

DEPARTMENT OF AGRICULTURE
DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION
Statutory Authority: 3 Delaware Code, Section 7202 (3 **Del.C.** §7202)
3 **DE Admin. Code** 304

PROPOSED

PUBLIC NOTICE

The Delaware Department of Agriculture proposes these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state. It should be noted here that these regulations do not supersede **Delaware Code** Title 7 Chapter 6 regarding Endangered Species.

The Delaware Department of Agriculture solicits written comments from the public concerning these proposed regulations. Any such comments should be submitted to the Acting State Veterinarian, Caroline Hughes, VMD, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before November 1, 2008. Copies of the proposed regulations are available on request.

304 Exotic Animal Regulations

1.0 Authority

These regulations are promulgated pursuant to the authority of Section 7202 of Title 3 of the **Delaware Code**.

2.0 Purpose

These regulations govern the permitting process, possession, sale, and exhibition of exotic animals, i.e., live wild mammals or hybrids of wild mammals or live reptiles not native to or generally found in the State of Delaware. The State Veterinarian or her or his designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein.

3.0 Definitions

"**Carnivore**" means a flesh-eating mammal, which possesses teeth and claws adapted for attacking and devouring its prey.

"**Custodian**" means one who owns, possesses or cares for an exotic animal.

"**Department**" means the Delaware Department of Agriculture, the State Veterinarian or his or her designated agent or representative.

"**Exotic**" means a live wild mammal or hybrid of a wild mammal or a live reptile not native to or generally found in Delaware as determined by the Delaware Department of Natural Resources and Environmental Control and the Division of Fish and Wildlife.

"**Herbivore**" means a mammal that feeds exclusively on vegetable matter.

"**Hybrid of a wild mammal**" means a mammal whose parents are different varieties of the same species or belong to different but closely allied species, one parent being a wild mammal not native to or generally found in Delaware and the other parent being a domestic mammal native to or generally found in Delaware.

"**Omnivore**" means an animal which eats any sort of food, both animal and vegetable in origin.

"**Owner**" means one who owns, possesses or cares for an exotic animal.

“Permit Holder” means one who owns, possesses or cares for an exotic animal and holds an applicable Exotic Animal permit.

“Primate” means a mammal that belongs to the highest order of mammals including monkeys and lemurs.

“Reptile” means any cold-blooded vertebra of the class Reptilia including turtles, lizards, snakes, crocodilians and tuatara.

“Secretary” means the Secretary of Agriculture or his or her designee.

“State Veterinarian” means the State Veterinarian of the Delaware Department of Agriculture, or his or her designee.

“Welfare” means that the owner provides for the health and well-being and satisfies the physiological requirements of the exotic animal.

4.0 The State Veterinarian Powers; Duties

4.1 The State Veterinarian is responsible for administering and enforcing these regulations. The State Veterinarian has the power to grant, deny, or revoke permits to possess exotics in this state.

4.2 The State Veterinarian is also vested with the power to designate agencies to seize and when warranted to humanely destroy an exotic if necessary to protect the public health, safety, or welfare and to protect the health of other animals. The State Veterinarian can humanely destroy an exotic without first notifying the exotic animal’s owner or custodian.

4.3 The State Veterinarian will maintain a list of animals that are exempt from permits. This list will be available to the public and is subject to change in keeping with current animal and human health and safety concerns.

4.4 The State Veterinarian is charged with preventing the introduction and spread of contagious and infectious diseases into and within the domestic animal population of the state. Therefore, any exotic animal health concerns must be immediately communicated to the State Veterinarian’s office.

5.0 Enclosure and Welfare requirements for permits

5.1 There shall be two enclosures to house an exotic: a primary enclosure and a secondary enclosure. Locking devices shall be required on both primary and secondary enclosures. Both primary and secondary enclosures must be approved by a designated agent or representative of the Delaware Department of Agriculture. Future changes to any pen used to contain an exotic animal must be approved in advance by a designated agent or representative of the Delaware Department of Agriculture. Prior to granting a permit, a final inspection of the enclosures where the exotic is to be confined shall be completed by the Department to insure that the requirements of these regulations have been met by the applicant. Inspections may include onsite visits or other proof of enclosure and welfare compliance, such as pictures or videos, as deemed appropriate by the Department. The Department shall be allowed access to make random, unfettered re-inspections of a permitted location to insure continued compliance or to request other proof of existing enclosure and welfare compliance, as deemed appropriate by the Department, for the purpose of re-inspection.

