

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

304 Exotic Animal Regulations

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 State Veterinarian, Sara Busch, DVM, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before May 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 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

"**Carnivores**" means flesh-eating mammals, which possess teeth and claws adapted for attacking and devouring their prey.

"**Department**" means the Delaware Department of Agriculture.

"**Exotics**" means live wild mammals or hybrids of wild mammals or live reptiles 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 those mammals feeding 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.

"**Omnivores**" means that group of animals which eat any sort of food, both animal and vegetable in origin.

"**Primates**" means the highest order of mammals including monkeys and lemurs.

"**Reptile**" means any cold-blooded vertebrae of the class Reptilia including turtles, lizards, snakes, crocodilians and tuatara.

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 where

warranted to humanely destroy an exotic if necessary to protect the public health, safety, or welfare and to do so without first notifying the exotic animal's owner or custodian.

5.0 Requirements for Obtaining a Permit

5.1 Enclosure and welfare requirements

5.1.1 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.

5.1.1.1 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 perform a literature review and present the current scientific literature review of enclosure and welfare standards for the species under consideration with the application. The size of both the primary and secondary enclosures/pens must be in proportion to the size and strength of the exotic animal. Completed enclosures/pens must be inspected and approved by an agent or representative of the Animal Health Section of the Delaware Department of Agriculture prior to placing any exotic animal therein. All changes to any pen used to contain an exotic animal covered by these regulations must be inspected and approved by the Delaware Department of Agriculture.

5.1.1.2 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.

5.1.1.3 Shared enclosures: Permitted exotic animals must be kept so as not to be allowed to reproduce while in captivity. Each enclosure is for one animal. Any shared enclosures are only for sterile, sterilized or animals otherwise unable to reproduce should they be housed together in a primary or secondary enclosure. The applicant needs 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.

5.1.1.4 When the secondary enclosure is opened to facilitate activities such as cleaning, the primary enclosure cannot be used or relied on as the only means to prevent physical contact with the public.

5.1.1.5 The enclosure and welfare requirements listed in 5.1 above must be met before an application for an Individual Permit can be accepted for consideration by the Department of Agriculture.

5.2 To obtain a 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 locating the exotic in the State of Delaware. If purchasing from an Exotic Animal Sales proprietor, the buyer must obtain an Individual Exotic Permit before the purchase. The State Veterinarian, for good cause shown, and upon written request of the applicant/possessor may grant an additional 10 day extension to such applicant/possessor if, in the State Veterinarian's sound discretion, such an extension will not endanger the public health, safety and welfare.

5.3 Renewal of all classes of permits will be on an annual basis and occur by the end of the calendar month in which the original permit was issued by the Delaware Department of Agriculture.

6.0 Transporting Exotic Animals

6.1 If the 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 and protect the public from physical contact. A violation of this provision is a ground for revoking a previously issued permit.

7.0 Requirements for the Humane Treatment of Exotics

7.1 Exotics must receive humane treatment including annual examinations by a licensed veterinarian. The State Veterinarian may consult with a local Society for the Protection of Cruelty to Animals ("SPCA") to enforce this provision.

8.0 Prohibitions of Public Nuisances

8.1 The exotic must not become a public nuisance. A public nuisance within the meaning of this

provision includes creating excessive odors, noise, or becoming an unreasonable risk of danger to the public.

8.1.1 Any permitted exotic animal that has become an immediate threat and/or an unreasonable risk of danger to the public may be subject to seizure and destruction in accordance with regulation 4.2 and without the public hearing contemplated by regulation 12.3.

9.0 Department Authority to Inspect Enclosures

9.1 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 will be met by the applicant. The applicant must schedule the inspection by the Department. The Department shall be allowed access to make random, unfettered re-inspections of a permitted location to insure continued compliance with these requirements.

10.0 Classes of Permit

10.1 Individual Permit

10.1.1 When exotics are kept as pets, the owner or custodian of the exotic must apply to the Department for an Individual Permit on a form supplied by the Department. Individual Permits granted by the Department shall be valid for one year and shall become null and void when the owner or custodian transfers ownership or possession of the exotic to another. The owner or custodian must obtain a separate Individual Permit for each exotic animal intended to be kept as a pet.

10.2 Exotic Animals Sales Permit

10.2.1 When exotics are kept for sale by an owner or custodian who has a valid Delaware business license, the owner or custodian of the exotic must apply to the Department for an Exotic Animals Sales Permit. Exotic Animals Sales Permits granted by the Department shall be valid for one year and are not transferable. The owner or custodian must apply for an Exotic Animals Sales Permit for each class of exotic animal as defined in 3.3 through 3.8 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 Sales Permit 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. age, gender, breed, markings/color, approximate weight, tattoo, microchip, etc.,) stocked at the business at the time of application for the yearly Permit.

