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DEPARTMENT OF STATE
Division of Administrative Rules

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Court Notices

State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 60 days following publication in the Register of a Notice of Proposed Rule Making, or a Notice of Emergency Adoption and Proposed Rule Making; and for 45 days after publication of a Notice of Revised Rule Making, or a Notice of Emergency Adoption and Revised Rule Making in the Register. When a public hearing is required by statute, the hearing cannot be held until 60 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

For notices published in this issue:

- the 60-day period expires on June 21, 2020
- the 45-day period expires on June 6, 2020
- the 30-day period expires on May 22, 2020

Department of Environmental Conservation

NOTICE OF ADOPTION

Animals Dangerous to Health or Welfare

I.D. No. ENY-38-19-0000 I-A

Filing No. 273

Filing Date: 2020-04-07

Effective Date: 2020-04-22

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 180 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-0511

Subject: Animals dangerous to health or welfare.

Purpose: To expand the list of animals which pose a risk to health or welfare of the people of the state or indigenous fish and wildlife.

Text or summary was published in the September 18, 2019 issue of the Register, I.D. No. ENV-38-19-00001-P.

Fiscal rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Joe Therrien, NYS Department of Environmental Conservation, 625 Broadway, Albany NY 12233, (518) 402-8985, email: joseph.therrien@dec.ny.gov.

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Revised Regulatory Impact Statement

The original Regulatory Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Revised Regulatory Flexibility Analysis

The original Regulatory Flexibility Analysis statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Revised Rural Area Flexibility Analysis

The original Rural Area Flexibility Analysis statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Revised Job Impact Statement

The original Job Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2023, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department received approximately 730 comments on the proposed regulation related to expanding the list of animals the Department finds to be dangerous to the health and welfare of the public or indigenous wildlife. Seven hundred of the comments were received as a form letter. We reviewed the substance of each comment and organized our responses by topic. Comments not pertinent to this rule making are not addressed here.

Comment: Many individuals noted their support for the proposed changes, stating that expanding the list of dangerous animals will protect the public and indigenous wildlife.

Response: DEC agrees that expanding the list of animals found to be dangerous will allow the Department to provide increased safeguards for public health and safety and that of indigenous wildlife.

Comment: Several writers voiced concern that wild animals should not be kept as pets and supported these changes.

Response: To clarify, these regulatory changes do not address possession of dangerous animals as pets in New York State. Such possession as pets is already prohibited in NYS Environmental Conservation Law 11-0512. The amendments of this proposed rule involve possession of dangerous animals for exhibition and other authorized activities.

Comment: One writer asked if the rule would eliminate the reporting requirement requiring individuals to notify their respective Town Clerks of the presence of dangerous animals.

Response: The rule does not modify or supersede any requirements of the state municipal law. Any person licensed to possess an animal reportable to the local Town Clerks office, as required by Section 209-cc of the General Municipal Law, will still be required to do so.

Comment: One writer suggested changing the exemption in 180.1 (d)(2) from "temporary" possession, to "permanent" possession, voicing concern that dangerous animals will not be allowed to be possessed long-term in appropriate facilities.

Response: The exemption provided for in the referenced paragraph [180.1(d)(2)] is specific to the temporary possession of native wildlife for rehabilitative purposes. This exemption is necessary so that licensed wildlife rehabilitators can continue to provide rehabilitative care for certain species of wildlife which are included in the list of dangerous animals such as black bear, raccoons and skunks. This exemption does not apply to nor limit the permanent possession of dangerous animals by licensed exhibitors.

Comment: One writer questioned why fox are considered dangerous animals.

Response: The list of dangerous animals in the amended rule incorporates the entire list of animals that the Legislature found to be a threat to the health and safety of New York residents, which includes fox.

Comment: One commenter remarked that skunks should not be put on the same level as tigers or lions as they pose far less danger to humans.

Response: Although skunks, raccoons, and bats can cause physical harm to humans through biting, scratching, or clawing, the inclusion of these species in the list of dangerous animals was due to their ability to carry the rabies virus. The rabies virus is fatal not only to these species but to humans as well. Any contact between humans and these species whether through bite, scratch, or saliva is considered an exposure that may warrant the exposed human receiving post-exposure rabies shots and often euthanasia of the animal for testing.

Comment: Several comments were received questioning the ability of currently licensed facilities to obtain additional dangerous animals for educational purposes.

Response: The amended rule does not prohibit acquiring additional dangerous animals for exhibition purposes. Any applicant who meets current requirements for possession of dangerous animals will be able to obtain new or replacement animals under their current licenses.

Comment: One writer asked if these regulations apply to fixed animal displays as well as travelling programs, and if home-based exhibitors could remain in business.

Response: The amended rule does not prohibit possession of dangerous animals at any of these facilities. An applicant who meets current requirements may be authorized to possess dangerous animals for exhibition purposes.

Comment: One writer asked what are DEC's plans for permitting some facilities, and further stated that the new regulations are ambiguous and do not clearly spell out who is going to be permitted.

Response: The amended rule only expands the list of animals that the department has found to be a danger to the health and welfare of the people of the state or indigenous wildlife. DEC is not changing the current requirements for possession of regulated species. All applications requesting possession of a dangerous animal will be reviewed using the department's current license application requirements.

Comment: One commenter stated that USDA already covers everything in this bill. Who will determine "adequate facilities"?

