

Secretary's Order No.: **2009-F-0046**

RE: Approving Amendment
7 DE Admin. Code 3904: Seasons (Rabbit)

Date of Issuance: December 15, 2009

Effective Date of the Amendment: January 11, 2010

I. Background:

A public hearing was held on Wednesday, December 2, 2009, at 6:30 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on a proposed amendment to Section 4.11 of the Delaware Fish and Wildlife Regulation 7 DE Admin. Code 3904: Rabbit Season. The proposed amendment would extend the rabbit hunting season in February for approximately two weeks.

In recent years, DNREC has added days to the deer hunting season in order to reduce and better control the deer population, but this action has reduced hunting opportunities for Delaware rabbit hunters because the State Wildlife Areas are often closed to rabbit hunting during deer seasons. Private lands, though technically open to rabbit hunting during most deer seasons, are often not available to rabbit hunters, again, due to deer hunting activity. Extending the rabbit season from the Monday that immediately precedes Thanksgiving through the end of February (currently, rabbit season ends on February 15th of each year) will restore this lost hunting opportunity for rabbit in Delaware.

The Department has the statutory basis and legal authority to act with regard to this proposed regulatory amendment concerning Delaware Fish and Wildlife Regulation

3904, Section 4.11: Rabbit, pursuant to 7 Del.C. §103(d). No other Delaware regulations are affected by these proposals. Additionally, it should be noted that this proposed regulatory revision has been endorsed by the Governor's Council on Wildlife and Freshwater Fish as well.

Only one comment was received by the Department from the public regarding the proposed amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, which was in support of this proposed promulgation. The Department provided proper notice of the hearing as required by law. Afterwards, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report dated December 2, 2009, which is attached and expressly incorporated into this Order regarding this matter, and submitted the same to the Secretary for review and consideration.

II. Findings:

The Department has provided a reasoned analysis and a sound basis in the record to support the issuance of the final regulations proposed in this matter. 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 the proposed amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, would restore lost hunting opportunity for Delaware rabbit hunters by extending the rabbit season in February for approximately two weeks;
7. The Department has reviewed this proposed regulatory amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendation as proposed should be applicable to all Delaware citizens equally;
8. The Department's aforementioned proposed amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, as published in the October 1, 2009 *Delaware Register of Regulations* and as set forth in Attachment "A" hereto, 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 regulatory amendment, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
9. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulations for publication in its next available issue, and shall provide written notice to the persons affected by the Order.
10. 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 Report dated December 2, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit will extend the rabbit season from the Monday that immediately precedes Thanksgiving through the end of February, thus restoring the two weeks in February which had become a lost hunting opportunity for Delaware hunters.

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, purposes, and authority of 7 Del. C. §103(d).

/s/ Collin P. O'Mara

Collin P. O'Mara

Secretary

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HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Approving Final Delaware Regulation Amendments for 2009:
7 DE Admin. Code 3904: Seasons (Rabbit)**

DATE: December 8, 2009

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, December 2, 2009, at 6:30 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on a proposed amendment to the Delaware Fish and Wildlife Regulation No. 3904 for Seasons, specifically, Section 4.11: Rabbit Season. The purpose of the aforementioned proposed amendment is to restore lost hunting opportunity for Delaware rabbit hunters by extending the rabbit season in February for approximately two weeks.

For many years, DNREC has been adding days to the deer hunting season in Delaware in order to reduce and better control the deer population in this State. This has reduced hunting opportunities for Delaware rabbit hunters. State Wildlife Areas are often closed to rabbit hunting during deer seasons. Private lands, though technically open to rabbit hunting during most deer seasons, are often not available to rabbit hunters, again, due to deer hunting activity. Extending the rabbit season from the Monday that immediately precedes Thanksgiving through the end of February (currently, rabbit season

ends on February 15th of each year) will restore this lost hunting opportunity for rabbit in Delaware.

The Department has the statutory basis and legal authority to act with regard to this proposed regulatory amendment concerning Delaware Fish and Wildlife Regulation 3904 (Section 4.11 – Rabbit), pursuant to 7 Del.C. §103(d). No other Delaware regulations are affected by these proposals. Additionally, it should be noted that this proposed regulatory revision has been endorsed by the Governor’s Council on Wildlife and Freshwater Fish as well.

Only one comment was received by the Department from the public regarding the proposed amendments to Regulation 3904 (Rabbit), which was in support of this proposed promulgation. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of a verbatim transcript and three documents introduced at the public hearing and marked by this Hearing Officer accordingly as Department Exhibits 1-3. The Department’s person primarily responsible for the drafting and overall promulgation of these proposed regulatory amendments, Kenneth Reynolds, developed the record with the relevant documents in the Department’s files. Following the submission of the Department’s exhibits into the public hearing record, Mr. Reynolds offered a brief statement with regard to the Department’s basis for proposing this amendment to Fish and Wildlife Regulation 3904 concerning the extension of rabbit season.

As noted previously, the purpose of the aforementioned proposed amendment is to restore lost hunting opportunity for Delaware rabbit hunters by extending the rabbit

season in February for approximately two weeks. Under the proposed revision, rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits, to wit: from the Monday that immediately precedes Thanksgiving through the last day of February, or the last Saturday of the month if February ends on a Sunday, provided that during a deer firearms season hunter orange is displayed in accordance with 7 Del.C. §718.

It should be noted that no members of the public attended the aforementioned hearing held on Wednesday, December 2, 2009. The Department did receive one comment via email prior to the time of the public hearing, and that comment was in support of this proposed promulgation

At the conclusion of the public hearing on December 2, 2009, this Hearing Officer formally closed the record with regard to any additional public comment regarding either of these proposed promulgations, as all proper notification and noticing requirements concerning the same had been met by the Department at that time.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendment to Delaware Fish and Wildlife Regulation 3904: Seasons (specifically, Section 4.11, Rabbit), and has thoroughly addressed any public questions and/or comments provided to the Department during the development of the record in this matter. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

11. Proper notice of the hearing was provided as required by law.
12. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
13. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
14. The Department held a public hearing in a manner required by the law and regulations;
15. The Department considered all timely and relevant public comments in making its determination;
16. Promulgation of the proposed amendment to Delaware Fish and Wildlife Regulation 3904: Seasons (specifically, Section 4.11, Rabbit) would restore lost hunting opportunity for Delaware rabbit hunters by extending the rabbit season in February for approximately two weeks;
17. The Department has reviewed this proposed regulatory amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendation as proposed should be applicable to all Delaware citizens equally;
18. The Department's aforementioned proposed amendment to Delaware's existing Regulation concerning rabbit season, as published in the October 1, 2009 *Delaware Register of Regulations* and as set forth in Attachment "A" hereto, 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 regulatory amendment, which shall go into effect ten days after their

publication in the next available issue of the *Delaware Register of Regulations*; and

19. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulations 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
Public Hearing Officer

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