

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-Publication of Notice Statement)

Amend Section 671.1, and Add Section 671.8
Title 14, California Code of Regulations (CCR)
Re: Permits for Restricted Species and Inspection of Facilities

- I. Date of Initial Statement of Reasons: March 13, 2012
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: April 12, 2012
Location: Eureka
 - (b) Discussion/Adoption Hearing: Date: June 20, 2012
Location: Mammoth
- III. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

- 1. Restricted Species Inspections (other than aquaculture)

Existing regulations specify the conditions under which an individual or entity can lawfully possess restricted species in California. The proposed regulatory change completes the modifications needed in regulation to comport with AB 820 (Statutes of 2005) (now sections 2116-2195 Fish and Game Code). The statute and consequent regulations are intended to implement a more comprehensive, self-supported program for inspection and monitoring of restricted species facilities in California.

Events in recent years involving captive restricted species (a human fatality incident and separate escaped animal incidents) demonstrated the need for reconsideration, modification, and addition to the existing regulations to address issues such as escape contingency planning, public safety, and inspections.

Consideration and adoption of these proposed regulations will result in the following:

Amend 671.1

Elimination of language that authorized a veterinarian to conduct inspections and resulted in a fee waiver for permit holders.

Clarification that permitted animal facilities will require only one inspection per year, and not two.

Modification of a 10-day notification requirement in the event of the death of restricted species under permit. The California Department of Fish and Game (Department) is also proposing to modify Section 671.1(c)(2)(N) regarding the 10 business day notification requirement for transfers, receipt, birth or death of an animal of any restricted species. Large zoos and research facilities requested a change to this section due to the regular deaths of a large number of small, short-lived restricted species such as fish, amphibians, and rodents.

The Department already has a 10-day reporting requirement for elephants, non-human primate, bears, wolves, gila monsters and members of the Family Felidae when these animals are transferred, received, have a birth or death, or there is a change in a unique identification. Because this is already required for these animals, the Department is being adequately notified. Should the Department ever wish to investigate the transfer, death, receipt, or birth of the other species not required to be uniquely identified, the permittee will be required to maintain and produce such records at the facility.

The proposal also provides clarification of the appeal process and other minor editorial cleanup changes.

Add 671.8

Proposed Action - § 671.8. Inspection of Facilities

This proposed new section establishes the annual inspection requirements and types of inspections to be conducted to be compliant with recent statute.

Establishes a permitting capability that includes inspection by an eligible local entity (ELE) through a memorandum of understanding (MOU) process specifically, and only, for research entities such that the Department would not be inspecting those research facilities. The facilities would not be required to pay the enclosure-based inspection fee. This option allows for a five year MOU with annual renewals during that five year time period. Research entities permitted by the Department are already subject to inspections by USDA, have special public health related requirements, specific animal care standards and mandatory accreditations that must be met for the research activities to be conducted.

The major changes would include:

- a more efficient method for inspecting nonresident applicants for restricted species;
- clarification and description of types of inspections (initial, renewal, amendment); and
- providing for research entities to be considered ELE's and enter into an MOU with the department for inspection purposes.

(b) Authority and Reference:

Authority cited: Fish and Game Code Sections 200, 203, 203.1, 1002, 2118, 2120, 2122, 2127, 2150, 2150.4, 2157, and 2193 Fish and Game Code.
Reference: Sections 2116, 2116.5, 2117, 2118, 2150, 2151, 2157, 2190, 2193, 2271 and 3500, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None

(d) Identification of Reports or Documents Supporting Regulation Change:

[Economic Impact Analysis](#)

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Portions of these proposed regulatory changes were discussed at meetings of the Director's Animal Advisory Committee between 2003 and 2012.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Two alternatives related to inspection of facilities were evaluated, Alternative 1 and Alternative 2.

Alternative 1 - Committee on the Humane Care and Treatment of Wild Animals proposed regulations:

Alternative 1 was developed by the Committee on the Humane Care and Treatment of Wild Animals and submitted to the Department. This alternative was evaluated by the Department and determined to be infeasible because it developed an ELE inspection program that required extensive review of detailed criteria (criminal record, background check, credit history, certifications, and training); relied on certification/training programs that the

Department does not have but would have to develop; and implemented a compensation program that would be administratively difficult for the Department to implement considering current contracting difficulties with private entities. Additionally, the Department believes that the Department would still be the responsible agency for any potential violations, complaints, or other issues should they arise. Alternative 1 is not evaluated any further, however, some of the committee recommendations contribute to Alternative 2.

Alternative 2 is an alternative developed by the Department that expands on the proposed action and is presented for consideration.

Alternative 2 - § 671.8. Inspection of Facilities

Alternative 2 includes all of the proposed regulation plus additional regulatory language that would enable the Department to potentially authorize a restricted species applicant or existing permittee (as a trained private individual) to be an ELE for inspection purposes starting in 2015. These ELE's would then enter into an MOU with the Department that would allow for inspection of the facilities. The applicant or permittee requesting ELE/MOU status would be required to pay a new ELE/MOU fee to cover the cost of administering an ELE/MOU process. The Department would not reimburse any entity that becomes an ELE.

Establishes permitting options so that the Department would not be inspecting those permitted facilities, and the facilities would not be required to pay the enclosure-based inspection fee. Allows for a five year MOU with annual renewals during that five year time period.

