

# COLORADO DEPARTMENT OF AGRICULTURE

## Animal Industry Division

### Rules Pertaining to the Administration and Enforcement of the Colorado Aquaculture Act

#### 8 CCR 1201-21

#### I. DEFINITIONS

- A. "Aquaculture Facility Permit" means a permit issued by the Commissioner to operate an aquaculture facility as defined in § 35-24.5-103(2), C.R.S.
- B. "Aquatic Organism(s)" means an individual or member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, or aquatic insect or other aquatic invertebrate. It includes the viable gametes (eggs or sperm) of an aquatic organism. This definition is set forth at § 35-24.5-103(5), C.R.S.
- C. "Broker" means an agent who negotiates contracts of purchase and sale of live aquatic organisms.
- D. "Commissioner" means the Commissioner of the Colorado Department of Agriculture.
- E. "Department" means the Colorado Department of Agriculture.
- F. "Division" means the Colorado Division of Parks and Wildlife.
- G. "Transport" means the movement of live aquatic organisms from an individual's, partnership's, corporation's, or other legal entity's property or the movement of live aquatic organisms from one watershed to another.

#### II. PERMIT REQUIREMENTS

- A. Except as provided herein, no person may propagate, sell, broker, trade or transport or attempt to propagate, sell, broker, trade or transport any live aquatic organisms unless the aquaculture facility which said person operates first obtains an aquaculture permit as provided in these rules.
- B. The following persons do not need an aquaculture permit:
  - 1. A broker who never takes physical possession of live aquatic organisms; or
  - 2. A person who
    - (a.) only sells directly to individuals live aquatic organisms for use as food; and
    - (b.) when those organisms are from a holding tank that is not hydrologically connected to the waters of the state; and

- (c.) when that person does not propagate, transport, or release live aquatic organisms into the waters of the state.
3. A bait dealer, who sells live aquatic organisms for use as bait, if:
    - (a.) all the live aquatic organisms the bait dealer sells are obtained from a source that has been inspected and certified free of disease in accordance with Division regulations and policies; and
    - (b.) the dealer maintains records and provides receipts to customers as required in section VI.E. of these rules; and
    - (c.) the dealer registers on a form provided by the Commissioner.
  4. Anyone exempted from such requirement by §§ 35-24.5-109(5) and (6), C.R.S.
  5. A person who transports legally obtained live aquatic organisms for non-commercial personal use or consumption so long as such live aquatic organisms are not released into the waters of the state and so long as the live aquatic organisms are not species whose possession the Division prohibits.

### **III. PERMITTED ACTIVITIES**

Except as otherwise prohibited by law, a permittee may sell, trade, transport or broker live aquatic organisms or operate a production facility for the purposes of propagating, selling, trading or transporting live aquatic organisms. Several satellite stations of a 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 aquatic organisms must obtain an annual health inspection performed by a qualified fish pathologist in accordance with Division regulations and policies.

### **IV. APPLICATION AND PERMITTING PROCEDURE**

- A. Applicants for an aquaculture facility permit or renewal of a permit must apply for required permits on forms provided by the Department accompanied by payment of one hundred dollars (\$100.00). Each applicant must 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 facility permits are non-transferable and shall expire December 31 of each year.
- C. Applications for renewal of an aquaculture facility permit must be postmarked on or before December 31 of the year preceding the year for which renewal is sought.
- D. Applicants must list the species of aquatic organisms that they intend 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. The Board will not issue an aquaculture permit for waters that have been stocked with aquatic organisms at public expense within five (5) years prior to application unless:

1. all aquatic organisms stocked in such waters have been removed or eliminated (e.g., by winter kill); or
  2. the applicant has negotiated with the Division for purchase or salvage of state-stocked aquatic organisms. All waters shall be equipped with screening installations, if necessary, to prevent aquatic organisms in public waters or private lakes from entering the permitted production facilities or lake(s), or prevent aquatic organisms in the permitted production facilities or lake(s) from entering public waters.
- G. An application for issuance or renewal of an aquaculture permit 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:
1. Potential habitat competition, damage or destruction;
  2. Disruption of migration, breeding, or rearing and survival of young;
  3. Predation;
  4. Danger to humans, domestic livestock or property; or
  5. Disease.
- H. An aquaculture facility permit may 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.
- I. In the event of a denial of application for permitting or renewal, the Board shall provide written notification to the applicant stating the reasons for denial within sixty (60) days of the receipt of a completed application.
- J. Review of any denial shall be conducted in accordance with §§ 24-4-104 and 105, C.R.S.