10.2.2 The enclosure and welfare requirements listed in 5.1 above must be met before an application for an Exotic Animal Sales Permit can be accepted for consideration by the Department of Agriculture.

10.2.3 When a business that is permitted by the Department of Agriculture to have exotic animals for the purpose of selling those animals, is approached by a prospective purchaser, the seller must as a precondition of sale require the purchaser to produce a valid Individual Permit from the Department of Agriculture for the specific exotic animal to be sold/purchased. If the purchaser resides outside the State of Delaware, the seller must insure as a precondition of sale that the exotic has a valid health certificate issued by a United States Department of Agriculture accredited veterinarian. A copy of the purchaser's Individual Permit must be maintained by the seller for 3 years after the sale of the exotic animal. Failure to keep a copy of the purchaser's Individual Permit is grounds for revocation of the Exotic Animals Sales Permit.

10.3 Accredited Zoo Permit

10.3.1 All zoos in Delaware accredited by the Association of Zoos and Aquariums (AZA) must apply for an Accredited Zoo Permit every year. 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 their on-going accreditation document and identify an inventory of every exotic animal by accurate description (age, gender, breed, markings/color, approximate weight, tattoo, microchip, etc.) kept at the Zoo at the time of the renewal of the annual Accredited Zoo Permit.

11.0 Escape

11.1 The owner or custodian of an exotic who learns of its escape from its enclosures must immediately notify the Department of the escape. The owner or custodian of an escaped exotic also has a duty to offer assistance to recapture the exotic.

12.0 Permit Denials and Revocations

12.1 The State Veterinarian may deny an application or renewal for a permit if the State Veterinarian or

her/his designee determines that the applicant has not fulfilled the requirements of these regulations at such time of application or for any other reason the State Veterinarian deems a denial justified. The denial must be accompanied by a reason for the denial. Reasons for denials may include, but are not limited to: a zoo losing its accreditation, an exotic animal biting, maiming, or otherwise injuring a human, an exotic animal escaping from its enclosure, any zoonotic disease concerns with the exotic animal, the applicant fails to provide a current literature review of the welfare standards for the exotic animal in question, or the applicant fails to maintain the welfare standards applicable to keeping the exotic. The applicant may re-apply at anytime, but each application fee is non-refundable, and each successive application that was previously denied must indicate what corrective actions have been taken to bring the applicant's current application into compliance with current regulations.

12.2 The State Veterinarian may revoke a permit previously issued under these regulations, if the permit holder is found to be in violation of these regulations.

12.3 The applicant may appeal a revocation of a permit previously issued to the Secretary of Agriculture (or designee) and request a public hearing.

12.3.1 Public Hearing

12.3.1.1 Whenever the State Veterinarian proposes to revoke a permit previously issued for any reason other than an immediate and unreasonable risk of harm to the public (in which case the exotic animal in question is subject to immediate seizure and possible destruction), the Department shall first give written notice to the permit holder of the State Veterinarian's determination and the reasons therefore. The written notice shall inform the permit holder 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 a public hearing must be in writing and must be received by the Department within ten (10) days of the date of the written notice to such permit holder. If no timely request for a hearing is received by the Department, the State Veterinarian's determination becomes final. The hearing shall be informal and the technical rules of evidence shall not apply. The public hearing shall be scheduled by the Department as soon as practicable, but in no event more than thirty (30) days after receiving the written request for a public hearing.

12.3.1.2 The issue at the public hearing will be to determine whether the permit holder has satisfied and continues to satisfy all of the requirements for obtaining or retaining a permit under these regulations. The public hearing 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) days of the date of the public hearing. Appeals from the Secretary's or his or her designee's decision shall be to the Superior Court of the State of Delaware.

13.0 Possession of an Exotic Without a Permit

13.1 When the Department has reason to believe that an exotic is being possessed in the state without a proper permit granted by the State Veterinarian, the Department shall send a written notice to the possessor of the legal obligation to obtain a permit within ten (10) days from the date of the written notice. The State Veterinarian, for good cause shown, and upon written request of the possessor, may grant an additional ten (10) day extension to such possessor if, in the State Veterinarian's sound discretion such an extension will not endanger the public health, safety and welfare.

13.1.1 Public Hearing

13.1.1.1 If the possessor of an exotic notified pursuant to subsection 12.1 believes that an exotic in his or her custody is not subject to these provisions, he or she may request a public hearing before the Secretary or his or her designee. A request for a public hearing must be in writing and received by the Department within ten (10) days of the date of the notice to the possessor of such alleged violation. The hearing shall be informal and the technical rules of evidence shall not apply.

13.1.1.2 The issue at the public hearing will be to determine whether the animal possessed in the state is in fact an exotic. The public hearing 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) days of the date of the public hearing. Appeals from the Secretary's or his or her designee's decision shall be to the Superior Court of the State of Delaware.