



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/24/2019 9:08:07 AM

Office of West Virginia
Secretary Of State

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

AGENCY: Natural Resources TITLE-SERIES: 58-65
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 58-65 Falconry

PRIMARY CONTACT

NAME: Wendy L Greene
ADDRESS: 324 4th Avenue
Room 343
South Charleston, WV 25303
EMAIL: wendy.l.greene@wv.gov
PHONE NUMBER: 304-558-2754

CITE STATUTORY AUTHORITY: §20-1-7(31)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§20-1-7(31) provides agency rule making authority for Chapter 20 powers and duties.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/10/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes standards to govern the take, possession, training, and use of raptors for the purpose of hunting in West Virginia. Changes to this rule include modifications to language pertaining to requirements for obtaining a West Virginia Falconry permit, banding of raptors used for falconry, taking and trapping of raptors, and radio transmitter requirements.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

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

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no anticipated change to revenue.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

There is no anticipated change to administrative costs.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There is no anticipated change to administrative costs or revenue.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Wesley H White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 58
LEGISLATIVE RULE
DEPARTMENT 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 take, possession, training, and use of raptors for the purpose of hunting in West Virginia.

1.2. Authority. -- W. Va. Code §20-1-7(~~3031~~).

1.3. Filing Date. -- ~~June 6, 2013~~

1.4. Effective Date. -- ~~June 6, 2013~~

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

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its 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. "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~~ Migratory Bird Permits, 50 C.F.R. §21.3.

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 weeks of age until it is fledged. An imprint bird ~~is considered to be one~~ remains such for its entire lifetime.

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

2.9. "Passage" means a first-year raptor that is no longer dependent upon parental care.

§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. Requirements for obtaining a West Virginia Falconry permit. ~~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.~~

3.4.1. The applicant must secure a sponsor in accordance with section 5 of this rule.

3.4.2. The applicant must pass the West Virginia falconry examination in accordance section 6 of this rule.

3.4.3. The applicant's raptor housing facilities and equipment shall be inspected and certified as meeting the standards established in section 7 of this rule by a representative of the Wildlife Resources Section of the Division.

3.5. Permit fees.

~~3.5.a.~~ 3.5.1. An applicant who applies for a permit ~~who~~ and does not ~~currently~~ possess a valid permit issued by the Division in one of the three 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.~~ 3.5.2. The annual renewal fee for any class permit is \$100. ~~Any~~ lapse in renewal of more than 30 days subjects the applicant to the same \$250 fee as an initial applicant.

~~3.5.c.~~ 3.5.3. An applicant ~~who possesses~~ possessing a valid permit issued by the Division in ~~one~~ any of the classes set forth in ~~Section~~ section 5 of this rule, ~~and who applies for a permit in one of the other~~ an additional classes shall ~~not pay an initial application fee but shall~~ pay the \$100 renewal fee only.

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

3.7. A West Virginia falconry permit ~~that lapses-lapsed~~ for five years or longer ~~may~~ shall not be reinstated.

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

3.9. Nonresidents.

~~3.9.a.~~ 3.9.1. A falconer ~~with~~ who holds a valid falconry permit from another state ~~who and~~ moves permanently to West Virginia shall notify the Division and the falconry regulatory agency of their former state within 30 days of the permanent move to West Virginia. He or she must obtain a West Virginia falconry permit within 90 days of the permanent move to West Virginia.

~~3.9.b.~~ 3.9.2. A falconer moving to West Virginia from another state may continue to practice falconry under a valid falconry permit issued by his or her former state until a West Virginia falconry permit is obtained.

~~3.9.c.~~ 3.9.3. A falconer holding a valid permit from another state who moving moves to West Virginia ~~from another state~~ may request a waiver of the falconry examination permit requirement by providing documentation of ~~having successfully completed~~ completion of a similar examination in his or her home state, ~~but~~ The applicant is ~~remains~~ 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.~~ 3.9.4. A non-resident falconer shall carry on his or her person, a valid falconry permit from his or 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, a permittee shall possess a valid hunting license and any other applicable stamps or licenses required by law.

~~4.1.a.~~ 4.1.1. 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 shall 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 and 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. The permittee shall report any unintended take of a threatened or endangered bird or animal 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 48 hours of the kill.

4.5. A permittee may use a falconry bird to take any bird species at any time for which there is a depredation order in ~~place in 50 CFR~~ accordance with Migratory Bird Permits, Control of Depredating and Otherwise Injurious Birds 50 C.F.R Part 21 Subpart D ~~at any time in accordance with the conditions of the~~

~~applicable deprecation order.~~ The permittee may not receive any compensation for deprecation activities.

