

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2012 AUG 31 PM 5:03

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Commerce, Division of Natural Resources, Wildlife Resources TITLE NUMBER: 58

CITE AUTHORITY: Legislative

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 65

TITLE OF RULE BEING AMENDED: Falconry

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Angel R. Moore
Authorized Signature

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

**SERIES 65
FALCONRY**

SUMMARY:

Series 65 revises the current legislative rule relating to falconry. Due to the significant amount of changes, the rule has been repealed and replaced with a rewritten legislative rule which is in compliance with recently passed Federal Regulations (§50CFR21). Furthermore, modifications were incorporated into the legislative rule to make it more consistent with the federal law.

CIRCUMSTANCES:

The legislative rule establishes standards to govern the take, possession, training, and use of raptors for the purpose of hunting in West Virginia.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 65, Falconry

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Natural Resources, Wildlife Resources Section

Address: 324 Fourth Avenue
So. Charleston, WV 25303

Phone Number: 304-558-2771 Email: billie.j.shearer@wv.gov

Fiscal Note Summary

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

There is no change anticipated to the administrative expenditures as a result of this rule.

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	Current Increase/Decrease (use "--")	Next 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			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Series 65, Falconry

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

No Impact

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.

Series 65 revises the current legislative rule relating to falconry. Due to the significant amount of changes, the rule has been repealed and replaced with a rewritten legislative rule which is in compliance with recently passed Federal Regulations (50CFR21). Furthermore, modifications were incorporated into the legislative rule to make it more consistent with the federal law.

Date: 8/31/2012

Signature of Agency Head or Authorized Representative

Angel R. Moore

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: 8/31/2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DOC - DNR- Wildlife Resources Section
324 Fourth Avenue
So. Charleston, WV 25303

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:
July 31, 2012

b. What other notice, including advertising, did you give of the hearing?
No public hearing was held. There was a 30 day comment period which was also advertised in a statewide News Release

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 31, 2012

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)

n/a

- 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 I. Taylor, Chief
DNR Wildlife Resources Section
324 Fourth Avenue
So. Charleston, WV 25303

- 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.

n/a

b. Date of hearing or comment period:

n/a _____

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

n/a _____

d. Attach findings and determinations and reasons:

Attached n/a _____

TITLE 58
LEGISLATIVE RULE
DIVISION OF NATURAL RESOURCES

FILED

2012 AUG 31 PM 5:03

SERIES 65
FALCONRY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§58-65-1. General

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

1.2. Authority. -- W. Va. Code §20-1-7(30).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replace. -- This legislative rule repeals and replaces Falconry, Title 58, Series 65 effective April 6, 2006.

§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. "Eyas" means an immature raptor that is not yet capable of flight.

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

2.5. "Hacking" means the temporary release of a raptor held for falconry to the wild to facilitate the bird's acquisition of necessary hunting skills.

2.6. "Hybrid" means any bird meeting the definition of hybrid in Federal regulations 50CFR21.3.

2.7. "Imprint" for the purposes of falconry, means a bird that is hand raised in isolation from the sight of other raptors from two (2) weeks of age until it is fledged. An imprint bird is considered to be so for its entire lifetime.

2.8. "Raptor" means a live migratory bird of the Order Falconiformes or the Order Strigiformes.

§58-65-3. Permit Requirements.

3.1. A West Virginia falconry permit is required before any resident may take, possess, transport, sell, purchase, barter or offer to sell, purchase or barter raptors for falconry purposes.

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

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

3.4. Before the Division shall issue a West Virginia falconry permit the applicant's raptor housing facilities and equipment shall be inspected and certified by a representative of the Wildlife Resources Section of the Division as meeting the standards established in section 7 of this rule.

