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Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

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Sequence Number: 05-10-11
Rule ID(s): 4954
File Date: 05/25/2011
Effective Date: 08/23/2011

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Law Enforcement Division
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1660-01-02	Rules and Regulations for Birds
Rule Number	Rule Title
1660-01-02-.03	Falconry

Rulemaking Hearing Rules
of
Tennessee Wildlife Resources Agency
Wildlife Resources

Chapter 1660-01-02
Rules and Regulations for Birds

1660-01-02-.03, Falconry, is amended by deleting the current language in its entirety and substituting the following language so that, as amended, the rule shall read as follows:

- (1) Definitions:
- (a) "Raptor" - means a live migratory bird of the family Accipitriformes or the great horned owl (*Bubo virginianus*) of the family Strigidae.
 - (b) "Take" - means to trap or capture, or attempt to trap or capture a raptor for the purpose of falconry.
 - (c) "Falconry" - means the sport of taking quarry by means of a trained raptor.
 - (d) "Service" - means the U.S. Fish and Wildlife Service, U.S. Department of Interior.

- (e) "State" - means the Tennessee Wildlife Resources Agency.
 - (f) "Bred in captivity" or "captive-bred" - refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.
 - (g) "Captivity" - means a live raptor held in a controlled environment that is intensively manipulated by man for the purpose of producing raptors of selected species, and that has boundaries designated to prevent raptors, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include, but are not limited to, artificial housing, waste removal, health care, and protection from predators, and artificially supplied foods.
- (2) Examination - Before any Apprentice Falconry Permit is issued, the applicant shall be required to answer correctly at least 80 percent of the questions on a supervised examination approved by the Service relating to the basic biology, care, and handling of raptors, literature, laws, regulations, and other appropriate subject matter.
 - (3) Permit requirement - A valid state falconry permit from Tennessee or another state meeting federal falconry standards is required before any person may take, possess, or transport a raptor for falconry purposes. Falconers from other states must obtain a Tennessee permit within 60 days of Tennessee residency in order to continue the practice of falconry in Tennessee.
 - (4) An applicant who wishes to practice falconry must submit an application, with appropriate permit fee, for a State Falconry Permit to the Executive Director of the Agency.
 - (5) Permit conditions - Every permit issued shall be subject to the following:
 - (a) A permittee may not take, transport, or possess a bald eagle for falconry purposes.
 - (b) A permittee may trade or transfer a raptor to another permittee if no money or other consideration is involved, except as authorized under state and federal propagation permits. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if prior written approval of the state which issued the permit is obtained, stating that federal and their state legal requirements are being met.
 - (c) A permittee may not take, possess, or transport a raptor in violation of restrictions, conditions, and requirements of the Federal or State Falconry Permit Regulations.
 - (d) Any change in ownership including, but not limited to, take from the wild, transfer, death, and or escape, shall be reported to the Service electronically at <http://permits.fws.gov/186A> within five (5) working days. A copy of such will be provided to the State within the same amount of time.
 - (6) Permits will expire on June 30 of the third year from date of issuance.
 - (7) Classes of permits - Three classes of falconry permits shall be issued, including:
 - (a) Apprentice class - Conditions of this class include:
 - 1. An apprentice permittee shall be at least fourteen (14) years old;
 - 2. A sponsor who is a holder of a General or Master Falconry Permit is required 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 (3) apprentices at one time;
 - 3. An apprentice permittee shall not possess more than one raptor and may not obtain more than one raptor as a replacement bird during any twelve-month period; and