§58-65-5. Classes of Permits.

5.1. Apprentice Class.

~~5.1.a.~~ 5.1.1. An applicant for an apprentice class permit must be at least 12 years old.

~~5.1.b.~~ 5.1.2. If the applicant is under 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.~~ 5.1.3. 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,~~ have a sponsor who meets the requirements of subsection 5.1.3.a for the first two years in which an apprentice permit is held, regardless of the age of the permittee.

~~5.1.c.1.~~ 5.1.3.a. A sponsor must be at least 18 years ~~old~~ of age, hold 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 have ~~at least~~ no less than two years of experience at the General Falconer level. A sponsor may not have more than three apprentices at any one time.

~~5.1.c.2.~~ 5.1.3.b. The applicant shall submit ~~a signed letter~~ an application signed by ~~from~~ the sponsor ~~stating affirming that~~ he or she will instruct the applicant in proper husbandry, training, and hunting of raptors held for falconry.

~~5.1.d.~~ 5.1.4. A permittee may not possess more than one raptor and may not obtain more than one raptor for replacement during any 12-month period.

~~5.1.e.~~ 5.1.5. 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.~~ 5.1.6. A permittee may not possess an eyas or imprint.

5.2. General Class.

~~5.2.a.~~ 5.2.1. An applicant for a permit must be at least 16 years old.

~~5.2.b.~~ 5.2.2. If the applicant is under 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.~~ 5.2.3. An applicant shall have at least two years of experience at the Apprentice Falconer level.

~~5.2.c.1.~~ 5.2.3.a. An applicant may not substitute any falconry school program or education for the required two-year apprenticeship period.

~~5.2.d.~~ 5.2.4. An applicant shall submit a signed letter from the applicant's sponsor stating ~~that~~ the applicant has practiced falconry at the apprentice level for ~~at least~~ no less than two years and has maintained, trained, flown, and hunted with raptors for an average of six months and a minimum of four months each year.

~~5.2.e.~~ 5.2.5. 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.

~~5.2.f.~~ 5.2.6. 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)~~ accordance with Endangered and threatened wildlife, 50 C.F.R §17.11.

~~5.2.g.~~ 5.2.7. A permittee may possess and use captive-bred, imprinted, eyas, and hybridized raptors for falconry.

5.3. Master Class.

~~5.3.a.~~ 5.3.1. An applicant for a permit must have at least five years of experience in the practice of falconry at the General Falconer level.

~~5.3.b.~~ 5.3.2. A permittee may not possess more than five wild raptors and may not obtain more than two raptors for replacement birds during any 12-month period.

~~5.3.c.~~ 5.3.3. A permittee may possess up to five additional captive-bred raptors that must be trained in the pursuit of wild game and used for hunting.

~~5.3.d.~~ 5.3.4. A permittee may possess and use captive-bred, imprinted, eyas and hybrid raptors for falconry.

~~5.3.e.~~ 5.3.5. A permittee may possess any species of Falconiform, Accipitriform, or Strigiform except a bald eagle.

~~5.3.e.1.~~ 5.3.5.a. If the permittee meets the qualifications and requirements for eagle possession established in section 12 of this rule, A a permittee may possess up to two golden eagles of the following species which will count against the possession limit of the permittee: golden eagles (*Aquila chrysaetos*), white-tailed eagles (*Haliaeetus albicilla*), or stellar's sea-eagles (*Haliaeetus pelagicus*), if the permittee meets the qualifications and requirements for eagle possession established in section 12 of this rule.

~~5.3.e.2.~~ 5.3.5.b. The A permittee who holds a valid federal Endangered Species permit may take from the wild one bird per year of a species that is Federally listed as threatened under 50CFR17.11 in accordance with Endangered and Threatened Wildlife and Plants, 50 C.F.R §17.11 if the permittee obtains a Federal Endangered Species permit. The permittee shall abide by all qualifications and restrictions of the state or territory in which the threatened bird is to be taken.

~~5.3.e.3.~~ 5.3.5.c. A permittee may possess a captive-bred raptor of a species that is Federally listed as threatened or endangered under ~~50CFR17.11~~ Endangered and threatened wildlife, 50 C.F.R. §17.11.

§58-65-6. Examination.

6.1. An applicant for a falconry permit shall take a supervised examination relative to basic biology, care and handling of raptors, literature, laws, rules, regulations and other appropriate subject matter. The applicant must answer correctly at least 80 percent of the questions on an examination provided and administered by the Division before the Division shall issue a falconry permit.

