

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

Chapter 04 Oysters

Authority: Natural Resources Article, §4-215, Annotated Code of Maryland

.03 Catching Oysters for Commercial Purposes.

A. – D. (text unchanged)

E. *Oysters may only be sold in accordance with COMAR 08.02.08.02.*

.04 Oyster [Containers] Container and Tagging Requirements.

A. *Containers.*

[A.] (1) [Oysters in the shell sold in the State] *Notwithstanding Natural Resources Article, §4-1018(a), Annotated Code of Maryland, oysters harvested from waters of the state shall be [measured at the point of initial sale] stored prior to leaving the bar from which they were harvested in [either] a:*

[(1)] (a) [A tub specified by Natural Resources Article, §4-1018, Annotated Code of Maryland; or] *Metal oyster tub that does not exceed the following inside dimensions:*

(i) *18 inches top diameter;*

(ii) *16 ½ inches bottom diameter; and*

(iii) *12 inches height;*

(b) *Rectangular shaped container that does not exceed the following inside dimensions:*

(i) *12 5/8 inches width across the top;*

(ii) *12 inches width across the bottom;*

(iii) *20 inches in length; and*

(iv) *11 ¼ inches height;*

(c) *Round container that does not exceed the following inside dimensions:*

(i) *16 ½ inches top diameter;*

(ii) *13 ½ inches bottom diameter; and*

(iii) *14 ¼ inches height; or*

[(2)] (d) [A container or bin] *Container with dimensions approved in writing by the Department[; or] which shall have a volume that is comparable to the containers described in §A(1)(a) — (c) of this regulation and, upon request, the Department's letter approving the container shall be displayed to any Natural Resources Police Officer.*

(2) *A container described in §A(1) of this regulation shall be:*

(a) *Made of a rigid, open mesh;*

(b) *Made of smooth, impervious, corrosion-resistant, and non-toxic materials which will not readily disintegrate or crack;*

(c) *Constructed so that it may be easily cleaned and kept in good repair; and*

(d) *Constructed to allow either one side or one end to be opened to unload or inspect the oysters.*

[(3)] *A basket with a capacity of 1 U.S. standard bushel, provided that the oysters being sold in this basket are not removed from the basket during storage or shipment.]*

[B. In order to obtain approval from the Department, a container or bin shall be measured by the Department and shall meet the following requirements:

(1) *The container or bin is made of a rigid, open mesh.*

(2) *The container or bin has a rectangular or square shape, right-angled corners, and flat surfaces.*

(3) *The container or bin is made of smooth, impervious, corrosion-resistant, and non-toxic materials which will not readily disintegrate or crack.*

(4) *The container or bin is constructed so that it may be easily cleaned and kept in good repair.*

(5) *The container or bin is constructed to allow either one side or one end to be opened to unload or inspect the oysters.*

C. *Upon demand, the Department's letter approving the dimensions of the container or bin shall be displayed to any Natural Resources Police Officer or any other duly authorized representative of the Department.]*

(3) *Oysters stored in accordance with §A(1)(a) and (b) of this regulation may not extend beyond the top of the container.*

(4) *Oysters stored in accordance with §A of this regulation shall remain in the original container until a tag is no longer required on the container in accordance with §B(3)(b) of this regulation.*

(5) *Exceptions.*

(a) *Oysters harvested from a lease in accordance with COMAR 08.02.23:*

(i) *Are exempt from §A(1) — (3) of this regulation; and*

(ii) *Shall be placed in any size container prior to leaving the lease from which they were harvested.*

(b) Oysters on board a skipjack harvested in accordance with Natural Resources Article, §4-1013, Annotated Code of Maryland from:

(i) Only one bar are exempt from §A(1) — (3) of this regulation; or

(ii) More than one bar may have oysters from one bar not in containers and all other oysters from different bars shall follow the container requirements of §A(1) — (4) of this regulation.

(c) Oysters harvested for recreational purposes and not for sale are exempt from this regulation.

B. Tagging.

(1) An individual storing oysters in accordance with §A(1) — (3) and (5)(a) of this regulation shall complete and affix a Department-issued tag to each container of oysters prior to leaving the bar from which the oysters were harvested.

(2) An individual storing oysters in accordance with §A(5)(b) of this regulation shall complete one Department-issued tag for the group of oysters not in containers and affix a Department-issued tag to each container of oysters prior to leaving the bar from which the oysters were harvested.

