

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, 203, 265, 355, 356, 395, 396, 398, 710.5, 710.7, 713, 1002, 1002.5, 1050, 1054, 1055, 1530, 1583, 1802, 2118, 2120, 2122, 2150, 2150.2, 2157, 3007, 3031, 3039, 3503, 3503.5, 3511, 3513, 3800, 3801.6, 3950, 4150, 5060 and 10500, of the Fish and Game Code, interpret or make specific 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, 3031, 3503, 3503.5, 3511, 3513, 3801.6, 3950, 5060, 5061, 10500, 12000 and 12002 Fish and Game Code; Section 597, Penal Code, and Title 50, Code of Federal Regulations, Parts 21.29 and 21.30, proposes to amend sections 670 and 703, Title 14, California Code of Regulations (CCR), relating to Falconry.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14, CCR.

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 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 (i.e., 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 New 2/13 (renamed DFW 360 Rev 07/2025), FG360b New 2/13 (renamed DFW 360b Rev.

07/2025) and FG360d New 2/13 (renamed DFW 360d Rev. 07/2025) 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.

Benefit 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.

Consistency and Compatibility 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.

Public Participation

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before **May 29, 2025** at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received on **June 9, 2025**. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing originating in the California Natural Resources Building, 715, P Street, Sacramento, California, which will commence at 8:30 a.m. on **Wednesday, May 14, 2025**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at 1500 Capitol Ave, Sacramento, CA 95814 in Sacramento, California, which will commence at 8:30 a.m. on **Wednesday, June 11, 2025**, and may continue at 8:30 a.m. on **Thursday, June 12, 2025**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative,

Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P 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 Melissa Miller-Henson or Jenn Bacon at FGC@fgc.ca.gov or at the preceding address or phone number. **David Kiene, Office of General Counsel, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Mr. Kiene can be reached at regulations@wildlife.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/Results of the Economic Impact Assessment

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 Business, 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 believes the proposed regulation will offer significant benefits by aligning with recent court decisions and federal falconry rules, clarifying falconry guidelines in California. This alignment will help practitioners use falcons responsibly and sustainably, enhancing the management of falconry activities, which protects the birds and supports practitioners.

Hunting and falconry are enjoyable outdoor activities that connect people with nature while managing wildlife populations, protecting habitats, and protecting the environment. The proposed change indirectly benefits public health and welfare in California.

However, it is essential to note that the regulation does not address specific safety concerns for workers in this field, so it will not improve worker safety.

(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 person or 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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

California Fish and Game Commission

Melissa Miller-Henson
Executive Director

Dated: April 15, 2025