§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 facility ~~may be required.~~ shall be necessary provided that one facility fulfills the housing requirements established in this section.

~~7.1.a.~~ 7.1.1. Indoor facilities (mews).

~~7.1.a.1.~~ 7.1.1.a. Indoor facilities shall be large enough to allow easy access through a secure door for the care and feeding of the raptors kept in the facility.

~~7.1.a.2.~~ 7.1.1.b. More than one 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.~~ 7.1.1.c. 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.~~ 7.1.1.d. 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.~~ 7.1.1.e. Each raptor housed in the facility shall have access to an adequate perch and a bath container of clean water.

~~7.1.a.6.~~ 7.1.1.f. The floor of the facility shall permit easy cleaning and shall be well drained.

~~7.1.a.7.~~ 7.1.1.g. Raptors may be kept in a residence provided that the residence meets or exceeds the provisions 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.~~ 7.1.2. Outdoor facilities (weathering area).

~~7.1.b.1.~~ 7.1.2.a. Outdoor facilities shall be surrounded by a fence or fully enclosed by a material suitable to protect the birds from disturbance or attack by predators, except that perches more than six and one-half feet high need not be fenced or enclosed.

~~7.1.b.2.~~ 7.1.2.b. The facility shall be large enough to ~~insure~~ ensure that the birds cannot strike the enclosure when flying from the perch.

~~7.1.b.3.~~ 7.1.2.c. 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.~~ 7.1.2.d. 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.~~ 7.1.3. The Division may permit, at its discretion, new innovative types of facilities, either indoors or outdoors, as they become known to the art provided those facilities fulfill the housing requirements established in this section.

7.2. All applicants must possess the following equipment before a permit will be issued:

~~7.2.a.~~ 7.2.1. At least one 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.~~ 7.2.2. At least one flexible, weather resistant leash and one strong swivel of an accepted falconry design;

~~7.2.c.~~ 7.2.3. A reliable scale or balance suitable for weighing raptors graduated to at least one-half ounce (15 gram) increments;

~~7.2.d.~~ 7.2.4. One suitable bath container, two to six inches deep and wider than the length of the raptor, for each raptor;

~~7.2.e.~~ 7.2.5. At least one weathering area perch of an acceptable design for each raptor.

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

7.4. A permittee shall notify the Division in writing of any change in location or substantial modification of the facility within five business days.

7.5. Falconry facilities do not need to be constructed at the permittee's residence or in 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 shall 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, but only in the presence of the permittee.

7.7. Transportation and Temporary Holding.

~~7.7.a.~~ 7.7.1. 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 Fish and Wildlife Permit Application form 3-186A (Migratory Bird Acquisition/Disposition Report) designating the permittee as the possessor of record and by a ~~signed~~ 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.~~ 7.7.1.a. A temporary ~~care-giver~~ caregiver authorized to possess raptors may provide care for up to 120 consecutive days. The raptors may be held at either the permittee's facilities or those of the temporary caregiver. The raptors will not count against the possession limit of the temporary caregiver. The temporary caregiver may use the birds 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.~~ 7.7.1.b. A temporary caregiver not authorized to possess raptors may provide care for up to 45 consecutive days only at the facilities of the permittee and may not fly the birds for any reason.

~~7.7.a.3.~~ 7.7.1.c. 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.~~ 7.7.2. Raptors may be held in a temporary facility for up to ~~one hundred and twenty (20)~~ 120 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.~~ 7.7.3. A permittee must obtain any necessary permits or licenses from the destination state before raptors legally held under a valid West Virginia falconry permit may be transported to other states for meets, trials or hunting.

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

8.1. A nonresident falconer shall possess a valid falconry permit from another state that meets Federal falconry standards to participate in falconry activities in West Virginia.

8.2. Nonresident falconers shall 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 120 days or longer must obtain a West Virginia falconry permit.

~~8.3.a.~~ 8.3.1. The holder of a valid falconry permit from another state who applies for a West Virginia falconry permit is not required to take the West Virginia falconry examination, but is subject to all facility, equipment and inspection requirements of this rule.

~~8.3.b.~~ 8.3.2. Upon payment of the initial application fee by the applicant and the certification of his or her facilities and equipment, the Division ~~may~~ shall issue the applicant a permit in the same class

held by the applicant in another state provided the applicant provides proof of licensure or permit 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 shall follow all the standard application procedures established in this rule. The Division may issue a permit in a class consistent with the applicant's documented experience in his or her country of origin.

