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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

DIVISION OF FISH AND WILDLIFE

Endangered, Nongame, and Exotic Wildlife

Exotic Species and Nongame Species Requiring a Permit for Possession; Exempted Species

Proposed Amendments: N.J.A.C. 7:25-4.3 and 4.4

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9; 23:1-1 et seq.; and 23:2A-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 07-14-10.

Proposal Number: PRN 2014-202.

Submit comments by January 16, 2015, electronically at

<http://www.nj.gov/dep/rules/comments>. The Department of Environmental Protection

(Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

G. Colin Emerle, Esq.

Attention: DEP Docket No. 07-14-10

Office of Legal Affairs
Department of Environmental Protection
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This rule proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, the proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing to amend the rules governing the possession of nongame and exotic species at N.J.A.C. 7:25-4 to add bison (known commonly as the American buffalo) to the list of mammals at N.J.A.C. 7:25-4.4(b)2 that are exempted from the requirement to obtain an annual possession permit.

Once hunted to near extinction at the end of the 19th century, bison populations have been revived in recent years due to conservation measures and a growing consumer demand for bison meat. In 2012, there were 162,110 bison in the United States on private ranches and farms. Approximately 57,000 bison were slaughtered for consumption in 2012 under Federal and qualified state inspection programs. While these numbers pale in comparison to the

approximately 120,000 beef cattle that go to market each day under Federal inspection in the United States, there is nevertheless a growing and sustained demand for bison meat in North America. According to the 2012 Census of Agriculture published by the U.S. Department of Agriculture (USDA), National Agricultural Statistics Service, there were 2,564 farms raising bison at the end of calendar year 2012.

http://agcensus.usda.gov/Publications/2012/#full_report).

Of the seven annual nongame and exotic species possession permits for bison in effect in 2014, four are Zoological permits, two are Animal Dealer permits, and one is an Animal Exhibitor permit. The permit records indicate that most of the bison are currently located at one farm.

The exemption from the requirement to obtain a possession permit will relieve entities who have bison from the annual application and inspection fee pursuant to N.J.A.C. 7:25-4.6(c) and the requirement for persons holding revoked or expired permits to submit reports explaining the disposition of animals in the permit holder's possession during the calendar year of licensure pursuant to N.J.A.C. 7:25-4.6(j). Likewise, the rule provisions requiring the permit applicant to demonstrate that the animals will be properly fed and housed as well as certified to be free of infectious diseases and parasites by a licensed veterinarian pursuant to the general possession criteria at N.J.A.C. 7:25-4.7 will not apply.

Bison will not be exempt from all State regulation, however, because they will continue to be regulated by the Department of Agriculture pursuant to the definition of "cattle" in that Department's Disease Control Program rules at N.J.A.C. 2:2, as well as the Livestock and Poultry Importation rules at N.J.A.C. 2:3 and the Quarantines and Embargoes of Animals rules at N.J.A.C. 2:5. These rules protect the health of bison that are already present in New Jersey, and

protect against introduction of diseases that could enter the State through imported animals. Bison will also continue to be subject to the Department of Agriculture rules at N.J.A.C. 2:8 regarding the humane treatment of livestock.

The Department is also proposing to update the rules to reflect prior statutory changes that classified several other species as livestock. The llama was designated as agricultural livestock pursuant to P.L. 1994, c. 33 (N.J.S.A. 4:2-16). The law applies to the llama (*Lama glama*) and any other species of the genus *Lama* capable of being raised, bred, or kept in New Jersey. Accordingly, at N.J.A.C. 7:25-4.3(a), the Department is proposing to delete llama from the list of species for which a permit is required, and at N.J.A.C. 7:25-4.4(a)2 is proposing to add two species of the genus *Lama* - the llama (*Lama glama*) and guanaco (*Lama guanicoe*) - to the list of exempt species. In 1994, when N.J.S.A. 4:2-16 was put in place, the alpaca had been classified as being of the genus *Lama*. Since that time, the alpaca was reclassified as being of the genus *Vicugna*. (See Integrated Taxonomic Information System, Taxonomic Serial Number 898279,

http://www.itis.gov/servlet/SingleRpt/SingleRpt?search_topic=TSN&search_value=898279).