This alternative will likely receive both support and opposition as it could lead to "self-inspection" which has been an issue in the past. The alternative is similar to the veterinarian inspection process which led to the requirement to change the regulations because of settlement language from a lawsuit that the Department agreed to, but it prohibits an ELE from conducting inspections of an exhibitor if that local entity is employed by, or receives compensation from, that exhibitor. However, the payment of inspection fees to the ELE does not constitute employment or compensation for purposes of this section. Compared to current conditions, the Department anticipates that, with the additional inspection fees based on number of enclosures, there will be increased Department enforcement of inspection requirements and ensuring animal care standards are met.

The department does not have a process where fees can be collected to be paid to an ELE and a compensation program would be administratively difficult for the Department to implement considering current contracting difficulties with private entities.

Alternative 2 would add the following elements to the regulatory package:

- Requires a permit holder to enter into an MOU with the Department to avoid the inspection fees that are based on a number of animal enclosures.
- Sets as the criteria for a trained private individual to be an ELE, that the individual must meet the qualification requirements for a restricted species permit as specified in Section 671.1.
- Provides that the director's "Committee on the Humane Care and Treatment of Wild Animals" shall advise and assist the Department in entering into MOU's and in determining whether an MOU meets the requirements of applicable laws and regulations.
- Allows the Department to grant or deny the request to become an ELE and/or obtain an MOU for justified reasons.
- Prohibits an ELE from conducting inspections of an exhibitor if the ELE is employed by, or receives compensation from, that exhibitor.
- Establishes January 2015 as the date that the Department would start to consider and enter into MOUs with permittees. This allows two full years for advance planning and preparation by the Department for this process.

(b) No Change Alternative:

The no change alternative would result in the Commission and Department being out of compliance with the mandate of the Fish and Game Code as expressed in several of the code sections related to *Chapter 2, Importation, Transportation, and Sheltering of Restricted Live Wild Animals (Sections 2116-2195)*.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action.

The actions proposed will improve compliance with existing statutes as it relates to permitting and possessing of live restricted wild animals in California.

This proposed action should result in improved wild animal care in licensed facilities, ensure that the facility and caging standards are being complied with by restricted species permit holders, and improve compliance with state law. The action will also result in improved planning and contingency should wild animals escape from a permitted facility.

The action will increase the workload and costs to the Department; however these costs will be borne by the permit holders whose fees will increase as a result of fully covering the cost of the program as required by state law. Pursuant to Section 2150.2 of the Fish and Game Code, the Department shall establish fees for permits, permit applications and facility inspection in amounts sufficient to cover the costs of administering, implementing, and enforcing these regulations.

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen 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. Considering the small number of permits issued over the entire state, this proposal is economically neutral to business and applies evenly to resident and nonresident permittees.

- (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.

The proposed regulations will identify the Department as the primary inspectors for approximately 260 Restricted Species facilities (this package does not include Research, Aquaculture or Fish inspections) in California. Currently, most of the inspections are conducted by veterinarians hired by or employed by the restricted species facility. Less work for veterinarians currently conducting these inspections may occur. It is unknown how much each private veterinarian charges restricted species permittees for inspection services but the statute (FGC Section 2150.4) requires the Department or an eligible local entity to conduct the inspections. The impacted veterinarians are generally employed otherwise and may still be employed by these facilities to conduct medical exams and other duties dealing with the health of the animals at the facility.

This regulation change will neither create new businesses in California or eliminate businesses currently doing business in this state nor expand the businesses currently doing business in this state.

(c) Cost Impacts on Representative Private Person or Business

As the number of permitted persons for all Restricted Species permits is small (approximately 300 permittees statewide) the impacts are not consequential to the State. However, there will be cost impacts that a representative private person or business who is among the 300 permittees would necessarily incur in reasonable compliance with this proposed action. Fish and Game Code Section 2150.2 states the Department “shall establish fees... in amounts sufficient to cover the costs...” These costs would occur in applying for a permit and the required inspection to house restricted wild animals and subsequent maintenance if deficiencies are found. The costs will be established under a separate rulemaking by the Department of Fish and Game.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State.

Statutorily, there must be no net cost to the State. All costs, such as those incurred for application reviews, processing, issuing permits, maintaining databases, inspections, development and maintenance of a mammal registry, and other administrative or enforcement costs will be fully offset by fees paid by the regulated parties.

(e) Other Nondiscretionary Costs/Savings to Local Agencies.

The effects to local agencies are unknown at this time.

(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.

INFORMATIVE DIGEST (Policy Statement Overview)

Existing regulations specify the conditions under which an individual or entity can lawfully possess restricted species in California. The proposed regulatory changes are needed to comport with AB 820 (Statutes of 2005) (now sections 2116-2195 Fish and Game Code). The statute and consequent regulations are intended to implement a comprehensive, self-supporting program for inspection and monitoring of restricted species facilities in California.

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Proposed Regulations

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Establishes annual inspection requirements and types of inspections to be conducted. Establishes inspection options that includes defining an eligible local entity and establishing a memorandum of understanding process specifically for research entities; and depending on Commission action either would or would not include the potential for a similar ELE/MOU process for other entities.

For public notice purposes and to facilitate Commission discussion, the Department is presenting the two regulatory options (Option A and Option B) for Section 671.8 that encompass differing opinions on who may conduct inspections, and under what circumstances, for Commission consideration:

Proposed Action - § 671.8. Inspection of Facilities

This proposed new section establishes the annual inspection requirements and types of inspections to be conducted to be compliant with recent statute. The fee for inspections would be based on the number of enclosures that a facility has, using actual inspection information that the Department gained from limited testing of the method on permitted facilities.

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