

APA-1
Revised 4/2018

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 220 Department or Agency Conservation and Natural Resources

Rule No.: 220-2-.02

Rule Title: Legal Arms, Ammunition, and Equipment for Hunting

New Amend Repeal (of Existing Rule) Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

Does the proposed rule have any economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Alabama Administrative Procedure Division of the Legislative Reference Service.

Signature of Certifying Officer Ryan W. Corley
Secretary of Administrative Procedure

Date 5/22/18

Department of Conservation and Natural Resources
Wildlife & Freshwater Fisheries

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Conservation and Natural Resources
RULE NO. & TITLE: 220-2-.02 Legal Arms, Ammunition, and Equipment for Hunting
INTENDED ACTION: Amendment.

SUBSTANCE OF PROPOSED ACTION: To allow turkeys to be taken by crossbow, to make it illegal to hunt turkey using handguns or pistols, and to make it illegal to hunt deer using a hand thrown spear. This amendment also makes formatting adjustments and renumbers subparagraphs of section (9) to make the numbering compliant with the Alabama Administrative Code.

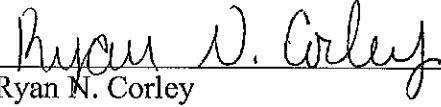
TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Director of Wildlife & Freshwater Fisheries at any time during the period stated below, or orally if requested in writing 48 hours in advance to the Director of Wildlife & Freshwater Fisheries, and then by personally appearing at Room 474, Folsom Administrative Building, 64 North Union Street, Montgomery, Alabama, at 10:00 a.m., Thursday, July 5, 2018.

If ADA accommodations are needed, please contact Daisy Perry at (334) 242-3165 or daisy.perry@dcnr.alabama.gov. Requests should be made as soon as possible but at least seven days prior to the date of a personal appearance to present views regarding the proposed rules.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Thursday, July 5, 2018.

CONTACT PERSON AT AGENCY: Chuck Sykes, Director, Wildlife & Freshwater Fisheries, 5th Floor, 64 N. Union Street, Montgomery, Alabama 36130, 334-242-3465.



Ryan N. Corley
Secretary of Administrative Procedure

Christopher M. Blankenship

220-2-.02 Legal Arms, Ammunition, and Equipment for Hunting

(1) GENERAL PROHIBITIONS:

(a) It shall be unlawful for any person to use any method or have in their possession any weapon or ammunition contrary to this regulation while hunting or attempting to hunt game birds and animals or other species provided for herein unless expressly provided for by duly enacted laws of the State of Alabama.

(b) It shall be unlawful for any person to refuse to submit firearms and ammunition or any device, instrument or accessory used in hunting to Conservation Officers for inspection.

(c) Except as otherwise provided by Rule 220-2-.03 for laser type range finders with computational capabilities on bows and by (d) listed below, it shall be unlawful for any person to hunt with a bow or gun that has a light source attached that is capable of casting a beam of light (including a laser sight) forward of said bow or gun or to possess such a light source adapted for attachment to said bow or gun while hunting.

(d) Legally blind hunters may use laser sighting devices to take game, subject to all other regulations if the following conditions are met:

- The person is accompanied by a sighted person who is a member of the immediate family or at least 16 years of age;
- The sighted person possesses proof of a current hunting license, or legal exemption (under no circumstances shall the sighted person be a holder of a "supervision required" license)
- The sighted person shall not discharge any gun or bow with laser sighting device.
- The legally blind person possesses the appropriate hunting license and proof of impairment (a physician's signed statement or equal.)

"Legally blind", as used in this regulation, shall mean central vision that does not exceed 20/200 in the better eye with corrective lenses or a visual field that subtends an angle no greater than 20 degrees.

(e) It shall be unlawful to possess any equipment that uses electronics to increase the ability to see in the dark (night vision equipment) while hunting any species of wildlife, both protected or unprotected species.

(f) It shall be unlawful to possess fully automatic firearms while hunting any species of wildlife.

(2) DEER:

- Rifles using centerfire, mushrooming ammunition.

