

Secretary's Order

**RE: FINAL EXEMPT ORDER: 3 DE Admin. Code 402:
*State Forest Regulations***

Date of Issuance: February 5, 2019

Effective Date of the Amendment: March 11, 2019

Under the authority vested in the Secretary of the Delaware Department of Agriculture (“Department”), pursuant to 3 *Del. C.* §§101(3) and 1011, and 29 *Del.C.* §10113(b)(6), Section 402 of Title 3 of the Delaware Administrative Code is hereby revised to modify specific regulatory language as set forth below. This modification to 3 DE Admin. Code 402: *State Forest Regulations* is required by the October 11, 2018 Opinion of the Honorable Jeffrey J. Clark, Superior Court Judge of the State of Delaware, *Delaware State Sportsmen’s Association, et al., v. Garvin, et al.* (C.A. No. K18C-05-047 JJC).

Judge Clark’s Opinion was issued subsequent to the Department’s promulgation of its final Amendments to 3 DE Admin. Code 402 (“Amendments”), as set forth in its Secretary Order issued April 16, 2018, and published in the May 1, 2018 edition of the *Delaware Register of Regulations*. This Exempt Order now revises the regulatory language of the Department’s final Amendments, so that the same mirrors the regulatory language set forth in Judge Clark’s Opinion, as noted above.

Findings of Fact

Based on Delaware law and the record as reflected in the prior Secretary's Order referenced above, I make the following findings of fact:

1. The proposed regulation is not in conflict with Delaware law; and
2. The proposed regulation is an appropriate exercise of the Department's responsibilities and authority.

Decision and Order Concerning the Regulation

NOW THEREFORE, under the above-described statutory authority, and for the reasons set forth above, I hereby ORDER that the revisions to 3 DE Admin. Code 402: *State Forest Regulations* be adopted and promulgated as follows, to wit:

1. Subsection 8.8.1 shall be modified by removing the term, "and lodges" from the existing regulatory language;
2. Subsection 8.8.2 shall be modified by removing the phrase, "provided that proper and current credentials shall be produced upon request" from the existing regulatory language;
3. Subsection 8.8.3 shall be modified by removing "...provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Department" from the existing regulatory language; and
4. Subsection 8.8.6 shall be removed in its entirety.

The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 *Del.C.* §10118(g).

A handwritten signature in cursive script that reads "Michael T. Scuse". The signature is written in black ink and is positioned above a thin horizontal line.

Michael T. Scuse

Secretary

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(3 DE Admin. Code 402: State Forest Regulations):

8.0 Hunting Rules and Regulations

8.8.1 Designated areas shall include State Forest Offices, education centers, and lodges, and shall be identified by appropriate signage.

8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas, ~~provided that proper and current credentials shall be produced upon request.~~

8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas. ~~, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Department.~~

~~8.8.6 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.~~

