

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2014 AUG -1 P 1:23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 19-32-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 35

TITLE OF RULE BEING PROPOSED: Aquaculture Importation

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Aquaculture Importation

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd., East
Charleston WV 25305

Phone Number: 304-558-3200 Email: jodeemartin@wvda.wv

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will have no fiscal impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Aquaculture Importation

Rule Title:

Aquaculture Importation

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: 7-29-14

Signature of Agency Head or Authorized Representative

Walt Helms



West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Statement of Circumstances

The provisions of the Aquaculture Importation rule will establish regulatory guidelines for the importation of aquaculture species into the state of West Virginia. With these regulatory guidelines the aquaculture industry will be able to import both specific pathogen-free organisms and organisms that will not cause unwanted disruption of aquatic wildlife, such as invasive species. Aquaculture provides an opportunity to advance West Virginia's agriculture industry, and promotes public health through the availability of healthy food options.

A handwritten signature in cursive script that reads "Walt Helmick". The signature is written in black ink and is positioned above a horizontal line.



West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Brief Summary of Proposed Rule
Aquaculture Importation
Title 61 Series 35

The purpose of this rule is to establish regulatory guidelines for the importation of aquaculture species into the state of West Virginia. Propagation of the state's aquaculture industry requires the ability to import both specific pathogen-free organisms and organisms that will not cause unwanted disruption of aquatic wildlife such as invasive species.

The West Virginia Department of Agriculture shall be the lead agency for aquaculture health and importation within the state of West Virginia. Therefore, it is the responsibility of the West Virginia Department of Agriculture to oversee the following regulation and to ensure that the guidelines maintained therein are observed.

Naturally indigenous or naturalized species are accepted for importation into the state of West Virginia unless otherwise specified. Additional freely traded species must be specifically named. Additional freely traded species will not require a permit for importation provided that all the requirements regarding animal health and disease status are addressed. The Commissioner of Agriculture and the state veterinarian shall keep a list of acceptable species, and changes to this list will be designated by those persons and/or the Aquaculture Advisory Board.

Species not on the freely traded list would require an importation permit issued by the West Virginia Department of Agriculture. Any aquatic life granted an importation permit must meet all the animal health requirements before importation into the state. Upon receipt of permit application the West Virginia Department of Agriculture would release the application to the West Virginia Division of Natural Resources. A joint review of the permit would be conducted, and if approved by both agencies a permit would be granted to the applicant. Import permits for species not included on the freely traded list must be granted for each transportation event.

To ensure that species being imported are disease and pathogen free there are four distinct categories, each with its own corresponding list of viral, bacterial, and/or parasitic



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Walt Helmick
Commissioner

disease(s) that are subject to the requirements of that category. The list for each disease category will be upheld by the Commissioner of Agriculture and the state veterinarian. Before importation of any susceptible species or products of those species (such as viable eggs or sperm) can occur, proper diagnostic testing at an accredited laboratory must be performed to determine specific pathogen-free status of the facility from which the animals will be moved.

For legal importation of aquaculture species to occur, shipments must be accompanied by several documents demonstrating the health status of those animals. Those documents include the following: Owner Shipper Statement, and Health certification.

Included within this rule are the four distinct categories of diseases, an explanation of the Owner Shipper Statement, as well as the fish testing requirements.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 1, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305
304-558-3200

LEGISLATIVE RULE TITLE: Aquaculture Importation

1. Authorizing statute(s) citation 19-32-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 1, 2014

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 31, 2014

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 1, 2014

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jodee Martin/Executive Assistant

West Virginia Department of Agriculture

1900 Kanawha Boulevard, East

Charleston, WV 25305

304-558-3200 304-558-2203 (fax)

jodeemartin@wvda.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

July 1, 2014 - July 31, 2014

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

August 1, 2014

d. Attach findings and determinations and reasons:

Attached

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 35
AQUACULTURE IMPORTATION

FILED
2014 AUG -1 P 1:23
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§61-35-1. General.

1.1. Scope. -- This legislative rule establishes standards for the importation of aquaculture species into the state of West Virginia.

1.2. Authority. -- W. Va. Code 19-32-4.

1.3. Filing Date. --

1.4. Effective Date. --

§61-35-2. Purpose.

The purpose of this article is to establish regulatory guidelines for the importation of aquaculture species into the state of West Virginia. Aquaculture provides the opportunity to advance West Virginia's agriculture industry, and promotes public health through the availability of healthy food options. Propagation of the state's aquaculture industry requires the ability to import both specific pathogen-free organisms and organisms that will not cause unwanted disruption of aquatic wildlife, such as invasive species.

