

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:125. Transportation of fish.

RELATES TO: KRS 150.010, 150.170, 150.235, 150.485

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.180(6), 150.280(2).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. KRS 150.280(2) authorizes the department, by administrative regulation, to identify species of wildlife potentially damaging to native ecosystems and to prohibit the transporting or holding of that wildlife. This administrative regulation provides for control of the transportation of fish, fish eggs, live bait, and other aquatic organisms into, through, and within the state to protect the resident fish population.

Section 1. ~~Definitions.~~

~~[(1)] ["APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.]~~

~~[(2)] ["APHIS approved laboratory" means a laboratory authorized by a state, tribal, or federal primary authority to analyze aquatic animal health and perform assays for the detection of the VHS virus.]~~

~~[(3)] ["Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and not stocked into waters of the Commonwealth.]~~

~~[(4)] ["Certified VHS free facility" means a fish-rearing facility that has been certified VHS free by an APHIS approved laboratory.]~~

~~[(5)] ["Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.]~~

~~[(6)] ["VHS" means Viral Hemorrhagic Septicemia, a disease of fish.]~~

~~[(7)] ["VHS positive state" means any state in the United States, or any Canadian province, listed on the APHIS Web site www.aphis.usda.gov as being positive for Viral Hemorrhagic Septicemia (VHS).]~~

~~[(8)] ["VHS-regulated fish species" means any species of fish deemed susceptible to VHS and listed on the APHIS Web site at www.aphis.usda.gov.]~~

~~Section 2.~~ A Fish Transportation Permit shall not be required:

- (1) By an individual to transport aquarium species;
- (2) By permitted Kentucky fish propagators as established in 301 KAR 1:115, except if transporting fish into Kentucky from outside of Kentucky;
- (3) By individuals with a sport or commercial fishing license to transport legally caught bait or fish;
- (4) By individuals transporting fish purchased from a licensed live bait dealer or permitted commercial fish propagator for stocking in private waters;
- (5) By agents of the department while performing their normal duties; or
- (6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

Section 2. ~~Section 3.~~ Live Fish, Live Bait, or Other Aquatic Organisms.

- (1) All individuals, corporations, or other business entities that transport any live fish, live bait as defined in 301 KAR 1:001~~[1:132]~~, Section 1, or other live aquatic organism,

except those individuals listed in Section ~~1~~² of this administrative regulation, into, within, or through Kentucky shall have in possession a:

(a) Fish Transportation Permit, to be renewed annually by calendar year, issued in the name of the individual, corporation, or other business entity transacting the business; and

(b) Bill of lading showing the origin and destination of the organisms being transported.

(2) An individual shall also possess a Live Fish and Bait Dealers License, as established in 301 KAR 1:132, if the organisms will be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free and any prohibited species listed in 301 KAR 1:122 shall not be present.

(4) If any VHS-regulated fish species from a VHS positive state are transported and unloaded in Kentucky, in addition to the requirements established in subsections (1), (2), and (3) of this section, the following requirements shall apply:

(a) If the origin of the VHS-regulated fish species is from a certified VHS free facility, the individual shall possess a copy of the documentation showing that the facility is VHS free.

(b) If the origin of the VHS-regulated fish species is from a non-certified VHS free facility:

1. The VHS-regulated fish species shall only be unloaded at a state inspected fish-processing plant or research and diagnostic laboratory;

2. The individual shall possess a copy of the APHIS VS 1-27 permit for Movement of Restricted Animals issued by an APHIS Veterinary Services office or by a state, tribal, or federal accredited veterinarian; and

3. Water from the fish transportation tank shall only be discharged into a municipal sewage system that includes wastewater~~[waste water]~~ disinfection or into a non-discharging~~[nondischarging]~~ settling pond devoid of fish.

(5) If the origin of the VHS-regulated fish species is from a VHS positive state and are only being transported through Kentucky then only the requirements established in subsections (1) and (3) of this section and Section ~~3~~⁴ of this administrative regulation shall apply.

(6) VHS-regulated fish species being transported from a known VHS positive state into, within, or through Kentucky that do not meet all requirements established in Sections ~~2~~³ and ~~3~~⁴ of this administrative regulation shall be confiscated for disposal purposes.

Section 3. ~~[Section 4.]~~ Fish Transportation Permit Application.

(1) If an individual, corporation, or other business entity wants to transport fish, live bait, or other aquatic organisms into, within, or through Kentucky they shall submit a completed Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR ~~5:022~~^{3:022}.

