

Brian Helms




L. Thomas Bulla, Secretary
Department of Commerce
State Capitol
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Charleston, WV 25305-0311

State of West Virginia
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MEMORANDUM

TO: Betty Ireland, Secretary of State

FROM: L. Thomas Bulla, Secretary 

SUBJECT: Approval to File Agency Approved Rules
Division of Natural Resources Series 58

DATE: July 28, 2005

Permission is hereby granted for the Division of Natural Resources to file the following agency approved rules:

58CSR12	Whitewater Rule
58CSR25	Boating Rule
58CSR31	Rules Governing Public Use of West Virginia State Parks, State Forests, and State Wildlife Management Areas under the Division of Natural Resources
58CSR46	Rule Defining the Terms to be Used Concerning All Hunting and Fishing Rules
58CSR52	Wild Boar Hunting
58CSR58	Special Waterfowl Hunting Rule
58CSR64	Miscellaneous Permits and Licenses
58CSR65	Falconry Rules
58CSR67	Lifetime Hunting, Trapping and Fishing Licenses Rules

If you have any questions, please feel free to contact me. Thank you for your assistance in this matter.

LTB:ffh

cc: Brian Helmick, Deputy Secretary
Frank Jezioro, Director

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 7/29/05

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Curtis L. Taylor
Division of Natural Resources
Wildlife Resources Section
1900 Kanawha Blvd., E.
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Falconry

1. Authorizing statute(s) citation 20-1-7(30)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 28, 2005

b. What other notice, including advertising, did you give of the hearing?

News Release to state papers, web site, public meetings and outdoor writers columns

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 28, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2005

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Curtis L. Taylor

Division of Natural Resources

Wildlife Resources Section

1900 Kanawha Blvd., E.

Capitol Complex, Bldg. 3, Room 842

Charleston, WV 25305

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 65
FALCONRY**

SUMMARY

This rule would still require nonresident falconers to obtain a West Virginia Falconry Permit to practice falconry in West Virginia. If, however, nonresident falconers possess a valid falconry permit from another State that meets Federal falconry standards and is listed in appropriate Federal regulations, the nonresident falconers would not be required to pay the initial \$250 application and issuance fee for the West Virginia Falconry Permit. Nonresident falconers would be required to pay the \$100 annual renewal fee for this permit during the first and subsequent years.

**TITLE 58
LEGISLATIVE RULE
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**SERIES 65
FALCONRY**

CIRCUMSTANCES

A small number of resident and nonresident falconers have requested that we reduce the falconry permit fees for nonresidents. Nonresident falconers that possess a valid falconry permit from another State and wish to obtain a West Virginia Falconry Permit are not subject to West Virginia's examination requirements; therefore, there is some justification for reducing these fees.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: 58-65 Falconry

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Division of Natural Resources, Wildlife Resources Section

Address: 1900 Kanawha Blvd., E., Capitol Complex, Bldg. 3, Room 842, Charleston, WV
25305

Phone Number: 558-2771 Email: billieshearer@wvdnr.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

This measure will have negligible fiscal impacts on the costs and revenues of state government. Eliminating the requirement for nonresidents to pay the initial application and issuance fee for a West Virginia Falconry permit may encourage nonresident falconers to visit West Virginia and generate tourism dollars; however, the total economic impact is likely to be minimal.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	<i>2006</i> Increase/Decrease (use "-")	<i>2007</i> Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: 58-65 Falconry

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Implementing this measure will have negligible fiscal impacts. Estimate costs and revenues are expected to be zero.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Implementing this measure may encourage visits to West Virginia and generate tourism; however, the total economic impact is not known and likely to be minimal.

Date: 7-29-05

Signature of Agency Head or Authorized Representative

Brian Helmick

**TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES**

**SERIES 65
FALCONRY**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2005 JUL 29 2 3:34

FILED

§58-65-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes standards to govern possession, training, and use of raptors for the purpose of hunting in West Virginia.

1.2. Authority. -- West Virginia Code §20-1-7(30)

1.3. Filing Date. --

1.4. Effective Date. --

§58-65-2. Definitions.

2.1. "Director" means the Director of the West Virginia Division of Natural Resources.

2.2. "Division" means the West Virginia Division of Natural Resources.

2.3. "Falconry" means the sport of taking quarry by means of a trained raptor.

2.4. "Raptor" means a live migratory bird of the Order Falconiformes or the Order Strigiformes, other than a bald eagle (*Haliaeetus leucocephalus*).