3.5. Permit fees.

3.5.a. An applicant who applies for a permit who does not currently possess a permit issued by the Division in one of the three (3) classes set forth in section 5 of this rule, shall pay an initial application/permit fee of \$250 for any class permit;

3.5.b. 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;

3.5.c. An applicant who possesses a permit issued by the Division in one of the classes set forth in Section 5 of this rule, who applies for a permit in one of the other classes shall not pay an initial application fee but shall pay the \$100 renewal fee.

3.6. A West Virginia falconry permit that lapses for fewer than five (5) years may be reinstated in the class last held by the permittee if the permittee provides proof of licensure at that class and pays the initial application/permit fee.

3.7. A West Virginia falconry permit that lapses for five (5) years or longer may not be reinstated.

3.8. A permittee must carry a copy of his/her permit while engaging in any falconry activity.

3.9. Nonresidents.

3.9.a. A falconer with a valid falconry permit from another state who moves permanently to West Virginia must notify the Division and the falconry regulatory agency of their former state within thirty (30) days of the permanent move to West Virginia. He/she must obtain a West Virginia falconry permit within ninety (90) days of the permanent move to West Virginia.

3.9.b. A falconer moving to West Virginia from another state may continue to practice falconry under a valid falconry permit issued by his/her former state until a West Virginia falconry permit is obtained.

3.9.c. A falconer moving to West Virginia from another state may request a waiver of the falconry examination by providing documentation of successfully completing a similar examination in his/her home state but will be subject to the equipment and facilities inspection by the Division and must meet the requirements established in section 7 of this rule.

3.9.d. A non-resident falconer must carry on his/her person a valid falconry permit from his/her home state and a valid West Virginia nonresident hunting license in lieu of an importation permit to practice falconry in West Virginia.

§58-65-4. Hunting.

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

4.1.a. A Federal waterfowl stamp is required to hunt waterfowl and a WV HIP registration is required to hunt any migratory game birds.

4.2. Falconers may only hunt during seasons established by the Natural Resources Commission and published by the Director.

4.3. Falconers shall abide by all bag limits established by the Natural Resources Commission and published annually by the Director.

4.4. Permittees must take every reasonable precaution to avoid the accidental take of any non-game, out-of-season, or threatened or endangered animal or bird while engaging in training, conditioning, or hunting activities. Any non-game or out-of-season game animal or bird killed by a falconry bird, without the intent of the falconer, shall be left at the site of the kill and the raptor may be allowed to feed on the carcass. Provided that any unintended take of a threatened or endangered bird or animal must be reported to the appropriate Division of Natural Resources District Law Enforcement Office and the U.S. Fish and Wildlife Service's WV Ecological Services Field Office within forty-eight (48) hours of the kill.

4.5. A permittee may use a falconry bird to take any bird species listed in §50CFR21.43, 44, 45, or 46 for which there is a depredation order in place at any time in accordance with the conditions of the applicable depredation order. The permittee may not receive any compensation for depredation activities.

§58.65.5. Classes of Permits

5.1. Apprentice Class

5.1.a. An applicant for an apprentice class permit must be at least twelve (12) years old.

5.1.b. If the applicant is under eighteen (18) years of age, a parent or legal guardian must sign the application and is legally responsible for the applicant's activities.

5.1.c. An applicant 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, for the first two (2) years in which an apprentice permit is held, regardless of the age of the permittee.

5.1.c.1. A sponsor must be at least eighteen (18) years old and have at least two (2) years of experience at the General Falconer level. A sponsor may not have more than three (3) apprentices at any one time.

5.1.c.2. The applicant must submit a signed letter from the sponsor stating that he/she will instruct the applicant in proper husbandry, training, and hunting of raptors held for falconry.

5.1.d. A permittee may not possess more than one (1) raptor and may not obtain more than one (1) raptor for replacement during any twelve (12) month period.

5.1.e. A permittee may possess only an American kestrel (*Falco sparverius*) or a red-tailed hawk (*Buteo jamaicensis*), which must be taken from the wild by the applicant or in the applicant's immediate presence.

