

Secretary's Order No.: **2008-F-0047**

RE: Proposed New State of Delaware  
Regulation No. 3920: Game Bird Releases (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. 3920: Game Bird Releases (2008). This new regulation would require that people who raise and release domestically-raised game birds (in particular, quail, pheasant, chukar partridge and Hungarian partridge) into the wild, primarily either for dog training purposes and/or for hunting purposes, obtain a permit from the Division to do so. This new regulation also requires those birds to be leg-banded prior to release. Permitted banders must report the band numbers of the birds released, the type of bird released, and the release date and location.

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 provided a reasoned analysis and a sound conclusion with regard to this proposed new regulation, 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 monitor release activities and better determine what proportion of the reported game bird harvest is made up of native wild birds versus released game farm birds;
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 participate in raising and releasing game birds;
8. The Department's proposed new Regulation 3920 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. 3920: Game Bird Release 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. 3920, will enable the Department to monitor release activities and better determine what proportion of the reported game bird harvest is made up of native birds versus released game fame birds.

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. 3920:  
Game Bird Releases (2008)

DATE: September 10, 2008

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### **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. 3920: Game Bird Releases (2008). This new regulation would require that people who raise and release domestically-raised game birds (in particular, quail, pheasant, chukar partridge and Hungarian partridge) into the wild, primarily either for dog training purposes and/or for hunting purposes, obtain a permit from the Division to do so. This new regulation also requires those birds to be leg-banded prior to release. Permitted banders must report the band numbers of the birds released, the type of bird released, and the release date and location.

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 proposed 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 that there is a hunter mail survey sent out each year, at which time the Department asks hunters what type of bird(s) they harvested each year, and how many were harvested. The Department is beginning to suspect that some of those birds reported as "harvested" were birds that were released into the wild, and perhaps shot almost immediately after being released. It is hopeful that this new regulation will enable the Department to distinguish how much of the harvest is comprised of true wild birds, as opposed to pen-raised and released birds.

Additionally, the Department plans to provide the requisite bands to those persons releasing these birds. Those bands will be plastic ones that unfold and self-wrap around the birds' legs, as opposed to the older type of bands that must be crimped with pliers. Since, for example, quail legs are so fragile, these newer type of bands will be safer for the wildlife involved as well.

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 participate in raising and releasing game birds into the wild.

**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 monitor release activities and better determine what proportion of the reported game bird harvest is made up of native wild birds versus released game farm birds;

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 participate in raising and releasing game birds;
7. The Department's proposed new Regulation 3920 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. 3920.Game Bird Releases.2008