4. An apprentice permittee may only possess a wild American Kestrel (*Falco sparverius*) or a Red-tailed Hawk (*Buteo jamaicensis*) captured by the apprentice, or a captive-bred raptor from a legal source.
- (b) General Class - Conditions of this class include:
1. A general permittee shall be at least eighteen (18) years old;
 2. A general permittee shall have at least two years experience in the practice of falconry at the apprentice level or its equivalent;
 3. A general permittee may not possess more than three raptors and may not obtain more than two raptors from the wild as replacement birds during any twelve-month period; and;
 4. A general permittee may not take, transport, or possess any species listed as Threatened or Endangered by the Service, except as provided by the State and Federal Falconry Regulations.
- (c) Master Class - Conditions of this class include:
1. An applicant must have at least five years experience in the practice of falconry at the General class level or its equivalent;
 2. A master permittee may not possess more than five raptors, and may not obtain more than two raptors taken from the wild for replacement birds during any twelve-month period;
 3. A master permittee may not take, transport or possess any species listed as Endangered by the Service except as provided by the State and Federal Falconry Regulations.
 4. Except as provided by the State and Federal Falconry Regulations, a master permittee may not take, transport, or possess as part of his five-bird limitation, more than one raptor listed as Threatened by the Service and/or State, or listed as In Need of Management by the State, and then only in accordance with Federal Regulations, 50 CFR 17, 21, and 22, and/or current State Proclamation "Proclaiming the Taking of Raptors for the Purpose of Falconry."
- (8) Facilities and equipment - Before any falconry permit is issued, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the Tennessee Wildlife Resources Agency as meeting the following standards:
- (a) Facilities - The primary consideration for raptor housing facilities whether indoors (mews) or outdoors (weathering area) is protection from the environment, predators, or undue disturbance. Applicants shall have the following facilities, except that depending upon climate conditions and sensitivity of the species, only one of the following facilities may be required.
1. Indoor facilities (mews) shall be large enough to allow easy access for caring for raptors housed in the facility. If more than one raptor is to be housed in the facility, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow each 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.

2. Outdoor facilities (weathering area) shall be fenced and covered with netting or wire or roofed to protect the birds from disturbances and attack by predators, except that perches more than 62 feet high need not be covered or roofed. The enclosures shall be wide enough to insure that the birds' wings shall not 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.
- (b) Equipment – An applicant must possess the following before obtaining a permit:
 1. Jesses - At least one pair of Aylmeri jesses of pliable leather or suitable synthetic material to be used when any raptor is flown free. Traditional type one-piece jesses may be used on raptors when not being flown;
 2. Leashes and swivels - At least one flexible, weather resistant leash and one strong swivel of acceptable falconry design;
 3. Bath container - At least one container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor;
 4. Outdoor perches - At least one weathering area perch of an acceptable design shall be provided for each raptor; and,
 5. Weighing device - A reliable scale or balance suitable for weighing the raptor(s) and graduated in increments of not more than 2 ounces (15 grams) shall be provided.
 - (c) Maintenance - All facilities and equipment shall be kept at or above the preceding standards at all times.
 - (d) Transportation - A raptor may be transported or held in temporary facilities, which shall be provided with an adequate perch and protection from extreme temperatures and excessive disturbance, for a period not to exceed thirty (30) days.
- (9) Marking - All raptors held within this state, except those held for scientific, rehabilitation, or zoological purposes, shall have a numbered, seamless, non-reusable marker supplied by the Service and available via the State. In the instance of raptors acquired after the effective date of these regulations, markers shall be attached immediately upon acquisition. Alteration, counterfeiting, or defacing of a marker is prohibited, except that permittees may remove the rear tab on markers and may smooth any imperfect surface, provided that the marker and the number are not affected. Loss or removal of any band must be reported to both the Service and the State within five (5) business days of the loss. The band must be replaced within thirty (30) days by a like band issued by the Service and available through the State.
- (10) Taking restriction - Raptors may be taken only in accordance with the appropriate proclamations promulgated by the Tennessee Wildlife Resources Commission.
- (11) Other restrictions:
- (a) Any person who possesses a lawfully acquired raptor before the effective date of these regulations and who fails to meet the permit requirements shall be allowed to retain the raptors. All such birds shall be identified with markers supplied by the Service and cannot be replaced if death, loss, release, or escape occurs.
 - (b) Any person who possesses raptors before the effective date of these regulations in excess of the number allowed under his class permit shall be allowed to retain the extra raptors. All such raptors shall be identified with markers supplied by the Service, and no additional raptors can be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.

- (c) A falconry permit holder shall obtain written permission from the State before any species not indigenous to this state is intentionally released to the wild. The marker of any intentionally released bird shall be removed and surrendered to the Tennessee Wildlife Resources Agency upon release. A standard Federal bird band shall be attached to such birds by the state or authorized Federal bird bander whenever possible.
 - (d) A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee for maintenance and care for a period not to exceed thirty (30) days. The raptor must be accompanied at all times by a properly completed form provided by the State/Service designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.
 - (e) Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping.
- (12) Interstate transport - Non-transfer, interstate import and export conditions follow:
- (a) Non-residents of this state who are permit holders from states which are recognized as falconry states by the Service may transport into this state raptors for personal falconry use (e.g. meets) provided the laws and regulations concerning hunting and falconry are observed, including the purchase of an appropriate Tennessee non-resident hunting license prior to pursuit of wild prey by falconry in Tennessee.
 - (b) Residents of this state who are falconry permittees may transport their raptors into other states that are recognized by the Service as falconry states for personal falconry use, provided all applicable hunting and falconry laws and regulations are observed.

