

Secretary's Order No.: **2007-F-0030**

RE: Proposed Amendments to the State of Delaware
Wildlife Regulation No. 3902: Method of Take (2007)

Date of Issuance: August 15, 2007

Effective Date of the Amendment: September 11, 2007

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3902: Method of Take (2007). There are three actions being proposed in this promulgation: (1) clarification of existing regulation that it is legal to use a muzzle-loading rifle during deer shotgun seasons; (2) clarification of existing regulation that it is legal for bow hunters to use a mechanical release, but no device that allows the bow to be drawn and locked in place; and (3) to allow squirrel hunters to use any of the following: a .17 caliber rifle, a .22 caliber rifle, or a muzzle-loading rifle up to a .36 caliber, for squirrel hunting south of the C&D Canal during the whole squirrel season.

It should be noted that there were originally four actions being proposed in this promulgation. An entirely new section (2.9) was presented at the public hearing, which would have prohibited hunters from being in the field with more than one hunting implement at a time. In light of public comment and concerns received by the Division during this public hearing process, and due to further considerations made by the Division as a result of said comments, the Division has decided to withdraw the proposed Section 2.9 from Regulation 3902. Further consideration of this matter will be made by the Division in future rulemaking procedures.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this specific proposed action. Proper notice of the hearing was provided as required by law.

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 response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, 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 these proposed amendments would provide better understanding to the regulated community with regard to allowing hunters to use a muzzle-loading rifle during deer shotgun seasons, and will clarify that bow hunters may use a mechanical release but no device that allows the bow to be drawn and locked in place;
7. Promulgation of these proposed amendments would also allow squirrel hunters to use any of the following: a .17 caliber rifle, a .22 caliber rifle, or a muzzle-loading rifle up to a .36 caliber, for squirrel hunting south of the C&D Canal during the entire squirrel season;

8. The proposed addition of Section 2.9 to these regulations has been formally withdrawn by the Division due to public comment and discussions regarding same, but will be revisited at another rulemaking procedure by this Division in the future;
9. 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;
10. The Department's proposed amendments to Regulation 3902 are adequately supported, not arbitrary or capricious, and are 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
11. 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 August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware

Regulation No. 3902 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. 3902, will aide the Department in its ability to provide better understanding to Delaware hunters with regard to the legal use of allowing hunters to use a muzzle-loading rifle during deer shotgun seasons, and will clarify that bow hunters may use a mechanical release but no device that allows the bow to be drawn and locked in place. This will also bring clarity concerning the specific types of rifles which may be used by hunters to hunt squirrel south of the canal. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to balance 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