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

8.6. The Division may allow a nonresident falconer to take raptors from the wild in West Virginia, if the falconer's home state allows reciprocal nonresident ~~take~~ taking of raptors. Nonresident ~~take~~ taking of raptors, if allowed, is subject to the provisions of section ~~eleven (11)~~ 11 of this rule, ~~and any other restrictions considered necessary by the Division.~~

§58-65-9. Reporting.

9.1. A permittee shall complete and submit a Federal Fish and Wildlife Permit Application form 3-186A (Migratory Bird Acquisition/Disposition Report) ~~either~~ electronically at <http://permits.fws.gov/186A> ~~or~~ and in paper form to the Division, in accordance with the instruction on the form, within 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.~~ 9.1.1. A permittee has 30 days to recover a raptor lost to the wild. The loss must be reported within five days of the termination of the 30 day ~~reclamation~~ reclamation period if the raptor is not recaptured.

~~9.1.b.~~ 9.1.2. A permittee shall report the theft of any raptor to the Division and to the U.S. Fish and Wildlife Service Regional Law Enforcement office within 10 days of the theft.

9.2. A permittee may not possess any raptor unless he or she has a properly completed and filed Federal Fish and Wildlife Permit Application form 3-186A (Migratory Bird Acquisition/Disposition Report) for each bird possessed.

9.3. A permittee ~~must~~ shall keep copies of all electronic Federal Fish and Wildlife Permit Application form 3-186A (Migratory Bird Acquisition/Disposition Report) submissions for five years after the loss, transfer or death of the raptor.

§58-65-10. Marking

10.1. ~~A raptor~~ Northern goshawks (*Accipiter gentilis*), Harris's hawks (*Parabuteo unicinctus*), Peregrine falcons (*Falco peregrines*) and Gyrfalcons (*Falco rusticolus*) taken, possessed, transported or used for falconry purposes shall be marked according to the following guidelines: with: a seamless, numbered band issued by the Division for captive bred birds or a U.S. Fish and Wildlife Service permanent, non-reusable numbered band issued by the Division for birds originating from the wild. An ISO (International Organization for Standardization) compliant (134.2 kHz) microchip may be implanted in addition to the band.

10.1.1. For captive-bred raptors, a seamless, numbered leg band issued by the U.S. Fish and Wildlife Service must be attached to the raptor.

10.1.2. For raptors originating from the wild, a U.S. Fish and Wildlife Service permanent, non-reusable numbered leg band issued by the Division must be attached to the raptor. A raptor taken from the wild may not be banded with a seamless numbered leg band.

10.1.3. For both captive-bred raptors and raptors originating from the wild, an ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip may be implanted in addition to the leg band.

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

~~10.3.~~ 10.2. A permittee must report the loss or removal of any band within five days by filing a Federal Fish and Wildlife Permit Application form 3-186A (Migratory Bird Acquisition/Disposition Report) either electronically or in paper form. Lost bands must be replaced by a permanent, non-reusable numbered band supplied by the Division. Upon remarking the raptor, the permittee shall immediately complete and submit a Federal Fish and Wildlife Permit Application form 3-186A (Migratory Bird Acquisition/Disposition Report) either electronically or on paper reporting the new band.

~~10.4.~~ 10.3. 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.~~ 10.4. 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's 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.~~ 10.5. A permittee shall remove and surrender to the Division any markers from an intentionally-released wild caught raptor which is indigenous to the state. A standard Federal band provided by the U.S.G.S. Bird Banding Lab may be attached to the birds prior to release, provided the falconer holds a federal bird banding permit issued by the U.S.G.S. Bird Banding Lab. at the discretion of the Division.

~~10.7.~~ 10.6. 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 shall notify the District Wildlife Biologist and District Law Enforcement Captain of the Division of his or her capture plans at least three days before initiating any trapping activity. The 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, including public lands. Furthermore, if the permittee is trapping and or acquiring the raptor from out-of-state, an importation permit as prescribed in W.Va. Code §20-2-13 will be required.

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, Accipitriform or Strigiform in West Virginia except: eagles; peregrine falcon (~~*Falco peregrines*~~) except by special permit; Northern harrier (*Circus ~~cyaneus~~ hudsonius*); northern goshawk (~~*Accipiter gentilis*~~); American rough-legged hawk (*Buteo lagopus*); barn owl (*Tyto alba*); long-eared owl (*Asio otus*); short-eared owl (*Asio flammeus*); northern saw-whet owl (*Aegolius acadicus*); merlin (~~*Falco columbaris columbaris*~~) eyases; sharp-shinned hawk (~~*Accipiter ~~straitus~~ striatus*~~) eyases.

