

State of California
Fish and Game Commission

Final Statement of Reasons for Regulatory Action
Amend Sections 670 and 703
Title 14, California Code of Regulations
Re: Falconry Regulations and Forms

Date of Initial Statement of Reasons: March 19, 2025

Date of Final Statement of Reasons: June 23, 2025

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 12, 2025

Location: Sacramento

Update

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR). Commission refers to the California Fish and Game Commission unless otherwise specified. Department refers to the California Department of Fish and Wildlife unless otherwise specified.

At its June 12, 2025, meeting, the Fish and Game Commission (Commission) adopted the proposed amendments for the purpose of conforming certain provisions of the Falconry regulations with recent court orders and federal Falconry regulations, and updating license application and inspection forms:

- Confirms the regulations, the initial and renewal Falconry license applications, and the inspection form with the recent opinion issued by the 9th Circuit U.S. Court of Appeal concerning the “Certification” by applicants for Falconry permits.
- Requires falconers to take only California-administered Falconry examinations (not falconry examinations administered by other states) to make this provision consistent with federal Falconry regulations.
- Deletes 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.
- Updates gender identification options, dates, contact information, and fees on the applications and application instructions.
- In subsection 670(e)(2)(D), the language “the applicable provisions of the Fish and Game Code, and the regulations promulgated thereto” has been removed to comply with the opinion issued by the 9th Circuit U.S. Court of Appeal which disfavors this provision.

Note that there is a nonsubstantial error in the proposed text of Section 703. In subsection 703(b)(1)(D) a portion of the form name ~~FG-360e~~ was in strikethrough, however it is not deleted. The adopted text has been corrected.

Consistency with Court Order and Federal Regulations

Subsection 679(e)(3)(A) was updated to reconcile federal request to make California falconry testing requirements consistent with federal regulations.

Subsection 670(j)(3)(B) remains unchanged because it was not the subject of the falconry-related litigation and therefore it was not addressed in the 9th Circuit Court of Appeals decision.

Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

Comment letters, emails and oral comments are in Attachment 1. Each comment, alternative, or other matter raised by the public has been rejected, acknowledged or accepted with a Department response as set forth in Attachment 2. None of the comments received required any change to the proposed regulation, which was approved by the Commission as presented.

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.

(c) Consideration of Alternatives

In view of information currently possessed, no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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.

Updated 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 and inspection form with the recent opinion issued by the Ninth 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

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 (D), 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.
- Incorporate by reference forms DFW 360, 360b, and 360d, pursuant to Section 20 “Incorporation by Reference,” Title 1, of the California Code of Regulations. It would be cumbersome, unduly expensive, or otherwise impractical to publish the documents in the California Code of Regulations.

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 proposed regulations are neither inconsistent nor incompatible with existing state regulations. Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. 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.

Update

At its June 12, 2025, meeting, the Fish and Game Commission adopted the proposed amendments for the purpose of conforming certain provisions of the Falconry regulations with recent court orders and federal Falconry regulations, and updating license application and inspection forms.