

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

Statutory Authority: 3 Delaware Code, Chapters 1, 71, and 72 (3 **Del.C.** Chs. 1, 71, & 72)
3 **DE Admin. Code** 906

PROPOSED

PUBLIC NOTICE

906 Possession, Sale or Exhibition of Live Wild Mammals or Hybrids of Wild Mammals or Live Reptiles not Native to or Generally Found in the State of Delaware

Summary

Pursuant to the authority granted by Title 3 chapters 1, 71, and 72 of the Delaware Code, the Department of Agriculture proposes to amend its regulations. The purpose of the amended regulations is to provide clear detail regarding the authority of the Department and State Veterinarian to determine an animal species to be invasive and clarify the requirements for non-native species and animal species determined to be invasive. In 2022, there has been an alarming increase in potbellied pigs at large in the State of Delaware. Potbellied pigs are non-native to the State of Delaware and many animals have been abandoned by their owners; are not in good care; have been a nuisance for private property owners; and with the species' early reproductive capacity, can become feral quickly and may contract contagious and infectious diseases. The Department, State Veterinarian, and sister state agencies have a responsibility to mitigate and reduce the threat of infectious and contagious diseases in animals and those that may spread to humans. Given the concerns listed above, potbellied pigs have been determined to be an invasive animal species in the State of Delaware.

The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the February 1, 2023, edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901 and is available for inspection during regular office hours. Copies are also published online at the *Delaware Register of Regulations* website: https://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations indicating whether these proposed regulations should be adopted, rejected or modified. Interested parties may hand deliver to the Department, any written suggestions, data, briefs or other materials at the above address. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 3, 2023. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after March 3, 2023, following review of the public comment, the Department of Agriculture will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Department of Agriculture, the amendments shall take effect ten days after being published as final in the *Delaware Register of Regulations*.

906 Possession, Sale or Exhibition of ~~Live Wild Mammals or Hybrids of Wild Mammals or Live Reptiles not Native to or Generally Found in the State of Delaware~~ Non-Native and Invasive Animal Species

~~May 16, 1994~~

1.0 Scope and Authority

These regulations govern the possession, sale and exhibition of ~~live wild mammals or hybrids of wild mammals or live reptiles, not native to or generally found~~ exotic animal species determined to be invasive in the State of Delaware. These regulations are promulgated pursuant to the authority granted by 3 **Del.C.** Ch. 72. The State Veterinarian or ~~his or her~~ a designee of the State Veterinarian or the Department shall have the authority to administer these Rules and Regulations and shall be solely responsible for making the determinations required hereunder. If future situations warrant, these regulations may be amended.

2.0 Definitions

The following terms when used in these Rules and Regulations shall have the following meanings:

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

~~"Department" means The Delaware Department of Agriculture.~~

~~"Exotic" means a live wild mammal, hybrid of a wild mammal, and a live reptile not native to or generally found in Delaware as defined in 3 DE Admin. Code 903, Section 3.0 and 7 DE Admin. Code 3900, Section 23.0. An exotic animal is ecologically foreign to Delaware, but allowed for possession, sale, and exhibition if a permit has been issued by the Department.~~

~~"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.~~

~~"Invasive animal species" or "invasive animal" means those species that are not native to or generally found in Delaware that as determined by the State Veterinarian become overpopulated and cause harm to the environment, adversely affecting habitats, bioregions, or causing ecological, environmental, or economic damage.~~

~~"Not Native to or Generally Found in Delaware" means those species which according to the Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife are not native to Delaware.~~

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

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

~~"Reptile" means any cold blooded vertebrate of the class Reptilia including turtles, lizards, snakes, crocodilians and the tuatara.~~

~~"Subject Creatures" means live wild mammals or hybrids of wild mammals or live reptiles not native to or generally found in Delaware which are not specifically exempted by these Rules and Regulations from the requirements of these Rules and Regulations and Chapter 72 of Title 3 of the Delaware Code.~~

3.0 Requirements for Obtaining a Permit

3.1 The following requirements must be met before the Department will issue a permit to possess, sell or exhibit a subject creature.

3.1.1 Enclosure Requirements

3.1.1.1 There must be two enclosures to house a subject creature, a primary enclosure and a secondary enclosure. Fastening or locking devices shall be required on both the primary and the secondary enclosures and must be tamper proof from the general public.

3.1.1.2 The primary enclosure shall consist of a pen, cage or other enclosure where the subject creature will be kept, and must be of such construction that it cannot be destroyed by or escaped from by the subject creature.

