

# DEPARTMENT OF SAFETY AND HOMELAND SECURITY

## OFFICE OF THE SECRETARY

Statutory Authority: 16 Delaware Code, Section 10404  
(16 Del.C., §10404)

### FINAL

### ORDER

## Regulations Governing Community Firearm Recovery Programs

### I. NATURE OF PROCEEDINGS

Pursuant to its delegated authority under 16 Del.C. §10400 et seq. and Delaware's Administrative Procedures Act, 29 Del.C. §10100 et seq., the State of Delaware Department of Safety and Homeland Security (DSHS) proposed these regulations in order to implement the Delaware General Assembly's mandate to establish the Community Firearm Recovery Program ("CFRP").

Notice of a public comment period lasting thirty (30) days relating to the proposed regulations was published in the Delaware *Register of Regulations* for September 1, 2011 as required by law.

### II. PUBLIC COMMENTS

DSHS received the following public comments in response to its notice of intent to adopt the proposed regulations and offers the following responses thereto:

A public comment was received concerning the disposal of the firearms that are acquired by law enforcement agencies through the CFRP. The concern is that all of the firearms recovered will be destroyed. The DSHS response is that the program the proposed regulations are designed to implement are specific as to the disposition of the firearms that are collected or recovered through the CFRP. The proposed regulations track the statutory language verbatim concerning disposal of firearms by means of sales or transfers to federally licensed dealers and add proposed Regulation 3.6.2 which allows for any firearm determined to be stolen to be returned to its rightful owner.

A public comment was received stating the proposed regulations constitute the first step in taking away a citizen's Second Amendment rights under the U.S. Constitution. The DSHS response is that Delaware's General Assembly, expressing the desires of all Delawareans, passed the law that was signed by the Governor calling for the creation of the CFRP as a means of reducing gun violence in this state. The General Assembly delegated to the DSHS the power and responsibility to adopt regulations to implement the program, one that is entirely voluntary. No citizen is being forced to surrender a firearm that is lawfully possessed.

A public comment was received stating that proposed Regulation 4.3, which allows for the anonymous surrender of firearms to the law enforcement agency conducting a CFRP event, would allow residents of other states to violate the federal gun control statute, 18 U.S.C. § 922, that proscribes transfers of firearms between residents of different states. The DSHS response is that Section 922 (a)(1) makes it unlawful for a person "engaged in the business" of dealing in firearms to do so across state lines without a federal license. Unless an individual participating in a CFRP event holds himself out to the public as being a source of guns, he would not be in violation of this federal law merely by surrendering a firearm or firearms in return for gift cards or cash. Section 922 (a)(3) makes it unlawful for a person to transport or receive into his state of residency a firearm purchased or obtained from another state. This statute is clearly not implicated by the surrender of a firearm to a law enforcement agency holding a CFRP event. Finally, Section 922 (a)(5) makes it unlawful for a person to sell, transport, or deliver a firearm to a "person" from a different state. The word "person" is defined in the federal gun control statute at Section 921 (a)(1) and does not contemplate the inclusion of law enforcement agencies within its meaning. Indeed, the term "law enforcement agency" is used throughout the federal gun control statute when that term is meant. DSHS does not believe Regulation 4.3 constitutes an invitation to violate federal law by persons from outside Delaware. Indeed, DSHS believes the anonymity feature of Regulation 4.3 is essential to the success of the CFRP and rejects the commenter's requests for revision.

### III. FINDINGS AND CONCLUSIONS

The public was given the required notice of DSHS' intent to adopt the proposed regulations and the opportunity to provide DSHS with comments concerning them. Thus, DSHS concludes that its consideration of the proposed regulations was entirely within its prerogatives and statutory authority and having received and considered public comments that did not lead to substantive changes, is now free to adopt the proposed regulations.

## IV. ORDER

AND NOW, this 17th day of October, 2011 it is hereby ordered that:

The proposed regulations are adopted;

The text of the proposed regulations shall be in the form attached hereto as Exhibit A;

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(e); and

DSHS reserves unto itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

IT IS SO ORDERED.

By: Lewis Schiliro, Secretary, Delaware Department of Safety and Homeland Security

### **Regulations Governing Community Firearm Recovery Programs**

#### **1.0 Definitions**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**"Agency"** means any local municipal police department, the New Castle County Police Department and the Delaware State Police.

**"CFRP"** means Community Firearm Recovery.

**"DSHS"** means Delaware Department of Safety and Homeland Security.

**"Firearm"** means any firearm as defined in Sec 222(12), Title 11, Delaware Code.

**"Gift Card"** means type of payment used by a police agency to pay for surrendered- firearms such as a VISA or MasterCard gift card.

