

**DEPARTMENT OF AGRICULTURE
DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Sections 101(3) & 1011 and 29 Delaware Code, Section 10119
(3 **Del.C.** §§101(3), 1011 and 29 **Del.C.** §10119)
3 **DE Admin. Code** 402

EMERGENCY

SECRETARY'S ORDER
(Extension of Emergency Order of December 26, 2017)

402 State Forest Regulations

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

Michael T. Scuse, Secretary

402 State Forest Regulations

1.0 Authority

These regulations are promulgated pursuant to the delegation of authority to the Department of Agriculture by the General Assembly found in 3 **Del.C.** Sections 1008 and 1011.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

2.0 Purpose

The State Forests of Delaware are open to members of the public for their enjoyment. Most legal forms of non-motorized recreation are permitted. The following regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

3.0 Construction

3.1 No regulation herein shall be interpreted or construed in such a manner as to prevent or delay authorized personnel of the Department or other state, county, or municipal agencies from completing official duties or emergency response.

3.2 In special circumstances, events, or emergencies, the Secretary or Forestry Administrator may, when it is deemed to be in the public interest, waive a specific regulation or fee.

3.3 Failure to enforce a specific regulation at a particular instance or instances shall not affect the validity of any other regulation or affect the validity of such regulation at any other time.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

4.0 Definitions

4.1 “**Department**” is the Delaware Department of Agriculture

4.2 “**DFS**” is the Delaware Forest Service

4.3 “**DNREC**” is the Delaware Department of Natural Resources and Environmental Control

4.4 “**Secretary**” is the Secretary of the Delaware Department of Agriculture

4.5 “**State Business Hours**” are 8:00 a.m. to 4:30 p.m. on Monday through Friday, except for state holidays.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

5.0 General Rules and Regulations

5.1 In order to promote the safety and welfare of State Forest visitors and protect and manage property in the State Forests, the Secretary and Forestry Administrator shall have the authority to develop reasonable policies for State Forests that are not in conflict with 3 **Del.C.** Ch. 10 and these regulations. These policies must be

approved by the Secretary and posted in a conspicuous location in the State Forest prior to their becoming effective. Copies of all policies shall also be maintained in the State Forest office.

- 5.2 Violation of any State Forest policy shall be grounds for eviction from the State Forest and the denial, revocation, or suspension of any permit issued or privilege granted by the Department.
- 5.3 The Department shall have the authority to enforce safety rules and/or policies developed in accordance with 5.1 of these Regulations for the protection of visitors and property.
- 5.4 State Forests are open to lawful non-motorized recreational uses that do not violate any of the rules and regulations contained herein.
- 5.5 Unless otherwise indicated, State Forest access roads are closed to vehicular travel. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands of the DFS except on established roads or as otherwise authorized by the Forest Administrator. Where vehicular traffic is permitted, the speed limit is twenty (20) miles per hour unless otherwise posted. Vehicular traffic on tax ditch rights of way is prohibited except for maintenance by authorized personnel and for law enforcement purposes. Non-pedestrian traffic (horseback riding and mountain biking) is restricted to access roads and trails unless otherwise noted. None registered vehicles and all-terrain vehicles are prohibited in all areas except those used by DFS employees or law enforcement in the application of their lawful duties. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the DFS, unless said vehicle is licensed for use upon public highways and roadways or the driver or operator of said vehicle has been issued a permit from the DFS.
- 5.6 Boundaries of State Forests are clearly marked with metal signs and yellow paint. Visitors crossing onto private property are subject to trespass laws governed by **Delaware Code**.
- 5.7 No living trees, shrubs, or other vegetation may be cut, felled, uprooted, removed, or otherwise injured or destroyed, unless written permission has first been obtained from the forest officer in charge.
- 5.8 No living animals shall be harassed, injured, destroyed, or collected and removed from State Forest lands unless written permission has first been obtained from the forest officer in charge. The only exception is lawful hunting as specified in the Division of Fish and Wildlife adopted regulations outlined in the annual **Hunting and Trapping Guide**.
- 5.9 Fires are prohibited for any purpose on State Forest lands other than in designated areas unless written permission is obtained in advance from the forest officer in charge. All fires must be under the direct supervision of a competent adult. It shall be unlawful to leave any fires that have not been thoroughly extinguished.
- 5.10 The dumping or depositing of rubbish, trash, paint, household items, or other debris, or any other materials and activities that could result in the depositing of such materials, such as paintball and geo-caching, are also prohibited.
- 5.11 The placement of advertisement signs on State Forest property is prohibited.
- 5.12 It shall be unlawful to litter on State Forest lands.
- 5.13 Writing upon, mutilating, carving, and otherwise defacing trees, buildings, structures, signs, and official notices is prohibited.
- 5.14 With the exception of animals permitted under lawful hunting regulations, all animals must be under the continuous control of the owner(s) unless otherwise authorized in writing by the Forestry Administrator. All dogs must be leashed, unless covered by the exception above. State Forest visitors are responsible for the conduct and any damages, either personal or property, caused by their animals.
- 5.15 It shall be unlawful to train dogs on DFS property unless prior permission is authorized by the State Forest office.
- 5.16 Entry to State Forest lands is prohibited from sunset to sunrise, except for lawful hunting, permitted camping, permitted Redden Lodge use, or as otherwise permitted in writing by the DFS.
- 5.17 Fishing on State Forest lands is limited to catch and release only. A state fishing license is required to fish on State Forest lands.
- 5.18 Visitors shall park in designated areas only and within those designated areas. It shall be unlawful for any person to park any vehicle on lands administered by the DFS in such a manner as to obstruct the use of State Forest access roads, gates, or trails. Any vehicle parked in such a manner shall be subject to removal and the owner of said vehicle shall pay for all costs involved in such removal.
- 5.19 Alcoholic beverages are prohibited on State Forest lands except within the Redden Lodge, if and only if, authorized in writing by the DFS.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