5.1.f. A permittee may not possess an eyas or imprint.

5.2. General Class

5.2.a. An applicant for a permit must be at least sixteen (16) years old.

5.2.b. If the applicant is under eighteen (18) years of age, a parent or legal guardian must sign the application and is legally responsible for the applicant's activities.

5.2.c. An applicant must have at least two (2) years of experience at the Apprentice Falconer level.

5.2.c.1. An applicant may not substitute any falconry school program or education for the two (2) year apprenticeship period.

5.2.d. An applicant must submit a signed letter from the applicant's sponsor stating that the applicant has practiced falconry at the apprentice level for at least two (2) years and has maintained, trained, flown and hunted with raptors for an average of six (6) months and a minimum of four (4) months each year.

5.2.e. A permittee may not possess more than two (2) raptors and may not obtain more than two (2) raptors for replacement birds during any twelve (12) month period.

5.2.f. A permittee may not take, transport, or possess any species of eagle or any species listed as threatened or endangered in appropriate Federal regulations (50CFR17.11).

5.2.g. A permittee may possess and use captive-bred, imprinted, eyas, and hybridized raptors for falconry.

5.3. Master Class.

5.3.a. An applicant for a permit must have at least five (5) years experience in the practice of falconry at the General Falconer level.

5.3.b. A permittee may not possess more than five (5) wild raptors and may not obtain more than two (2) raptors for replacement birds during any twelve (12) month period.

5.3.c. A permittee may possess up to five (5) additional captive-bred raptors that must be trained in the pursuit of wild game and used for hunting.

5.3.d. A permittee may possess and use captive-bred, imprinted, eyas and hybrid raptors for falconry.

5.3.e. A permittee may possess any species of Falconiform or Strigiform except a bald eagle.

5.3.e.1. A permittee may possess up to two (2) golden eagles, white-tailed eagles, or stellar's sea-eagles if the permittee meets the qualifications and requirements for eagle possession established in Section 12 of this rule.

5.3.e.2. The permittee may take from the wild one (1) bird per year of a species that is Federally listed as threatened under 50CFR17.11 if the permittee obtains a Federal Endangered Species permit. The permittee must abide by all qualifications and restrictions of the state or territory in which the threatened bird is to be taken.

5.3.e.3. A permittee may possess a captive-bred raptor of a species that is Federally listed as threatened or endangered under 50CFR17.11.

§58-65-6. Examination.

6.1. Applicants for a falconry permit must answer correctly at least eighty (80) percent of the questions on a supervised examination relative 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.

§58-65-7. Facilities and Equipment.

7.1 The primary consideration for raptor housing facilities, whether indoors (mews or residence provision) or outdoors (weathering area), is protection from the environment, predators, domestic animals and undue disturbance. The applicant shall have the following facilities, except that depending on climatic conditions or specific considerations for the species of raptor being housed, only one may be required.

7.1.a. Indoor facilities (mews).

7.1.a.1. Indoor facilities shall be large enough to allow easy access through a secure door for the care and feeding of the raptor(s) kept in the facility.

7.1.a.2. More than one (1) raptor may be kept untethered in the facility provided that they are compatible and will not cause injury or harm to one another.

7.1.a.3. Each raptor housed in the facility shall have an area large enough to allow it to fly or, if tethered fully extend its wings and bate (attempt to fly while tethered) without damaging its feathers or contacting other raptors.

7.1.a.4. The facility shall have at least one opening for sunlight protected on the inside by materials suitable to prevent injury to the raptor during any attempt to exit through the opening. Any walls that are not solid shall be similarly protected.

7.1.a.5. Each raptor housed in the facility shall have access to an adequate perch and a bath container of clean water.

7.1.a.6. The floor of the facility shall permit easy cleaning and shall be well drained.

7.1.a.7. Raptors may be kept in a residence provided that their provisions meet or exceed those in this subsection, except that all raptors housed in this manner must be tethered and windows or other openings do not have to be covered.