Although the classification of the alpaca was changed, the Department does not believe the purpose of its designation under the statute as agricultural livestock is affected. Therefore, the Department proposes to add the alpaca (*Vicugna pacos*) to the list of exempt species. These three species are not exempt from all State regulation, however, because they are regulated by the Department of Agriculture, as small ruminants, under the Disease Control Program rules at N.J.A.C. 2:2, as well as the Livestock and Poultry Importation rules at N.J.A.C. 2:3, the Quarantines and Embargoes of Animals rules at N.J.A.C. 2:5, and the Humane Treatment of Domestic Livestock rules at N.J.A.C. 2:8.

Three large and flightless birds that are farmed primarily for their meat - the ostrich, rhea, and emu - were designated as agricultural livestock pursuant to P.L. 1997, c. 316 (N.J.S.A. 4:2-17). Accordingly, at N.J.A.C. 7:25-4.4(a)1, the Department is proposing to add the emu (*Dromaius novaehollandiae*), ostrich (*Struthio camelus*), greater rhea (*Rhea americana*), and lesser rhea (*Rhea pennata*) to the list of exempt species. These species of flightless birds are not exempt from all State regulation, however, because they are regulated by the Department of Agriculture under the Disease Control Program rules at N.J.A.C. 2:2, as well as the Livestock and Poultry Importation rules at N.J.A.C. 2:3, the Quarantines and Embargoes of Animals rules at N.J.A.C. 2:5, the Humane Treatment of Domestic Livestock rules at N.J.A.C. 2:8, and the Avian Influenza rules at N.J.A.C. 2:9.

Finally, the Department is proposing amendments that correct misspellings of two kinds of snakes. At N.J.A.C. 7:25-4.3(a)3iii, the correct spelling is “Boas,” rather than “Bosas.” At N.J.A.C. 7:25-4.3(a)3v, the correct spelling is “Racer,” rather than “Raceer.”

Social Impact

The Department anticipates that the proposed amendment to exempt bison will impact a subset of the owners, operators, and employees of the approximately 9,071 farms in New Jersey, as well as retail sellers and consumers of bison products. The removal of permit requirements for the possession of bison should serve as an incentive to those farmers who may be interested in attempting to raise bison, although it is impossible to predict how many farmers will choose to enter bison farming as a result of the amendment.

With respect to consumers, the potential impacts of enhanced bison farming and sales of bison products touch upon a number of social trends that have become more evident in recent years. Numerous media reports note the growth of the “farm-to-table” and “slow food”

movements that are characterized by a commitment to environmentally-sustainable, locally produced, healthy foods. Proponents of bison farming note that bison production does not lend itself to industrial farming methods, and this is viewed positively by a segment of consumers who seek out sustainable, grass-fed, pasture-raised, and free-range meats.

Health-conscious consumers regard meat from bison as a better alternative to other types of livestock, containing 2.42 grams of fat, 143 calories, and 82 milligrams of cholesterol per 100 grams (3.5 ounces) of cooked meat. (<http://www.bisoncentral.com/about-bison/data-and-statistics>).

There will be no social impact from the proposed amendments that exempt llamas and the ostrich, emu, and rhea from the Department's nongame and exotic species rules. The statutory amendment that classified llamas as agricultural livestock was enacted in 1994, while the statutory amendment altering the status of the three birds was enacted in 1997. The adoption of these amendments codifying the existing statutory exemptions will not result in any new or additional social impacts.

Economic Impact

To the extent that the proposed amendment exempting bison further enhances the diversity and viability of New Jersey's agricultural economy and promotes the increased availability of products derived from bison raised on farms in this State, the Department anticipates that the proposed amendment could have a positive economic impact for New Jersey farmers who are presently raising bison, and those farmers who decide to raise bison in the future.

According to the National Bison Association, the value of bison meat sold in grocery stores, restaurants and farmers' markets throughout the United States exceeded \$278 million in

2011. The 2011 retail and restaurant sales represented a 15.8 percent increase over 2010, despite a 16 percent drop in the number of animals processed commercially, according to the Association's calculation of the economic size of the American bison market.

With respect to New Jersey-specific data, the USDA 2012 Census of Agriculture notes that there were seven “operations with [bison] inventory” in the State. Of that number, the 2012 *Census* indicates that four sold at least one head of bison in 2012, and that the sales were valued at \$135,000 during that year.

[http://agcensus.usda.gov/Publications/2012/Full_Report/Volume_1, Chapter_1_State_Level/New_Jersey/st34_1_034_036.pdf](http://agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_State_Level/New_Jersey/st34_1_034_036.pdf)).