§58-65-3. Permit Requirements.

3.1. A West Virginia falconry permit is required before any person may take, possess, transport, sell, purchase, barter, or offer to sell, purchase or barter raptors for falconry purposes or practice falconry in the state of West Virginia.

3.2. Permittees may not take, possess, transport, sell, purchase, barter, or transfer any raptor for falconry purposes except under authority of a Federal falconry permit which is issued in conjunction with the state permit and in accordance with appropriate State and Federal rules and regulations.

3.3. The Director may issue falconry permits to applicants who meet the requirements and otherwise comply with the provisions of this rule.

3.4. Applicants shall complete and submit an application on forms provided by the Division.

3.5. Permits are valid from January 1 to December 31 of each year. Permits are renewable, but may not be transferred to any other person. The Director may revoke or deny permits for cause or for violation of any of the provisions of the permit or Subsection 11.1 of this rule.

3.6. The fees for permits are as follows:

3.6.1. An applicant who applies for a permit, who does not currently possess a permit issued by the Division in one of the three classes set forth in Section 4 of this rule, shall pay an initial \$250 application and issuance fee for any class permit.

3.6.2. The annual renewal fee for any class permit is \$100. Any lapse in renewal of more than thirty (30) days subjects the applicant to the same \$250 fee as an initial applicant.

3.6.3. An applicant, who currently possess a permit issued by the Division in one of the classes set forth in Section 4 of this rule, who applies for a permit in one of the other classes shall not pay an application and issuance fee.

3.6.4. Nonresident falconers that possess a valid falconry permit from another State that meets Federal falconry standards and is listed in appropriate Federal regulations will not be required to pay an initial \$250 application and issuance fee, but nonresident falconers will be required to pay the \$100 annual renewal fee during the first and subsequent years.

3.7. Hunting License Requirements.

3.7.1. In addition to a falconry permit, permittees shall possess a valid hunting license and any other applicable stamps or licenses that are required by law.

3.7.2. When hunting waterfowl with a raptor, the permittee shall hold a valid federal and state waterfowl stamp.

3.8. Seasons and bag limits.

3.8.1. Falconers may only hunt during seasons established by the Director.

3.8.2. Falconers shall abide by all bag limits established by the Director.

§58-65-4. Classes of Permits.

4.1. Apprentice class.

4.1.1. An applicant for a permit shall be at least fourteen (14) years old.

4.1.2. A permittee shall be sponsored by a holder of a valid West Virginia General or Master Falconry Permit or a valid General or Master Falconry Permit from another state meeting Federal falconry standards and listed in appropriate Federal regulations for the first two years in which an apprentice permit is held, regardless of the age of the permittee. A sponsor may not have more than three apprentices at any one time;

4.1.3. A permittee shall not possess more than one raptor and may not obtain more than one raptor for replacement during any 12-month period.

4.1.4. A permittee shall possess only an American kestrel (*Falco sparverius*) or a red-tailed hawk (*Buteo jamaicensis*), which must be taken from the wild.

4.2. General Class.

4.2.1. An applicant for a permit shall be at least eighteen (18) years old.

4.2.2. An applicant for a permit shall have at least two (2) years experience in the practice of falconry at the apprentice class level.

4.2.3. A permittee may not possess more than two raptors and may not obtain more than two raptors for replacement birds during any 12-month period.

4.2.4. A permittee may not take, transport, or possess any golden eagle (*Aquila chrysaetos*), or any species listed as threatened or endangered in appropriate Federal regulations.

4.3. Master Class.

4.3.1. An applicant for a permit shall have at least five (5) years experience in the practice of falconry at the general class level.

4.3.2. A permittee may not possess more than three raptors, and may not obtain more than two raptors for replacement birds during any 12-month period.

4.3.3. A permittee may not take any species listed as threatened or endangered in appropriate Federal regulations, but may transport or possess those species in accordance with the federal regulations and with authorization in writing by the Director.

4.3.4. A permittee may not take, transport, or possess any golden eagle or any raptor not indigenous to this State for falconry purposes, unless authorized in writing by the Director.

§58-65-5. Examination.

5.1. Applicants for a falconry permit shall answer correctly at least 80 percent of the questions on a supervised examination relating to basic biology, care and handling of raptors, literature, laws, rules, regulations and other appropriate subject matter before the Division will issue a falconry permit. The examination will be provided and administered by the Division.