7.1.b. Outdoor facilities (weathering area).

7.1.b.1. Outdoor facilities shall be surrounded by a fence or fully enclosed by a material suitable to protect the bird(s) from disturbance or attack by predators, except that perches more than six and one half (6 ½) feet high need not be fenced or enclosed.

7.1.b.2. The facility shall be large enough to insure that the birds cannot strike the enclosure when flying from the perch.

7.1.b.3. Raptors housed in the facility shall have access to a suitable perch, sufficiently covered, in whole or in part, to protect the raptor from excessive sun, wind, and inclement weather in addition to a bath container of clean water.

7.1.b.4. A raptor may be perched unenclosed and uncovered on a perch of any height, if under the direct supervision of the permittee or an individual designated by the permittee.

7.1.c. The Division may permit, at its discretion, new innovative types of facilities, either indoors or outdoors, as they become known to the art.

7.2. The following equipment must be possessed by an applicant before a permit will be issued and by all permittees:

7.2.a. At least one (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 one piece jesses may be used on raptors when they are not being flown;

7.2.b. At least one (1) flexible, weather resistant leash and one (1) strong swivel of an accepted falconry design;

7.2.c. A reliable scale or balance suitable for weighing raptors graduated to at least one-half (1/2) ounce (15 gram) increments;

7.2.d. One (1) suitable bath container, two (2) to six (6) inches deep and wider than the length of the raptor, for each raptor;

7.2.e. At least one (1) weathering area perch of an acceptable design for each raptor.

7.3. All facilities and equipment shall be maintained to meet or exceed the standards described in this rule at all times.

7.4. A permittee must notify the Division in writing of any change in location, or substantial modification of, the facility within five (5) business days.

7.5. Falconry facilities do not need to be constructed at the permittee's residence or its immediate proximity provided that the permittee has convenient daily access to adequately care for and maintain the raptors housed in the facility. The owner of the property must provide the Division with a signed and dated statement authorizing the Division to inspect the facilities.

7.6. The Division may inspect falconry birds, facilities, equipment and records, without advance notice, during regular business hours only in the presence of the permittee.

7.7. Transportation and Temporary Holding.

7.7.a. A raptor possessed under authority of a West Virginia falconry permit may be temporarily held by a person other than the permittee 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. The statement must describe the term of the temporary care and, if applicable, the activities for which the temporary holder may use the raptor.

7.7.a.1. A temporary care giver authorized to possess raptors may provide care for up to one hundred and twenty (120) consecutive days. The raptor(s) may be held at either the permittee's facilities or those of the temporary caregiver. The raptor(s) will not count against the possession limit of the temporary caregiver. The temporary caregiver may use the bird(s) for falconry or other activities if specifically authorized to do so in writing by the permittee and the temporary caregiver holds an appropriate level falconry permit.

7.7.a.2. A temporary caregiver not authorized to possess raptors may provide care for up to forty-five (45) consecutive days only at the facilities of the permittee and may not fly the bird(s) for any reason.

7.7.a.3. The authorized term for temporary holding may be extended, at the discretion of the Division, due to extenuating circumstances including, but not limited to, illness, military service or family emergency.

7.7.b. Raptors may be held in a temporary facility for up to one hundred and twenty (20) consecutive days if the temporary facility is equipped with a suitable perch and is protected from predators, domestic animals, extreme temperature or weather conditions and excessive disturbance.

7.7.c. Raptors legally held under a valid West Virginia falconry permit may be transported to other states for meets, trials or hunting with no additional permits or requirements proved that the permittee obtains any necessary permits or licenses from the destination state.

§58-65-8. Nonresident and Temporary Resident Falconry.

8.1. Nonresident falconers must possess a valid falconry permit from another sate that meets Federal falconry standards to participate in falconry activities in West Virginia.