- Air powered guns, .30 caliber or larger.
- Shotguns, 10 gauge or smaller using buckshot, slugs, or single round ball.
- Muzzle-loaders and Black Powder Handguns-- .40 caliber or larger.
- Long bows, compound bows, or crossbows in conformance with 220-2-.03.
- Handguns or pistols using centerfire, mushrooming ammunition.
- ~~Hand thrown spear with sharpened blade in conformance with the standards for broadheads in paragraph 2(b) of 220-2-.03.~~

(3) **TURKEY:**

(a)

- Shotguns, 10 gauge or smaller using standard No. 2 shot or smaller.
- Long bows, ~~or compound bows,~~ or crossbows in conformance with 220-2-.03 ~~(no crossbows).~~
- ~~Handguns or pistols using centerfire mushrooming ammunition, black powder handguns or pistols .40 caliber or larger.~~
- ~~Handguns or pistols can only have open metallic sights (no scopes).~~

(b) Nothing in this section is intended to prohibit the possession of rifles, shotgun/rifle combinations (drilling) or buckshot and slugs when the hunter is stalk hunting both deer and turkey provided no person shoots or attempts to shoot turkey with the rifle or shotgun using buckshot or slugs.

(4) **MIGRATORY BIRDS:**

- Shotguns, 10 gauge or smaller, plugged with a one piece filler incapable of removal without disassembling the gun or otherwise incapable of holding more than 3 shells using standard No. 2 shot or smaller, except waterfowl must be hunted with steel shot or other shot compositions and shot sizes that are approved by the U.S. Fish and Wildlife Service.
- Waterfowl hunters shall not possess any other size shot or any size lead shot.
- Long bows, compound bows, or crossbows.
- Raptors by properly permitted falconers.

(5) **RACCOON & OPOSSUM:**

- Nighttime hunting--Shotguns using No. 6 shot or smaller; .22 caliber rimfire firearms.
- Daytime hunting - See "(7) OTHER GAME BIRDS OR ANIMALS"

(6) **BOBCAT, GROUNDHOG, UNPROTECTED WILDLIFE, FOX, COYOTE & FERAL SWINE:**

- Rifles of any caliber.
- Handguns or pistols.

- Shotguns, 10 gauge or smaller.
- Long bows, compound bows, or crossbows.
- Muzzleloaders and black powder handguns of any caliber.
- Spear or sharpened blade.
- Raptors by properly permitted falconers.

(7) **OTHER GAME BIRDS OR ANIMALS:**

- Rifles using rimfire ammunition or those operated by air.
- Muzzleloaders and black powder handguns of any caliber.
- Long bows, compound bows, or crossbows.
- Shotguns, 10 gauge or smaller, using standard No. 4 shot or smaller.
- Handguns or pistols.
- Blowguns using darts propelled by the hunter's breath only.
- Sling shots.
- Raptors by properly permitted falconers.

(8) **BULLFROG AND PIG FROG:**

- Air powered rifles .25 caliber or smaller.
- Gig or spear.
- Long bows, compound bows, or crossbows.
- Hand or dip net.

(9)(a) ~~**FALCONRY: falconry**~~

(a) For the purpose of permitting the practice of falconry as a legal means of taking game in Alabama, and for no other purpose, live migratory birds of the order Falconiformes, the order Accipitriformes (other than the bald eagle, *Haliaeetus leucocephalus*), and the order Strigiformes, are hereby designated as game birds.

(b) As used in this regulation, the word:

1. **"Raptor"** means a live migratory bird of the order Falconiformes, the order Accipitriformes [other than the bald eagle (*Haliaeetus leucocephalus*)], or of the order Strigiformes.
2. **"Take"** means to trap or capture, or attempt to trap or capture, a raptor for the purpose of falconry.
3. **"Falconry"** means the sport of taking quarry by means of a trained raptor.
4. **"Service"** means the U. S. Fish and Wildlife Service, U.S. Department of Interior.
5. **"Commissioner"** means the Commissioner of the Department of Conservation and Natural Resources.

6. "**Department**" means the Alabama Department of Conservation and Natural Resources.

7. "**Division**" means the Division of Wildlife and Freshwater Fisheries of the Department of Conservation and Natural Resources.

(c) An applicant who wishes to practice falconry in Alabama must submit a request for an application to practice falconry along with a non-refundable \$7.50 fee to the Commissioner. If a permittee desires to renew his permit an additional \$7.50 fee shall be due with each renewal request.

(d) A falconry permit is required before any person may take, transport, or possess wild-taken or captive bred raptors for falconry purposes. The use for falconry or the possession of any raptor species not covered by the Federal Falconry Regulations and listed above is controlled by these regulations.

Every permit issued shall be subject to the following special conditions:

1. A permittee may not take, transport, or possess any species designated as endangered by the State unless authorized in writing by the Commissioner.

2. A permittee may not sell, purchase, barter, or offer to sell, purchase, or barter any raptor unless the raptor is marked on the metatarsus by a seamless, numbered band supplied by the Service.

3. A permittee may not propagate raptors without prior acquisition of a valid raptor propagation permit issued under Federal Regulation 50CFR21.30.

