

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action
Amend Sections 670 and 703
Title 14, California Code of Regulations
Re: Falconry Regulations and Forms

I. Date of Initial Statement of Reasons: March 19, 2025

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing:

Date: April 16, 2025

Location: Sacramento, CA

(b) Discussion Hearing:

Date: May 14, 2025

Location: Webinar/Teleconference

(c) Adoption Hearing:

Date: June 19, 2025

Location: Sacramento, CA

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The Department of Fish and Wildlife (Department) has requested the proposed amendments for the purpose of conforming certain provisions of the Falconry regulations with recent court orders and federal Falconry regulations. It is necessary that the Fish and Game Commission:

- Conform the regulations and the initial and renewal Falconry license applications with the recent opinion issued by the 9th Circuit U.S. Court of Appeal concerning the “Certification” by applicants for Falconry permits.
- Require falconers to take only California-administered Falconry examinations (not falconry examinations administered by other states).
- Delete restrictions on commercial exhibiting of Falconry raptors (e.g., films, education) to conform with a district court’s November 10, 2022 Stipulated Judgment and Order.

Background

The present regulations of Title 14, Section 670, Falconry, were adopted by the Fish and Game Commission in 2017. Generally, the purpose of these provisions was to streamline and clarify the permitting, possession, and treatment of raptors for purposes of Falconry as defined in Section 670(b)(7) of these regulations. Possession of any live wildlife animal by persons is always unlawful, absent specific authorization and, generally, an applicable permit. Exceptions are extremely limited and highly regulated; these may include organizations such as zoos, sanctuaries, veterinary care, rehabilitation, scientific and educational activities, and the like. Only licensed Falconers are permitted to possess, house, trap, transport, and use Falconry raptors for the purpose of hunting or training.

Falconry has been a sport for thousands of years of human history across all cultures. In the current license year (2024) there are approximately 600 California licensed falconers, enjoying and showcasing the sport. Falconers are ardent caretakers and rehabilitators of the birds. The number of raptors in possession varies but has sometimes exceeded 1,000 birds in recent license years.

Falconry raptors may be any bird of the Order Falconiformes, Accipitriformes or Strigiformes, or a hybrid thereof. Additionally, a licensed falconer may capture raptor(s) from the wild in California, according to the established limits for their respective Falconry license class (Apprentice class, General class or Master class). Raptors that may be captured from the wild for use in Falconry in California are: Northern goshawk, Cooper's hawk, sharp-shinned hawk, red-tailed hawk, red-shouldered hawk, merlin, American kestrel, prairie falcon, barred owl and great horned owl. Only a Master falconer may possess eagles in accordance with 670(e)(6)(C)2.

Proposed Regulations

Amend subsection 670(e)(2)(D)

Amend subsection 670(e)(2)(D) so that it no longer requires applicants for a falconry license to certify that they understand that their facilities, equipment, or raptors are subject to unannounced inspections, and they have read, understand and agree to abide by the applicable provisions of the Fish and Game Code and regulations promulgated thereto.

The change to section 670(e)(2)(D) conforms with the opinion issued by the U.S. Court of Appeal, 9th Circuit, in the case *Stavrianoudakis et al. v. United States Fish & Wildlife Service et al.* ((2024) 108 F.4th 1128)), in which the Department Director in his official capacity is a party), which holds that a certification signed by falconry license applicants in which they acknowledge that their facilities may be subject to unannounced inspections and that they agree to comply with all relevant laws (including laws allowing for unannounced inspections) creates an unconstitutional condition. Likewise, Forms FG 360 and FG 360b (the initial and renewal falconry applications incorporated by reference in subsection 703(b)(1)(B)) will be amended removing the relevant parts of the certification statement.

This ongoing lawsuit was filed over six years ago. To date, the Department has paid approximately \$450,000 in attorney's fees and Department staff have spent over a thousand hours helping the Department of Justice defend the Department; these changes could end this lawsuit and minimize further payment of fees and allow Department staff to work on other Department priorities.