8.2. Nonresident falconers must possess appropriate nonresident hunting licenses to hunt with a raptor in West Virginia.

8.3. A falconer with a valid falconry permit from another state who temporarily resides in West Virginia for one hundred twenty (120) days or longer must obtain a West Virginia falconry permit.

8.3.a. The holder of a valid falconry permit from another state will not be required to take the West Virginia falconry examination but will be subject to all facility, equipment and inspection requirements of this rule.

8.3.b. Upon payment of the initial application fee and certification of facilities and equipment the Division may issue the applicant a permit in the same class held by the applicant in another state provided the applicant provides proof of licensure at that class.

8.4. A legal immigrant to the United States with falconry experience in another country who assumes residency in West Virginia and wishes to practice falconry must follow all the standard application

procedures establish in this rule but may be issued a permit in a class consistent with the applicants documented experience in his/her country of origin.

8.5. A nonresident licensed falconer may transport lawfully possessed raptors through West Virginia.

8.6. The Division may allow nonresident falconers to take raptors from the wild in West Virginia if his/her home state allows reciprocal nonresident take. Nonresident take, if allowed, would be subject to the provisions of section eleven (11) of this rule and any other restrictions deemed necessary by the Division.

§58-65-9. Reporting.

9.1. A permittee must complete and submit a Federal form 3-186A (Migratory Bird Acquisition/Disposition Report) either electronically at <http://permits.fws.gov/186A> or in paper form to the Division, in accordance with the instruction on the form, within ten (10) days of any acquisition (take, purchase, transfer, barter, receive), loss (sell, transfer, barter, death, lose) or change in status (reband, microchip).

9.1.a. A permittee shall have thirty (30) days to recover a raptor lost to the wild. The loss must be reported within five (5) days of the termination of the thirty (30) day reclamation period if the raptor is not recaptured.

9.1.b. A permittee must report the theft of any raptor to the Division and to the U.S. Fish and Wildlife Service Regional Law Enforcement office within ten (10) days of the theft.

9.2. A permittee may not possess any raptor unless he/she has a properly completed Federal form 3-186A for each bird possessed.

9.3. A permittee must keep copies of all electronic Federal form 3-186A submissions for five (5) years after the loss, transfer or death of the raptor.

§58-65-10. Marking

10.1. All raptors taken, possessed, transported or used for falconry purposes must be marked with: a seamless, numbered band issued by the Division for captive-bred birds; a U.S. Fish and Wildlife Service permanent, non-reusable numbered band issued by the Division for birds originating from the wild; or in lieu of a band, an ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip.

10.2. A raptor taken from the wild may not be banded with a seamless numbered band.

10.3. A permittee must report the loss or removal of any band within five (5) days by filing a Federal form 3-186A either electronically or in paper form. Lost bands must be replaced by either a permanent, non-reusable numbered band supplied by the Division or an ISO-compliant (134.2 kHz) microchip. Upon remarking the raptor, the permittee must immediately complete and submit a Federal form 3-186A either electronically or on paper reporting the new band or microchip information.

10.4. The 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 nomenclature are not affected.

10.5. If a band causes documented harm or injury to a raptor, the permittee may remove the band and be exempted from future re-banding at the discretion, and with the written permission, of the Division. If a band must be removed from a wild-taken goshawk, Harris' hawk, peregrine falcon or gyrfalcon it must be replaced by an ISO-compliance (134.2 kHz) microchip supplied by the U.S. Fish and Wildlife Service through the Division.

10.6. A permittee must remove and surrender to the Division any markers from an intentionally-released raptor which is indigenous to the state. A standard Federal band shall be attached to such bird(s) by the permittee or a Division or U.S. Fish and Wildlife Service bander prior to release.

10.7. Non-indigenous, captive-bred, or hybrid raptors may not be released to the wild in West Virginia.

§58-65-11. Take/Trapping of Raptors

11.1. A permittee must notify both the Division and the U.S. Fish and Wildlife Service Regional Law Enforcement office of their capture plans at least three (3) days before initiating any trapping activity. Such notification shall include the location of the trapping, a description of the trapping or capture methods and documentation that the permittee has permission from the land owner.

