

DEPARTMENT OF AGRICULTURE

Amendment and Compilation of Chapter 4-71,
Hawaii Administrative Rules

November 28, 2006

SUMMARY

1. §§4-71-2 to 4-71-3.1 are amended.
2. §4-71-4.1 is amended.
3. §4-71-6 is amended.
4. §§4-71-6.5 to 4-71-10 are amended.
5. Chapter 71 is compiled.

HAWAII ADMINISTRATIVE RULES
TITLE 4 DEPARTMENT OF AGRICULTURE
SUBTITLE 6 DIVISION OF PLANT INDUSTRY
CHAPTER 71
PLANT AND NON-DOMESTIC ANIMAL QUARANTINE
NON-DOMESTIC ANIMAL IMPORT RULES

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Historical note: Chapter 71 is based substantially upon Regulation 2 entitled "Concerning the Introduction of Feral and Other Non-Domestic Animals into Hawaii," of the Division of Entomology and Marketing, Department of

Agriculture and Conservation [Eff. 12/12/41; am and ren. Regulation 2 8/30/47; am 9/16/60; R 7/13/81]; and Regulation 3 entitled "Concerning the Introduction of Bacteria, Fungi and Viruses into Hawaii," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff. 12/12/41; am and ren. Regulation 3 8/30/47; R 7/13/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§4-71-1 Objective. The objective of this chapter is to implement the requirements of chapter 150A, Hawaii Revised Statutes, by restricting or prohibiting the importation of specific non-domestic animals that are detrimental to the agricultural, horticultural, and aquacultural industries, natural resources and environment of Hawaii. [Eff. 7/13/81; am and comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6, 150A-7)

§4-71-2 Definitions. As used in the chapter:

"Advisory subcommittee" means one of the advisory subcommittees on entomology, invertebrate and aquatic biota, land vertebrates, algae, bacteria, fungi, protozoa, viruses, or plants appointed by the chairman pursuant to section 150A-10, HRS;

"Board" means the board of agriculture of the department of agriculture;

"Branch" means the plant quarantine branch;

"Chairperson" means the chairperson of the board of agriculture;

"Chief" means the chief or manager of the plant quarantine branch;

"Department" means the department of agriculture;

"Non-domestic animal" means any animal, including mammals, birds, reptiles, amphibians, fishes and invertebrates, other than domestic dog (Canis familiaris), domestic cat (Felis catus), domestic horse (Equus caballus), domestic ass, burro, or donkey (Equus

asinus), domestic cattle (Bos taurus and Bos indicus) including the beefalo (3/8 bison and 5/8 domestic cattle), domestic sheep (Ovis aries), domestic goat (Capra hircus), domestic swine (Sus scrofa domestica), domestic pot-bellied pig (Sus salvanis), domestic alpaca (Lama pacos), domestic llama (Lama glama), domesticated races of European rabbit (Oryctolagus cuniculus), domesticated races of chicken (Gallus gallus), domesticated races of turkeys (Meleagris gallopavo), domesticated races of pigeons (Columba domestica and Columba livia), domesticated races of muscovy ducks (Cairina moschata), domesticated races of greylag geese (Anser anser) and swan geese (Anser cygnoides), and domestic hybrids (crosses between two domestic animals). As used in this chapter, the term or word, "animal," shall mean "non-domestic animal;"

"Permittee" means any person or agency that has applied for and been granted a permit for the introduction or possession of an animal under this chapter;

"Primate sanctuary" means a facility that provides permanent care, rehabilitation, and protection for donated, abandoned, or displaced primates, does not trade or sell primates for financial gain, and that maintains a 501(c)(3) not-for-profit federal tax-exempt status and any permits or licenses required by federal, state, or municipal laws; and

"Private use" means use for non-commercial purposes, such as non-profit research, and does not include individual possession of an animal as a pet. [Eff. 7/13/81; am and comp 9/19/91; am and comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6, 150A-6.2, 150A-7)

§4-71-3 Permits. (a) All importation of animals shall be by permit. A permit application shall be submitted to the chief with an appropriate bond, if required in this chapter, and the following information:

- (1) Name and address of shipper and importer, including mailing and street address;

- (2) Approximate number and kind (common and scientific name) of animal;
- (3) Sex, if determinable;
- (4) Object of importation;
- (5) Mode of transportation; and
- (6) Approximate date of arrival.