4. A permittee may not take, possess or transport a raptor in violation of restrictions, conditions, and requirements of the State Falconry Permit Regulations or Federal regulations listed in 50 CFR, Part 21.

5. A permittee must report the take, loss, or transfer of a falconry bird within five days by entering the required information in the electronic database at <https://migbirdapps.fws.gov/Falconry/> or by submitting a paper form 3-186A to the State falconry permit administrator.

(e) A permit or the renewal of a permit is valid when issued by the State and expires on August 31 of the third calendar year after it is issued, unless a different period is specified on the permit or renewal. A fee of \$7.50 shall be required with each renewal.

(f) Three classes of falconry permits shall be issued. These include:

1. APPRENTICE CLASS - Conditions of this class include:

(i) A permittee shall be at least 12 years old; if under 18 years of age, a parent or legal guardian must sign permittee application and is legally responsible for activities of the permittee.

(ii) A sponsor who is a holder of a General or a 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 apprentices at one time;

(iii) A permittee shall not possess more than one raptor and may not obtain more than two raptors during a calendar year;

(iv) A permittee shall possess only the following raptors, less than 1 year old but not nestlings, which must be taken from the wild by the apprentice: a red-tailed hawk (*Buteo jamaicensis*), or a red-shouldered hawk (*Buteo lineatus*).

2. GENERAL CLASS - Conditions of this class include:

(i) A permittee shall be at least 16 years old; if 16 or 17 years of age, a parent or legal guardian must sign permittee application and is legally responsible for activities of the permittee.

(ii) A permittee shall have at least two years experience in the practice of falconry at the apprentice level or its equivalent; including maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each year, and submit a document from a General or Master class falconer (preferably the sponsor) stating such experience;

(iii) A permittee may not possess more than three raptors and may not obtain more than two raptors taken from the wild during a calendar year;

(iv) A permittee may not take, transport, or possess any golden eagle or any species listed as threatened or endangered by the Service or any species listed as endangered by the State except as provided by the Federal and State Falconry Permit Regulations.

3. MASTER CLASS - Conditions of this class include:

(i) An applicant shall have at least five years experience in the practice of falconry at the general class level or its equivalent;

(ii) A permittee may not possess more than five wild raptors, and may not obtain more than two raptors taken from the wild during a calendar year;

(iii) A permittee may not take, transport or possess any species listed as endangered by the Service or any species listed as endangered by the State except as provided by the Federal and State Falconry Permit Regulations.

(g) Before any falconry permit is issued, the applicant shall be required to answer correctly at least 80 per cent 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. An opportunity for retaking the examination shall be provided in the event of failure.

(h) 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 Division of Wildlife and Freshwater Fisheries as meeting the following standards:

1. 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 applicant shall have the following facilities, which may be in the form of separate structures or as an approved hybrid design fulfilling requirements of both:

(i) 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 raptor 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;

(ii) Outdoor facilities (weathering area) shall be fenced and covered with netting or wire or roofed to protect the birds from disturbance and attack by predators. 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 with at least one perch covered to protect a raptor from the weather.

2. Equipment - The following items shall be in the possession of the applicant before he can obtain a permit:

(i) 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; and

(ii) Leashes and Swivels - At least one flexible, weather resistant leash and one swivel of acceptable falconry design; and

(iii) 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; and

(iv) Outdoor Perches - At least one weathering area perch of an acceptable design shall be provided for each raptor; and

(v) Weighing Device- A reliable scale or balance suitable for weighing the raptor and graduated in increments of not more than ½ ounce (15 grams) shall be provided.

3. Maintenance - All facilities and equipment shall be kept at or above the preceding standards at all times.

4. Transportation - Temporary Holding - Temporarily, 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 120 days.

(i) Special restrictions are as follows:

~~1.~~(I) Young raptors not yet capable of flight (eyasses) may only be taken by General or Master Falconry Permit, and no more than two eyasses may be taken by the same permittee during one calendar year;

~~2.~~(II) First year passage raptors may be taken during any month;

~~3.~~(III) Only American Kestrels (*Falco sparverius*) and great horned owls (*Bubo virginianus*) may be taken when over one year old, except that any raptor other than endangered or threatened species taken under a depredation

(or special purpose) permit may be used for falconry by General or Master Falconry Permit holders;

4.(IV) A raptor wearing falconry equipment may be retrapped at any time.

(j) Another person may care for the birds of a permittee if written authorization from the permittee accompanies the birds when they are transferred. If that period of care will exceed 45 days, the permittee shall inform the Division's falconry permit administrator within three days of the transfer, of the reason for the transfer, where the birds are being held, who is caring for them, and approximately how many days they will be under the care of the second person.