11.2. Resident Apprentice Falconers may take only an American kestrel (*Falco sparverius*) or a red-tailed hawk (*Buteo jamaicensis*) from the wild in West Virginia.

11.3. Resident General or Master Falconers may take from the wild any species of Falconiform or Strigiform in West Virginia except: eagles; peregrine falcon (*Falco peregrines*); Northern harrier (*Circus cyaneus*); eastern goshawk (*Accipiter gentilis*); Merlin (*Falco columbaris*); sharp-shinned hawk (*Accipiter straitus*); American rough-legged hawk (*Buteo lagopus*).

11.4. Species cited as threatened or endangered under 50CFR17.11 may not be taken in West Virginia unless the permittee holds a valid Federal endangered species permit.

11.5. If a permittee captures a raptor he/she is not allowed to possess, it must be released immediately.

11.6. Permittees, regardless of class, may not take more than two (2) raptors from the wild in any calendar year.

11.7. Immature raptors which are not yet capable of flight (eyases) may be taken from May 1 to July 31 only by a general or master falconer. At least one (1) young must be left in the nest or aerie from which the take occurs.

11.8. First year (passage) birds may be taken from September 1 to January 31.

11.9. Only American kestrels and great-horned owls (*Bubo virginianus*) may be taken from the wild when over one (1) year of age.

11.10. An individual other than a permittee may take a raptor from the wild for a permittee if the permittee is present and supervises the capture. The permittee is considered the person responsible for the take and the reporting thereof.

11.10.a. A physically impaired permittee may retain a general or master permittee to take a bird from the wild for him/her. Even if not present during the capture, the impaired permittee is the person considered responsible for the take and the reporting thereof.

11.11. Recapture of lost raptors.

11.11.a. A permittee may recapture a raptor that he/she has lost at any time.

11.11.b. A permittee may recapture any raptor marked or equipped for falconry or any captive-bred raptor at anytime even if the permittee is otherwise prohibited from possessing that species.

11.11.b.1. The recaptured raptor will not count against the possession limit of the permittee.

11.11.b.2. The permittee must notify the Division within ten (10) days of the recapture.

11.11.b.3. The permittee must make every effort to return the bird to the possessor of record if that person is legally allowed to possess that raptor. If the possessor of record cannot be located or is not legally allowed to possess the raptor the Division shall determine the disposition of the raptor.

11.12. A permittee may not take any raptor banded with a standard Federal migratory bird band, other auxiliary research marker or a transmitter.

11.12.a. A raptor with a standard Federal migratory bird band or auxiliary marker must be released immediately and the permittee must promptly report the band number and all other relevant information to the Division and to the Federal Bird Banding Laboratory at 800-327-2263 or www.reportband.gov.

11.12.b. A permittee may hold a raptor captured with a transmitter for up to thirty (30) days in order to contact the researcher to determine if he/she wishes to replace the transmitter or its batteries or remove the transmitter. The Division must be notified within five (5) business days of such capture. Disposition of the raptor will be at the discretion of the Division and the researcher. This temporary possession will not count against the take or possession limit of the permittee.

11.13. A permittee may acquire a raptor of any species the permittee is allowed to possess by this rule, regardless of the age of the raptor, directly from a permitted rehabilitator. The bird will be considered as taken from the wild and will count against the take and possession limits of the permittee.

11.14. A permittee who accidentally injures a raptor while trapping shall be responsible for all costs related to the care and rehabilitation of the raptor by a veterinarian or permitted wildlife rehabilitation center.

11.14.a. A permittee who does not opt to put the injured raptor on his/her permit must immediately transport the bird to the Division or a licensed rehabilitation center for care. If the permittee does so, the raptor will not count against his/her take or possession limit.