The holders of annual possession permits for bison would derive an economic benefit from being relieved of the cost of permitting, as well as the costs of complying with notification and recordkeeping requirements at N.J.A.C. 7:25-4.6. These mandates include the requirement for holders of animal dealer possession permits to submit an annual inventory of acquisitions, sales, and exchanges to the Division of Fish and Wildlife; the requirement that zoos submit quarterly reports to the Division of births, deaths, acquisitions, and disposals; the requirement of animal exhibitors to inform the Division of any scheduled activity in New Jersey covered by permit in order to permit inspection of the activity by Division personnel; and the requirement that permit holders holding revoked or expired permits file annual reports with the Division explaining the final disposition of all animals in that person’s possession during the preceding calendar year.

Economic impacts of the proposed amendment on the Department will consist of an annual loss of approximately \$750.00 in nongame and exotic possession permit fees now collected from the seven permit holders that currently possess bison, as well as an undetermined

amount of possession permit fees that would have been collected from future bison permit holders. However, the loss of fee revenue would be offset by the cost savings realized by the Division of Fish and Wildlife's relinquishing jurisdiction over the periodic inspections and examinations of bison holding pens or exhibit areas and reviews of relevant records pertaining to bison pursuant to N.J.A.C. 7:25-4.6. As noted in the summary, bison are defined as "cattle" under Department of Agriculture rules, and are therefore subject to the Disease Control Program rules at N.J.A.C. 2:2, the Quarantines and Embargoes of Animals rules at N.J.A.C. 2:5, the Livestock and Poultry Importation rules at N.J.A.C. 2:3, and the Humane Treatment of Domestic Livestock rules at N.J.A.C. 2:8.

There will be no economic impact from the proposed amendments that exempt llamas, guanacos, and alpacas and the ostrich, emu, and rhea from the Department's nongame and exotic species rules. The statutory amendment that classified llamas, guanacos, and alpacas as agricultural livestock was enacted in 1994, while the statutory amendment altering the status of the birds was enacted in 1997. The adoption of these amendments codifying the existing statutory exemptions will not result in any new or additional economic impacts.

Environmental Impact

The Department does not believe that the proposed amendment to exempt bison from its exotic and nongame permitting requirements will have any environmental impact. The purpose of the Department's exotic and nongame species regulatory program as expressed in the Endangered and Nongame Species Conservation Act at N.J.S.A. 23:2A-2 is to provide for the management of all forms of wildlife to ensure their continued participation in the ecosystem. The bison population in New Jersey is captive and not intended for the reintroduction of a free-

ranging population managed for species conservation and ecological restoration. Accordingly, the beneficial ecological functions attributed to bison living on range lands in the western United States, for example, the creation of landscape heterogeneity through grazing and wallowing, creation of habitat for grassland birds and other commensals, conversion of vegetation into protein biomass for predators, provision of carcasses for scavengers, and provision of bison wool for small mammals and nesting birds, are not occurring now and thus will not be lost because of the proposed amendment. Any potential impacts that bison populations may have on the public health, safety, and welfare are adequately addressed through the rules of the Department of Agriculture.

There will be no environmental impact from proposed amendments that exempt llamas, guanacos, and alpacas and the ostrich, emu, and rhea from the Department's nongame and exotic species rules. The statutory amendment that classified llamas, guanacos, and alpacas as agricultural livestock was enacted in 1994, while the statutory amendment altering the status of the birds was enacted in 1997. The adoption of these amendments codifying the existing statutory exemptions will not result in any new or additional environmental impacts.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend any State rule or regulation that exceeds any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed amendments are not promulgated under the authority of or in order to implement, comply with, or participate in any program established under Federal law, or under a State

statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Therefore, no Federal standards analysis is required.

Jobs Impact

To the extent that bison herds increase as a result of the proposed amendment exempting bison from the exotic and nongame species rules and require more employees for those businesses that tend, slaughter, and market bison, the Department anticipates that the proposed amendment will have a positive impact on jobs or employment in New Jersey.

There will be no jobs-related impact regarding the proposed amendments that exempt llamas, guanacos, and alpacas and the ostrich, emu, and rhea from the Department's nongame and exotic species rules. The statutory amendment that classified llamas, guanacos, and alpacas as agricultural livestock was enacted 1994, while the statutory amendment altering the status of the birds was enacted in 1997. The adoption of these amendments codifying the existing statutory exemptions will not result in any new or additional impacts.

