

Secretary's Order No.: **2008-F-0046**

RE: Proposed New State of Delaware
Regulation No. 3921: Guide License Requirements (2008)

Date of Issuance: September 11, 2008

Effective Date of the Amendment: October 11, 2008

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive public comment on the proposed new Delaware Wildlife Regulation No. 3921: Guide License Requirements (2008). Last year, the General Assembly made several license changes here in Delaware. One such change concerned new guidelines for those persons who are in the business of guiding hunters and charging for that service. At that time, there was not enough time for the Department to prepare regulations related to that new license statute. Instead, a policy was developed for the Department concerning this matter, which defined the requirements related to the Delaware Guide License as found in 7 Del.C., Chapter 5. This new regulation would simply take this policy and convert it into a formal State of Delaware regulation.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department at that time regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the same, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;

6. Promulgation of this new regulation will allow the Department to take the policy as developed last year and convert it into a formal State of Delaware Regulation. No additional or increased costs would apply with this conversion. The new regulation will define the requirements related to the Delaware Guide License as found in 7 Del.C., Chapter 5;
7. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that provide a guiding service to hunters;
8. The Department's proposed new Regulation 3921 is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed new State of Delaware

Regulation No. 3921: Guide License Requirements be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3921, will enable the Department to take the policy as developed last year and convert it into a formal State of Delaware Regulation. No additional or increased costs would apply with this conversion. The new regulation will define the requirements related to the Delaware Guide License as found in 7 Del.C., Chapter 5.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ John A. Hughes

John A. Hughes
Secretary

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: New Regulation: State of Delaware
Wildlife Regulation No. 3921:
Guide License Requirements (2008)

DATE: September 10, 2008

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive public comment on the proposed new Delaware Wildlife Regulation No. 3921: Guide License Requirements (2008). Last year, the General Assembly made several license changes here in Delaware. One such change concerned new guidelines for those persons who are in the business of guiding hunters and charging for that service. At that time, there was not enough time for the Department to prepare regulations related to that new license statute. Instead, a policy was developed for the Department concerning this matter, which defined the requirements related to the Delaware Guide License as found in 7 Del.C., Chapter 5. This new regulation would simple take this policy and convert it into a formal State of Delaware regulation.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department at that time regarding this proposed action. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on August 25, 2008, Kenneth Reynolds, Program Manager with the Department's Division of Fish and Wildlife, offered the Department's exhibits pertaining to this regulatory promulgation, along with a brief explanation to the public with regard to the salient points of this new regulation.

Mr. Reynolds explained to the attendees at this public hearing that the primary reason for the Department to promulgate this new regulation is to take the policy as developed last year and convert it into a formal State of Delaware Regulation. No additional or increased costs would apply with this conversion, as that type of action would have to be done through the General Assembly.

Under this new regulation, all individuals receiving compensation for providing personal guide services to hunters would be required to have a Delaware Guide License. Such persons must be 18 years of age or older, and must not have been convicted for violations of any wildlife or fisheries statutes or regulations within the last three years prior to applying for a Delaware Guide License. All persons possessing a Delaware Guide License are required to complete and submit an annual report to the Department within seven days after the close of the season to include information concerning the hunters guided that season, as set forth in Section 21.4 of this new Regulation. Moreover, the Guide shall retain all hunting field records for a period of three years.

Lastly, neither a resident or non-resident hunting license is required for persons holding a valid Delaware Guide License.

For brevity's sake, and for the Secretary's review, a copy of the Department's proposed revisions to these regulations is attached hereto as Attachment "A" and is expressly hereby incorporated into this report.

It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that provide a guiding service to hunters.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for new Regulation 3920. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;

4. The Department considered all timely and relevant public comments in making its determination;
5. Promulgation of this new regulation will allow the Department to take the policy as developed last year and convert it into a formal State of Delaware Regulation. No additional or increased costs would apply with this conversion. The new regulation will define the requirements related to the Delaware Guide License as found in 7 Del.C., Chapter 5;
6. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that provide a guiding service to hunters;
7. The Department's proposed new Regulation 3921 is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
8. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

/s/ Lisa A. Vest
LISA A. VEST
Hearing Officer

/ahear/FW Sect. 3921.Guide License Requirements.2008