Authority: T.C.A. §§70-1-206 and 70-4-414. Administrative History: Original rule filed June 25, 1975; effective July 25, 1975. Amendment filed March 2, 1978; effective April 1, 1978. Repeal and new rule filed August 26, 1998; effective November 9, 1998.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown	✓			
Mike Chase				✓
Johnny Coleman				✓
Jeffrey H. Griggs	✓			
Mike Hayes				✓
Julius Johnson	✓			
Robert Martineau				✓
Jeff McMillin	✓			
Mitchell S. Parks	✓			
Julie Schuster				✓
Todd A. Shelton				✓
Eric Wright	✓			
Danya Welch	✓			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 04/15/2011 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/25/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 04/15/2011



Date: 4-15-11

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: 4-15-11

Notary Public Signature: Lisa Crawford

My commission expires on: 8-23-11

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Attorney General and Reporter

5-19-11
 Date

Department of State Use Only

Filed with the Department of State on:

5/25/11

Effective on:

8/23/11



Tre Hargett
Secretary of State

RECEIVED
2011 MAY 25 PM 12: 31
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-01-02-.03

New	_____
Amendment	_____X_____
Repeal	_____

There were no public comments to the above-described rule.

Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

None.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

None, due to the fact that all reporting will be handled by e-mail through the US Fish and Wildlife Service once the rule is adopted.

(3) A statement of the probable effect on impacted small businesses and consumers;

None.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

None at the time since the new rule will be less restrictive than the current rule.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The new rule is being promulgated in accordance with new Federal Falconry Rules to work in tandem with each other. The rule, once in effect, will eliminate the necessity of a Federal Falconry License.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

None.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule is being promulgated in accordance with the new Federal falconry rules. Once in place, the new state rule will eliminate the necessity for falconers to obtain a \$100 Federal Falconry Permit. The new rule will allow falconers to maintain more hunting birds. In addition, this rule will be less burdensome, i.e., all transactions concerning raptors for hunting purposes will be done electronically.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

50 CFR, Parts 21 and 22
Migratory Bird Permits; Changes in the Regulations Governing Falconry; Final Rule

This federal rule requires states to adopt a system for administering falconry no later than January 1, 2014. This will eliminate the duplicity that now exists with Tennessee and the USFWS both having falconry systems. Once state rules are adopted, falconers will no longer be required to adhere to two systems and buy two licenses. Falconers will operate according to the state system only, making the practice of falconry less burdensome.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals who use raptors for hunting purposes, known as falconers. The Tennessee Wildlife Resources Agency, with the new rule, will have an electronic reporting system, eliminating mail and hard copies for raptor transactions. The new rule will eliminate the need for the federal government to have a falconry system. All parties--state, federal and falconers--are in favor of this change.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There will be savings with a new electronic reporting system which will eliminate hard copies and mailings. However, the savings will be nominal compared to the Agency's budget as a whole.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Walter Cook, Captive Wildlife Coordinator, 615-781-6647, Walter.Cook@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Nat Johnson, TWRA Assistant Executive Director, will explain the rule at the scheduled meeting of the Government Operations Committee.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Nat Johnson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 781-6555, Nat.Johnson@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

Impact on Local Governments

Pursuant to T.C.A. Sections 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (Public Chapter 1070, 2010 Legislative Session.)

The Agency anticipates that this amended rule will have no financial impact on local governments.

Red line Copy

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- Revision Type (check all that apply):**
- Amendment
 - New
 - Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1660-01-02	Rules and Regulations for Birds
Rule Number	Rule Title
1660-01-02-.03	Falconry

Rulemaking Hearing Rules
 of
 Tennessee Wildlife Resources Agency
 Wildlife Resources

Chapter 1660-01-02
 Rules and Regulations for Birds

1660-01-02-.03, Falconry, is amended by deleting the current language in its entirety and substituting the following language so that, as amended, the rule shall read as follows:

~~1660-01-02-.03 FALCONRY.~~

~~(1) Definitions:~~

~~(a) "Raptor" means a live migratory bird of the family Accipitridae, [other than the bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*)], or of the family Falconidae, or the great horned owl (*Bubo virginianus*) of the family Strigidae.~~

~~(b) "Take" means to trap or capture, or attempt to trap or capture a raptor for the purpose of falconry.~~

- ~~(c) "Falconry" means the sport of taking quarry by means of a trained raptor.~~
 - ~~(d) "Service" means the U.S. Fish and Wildlife Service, U.S. Department of Interior.~~
 - ~~(e) "State" means the Tennessee Wildlife Resources Agency.~~
 - ~~(f) "Bred in captivity" or "captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.~~
 - ~~(g) "Captivity" means that a live raptor is held in a controlled environment that is intensively manipulated by man for the purpose of producing raptors of selected species, and that has boundaries designated to prevent raptors, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include, but are not limited to, artificial housing, waste removal, health care, and protection from predators, and artificially supplied foods.~~
- ~~(2) Examination—Before any falconry permit is issued, the applicant shall be required to answer correctly at least 80 percent of the questions on a supervised examination approved by the Service relating to the basic biology, care, and handling of raptors, literature, laws, regulations, and other appropriate subject matter.~~
- ~~(3) Permit requirement—A valid State Falconry permit from Tennessee or another state meeting Federal Falconry Standards is required before any person may take, possess, or transplant a raptor for falconry purposes, provided that such falconers from other states must obtain a Tennessee permit within 60 days of Tennessee residency in order to continue the practice of falconry in Tennessee.~~
- ~~(4) Application procedures:~~
- ~~(a) An applicant who wishes to practice falconry must submit an application, with appropriate permit fee, for a State falconry permit to the Executive Director of the Tennessee Wildlife Resources Agency (the State).~~
 - ~~(b) A separate application, with appropriate permit fee, must be submitted to the Service for the Federal Falconry Permit.~~
 - ~~(c) The State will send a permit for each approved applicant to the Service, which will countersign it and forward it, as a State/Federal Falconry Permit, to each such applicant.~~
- ~~(5) Permit conditions—Every permit issued shall be subject to the following:~~
- ~~(a) A permittee may not take, transport, or possess a bald eagle or a golden eagle for falconry purposes.~~
 - ~~(b) A permittee may trade or transfer a raptor to another permittee if no money or other consideration is involved, except as authorized under state and federal propagation permits. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if prior written approval of the state which issued the permit is obtained, stating that federal and their state legal requirements are being met.~~
 - ~~(c) A permittee may not take, possess, or transport a raptor in violation of restrictions, conditions, and requirements of the Federal or State Falconry Permit Regulations.~~
 - ~~(d) Any change in ownership—take from the wild, transfer, death, escape, etc.—shall be reported to the Service on forms (No. 3-186A) provided via the Service and/or the State within five (5) working days, with such completed forms to be forwarded by the Service to the State.~~
- ~~(6) Duration of permits—A permit or the renewal of a permit is valid when issued by the State and expires on June 30th of each year.~~

~~(7) Classes of permits—Three classes of falconry permits shall be issued, including:~~

~~(a) Apprentice class—Conditions of this class include:~~

- ~~1. A permittee shall be at least fourteen (14) years old;~~
- ~~2. A sponsor who is a holder of a General or Master Falconry Permit is required 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 (3) Apprentices at one time;~~
- ~~3. A permittee shall not possess more than one raptor and may not obtain more than one raptor as a replacement bird during any twelve-month period; and~~
- ~~4. An Apprentice permittee shall possess only the following raptors, which must be taken from the wild by the apprentice: an American kestrel (*Falco sparverius*) or a Red-tailed Hawk (*Buteo jamaicensis*).~~

~~(b) General Class—Conditions of this class include:~~

- ~~1. A permittee shall be at least eighteen (18) years old;~~
- ~~2. A permittee shall have at least two years experience in the practice of falconry at the Apprentice level or its equivalent;~~
- ~~3. A permittee may not possess more than two raptors and may not obtain more than two raptors for replacement birds during any twelve-month period; and;~~
- ~~4. A permittee may not take, transport, or possess any species listed as Threatened or Endangered by the Service, except as provided by the Federal Falconry Regulations.~~