(k) Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping purposes. Feathers of golden eagles not retained for imping purposes shall be sent to the National Eagle Repository.

(l) Non-transfer, interstate import and export conditions:

1. Non-residents of the State which are permit holders from States which are recognized as falconry states by the Service may transport into Alabama raptors for personal falconry use (i.e. Falconry Meets, etc.) provided the laws and regulations concerning hunting and falconry are observed;

2. Residents of the 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 hunting and falconry laws and regulations are observed.

3. This section does not prevent the importation, exportation, or exchange between permittees of legally acquired raptors taken from the wild or produced by captive propagation, if the permittees who import, export, or exchange raptors notify the Department in writing and as provided for elsewhere within these regulations.

(m) Permittees holding the proper licenses may hunt, pursue and kill game birds and game animals during any of the established hunting seasons in accordance with existing regulations under the following provisions:

1. Persons desiring to hunt with raptors must obtain proper hunting licenses along with proper falconry permits before attempting to take game birds and game animals;

2. Persons hunting with raptors may hunt, pursue and kill game birds and game animals as follows:

- Migratory game birds - during the gun seasons for birds pursued.
- Resident game birds and animals - from the opening date of the gun season for the species pursued through March 31.

3. A permittee, whose hunting raptor accidentally kills game that is out of season or of the wrong species or sex, shall leave the dead quarry where it lies, except that the raptor may feed upon the quarry prior to leaving the site of the kill.

4. Regular season bag limits for migratory game birds do not apply to falconry. Falconry bag limits shall not exceed 3 birds for all migratory game birds in the aggregate, whether or not an extended season is selected. Regular season bag limits for resident game birds and animals shall apply to falconry.

(n) It shall be lawful for a nonresident to take or attempt to take raptors from the wild in Alabama, subject to the same restrictions and limitations as apply to resident permit holders, if the nonresident has a valid general or master level falconry permit from such person's state of residence, a valid Alabama nonresident hunting license, and if such person's state of residence provides the same privileges to residents of Alabama.

(o) Violation of this regulation or federal regulation is just cause for revocation of permits by the Department.

Author: Christopher M. Blankenship

Statutory Authority: §§ 9-2-7, 9-2-8 and 9-2-12
Code of Alabama 1975

Penalty: As provided by law.

History: Filed September 30, 1982. **Amended:** October 18, 1982; October 13, 1984; October 19, 1985; December 2, 1987; April 7, 1989; January 2, 1990; September 27, 1990; November 13, 1991. **Amended:** Filed October 4, 1993; effective November 8, 1993. **Amended:** Filed September 13, 1994; effective October 19, 1994. **Amended:** Filed September 20, 1995; effective October 26, 1995. **Amended:** Filed September 10, 1996; effective October 16, 1996. **Amended:** Filed August 11, 1997; effective September 16, 1997. **Amended (PE):** Filed March 10, 1998; effective March 10, 1998. **Amended:** Filed November 30, 1998; effective January 4, 1999. **Amended:** Filed September 13, 1999; effective October 18, 1999. **Amended:** Filed June 26, 2002; effective July 31, 2002. **Amended:** Filed September 16, 2002; effective October 21, 2002. **Amended:** Filed August

25, 2003; effective September 29, 2003. **Amended:** Filed August 10, 2004; effective September 14, 2004. **Amended:** Filed August 9, 2005; effective September 13, 2005. **Amended:** Filed August 10, 2006; effective September 15, 2006. **Amended:** Filed September 12, 2007; effective October 17, 2007. **Amended:** Filed September 11, 2008; effective October 16, 2008. **Amended:** Filed June 15, 2012; effective July 20, 2012. **Amended:** Filed August 20, 2012; effective September 24, 2012. **Amended:** Filed September 6, 2013; effective October 14, 2013. **Amended:** Filed April 15, 2014; effective May 20, 2014. **Amended:** Filed May 20, 2014; effective June 24, 2014. **Amended:** Filed September 22, 2014; effective October 27, 2014. **Amended:** Filed June 10, 2015; effective July 15, 2015. **Amended:** Filed June 14, 2016; effective July 29, 2016. May 22, 2018.

ECONOMIC IMPACT
STATEMENT FOR APA RULE
(Section 41-22-23(f))

Control No. 220 Department or Agency Conservation

Rule No: 220-2-.02

Rule Title: Legal Arms, Ammunition, and Equipment for Hunting

 New X Amend Repeal Adopt by Reference

 X This rule has no economic impact.

 This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

3. EFFECT OF THIS RULE ON COMPETITION:

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED: