

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State  
**John Thurston**  
500 Woodlane, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



For Office  
Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Game and Fish Commission

Department Legal Division

Contact James Goodhart, General Counsel E-mail james.goodhart@agfc.ar.gov Phone 501-223-6327

Statutory Authority for Promulgating Rules Amendment 35

Rule Title: 35.12 Aquatic Animal Health Certification Requirement For Importation

| Intended Effective Date<br>(Check One)   |                                       | Date                          |
|--|---------------------------------------|-------------------------------|
| <input type="checkbox"/> Emergency (ACA 25-15-204)   | Legal Notice Published .....          | Aug. 15-18, Sept. 23-15, 2020 |
| <input type="checkbox"/> 10 Days After Filing (ACA 25-15-204)  | Final Date for Public Comment .....   | October 14, 2020              |
| <input checked="" type="checkbox"/> Other <u>January 1, 2021</u><br>(Must be more than 10 days after filing date.) | Reviewed by Legislative Council ..... | NA                            |
|  | Adopted by State Agency .....         | October 15, 2020              |

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

|   |  |                                 |
|---|--|---------------------------------|
| <u>April M. Soman</u><br>Contact Person | <u>April.Soman@agfc.ar.gov</u><br>E-mail Address | <u>October 19, 2020</u><br>Date |
|---|--|---------------------------------|

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted

~~in Substantial Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. Pursuant to 2011 decision rendered by the Pulaski County Circuit Court and 2000 opinion by the Arkansas Attorney General, the rulemaking requirements in the Arkansas Administrative Procedures Act cannot be constitutionally applied to the AGFC. Nevertheless, the AGFC does substantially comply with the rulemaking provisions under Ark. Code Ann. section 25-15-204 for public notice, opportunity for comment, and filing of all regulations adopted by the Commission.~~

in Substantial Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. Pursuant to 2011 decision rendered by the Pulaski County Circuit Court and 2000 opinion by the Arkansas Attorney General, the rulemaking requirements in the Arkansas Administrative Procedures Act cannot be constitutionally applied to the AGFC. Nevertheless, the AGFC does substantially comply with the rulemaking provisions under Ark. Code Ann. section 25-15-204 for public notice, opportunity for comment, and filing of all regulations adopted by the Commission.

s/s James F. Goodhart

|                                     |   |
|-------------------------------------|---|
| <u>501-223-6327</u><br>Phone Number | <u>James.Goodhart@agfc.ar.gov</u><br>E-mail Address |
| <u>General Counsel</u><br>Title     |   |
| <u>October 19 , 2020</u><br>Date    |   |

# **Arkansas Game and Fish Commission**

## **Code Book**

**The regulations in this Code Book are hereby adopted by the Arkansas State Game and Fish Commission under authority of Amendment 35 to the Constitution of the State of Arkansas. All laws, rules, regulations, or orders in conflict with the regulations in this Code Book are hereby repealed by the Arkansas State Game and Fish Commission.**

## **35.12 Permit Required To Possess Silver Carp, Bighead Carp, Diploid Black Carp, Or European Rudd**

NEW TITLE: Aquatic Animal Health Certification Requirement For Importation

It is unlawful to import, transport, or otherwise receive live fish or fertilized eggs from any source outside of Arkansas without a valid Fish Health Disease-Free certification, issued following screening and confirmatory testing conducted as described in the inspection section of the most recent edition of the "American Fisheries Society - Fish Health Section Blue Book" or the most recent edition of the World Organization for Animal Health "Manual of Diagnostic Tests for Aquatic Animals," or conducted according to approved protocols in a laboratory listed by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service that has been approved to test for aquatic animal pathogens, or in a USDA NAHLN laboratory by an official NAHLN protocol. See Addendum I1.00 for specific requirements.

### **EXCEPTIONS:**

- A. Channel Catfish (*Ictalurus punctatus*), Blue Catfish (*Ictalurus furcatus*), and Hybrid Catfish (*Ictalurus furcatus X Ictalurus punctatus*) for commercial "foodfish" production may be imported by permitted Resident fish farmers from permitted Non-resident fish farms located in the state of Mississippi, in the area West of Interstate Hwy 55 and North of Interstate Hwy 20, without a health certificate, provided such fish remain on the receiving facility's premises, except to go directly to a terminal processing facility. Exclusions for these species do not apply for fish destined for recreational or other stocking purposes.
- B. Species listed as threatened, endangered, or species of greatest conservation concern may utilize a sentinel species from the same genus, which are located in the same water source.
- C. A Certificate of Veterinary Inspection will be accepted in lieu of health certifications for educational display purposes (e.g. zoos, public aquaria, museums, etc.) where specimens remain permanently in captivity in a closed aquarium system.