~~(c) Master Class—Conditions of this class include:~~

- ~~1. An applicant shall have at least five years experience in the practice of falconry at the General class level or its equivalent;~~
- ~~2. A permittee may not possess more than three raptors, and may not obtain more than two raptors taken from the wild for replacement birds during any twelve-month period;~~
- ~~3. A permittee may not take, transport or possess any species listed as Endangered by the Service except as provided by the Federal Falconry Regulations.~~
- ~~4. Except as provided by the Federal Falconry Regulations, a permittee may not take, transport, or possess as part of his three-bird limitation, more than one raptor listed as Threatened by the Service and/or State, or listed as In Need of Management by the State, and then only in accordance with Federal Regulations 50CFR21 and/or State Proclamation, "Proclaiming the Taking of Raptors for the Purpose of Falconry."~~

~~(8) Facilities and equipment—Before any falconry permit is issued, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the Tennessee Wildlife Resources Agency as meeting the following standards:~~

~~(a) Facilities—The primary consideration for raptor housing facilities whether indoors (mews) or outdoors (weathering area) is protection from the environment, predators, or undue disturbance. The application shall have the following facilities, except that depending upon climatic conditions and sensitivity of the species, only one of the following facilities may be required:~~

- ~~1. Indoor facilities (mews) shall be large enough to allow easy access for caring for raptors housed in the facility. If more than one raptor is to be housed in the facility, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow each 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.~~
- ~~2. Outdoor facilities (weathering area) shall be fenced and covered with netting or wire or roofed to protect the birds from disturbances and attack by predators, except that perches more than 62 feet high need not be covered or roofed. The enclosures shall be wide enough to insure that the birds' wings shall not 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.~~
- ~~(b) Equipment The following items shall be in possession of the applicant before he can obtain a permit:
 - ~~1. Jesses At least one pair of Aylmeri jesses of Pliable leather or suitable synthetic material to be used when any raptor is flown free. Traditional type one-piece jesses may be used on raptors when not being flown;~~
 - ~~2. Leashes and swivels At least one flexible, weather resistant leash and one strong swivel of acceptable falconry design;~~
 - ~~3. Bath container At least one container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor;~~
 - ~~4. Outdoor perches At least one weathering area perch of an acceptable design shall be provided for each raptor; and,~~
 - ~~5. Weighing device A reliable scale or balance suitable for weighing the raptor(s) and graduated in increments of not more than 2 ounce (15 grams) shall be provided.~~~~
- ~~(c) Maintenance All facilities and equipment shall be kept at or above the preceding standards at all times.~~
- ~~(d) Transportation: temporary holding A raptor may be transported or held in temporary facilities, which shall be provided with an adequate perch and protection from extreme temperatures and excessive disturbance, for a period not to exceed thirty (30) days.~~
- ~~(9) Marking All raptors held within this state, excepting those held for scientific or zoological purposes, shall have a numbered, seamless, non-reusable marker supplied by the Service, and available via the State in the instance of raptors acquired after the effective date of these regulations, markers shall be attached immediately upon acquisition. Alteration, counterfeiting, or defacing of a marker is prohibited, except that permittees may remove the rear tab on markers and may smooth any imperfect surface, provided that the marker and the number are not affected. Loss or removal of any band must be reported to the Service within five (5) working days of the loss for forwarding to the State. The band must be replaced within thirty (30) days by a like band issued by the Service, and available through the State.~~
- ~~(10) Taking restriction Raptors may be taken only in accordance with the appropriate proclamations promulgated by the Tennessee Wildlife Resources Commission.~~
- ~~(11) Other restrictions:
 - ~~(a) A person who possesses a lawfully acquired raptor before the enactment of these regulations and who fails to meet the permit requirements, shall be allowed to retain the~~~~

~~raptors. All such birds shall be identified with markers supplied by the Service and cannot be replaced if death, loss, release, or escape occurs.~~

- ~~(b) A person who possesses raptors before the enactment of these regulations in excess of the number allowed under his class permit shall be allowed to retain the extra raptors. All such raptors shall be identified with markers supplied by the Service and no replacement can occur, nor may an additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.~~
- ~~(c) A falconry permit holder shall obtain written permission from the State before any species not indigenous to this state is intentionally released to the wild. The marker of any intentionally released bird shall be removed and surrendered to the Tennessee Wildlife Resources Agency upon release. A standard Federal birdband shall be attached to such birds by the state or authorized Federal bird bander whenever possible.~~
- ~~(d) A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee for maintenance and care for a period not to exceed thirty (30) days. The raptor must be accompanied at all times by a properly completed form provided by the State/Service designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.~~
- ~~(e) Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping.~~

~~(12) Interstate transport-Non-transfer, interstate import and export conditions follow:~~

- ~~(a) Non-residents of this state who are permittee holders from states which are recognized as falconry states by the Service may transport into this state raptors for personal falconry use (e.g. meet's) provided the laws and regulations concerning hunting and falconry are observed, including the purchase of an appropriate Tennessee non-resident hunting license prior to pursuit of wild prey by falconry in Tennessee.~~
- ~~(b) Residents of this state who are falconry permittees may transport their raptors into other states which are recognized by the Service as falconry states for personal falconry use, provided all applicable hunting and falconry laws and regulations are observed.~~

~~Authority: T.C.A. §70-1-206. Administrative History: Original rule filed June 25, 1975; effective July 25, 1975. Amendment filed March 2, 1978; effective April 1, 1978. Repeal and new rule filed August 26, 1998; effective November 9, 1998.~~

1660-01-02-.03 FALCONRY.

(1) Definitions:

- (a) "Raptor" - means a live migratory bird of the family Accipitriformes or the great horned owl (Bubo virginianus) of the family Strigidae.
- (b) "Take" - means to trap or capture, or attempt to trap or capture a raptor for the purpose of falconry.
- (c) "Falconry" - means the sport of taking quarry by means of a trained raptor.
- (d) "Service" - means the U.S. Fish and Wildlife Service, U.S. Department of Interior.
- (e) "State" - means the Tennessee Wildlife Resources Agency.
- (f) "Bred in captivity" or "captive-bred" - refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

- (g) "Captivity" - means a live raptor held in a controlled environment that is intensively manipulated by man for the purpose of producing raptors of selected species, and that has boundaries designated to prevent raptors, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include, but are not limited to, artificial housing, waste removal, health care, and protection from predators, and artificially supplied foods.
- (2) Examination - Before any Apprentice Falconry Permit is issued, the applicant shall be required to answer correctly at least 80 percent of the questions on a supervised examination approved by the Service relating to the basic biology, care, and handling of raptors, literature, laws, regulations, and other appropriate subject matter.
- (3) Permit requirement - A valid state falconry permit from Tennessee or another state meeting federal falconry standards is required before any person may take, possess, or transport a raptor for falconry purposes. Falconers from other states must obtain a Tennessee permit within 60 days of Tennessee residency in order to continue the practice of falconry in Tennessee.
- (4) An applicant who wishes to practice falconry must submit an application, with appropriate permit fee, for a State Falconry Permit to the Executive Director of the Agency.
- (5) Permit conditions - Every permit issued shall be subject to the following:
- (a) A permittee may not take, transport, or possess a bald eagle for falconry purposes.
- (b) A permittee may trade or transfer a raptor to another permittee if no money or other consideration is involved, except as authorized under state and federal propagation permits. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if prior written approval of the state which issued the permit is obtained, stating that federal and their state legal requirements are being met.
- (c) A permittee may not take, possess, or transport a raptor in violation of restrictions, conditions, and requirements of the Federal or State Falconry Permit Regulations.
- (d) Any change in ownership including, but not limited to, take from the wild, transfer, death, and or escape, shall be reported to the Service electronically at <http://permits.fws.gov/186A> within five (5) working days. A copy of such will be provided to the State within the same amount of time.
- (6) Permits will expire on June 30 of the third year from date of issuance.
- (7) Classes of permits - Three classes of falconry permits shall be issued, including:
- (a) Apprentice class - Conditions of this class include:
1. An apprentice permittee shall be at least fourteen (14) years old;
2. A sponsor who is a holder of a General or Master Falconry Permit is required 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 (3) apprentices at one time;
3. An apprentice permittee shall not possess more than one raptor and may not obtain more than one raptor as a replacement bird during any twelve-month period; and
4. An apprentice permittee may only possess a wild American Kestrel (*Falco sparverius*) or a Red-tailed Hawk (*Buteo jamaicensis*) captured by the apprentice, or a captive-bred raptor from a legal source.