(b) The chief, without submitting the permit application to the board, may approve or disapprove the issuance of a permit based on a past board decision relating to the same species of animal and the respective conditions for importation previously established by the board for that animal species, provided that, if approved, the current import request is, in all essential respects, the same as the previously approved request and that the importer is able to comply with the previously established conditions.

(c) A permit application for an animal which was previously disapproved may be resubmitted for board action pursuant to section 4-71-4 upon determination by the chief that conditions for importation are significantly different from the previously disapproved request.

(d) A permit application for an animal allowed for import under these rules but not previously permitted entry by the board shall be submitted for board action pursuant to section 4-71-4.

(e) The chairperson, without submitting the permit application to the advisory committee on plants and animals and the board, may approve a short term permit for performing animals in a circus, carnival, commercial filming for television or movies, or other performance or exhibition when it has been determined that the animals shall be adequately safeguarded under the control of professional trainers or handlers, provided that the animals are not on the list of prohibited animals and further provided that an appropriate bond is secured with the department as required by sections 4-71-7 and 4-71-8.

(f) The permittee shall comply with all permit conditions established by the board. Violation of permit conditions may result in citation as provided in section 150A-12, HRS, or in cancellation of the permit. Any violation of law or rule that calls into question the permittee's fitness to hold a permit, especially

the likelihood of the permittee maintaining proper security and safeguarding for animals under the permittee's other permits, may result in cancellation of the permittee's other permits as well.
 [Eff. 7/13/81; comp 9/19/91; am and comp 2/21/92; am and 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-6.4, 150A-7)

§4-71-3.1 User permit fees. (a) A fee for the processing and issuance of a permit is required as follows:

- (1) Five dollars per permit for a single shipment within one year from date of issuance;
- (2) Fifty dollars per permit for unlimited shipments within one year from date of issuance; and
- (3) Fees shall be paid in full at the time of request and are non-refundable except for an appropriate bond as required in this chapter.

(b) In addition to the requirements of subsection (a) herein, a fee for a site inspection as required in this chapter and by permit conditions shall be twenty-five dollars per inspection plus mileage reimbursement.

(c) For inspections requiring the services of personnel beyond official working hours, an additional fee shall be assessed which shall include applicable charges for overtime wages, fixed charges for personnel services, and meals if required.

(d) Fees may be waived by the chief for research by not-for-profit organizations, universities, or government agencies, or for exhibition in municipal zoos or government-affiliated aquariums. [Eff and comp 8/16/99; am and comp 11/30/01; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-7.5)

§4-71-4 Submission of permit application to the board. (a) The applicant shall provide the chief with the following additional information:

- (1) A statement of reasons for importation;
- (2) The person responsible for the animal;

- (3) A description of safeguarded facilities;
- (4) The method of disposition;
- (5) An abstract of the animal; and
- (6) Any other pertinent documented information as required by the branch on the proposed introduction.

(b) The applicant shall provide an adequate number of copies of the application and attachments as requested by the chief.

(c) The chief shall compile the information submitted by the applicant and send it to the members of the appropriate advisory subcommittee(s) for review.

(d) The comments and recommendations of the advisory subcommittee(s) shall be compiled and sent to the advisory committee on plants and animals for review.

(e) The comments and recommendations of the advisory subcommittee(s), the advisory committee on plants and animals, including the committee's votes, and of the chief shall be compiled and submitted to the board at its regular scheduled meeting.

(f) The board shall take action to approve or disapprove the permit application. The board may impose permit conditions including but not limited to, health requirements, safeguarding the animal from escape, unauthorized release, or theft, as well as any applicable requirements of municipal, state or federal law. [Eff. 7/13/81; comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-6.4, 150A-7)

§4-71-4.1 Maximum time period for permit approvals, disapprovals, extensions, or automatic approvals. (a) Pursuant to the requirements of chapter 91, HRS, the department shall establish the following maximum time periods for the processing of permit requests after acceptance of a completed permit application and payment of applicable fees pursuant to sections 4-71-3 and 4-71-3.1:

- (1) For same species of animals with respective conditions for importation previously established by the board, the chief may approve or disapprove the issuance of a permit within 90 days;
- (2) For certain performing animals in a circus, carnival, or commercial filming for television or movies, or other performance or exhibition, and with an appropriate bond secured with the department for each animal, the chairperson, without submitting the permit application to the board, may approve or disapprove a short term permit within 120 days;
- (3) For a permitted animal enumerated in section 4-71-6.5 that requires board action pursuant to section 4-71-4 to amend or establish permit conditions, the chief may approve or disapprove the issuance of a permit within 180 days; and
- (4) For an animal not previously permitted entry, excluding those animals enumerated in section 4-71-6, an application request must be submitted for board action pursuant to section 4-71-4 and subject to public input and notification for listing under section 4-71-4.2 or as provided by section 150A-6.2, HRS, the chief may approve or disapprove the issuance of a permit within one year.