670(e)(2)(D) Signed Certification. Each application shall contain a certification worded as follows: "I certify that I have read and am familiar with both the California and U.S. Fish and Wildlife Service falconry regulations, CFR 50, Sections 21.29 through 21.30, and that the information I am submitting is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to cancellation of the application, suspension or revocation of a license, and/or administrative, civil, or criminal penalties. ~~I understand that my facilities, equipment, or raptors are subject to unannounced inspection pursuant to subsection 670(j), Title 14, of the California Code of Regulations.~~ I certify that I have read, understand, and agree to abide by, all conditions of this license, ~~the applicable provisions of the Fish and Game Code, and the regulations promulgated thereto.~~ I certify that there are no pending or previous legal or administrative proceedings that could disqualify me from obtaining this license." The application shall be submitted with the applicant's original signature.

Delete subsection 670(e)(3)(A)1.

Federal falconry regulations state that state falconry regulations “may be more restrictive than these Federal standards but may not be less restrictive.” (50 C.F.R. 21.82(b)(1)(ii).) States that have regulations that are not at least as restrictive may have their licensing authority suspended. (50 C.F.R. 21.82(b)(5))

Federal falconry regulations also require that a falconry applicant take an examination administered by the state in which they wish to obtain their license. (50 C.F.R. 21.82(c)(3).) But presently, subsection 670(e)(3)(A)1 allows applicants to take out of state falconry exams. The United States Fish and Wildlife Service has notified California of this inconsistency with Federal falconry regulations, potentially placing California’s falconry program at risk of suspension. Deleting subsection 670(e)(3)(A)1. will make this regulation consistent with the federal requirement:

670(e)(3)(A) An applicant who meets one of the following criteria shall be exempt from taking the California falconry examination:

- ~~1. An applicant who provides documentation of successfully passing a federally approved examination in a state that has had its falconry regulations certified as specified in 50 CFR 21 will not be required to take the examination in California if the applicant took the examination less than five years prior to submitting an application for a California falconry license.”~~

Amend subsection 670(h)(13)(A)

Deleting the provisions of subsection 670(h)(13)(A) regarding commercial exhibiting of falconry birds described below is necessary to make this subsection comply with a November 10, 2022 Stipulated Judgment and Order in *Stavrianoudakis et al. v. United States Fish & Wildlife Service et al.*, in which the Department agreed not to enforce these provisions. In this case, the district court had earlier found that these provisions likely violate the First Amendment of the United States Constitution.

670(h)(13)(A) Education and Exhibiting. A licensee may use raptors in his or her possession for training purposes, education, field meets, and media (filming, photography, advertisements, etc.), as noted in 50 CFR 21, if the licensee possesses the appropriate valid federal permits, ~~as long as the raptor is primarily used for falconry and the activity is related to the practice of falconry or biology, ecology or conservation of raptors and other migratory birds. Any fees charged, compensation, or pay received during the use of falconry raptors for these purposes may not exceed the amount required to recover costs.~~ An Apprentice falconer may use the licensee's falconry raptor for education purposes only under the supervision of a General or Master falconer.”

Necessity of the Proposed 670 Regulation Changes

Amendments to subsection 670(e)(2)(D) and Forms FG 360, FG 360b and FG 360d are necessary to make this subsection conform with the opinion issued by the U.S. Court of Appeal, 9th Circuit, in the case *Stavrianoudakis et al. v. United States Fish & Wildlife Service et al.* ((2024) 108 F.4th 1128)), in which the Director of the Department in his official capacity is a party. This opinion holds that a certification signed by falconry license applicants in which they acknowledge that their facilities may be subject to unannounced inspections and that they agree to comply with all relevant laws (including laws allowing for unannounced inspections) creates an unconstitutional condition. These deletions would eliminate unconstitutional conditions.

Furthermore, these changes are necessary because they could help end this lawsuit and minimize further payment of fees and allow staff to work on other Department priorities. The only issue that remains in this lawsuit is whether the Plaintiffs are entitled to relief under their unconstitutional conditions claim. So far, the Department has paid approximately \$450,000 in attorney's fees, and Department staff have spent over a thousand hours working with Department of Justice attorneys to help defend the Department.

