

MARYLAND REGISTER

Proposed Action on Regulations

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Title Subtitle Chapter Regulation

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3. Name of Promulgating Authority

Department of Natural Resources

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Title 08
DEPARTMENT OF NATURAL RESOURCES
Subtitle 02 FISHERIES SERVICE

08.02.23 Shellfish Aquaculture and Leasing

Authority: Natural Resources Article, §§4-11A-02 and 4-11A-12, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Natural Resources proposes to amend Regulations .03 and .04 under COMAR 08.02.23 Shellfish Aquaculture and Leasing.

Statement of Purpose

The purpose of this action is to clarify that a person needs an authorization from the Department prior to engaging in certain shellfish aquaculture activities in Maryland waters and to liberalize the Shellfish Aquaculture Harvester Permit registration requirement. These changes were discussed with and supported by the Aquaculture Coordinating Council.

In Regulation .03, the proposed action clarifies that shellfish aquaculture activities may only be performed on a leased area or in a permitted area. An individual would come to the conclusion that a lease or permit is required by reading definitions, several statutes and regulations together, but adding the statement to regulation makes it completely clear. The proposed action also reorganizes and simplifies some of the structure of the regulation to make it easier to read.

In Regulation .04, the proposed action removes the requirement for individuals working on a lease and under the supervision of a permittee, from having to obtain and possess a registration card. The action also adds language to ensure that the permittee is responsible for those individuals and corrects affected references. Current regulations require every individual that is conducting aquaculture activities to have either a Shellfish Aquaculture Harvester Permit or Registration Card in order to participate in aquaculture activities on the lease. The industry has requested that allowances be made for workers that are accompanying a permittee and requested that the Department exempt them from the registration requirement. This change will allow leaseholders to hire short-term laborers that will be supervised by the permittee while working on the lease.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed action may benefit lease holders.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	

- D. On regulated industries or trade groups:
 - Registration Cards (+) Indeterminable
- E. On other industries or trade groups: NONE
- F. Direct and indirect effects on public: NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. Removing the registration card requirement for individuals supervised by a permittee provides business flexibility which could save leaseholders time and money. Although registration cards are free, there is a period of time that is necessary to apply for and receive one. Relaxing the requirements for registration cards provides the leaseholder the flexibility to hire day workers if they choose, possibly avoiding delays and saving them money by not having to wait for workers to obtain a card. The actual amount is indeterminable because it will depend on each individual business' operational structure.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Removing the registration card requirement for individuals supervised by a permittee provides business flexibility which could save leaseholders time and money. Although registration cards are free, there is a period of time that is necessary to apply for and receive one. Relaxing the requirements for registration cards provides the leaseholder the flexibility to hire day workers if they choose, possibly avoiding delays and saving them money by not having to wait for workers to obtain a card.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Shellfish Aquaculture Regulations, Regulatory Staff, Department of Natural Resources Fisheries Service, B-2, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment.dnr@maryland.gov, or fax to 410-260-8310. Comments will be accepted through October 3, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2017
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
No
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
No additional funds are necessary to implement this regulation. Regulations for aquaculture leases are already being enforced and this proposal does not increase that burden.
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- G. Small Business Worksheet:

Attached Document:

.03 Commercial Lease Procedures.

A. Aquaculture Activities on Submerged Land.

(1) [Except for demonstration leases, prior to engaging] *A person may not engage* in aquaculture activities on submerged land in waters of the State, including the areas listed in Regulations .05 and .06 of this chapter, [a person shall:] *unless the land is leased or permitted for shellfish aquaculture purposes.*

(2) *To obtain a submerged land lease a person shall:*

[(1)] (a) (text unchanged)

[(a)] (i) — [(b)] (ii) (text unchanged)

[(2)] (b) (text unchanged)

[(a)] (i) — [(b)] (ii) (text unchanged)

B. Aquaculture Activities in the Water Column.

(1) [Prior to engaging] *A person may not engage* in aquaculture activities in the water column [of:] *unless the water column is leased or permitted for shellfish aquaculture purposes.*

[(1)] (2) [Aquaculture] *To obtain a water column lease* [enterprise zones listed in Regulation .05 of this chapter,] a person shall:

(a) Apply for:

(i) [An aquaculture] *A water column lease* by submitting an application on a form provided by the Department; and

(ii) (text unchanged)

(b) Submit a non-refundable fee of [\$150; or.]:

(i) *\$300 for areas not in aquaculture enterprise zones as described in Regulation .05 of this chapter; or*

(ii) *\$150 for areas in aquaculture enterprise zones as described in Regulation .05 of this chapter.*

[(2)] Waters of the State not listed in Regulation .05 of this chapter, a person shall:

(a) Apply for:

(i) A shellfish aquaculture harvester permit as described in Regulation .04 of this chapter; and

(ii) A water column lease by submitting an application on a form provided by the Department; and

(b) Submit a nonrefundable fee of \$300.]

C. (text unchanged)

D. Rent.

(1) *Submerged Land Lease.* Except as provided in [§E(3)] §D(3) of this regulation, the rental rate for a submerged land lease is \$3.50 per acre per year and is due in full to the Department by December 31 of the preceding year.