Agriculture Industry Impact

The proposed amendment exempting bison is anticipated to have a positive impact on the agriculture industry in New Jersey. The Department believes that by eliminating regulatory barriers and bureaucratic "red tape," the proposed amendment supports the ongoing economic development strategy of the Department of Agriculture as it assists New Jersey's livestock industry in the transition to a new market structure that that is characterized in part by a trend toward the production of alternative livestock such as bison, as stated in the New Jersey Department of Agriculture 2009 Economic Development Strategies document.

<http://www.newjersey.gov/agriculture/conventions/2009/09ecostrats.pdf> at page 15) The Department also believes that the proposed amendment furthers the component of the economic development strategy put forth by the Department of Agriculture to support the marketing and distribution of fresh and frozen livestock products throughout the State.

<http://www.newjersey.gov/agriculture/conventions/2009/09ecostrats.pdf> at page 16)

As noted in the summary above, bison are included in the definition of cattle and regulated by the Department of Agriculture under its Disease Control Program rules at N.J.A.C. 2:2, and the Livestock and Poultry Importation rules at N.J.A.C. 2:3. The health of the animals that are already in New Jersey and of those that would be imported into the State in the future is protected through those rules. Bison are also subject to the Department of Agriculture rules at N.J.A.C. 2:8 regarding the humane treatment of livestock.

There will be no impact to the agricultural industry from the proposed amendments that exempt llamas, guanacos, and alpacas and the ostrich, emu, and rhea from the Department's nongame and exotic species rules. The llamas, guanacos, and alpacas are already regulated by the Department of Agriculture under the Disease Control Program rules at N.J.A.C. 2:2, as well as the Livestock and Poultry Importation rules at N.J.A.C. 2:3, the Quarantines and Embargoes of Animals rules at N.J.A.C. 2:5, and the Humane Treatment of Domestic Livestock rules at N.J.A.C. 2:8. The ostrich, emu, and rhea are regulated under those rules, as well as under the Avian Influenza rules at N.J.A.C. 2:9. The statutory amendment that classified llamas, alpacas, and guanacos as agricultural livestock was enacted 1994, while the statutory amendment altering the status of the birds was enacted in 1997. The adoption of these amendments codifying the existing statutory exemptions will not result in any new or additional agricultural impacts.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendment to N.J.A.C. 7:25-4.4(b)2 will not impose additional reporting, recordkeeping, or other compliance requirements on small businesses. Rather, the proposed amendment to exempt bison from the exotic and nongame species rules will eliminate compliance and recordkeeping requirements related to possession permits on any small businesses that raise or keep bison in the State.

Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments to determine their impact, if any, on the affordability of housing. The proposed amendments have no impact on the availability or affordability of housing in this State. Accordingly, the Department has determined that the proposed amendments will not evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments to determine their impact, if any, on smart growth development. Subchapter 4 of N.J.A.C. 7:25 has no impact on housing production in New Jersey because the rules govern only the possession of nongame and exotic wildlife. Therefore, the proposed amendments will not evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:25-4.3 Exotic species and nongame species requiring a permit for possession

(a) Exotic species and nongame species requiring a permit for possession include, but are not limited to, the following:

1. (No change.)

2. Mammals:

i.–iv. (No change.)

[v. Llama--Lama glama;]

Recodify existing vi.–vii. as **v.-vi.** (No change in text.)

3. Reptiles:

i.–ii. (No change.)

iii. [Bosas] **Boas**—Family Boidae (other than Boa Constrictors);

iv. (No change.)

v. [Racer] **Racer**-- Coluber spp.;

vi.–xv. (No change.)

(b) (No change.)

7:25-4.4 Exempted species

(a) The following listed species of exotic or nongame mammals, birds, reptiles, or amphibians may be possessed in this State without a permit.

1. Birds:

i.–viii. (No change.)

ix. Society finch – *Lonchura domesticus*[.];

x. Ostrich - *Struthio camelus*;

xi. Greater Rhea - *Rhea americana*;

xii. Lesser Rhea - *Rhea pennata*;

xiii. Emu - *Dromaius novaehollandiae*.

2. Mammals:

i.–vii. (No change.)

viii. Flying Squirrel – *Glaucomypis* spp.;

ix. Alpaca -- *Vicugna pacos*;

x. Guanaco -- *Lama guanicoe*;

xi. Llama – *Lama glama*;

xii. Bison (American buffalo) -- *Bison bison*.

3.-4. (No change.)

(b).(No change.)