(b) General Class - Conditions of this class include:

1. A general permittee shall be at least eighteen (18) years old;
2. A general permittee shall have at least two years experience in the practice of falconry at the apprentice level or its equivalent;
3. A general permittee may not possess more than three raptors and may not obtain more than two raptors from the wild as replacement birds during any twelve-month period; and;
4. A general permittee may not take, transport, or possess any species listed as Threatened or Endangered by the Service, except as provided by the State and Federal Falconry Regulations.

(c) Master Class - Conditions of this class include:

1. An applicant must have at least five years experience in the practice of falconry at the General class level or its equivalent;
2. A master permittee may not possess more than five raptors, and may not obtain more than two raptors taken from the wild for replacement birds during any twelve-month period;
3. A master permittee may not take, transport or possess any species listed as Endangered by the Service except as provided by the State and Federal Falconry Regulations.
4. Except as provided by the State and Federal Falconry Regulations, a master permittee may not take, transport, or possess as part of his five-bird limitation, more than one raptor listed as Threatened by the Service and/or State, or listed as In Need of Management by the State, and then only in accordance with Federal Regulations, 50 CFR 17, 21, and 22, and/or current State Proclamation "Proclaiming the Taking of Raptors for the Purpose of Falconry."

(8) Facilities and equipment - Before any falconry permit is issued, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the Tennessee Wildlife Resources Agency as meeting the following standards:

(a) Facilities - The primary consideration for raptor housing facilities whether indoors (mews) or outdoors (weathering area) is protection from the environment, predators, or undue disturbance. Applicants shall have the following facilities, except that depending upon climate conditions and sensitivity of the species, only one of the following facilities may be required.

1. Indoor facilities (mews) shall be large enough to allow easy access for caring for raptors housed in the facility. If more than one raptor is to be housed in the facility, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow each 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.
2. Outdoor facilities (weathering area) shall be fenced and covered with netting or wire or roofed to protect the birds from disturbances and attack by predators, except that perches more than 62 feet high need not be covered or roofed. The enclosures shall be wide enough to insure that the birds' wings shall not 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.

- (b) Equipment – An applicant must possess the following before obtaining a permit:
1. Jesses - At least one pair of Aylmeri jesses of pliable leather or suitable synthetic material to be used when any raptor is flown free. Traditional type one-piece jesses may be used on raptors when not being flown;
 2. Leashes and swivels - At least one flexible, weather resistant leash and one strong swivel of acceptable falconry design;
 3. Bath container - At least one container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor;
 4. Outdoor perches - At least one weathering area perch of an acceptable design shall be provided for each raptor; and,
 5. Weighing device - A reliable scale or balance suitable for weighing the raptor(s) and graduated in increments of not more than 2 ounces (15 grams) shall be provided.
- (c) Maintenance - All facilities and equipment shall be kept at or above the preceding standards at all times.
- (d) Transportation - A raptor may be transported or held in temporary facilities, which shall be provided with an adequate perch and protection from extreme temperatures and excessive disturbance, for a period not to exceed thirty (30) days.
- (9) Marking - All raptors held within this state, except those held for scientific, rehabilitation, or zoological purposes, shall have a numbered, seamless, non-reusable marker supplied by the Service and available via the State. In the instance of raptors acquired after the effective date of these regulations, markers shall be attached immediately upon acquisition. Alteration, counterfeiting, or defacing of a marker is prohibited, except that permittees may remove the rear tab on markers and may smooth any imperfect surface, provided that the marker and the number are not affected. Loss or removal of any band must be reported to both the Service and the State within five (5) business days of the loss. The band must be replaced within thirty (30) days by a like band issued by the Service and available through the State.
- (10) Taking restriction - Raptors may be taken only in accordance with the appropriate proclamations promulgated by the Tennessee Wildlife Resources Commission.
- (11) Other restrictions:
- (a) Any person who possesses a lawfully acquired raptor before the effective date of these regulations and who fails to meet the permit requirements shall be allowed to retain the raptors. All such birds shall be identified with markers supplied by the Service and cannot be replaced if death, loss, release, or escape occurs.
 - (b) Any person who possesses raptors before the effective date of these regulations in excess of the number allowed under his class permit shall be allowed to retain the extra raptors. All such raptors shall be identified with markers supplied by the Service, and no additional raptors can be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.
 - (c) A falconry permit holder shall obtain written permission from the State before any species not indigenous to this state is intentionally released to the wild. The marker of any intentionally released bird shall be removed and surrendered to the Tennessee Wildlife

Resources Agency upon release. A standard Federal bird band shall be attached to such birds by the state or authorized Federal bird bander whenever possible.