## **V. INSPECTION**

The permittee shall allow the inspection of aquatic organisms by persons authorized by the Commissioner to enforce these regulations at any reasonable time. A permittee shall make records required by these regulations available to such authorized Department or Division employees during regular business hours.

## **VI. RECORD KEEPING**

- A. All aquaculture facility permittees shall maintain records documenting the acquisition of aquatic organisms. The records must show the name and address of the business or person from whom such aquatic organisms were obtained, their date of acquisition, and their species, number and size. The permittee shall retain all records for the period of ownership of the aquatic organisms and for three (3) years after disposition.
- B. When live aquatic organisms 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 aquatic organisms. Such invoice must contain the permittee's name, and such invoice must 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 aquatic organisms.

- C. The permittee shall maintain copies of all invoices for aquaculture facility permits for three (3) years.
- D. The permittee shall maintain all original records at the same location as the production facility or satellite location or at the Colorado address of the permittee.
- E. Bait dealers who are exempt from the aquaculture permit requirement pursuant to section II of these rules shall:
  - 1. maintain records of all acquisitions of live aquatic organisms. The records must show the name and address of the business or person from whom such aquatic organisms were obtained, their date of acquisition, and their species, number, and size; and
  - 2. provide each purchaser of live aquatic organisms with a written receipt stating the seller's name, address, the date of sale, and the species and number sold.

## **VII. SPECIAL REGULATIONS**

In all cases of permitting, taking, possession, importation, transportation, exportation, release, marking and sale of cultured aquatic stock or legally obtained wild aquatic organisms, the most restrictive state or federal law shall apply.

## **VIII. NON-COMPLIANCE**

Non-compliance with the provisions of this rule constitutes grounds for denial, suspension or revocation of an aquaculture facility permit pursuant to the provisions of § 35-24.5-110 C.R.S. Any permittee whose permit is denied, suspended, or revoked, by the Commissioner shall lawfully dispose of all live aquatic organisms held pursuant to the permit in the manner and within the time period ordered by the Commissioner.

## **IX – XII. RESERVED**

## **XIII. 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.

### **D. December 9, 2008 – Effective January 30, 2009**

#### Statutory Authority

This copy of the text of the “Rules Pertaining to the Administration and Enforcement of the Colorado Aquaculture Act” is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1201-21 and may be obtained from the following website: <http://www.sos.state.co.us/CCR/Welcome.do>.

The amendments to these rules are proposed to the Commissioner of the Colorado Department of Agriculture (“Commissioner”) for his adoption pursuant to his authority under the Aquaculture Act (the “Act”), § 35-24.5-107(1) and (5), C.R.S.

The purpose of these proposed rules is to:

