

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

Do Not Mark In This Box

FILED

2015 APR 14 P 3:04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 199

SECTION 64-9-10, PASSED ON March 14, 2015

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: June 1, 2015



Authorized Signature

**TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE**

**SERIES 35
AQUACULTURE IMPORTATION**

FILED

2015 APR 14 P 3:04

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. -- April 14, 2015

1.4. Effective Date. -- June 1, 2015

§61-35-2. Purpose.

2.1. The purpose of this rule 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.

2.2. The West Virginia Department of Agriculture is 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 this rule and to ensure that the guidelines in it are observed.

2.3. A person releasing aquaculture species into public waters shall abide by the health requirements listed in §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 meets the requirements established by a specific laboratory-associated governing body.

3.2. "Aquaculture Advisory Board" means the board created under the Aquaculture Development Act §19-32-5 of the West Virginia Code and shall consist of educated and knowledgeable individuals from various backgrounds authorized by the Aquaculture Development Act §19-32-5 of the West Virginia Code to review policies, laws, rules and

regulations affecting aquaculture and to recommend changes to encourage aquaculture development in West Virginia

3.3. “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.

3.4. “Diagnostic testing” means the use of laboratory analysis to determine the disease status of an aquatic organism.

3.5. “Freely traded aquatic species” means species of aquatic organisms that, if all import health requirements are met, may be imported into West Virginia without an importation permit

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

3.7. “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.

3.8. “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.

3.9. “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.

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

3.11. “Originating facility” means the establishment from which a group of aquatic species originated.

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

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

3.14. “Protected aquatic species” means a class of aquatic organisms that is guarded from human disturbance by state or federal law.

3.15. "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.

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

3.17. "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.

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

3.19. "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; provides support to West Virginia's animal agriculture industry; administers laws, and rule 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.

3.20. "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, a person may import naturally indigenous or naturalized species of aquatic organisms into the state, except for restricted, protected and genetically engineered species. The freely traded species must be specifically named and do not require a permit for importation if all issues and requirements regarding animal health and disease status are addressed. The Commissioner of Agriculture, his or her designee, and the state Veterinarian shall keep a list of acceptable species. The Aquaculture Advisory Board may make recommendations to the Commissioner and the State Veterinarian.

4.2. Other aquatic species not included in the freely traded list described in Subsection 4.1 of this section require an importation permit issued by the West Virginia Department of Agriculture. A person granted an importation permit shall ensure the aquatic life meets all animal health requirements before importation into the state. Upon receipt of a permit application, the Department shall forward 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. Regardless

of the history of previous imports by that producer he or she must apply for an importation permit for each transportation event.

§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 parasitic diseases that are subject to the requirements of that category. The list for each disease category shall be maintained by the Commissioner of Agriculture, or his or her designee, and the State Veterinarian. They, may add or remove diseases from each list. 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 are not present in West Virginia. To ensure that diseases in this category are not imported into the state the following directives shall apply:

5.1.a.i. A veterinarian or certified trained personnel shall conduct mandatory farm certification or screening of individual lots.

5.1.a.ii. The Commissioner shall refuse to issue an importation permit for any screened animals in which a Category I disease is detected.

5.1.a.iii. A veterinarian or certified trained personnel may require special methods for detection of listed diseases.

5.1.b. Category II diseases are not present in West Virginia. Only those aquatic species originating from a state or zone where listed diseases have been reported will be tested. To ensure that diseases in this category are not imported into the state the following directives shall apply:

5.1.b.i. A veterinarian or certified trained personnel shall conduct mandatory farm certification or screening of individual lots.

5.1.b.ii. The Commissioner shall refuse to issue an importation permit for any screened animals in which a Category II disease is detected.

5.1.b.iii. A veterinarian or certified trained personnel may require special methods for detection of listed diseases.

5.1.c. Category III diseases 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 shall apply:

5.1.c.i. A veterinarian or certified trained personnel shall conduct mandatory farm certification or screening of individual lots.

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. All shipments of aquaculture species for importation shall be accompanied by the following documents demonstrating the health status of those animals.

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 Department, serves as a notice of pending importation and shall contain contact information for the consigner, descriptive information of the aquatic species being imported, and a verification of health of those aquatic animals. A copy of this document must be mailed to the Department upon completion of the sale to an aquaculture producer, and must be provided to the Department five (5) days prior to shipment. An additional copy of the document must accompany the shipment of aquatic species upon importation into this state. The consigner shall complete a new document for every shipment of aquatic species into this state.

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.

§61-35-6. Aquatic Animal Testing Requirements.

6.1 The proper diagnostic testing required for importation of aquatic species into West Virginia shall be performed in the following manner:

6.1.a. A Veterinarian or trained and certified personnel shall certify that lots of aquatic species at an aquaculture facility were tested.

6.1.a.i. The collection of samples from each lot of aquatic species 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 §61-35-5 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.