5.2 The primary enclosure shall be a pen, cage or other structure where the exotic will be kept and which must be of sturdy and escape-proof construction. Enclosures/Pens must be consistent in size, structure, lighting, temperature control, and ventilation according to the welfare standards and needs described and found in scientific literature for the species under request for permitting into Delaware. The applicant is required to demonstrate knowledge of enclosure and welfare standards for the species under consideration with the application.

5.3 The secondary enclosure must be sufficient to prevent the exotic from escaping from the property of the custodian should it be set free from its primary enclosure. The secondary enclosure must insure there will be no physical contact between members of the public and the exotic if it is set free from the primary enclosure.

5.4 Shared enclosures: Permitted exotic animals must be kept so as not to be allowed to reproduce while in captivity. Any shared enclosures are only for sterile animals or animals unable to reproduce. The

applicant may be required to provide proof of sterility or birth control treatment to the Delaware Department of Agriculture. Only animals permitted herein by an Accredited Zoo Permit under the inspection and accreditation of the Association of Zoos and Aquariums (AZA) shall be allowed to legally reproduce under these regulations.

- 5.5 Exotics must receive humane treatment and care. In order to insure humane treatment, the State Veterinarian may require an examination by a licensed veterinarian or the State Veterinarian's designee. Such examination will be at the owner's expense. The State Veterinarian may consult with a local Society for the Protection of Cruelty to Animals ("SPCA") to enforce this provision.
- 5.6 All Exotic Animal Permit holders must have an emergency evacuation plan and provide a written copy of this plan to the Department upon request.
- 5.7 The enclosure and welfare requirements listed above must be in compliance before application renewal for any class of Exotic Animal Permit can be approved by the Department of Agriculture.

6.0 Permit Classes

6.1 Individual Exotic Animal Permit

6.1.1 When exotics are kept as pets, the owner or appointed custodian of the exotic must apply to the Department for an Individual Permit on a form supplied by the Department. Individual Exotic Animal Permits granted by the Department shall be null and void when the owner or appointed custodian transfers ownership or possession of the exotic to another individual. The owner or appointed custodian must obtain a separate Individual Permit for each exotic animal intended to be kept as a pet. A background check of an applicant may be completed by the Department. An applicant is required to provide proof of research of her/his county, city, local laws, rules and regulations that may govern the possession of an exotic in his/her area. Individual Exotic Animal Permits must be renewed every three years.

6.2 Exotic Animal Sales Permit

6.2.1 In order to sell exotic animals, business entities must have a valid Delaware business license, and must obtain an Exotic Animal Sales Permit from the Department. When applicable, business entities must also hold a valid USDA Exotic Animal Dealer Permit. Exotic Animal Sales Permits granted by the Department shall be valid for one year and are not transferable.

6.2.2 When a permitted business entity (seller) sells an exotic animal, the following conditions of sale must be met:

6.2.2.1 The seller must provide the purchaser with written information regarding the exotic's enclosure and welfare requirements.

6.2.2.2 The seller must notify the purchaser of the requirement to obtain an Exotic Animal Permit from the Delaware Department of Agriculture.

6.2.2.3 The seller must notify the purchaser of the possibility that there may be county, city, local laws, rules and regulations that may govern the possession of exotics in their area.

6.2.2.4 The seller must notify the Department of the purchaser's identifying information (name, address, telephone, email) and the exotic's information within 2 business days after the sale of an exotic.

6.2.2.5 If the purchaser resides outside the State of Delaware, the seller must maintain a record of the interstate sale, including purchaser's address, and must notify the appropriate state veterinarian's office or applicable state agency.

