

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 28 11 58 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Natural Resources TITLE NUMBER: 58

RULE TYPE: Legislative; CITE AUTHORITY \$20-1-7(30)

AMENDMENT TO AN EXISTING RULE: YES ___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

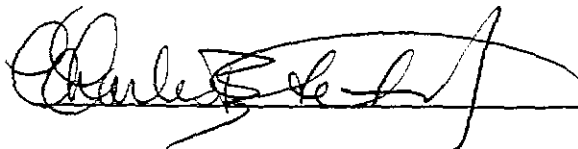
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 65

TITLE OF RULE BEING PROPOSED: Falconry

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 29, 1996 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

DNR Wildlife Resources Section
Capitol Complex, Bldg. 3, Room 842
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.40

FISCAL NOTE FOR PROPOSED RULE

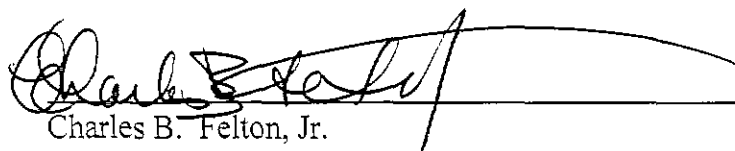
Rule Title: Falconry
 Type of Rule: Legislative Interpretive Procedural
 Agency: Division of Natural Resources
 Address: State Capitol Complex
Building 3, Room 842
1900 Kanawha Blvd.
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 310.00	\$	\$ 0	\$ -5.00	\$ +805.00
PERSONAL SERVICES	1,560.00		0	1,755.00	195.00
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER (LICENSE FEES)	1,250.00		0	1,750.00	1,000.00

2. Explanation of above estimates:
Total costs are based on personal services to inspect facilities and test applicants minus the applicant's annual fee for these services.
3. Objectives of these rules:
To establish standards to govern the possession, training, and use of falcons for the purpose of hunting in West Virginia.
4. Explanation of Overall Economic Impact of Proposed Rule.
- A. Economic Impacts on State government. \$310.00 initial cost to administer falconry in WV
 - B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.
None
 - C. Economic Impact on citizens/Public at Large. None

Date: 6/28/96


 Charles B. Felton, Jr.
 Director

RULE SUMMARY

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

**SERIES 65
FALCONRY**

This rule establishes, within the regulatory guidelines of the U.S. Fish and Wildlife Service, the requirements for an individual to possess a raptor for the purpose of "falconry" within the State of West Virginia. These requirements include standards for housing the bird(s), training the bird(s), equipment, the number and species of birds that may be possessed; the training and testing requirements for the "falconer" and other state and federal permits which are required. The rule also establishes an annual fee schedule for the testing and inspection of falconers and their equipment and facilities, respectively.

STATEMENT OF CIRCUMSTANCES REQUIRING RULE

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

**SERIES 65
FALCONRY**

Series 65, Falconry, is required to permit individuals to practice falconry within the State of West Virginia. Before individuals may legally practice falconry in West Virginia rules must be adopted prescribing how individuals are trained, what equipment they must have and how they must maintain the birds. These rules must follow the regulations established by the U.S. Fish and Wildlife Service (the federal agency responsible for migratory birds) and be approved by that agency.

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

**SERIES 65
FALCONRY**

§58-65-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes standards to govern the possession, training, and use of falcons 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 Director of the West Virginia Division of Natural Resources.

2.2. "Division" means 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*) or a golden eagle (*Aquila chrysaetos*).

§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 (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 provided applicants meet the requirements and otherwise comply with the provisions of this rule.

3.4. Applicants must 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. Permits may be revoked or denied for cause or any of the provisions of the permit or Section 11.1 of this rule.

3.6. The annual fees for permits are as follows:

3.6.1. Initial application/issuance fee is \$250.

3.6.2. Annual renewal fee is \$100 for second and succeeding years. Any lapse in renewal of more than thirty (30) days will subject the applicant to the same fee as the initial applicant.

3.7. Hunting License Requirements.

3.7.1. In addition to a falconry permit, falconers are required to 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 must hold a valid federal and state waterfowl stamp.

3.8. Seasons and bag limits.

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

3.8.2. Falconers must abide by all bag limits established and promulgated by the Director.

§58-65.4. Classes of Permits.

