

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 703
Title 14, California Code of Regulations (CCR)
Re: Falconry Fees and Forms

- I. Date of Initial Statement of Reasons: May 21, 2013
- II. Date of Final Statement of Reasons July 31, 2013
- III. Dates and Locations of Scheduled Hearings:
 - (a) Public Hearing: Date: July 30, 2013
Location: Sacramento

IV. Update:

After the 45 day comment period a Public Hearing was held as described in the Notice of Public Hearing. After considering the written and oral comments received from interested parties, the Department will adopt the originally proposed text, fees and forms as described in the Notice, with an effective date of January 1, 2014.

V. Summary of Primary Considerations Raised in Support and in Opposition:

During the 45 day comment the Department received the following 3 written comments:

Eric Steinhauer, June 22, 2013. (Email 1)

Mr. Steinhauer generally expressed concern over changes to Falconry regulations adopted by the Fish and Game Commission in Section 670, law enforcement, and equal access to hunting opportunities. These general comments have been noted by the Department but are outside of the scope of this rulemaking. Specific comments regarding the proposed amendments to Section 703 are as follows:

a) The inspection fees are burdensome.

Department response: The inspection fees apply only to those falconers who: 1) are new licensees; or 2) move their permanent raptor facilities to a new location. The inspection fee of \$259 for the 2013-2014 fiscal year was derived by calculating the actual cost to the Department to perform such inspections, but not more than that cost. Pursuant to sections 1050 and 2150.2 of the Fish and Game Code, the Department is required to establish fees for permits, permit applications and facility inspections in amounts sufficient to cover the costs of

administering, implementing, and enforcing these statutes. 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.

- b) The Department should consider alternatives to the proposed fees.

Department response: Pursuant to sections 1050 and 2150.2 of the Fish and Game Code, the Department is required to establish fees for permits, permit applications and facility inspections in amounts sufficient to cover the costs of administering, implementing, and enforcing these statutes. The Department could have chosen to calculate the fee based on the middle step of the pay scale, but since most employees reach the top pay scale within 5 years or so, this approach would have resulted in insufficient revenues within a short period of time. Alternatively, a lower job classification could have been used to conduct the facility inspections. However, the Department believes that Game Wardens are most qualified to interpret the regulations and conduct inspection activities. 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.

- c) The Department should show just cause for the current fee increases.

Department response: Each fee is fully described and the justification for each fee is shown in the Initial Statement of Reasons and Std. 399 Economic and Fiscal Impact Statement. Pursuant to sections 1050 and 2150.2 of the Fish and Game Code, the Department is required to establish fees for permits, permit applications and facility inspections in amounts sufficient to cover the costs of administering, implementing, and enforcing these statutes.

- d) Falconers pay a license fee, hunting fee, and Federal license fee.

Department response: The falconry license fee is set in Fish and Game Code section 396(b) and will not be affected by the proposed rulemaking. Other hunting fees are beyond the scope of this rulemaking. The Federal License Fee of \$100/year will end with the effective date of Section 670 and Section 703 on January 1, 2014.

Karl Kerster, July 29, 2013. (Email 2)

Mr. Kerster generally expressed concern over changes to Falconry regulations adopted by the Fish and Game Commission in Section 670, expressing an opinion that the Falconry regulations should be substantially changed or discarded. These general comments have been noted by the Department but are outside of the

scope of this rulemaking. Specific comments pertaining to the proposed amendments to Section 703 are as follows:

- a) The Department's "claim that these regulations will not cause a significant effect on housing costs ... is false."

Department response: The assessment of impact on housing costs is attributed to human (not raptor) housing throughout California. The conclusions of the Department expressed in the Initial Statement of Reasons, the Economic Impact Assessment, and Std. 399 Economic and Fiscal Impact Statement are correct insofar as a finding of no impact. The proposed inspection fee for raptor facilities will affect only a small number of licensed falconers and will neither increase nor decrease housing costs in California.

- b) The Department's "claim of having no negative impact on the California economy is similarly false."

Department response: The assessments of impact on the economy are presented in the Initial Statement of Reasons, the Economic Impact Assessment, and Std. 399 Economic and Fiscal Impact Statement. The proposed regulations will affect a relatively small number of individuals engaged in the practice of falconry, primarily for recreation. The proposed application and inspection fees will have no measurable effect on the state's economy.

- c) The "expensive, unnecessary inspections being conducted by Department employees should be deleted."