11.4. Species cited as threatened or endangered under ~~50CFR17.11~~ Endangered and threatened wildlife, 50 C.F.R. §17.11 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 or she is not allowed to possess, it must be released immediately.

11.6. Permittees, regardless of class, may not take more than two 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 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 (*Falco sparverius*) and great-horned owls (*Bubo virginianus*) may be taken from the wild when over one 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.~~ 11.10.1. A physically impaired permittee may retain a general or master permittee to take a bird from the wild for him or 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.~~ 11.11.1. A permittee may recapture a raptor that he or she has lost at any time.

~~11.11.b.~~ 11.11.2. A permittee may recapture any raptor marked or equipped for falconry or any captive-bred raptor at ~~anytime~~ any time, even if the permittee is otherwise prohibited from possessing that species.

~~11.11.b.1.~~ 11.11.2.a. The recaptured raptor will not count against the possession limit of the permittee.

~~11.11.b.2.~~ 11.11.2.b. The permittee shall notify the Division within 10 days of the recapture.

~~11.11.b.3.~~ 11.11.2.c. The permittee shall 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.~~ 11.12.1. A raptor with a standard Federal migratory bird band or auxiliary marker must be released immediately and the permittee shall 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.~~ 11.12.2. A permittee may hold a raptor captured with a transmitter for up to 30 days in order to contact the researcher to determine if he or she wishes to replace the transmitter or its batteries or remove the transmitter. The permittee must notify the Division within five business days of the capture. Disposition of the raptor will be at the discretion of the Division and the researcher. This temporary possession does 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 counts against the take and possession limits of the permittee.

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

~~11.14.a.~~ 11.14.1. A permittee who does not opt to put the injured raptor on his or her permit shall immediately transport the bird to the Division or a licensed rehabilitation center for care. If the permittee does so, the raptor does not count against his or 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 does 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 eagles of the following species: golden eagles eagles (*Aquila chrysaetos*), white-tailed eagles (*Haliaeetus albicilla*), or ~~Stellar's~~ Stellar's sea-eagles (*Haliaeetus pelagicus*), subject to the requirements of this section and ~~50CFR22-24~~ Eagle Permits, Permits for Falconry Purposes 50 C.F.R. §22.24. Any eagles 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 or she shall document and submit the following information to the Division:

~~12.3.a.~~ 12.3.1. The permittee's experience in handling large raptors, including information about the species he or she has handled and the type and duration of the activity in which he or she has gained experience; and;

~~12.3.b.~~ 12.3.2. At least two letters of reference from persons with experience handling and or flying large raptors. Each letter shall 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 shall also assess the permittee's ability to ~~care~~ care for and fly large raptors for falconry.

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

13.1. General or master falconers may hack 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.~~ 13.1.1. The permittee shall obtain written approval from the Division of any hack location prior to hacking.

~~13.1.b.~~ 13.1.2. Any raptor that a permittee hacks must be a species that the permittee is allowed to possess by this rule and counts against his or her possession limit.

~~13.1.c.~~ 13.1.3. Any hybrid raptor that is hacked must have two 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~~ Migratory Bird Permits, Falconry standards and Falconry permitting, 50 C.F.R §21.29.

13.3. Falconry birds may be used for captive propagation only in accordance with Federal falconry regulations ~~50CFR21.29~~ Migratory Bird Permits, Falconry standards and Falconry permitting, 50 C.F.R §21.29.

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~~ Migratory Bird Permits, Falconry standards and Falconry permitting, 50 C.F.R §21.29.

13.5. Falconry permittees may conduct abatement activities with a falconry birds only in accordance with Federal falconry rules ~~50CFR21.29~~ Migratory Bird Permits, Falconry standards and Falconry permitting, 50 C.F.R §21.29.

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~~ Migratory Bird Permits, Falconry standards and Falconry permitting, 50 C.F.R §21.29.

13.7. A permittee shall dispose of falconry birds that die in accordance with Federal falconry rules 50CFR21.29 Migratory Bird Permits, Falconry standards and Falconry permitting, 50 C.F.R §21.29.

§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 shall have two (2) working radio transmitters attached when flown free.~~

14.2. Radio Transmitters.

14.2.1. Hybrid raptors shall have two working radio transmitters attached when flown free.

14.2.2. Non-indigenous raptors shall have at least one working radio transmitter 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 90 days of the permittee's death. After 90 days, the Division has 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 Migratory Bird Permits, Falconry standards and Falconry permitting, 50 C.F.R §21.29; any violation of this rule; or any violation of West Virginia game laws or regulations.