

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, and 3004.5, of the Fish and Game Code, and to implement, interpret or make specific sections 200, 202, 203, 203.1, 207, 2055 and 3004.5, of said code, proposes to amend Section 355, Title 14, California Code of Regulations, relating to Ammunition Certification for Big Game and Nongame Bird and Nongame Mammal Hunting in Condor Range.

Informative Digest/Policy Statement Overview

The Governor signed AB 821 into law in 2007 establishing section 3004.5 of the Fish and Game Code. This section states:

3004.5. (a) Nonlead centerfire rifle and pistol ammunition, as determined by the commission, shall be required when taking big game with rifle or pistol, as defined by Section 350 of the department's mammal hunting regulations, and when taking coyote, within the department's deer hunting zone A South, but excluding Santa Cruz, Alameda, Contra Costa, San Mateo, and San Joaquin Counties, areas west of Highway 101 within Santa Clara County, and areas between Highway 5 and Highway 99 within Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern Counties, and within deer hunting zones D7, D8, D9, D10, D11, and D13.

(b) By July 1, 2008, the commission shall establish, by regulation, a public process to certify centerfire rifle and pistol ammunition as nonlead ammunition, and shall define, by regulation, nonlead ammunition as including only centerfire rifle and pistol ammunition in which there is no lead content. The commission shall establish and annually update a list of certified centerfire rifle and pistol ammunition.

Based on this Section of the Fish and Game Code, the Commission adopted changes to Sections 353 and 475, Title 14, CCR that made more specific some of the above Code sections.

Section 353

The intent of the regulation changes was to reduce the risk of indirect lead poisoning to the California condor (as well as other scavenging birds) from big game hunting activities by requiring "non-lead" projectiles. The Commission action defined "non-lead" projectiles to mean projectiles that contain only trace amounts of lead resulting from the projectile production process. The Commission established a maximum amount of lead allowable in projectiles of less than 1 percent content by weight.

The changes made:

1. Established the regulatory definition of projectile. A "projectile" is defined as any bullet, ball, sabot, slug, buckshot or other device which is expelled from a firearm through a barrel by the force of any explosion.
2. Established a maximum threshold of allowable lead in a projectile to account for trace elements present in the projectile production process. The threshold was established as less than 1 percent content by weight.
3. Established the geographic area in which non-lead projectiles would be required for big game hunting as specified in Section 3004.5 of the Fish and Game Code.

4. Established that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm capable of firing the projectile while taking or attempting to take any big game.

Section 475

The intent of the regulation change was to reduce the risk of indirect lead poisoning to the California condor (as well as other scavenging birds) from nongame hunting activities by requiring “non-lead” projectiles.

The changes made:

1. Established the regulatory definition of projectile. A “projectile” is defined as any bullet ball, sabot, slug, buckshot or other device which is expelled from a firearm through a barrel by the force of any explosion.
2. Established a maximum threshold of allowable lead in a projectile to account for trace elements present in the projectile production process. The threshold was established as less than 1 percent content by weight.
3. Established the geographic area in which non-lead projectiles would be required for nongame bird and nongame mammal hunting as specified in Section 3004.5 of the Fish and Game Code.
4. Established that it is unlawful to possess any projectile containing lead in excess of the amount permitted and a firearm capable of firing the projectile while taking or attempting to take any nongame bird or nongame mammal.
5. Established that .22 caliber rimfire cartridges used or possessed while hunting nongame birds or nongame mammals must be non-lead as defined by the Commission.

Enforcement of the projectile regulations is expected to be problematic, but the Department continues to work with the ammunition and bullet manufacturers, and other industries to develop tools to better enforce the regulations regarding non-lead projectiles.

The intent of the current proposed regulation change is to facilitate the above changes by identifying ammunition and projectiles that will be certified to meet the “non-lead” standard set by the Commission in Sections 353 and 475 of Title 14, CCR. This proposal specifically establishes a public process by which the Commission (OPTION 1) or the Department (OPTION 2) shall certify a list of centerfire rifle and pistol ammunition and projectiles that contain no lead for use when hunting big game and nongame birds and nongame mammals in condor range as specified in subsection 353(h) Title 14, CCR. This process includes the type of information the manufacturer will need to supply for certification. It also establishes that certified ammunition and projectiles will be placed on a public list to facilitate compliance by hunters. Finally, it provides for a process by which ammunition or projectiles will be removed if/when errors in certification are discovered.

The ultimate purpose of using ammunition and projectiles certified to contain no lead is to ensure that hunters are not exposing condors to secondary lead poisoning.

This proposal adds projectiles to the certification process. The statute identifies only ammunition to be certified. All ammunition is composed of an ignition source, propellant, and projectile, all of which are housed in a cartridge. Only the projectile comes into contact with the intended target and therefore is the only component of ammunition that is relevant to potential lead poisoning of condors. In addition, many hunters manufacture their own ammunition for hunting. Because the statute does not recognize these facts, the proposal must focus on certifying the projectiles to be lead free for the intended result to be

realized.

Another issue that the proposed regulation repairs relative to the statute is the reality that not all big game and nongame birds and nongame mammals are taken with centerfire rifles or pistols. Currently, both muzzleloading and shotguns may be used to take these animals. However, neither are defined as centerfire rifles and pistols. This proposal makes specific that those hunters using these firearms must use projectiles certified to be lead free.

Lastly, nongame birds and nongame mammals may be taken with rimfire firearms. This proposal makes specific that those hunters using rimfire firearms for hunting nongame birds and nongame mammals must use projectiles certified to be lead free.

Failing to certify and establish a list of ammunition and projectiles that meet the standard of non-lead ammunition as identified in subsection 353(h) Title 14, CCR, would result in the loss of most hunting opportunities for big game and non-game birds and mammals in condor range.

The code requires that this process be established by July 1, 2008.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Best Western Stockton Inn, Fremont Room, 4219 East Waterloo Road, Stockton, California on Friday, March 7, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the University of California, Davis, Bodega Bay Marine Laboratory - Lecture Hall, 2099 Westside Road, Bodega Bay, California on Friday, April 11, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before March 28, 2008, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 8, 2008. All comments must be received no later than April 11, 2008, at the hearing in Bodega Bay, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Dr. Eric Loft, Chief, Wildlife Branch, Department of Fish and Game, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations only establish the process to certify ammunition and have no known private sector economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John Carlson, Jr.
Executive Director

Dated: February 11, 2008