**PENALTY:** Class 3

FINANCIAL / ECONOMIC IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY  
(Attach additional pages if needed)

DEPARTMENT: Arkansas Game & Fish Commission

DIVISION: Fisheries

PERSON COMPLETING THIS STATEMENT: Ben Batten

TELEPHONE #: 501-223-6300

FAX #: 501-223-6372

EMAIL:

ben.batten@agfc.ar.gov

SHORT TITLE OF THIS RULE: Live Fish Trade Regulations Adoption

- Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes: No: **X**
- Do you believe that the development of a financial impact statement is so speculative as to be cost prohibitive? Yes: No: **X** If "Yes", please explain:
- If the purpose of this rule is to implement a **federal** rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

| <u>Current Fiscal Year</u> |        | <u>Next Fiscal Year</u> |        |
|----------------------------|--------|-------------------------|--------|
| General Revenue            | \$     | General Revenue         | \$     |
| Federal Funds              | \$     | Federal Funds           | \$     |
| Cash Funds                 | \$ N/A | Cash Funds              | \$ N/A |
| Special Revenue            | \$     | Special Revenue         | \$     |
| Other (Identify)           | \$     | Other (Identify)        | \$     |
| Total                      | \$     | Total                   | \$     |

- What is the total estimated cost by fiscal year to any **party** subject to the proposed, amended, or repealed rule? (Estimated cost includes fees, administrative penalties, reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.) Identify the **party** subject to the proposed rule, and explain how they are impacted.

Current Fiscal Year: \$ N/A      Next Fiscal Year: \$ N/A

Party Subject to Rule: **Live Fish Trade Industry**

Effect on Party Subject to Rule: **Yearly increase of \$25 for license fee renewal; formerly the fee was one-time with no renewal fee.**

- What is the total estimated cost by fiscal year to the **agency** to implement this rule? Explain the financial benefit to the agency from implementing this rule.

Current Fiscal Year: \$ N/A      Next Fiscal Year: \$ N/A

Financial Benefit to Agency: N/A

- Do alternative means exist for accomplishing the objectives of the rules that might be less burdensome to small business? Yes: No: **X**

Why were such alternatives not proposed:

- Compare this rule with federal and state counterparts:

**ARKANSAS GAME AND FISH COMMISSION**  
Little Rock, Arkansas

MINUTE ORDER NO: 20-052 SUBJECT: 2021 Live Fish Trade Regulations  
 DATE PASSED: October 15, 2020  
 PAGE 1 of 1 PAGES LOCATION: Statewide

**WHEREAS,** the Arkansas Game and Fish Commission and its staff have proposed the attached 2021 live fish trade regulations; **and**

**WHEREAS,** the attached regulations have been communicated through a variety of media avenues to sportsmen and the general public throughout the state for review and comment for at least the past 30 days; **and**

**WHEREAS,** after carefully considering the recommendations of Commission staff and the Regulations Committee, as well as comments received from the public, the Commission has determined that the attached regulations promote sound wildlife conservation and management and are consistent with Amendment 35 of the Arkansas Constitution and that these regulations should now be approved for application statewide.

**NOW, THEREFORE, BE IT ORDERED** this 15th day of October 2020, that the Arkansas Game and Fish Commission hereby approves and adopts the attached regulations, which shall become effective January 1, 2021.

**BE IT FURTHER ORDERED** that the Commission staff is authorized to proceed with legally certifying and filing the attached regulations with the Secretary of State, State Library, and Bureau of Legislative Research and incorporating them into the Commission Code Book and Addendum.

**STAFF APPROVAL**

Submitted by: *BB*  
Ben Batten  
Chief

Division: Fisheries

Approved: *Rob Finley*  
Director

Approved: *A.F. Woodhart*  
Legal

Approved: *Jamie Sheer*  
Fiscal

**COMMISSION APPROVAL**

*Andrew Parker*  
Andrew Parker  
Chairman

*Joe Morgan*  
Joe Morgan  
Vice Chairman

*Bobby Martin*  
Bobby Martin  
Commissioner

*Stan Jones*  
Stan Jones  
Commissioner

*J. D. Neeley*  
J. D. Neeley  
Commissioner

*Anne Marie Doramus*  
Anne Marie Doramus  
Commissioner

*Rob Finley*  
Rob Finley  
Commissioner