

## Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 94 Sanitary Control of Molluscan Shellfish

TYPE OF RULE (*check one*):       Routine Technical       Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

**BRIEF SUMMARY:** This proposal would amend Chapter 94 to reference the most current version of the National Shellfish Sanitation Program Model Ordinance (Model Ordinance). The proposal would also specify certain compliance requirements for the operation of buying stations. Specifically, buying station representatives would need to maintain activity logs that document information such as date and time of purchase, quantity of shellstock purchased, and the date and time of harvest. The proposed regulation also specifies that vehicles must have a mechanical refrigeration unit, onboard thermometer and a time/temperature data logger. The proposal would also change the expiration date of Shellfish Sanitation Certificates, Bulk Tagging, and Buying Station Permits from June 1<sup>st</sup> to April 1<sup>st</sup>. The Department is also processing a rule change to Chapter 2 (Aquaculture Regulations), which would establish maximum seed size definitions for growing areas in the prohibited classification. In order to maintain consistency with those anticipated changes, this proposal specifies that aquaculture lease and license holders may buy or possess seed from growing areas in the prohibited classification, so long as the seed size complies with definitions established in Chapter 2.

Date, time and location of PUBLIC HEARING (*if any*): None scheduled

COMMENT DEADLINE: February 12, 2021

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§6171, 6856

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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\* Check one of the following two boxes.

X The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

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## DEPARTMENT OF MARINE RESOURCES

### CHAPTER 94 – SANITARY CONTROL OF MOLLUSCAN SHELLFISH

#### 94.02 Definitions

In addition to definitions contained in the “Definitions” section of the Model Ordinance, the following words and terms, when used in this chapter, have the following meaning.

- A. Buying station. A ~~truck~~ vehicle that is leased, owned or rented by the certified dealer and which is used to transport shellstock purchased at a location other than the dealer’s permanent facility. ~~The truck must be properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of the shellstock in accordance with the Model Ordinance.~~
- B. Model Ordinance. The document entitled “National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish”, ~~2017~~ 2019 Revision, Sections I and II, published by the U.S. Food and Drug Administration.

#### 94.06 Prohibited Acts – Dealers

- B. It is unlawful to buy, ~~purchase~~ or possess shellfish obtained from any source other than shellstock harvested by a licensed harvester from an area classified by the Department as approved or conditionally approved in the open status; or a dealer holding a shellfish certificate.
  - 1. Exception: The holder of a depuration certificate or a relay permit from the Department may buy, ship, transfer or transport shellfish from an area classified as restricted or conditionally restricted in accordance with certificate or permit conditions.
  - 2. Exception: The holder of an aquaculture lease or license may buy, ~~purchase~~ or possess seed from growing areas in the prohibited classification provided the seed does not exceed the maximum seed size definitions as established in Chapter 2. ~~is held in an area classified as approved or conditionally approved in the open status for the time specified in the Model Ordinance.~~

#### 94.07 Shellfish Sanitation Certificates

- C. Expiration. Certifications expire ~~June~~ April 1<sup>st</sup>, unless an earlier expiration date is given.

#### 94.11 Permits

- A. Bulk Tagging of Shellstock Permit

5. Bulk Tagging permits expire ~~June~~ April 1<sup>st</sup> unless an earlier expiration date is given.

### C. Buying Station Permit

1. A person may not operate a buying station without a current buying station permit issued by the Department.
  2. To obtain buying station permit, a person must apply to the Department on an annual basis on forms supplied by the Commissioner and must provide all information required. A permit is required for each buying station operation.
  3. Compliance
    - (a) ~~The truck vehicle~~ used as a buying station must be leased, owned or rented by the certified dealer and licensed with the appropriate supplemental license for that ~~truck~~ vehicle in accordance with 12 M.R.S. §6851.
    - (b) The vehicle must be properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of the shellstock in compliance with applicable regulations and requirements of the Model Ordinance. Water used for sanitation of the vehicle must be from an approved water source at the certified dealer's permanent facility.
    - (c) The vehicle must have a mechanical refrigeration unit, an onboard thermometer and a time/temperature data logger that can be downloaded for review by the Department. The mechanical refrigeration unit must always be operating during the buying station activity and until the vehicle is returned to the permanent facility. The ambient air temperature can exceed the required temperature of 45°F degrees for a period no longer than 2 hours, after which the vehicle air temperature must reach and maintain 45°F.
    - (d) The buying station representative must maintain a buying station activity log including, but not limited to, the date and time of purchase, area harvested, names of all harvesters and their shellfish harvester's license number, the date and time of harvest, the quantity of shellstock purchased from each harvester and the temperature inside the conveyance at the start and conclusion of activity at each buying location and upon return to the dealer's permanent facility.
    - (e)(b) All shellstock purchased at the buying station must be transported by the certified dealer to the permanent facility for which that holder's certification was issued.
    - (f)(e) None of the following activities may occur on or in connection with a buying station: washing of shellstock, packing, tagging, distribution to any person or entity other than the certified dealer's facility.
    - (g)(d) The HACCP plan and HACCP records must be kept with the ~~truck~~ vehicle. A copy of the HACCP plan and records that apply to the buying station/~~truck~~ vehicle must be separately identified and kept with the buying station/~~truck~~ vehicle.
5. Buying station permits expire ~~June~~ April 1<sup>st</sup> unless an earlier expiration date is given.

## Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 94 Sanitary Control of Molluscan Shellfish

STATUTORY AUTHORITY: 12 MRS §§6171, 6856

DATE AND PLACE OF PUBLIC HEARING(S): None scheduled

COMMENT DEADLINE: February 12, 2021

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

The purpose of the rule proposal is to reference the most recent version of the model ordinance and to specify minimum compliance requirements for buying stations. The compliance requirements are intended to protect public health by ensuring that buying stations are operated in a manner that prevents contamination, deterioration and decomposition of shellstock.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_  NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

This proposed rule amends the existing regulation to reference the most current version of the Model Ordinance and specifies compliance requirements for buying stations.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]:

Department staff within the Bureau of Public Health and the Model Ordinance.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

***FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

*ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:*

[*see* §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED:* [*see* §8057-A(2)(B)]

*BENEFITS OF THE RULE:* [*see* §8057-A(2)(C)]

*Note: If necessary, additional pages may be used.*