5.2. Division employees representing the Director shall inspect and certify raptor housing and other equipment prior to issuing a permit to an applicant. Facilities and equipment must meet the standards listed in Subsection 6.1 of this rule.

§58-65-6. Facilities and Equipment.

6.1. Before a falconry permit is issued, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the Wildlife Resources Section of the Division as meeting the following standards:

6.1.1. Facilities.

6.1.1.a. The primary consideration for raptor housing facilities, whether indoors (mews) or outdoors (weathering area), is protection from the environment, predators, or undue disturbance. The applicant shall have the following facilities, except that depending upon climatic conditions, the issuing authority may require only one of the following facilities:

6.1.1.b. Indoor facilities (mews) which are large enough to allow easy access for caring for the raptors housed in the facility. If more than one raptor is to be kept in the mews, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow the bird to fully extend its wings. There shall be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the bird's body, and a secure door that can be easily closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided; or

6.1.1.c. Outdoor facilities (weathering area) which are fenced and covered with netting or wire, or roofed to protect the birds from disturbance and attack by predators except that perches more than 6 ½ feet high need not be covered or roofed. The enclosed area shall be large enough to insure the birds cannot strike the fence when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.

6.1.2. The following equipment shall be possessed by the applicant before he or she will be issued a permit:

6.1.2.a. Jesses -- An applicant shall possess at least 1 pair of Alymeri jesses or jesses of similar type, constructed of pliable, high-quality leather or suitable synthetic material to be

used when any raptor is flown free. Traditional 1-piece jesses may be used on raptors when they are not being flown;

6.1.2.b. Leashes and swivels -- An applicant shall possess at least 1 flexible, weather-resistant leash and 1 strong swivel of acceptable falconry design;

6.1.2.c. Weighing device -- An applicant shall possess a reliable scale or balance suitable for weighing the raptors held and graduated to increments of not more than 1/2 ounce (15 grams);

6.1.2.d. Bath container -- An applicant shall possess at least 1 suitable container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor; and

6.1.2.e. Outdoor perches -- An applicant shall possess at least 1 weathering area perch of an acceptable design for each raptor.

6.1.3. Maintenance.

6.1.3.a. All facilities and equipment shall meet or exceed the standards listed in Subsections 6.1.1 and 6.1.2 of this rule at all times.

6.1.4. Transportation and temporary holding.

6.1.4.a. A raptor possessed under authority of a West Virginia falconry permit may be temporarily held by a person other than the permittee only if that person is otherwise authorized to possess raptors, and then only if the raptor is accompanied at all times by the properly completed Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) designating the permittee as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

6.1.4.b. Raptors may be transported or held for a period not to exceed thirty (30) days in a temporary facility, if it is equipped with a perch and is protected from extreme temperatures and excessive disturbance.

6.1.4.c. Raptors legally held under a valid West Virginia falconers permit may be transported to other states for meets, trials, and hunting and may be returned to West Virginia by the permittee without having to obtain an importation permit. Nothing in this rule exempts the falconer from having to obtain the necessary permits or licenses before transporting any raptor into another state.

§58-65-7. Nonresident Permits.

7.1. Nonresident falconers shall possess both a West Virginia falconry permit and the appropriate nonresident hunting licenses to hunt with a raptor in West Virginia.

7.2. Nonresident falconers are not subject to the examination and facilities and equipment conditions outlined in Sections 5 and 6 of this rule, but must show proof of possession of a valid permit from another State that meets Federal falconry standards and is listed in appropriate Federal regulations.

7.3. Nonresident falconers shall obtain an importation permit as required by West Virginia Code §20-2-13, prior to bringing raptors into West Virginia.

§58-65-8. Reporting.

8.1. The permittee may not take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless he or she submits a Federal form 3-186A (Migratory Bird Acquisition/Disposition Report), completed and filed in accordance with the instructions on the form, to the Division office within five (5) calendar days of any transaction.

8.2. A permittee may not possess a raptor, unless the permittee has a properly completed Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) for each bird possessed.

§58-65-9. Marking.

9.1. The Division shall conduct an inventory of all raptors held within the State, except those held for scientific or zoological purposes.

9.2. Any raptor taken, possessed or transported for falconry purposes, except a captive bred raptor lawfully marked by a numbered, seamless band issued by the Division or the US Fish and Wildlife Service, shall be banded with a permanent, non-reusable numbered band issued by the Division or the US Fish and Wildlife Service.