Department response: The Department has a statutory duty under Fish and Game Code section 2120 to issue permits that allow the possession and protect the welfare of restricted species, including raptors. Without inspection of raptor facilities, the Department would be unable to meet its statutory responsibilities.

Fred Seaman, July 30, 2013 (Email 3)

Mr. Seaman made specific objections to several of the proposed fees:

- a) The examination fee is excessive.

Department response: The examination fee is fully described and the justification for the fee is shown in the Initial Statement of Reasons and Std. 399 Economic and Fiscal Impact Statement. Pursuant to sections 1050 and 2150.2 of the Fish and Game Code, the Department is required to establish fees for permits, permit applications and facility inspections in amounts sufficient to cover the costs of administering, implementing, and enforcing these statutes.

- b) The inspection should not be performed by Department staff or volunteers.

Department response: Inspections are to be performed by Department personnel in accordance with the provisions of Section 670. This comment has been noted by the Department but is outside of the scope of this rulemaking.

c) The inspection costs are underestimated.

Department response: Refer to Email 1 (a).

d) The objection to re-inspection is the same as noted in (b) and (c).

Department response: Refer to Email 1 (a).

e) Special Raptor Capture Drawing Application. There should be no process or fees for Prairie Falcons.

Department response: The provisions establishing a requirement for a Special Raptor Capture Drawing Application procedure are found in Section 670, Falconry regulations as adopted by the Fish and Game Commission, and are outside of the scope of this rulemaking. The drawing application fee is proposed to be set at \$7.50 which is the same as the non-refundable application fee for other Department licenses, permits, reservations, or entitlements specified in Fish and Game Code section 1050(f).

f) Special Raptor Capture Permit. Same objection as (e).

Department response: Refer to Email 3 (e).

g) Nonresident Falconer Raptor Capture Permit – Excessive fee.

Department response: The fee for a Nonresident Falconer Raptor Capture Permit is in current regulations (subsection 670(c)(4)(B)) and has been set at \$319.00 for the 2013/2014 license year. Although the current provision for the fee is being moved from Section 670 to Section 703 (effective January 1, 2014) the Department is not proposing to change the fee. Pursuant to sections 1050 and 2150.2 of the Fish and Game Code, the Department is required to establish fees for permits, permit applications and facility inspections in amounts sufficient to cover the costs of administering, implementing, and enforcing these statutes.

No other written comments were received.

PUBLIC HEARING JULY 30, 2013

The Department did receive the following oral public comments at the public hearing:

Karl Kerster (Commenter 1)

Mr. Kerster referred to his email of July 29 (see Email 2 with Department response) and generally expressed concern over changes to Falconry regulations adopted by the Fish and Game Commission in Section 670. He shared his opinion that the Falconry regulations should be substantially changed or discarded, and that he is willing to undertake a role in working with the Department and the falconry community on future revisions. These general comments have been noted by the Department but are outside of the scope of this rulemaking. Specific comments regarding the proposed amendments to Section 703 are as follows:

a) California residents might not be able to afford to become falconers because of excessive fees and regulation.

Department response: Refer to Email 1 (a).

b) The inspection fee might be imposed multiple times on a falconer (for example a college student) who moves frequently in a year,

Department response: No information was provided by the commenter as to any actual person who may be, or might have been, impacted by the regulation, and the Department is not aware of any such person or circumstance. The inspection fee is required under subsection 670(j)(1)(E) "if the licensee moves his/her permanent facilities to a another location." Inspections are to be performed by law enforcement personnel in accordance with the provisions of Section 670. This comment has been noted by the Department but is outside of the scope of this rulemaking.

c) The fees, in particular inspection fees, might actually impact the cost of housing.

Department response: Refer to Email 2 (a).

George Bristol (Commenter 2)

Mr. Bristol generally expressed concern over changes to Falconry regulations adopted by the Fish and Game Commission in Section 670, and shared his opinion that the Falconry regulations should be substantially changed or discarded. He further explained his role in working with the US Fish and Wildlife Service over many years. These general comments have been noted by the Department but are outside of the scope of this rulemaking. Specific comments regarding the proposed amendments to Section 703 are as follows:

a) The cost of the initial inspection of raptor facilities (\$259) is too high for young people just starting their falconry practice. This and other fees are a disincentive to new falconers.

Department response: The inspection fee, and all other proposed fees, are fully described and the justification shown in the Initial Statement of Reasons and Std. 399 Economic and Fiscal Impact Statement. Pursuant to sections 1050 and 2150.2 of the Fish and Game Code, the Department is required to establish fees for permits, permit applications and facility inspections in amounts sufficient to cover the costs of administering, implementing, and enforcing these statutes.