- Deleting subsection 670(e)(3)(A)1 is necessary to make California falconry regulations at least as restrictive as Federal falconry regulations and thereby prevent suspension of California's falconry licensing authority. Federal falconry regulations require that falconry applicants take exams administered by their own states. Federal falconry regulations state that state falconry regulations "may be more restrictive than these Federal standards but may not be less restrictive." (50 C.F.R. 21.82(b)(1)(ii).) States that have regulations that are not at least as restrictive may have their licensing authority suspended. (50 C.F.R. 21.82(b)(5).)
- Federal falconry regulations also require that a falconry applicant take an examination administered by the state in which they wish to obtain their license. (50 C.F.R. 21.82(c)(3).) But presently, subsection 670(e)(3)(A)1 allows applicants to take out of state falconry exams. The U.S. Fish and Wildlife has notified California of this inconsistency with Federal falconry regulations, potentially placing California's falconry program at risk of suspension. Deleting subsection 670(e)(3)(A)1 will make Section 670 consistent with the federal requirement.
- Deleting some of the provisions of subsection 670(h)(13)(A) regarding commercial exhibiting of falconry birds and fees charged is necessary to make this subsection comply with a November 10, 2022, Stipulated Judgment and Order in *Stavrianoudakis et al. v. United States Fish & Wildlife Service et al.*, in which the Department agreed not to enforce these provisions. In this case, the district court had earlier found that these provisions likely violate the First Amendment of the U.S. Constitution.

Amend subsection 703(b)(1), Falconry Application forms

The amendment updates the reference to forms incorporated by reference in subsections 703(b)(1)(B) through (E), consistent with current Department form standards and current revision dates. Amending subsection 703(b)(1) is necessary to ensure consistency with the amended forms.

Amendments to forms FG 360, 360b and 360d:

- Updating the names of each form consistent with current Department form standards and current revision date, e.g. (~~FG 360 (New 2/13)~~) (DFW 360 (Rev. 07/25)), and
 - the Department address, website, and minor grammatical edits.
 - adding "Non-binary" as a gender option is necessary for inclusivity.
 - the amounts of the fees are updated in accordance with Section 713, Fish and Game Code.
- DFW 360. Updating the applicant's certification on form DFW 360 for consistency with the amendment of subsection 670(e)(2)(D).

- DFW 360b. Updating the applicant’s certification on form DFW 360b for consistency with the amendment of subsection 670(e)(2)(D); and
 - Delete the instruction specifying an examination outside California consistent with the deletion of subsection 670(e)(3)(A)1.
- DFW 360d. Updating the applicant’s certification on form DFW 360d for consistency with the amendment of subsection 670(e)(2)(D).

(b) Goals and Benefits of the Regulation

The proposed amendments would:

1. Make subsection 670(e)(2)(D) comply with a 9th Circuit Court of Appeal decision that held that portions of the certification in which applicants for falconry licenses certify that they understand that their "facilities, equipment, or raptors are subject to unannounced inspection[s]" and that they "have read, understand, and agree to abide by all conditions of ...the applicable provisions of the Fish and Game Code and regulations promulgated thereto," including the unannounced inspection provision (subsection 670(j)(3)(A)), are unconstitutional conditions.
2. Updates the initial and renewal falconry license applications so that they contain current information and certifications consistent with subsection 670(e)(2)(D) and the 9th Circuit Court of Appeal decision, and update the incorporation of these applications by reference in subsection 703(b)(1)(B) so these amendments become part of the regulation.
3. Make subsection 670(e)(3)(A) consistent with Federal falconry regulations that require applicants for an apprentice falconry license to take an examination administered by the state in which they wish to obtain their license. Subsection 670(e)(3)(A)1 is proposed to be deleted, removing the allowance that California apprentice falconry license applicants may take examinations from other states, the result is, in conformance with Federal regulations, that applicants will be required to take only the California examinations.
4. Make subsection 670(h)(13)(A) consistent with the November 10, 2022 Stipulated Judgement and Order. The provisions in subsection 670(h)(13)(A) placing constraints on exhibiting are proposed for deletion.
5. Potentially save the Department tens of thousands of dollars in attorney’s fees in the ongoing falconry litigation by deleting the certification language and thereby eliminating the remaining issues in the case.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Section 670

Authority cited: 200, 203, 265, 355, 356, 395, 396, 398, 710.5, 710.7, 713, 1050, 1054, 1530, 1583, 1802, 3007, 3031, 3039, 3503, 3503.5, 3511, 3513, 3800, 3801.6, 3950, 4150 and 10500, Fish and Game Code

Reference: Sections 395, 396, 713, 1050, 3007, 3031, 3503, 3503.5, 3511, 3513 and 3801.6, Fish and Game Code; Section 597, Penal Code; and Title 50, Code of Federal Regulations, Parts 21.29 and 21.30.