(3) Tags:

(a) Shall be completed legibly in indelible ink;

(b) Shall stay affixed to the container until the container is in the possession of a person who is licensed and certified to sell shellfish by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07;

(c) May not be reused; and

(d) May only be transferred to another individual during a license transfer in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland.

(4) In addition to the tagging requirements of this regulation, a person who is licensed and certified to sell shellfish by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07 shall follow the tagging requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Department of Health and Mental Hygiene in COMAR 10.15.07.01.

(5) An individual shall only possess one type of Department-issued tag, wild shellfish or farm raised shellfish while harvesting oysters.

(6) Except as provided in §B(3)(d) of this regulation, tags shall only be used by the individual to whom the tags were originally issued.

(7) Exception. Tags are not required for oysters harvested for recreational purposes.

.06 Daily Catch Limit.

A. Definition.

(1) In this chapter, the following term has the meaning indicated.

(2) Term Defined. "Bushel" means an amount of oysters that would fill a container that meets the requirements of COMAR 08.02.04.04A.

B. Except as provided in Regulation .14 of this chapter or in areas for which a permit has been issued under COMAR 08.02.23.04, the daily catch limits for the taking of oysters from the waters of the State are the following:

[A. — C.] (1) — (3) (text unchanged)

.16 Recording the Catching and Disposal of Oysters.

A. Shellfish Buy Ticket.

[(1) A licensed oyster dealer shall record complete information upon a Shellfish Buy Ticket provided by the Department, for every harvest of oysters that the dealer purchases. The licensed oyster dealer shall obtain the signature of the harvester on the Shellfish Buy Ticket.

(2) At the time of sale of oysters to a licensed oyster dealer, the harvester shall provide the information necessary to complete the Shellfish Buy Ticket and sign the Shellfish Buy Ticket.

(3) A copy of the Shellfish Buy Ticket shall accompany the conveyance of oysters in bulk from the locations of original purchase to locations of storage, processing, or resale.]

(1) Notwithstanding Natural Resources Article, §4-1007, Annotated Code of Maryland, §A(2) — (3) of this regulation do not apply to the sale or purchase of oysters harvested from a leased area.

(2) When oysters are sold to a buying station:

(a) The seller shall provide the information necessary for the buyer to complete a Department-issued Shellfish Buy Ticket;

(b) The buyer shall complete a Department-issued Shellfish Buy Ticket for every oyster purchase; and

(c) Both the seller and the buyer shall sign the Shellfish Buy Ticket.

(3) When oysters are sold at a location other than a buying station, the seller shall complete and sign a Department-issued Shellfish Buy Ticket.

(4) An individual who harvests oysters from a public oyster bar and places them on a lease shall complete and sign a Department-issued Shellfish Buy Ticket.

[B. Oyster Sales and Export Tax Certificate.

(1) A licensed oyster dealer shall complete an Oyster Sales and Export Tax Certificate, on forms provided by the Department, for each shipment of oysters sold in the shell.

(2) A person who ships oysters in the shell out-of-State shall receive an oyster sales and export tax certificate for each truck or boat load shipped. The original certificate shall accompany the shipment of oysters out-of-State and shall be available for inspection by officials of the State.

(3) The second copy of the certificate shall be submitted to the Department with the Oyster Tax Report and payment of any money due the Department.]

[C.] *B. [Oyster] Shellfish Tax Report.*

(1) Except as provided in [§C(2) and (3)] §B(3) of this regulation, [a licensed oyster dealer] *when oysters are sold to a buying station, the buyer shall complete each week [an Oyster] a Shellfish Tax Report provided by the Department and by Thursday of each week, send to the Department the Shellfish Buy Ticket, the Oyster [Sales and] Export [Tax] Certificate, and the [Oyster] Shellfish Tax Report for all oysters purchased during the week ending on the previous Saturday.*

(2) *Except as provided in §B(3) of this regulation, when oysters are sold at a location other than a buying station, the seller shall complete each week a Shellfish Tax Report provided by the Department and by Thursday of each week, send to the Department the Shellfish Buy Ticket, the Oyster Export Certificate, and the Shellfish Tax Report for all oysters sold during the week ending on the previous Saturday.*

[2)] (3) [Licensed oyster dealers] *Exceptions.*

(a) *Individuals whose sales or purchases would require payment of taxes of less than \$25 weekly may submit [oyster tax reports] Shellfish Tax Reports monthly.*

[3)] (b) *For the months May through August only one [oyster tax report] Shellfish Tax Report is required[,] to be submitted by September 14.*

(4) [Oyster] *Shellfish Tax Reports for the periods described in [§C(1) —(3)] §B(1) — (3) of this regulation, shall be submitted to the Department even though no taxes may be due, unless [a dealer] an individual has received an exemption pursuant to this section. [A dealer] An individual may request an exemption from the requirements of this section by filing at least 30 days before the start of the period for which an exemption is sought, on a form provided, an affidavit with the Department of Natural Resources[,] stating the reasons the [dealer] individual expects to collect no taxes during the period. The exemption will not be effective until the Department has approved in writing the requested exemption. Notwithstanding the issuance of an exemption, if an exempted [dealer] individual during the exemption period purchases any oysters upon which taxes are payable by the [dealer] individual, the [dealer] individual shall comply with all applicable provisions of this section. The Department in its sole discretion may revoke any exemption granted under this section.*

(5) Each Shellfish Buy Ticket and Oyster Sales and Export Tax Certificate shall be submitted with the [Oyster] *Shellfish Tax Report for which there is any money due the State.*

(6) [These forms] *Forms shall be accompanied by any money due the State for the respective period of time.*

C. Oyster Export Certificate.

(1) *When oysters are shipped out of State, the seller shall complete an Oyster Export Certificate for each shipment.*

(2) *A person who ships oysters in the shell out of State shall receive an Oyster Export Certificate for each shipment. The original certificate shall accompany the shipment of oysters out of State and shall be available for inspection by officials of the State.*

(3) *A copy of the certificate shall be submitted to the Department with the Shellfish Tax Report and payment of any money due the Department.*

[D. Plantings on Leased Ground; Selling to Unlicensed Buyers.

(1) A person who takes oysters from a public oyster bar and plants them on leased ground, or a person who takes oysters from a public oyster bar and sells them to an unlicensed buyer, shall obtain and complete a Shellfish Buy Ticket form for the portion of each day's catch disposed of in this manner. For each week for which a person completes a Shellfish Buy Ticket, that person also shall complete an Oyster Tax Report on a form provided by the Department.

(2) By Thursday of each week, except as provided in §C(2) and (3) of this regulation, the person shall send to the Department the Shellfish Buy Ticket and an Oyster Tax Report for oysters caught during the week ending on the previous Saturday.

(3) These forms shall be accompanied by all money due the State for the respective period of time.]

[E.] *D. Oyster Harvester Reporting.*

(1) Any [person] *individual licensed to catch oysters for commercial purposes who has paid the oyster surcharge shall submit an accurate Maryland monthly oyster report in accordance with COMAR 08.02.13.06.*

(2) The Department may suspend [a person's] *an individual's entitlement to catch oysters for commercial purposes for failing to submit an accurate Maryland monthly oyster report in accordance with COMAR 08.02.13.06.*

E. Failure to submit reports required by this regulation may result in the suspension or revocation of the individual's license or authorization under Natural Resources Article, §4-701, Annotated Code of Maryland.

Chapter 08 Shellfish — General

Authority: Natural Resources Article, §4-215, Annotated Code of Maryland

.02 Buying Station.

[A. Definition. A "buying station" is a fixed place of business of any person having a license to buy, process, pack, resell, market, or otherwise deal in clams or oysters.

B. The Department may designate an area other than a fixed place of business as a buying station by publication of the area in one newspaper of general circulation. The Department may remove an area from, or add an area to, the published list by publication of the change in the same newspaper. The Department shall maintain a current list of designated areas and shall provide a copy to any person upon request.]

A. Definitions.

(1) Notwithstanding Natural Resources Article, §4-1007, Annotated Code of Maryland, in this subtitle, the following term has the meaning indicated.

(2) Term Defined. "Buying station" means a location where a person buys, processes, packs, or otherwise deals in oysters or clams for resale where the person purchasing oysters or clams for resale:

(a) Possesses a valid seafood dealer authorization in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland; and

(b) Is licensed and certified by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07.

B. A person may only sell oysters or clams at a:

(1) Buying station; or

(2) Location other than a buying station if:

(a) The person selling the oysters or clams is:

(i) Licensed and authorized to sell the person's own catch in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland; and

(ii) Licensed and certified by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07;

and

(b) The oysters or clams are sold or served to ultimate consumers, and not for resale.

JOHN R. GRIFFIN
Secretary of Natural Resources