**"Pilot Period"** means July 6, 2011 to May 15, 2012.

**"Secretary"** means the Secretary of Delaware Department of Safety and Homeland Security.

#### **2.0 Application by Requesting Police Agency:**

2.1 Funds allocated pursuant to 16 **Del.C.** Ch. 104 shall be maintained in the DSHS, Office of the Secretary.

2.1.1 Administrative costs incurred pursuant to the recovery of the weapons, the purchase and redemption of gift cards, and, upon approval by the Secretary, publication and advertising of the CFRP event shall be reimbursable through the funds allocated under 16 **Del.C.** Ch. 104 and these regulations.

2.1.2 Administrative costs shall be requested by the police agency in advance of the CFRP event pursuant to section 2.3 of these regulations.

2.2 Request for funds:

2.2.1 An agency may participate in the CFRP and receive funds, upon approval by the Secretary, by submitting a letter of request, at least 14 days in advance of the event, indicating its desire to do so and stating the following:

2.2.1.1 The date, time, location and duration of the event;

2.2.1.2 Any civic and/or community organization participating in the event in collaboration or partnership with the requesting agency;

2.2.1.3 The person in the requesting agency responsible for maintaining the funds and/or inventory allocated by DSHS as well as any funds and/or inventory contributed by sponsoring entities;

2.2.1.4 An estimate of firearms the requesting agency believes it will receive as a result of the CFRP event;

2.2.1.5 The estimated costs of publication and advertising; and,

2.2.1.6 The estimated costs to administer the program.

2.3 Agencies may, and are encouraged to, convert any funds received from DSHS for a CFRP event to gift cards redeemable for merchandise in the amounts stated in Sections 3.3 and 3.4 of these regulations, to the extent possible.

2.4 Within seven (7) days after the conclusion of the CFRP event, the police agency shall submit to the Secretary an accounting of all funds allocated by DSHS under these regulations.

2.5 All unused funds shall be returned to DSHS in the form of U.S. currency, check or money order within seven (7) days of the CFRP event.

**3.0 Collection and Disposition of Recovered Firearms:**

- 3.1 Upon surrender, all firearms shall be tagged or marked by the collecting agency as to where collected, whom collected by, the date of collection, make, model and serial number.
- 3.2 All ammunition received shall be disposed of at the discretion of the host agency in accordance with their policies.
- 3.3 Funds shall be issued for firearms which, upon preliminary inspection, appear to be operational, in amounts not to exceed the following:

|                       |                 |
|-----------------------|-----------------|
| <u>Assault Rifles</u> | <u>\$200.00</u> |
| <u>Hand Guns</u>      | <u>\$150.00</u> |
| <u>Rifles</u>         | <u>\$100.00</u> |
| <u>Shotguns</u>       | <u>\$100.00</u> |

- 3.4 The agency shall have the discretion to pay an amount not to exceed \$75.00 for parts of firearms and ammunition received during a CFRP event.
- 3.5 Within seven (7) business days after the conclusion of a CFRP event, a complete list of all firearms collected shall be supplied to the Secretary containing information listed in section 3.1 of these regulations.
- 3.6 It shall be the responsibility of the police agency holding a CFRP event to dispose of the firearms collected. Disposal may include any, or a combination, of the following:
  - 3.6.1 Sale or transfer of firearms to a federal licensed dealer, (defined as a person licensed as a firearms collector, dealer, importer, or a manufacturer under the provisions of 18 U.S.C. section 922). The proceeds of any such sale shall be utilized by the agency for any law enforcement or charitable purpose as established by the agency conducting the CFRP event.
  - 3.6.2 Destruction in a manner causing total destruction of the firearm through such methods as melting or shredding.
  - 3.6.3 Return any firearms determined to be stolen to the rightful owner.
- 3.7 Agencies, upon disposition of firearms, shall furnish a list of all disposed firearms to the Secretary.

**4.0 General Rules:**

- 4.1 An agency conducting a CFRP event shall be responsible for the security of the site, the surrounding area, the surrendered firearms, transportation of surrendered firearms and all unused funds and inventory.
- 4.2 To ensure safety, any agency conducting a CFRP event shall have at least one person on site knowledgeable in the operation and safety of firearms.
- 4.3 Any individual who elects to surrender a firearm anonymously at a CFRP event may do so and personal identification shall not be required to be presented at the time of the redemption.

**15 DE Reg. 682 (11/01/11) (Final)**