

## SECRETARY'S ORDER

**RE:        Approving Final Regulations to Amend  
             3 DE Admin. Code 402: *State Forests***

**Date of Issuance: April 16, 2018**

**Effective Date of the Amendment: May 11, 2018**

Under the authority vested in the Secretary of the Delaware Department of Agriculture (“Department”, “DDA”) pursuant to 3 *Del. C.* §§101(3) and 1011, 29 *Del. C.* §8103(8), and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

### **Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation amendments (“Amendments”) to 3 DE Admin. Code 402: *State Forests*, necessitated as a result of the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware’s State Parks, State Forests, and State Wildlife areas. Delaware State Parks and State Wildlife areas are under the jurisdiction of the Department of Natural Resources and Environmental Control (“DNREC”), while State Forests are under DDA jurisdiction.

In the *Bridgeville* decision, the Court found that portions of existing firearm regulations of both DNREC and DDA violated the Delaware Constitution, in that they were overly broad in their prohibitions. Without valid regulations, firearms would essentially be unregulated (1) within Delaware’s State Forest lands, including facilities such as education centers, lodges and offices; (2) within Delaware’s State Parks; and (3) on land and waters administered by the

Department's Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. Thus, on December 26, 2017, pursuant to 29 *Del.C.* §10119, both DNREC and DDA adopted emergency regulation amendments to those portions of each agency's existing regulations affected by the *Bridgeville* decision.

The emergency regulations of DNREC and DDA, as published in the *Delaware Register of Regulations* on January 1, 2018, are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulation amendments pursuant to the Administrative Procedures Act ("APA"), within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations. Once finalized and adopted, the formal regulatory Amendments of both DNREC and DDA will immediately supersede the emergency regulations, pursuant to both the APA and 29 *Del.C.* §10115.

With the aforementioned emergency regulations in effect, both DNREC and DDA then began the formal adoption of the proposed regulations, so as to comply with the *Bridgeville* decision. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 3 *Del.C.* §§101(3) and 1011, and 29 *Del.C.* §8003(7).

The commencement of the formal regulatory development process was begun by both DNREC and DDA with the publication of each agency's proposed regulation Amendments in the February 1, 2018 *Delaware Register of Regulations*. Thereafter, public workshops were held jointly by both agencies in each county throughout the State of Delaware in February 2018. The joint public hearing in this matter was held on March 12, 2018, where the aforementioned proposed Amendments were then presented and thoroughly vetted to members of the public. All

proper notification and noticing requirements concerning this matter were met by both DNREC and DDA. Proper notice of the hearing was provided as required by law.

The joint hearing held on March 12, 2018 was heavily attended by members of the public, with comment being received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the hearing for the purpose of allowing additional public comment to be received regarding this proposed promulgation. The hearing record closed for comment in this matter on March 27, 2018, with additional public comment having been received by the Department during the post-hearing phase of this formal promulgation.

After the comment period formally closed, the Department performed a thorough review of the record, including, but certainly not limited to, all of the comments received on the proposed Amendments. The full range of comments contained in the formal hearing record includes those from members of the public, as well as from other contributors such as the Delaware Association of Second Amendment Lawyers, the National Rifle Association of America, and the Giffords Law Center.

These proposed regulatory Amendments were necessitated by the Delaware Supreme Court's decision in *Bridgeville*, and the resulting need for the existing firearms regulations of both DNREC and DDA to comply with the same. The Court has drawn the lines to delineate how State agencies may regulate firearms, and DNREC and DDA believe that they have respected those limits with these proposed regulatory Amendments.

In *Bridgeville*, the Court specifically described the types of areas within which firearms could be restricted. The proposed regulatory Amendments limit the possession and use of firearms in defined common areas, such as visitor centers, lodges, educational facilities and

dormitories, family campgrounds, bathhouses, playgrounds, recreational facilities, and guarded beaches. In adhering to the Court’s guidance, only those with concealed-carry permits or law enforcement credentials may carry firearms into these and other “designated areas.” The limits on firearms in crowded areas on State lands are consistent with the statutory limits on the use of deadly force. Moreover, the proposed regulatory Amendments specifically state that “[f]irearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 *Del. C.* §1448.” This language is found in all three sets of the proposed regulation amendments, specifically, 3 DE Admin. Code 402 at Section 8.8.4; 7 DE Admin. Code 3900 at Section 8.3.4.10; and 7 DE Admin. Code 9201 at Section 21.1.5.

Hearing Officer Vest prepared a Hearing Officer’s Report dated April 9, 2018 (“Report”). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix “A.”

### **Reasons and Conclusions**

Based on the record developed by the Department’s experts and established by the Hearing Officer’s Report, I find that the proposed regulatory amendments to 3 DE Admin. Code 402: *State Forests* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final. I further find that the Department’s experts fully developed the record to support adoption of these regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to its proposed amendments to 3 DE Admin. Code 402: *State Forests*, pursuant to 3 *Del.C.* §§101(3) and 1011, and 29 *Del.C.* §8103(8);

2. The Department has jurisdiction under its statutory authority, pursuant to 3 *Del.C.* §101(3), to issue an Order adopting its proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on March 12, 2018, and held the record open through close of business on March 27, 2018, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory Amendments will enable the Department to comply with the Delaware Supreme Court's decision in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State wildlife areas;

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption "B1" concerning same, as these proposed regulatory Amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed regulatory Amendments, as published in the February 1, 2018 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 3 DE Admin. Code 402: *State Forests*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



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Michael T. Scuse  
Secretary