(b) Notwithstanding the requirements of subsection (a) herein, the maximum period of time shall be extended indefinitely in the event of a national disaster, state emergency, or union strike, which prevents the department from fulfilling application or review requirements in a timely manner.

(c) Except as provided for in subsection (b), an application request for the issuance of a permit shall be given automatic approval if action is not taken by the department within the established maximum period of time as specified in subsection (a). After the expiration of the maximum time period is brought to the attention of the department, the department shall have a reasonable amount of time to issue the permit. This section shall apply only to application requests for

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business or development-related permits required by law to be obtained prior to the formation, operation, or expansion of a commercial or industrial enterprise. [Eff and comp 8/16/99; am and comp 11/30/01; am and comp] (Auth: HRS §§91-13.5, 141-2, 150A-9) (Imp: HRS §§91-13.5, 150A-6.2)

§4-71-4.2 Public input and notification for listing. (a) By order, the board may adopt additions to or deletions from the lists of animals without regard to the notice and public hearing requirements of chapter 91, HRS, provided that thirty days or more prior to the effective date of the order, the department shall issue a press release and mail notices to the Office of Environmental Quality Control for publication and to all persons who have made a timely written request of the department for advance notice of the order or the department's rulemaking proceedings. The press release and the notice shall include:

- (1) A statement summarizing the substance of the proposed order which may include examples of the kinds of animals being added to or deleted from the lists required under section 150A-6.2, HRS;
- (2) A statement that a copy of the proposed order and the proposed exact changes will be mailed to any interested person who requests a copy upon payment in advance of costs for photocopying, preparing, and mailing the copy;
- (3) A statement as to where to obtain a copy of the proposed order and the proposed exact changes for inspection, or for pick-up after payment in full of costs for photocopying and preparing; and
- (4) A statement that the department is soliciting comments regarding the proposed order during the next thirty days, where comments may be forwarded to, and where the proposed order will be discussed.

(b) The department shall consider all oral and written comments and may incorporate the same in its review of the proposed order by the advisory committee on plants and animals in a noticed, public meeting.

(c) Upon approval by the board at a noticed, public meeting, the order to adopt additions to or deletions from the lists of animals shall take effect ten days after the department gives public notice of the order in a daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide. [Eff and comp 8/16/99; am and comp 11/30/01; comp]
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-6.6)

§4-71-4.3 Violations. Any person who violates any provision or requirement of this chapter or of any notice given pursuant thereto, shall be subject to the penalties provided for under section 150A-14, HRS. [Eff and comp 8/16/99; comp 11/30/01; comp]
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.4, 150A-14)

SUBCHAPTER 2

NON-DOMESTIC ANIMAL INTRODUCTIONS

§4-71-5 Notice of quarantine. The board finds that there exists serious danger to the agricultural, horticultural, and aquacultural industries, natural resources, and environment of Hawaii by the uncontrolled introduction of feral and other non-domestic animals. [Eff. 7/13/81; comp 9/19/91; comp 2/21/92; comp 9/13/93; comp 1/30/95; am and comp 8/16/99; comp 11/30/01; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6, 150A-6.2, 150A-7)

§4-71-6 Prohibited introductions. (a) The introduction into Hawaii of live animals or live non-domestic animals as defined in this chapter at any

stage of development is prohibited except for those animals on the lists incorporated in §4-71-6.5 by permit, and except as provided by section 150A-6.2, HRS.

