

DEPARTMENT OF AGRICULTURE

Markets Division

RULE PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE COLORADO AQUACULTURE ACT

8 CCR 1204-7

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

I. DEFINITIONS

- A. "Aquaculture Permit" issued for brokering live native or nonnative fish or viable gametes (eggs or sperm), or for the operation of a fish production facility for the purposes of propagating, selling, trading or transporting live fish or viable gametes or charges customers to fish.
- B. "Broker" means an agent who negotiates contracts of purchase and sale.
- C "Commissioner" means Commissioner of the Colorado Department of Agriculture.
- D "Department" means Colorado Department of Agriculture.
- E "Division" means Colorado Division of Wildlife.
- F. "Transport" means the movement of live fish or viable gametes off of an individual's, partnership's, corporation's, or other legal entity's property or the movement of live fish or viable gametes from one watershed to another.

II. PERMIT REQUIREMENTS

- A. No aquaculturist may propagate, sell, broker, trade or transport or attempt to propagate, sell, broker, trade or transport any live fish or viable gametes unless the aquaculture facility which said person operates first obtains an aquaculture permit as provided in these rules.
- B. Non-compliance with the provisions of this rule which pertains to aquaculture permits may result in withholding, denying, suspension or revocation of the permit pursuant to the provisions of § 35-24.5 110. The permittee whose permit is withheld, denied, suspended, or revoked, as required by the Commissioner, shall lawfully dispose of fish and viable gametes held pursuant to the permit. Fish and viable gametes must be disposed of by the owner or his agent within 6 months if so ordered by the Commissioner.

III. PERMITTED ACTIVITIES

A. Aquaculture Permit

Except as otherwise prohibited by law, a permittee may broker live native or nonnative fish or viable gametes (eggs or sperm) or operate a fish production facility for the purposes of propagating, selling, trading or transporting live fish or viable gametes. Several satellite stations of a fish production facility may operate under one aquaculture permit provided all such satellite stations are listed on such permit. All production facilities that sell or stock live fish shall obtain an annual fish health inspection performed by a qualified fish pathologist, unless inspection services are not available. The permittee shall provide a copy of such inspection report to the Department.

IV. APPLICATION AND PERMITTING PROCEDURE

- A. Applicants for a permit and renewal of a permit shall apply for required permits on forms provided by the Department accompanied by funds in the amount of one hundred dollars (\$100.00). Each applicant shall submit a signed, complete, accurate, and legible application. An additional fee is not required to amend a permit (i.e., add more species).
- B. Aquaculture permits are non-transferable and shall expire December thirty-first (31) of each year.
- C. Applications for renewal of a permit must be postmarked on or before December 31 of the year preceding the year for which renewal is sought.
- D. Applicants shall list the species of fish they desire to possess.
- E. A Division employee shall make a personal inspection of the applicant's facilities when considering an initial application to determine compliance with these regulations.
- F. An aquaculture permit will not be issued for waters which have been stocked with fish at public expense within five (5) years prior to application unless: (a) all fish stocked in such waters have been removed or eliminated (e.g., by winter kill) or (b) the applicant has negotiated with the Division for purchase, or salvage of state-stocked fish. All waters shall be equipped with screening installations, if necessary, to prevent fish in public waters or private lakes from entering the permitted production facilities or licensed lake(s), or fish in the private production facilities or private lake(s) from entering public waters.
- G. 1. An application for a permit issuance or renewal may be denied in its entirety or limited as to species authorized to be kept if necessary to protect Colorado's wildlife resources or cultured aquatic stock from a negative impact such as;
 - a. Potential habitat competition, damage or destruction.
 - b. Disruption of migration, breeding, or rearing and survival of young.
 - c. Predation.
 - d. Danger to humans, domestic livestock or property.
 - e. Disease.
- 2. An aquaculture permit shall not be denied, however, for species endemic to the local area of the facility, or for species generally accepted as not having negative impact to wildlife resources.
- 3. Written notification of denial will be furnished to the applicant stating the reasons for denial within sixty (60) days of the receipt of a sufficient application.
- 4. Review of a denial shall be in accordance with section 24-4-104 & 105, C.R.S., as may be amended.