3.1.1.3 The secondary enclosure must be of a type sufficient to prevent the subject creature from escaping from the property of the custodian of the subject creature should the subject creature escape from its primary enclosure. The secondary enclosure shall be of a type sufficient to prevent bodily contact between members of the public and the subject creature.

3.1.1.4 If the subject creature is a reptile, the requirement for a secondary enclosure may be waived if, in the opinion of the State Veterinarian or his or her designee, the primary enclosure provides adequate protection for the general public.

3.1.1.5 If the subject creature is removed from the primary and/or secondary enclosures for any reason, it will be the responsibility of the owner/caretaker to make every effort to insure against the escape of the creature.

3.1.1.5.1 If the subject creature is out of the enclosures for the purpose of exercise, it will be the responsibility of the owner/caretaker to have the creature restrained by such a device that the creature will be under the strict control of the owner/caretaker at all times. Under strict control of the owner/caretaker shall be deemed to mean that the owner/caretaker will have the creature restrained to such a degree as to prevent its attacking humans or other animals that may come within its close proximity.

3.1.1.5.2 If the subject creature is to be moved from one location to another for any reason, the creature shall be transported in such a cage or other transportation device that will be strong enough to preclude its escape while in transport.

3.2 Requirements for the Treatment of Subject Creatures

3.2.1 The subject creature or creatures must be receiving proper care, humane treatment and veterinary treatment, if required. The State Veterinarian may consult with the local Society for the Protection at Cruelty to Animals (the "S. P. C. A. ") to enforce the provisions of this rule.

3.3 Prohibition on Public Nuisance

3.3.1 The subject creature must not be a public nuisance. A nuisance will be considered as including, but not limited to, a subject creature which creates excessive odors or noise, displays obnoxious behavior or causes justifiable fear.

3.4 Inspection requirements

3.4.1 Prior to the granting of a permit under this section, a final inspection of the premises where the subject creature or creatures are to be housed shall be completed by department personnel to ensure that the requirements of these Rules and Regulations are being met by the applicant. The applicant must schedule such an inspection with the Department. Nothing contained herein shall be construed to prohibit the Department's personnel from reinspecting the applicant's premises at any time.

3.0 Invasive Animal Species

3.1 The Department and State Veterinarian oversee exotic animal species in the State of Delaware and have the authority to determine whether an exotic animal species is invasive. If an animal species is determined to be invasive, the sale, trade, breeding, import, barter, gifting, release into the wild, and auction of the animal species is prohibited.

3.2 The State Veterinarian may determine that an animal species is invasive based on the potential of the animal species to become feral, and if that animal species is not native to or generally found in the State of Delaware and is at-large.

3.3 The Department will not issue a permit to possess, breed, sell, or exhibit an animal species that is determined to be invasive.

3.4 The State Veterinarian or the Department will issue a public notice indicating that an animal species is determined to be invasive. An owner or caretaker that possesses, breeds, sells, or exhibits an animal species, determined to be invasive, prior to the date of the public notice is required to:

3.4.1 Tag the animal with a visible form of identification and register the device with the Department.

3.4.2 Cease breeding or other activity that increases the count of the animal species that is determined to be invasive.

3.4.3 Provide adequate housing and secure fencing such that the invasive animal species cannot escape.

3.4.4 Report within 12 hours to the Department in-person or by telephone if the animal is at-large.

3.4.5 House male and female animals, capable of reproducing, separately to ensure that breeding does not occur.

3.4.6 Obtain an Invasive Animal Permit from the Department.

3.4.7 Allow the Department, State Veterinarian, or duly authorized agent access to the premises where the animal species is being held to assess compliance with these Rules and Regulations, and to examine the welfare of the animal species in the event of or threat of a contagious or infectious disease.

4.0 Types of Permits

4.1 There shall be four types of permits which may be issued by the Department: 1) an individual permit; 2) a class permit; 3) breeder permit; or 4) exhibition permit.

4.2 Individual Permits

4.2.1 When subject creatures are kept as pets, the custodian of the subject creature must apply to the Department on forms supplied by the Department for an individual permit for each subject creature so kept. Individual permits granted by the Department shall be valid for the life of the subject creature, provided, however, that said permit or permits shall expire when, the custodian transfers possession of the subject creature to another person. Any natural addition (born from the animals already permitted) will require a permit when reaching the age of three (3) months if continued to be kept on original premise.