6.2.2.6 A copy of the purchaser's sale record must be maintained by the seller for 3 years after the sale of the exotic animal.

6.2.3 Exotics Animal Sales permit holders must guarantee that all exotic animals for sale are in good health at the time of sale and for 10 days after the sale.

6.3 Accredited Zoo Permit

6.3.1 All zoos in Delaware accredited by the Association of Zoos and Aquariums (AZA) or the designated successor organization must obtain an Accredited Zoo Permit annually.

6.4 Exotic Animal Exhibitor Permit

- 6.4.1 All parties or entities (with the exception of accredited zoos located in Delaware) who wish to present exotic animals for public view must obtain an Exotic Animal Exhibitor Permit from the Department annually.

7.0 Initial Permits

- 7.1 **Individual Exotic Animal Permit.** Initial applications must be filed with the Delaware Department of Agriculture within 10 days of acquiring the exotic and/or within 10 days of relocating the exotic into the State of Delaware. The State Veterinarian, for good cause shown, and upon written request of the owner/custodian may grant an extension.

- 7.2 **Exotic Animal Sales Permit.** Initial applications must be filed with the Delaware Department of Agriculture prior to the sale of any exotic animal by a business. Exotic Animal Sales Permits must be obtained for each class of exotic animal: carnivore, herbivore, hybrid of wild mammals, omnivore, primate and reptile as defined in 3.0 of these regulations. If an exotic can be placed in more than one class, the applicant need only apply for one class per exotic. The yearly Exotic Animals Sales Permit request must include an inventory of each specific exotic animal per class of exotic animal identified on the Permit Application. The inventory must identify every exotic animal by accurate description (e.g. name, age, gender, breed, markings/color, approximate weight, tattoo, microchip, etc.) stocked at the business at the time of application for the yearly Permit.

- 7.3 **Accredited Zoo Permit.** Initial applications must be filed with the Delaware Department of Agriculture upon accreditation by the Association of Zoos and Aquariums, or its successor association. The Accredited Zoo Permit covers every exotic animal housed or kept at the Zoo. The yearly Accredited Zoo Permit application must include a current copy of the Zoo's on-going accreditation document and identify an inventory of every exotic animal by accurate description (name, age, gender, breed, markings/color, approximate weight, tattoo, microchip, etc.) kept at the Zoo at the time of application for the annual Accredited Zoo Permit.

- 7.4 **Exotic Animal Exhibitor Permit.** Initial applications must be filed with the Delaware Department of Agriculture prior to exhibiting exotic animals in the state of Delaware.

7.4.1 All Exotic Animal Exhibitors must:

- 7.4.1.1 Notify the Department within the 60 day period prior to exhibiting exotic animals in Delaware
- 7.4.1.2 Provide the Department with an inventory of all animals to be exhibited
- 7.4.1.3 Provide the Department with the dates of exhibition
- 7.4.1.4 Provide the Department with a list of exhibition activities
- 7.4.1.5 Provide the Department with a public health and safety plan and an animal health plan upon request

7.4.2 When applicable, Exotic Animal Exhibitors must:

- 7.4.2.1 Have a valid USDA Exotic Animal Exhibitor License
- 7.4.2.2 Show proof of exotic animal permits or licenses from their states of origin
- 7.4.2.3 Show valid health certificates
- 7.4.2.4 Have a valid business license
- 7.4.2.5 Provide proof of knowledge of exotics' health, safety and proper care

8.0 Renewal of permits

- 8.1 Individual Exotic Animal permits are required to be renewed every three years and renewal must occur by March 31st of the fourth year.
- 8.2 Exotic Animal Sales permits are required to be renewed on an annual basis and renewal must occur by December 31st of each year. An updated inventory must be submitted with each permit renewal application.

- 8.3 Accredited Zoo permits are required to be renewed on an annual basis and renewal must occur by December 31st of each year. An updated inventory must be submitted with each permit renewal application.
- 8.4 Exotic Animal Exhibitor permits are required to be renewed on an annual basis as needed. An updated inventory must be submitted with each permit renewal application.
- 8.5 Failure to renew permits of any class will be considered to be in possession of an exotic without a permit as defined in 9.0.

