



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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SECRETARY'S ORDER NO: 2017-P-0030

Pursuant to 29 Del.C. §10119

AUTHORITY

Pursuant to 29 Del.C. §10119, the Department of Natural Resources and Environmental Control adopts the attached emergency amendments to the Regulations Governing State Parks, 7 Delaware Administrative Code §9201, and the Regulations the General Rules and Regulations Governing Land and Waters Administered by the Division of Fish and Wildlife, 7 Delaware Administrative Code §3900.

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for DNREC to “[m]ake and enforce regulations relating to the protection, care and use of the areas it administers”, 7 Del.C. §4701(a)(4), and to “[e]stablish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State”. 29 Del.C. §8003(7).

It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations.

REASON FOR THE EMERGENCY REGULATION ORDER

The portions of the Regulations referenced above relating to firearms were affected by the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC*, issued on December 7, 2017. The fifteen-day period for filing a motion for reargument passed on December 22, 2017. The decision will have binding effect upon the issuance of a mandate by the Court. The Court found that the existing firearms regulations violated the State of Delaware Constitution, in that they were overly broad in their prohibitions. In the absence of interim regulations, firearms would essentially be unregulated within State Parks and on land and waters administered by the Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. A risk of harm from gunfire would be presented in these and other areas where large numbers of visitors gather, including families and children. Law enforcement authorities would lack the ability to screen and check for identification, permits, or credentials of armed visitors to these facilities. The Court recognized that restrictions on firearms are appropriate in limited public areas and facilities; but that licensed and qualified persons must be exempt from such prohibitions. The interim regulations are an effort to strike the balance the Court mandated.

EFFECTIVE DATE OF ORDER

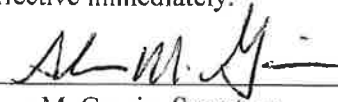
This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120 days; however, at the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 *Del.C.* §10119(3). The Department intends to propose regulations that would supersede the interim regulations upon formal approval pursuant to the Administrative Procedures Act, pursuant to 29 *Del.C.* §10115.

PETITION FOR RECOMMENDATIONS

Consistent with the requirements of 29 *Del.C.* §10119(4) the Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Order. Petitions should be presented to the Office of the Secretary, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, the 26th day of December, 2017 that the attached amendments to the above-referenced Regulations are adopted pursuant to 29 *Del.C.* §10119 and effective immediately.



Shawn M. Garvin, Secretary

Dated: December 26, 2017

Parks Emergency Regulations (Title 7 DAC §9201):

21.1 It shall be unlawful to display, possess, or discharge firearms of any description, air rifles, B.B. guns, sling shots, or archery equipment within designated areas upon lands or waters administered by the Division, except with prior written approval of the Director.

21.1.1 Designated areas shall include park offices, visitor centers, nature centers, bathhouses, restaurants and snack bars, stadiums, museums, zoos, stables, educational facilities, dormitories, group camping areas, swimming pools, guarded beaches, and water parks, and shall be identified by appropriate signage.

21.1.2 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.

21.1.3 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including designated areas, upon showing proper and current credentials to Parks authorities.

21.1.4 Delaware residents holding an active current license to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, upon showing the license to Parks authorities.

21.1.5 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 *Del.C.* §1448.

21.1.6 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.

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

Fish & Wildlife Emergency Regulations (Title 7 DAC §3900):

8.3.4.1 It shall be unlawful for any person to possess a firearm within designated areas on lands or waters administered by the Division from March 1 through August 31, except as authorized by the Director in writing.

8.3.4.6 Designated areas shall include Division offices, visitor centers, nature centers, educational facilities, and maintenance shops, and shall be identified by appropriate signage.

8.3.4.7 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.

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

8.3.4.9 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, provided that the permit shall be produced upon request of Parks authorities.

8.3.4.10 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.

8.3.4.11 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.

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

SECRETARY'S ORDER

Pursuant to 29 Del.C. §10119

AUTHORITY

Pursuant to 29 Del.C. §10119, the State of Delaware Department of Agriculture adopts the attached emergency amendments to the State Forest Regulations, 3 Delaware Administrative Code §402.

These regulations are issued by the Secretary pursuant to the power conveyed by the General Assembly for The Agriculture Secretary by 3 Del.C. §101(3), and by the specific authority to devise and promulgate regulations to protect State Forest lands conferred by 3 Del.C. S1011.

It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act, within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations by 29 Del.C. §10119(3)..

REASON FOR THE EMERGENCY REGULATION ORDER

The portions of the Regulations referenced above relating to firearms were affected by the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club v. DNREC*, issued on December 7, 2017. The fifteen-day period for filing a motion for reargument passed on December 22, 2017. The decision will have binding effect upon the issuance of a mandate by the Court. The Court found that the existing firearms regulations violated the State of Delaware Constitution, in that they were overly broad in their prohibitions. In the absence of interim regulations, firearms would essentially be unregulated on State Forest lands, including facilities such as education centers, lodges, and offices. A risk of harm from gunfire would be present in these and other areas where visitors gather, including families and children. Law enforcement authorities would lack the ability to screen and check for identification, permits, or credentials of armed visitors to these facilities. The Court recognized that restrictions on firearms are appropriate in limited public areas and facilities; but that licensed and qualified persons must be exempt from such prohibitions. The interim regulations are an effort to strike the balance the Court mandated.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect immediately upon issuance, and shall remain in effect for 120 days; however, at the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. §10119(3). The Department intends to propose regulations that would supersede the interim regulations upon formal approval pursuant to the Administrative Procedures Act, pursuant to 29 Del.C. §10115.

PETITION FOR RECOMMENDATIONS

Consistent with the requirements of 29 Del.C. §10119(4) the Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of this Order. Petitions should be presented to the Office of the Secretary, Delaware Department of Agriculture, 2320 South Dupont Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, the 26th day of December, 2017 that the attached amendments to the above-referenced Regulations are adopted pursuant to 29 *Del.C.* §10119 and effective immediately.



Michael T. Scuse, Secretary

Dated: December 26, 2017

DDA Emergency Regulations (Title 3 §402 DAC):

8.8 Target shooting is prohibited. Firearms are allowed for legal hunting ~~only~~ and are otherwise prohibited within designated safe areas on State Forest lands.

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 to Departmental authorities 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 of Departmental authorities.

8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 *Del.C.* §1448.

8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.

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.