1. Define “aquaculture facility permit” to comport with the current definition as codified within the Aquaculture Act, § 35-24.5-103(2), C.R.S.
2. Define the common, biological term “Gamete(s)” as it specifically relates to fish and aquaculture.
3. Clarify aquaculture facility permitting requirements for the following groups of persons in the following ways:
  - a. To articulate that a broker who never physically possesses a live fish or viable gamete does not need a permit;
  - b. To create an exemption for those persons who sell live fish to individuals from grocery stores, fish markets, and restaurants, but to maintain the requirement that those who transport live fish to these types of outlets must have a permit;
  - c. To distinguish bait dealers who propagate, transport, or release live fish or viable gametes into state waters from those who do not such that only bait dealers who propagate, transport, or release live fish or viable gametes into state waters need a permit. Those who do not undertake these specified activities do not need such a permit as long as they obtain their live fish and viable gametes from a Division fish health certified source, maintain records of fish acquisition, and provide their customers receipts for sale of live fish and viable gametes;
  - d. To maintain the exemption from requiring a permit for those who hold live fish or viable gametes in closed aquaria or backyard ponds, including those facilities that are municipal, state, or federal facilities or any accredited zoological garden; and
  - e. To clarify that persons transporting live fish or viable gametes that have been legally obtained for a non-commercial, personal use in aquaria or backyard ponds or as bait do not need a permit.
4. To articulate and clarify the results of non-compliance with the provisions of the rule and to allow the Commissioner to set the time limit for disposal of live fish and viable gametes in the event that a permit is denied, suspended, or revoked.
5. To establish record-keeping requirements of bait dealers who are exempt from the permitting requirements of the Aquaculture Act.
6. To move this rule within the Code of Colorado Regulations from the Markets Division (8 CCR 1204-7) to the Animal Industry Division (8 CCR 1201-21) to reflect a reorganization of the Aquaculture Act to the Animals Division within the Colorado Department of Agriculture.
7. To make general changes to language within the rule to ensure consistency with the newly proposed definitions, exemptions, and other changes.

## Factual and policy issues

The factual policy issues encountered when developing these rules include:

1. The definitions of the rule are changed to provide more consistent, clear language to define that a permit is for an aquaculture facility as defined within the Aquaculture Act, § 35-24.5-101, et seq.
2. Section II.A is expanded to define more clearly who does and who does not need a permit pursuant to the Aquaculture Act. The previous definition broadly stated that no aquaculturist could engage in the described acts without a permit. The proposed language articulates five exemptions from permitting based upon a variety of factors, thus more clearly guiding the public.
3. Throughout the rule, changes in language are incorporated to clarify intent, remove obsolete provisions, and to bring the rule as a whole into conformity with the newly proposed parts.

## **E. February 15, 2013 – Effective March 30, 2013**

### Statutory Authority

The amendments to these rules are proposed to the Commissioner of the Colorado Department of Agriculture (“Commissioner”) for his adoption pursuant to his authority under the Aquaculture Act (the “Act”), § 35-24.5-107(1) and (1)(c), C.R.S.

The purpose of these proposed rules is to:

1. Define “aquatic organism” to comport with the current definition as codified within the Aquaculture Act, § 35-24.5-103(5), C.R.S.
2. Change language throughout the rule to conform terms to the new definition of “aquatic organism” and removal of the term “gamete.”
3. Define “Division” to comport with its new name, the Division of Parks and Wildlife.
4. Change language throughout the rule to conform terms to the new definition of “Division” and removal of any references to the non-existent Division of Wildlife.
5. Introduce new structure to the rules to provide ease of comprehension and application without modifying any current requirements or limitations.
6. Provide a registration process for bait dealers who are exempt from the aquaculture facility permitting process to ensure that the Department properly records them as bait dealers and thus exempt from permitting requirements.

## Factual and policy issues

The factual policy issues encountered when developing these rules include:

1. The Department continues to attempt to make these rules easier to read and more effective. The use of “aquatic organism” allowed the Department to simplify the rule to get rid of “live fish and viable gametes,” characterizing this group, generally, as “aquatic organisms.” Similarly, the

Department had to change the reference to Division of Wildlife to match its new name, Division of Parks and Wildlife.

2. Throughout the rule, the Department has used new paragraphs, indentation, and numbering to make the rule more readable and accessible. The Department has moved lists of items from paragraph form into numbered form to improve ease of access and increase reader comprehension. These changes are cosmetic in nature and do not change any regulatory requirements.
3. Because bait dealers are exempt from the permit process, the Department needed a method to identify them more quickly and simply. Thus, the Department created a system by which bait dealers could register with the Department as a “bait dealer” and avoid any confusion with regard to whether they did or did not meet the exemption status for permitting.
4. The Department created a new “Non-Compliance” section and moved already-existing language into that section, illustrating its stand-alone application.
5. These revisions incorporate changes as a result of the Department’s Regulatory Efficiency Review Process conducted in accordance with the Governor’s Executive Order D 2012-002.