- (d) A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee for maintenance and care for a period not to exceed thirty (30) days. The raptor must be accompanied at all times by a properly completed form provided by the State/Service designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.
 - (e) Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping.
- (12) Interstate transport - Non-transfer, interstate import and export conditions follow:
- (a) Non-residents of this state who are permit holders from states which are recognized as falconry states by the Service may transport into this state raptors for personal falconry use (e.g. meets) provided the laws and regulations concerning hunting and falconry are observed, including the purchase of an appropriate Tennessee non-resident hunting license prior to pursuit of wild prey by falconry in Tennessee.
 - (b) Residents of this state who are falconry permittees may transport their raptors into other states that are recognized by the Service as falconry states for personal falconry use, provided all applicable hunting and falconry laws and regulations are observed.

Authority: T.C.A. §§70-1-206 and 704-414. Administrative History: Original rule filed June 25, 1975; effective July 25, 1975. Amendment filed March 2, 1978; effective April 1, 1978. Repeal and new rule filed August 26, 1998; effective November 9, 1998.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown				
Mike Chase				
Johnny Coleman				
Jeffrey H. Griggs				
Mike Hayes				
Julius Johnson				
Robert Martineau				
Jeff McMillin				
Mitchell S. Parks				
Julie Schuster				
Todd A. Shelton				
Eric Wright				
Danya Welch				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 04/15/2011 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/25/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 04/15/2011

Date: _____

Signature: _____

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

 Robert E. Cooper, Jr.
 Attorney General and Reporter

 Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

RULE: 1660-01-02-.03

New	_____
Amendment	<u> X </u>
Repeal	_____

[] There were no public comments to the above-described rule.

[] Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

None.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

None, due to the fact that all reporting will be handled by e-mail through the US Fish and Wildlife Service once the rule is adopted.

(3) A statement of the probable effect on impacted small businesses and consumers;

None.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

None at the time since the new rule will be less restrictive than the current rule.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The new rule is being promulgated in accordance with new Federal Falconry Rules to work in tandem with each other. The rule, once in effect, will eliminate the necessity of a Federal Falconry License.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

None.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule is being promulgated in accordance with the new Federal falconry rules. Once in place, the new state rule will eliminate the necessity for falconers to obtain a \$100 Federal Falconry Permit. The new rule will allow falconers to maintain more hunting birds. In addition, this rule will be less burdensome, i.e., all transactions concerning raptors for hunting purposes will be done electronically.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

50 CFR, Parts 21 and 22
Migratory Bird Permits; Changes in the Regulations Governing Falconry; Final Rule

This federal rule requires states to adopt a system for administering falconry no later than January 1, 2014. This will eliminate the duplicity that now exists with Tennessee and the USFWS both having falconry systems. Once state rules are adopted, falconers will no longer be required to adhere to two systems and buy two licenses. Falconers will operate according to the state system only, making the practice of falconry less burdensome.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals who use raptors for hunting purposes, known as falconers. The Tennessee Wildlife Resources Agency, with the new rule, will have an electronic reporting system, eliminating mail and hard copies for raptor transactions. The new rule will eliminate the need for the federal government to have a falconry system. All parties--state, federal and falconers--are in favor of this change.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There will be savings with a new electronic reporting system which will eliminate hard copies and mailings. However, the savings will be nominal compared to the Agency's budget as a whole.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Walter Cook, Captive Wildlife Coordinator, 615-781-6647, Walter.Cook@tn.gov

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Nat Johnson, TWRA Assistant Executive Director, will explain the rule at the scheduled meeting of the Government Operations Committee.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Nat Johnson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 781-6555, Nat.Johnson@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

Impact on Local Governments

Pursuant to T.C.A. Sections 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (Public Chapter 1070, 2010 Legislative Session.)

The Agency anticipates that this amended rule will have no financial impact on local governments.