6.0 Redden State Forest Lodge

It shall be unlawful to make use of the Lodge facility in any manner other than outlined in the Redden state Forest Lodge Lease Agreement.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

7.0 Camping Rules and Regulations

7.1 Camping is free-of-charge, year round, but restricted to map-designated campsites. A forest use permit is required for all camping on State Forest lands. Permits are available at State Forest offices during state business hours or from information boxes located at each State Forest office. Completed permits must be submitted during office hours to ensure campsite availability.

7.2 Campsites are on a first-come, first-served basis and reservations are required.

7.3 Campsites are of a primitive type, and are to be used ONLY for tent, van or pickup campers. Travel trailers and /or self-propelled motor homes are excluded due to access and parking limitations, unless otherwise noted.

7.4 There are a limited number of campsites, each is large enough to accommodate large families. These are equipped with tables, fire pits, charcoal grills and a trash barrel. Campsites are limited to a maximum number of ten (10) people per site, with a maximum stay of three nights per week. Camper(s) must remove their trash upon vacating their campsite.

7.5 Camping is at your own risk. State Forests are a public use area and there is no after-hours, nighttime or weekend security. Law enforcement is provided by the Delaware State Police and DNREC should the need arise.

7.6 State forests are “multiple-use facilities”, which means other activities will continue while you camp. These activities include: hunting, picnicking, hiking, nature study, horseback riding, firewood cutting (by permit only), and timber harvesting. The DFS reserves the right to limit or deny permits during times of conflicting use.

7.7 Firewood for camp use is available at the campsites. If more firewood is needed, it may be gathered locally from dead and downed trees. Standing trees or shrubs shall not be cut. Using firewood located at the office complex is prohibited. Campfires shall be contained within established fire rings only.

7.8 Campsites are to be left clean and all fires are to be extinguished before departing from the area.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

8.0 Hunting Rules and Regulations

8.1 State Forests are year-round multiple use areas. Hunters share the use of State Forest lands with other public users such as hikers, campers, horseback riders, firewood cutters, and loggers.

8.2 No special permits are required to hunt on State Forest lands, except as specified in the DNREC, Division of Fish and Wildlife **Hunting and Trapping Guide**. Properly licensed hunters may hunt during any open season except on areas otherwise designated, such as those marked with Wildlife Sanctuary, NO HUNTING, or Safety Zone signs.

8.3 No permanent deer stands, platforms, ladders, or blinds may be constructed. No screw-in tree steps, spikes, screws, or nails are allowed.