9.0 Possessing, Keeping or Owning an Exotic Animal Without a Permit

When the Department has reason to believe that an owner or custodian of an exotic animal has not obtained the proper permit, the Department shall inform the owner or custodian of his or her legal obligation to obtain a permit. The permit must be obtained within ten business (10) days from the date of the notification. No permit can be issued if the possession of an exotic animal is prohibited by other applicable statutes or limitations. The State Veterinarian may grant an additional extension and will notify the owner or custodian of the length of the extension.

10.0 Transporting, Transfer of Ownership and Relocation of Exotic Animals

- 10.1 If an exotic is to be moved from one location to another for any reason, the exotic shall be transported in a cage or other container that will be strong enough to prevent its escape while in transport, will protect the public from physical contact and meets welfare requirements. If an owner is transporting an exotic because of zoonotic or animal disease concerns, the State Veterinarian is to be notified immediately. A violation of this provision is grounds for revoking a previously issued permit.
- 10.2 All permit holders are required to notify the Delaware Department of Agriculture if they change their name, permanent address or phone number within 30 days.
- 10.3 All permit owners are required to immediately notify the Delaware Department of Agriculture of any change of ownership or of an exotic animal's birth or death.

11.0 Prohibitions of Public Nuisances

- 11.1 The exotic must not become a public nuisance.
- 11.2 Any exotic animal that is an immediate threat and/or poses a risk of danger to the public may be subject to seizure and destruction in accordance with regulation 4.2 and without the administrative hearing contemplated by regulation 13.2.

12.0 Escape

The owner or custodian of an exotic who learns of its escape from its enclosures must immediately notify the Department and the appropriate animal control agency of the escape. The owner or custodian of an escaped exotic has a responsibility to offer assistance to recapture the exotic and incur any expenses associated with recapture including any damages that may occur.

13.0 Permit Denials and Revocations

- 13.1 The State Veterinarian or his/her designee may deny or revoke an initial application, renewal application or a permit for any justified reason, which will be furnished in writing upon the request of the owner or custodian. Reasons for denials may include, but are not limited to: a zoo losing its accreditation; an exotic animal biting, maiming, or injuring a human; an exotic animal escaping from its enclosure; failure to notify the Department of the transfer or sale of any exotic animal; exotic animals being bred or reproducing; failure to keep copies of sales records for three years; any zoonotic or animal disease concerns; prior animal cruelty violations or the applicant/permit holder fails to maintain welfare standards.
- 13.2 The applicant may appeal a revocation or denial of a permit previously issued to the Secretary of Agriculture and request an administrative hearing.

13.2.1 Administrative Hearing

- 13.2.1.1 Whenever the State Veterinarian determines that an exotic animal poses an immediate and unreasonable risk of harm to public health and safety or domestic animal health, the exotic animal is subject to immediate seizure and possible destruction. In such circumstances no administrative hearing is available to the applicant/permit holder to challenge the State Veterinarian's determination.
- 13.2.1.2 Whenever the State Veterinarian proposes to revoke a permit or deny an application for any reason other than an immediate and unreasonable risk or harm to the public health and safety the Department shall first give written notice to the permit holder or applicant of the State Veterinarian's determination. The written notice shall inform the permit holder or applicant that he or she has the right to challenge the determination and to request a hearing before the Secretary of the Department or his or her designee. A request for an administrative hearing must be in writing and must be received by the Department within ten (10) business days of the date of the written notice to such permit holder or applicant, or the State Veterinarian's determination becomes final. The hearing shall be informal and the technical rules of evidence shall not apply. The administrative hearing shall be scheduled by the Department as soon as practicable, but in no event more than thirty (30) business days after receiving the written request for an administrative hearing.
- 13.2.1.3 Administrative hearings shall be recorded. The Secretary or his or her designee shall render his or her decision in writing to all interested parties within thirty (30) business days of the date of the administrative hearing.
- 13.2.1.4 Appeals shall be handled by the Superior Court of the State of Delaware.

12 DE Reg. 388 (10/01/08) (Prop.)