V. INSPECTION

The permittee must allow the inspection of fish or viable gametes by persons authorized by the Commissioner to enforce these regulations, at any reasonable time. Records required by these regulations shall be made available to such authorized Department or Division employees during regular business hours.

VI. RECORD KEEPING

- A. Acquisition: All aquaculture permittees shall maintain annual records documenting the acquisition of fish and viable gametes. The records shall show the name and address of the business or person of whom such fish and viable gametes were obtained, date of acquisition and species, number and size of the fish and viable gametes obtained. All records will be retained for the period of ownership of the fish or viable gametes and for three (3) years after disposition.
- B. When live fish or viable gametes are sold, traded, taken or otherwise disposed of from an aquaculture facility, the permittee or operator shall, at the time of transfer of possession, give an invoice to the person receiving such fish or viable gametes. Such invoice shall contain the permittee's name and such invoice shall show the name and address of the recipient, the license number or designation of the receiving facility or lake, date of delivery, species, number and size of the fish or viable gametes.
- C. Copies of all invoices for aquaculture permits shall be maintained by the permittee for three years.
- D. All original records must be kept at the same location as the production facility or satellite location or at the Colorado address of the permittee.

VII. SPECIAL REGULATIONS

Most Restrictive Federal or State Law - In all cases of permitting, taking, possession, importation, exportation, release, marking and sale of cultured aquatic stock, the most restrictive state or federal law shall apply.

VIII. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

A. March 30, 1992 – Effective April 30, 1992

The Statement of Basis, Specific Statutory Authority and Purpose for this rulemaking activity is no longer in the Department's files.

B. February 17, 1998 – Effective April 30, 1998

These rules are adopted pursuant to 35-24.5-105(1) and 35-24.5-106(1).

These recommended changes are the result of a review of the existing regulation by the Colorado Aquaculture Board. This review resulted in both technical and operational changes being recommended.

C. May 13, 2008 – Effective June 30, 2008

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Aquaculture Act (the "Act"), §35-24.5-107(1)(a),(c), and 5, C.R.S.

Purpose

The purpose of these proposed rules is to:

1. Require all fish in Colorado aquaculture holding and aquaculture production facilities to be certified as Viral Hemorrhagic Septicemia ("VHS")-free in accordance to Colorado Division of Wildlife Chapter 0 Regulations.
2. Reduce the aquaculture facility permit fee from \$150.00 to \$100.00.

3. Correct several typographical errors, delete obsolete language, and to add a section to contain the statements of basis, specific statutory authority and purpose.

Factual and Policy Issues

The factual and policy issues encountered when developing these rules include:

1. Rule III(A) currently requires all production facilities that sell or stock live salmonids to obtain an annual fish health inspection. In March of 2008 the Colorado Division of Wildlife expanded its Viral Hemorrhagic Septicemia ("VHS")-free certification requirements for salmonids to include testing for all species of fish. The requirement applies to all in-state aquaculture holding and aquaculture production facilities and is intended to maintain Colorado's VHS-free status. CDA proposes to amend Rule III(A) to expand the VHS-free certificate carrying requirement to all fish in Colorado aquaculture holding and aquaculture production facilities.
2. Section 35-24.5-106(1)(a), C.R.S. allows for the Colorado Aquaculture Board to consider and recommend to the Commissioner rules concerning fees to fund all direct and indirect costs of the administration and enforcement of the Act. CDA recommends a reduction in the aquaculture facility permit yearly fee from \$150.00 to \$100.00 because the current level of administration of the program would remain intact, and there would be a reduction in cost to the aquaculture industry.
3. After review of these Rules, the Aquaculture Board found three typographical errors that needed to be corrected and, if these amendments are passed, an obsolete sentence that needs to be struck from the Rules.

Editor's Notes

History

Entire Rule eff. 06/30/2008.