

## SECRETARY'S ORDER

(Extension of Emergency Order of December 26, 2017)

Pursuant to 29 *Del.C.* §10119

### AUTHORITY

Pursuant to 29 *Del.C.* §10119, the State of Delaware Department of Agriculture adopted on December 26, 2017 emergency amendments to the State Forest Regulations, 3 Delaware Administrative Code §402. These regulations were 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.* §1011.

The above 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. The Department is currently in the process of formally adopting final regulation amendments as it relates to the affected Regulations referenced above. As the 120-day period will expire before such time as it is possible for the Department to finalize its formal adoption of the above regulatory amendments, it is now necessary to renew the emergency order for an additional 60 days, pursuant to 29 *Del.C.* §10119(3), so as to retain its provisions while the amendments are being finalized pursuant to the Administrative Procedures Act.

### REASON FOR RENEWAL OF THE EMERGENCY 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 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.

The aforementioned emergency order is being renewed for an additional 60 days since there is insufficient time to finalize the formal adoption of the aforementioned regulatory amendments through the Administrative Procedures Act on or before the expiration of the initial 120-day period, which will be April 25, 2018. This action is being taken to maintain the current interim measures, which the Department has deemed necessary to avoid the risk of harm to public health, safety, and welfare.

Subsequent to the adoption of the emergency regulations on December 26, 2017, the Department began the formal regulatory promulgation process with the publication of its initial proposed regulatory amendments in the January 1, 2018 *Register of Regulations*. Thereafter, the Department held public workshops in each county throughout the State of Delaware in February 2018, and held the public hearing on March 12, 2018. It is anticipated that the formal adoption of the aforementioned regulatory amendments will be finalized prior to the expiration of this 60-day renewal period (on or before June 25, 2018).

### **EFFECTIVE DATE OF ORDER**

The renewal of this emergency order shall take effect at 12:01 a.m. on April 26, 2018, and shall remain in effect for no longer than 60 additional days. The Department's formal regulatory amendments, however, shall immediately supersede the interim regulations upon formal approval, pursuant to the Administrative Procedures Act, and 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 16th day of April, 2018 that the attached amendments to the above-referenced Regulations are adopted pursuant to 29 *Del.C.* §10119 and effective as noted above.



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Michael T. Scuse, Secretary