4.3 Class Permits

4.3.1 ~~Covers all animals. Animals are a business. Owner must have a business license. When subject creatures are kept for resale or exhibit or for medical or psychological research, the custodian of the subject creature or creatures shall apply to the Department on forms provided by the Department for a class permit for each class of subject creatures so kept.~~

4.4 ~~Breeder Permits~~

4.4.1 ~~Hobbyist; covers all animals, breeds animals as a hobby for personal enjoyment.~~

4.5 ~~Exhibition Permits~~

4.5.1 ~~Covers all animals use for educational displays and presentations. Cages and containers must be secure so there is no chance of escape during exhibition and transport.~~

4.5.2 ~~Applicants may be granted permits for the following. Classes of subject creatures: (1) Reptiles; (2) Primates; (3) Herbivores; (4) Carnivores; and (5) Omnivores.~~

4.0 Species Declared as Invasive Animal Species

4.1 Potbellied pigs

4.2 Feral swine of any kind

5.0 Requirements for Permits

5.1 An owner or caretaker of an exotic animal species must obtain an Exotic Animal Permit from the Delaware Department of Agriculture for any animal species not determined to be invasive pursuant to this regulation and not determined to be exempt pursuant to 3 **DE Admin. Code** 903. The State Veterinarian will not issue an Exotic Animal Permit for an animal species that is determined to be invasive.

5.2 If an owner or caretaker of an animal species that has been determined to be invasive has already obtained an Exotic Animal Permit for that animal, the owner or caretaker must obtain an Invasive Animal Permit. The Exotic Animal Permit will become void.

5.3 The State Veterinarian may inspect the premises where an invasive animal species is being held. This includes premises for which an owner or caretaker has obtained an Exotic Animal Permit for an animal, prior to that animal species being determined to be invasive.

5.0 6.0 Refusal or Cancellation of a Permit

5.1 ~~6.1~~ The State Veterinarian may refuse to grant a permit under these Rules and Regulations, or may cancel a permit issued under these Rules and Regulations, 3 **DE Admin. Code** 903 if the applicant or permit holder is not in compliance with these Rules an Regulations this regulation or 3 **Del.C.** Ch. 72.

6.2 If the State Veterinarian proposes to cancel a permit already issued, the Department will notify the permit holder of the intended action.

5.2 Notice and Informal Hearing

5.2.1 ~~Whenever the State Veterinarian proposes to refuse to issue a permit, or to cancel a permit already issued, the Department shall first give written notice to the applicant or permit holder of the intended action and the reasons therefore. The notice shall inform the applicant or permit holder that he or she has ten (10) days from the date of the notice to request a hearing before the State Veterinarian or his or her designee. If no timely request for a hearing is received by the Department, the State Veterinarian's decision shall be final. The request for a hearing must be in writing and received by the Department within ten (10) days of the date of the notice to such person. The hearing shall be informal, and the technical rules of evidence shall not apply. The hearing shall be scheduled by the Department as soon thereafter as possible, but in no event more than ten (10) days after receipt of the request for the hearing, unless the State Veterinarian in his or her sound discretion finds that the public health, safety or welfare will not be jeopardized by a later hearing date. The hearing shall take place at a location designated by the State Veterinarian.~~

5.2.2 ~~The hearing shall be before the State Veterinarian or his or her designee. The purpose of the hearing will be to determine whether the person requesting the hearing meets all of the requirements for obtaining or retaining a permit under these Rules and Regulations and 3 **Del.C.** Ch. 72. The hearing shall be recorded. The person requesting the hearing has the right to present evidence on his behalf, to rebut evidence against him or her and to be represented by Counsel. The hearing officer shall render his or her decision in writing within ten (10) calendar days of the date of the hearing and provide a copy of said decision to the person requesting the hearing. The hearing officer's decision shall state the reasons why the permit was refused or canceled, and this decision shall be final.~~

6.0 7.0 Notification of Transfer or Escape

6.1 Notification of Transfer

~~6.1.1 7.1~~ Prior to any change of possession or relocation of a ~~subject creature~~ invasive animal species for any reason whatsoever; the transferor or person relocating a ~~subject creature~~ invasive animal species shall notify the Department in writing on forms provided by the Department of such transfer or relocation. No transfer of possession or relocation of a ~~subject creature~~ invasive animal species may occur unless and until the transferee or the person relocating a ~~subject creature~~ accepting the relocated invasive animal applies for and is granted a new permit by the Department as ~~herein provided in this regulation or receives approval from the State Veterinarian to relocate such invasive animal across state lines.~~