(2) *Water Column Lease.* Except as provided in [§E(3)] §D(3) of this regulation, the rental rate for a water column lease in areas listed in Regulation .05 of this chapter is \$25 per acre per year and is due to the Department by December 31 of the preceding year.

(3) (text unchanged)

E.—H. (text unchanged)

I. Transfer of Lease.

(1) (text unchanged)

(2) Prior to receiving approval of a transfer, the person receiving a transferred lease shall complete a lease application and a shellfish aquaculture harvester permit application and submit the required forms with the transfer form described in [§J(1)] §I(1) of this regulation.

J. (text unchanged)

.04 Shellfish Aquaculture Harvester Permit.

A. Except for a demonstration lease holder, a lease holder or a lease transfer applicant shall submit an application [for], *provided by the Department, and obtain* a shellfish aquaculture harvester permit prior to engaging in aquaculture activities.

B. A shellfish aquaculture harvester permit:

(1) (text unchanged)

(2) Shall be automatically renewed for a new term upon receipt of all reports required under Regulation .03D of this chapter; [and]

(3) Is not transferable[.]; *and*

(4) *Is an operator card for the purposes of Natural Resources Article, §4-11A-16.1, Annotated Code of Maryland.*

[C.] Application. An application shall:

(1) Be submitted on a form provided by the Department; and

(2) Include a list of all individuals who may be engaging in aquaculture activities within the area described in the applicant's lease application.]

[D.] C. (text unchanged)

[E.] D. Permit Registrants.

(1) *Except for an individual under the supervision of a shellfish aquaculture harvester permittee who is present on the leased area, [An] an individual engaged in aquaculture activities within the area described in the permit applicant's lease shall be:*

(a) (text unchanged)

(b) [Issued] *In possession of a shellfish aquaculture harvester registration card issued to the individual by the Fisheries Service.*

(2) A shellfish aquaculture harvester permittee shall immediately notify the Department of any changes [to the list] of named permit registrants on a form provided by the Department.

(3) (text unchanged)

(4) *A shellfish aquaculture harvester permittee shall be responsible for all work and acts performed on the leased area under the permittee's supervision.*

[F.] E. [A shellfish aquaculture harvester permittee or permit registrant] *Any individual engaged in aquaculture activities on a leased area or transporting shellfish from a lease to a dealer:*

[(1) Shall be in possession of the individual's shellfish aquaculture harvester registration card while engaged in aquaculture activities on a leased area;]

[(2)] (1) Shall harvest, *transport and store shellfish* in accordance with the National Shellfish Sanitation Program Model Ordinance that is incorporated by reference in COMAR 10.15.07.01A;

[(3)] (2) Except as provided in [§F(4)] §E(3) of this regulation, may not harvest oysters from a:

(a) Water column lease that are less than 2 inches from hinge to bill; or

(b) Submerged land lease that are less than:

(i) 2 inches from hinge to bill from April 1 through September 30; or

(ii) 3 inches from hinge to bill from October 1 through the following March 31;

[(4)] (3) — [(7)] (6) (text unchanged)

[(8)] (7) Shall store oysters in accordance with [§H] §G of this regulation; and

[(9)] (8) Shall tag oysters in accordance with [§I] §H of this regulation.

[G.] F. Tolerance Limit.

(1) A shellfish aquaculture harvester permittee or permit registrant may not possess oysters harvested from a lease that include a combined total of more than 5 percent of shells and oysters which measure less than the minimum allowable size specified in [§F(3)] §E(2) of this regulation.

(2)—(4) (text unchanged)

[H.] G. Containers.

(1) (text unchanged)

(2) Oysters shall remain in the original container until a tag is no longer required on the container in accordance with [§I(4)(d)] §H(4)(d) of this regulation.

[I.] H. Tagging.

(1) Except as provided in [§I(2)] §H(2) of this regulation, an individual storing oysters in accordance with §H of this regulation shall complete and affix a Department-issued tag to each container of oysters prior to leaving the lease from which the oysters were harvested.

(2) An individual storing oysters in accordance with [§H] §G of this regulation may use a tag not supplied by the Department if:

(a)—(b) (text unchanged)

(3)—(8) (text unchanged)

[J.] I. Denial, Suspension, and Revocation.

(1) Denial. The Department may deny issuance of a shellfish aquaculture harvester permit or registration card if the applicant or listed registrant:

(a)—(c) (text unchanged)

(d) Held a shellfish aquaculture harvester permit or registration card that was revoked in accordance with [§J(2)] §I(2) of this regulation within 3 years of the date of the application.

(2) (text unchanged)

(3) Appeal.

(a) Except as provided in [§J(3)(c)] §I(3)(c) of this regulation, prior to denying issuance of, suspending or revoking a shellfish aquaculture harvester permit or a shellfish aquaculture harvester registration card, the Department shall give the individual notice of its intended action and an opportunity to appear at a hearing conducted in accordance with the contested case procedures set forth in State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04.

(b)—(c) (text unchanged)

MARK J. BELTON
Secretary of Natural Resources