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DNR-FS-2024-7

SMALL BUSINESS COMPLIANCE GUIDE  
Amendment to Subtitle 02 Fisheries Service  
Regarding the Department's Regulations for Oysters and Clams  
Declaration Requirement for Seafood Dealers

Released October 21, 2024  
Updated April 23, 2025

This Guide is prepared in accordance with the requirements of State Government Article, §10-110, Annotated Code of Maryland. It is intended to help small businesses comply with the revised rules adopted in the above-referenced sections of the Code of Maryland Regulations. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small businesses, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply.

The Department will clarify or update the text of the Guide as an idea moves through the regulatory process. Direct your comments and recommendations, or calls for further assistance, to Fishing and Boating Services Regulatory Division:

410-260-8300

410-260-8DNR; toll free in Maryland 877-620-8DNR; TTY Users Call via the Maryland Relay

## I. SUMMARY & FAQs

### **What was proposed?**

The purpose of this action is to create a no-cost declaration of intent for shellfish dealers who purchase soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters in order to facilitate current reporting and tax payment requirements. This will be an annual requirement that dealers may complete either at license renewal or at any other point during the year prior to purchasing soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters. Dealers who have not declared their intent to purchase soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters would not be able to do so until their declaration was complete. Only dealers who are licensed by the Department of Natural Resources and licensed and certified by the Department of Health are allowed to deal in soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters because those species are typically sold for human consumption. Dealers who have not declared their intent will be exempt from the reporting requirements that are otherwise required when engaging in that activity.

### **Why is this change necessary?**

The current state of dealer reporting and shellfish tax payments made through the existing buy ticket system results in the receipt of less than 100% of reports and taxes owed by dealers. Currently, the Department does not know which dealers are actively buying oysters and clams in a season unless those dealers choose to submit buy tickets and taxes. Requiring dealers to declare their intent to purchase soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters will allow the Department to know which dealers are expected to report each season, allows for easier follow-up with late reporters, allows the calculation of reporting rates, and would aid in identifying dealers who may owe shellfish taxes. This also aligns with the existing requirement that oyster and clam harvesters must declare their intent to harvest each season. Currently, all dealers are required to report weekly or monthly, depending on level of activity, unless they have indicated to the Department that they will not be purchasing oysters or clams for some period of time. This action proposes to waive this requirement until a dealer has declared their intent to buy soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters in a season, which will alleviate having to report “no activity” by those dealers. Lastly, by limiting this declaration requirement to those dealers who are buying soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters, the Department is exempting those dealers who only deal in razor clams, which are prohibited from being sold for human consumption and for which taxes are not required to be paid.

### **Who will this affect?**

This regulation change will affect shellfish dealers who are licensed to deal in soft-shell clams of the species *Mya arenaria*, hard-shell clams, or oysters. Shellfish dealers who deal in shellfish for human consumption must be licensed by the Department of Natural Resources and licensed and certified by the Department of Health.

**CLARIFICATION:** The proposed regulation does not completely capture the Department’s intent. The statement of purpose does, but the regulation text does not. As written, the regulation would apply to all dealers, not just those purchasing shellfish from licensed harvesters. The intention is to narrow the scope of this declaration to the smallest possible number of licensees, which is only dealers who are buying from harvesters. This is so we know who owes us taxes.

Dealers that don't buy from harvesters don't owe us taxes and there is no reason to declare. The Department will clarify this in the final action by amending the text. The amended language will be less restrictive as it clarifies that this only applies to dealers who are purchasing from in-state harvesters.

**Has this change been discussed with advisory bodies?**

This idea was scoped with the Sport Fisheries Advisory Commission and the Tidal Fisheries Advisory Commission at their meetings in October 2024.

**What is the specific regulatory action?**

Amend Regulations .09 and .12 under COMAR 08.02.08 Shellfish—General.

**II. RECORDKEEPING AND REPORTING REQUIREMENTS**

This action creates the need for a seafood dealer to declare their intent to deal in oysters or clams for human consumption. This would be an annual requirement that dealers could complete either at license renewal or at any other point during the year prior to purchasing oysters or clams for human consumption. Dealers who did not declare their intent to purchase oysters or clams would be prohibited from buying oysters or clams commercially until their declaration was complete.

**III. REGULATORY PROCESS**

During the scoping process, the Department gathers suggestions and ideas from stakeholders and others about how to solve a fishery problem or address a need. The goal of scoping is to identify issues, potential impacts, and reasonable alternatives associated with the issues so that management actions can be developed. After the public has had an opportunity to comment on possible management actions during the scoping process, the Department considers these comments and develops an appropriate management strategy. This proposal was scoped from October 21—November 5, 2024.

At the conclusion of the scoping process, the Department determined that the action is necessary and appropriate. The rules are being promulgated following the Administrative Procedures Act described in Title 10, Subtitle 1 of the State Government Article Annotated Code of Maryland.

- The General Assembly’s Administrative, Executive, and Legislative Review Committee reviews the regulatory proposal for fiscal and legal analysis.
- The proposal is printed by the Division of State Documents in the Maryland Register.
- A 30 day public comment period begins on the day of publication. The proposed action was printed in the Maryland Register on April 18, 2025. The comment period will close at 11:59 p.m. May 19, 2025.
- After review of the comments, the Department may adopt the changes.
- If the Department adopts the changes, they become effective after a notice is published in the Maryland Register that announces approval and the effective date.

#### **IV. IMPLEMENTATION DATE**

The Department projects that this change could be effective in the summer of 2025. However, the exact date cannot be determined. The Department will follow our normal proposal procedures if this concept moves forward.