(2) If an individual, corporation, or other business entity wants to transport VHS-regulated fish species into or through Kentucky from a VHS positive state, in addition to the requirements established in subsection (1) of this section they shall also submit a:

(a) Copy of the documentation showing that the facility that the VHS-regulated fish species are coming from is certified as being VHS free; or

(b) Copy of the APHIS VS 1-27 permit if the facility is not certified as being VHS free.

(3) An individual, corporation, or other business entity shall not transport fish, live bait, or other aquatic organisms into, within, or through Kentucky without an approved Fish Transportation Permit in possession.

(4) If an individual, corporation, or other business entity desires to transport VHS-regulated fish species from a facility in a VHS positive state that is currently not listed on their Fish Transportation Permit, the permittee shall:

(a) Notify the department; and

(b) If approved by the commissioner based on risk of contagion to fish of the Commonwealth be sent an updated Fish Transportation Permit listing the approved facility.

Section 4. ~~[Section 5.]~~ Transportation of Roe-Bearing Fish and Roe.

(1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as established in 301 KAR 1:155 into, within, or through Kentucky, shall have in possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester's name and commercial fishing license and roe-bearing harvester's permit numbers listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155, Section ~~8(4)(c)~~~~[4(4)(d)3]~~.

Section 5. ~~[Section 6.]~~ All officers and agents of the department have the authority to demand of the transporter, at any time, that prohibited species listed in 301 KAR 1:122 shall not be present and proof that the transporter possesses all appropriate permits and documentation.

Section 6. ~~[Section 7.]~~ Fish Transportation Permit Denial, Revocation, and Nonrenewal.

(1) The department shall deny a Fish Transportation Permit for transportation of aquatic organisms determined potentially damaging to Kentucky's native ecosystems.

(2) The department shall revoke and not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they:

(a) Falsify the documentation needed to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit; or

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

(3) ~~[(2)]~~ An individual, corporation, or other business entity whose Fish Transportation Permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(4) ~~[(3)]~~ A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(5) ~~[(4)]~~ Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(6) ~~[(5)]~~ The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 7. ~~[Section 8.]~~ Incorporated by Reference.

(1) "Application for Fish Transportation Permit", ~~2023~~~~[2008]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

APPROVED BY AGENCY: July 13, 2023

FILED WITH LRC: July 14, 2023 at 11:00 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2023, at 11:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation controls the transportation of fish, fish eggs, live bait and other aquatic organisms into, through, and within the state.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to protect the resident fish populations of Kentucky by preventing the unwanted spread of invasive aquatic organisms or diseases.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. KRS 150.280(2) authorizes the department, by administrative regulation, to identify species of wildlife potentially damaging to native ecosystems and to prohibit the transporting or holding of these wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation fulfills the purpose of KRS 150.025(1)(c) by regulating the transportation of fish and other aquatic organisms that are transported into, through, and within Kentucky. It fulfills the purpose of KRS 150.180(6) by prohibiting fish that either may become a menace to the state or are carrying a disease. It also fulfills the purpose of KRS 150.280(2), by allowing the department to deny a transportation permit for transportation of aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment further clarifies in administrative regulation that the department may deny a transportation permit for transportation of aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems. A non-substantive change was also made to the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to prevent the spread of non-native or invasive aquatic organisms in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes:

See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes:

See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

All individuals applying for a transportation permit to transport aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems will be affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Those regulated entities in question (3) will not be allowed to transport aquatic organisms potentially damaging to Kentucky's aquatic ecosystems

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will be no cost incurred by those entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Compliance will help prevent the unwanted spread of non-native aquatic organisms in Kentucky's waters.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis:

There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering was not applied because all individuals wishing to transport aquatic organisms that are determined to be potentially damaging to Kentucky's native ecosystems will be treated the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. KRS 150.280(2) authorizes the department, by administrative regulation, to identify species of wildlife potentially damaging to native ecosystems and to prohibit the transporting or holding of that wildlife.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

Approximately \$1,700 will be generated from transportation permits for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

Approximately \$1,700 will be generated from transportation permits in subsequent years.

(c) How much will it cost to administer this program for the first year?

It will cost approximately \$1,000 to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years?

It will cost approximately \$1,000 to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There will be no anticipated cost savings for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There will be no anticipated cost savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

There will be no additional costs for the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

There will be no additional costs for the regulated entities in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):`

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will have no major economic impact as defined above.