(b) The list of animals designated as prohibited entry pursuant to section 150A-6.2, HRS, dated November 28, 2006, and located at the end of this chapter is made a part of this section. No person shall introduce into Hawaii any animal from the list of prohibited animals. [Eff. 7/13/81; am and comp 9/19/91; am and comp 2/21/92; am and comp 9/13/93; am and comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

§4-71-6.1 Ad hoc panel for identification of prohibited hybrid animal. (a) The chairperson shall establish an ad hoc panel of no fewer than three members with applicable expertise in vertebrate biology to determine if an animal is a prohibited hybrid animal when the branch suspects that the lineage of the animal is not as stated by the owner or on other official documents.

(b) The ad hoc panel shall review all pertinent information including, but not limited to, expert consultations, health and pedigree certificates, owner's statements, branch findings, or viewings of the animal, to determine lineage of a suspect prohibited hybrid animal.

(c) After its review and determination the ad hoc panel shall report its findings to the branch, and appropriate action shall be taken by the branch on the disposition of the suspect hybrid prohibited animal.

(d) In any contested case arising out of the identification of a suspected hybrid animal, the method of identification selected by the ad hoc panel shall not be overturned absent evidence of actual bias on the part of one or more of the ad hoc panel members or unless the method of identification lacks a scientific basis. [Eff and comp 8/16/99; comp 11/30/01; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6, 150A-6.2)

§4-71-6.5 Permitted introductions. (a) The introduction into Hawaii of live animals or live non-domestic animals as defined in this chapter is only allowed:

- (1) For those animals on the list designated as conditionally approved and dated November 28, 2006, or on the list designated as restricted entry, dated November 28, 2006, pursuant to section 150A-6.2, HRS, both of which lists are located at the end of this chapter and made a part of this section;
- (2) By permit approved by the board or chief pursuant to sections 4-71-3 and 4-71-4; and
- (3) After securing appropriate bond for certain animals pursuant to sections 4-71-7, 4-71-8, and 4-71-9.

(b) Pursuant to the requirements of subsection (a) herein, the introduction of animals on the lists of conditionally approved or restricted animals is allowed as follows:

- (1) Animals on the list of conditionally approved animals, for individual possession, businesses, or institutions;
- (2) Animals on Part A of the list of restricted animals, for research by universities or government agencies, exhibition in municipal zoos or government-affiliated aquariums, for other institutions for medical or scientific purposes as determined by the board, or for other purposes as specified in this chapter; and
- (3) Animals on Part B of the list of restricted animals, for the purposes described in subsection (b)(2) herein or for private and commercial use, including research, zoological parks, or aquaculture production, except that animals in the order Primates shall not be allowed for import or possession for private or commercial use other than for purposes described in subsection (b)(2) or for primate sanctuaries, as determined by the board.

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(c) The introduction of unlisted animals for the purpose of remediating medical emergencies or agricultural or ecological disasters, or conducting scientific research that is not detrimental to agriculture, the environment, or humans is allowed for import and possession by a special permit on a case-by-case basis, if the importer can meet permit requirements or other guidelines as determined by the board pursuant to section 150A-6.2, HRS.

(d) The introduction of unlisted animals for the purpose of filming, performance, or exhibition is allowed by a short-term special permit on a case-by-case basis not to exceed 90 days for importation and possession if the importer can meet permit and bonding requirements as determined by the board pursuant to section 150A-6.2, HRS.

(e) The permittee shall obtain prior site approval for animals on the list of restricted animals and for unlisted animals under special permit as determined by the board.

(f) Restricted list animals and unlisted animals under special permit as determined by the board require a permit for both import and possession. Where a permit for a restricted list animal allows transfer or sale, the proposed transferee shall first obtain a permit for possession of the animal by application to the chief, site inspection approval, and satisfaction of any bond or other requirements applicable.

(g) The board may establish permit conditions including but not limited to, time, place, location, use, special precautions, health requirements, and safeguarding the animal from escape, unauthorized release, or theft, as well as any applicable requirements of municipal, state or federal laws. The permittee shall comply with the requirements of this chapter, chapter 150A, HRS, and specific permit conditions established by the board. [Eff. and comp 2/21/92; am and comp 9/13/93; am and comp 1/30/95; am and comp 8/16/99; am and comp 11/20/01; am and comp] (Auth: §§141-2, 150A-9) (Imp: HRS §150A-6.2)

§4-71-7 Bond for certain animals. The applicant shall secure an appropriate bond, as specified in this chapter, for the following:

- (1) Monkeys, apes, baboons, chimpanzees, gibbons, lemurs, pottos, wallabies, and any other animal that the board or chairperson may require to be bonded as a condition for importation or possession;
- (2) Any offspring of bonded animals; and
- (3) Certain performing animals in a circus, carnival, commercial filming for television or movie productions, or other performance or exhibition under short-term permit that have been permitted entry by the chairperson without advisory committee review and board action pursuant to section 4-71-3(e), or certain unlisted animals that have been permitted entry by the board under special permit pursuant to section 150A-6.2, HRS. [Eff. 7/13/81; am and comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp]
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

§4-71-8 Bonding procedure. (a) When required in this chapter, the bonding of animals shall be by cashier's check, or cash secured with the department.