4.1. Apprentice class.

4.1.1. Permittee shall be at least 14 years old;

4.1.2. Permittee must 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. Permittee shall not possess more than one raptor and may not obtain more than one raptor for replacement during any 12-month period; and

4.1.4. Permittee shall possess only an American kestrel (*Falco sparverius*) or a red-tailed hawk (*Buteo jamaicensis*).

4.2. General Class.

4.2.1. A permittee shall be at least 18 years old;

4.2.2. A permittee shall have at least two years experience in the practice of falconry at the apprentice 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; and

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 shall have at least five 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 such species in accordance with said 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 the State for falconry purposes, unless authorized in writing by the Director.

§58-65.5. Examination.

5.1. Applicants are required to 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 a falconry permit is issued. The examination will be provided and administered by the Division.

5.2. Division employees representing the Director will 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 Section 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 may have either of the following facilities, except that depending upon climatic conditions, the issuing authority may require only one of the facilities described below.

6.1.1.b. Indoor facilities (mews) shall be 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.

6.1.1.c. Outdoor facilities (weathering area) shall be 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 must be possessed by the applicant before he or she will be issued a permit:

6.1.2.a. Jesses -- At least 1 pair of Alymeri jesses or 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 not being flown.);

6.1.2.b. Leashes and swivels -- At least 1 flexible, weather-resistant leash and 1 strong swivel of acceptable falconry design;

6.1.2.c. Weighing device -- A reliable scale or balance suitable for weighing the raptor(s) held and graduated to increments of not more than ½ ounce (15 gram) shall be provided;

6.1.2.d. Bath container -- 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 -- At least 1 weathering area perch of an acceptable design shall be provided for each raptor.

6.1.3. Maintenance.

6.1.3.a. All facilities and equipment must meet or exceed the standards listed in Sections 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 must possess both a West Virginia falconry permit and 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 Title 58 CSR 65-5 and Title 58 CSR 65-6, 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 must 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 in accordance with the instructions on the form, to the issuing office within five (5) calendar days of any such transaction.

8.2. Raptors may not be possessed 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 will 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, must 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. Loss or removal of any band must be reported to the issuing office within five (5) working days of the loss. The lost band must be replaced by a permanent, non-reusable numbered band supplied by the Division or by the US Fish and Wildlife Service. A Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) must be filed in accordance with the instructions on the form reporting the loss of the band and rebanding.

9.5. Alteration, counterfeiting or defacing of a marker is prohibited except that 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 regulations.

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

10.1.3. Resident, licenced falconers are only allowed to take American kestrels (*Falco sparverius*) and red-tailed hawks (*Buteo jamaicensis*) from the wild for the purpose of falconry.

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

10.1.5. Immature raptors of the species listed in Section 10.1.3 above which are not yet capable of flight (eyases) may only be taken by a General or Master Falconer during the period 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 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. Any raptor listed as threatened or endangered by state or federal laws, rules or regulations, other than golden eagles, 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 falconers.

10.2. Other Restrictions/Provisions.

10.2.1. Any person who possesses a lawfully acquired raptor before the enactment of these regulations and who fails to meet the permit requirements may be allowed to retain the raptor(s), provided they meet all the housing requirements listed in Section 6.1.1 above and provided further that the raptor may not be used for falconry purposes by the holder. Any person possessing raptors under the authority of this section must also comply with the provisions of Miscellaneous Permits and Licenses (58 CSR 64-2.1.3). All such 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 these regulations, in excess of the number allowed under his class permit, may be allowed to retain the extra raptors. All such 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 permit held by the permittee.

10.2.3. The marker from an intentionally released bird which is indigenous to the State shall also be removed and surrendered to the Division. A standard Federal bird band shall be attached to such 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 if written authorization from the permittee accompanies the birds when they are transferred; provided, that if the period of care will exceed thirty (30) days, the Director must be notified in writing by the permittee within three (3) days of the transfer. Notification must include the location where the birds are being held, the reason for the transfer, the name and address of the person responsible for their care, and the approximate number of days they will be in the care of the second person.

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

10.2.7. 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. 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 in writing.

§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. Notice will be sent to the permittee by certified mail and will specify the reason for the revocation, which includes, but is not limited to, the following reasons:

11.1.1. Improper care for raptor, or

11.1.2. Raptor becomes a public nuisance, or

11.1.3. Violation of West Virginia game laws or rules, or

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

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