9.3. Raptors removed from the wild shall not be banded with a seamless numbered band.

9.4. A permittee shall report the loss or removal of any band to the issuing office within five (5) working days of the loss. The lost band shall be replaced by a permanent, non-reusable numbered band supplied by the Division or by the US Fish and Wildlife Service. The permittee shall file a Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) in accordance with the instructions on the form reporting the loss of the band and the rebanding.

9.5. Alteration, counterfeiting or defacing of a marker is prohibited except that a permittee may remove the rear tab on markers and may smooth an imperfect surface provided the integrity of the marker and numbering are not affected.

§58-65-10. Restrictions.

10.1. Taking Restrictions.

10.1.1. It is illegal to take at any time any golden eagle or any species of raptor listed as threatened or endangered in appropriate State or Federal rules or regulations.

10.1.2. Only resident falconers may take raptors from the wild for the purposes of falconry.

10.1.3. Resident falconers may only take American kestrels (*Falcon sparverius*) and red-tailed hawks (*Buteo jamaicensis*) from the wild for the purpose of falconry.

10.1.4. Resident falconers who desire to take either of the two species listed in Subdivision 10.1.3 of this Section shall obtain a scientific collecting permit from the Director. Any permit for collecting birds from the wild shall include, as a provision of collection, the written permission of the landowner, including State and Federal agencies, from which the birds would be taken.

10.1.5. Immature raptors of the species listed in Subdivision 10.1.3 of this Section which are not yet capable of flight (eyases) may only be taken by a General or Master Falconer during the period of May 1 to June 15, and no more than two eyases may be taken by the same permittee during the specified period.

10.1.6. First-year (passage) birds may be taken only during the period of September 1 to November 30.

10.1.7. A marked or banded raptor may be retrapped at any time.

10.1.8. Only American Kestrels (*Falco sparverius*) may be taken when over one year old for falconry. Any raptor listed as other than threatened or endangered species listed by state or federal laws, rules or regulations, taken under the authority of a depredation or special purpose permit issued by the U.S. Fish and Wildlife Service may be used for falconry by General and Master class falconers.

10.2. Other Restrictions and Provisions.

10.2.1. Any person who possesses a lawfully acquired raptor before the enactment of this rule and who fails to meet the permit requirements of this rule shall be allowed to retain the raptors, provided he or she meets all the housing requirements listed in Subdivision 6.1.1 of this rule and provided further that the raptor is not used for falconry purposes by the holder. Any person possessing raptors under the authority of this section shall also comply with the provisions of the Division's rule, Miscellaneous Permits and Licenses 58 CSR 64-2.1.3. These birds shall be

identified with markers supplied by the Director and cannot be replaced if death, loss, release, or escape occurs.

10.2.2. A person who possesses raptors before the enactment of this rule, in excess of the number allowed under his or her class of permit, shall be allowed to retain the extra raptors. These birds shall be identified with markers supplied by the Director and no replacement shall occur, nor may an additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.

10.2.3. A falconer shall remove and surrender to the Division any markers from an intentionally released bird which is indigenous to the state. A standard Federal bird band shall be attached to these birds by a Division or U.S. Fish and Wildlife Service bird bander prior to release.

10.2.4. No non-indigenous birds may be released in this state.

10.2.5. Another person may care for the birds of a permittee, for a period not to exceed thirty (30) days. The raptor shall be accompanied at all times by a properly completed Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

10.2.6. Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by a permittee only for imping purposes.

10.2.7. A permittee may not sell, purchase, barter, or offer to sell, purchase or barter any raptor unless the raptor is marked on the metatarsus by a seamless, numbered band supplied by the Division or US Fish and Wildlife Service.

10.2.8. A permittee may not propagate raptors without prior acquisition of a valid raptor propagation permit issued by the U.S. Fish and Wildlife Service and written authorization from the Director.

§58-65-11. Revocation of Permit.

11.1. The Director may revoke a falconry permit under the authority granted by West Virginia Code §20-2-38. The Director shall send notice to the permittee by certified mail which specifies the reason for the revocation, which may include, but is not limited to, the following reasons:

11.1.1. Improper care for a raptor;

11.1.2. A raptor becomes a public nuisance;

11.1.3. A violation of West Virginia game laws or rules;

11.1.4. Non-compliance with the terms or conditions of permit; or

11.1.5. Revocation of the permittee's Federal falconry permit.