(b) An appropriate individual bond shall be secured with the department for the sum of three thousand dollars for each animal except as provided for in subsection (c).

(c) An appropriate individual bond shall be secured with the department for the sum of two thousand dollars for each animal for owners holding valid United States Department of Agriculture licenses under the Animal Welfare Act.

(d) A cashier's check or cash secured with the department as a bond, shall be returned to the owner without interest, upon verification of the death or exportation of the animal, or the transfer or sale of the animal to a new owner who has secured the necessary bond and permit in advance of the transfer.

(e) Government organizations, such as municipal zoos, and animal sanctuaries determined by the United States Internal Revenue Service to be not-for-profit entities are exempt from the bonding requirements of this section. [Eff. 7/13/81; am and comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

§4-71-9 Conditions for bonding. An owner, dealer, or organization shall import and maintain bonded animals under the following conditions:

- (1) The owner, dealer, or organization shall submit information to the chief with respect to the number, sex, if determinable, and species of animal;
- (2) The animal shall be kept in captivity and as required by permit conditions at all times;
- (3) The chief shall be notified immediately upon the escape of any bonded animal;
- (4) The chief shall be notified immediately upon the death of the bonded animal and the carcass shall be presented immediately to the state veterinarian or his designate for examination and verification;
- (5) Out-of-state movement of a bonded animal shall be verified by an inspector in advance of the movement and after prior arrangements for verification have been made with the chief;
- (6) An animal may be sold or given away in Hawaii only to persons who have secured an appropriate bond with and acquired a permit from the department prior to the sale or transfer;
- (7) A bond or cashier's check in the appropriate amount required under section 4-71-8 shall be kept in full force and effect;
- (8) The owner, dealer, or organization shall report to the chief the birth of and secure an appropriate bond and permit for any offspring within thirty calendar days of the birth;

- (9) The owner, dealer, or organization shall report to the chief any change of mailing address and related contact information within seven business days of the change; and
- (10) The owner, dealer, or organization possessing a valid United States Department of Agriculture license under the Animal Welfare Act shall report to the chief any suspension, revocation, or expiration of the required federal license within seven business days of the license status change. [Eff. 7/13/81; am and comp 9/19/91; comp 2/21/92; comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp _____] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

§4-71-10 Failure to comply with bond conditions.

- (a) The department may seize the bonded animal, and foreclose on the bond or retain such sums secured by cash or cashier's check upon failure of the owner to comply with the bonding conditions in section 4-71-9.
- (b) Should the bonded animal escape, the owner shall take necessary action to recapture the animal. If the owner fails to recapture the animal within one week after escape or when the animal becomes a nuisance or poses a serious threat to the community, the department may employ its resources to recapture the animal after due notice to the owner. The owner shall be held responsible for the cost incurred by the department.
- (c) Any bonded animal that is captured after escape or seized pursuant to section 4-71-10 may be sold at a private sale, shipped out state, donated to a government agency, or destroyed no sooner than fifteen days after cancellation of the bond. [Eff 7/13/81; am and comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp _____] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

Amendments to and compilation of chapter 71, title 4, Hawaii Administrative Rules, on the Summary Page dated November 28, 2006 were adopted on November 28, 2006 following public hearings held on July 10, 2006, July 12, 2006, and July 13, 2006 after public notice was given in the Honolulu Star-Bulletin, the West Hawaii Today, the Maui News, and the Garden Island News on June 9, 2006 and the Hawaii Tribune Herald on June 11, 2006.

They shall take effect ten days after filing with the Office of Lieutenant Governor.

SANDRA LEE KUNIMOTO
Chairperson, Board of
Agriculture

LINDA LINGLE
GOVERNOR
State of Hawaii

Dated : _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General