Section 703

Authority cited: Sections 713, 1002, 1002.5, 1050, 1055, 2118, 2120, 2122, 2150, 2150.2, 2157 and 5060, Fish and Game Code.

Reference: Sections 395, 396, 398, 713, 1002, 1002.5, 1050, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2150.4, 2151, 2157, 2190, 2193, 2271, 3005.5, 3007, 3503, 3503.5, 3511, 3513, 3950, 5060, 5061, 10500, 12000 and 12002, Fish and Game Code; and Title 50, Code of Federal Regulations, Parts 21.29 and 21.30.

(d) Specific Technology or Equipment Required by Regulatory Change: None.

(e) Identification of Reports or Documents Supporting Regulation Change

Stipulated Judgment and Order of the United States District Court (*Stavrianoudakis, et al. v. USFWS, et al.*, Case 1:18-cv-01505-JLT-BAM), dated November 10, 2022

Opinion of the United States Court of Appeals, 9th Circuit (*Stavrianoudakis, et al. v. USFWS, et al.*, (2024) 108 F.4th 1128))

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

The Department presented the proposed amendments to the Commission's Wildlife Resources Committee meeting on January 15, 2025.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative

The no change would leave the Department out of conformity with the opinion issued by the U.S. Court of Appeal, 9th Circuit, in the case *Stavrianoudakis et al. v. United States Fish & Wildlife Service et al.* ((2024) 108 F.4th 1128)). This would leave the Department vulnerable to further litigation and additional costs.

Not making the other proposed changes (i.e., allowing applicants to continue to take out of state exams) would place would leave the Department's licensing authority at risk of suspension because it would continue to be inconsistent with Federal falconry laws. Without the proposed changes, the ability of licensed Falconers in California to enjoy their sport is threatened.

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 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.

- (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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Commission does not anticipate benefits to jobs, businesses, the health and welfare of California residents, or of any benefits to worker safety and the State's environment.

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

The proposed regulation would require falconers to take the California-administered falconry examination for which the fee is currently \$69. Current regulations allow exams from other states for which the fee is reduced or non-existent. While this fee does not represent a new cost, and there are no additional fees required by this proposed regulation, this could represent an increase for those falconers who have completed their exams in other states.

The Commission is not aware of any cost impacts that a representative private business would necessarily incur in reasonable compliance with the proposed action as it imposes no new fees or costs.

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

The proposed regulations may save the Department hundreds of thousands of dollars in attorney's fees in the ongoing falconry litigation by deleting the certification language and thereby eliminating the remaining issues in the case related to conformity with the opinion issued by the U.S. Court of Appeal, 9th Circuit, in the case *Stavrianoudakis et al. v. United States Fish & Wildlife Service et al.* ((2024) 108 F.4th 1128)). This lawsuit, filed over six years ago, is ongoing and so far the Department has paid approximately \$457,131 in attorney fees (\$282,131 to the California Department of Justice and \$175,000 in plaintiff's attorney fees) to defend the Department; these regulatory changes could end this lawsuit and minimize further payment of fees and allow Department staff to work on other Department priorities. In combination with the collection of approximately \$1,725 in additional fee revenue and the savings from not having to pay up to \$457,131 in additional attorney fees yields a fiscal benefit of approximately \$458,856 for the Department. See addendum to the STD 399 for further explanation.

- (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, Government Code: None.
- (h) Effect on Housing Costs: None.