There were no other speakers, and no other written comments submitted.

VI. Location and Index of Rulemaking File

A rulemaking file with attached file index is maintained at:

Department of Fish and Wildlife
1416 Ninth Street, Room 1208
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street, Room 1208
Sacramento, CA 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified. The intent of the regulation proposal is to adopt new Department forms and fees in accordance with the Commission's newly adopted falconry regulations in Section 670.

(b) No Change Alternative:

The no change alternative would result in the Department being unable to recover its costs for licensing, permitting and inspection activities related to the practice of falconry in California under the newly adopted Commission regulations in Section 670.

(c) Consideration of Alternatives:

In view of information currently possessed, and considering the comments of the public, no reasonable alternative is known to the Department which would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective as and less burdensome to the 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.

IX. Impact of the Regulation Changes

Regulations adopted by the Commission under Section 670 will increase the workload and costs to the Department; however these costs will be borne by the license holders whose fees will fully cover the cost of the program as required by state law. Pursuant to sections 1050 and 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.

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 affect a relatively small number of individuals engaged in the practice of falconry in California, primarily for recreation. The Department anticipates that the proposed regulations will affect very few, if any, businesses that rely on raptors. Therefore 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.

- (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 Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, the expansion of businesses in California, or benefits to worker safety.

Cost Impact to Small Business. The Department has determined that the amendments are unlikely to affect small businesses. The proposed action will affect individuals who choose to engage in the practice of falconry in California, primarily for recreation.

Benefits to the Environment:

The Department anticipates benefits to the environment and to the health and welfare of California residents. It is the policy of this state to encourage the

conservation, maintenance, and utilization of the raptor populations for their ecological values and their use and enjoyment by the public. The new provisions of Section 703 enable the Department to recover its costs for licensing, permitting and inspection activities related to the practice of falconry in California in accordance with regulations adopted by the Commission in Section 670, Falconry. Adoption of a self-supporting falconry program in California, including raptor species harvest quotas and inspection of raptor housing facilities, supports preservation of sustainable raptor populations for the citizens of the state.

(c) Cost Impacts on Representative Private Person or Business

There will be costs to private persons (e.g. falconers) who are among the 575 current licensees, and new applicants, who must comply with this proposed regulation. Generally, the new fees are not charged annually but are charged one-time dependent on the service extended by the state. Those one time fees, listed as 1-3, are: initial License Application, \$13.75; Examination, \$50.00; and initial Inspection, \$259.00 (and \$12.75 for addition enclosures); totaling \$322.75. The re-inspection fee, 4, is only charged when there is a failed inspection. The other fees, listed as 5-8, are charged based on the falconer's request for the service.

Fish and Game Code Section 1050 states "fees established by the Department shall be in an amount sufficient to recover all reasonable administrative and implementation costs of the Department relating to the program with regard to which the fee is paid."

There is a significant amount of Department staff time needed for reviewing/approving applications, determining advancement into higher falconry classes, administering falconry examinations and drawings, maintaining the state falconer database and ensuring proper data entry, complying with federal data reporting mandates, inspecting raptor housing and care facilities, and authorizing a variety of other falconry activities required in Section 670.

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

The fees established by the Department are in an amount sufficient to recover all reasonable administrative and implementation costs relating to the falconry program. There are no related costs or savings in Federal Funding to the State.

(e) Other 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.

X. Forms Incorporated by Reference and not published in CCR:

The provisions of Section 703(b) contain nine forms “incorporated by reference” on a combined total of 16 pages. These forms will be readily available on the Department website, or at Department offices around the state, for the very few falconers that must use an individual form. The fees depicted on the face of some of the forms are updated annually (per Section 713, FGC). In accordance with Title 1, Section 20, CCR, the Department has determined that publication of such a large quantity of forms, some requiring annual updating, in the CCR for a small number of users would be cumbersome, unduly expensive, and otherwise impractical.

XI. Authority and Reference:

Authority cited: Sections 713, 1002, 1050, 1053, 2118, 2120, 2122, 2150, 2150.2 and 2157, Fish and Game Code.

Reference: Sections 395, 396, 398, 713, 1050, 1053, 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, 10500, 12000 and 12002, Fish and Game Code. Title 50, Code of Federal Regulations, Parts 21.29 and 21.30.