The West Virginia Department of Agriculture shall be the lead agency for aquaculture health and importation within the state of West Virginia. Therefore, it is the responsibility of the West Virginia Department of Agriculture to oversee the following regulation and to ensure that the guidelines maintained therein are observed.

Aquaculture species released into public waters shall abide by the health requirements listed in sections §20-2-13 and §20-2-64 of the West Virginia Code.

§61-35-3. Definitions.

3.1. "Accredited Laboratory" means a laboratory or group of laboratories that has undergone specific standardizations and examinations and met the requirements established by a specific laboratory-associated governing body.

3.2. "Aquaculture" means the propagation, rearing, or use of aquatic species in controlled or selected environments for private and or commercial purposes related to food production, recreation, research, importation, exportation, marketing, transportation and science.

3.3. "Aquaculture Advisory Board" means a group of educated and knowledgeable individuals from various backgrounds authorized by the Aquaculture Development Act West Virginia Code §19-32-5 to review policies, laws, and regulations affecting aquaculture and to recommend changes to encourage aquaculture development in West Virginia

3.4. "Confidence level" means an interval used to indicate the reliability of an estimate; i.e., a 95 percent confidence level means that 95 out of 100 estimates would capture the true value of the test's means.

3.5. "Diagnostic testing" means the use of laboratory analysis to determine the disease status of an aquatic organism.

3.6. "Freely traded aquatic species" means species of aquatic organisms that, allowing that all import health requirements are met, may be imported into West Virginia without an importation permit

3.7. "Genetically engineered aquatic species" means a class of aquatic organisms whose inherited traits have been scientifically altered to produce desired outcomes.

3.8. "Health certification" means a document provided by an accredited laboratory that provides testing results for diagnostics performed at that laboratory for a specified list of aquatic animal diseases.

3.9. "Lot" means a group of aquatic species reared or housed in the same tank, pond, etc. that are kept together throughout the lifespan of those organisms.

3.10. "Naturalized aquatic species" means a class of aquatic organisms that has been introduced into West Virginia waters and is now considered to be an established part of the state's aquatic population.

3.11. "Naturally indigenous aquatic species" means a class of aquatic organisms that was or is known to naturally inhabit West Virginia waters.

3.12. "Originating facility" means the establishment from which a group of aquatic species began.

3.13. "Owner-Shipper Statement (OSS)" means a document required by the West Virginia Department of Agriculture that must be completed and signed by the consigner (seller) and shall be mailed directly to the West Virginia Department of Agriculture upon completion of sale and a copy must also accompany the shipment of aquatic species upon importation into the state of West Virginia.

3.14. "Prevalence level" means the proportion of aquatic species that are disease; i.e., a prevalence level of five percent (5%) that five out of one hundred (5/100) animals have a disease.

3.15. "Protected aquatic species" means a class of aquatic organisms that is guarded from human disturbance by state and/or federal law.

3.16. "Public waters" means any body of water that is not privately owned; i.e., any body of water that is owned by the state of West Virginia or dually owned by West Virginia and a bordering state.

3.17. "Restricted aquatic species" means a class of aquatic organisms that is prohibited from release into West Virginia waters by state and/or federal agencies.

3.18. "Special methods" means a test or tool that is not commonly used to test for general diseases but that is used to diagnose a specific disease.

3.19. "Specific pathogen-free" means an organism that, through a variety of husbandry and therapeutic methods, is known to be free of a particular disease.

3.20. "State Veterinarian" means the state animal health official, a member of the national Assembly of State Animal Health Officials who oversees and implements programs in Laboratory Services and Veterinary Services and provides support to West Virginia's animal agriculture industry, administers laws and regulations that apply to health requirements for livestock and poultry, to strive to prevent and control the spread of disease through commerce, both in state and out of state, and provide laboratory diagnostic services to prevent and control disease.

3.21. "Susceptible species" means a class of aquatic organisms known to be vulnerable to a specific disease.

§61-35-4. Freely Traded Aquatic Species for Aquaculture Importation.

4.1. Unless otherwise specified, naturally indigenous or naturalized species of aquatic organisms are to be accepted for importation into the state exclusive of restricted, protected, and genetically engineered species. Additional freely traded species must be specifically named. Freely traded species will not require a permit for importation provided that all issues and requirements regarding animal health and disease status are addressed. A list of such acceptable species will be kept by the Commissioner of Agriculture, his/her designee, and the State Veterinarian, and changes to said list will be designated by those persons and/or the Aquaculture Advisory Board.

4.2. Other aquatic species not included in the aforementioned freely traded list would require an importation permit issued by the West Virginia Department of Agriculture. Aquatic life granted an importation permit must fulfill all animal health requirements before importation into the state may occur. Upon receipt of a permit application, the West Virginia Department of Agriculture would release the application to the West Virginia Division of Natural Resources. A joint review of the importation permit would be conducted, and if approved by both agencies an importation permit would be granted to the applicant. Import permits for species not on the list of freely traded aquatic organisms must be granted for each transportation event, regardless of the history of previous imports by that producer.