6.2 Notification of Escape

~~6.2.1 7.2~~ Within ~~twenty-four~~ 12 hours of the escape of any ~~subject creature or creatures~~ invasive animal species from the custody of its custodian, ~~said the custodian shall notify the Department, by phone or in-person, of such the escape, and provide reasonable assistance and cooperation to the Department to recapture said subject creature or creatures the invasive animal species.~~

7.0 Failure to Obtain Proper Permit

~~7.1~~ When the Department has reason to believe that a subject creature is being kept by a person without a proper permit issued pursuant to these Rules and Regulations, the Department shall notify such person of such violation in writing. Such person shall have ten (10) calendar days from the date of this notice to obtain a proper permit pursuant to these Rules and Regulations. At the discretion of the State Veterinarian and for good cause shown, upon written request of the person, the State Veterinarian may grant an additional ten (10) day extension to such person if, in the State Veterinarian's sound discretion, such extension will not endanger the public health, safety and welfare. The lack of money or resources needed to come into compliance with these Rules and Regulations and ~~3 Del.C. Ch. 72~~ shall not be good cause for an extension of this Rule.

7.2 Informal Hearings

~~7.2.1~~ If a person notified pursuant to this Section believes that a creature in his or her custody is not a creature subject to these Rules and Regulations or ~~3 Del.C. Ch. 72~~, such person may request a hearing before the State Veterinarian. Such request must be in writing and received by the Department within ten (10) days of the date of the notice to the person of such violation. The hearing shall be informal, and the technical rules of evidence shall not apply. The hearing shall be scheduled by the Department as soon thereafter as possible, but in no event more than ten (10) days after receipt of the request for the hearing unless the State Veterinarian in his or her sound discretion finds that the public health, safety and welfare will not be jeopardized by a later hearing date. The hearing shall take place at a location designated by the State Veterinarian.

~~7.2.2~~ The hearing, shall be before the State Veterinarian or his or her designee. The purpose of the hearing will be to determine whether or not the person notified has custody of a creature subject to these Rules and Regulations and ~~3 Del.C. Ch. 72~~ without the requested permit. The hearing shall be recorded. The person requiring the hearing has the right to present evidence on his or her behalf, to rebut evidence against him or her, and to be represented by counsel. The hearing officer shall render his or her decision in writing within ten (10) calendar days of the date of the hearing and provide a copy of said decision to the person requesting the hearing. The hearing officer's decision shall state what, if any actions must be taken on the part of the custodian of the creature to comply with these Rules and Regulations and ~~3 Del.C. Ch. 72~~, and the time within which such action must be taken.

7.3 Disposition of Subject Creatures Kept in Violation of These Rules and Regulations.

~~7.3.1~~ If a person fails to comply with these Rules and Regulations or ~~3 Del.C. Ch. 72~~ within the time allowed by the State Veterinarian or his or her designee, and fails to place the subject creature or creatures in a holding facility approved by the State Veterinarian, a list of which facilities will be maintained and made available by the Department, the State Veterinarian may order the confiscation and euthanization of the subject creature or creatures kept in violation of these Rules and Regulations or ~~3 Del.C. Ch. 72~~ without further notice to the custodian of said subject creature or creatures or any other person.

8.0 Violations

8.1 If a permitted invasive animal species is found at-large without visible identification, and the Department is not able to contact the owner or caretaker, the Department or other State or federal agents may euthanize the animal immediately on-site.

8.2 If the Department has reason to believe that an invasive animal species is being kept by a person without an Invasive Animal Permit, the Department shall notify the person of such violation. The lack of money or

resources needed to come into compliance with this regulation and 3 Del.C. Ch. 72 shall not be good cause for an extension of this regulation.

8.3 If an owner or caretaker fails to comply with this regulation, the State Veterinarian may order the seizure and euthanization of the permitted invasive animal species kept in violation of this regulation without further notice to the owner or caretaker.

8.4 If an individual or retail establishment is found selling or otherwise making available to members of the public an animal species determined to be invasive, the establishment will be found in violation of this regulation. The State Veterinarian may order the seizure and euthanization of any invasive animal species found on the premises of the establishment.

8.0 9.0 Emergency Action

~~Nothing in these Rules and Regulations~~ this regulation shall be construed to prohibit the Department from confiscating and destroying any ~~subject creature~~ invasive animal species without notice or a hearing when in the opinion of the State ~~veterinarian or his or her sound discretion~~ Veterinarian such emergency action is required to protect the public health, safety or welfare.

26 DE Reg. 651 (02/01/23) (Prop.)