Response: The Animal Welfare Act, implemented and enforced by the U.S. Department of Agriculture (USDA), covers and requires licensing for the possession of certain warm-blooded animals held for exhibition purposes. While many of the species included in DEC's list of dangerous animals are mammals (warm-blooded animals), there are other dangerous animals including crocodiles, alligators, large monitor lizards, and venomous and constrictor snakes, which are not regulated by USDA. Additionally, the Animal Welfare Act sets general standards for humane care and treatment for, among others, animals exhibited to the public. In New York State, the NYS Legislature requires DEC to list and license the possession of any animal which would present a danger to the health and welfare of the public or indigenous fish or wildlife population. The inclusion of the animals in the list of dangerous animals provides DEC with the necessary means to meet the Legislative intent of the Environmental Conservation Law.

Comment: One commenter asked if these changes are necessary? How will they minimize the risk dangerous animals pose to public and native wildlife?

Response: The regulations apply to facilities which possess these animals in captivity for exhibition purposes where these animals will be in close proximity to the public. By expanding the list of dangerous animals in the regulation, DEC will now be able to apply current application review requirements to all the listed dangerous animals ensuring that dangerous animals are held at facilities with housing, holding, and caging sufficient to protect the health and welfare of the public.

Comment: We received approximately 700 comments submitted as a form letter. The letter indicated that the commenters were tourists that travel to New York and felt that facilities within NYS would be negatively impacted by the regulatory changes.

Response: Expanding the list of dangerous animals will not impact current license holders who possess facilities capable of safely housing dangerous animals.

Comment: License holders play by the rules because their livelihoods are at stake. Violators will continue to illegally possess regulated species the proposed changes will only impact compliant license holders.

Response: Expanding the list of dangerous animals will not impact current license holders who possess facilities capable of safely housing dangerous animals other than to increase the number of individual animals which they will need to have licensed. DEC recognizes that other individuals may choose not to comply with various laws of the state; however, by expanding the list of dangerous animals, DEC will be able to properly review applications requesting possession of dangerous animals and reasonably assure that any license issued by DEC is for a facility which can properly house and maintain such dangerous animals safely.

Comment: The changes will impose requirements on owners and their animals in a negative way. Now will be required to get a license to propagate and sell newly listed species. This will greatly restrict a revenue stream.

Response: The regulation provides for the issuance of licenses for propagation of listed dangerous animals. Similar to the review of license applications for exhibition purposes, DEC will continue to review applications for propagation of dangerous animals using current license application requirements.

Comment: Suggest adding sloths, kinkajous, hedge hogs and sugar gliders, kangaroos and wallabies to the list to prohibit their possession as pets due to disease concerns and documented attacks on the public. Also add camels, otters, kangaroos, and wallabies due to these species' inherent danger to the public.

Response: DEC created a comprehensive list of animals that pose a risk to the public or indigenous wildlife populations recognizing the inherent dangerous nature of these animals in captivity. The adopted regulation addresses possession of these species for exhibition purposes. The NYS Legislature, by adding Section 11-0512 to the Environmental Conservation Law prohibiting the possession, sale, transfer and import of listed wild animals as pets, recognized that keeping exotic animals as pets poses a serious threat to the health and safety of New York residents. Any additions to the list of wild animals prohibited to be possessed as pets would be more appropriate as a Legislative amendment to the existing law.

Comment: Several writers stated that dangerous animals pose significant public safety risks and should only be kept by institutions with sufficient expertise, staff, resources and facilities to provide the highest standards of welfare and safety. They stated that they fully support adding the proposed species to 6 NYCRR 180.1 and further that DEC should more stringently regulate commercial exhibition of these animals which are wild, unpredictable, and capable of inflicting serious injury.

Response: DEC agrees that these species can pose a risk to the public and warrant inclusion in the list of dangerous animals, and that possession of dangerous animals in facilities which are not equipped to safely house such animals possess a risk to the public.

Comment: DEC should incorporate a strict prohibition on direct contact with all dangerous wild animals. The proposed regulation exempts certain entities which therefor are exempt from direct contact prohibition.

Response: DEC already prohibits direct contact between licensed regulated species and the public. The exempt facilities are covered under separate licenses from DEC which also prohibit public contact.

Comment: The new rule does not provide any substantive requirements that the agency could use to assess whether the exhibitor is qualified to care for or handle dangerous animals. DEC should instead require accreditation by AZA or the Global Federation of Animal Sanctuaries (GFAS). There is nothing in the new rule that would have prevented the previous incidents in NYS. "The proposed regulation is simply administrative, designed for the NYSDEC to issue licenses for any facility exhibiting dangerous animals that fills out the proper paperwork."

Response: The amended regulation only expands the list of animals found to be a threat to the health and safety of the public or indigenous wildlife. All applications received requesting possession of dangerous animals for exhibition purposes will be reviewed using current application requirements which address the stated concerns.

Comment: The possession of dangerous animals requires education in animal husbandry, welfare, and safety as well as a significant financial commitment and liability insurance. Dangerous animals belong in their natural habitats or at accredited facilities that have the appropriate knowledge and expertise to care for wild animals humanely and securely. Further, stated that "Only through regulation can there exist a uniform U.S. legal regime that safeguards the public, protects animals, allocates legal liability and insurance risk properly, furthers a policy of respect for nature, and considers the interests of present and future generations ..."

Response: DEC agrees with the commenter. The expansion of the list of dangerous animals will provide a necessary means for DEC to adequately license possession of dangerous animals at facilities which are capable of safely housing them.