§61-35-5. Health Requirements for Aquaculture Importation.

5.1. There are numerous infectious diseases that threaten not only the health of aquaculture species, but may also threaten the viability of the entire aquaculture industry. As such, a framework for aquatic animal health has been established by the Aquaculture Advisory Board to ensure that aquaculture species being imported into the state of West Virginia can be identified as specific pathogen-free. This framework is built upon four distinct categories, each with its own corresponding list of viral, bacterial, and/or parasitic disease(s) that are subject to the requirements of that category. The list for each disease category will be upheld by the Commissioner of Agriculture, his/her designee, and the State Veterinarian. Diseases may be added to or removed from each list as directed by those persons and/or the Aquaculture Advisory Board. Not all aquatic species are susceptible to the diseases listed in the four categories. Before importation of any susceptible species or products of those species (such as viable eggs or sperm) may occur, proper diagnostic testing at an accredited laboratory must be performed to determine specific pathogen-free status of the facility from which the animals will be moved. The four categories are as follows:

5.1.a. Category I, diseases not present in West Virginia, therefore absolute avoidance is required. To ensure absolute avoidance, the following directives will be upheld:

5.1.a.i. Mandatory farm certification or screening of individual lots will be conducted.

5.1.a.ii. Detection in screened animals will result in the denial of permission to import.

5.1.a.iii. Any special methods required for detection of listed diseases shall be used.

5.1.b. Category II, diseases not present in West Virginia therefore absolute avoidance is required. Only those aquatic animals originating from a state or zone where listed diseases have been reported will be tested. The following directives will be upheld:

5.1.b.i. Mandatory farm certification or screening of individual lots will be conducted.

5.1.b.ii. Detection in screened animals will result in the denial of permission to import.

5.1.b.iii. Any special methods required for detection of listed diseases shall be used.

5.1.c. Category III, diseases that are currently present in West Virginia but are not desirable for importation. The spread of these pathogens such that other producers or West Virginia's natural resources are impacted will be avoided. The long term goal is elimination of these pathogens from aquaculture facilities within the state. Avoidance of these diseases will be recommended, but not mandatory. The following directives will be upheld:

5.1.c.i. Mandatory farm certification or screening of individual lots will be conducted.

5.1.c.ii. The detection of these pathogens in screened aquatic species will not constitute cause for denial of importation, but importation of animals showing clinical signs will be discouraged.

5.1.c.iii. Special methods for the detection of listed diseases will not be required.

5.1.d. Category IV, special cases. The State Veterinarian may issue at their discretion such permit as they are authorized to issue, fix the terms thereof, and revoke at their pleasure.

5.2. For legal importation of species intended for aquaculture to occur, shipments must be accompanied by several documents demonstrating the health status of those animals. Those documents include the following:

5.2.a. An Owner-Shipper Statement (OSS) completed by the consigner (seller) of the aquatic species intended for importation into the state of West Virginia. This document, provided by the West Virginia Department of Agriculture, shall serve as a notice of pending importation and shall contain contact information of the consigner, descriptive information of the aquatic species being imported, and a verification of health of those aquatic organisms. A copy of this document must be mailed to the West Virginia Department of Agriculture upon completion of the sale to a West Virginia aquaculture producer. An additional copy of the document must accompany the shipment of aquatic species upon importation into the state of West Virginia. A new document must be completed for every shipment of aquatic species into West Virginia.

5.2.b. A health certification verifying that susceptible aquatic species within the originating facility have been tested by an accredited laboratory for the diseases listed in

Categories I-IV within twelve months of the date of import. The testing report must be dated within twelve months of the date of import; any document dated prior to twelve months of the date of importation will be considered expired.

§61-35-6. Fish Testing Requirements.

6.1 The testing methods necessary to complete the testing report required for importation of aquatic species into West Virginia should be performed in the following manner:

6.1.a. All lots of aquatic species at an aquaculture facility shall be tested.

6.1.a.i. The collection of samples from each lot of aquatic species shall be based upon an assumed prevalence level of five percent (5%) and a 95 percent (95%) confidence level of detecting at least one infected fish in the lot for the diseases listed under Categories I-IV (61-x-5.1.a-d). All lots on the facility must be sampled within a 30 day window of time; i.e., every lot on the facility must be tested within 30 days of the date that the first lot was sampled.

6.1.a.ii. If all lots at a facility are not sampled within 30 days of the date that the first sample was collected, then all sampling at the facility shall be repeated.