VII. Economic Impact Assessment

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission does not anticipate that the proposed action will have any effect on the creation or elimination of jobs within the state. Federal falconry regulations require that a falconry applicant take an examination administered by the state in which they wish to obtain their license (50 C.F.R. 21.82(c)(3)). Presently, subsection 670(e)(3)(A)1 C.C.R. allows applicants to take out of state falconry exams, but the U.S. Fish and Wildlife Service has notified California of this inconsistency with Federal falconry regulations, potentially placing California's falconry program at risk of suspension. The proposed action brings California's falconry exam requirements in line with existing Federal regulations. The proposed regulation would require falconers to take the California-administered falconry examination for which the fee is currently \$69. Current regulations allow exams from other states for which the fee is reduced or non-existent. While this fee does not represent a new cost, and there are no additional fees required by this proposed regulation, this could represent an increase for those falconers who have completed their exams in other states.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission does not anticipate that the proposed action will have any negative or positive impacts regarding the creation of new businesses or the elimination of existing businesses within the state.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate any expansion of businesses currently doing business within the state as a result from these proposed regulations.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission does not anticipate any benefits to the health and welfare of California residents as a result from these proposed regulations.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate any benefits to worker safety as a result from the proposed regulations.

(f) Benefits of the Regulation to the State's Environment

The Commission does not anticipate benefits to the state's environment as a result from the proposed regulations.

(g) Other Benefits of the Regulation

The Commission does not anticipate any other benefits as a result from the proposed regulations.

Informative Digest/Policy Statement Overview

The proposed regulatory changes amend Section 670, Title 14, CCR, Practice of Falconry, and subsection 703(b) relating to falconry forms. The Department of Fish and Wildlife (Department) has requested the proposed amendments for the purpose of conforming certain provisions of the Falconry regulations with recent court orders and federal Falconry regulations. It is necessary that the Fish and Game Commission:

- Conform the regulations and the initial and renewal Falconry license applications with the recent opinion issued by the 9th Circuit U.S. Court of Appeal concerning the “Certification” by applicants for Falconry permits.
- Require falconers to take only California-administered Falconry examinations (not falconry examinations administered by other states).
- Delete restrictions on commercial exhibiting of Falconry raptors (e.g., films, education) to conform with a district court’s November 10, 2022 Stipulated Judgment and Order.

Proposed changes to Section 670 and 703:

- Amend subsection 670(e)(2)(D) so that the required certification conforms with the opinion issued by the U.S. Court of Appeal, 9th Circuit, in the case *Stavrianoudakis et al. v. United States Fish & Wildlife Service et al.* ((2024) 108 F.4th 1128)), which holds that a certification signed by falconry license applicants in which they acknowledge that their facilities may be subject to unannounced inspections and that they agree to comply with all relevant laws (including laws allowing for unannounced inspections) creates an unconstitutional condition.
- Deleting subsection 670(e)(3)(A)1 will make this regulation consistent with the federal requirement that a falconry applicant take an examination administered by the state in which they wish to obtain their license, 50 C.F.R. 21.82(c)(3). Presently Section 670 allows Falconry applicants to take out of state examinations, this provision is deleted.
- Deleting those provisions of subsection 670(h)(13)(A) regarding commercial exhibiting of falconry birds is necessary to make this subsection comply with a November 10, 2022 Stipulated Judgment and Order in *Stavrianoudakis et al. v. United States Fish & Wildlife Service et al.*, in which the Department agreed not to enforce these provisions. In this case, the district court had earlier found that these provisions likely violate the First Amendment of the U.S. Constitution.
- Amend subsections 703(b)(1)(B), (C) and (E), where the Falconry application forms (FG360, 360b and 360d) are incorporated by reference. The forms will be amended removing the relevant parts of the certification statement as set forth in subsection 670(e)(2)(D) and in conformance with cited opinion of the court. Other minor nonsubstantial changes are proposed.

Benefits of the regulations

The benefits of the proposed regulations are consistency with the opinion of the court and federal law. The amended regulations benefit the licensed falconers and reduce the risk of further litigation of the Department.

Evaluation of incompatibility with existing regulations

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to sections 670 and 703 are neither inconsistent nor incompatible with existing state regulations. No other state agency has the authority to promulgate falconry regulations.