11.15. Any raptor removed from the wild is always considered wild for the purposes of this rule regardless of how long it has been held in captivity or whether it is transferred to another permit. However, it is considered to be taken from the wild only by the permittee who originally captured it and will not count against the wild take limit of the permittee to whom it is transferred.

§58-65-12. Use of eagles in falconry.

12.1. Only master falconers may possess eagles for use in falconry.

12.2. Master falconers, with a permit to do so, may possess or transport up to two (2) eagles of the following species: golden eagles, white-tailed eagles or Stellar's sea-eagles, subject to the requirements of this section and 50CFR22.24. Any eagle(s) held for falconry count against the possession limit of the permittee.

12.3. Before a permittee may possess an eagle for use in falconry he/she must document and submit the following information to the Division:

12.3.a. The permittee's experience in handling large raptors, including information about the species he/she has handled and the type and duration of the activity in which he/she has gained experience and;

12.3.b. At least two (2) letters of reference from persons with experience handling and/or flying large raptors. Each letter must contain a concise history of the author's experience with large raptors which can include but is not limited to, handling large raptors held by zoos, the rehabilitation of large raptors, or participation in scientific studies involving large raptors. Each letter must also assess the permittee's ability to cure for and fly large raptors for falconry.

§58-65-13. Related activities and permits.

13.1. General or master falconers may hack (temporarily release to the wild) raptors in West Virginia, except that a raptor may not be hacked near the nesting area of any Federally listed threatened or endangered species, or in any location where a hacked raptor is likely to take, harm or otherwise disturb a threatened or endangered species.

13.1.a. The permittee must obtain written approval from the Division of any hack location prior to hacking.

13.1.b. Any raptor that a permittee hacks must be a species that the permittee is allowed to possess by this rule and will count against his/her possession limit.

13.1.c. Any hybrid raptor that is hacked must have two (2) functioning radio transmitters attached during any hacking period.

13.2. Falconry birds may be transferred to other related permits in accordance with Federal falconry regulations 50CFR21.29.

13.3. Falconry birds may be used for captive propagation only in accordance with Federal falconry regulations 50CFR21.29.

13.4. Falconry permittees may use birds possessed for falconry purposes in conservation education programs presented in public venues subject to the terms and conditions of the Federal falconry regulations 50CFR21.29.

13.5. Falconry permittees may conduct abatement activities with a falconry bird(s) only in accordance with Federal falconry rules 50CFR21.29.

13.6. Feathers that are molted or feathers from falconry birds that die in captivity may be retained and/or exchanged for imping purposes only in accordance with Federal falconry rules 50CFR21.29.

13.7. Disposition of falconry birds that die must be done in accordance with Federal falconry rules 50CFR21.29.

§58-65-14. Other provisions.

14.1. Hybrid, non-indigenous, or captive-bred raptors may not be permanently released in West Virginia.

14.2. Hybrid and non-indigenous raptors must have two (2) working radio transmitters attached when flown free.

14.3. A permittee may use other accepted falconry practices, such as but not limited to, the use of creance (tethered) flying, lures, balloons or kites in training or conditioning falconry raptors.

14.4. A permittee may fly falconry birds at unprotected species or at pen raised animals at any time.

14.5. The surviving spouse, executor, administrator or other legal representative of a deceased falconry permittee may transfer any birds held by the permittee to another permittee within ninety (90) days of the permittee's death. After ninety (90) days the Division shall have discretion over the disposition of the birds.

§58-65-15. Permit Revocation

15.1. The Director may revoke a falconry permit under the authority granted by West Virginia Code §20-2-38. The Director shall notify the permittee by certified mail of the specific reasons for the revocation.

15.2. Permits may be revoked for cause, including but not limited to: improper care for a raptor; a raptor becomes a public nuisance; any violation of Federal falconry rules 50CFR21.29; any violation of this rule; or any violation of West Virginia game laws or regulations.