8.4 Deer drives by any person or persons are not permitted on any State Forest land at any time.

8.5 Small game hunting is closed on State Forest lands during firearm deer seasons.

8.6 The DFS reserves the right to close specific State Forest tracts to hunting during specific hunting seasons. It shall be unlawful for any person to hunt on lands administered by the DFS, except as permitted by the Forestry Administrator in writing and specified on current State Forest area maps distributed by the DFS.

8.7 Trapping rights may be leased for State Forest lands. No other trapping is permitted on State Forest lands.

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.
- 8.9 Waterfowl hunting is not permitted on State Forest land or waters.
- 8.10 Squirrel hunting is not allowed with a rifle or muzzleloading rifle. Squirrel hunting with a shotgun is permitted.
- 8.11 The following hunting restrictions apply to those tracts of State Forest lands as specified in the DNREC, Division of Fish and Wildlife **Hunting and Trapping Guide**. Maps delineating these areas are available at State Forest offices.
 - 8.11.1 All deer hunting is limited to numbered stands.
 - 8.11.2 For shotgun season stands will be chosen in a pre-season lottery. To apply for a stand during the shotgun season fill out the application in the Delaware Hunting and Trapping Guide. For leftover stands there will be a daily lottery held at the local State Forest office, 1 and 1/2 hours before legal hunting time.
 - 8.11.3 For Muzzleloader season there will be a daily lottery held at the local State Forest office, 1 and 1/2 hours before legal hunting time.
 - 8.11.4 All hunters on these tracts, during shotgun and muzzleloader season, must only hunt from their designated stand, as walk around hunting is not permitted.
 - 8.11.5 During Archery season bowhunters must be within 50 yards of their designated stand.
 - 8.11.6 Stands will be available during Archery season on a first-come, first-served basis.
 - 8.11.7 No more than one hunter may hunt from a stand at any one time.

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

9.0 Forest Use Permits

- 9.1 Forest use permits on State Forests are issued on a first-come, first-served basis and are required for camping, firewood cutting, lodge rental (Redden State Forest), organized special events, and pavilion reservation. Facility users are required to submit a completed Forest Use Permit during state business hours. Facilities are to be reserved in advance.
- 9.2 Firewood permits are required to harvest firewood on State Forest lands and are issued at the discretion of the State Forest staff. When available, these permits are issued on a first-come, first-served basis. There is a fee of \$100 for firewood permits, which allows the holder to cut for three days within areas designated and posted by State Forest staff. No trees are to be felled; only downed wood may be cut. Wood is not for resale.

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

10.0 Department Enforcement Regulations

- 10.1 The violation of, or the refusal to obey, any law, these regulations, State Forest policies or the terms or conditions of any permit issued or privilege granted by the Department shall be grounds for the suspension or revocation of any permit issued or privilege granted by the Department, the removal or eviction from State Forest lands and/or the denial of future entry to, or the denial of future permits or privileges within State Forests. Any and all applicable permit fees shall be forfeited to, and retained by, the Department. Any such suspension, revocation, removal, eviction or the denial of entry, permit or privilege shall not preclude the prosecution of any person for violation of any law or these regulations.
- 10.2 Whoever violates any of the foregoing regulations shall be deemed to have committed an unclassified misdemeanor and shall be fined not less than \$25 nor more than \$250 and be required to pay all applicable court costs. For each subsequent violation, within three years of a previous conviction, the violator shall be

fined not less than \$50 nor more than \$500 and be required to pay all applicable court costs. In addition to fines and court costs, State Forest Service may request the court to order restitution in an amount determined by it for the destruction or removal of property to those convicted of violating these regulations.

10.3 Justices of the Peace throughout the State shall have jurisdiction over alleged violations of these State Forest Regulations; however, any violator shall, upon arrest, be taken to the nearest available Justice of the Peace in the county where such violation is alleged to have occurred, or in lieu thereof, be provided with an assessment form for the voluntary payment of fines.

10.4 Notwithstanding the immediate preceding subsection, a duly authorized peace officer making an arrest for a violation of these regulations may issue a summons requiring the violator to appear in person at a subsequent date at the Justice of the Peace Court nearest to the place of arrest and during the regularly scheduled hours of the Court.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

21 DE Reg. 837 (05/01/18) (Emer.)