

**RULES
OF
GEORGIA DEPARTMENT OF AGRICULTURE**

**CHAPTER 40-7-12
THE HANDLING, STORAGE, SHUCKING, PACKING,
SHIPPING AND/OR SALE OF SHELLFISH**

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40-7-12-.01 Scope of Regulation. Under and by virtue of the power and authority vested in me as Commissioner of Agriculture, State of Georgia, by the Constitution and the laws of this State, more particularly by O.C.G.A. Section 26-2-310 et seq., I do hereby promulgate, prescribe and adopt the following rules and regulations governing the handling, storage, shucking, packing, repacking, shipping and/or sale of shellfish. These rules and regulations are based upon the requirements for interstate and intrastate shipments as outlined in the NSSP (National Shellfish Sanitation Program) Model Ordinance entitled "Guide for the Control of Molluscan Shellfish Model Ordinance" covering the sanitation of harvesting, processing, and distribution of shellfish. Therefore, the Department of Agriculture is hereby authorized to enforce any of these. These are to include all inspections and certifications and enforcement of NSSP requirements.

Authority O.C.G.A. Secs. 26-2-20, 26-2-310 et seq. **History.** Original Rule entitled "Definitions" adopted. F. Aug 8, 1972; eff. Aug 28, 1972. **Repealed:** New Rule, same title, adopted. F. Sept. 27, 1993, eff. Oct. 17, 1993. **Repealed:** New Rule entitled "Scope of Regulation" adopted. F. Jan. 10, 2001; eff. Jan. 31, 2001, as specified by Agency.

40-7-12-.02 Certificates and Permits. Every person who operates a plant where shellfish are handled, stored, shucked, packed, repacked, shipped, reshipped and/or sold in any manner shall possess an unrevoked certificate of satisfactory compliance with the requirements herein set forth, from the Georgia Department of Agriculture prior to operation provided, that these provisions shall not apply to the preparation and/or sale of shellfish in the kitchens and dining rooms of eating establishments for consumption on the premises. The Georgia Department of Agriculture shall issue numbered certificates to persons operating shellfish plants in conformance with these regulations. Such certificates shall be issued on August 1st of each year or as soon thereafter as the shellfish plant to be certified begins operation. Each certificate shall expire July 31st following the date of issue. The taking of shellfish in the State of Georgia is established and regulated by the Department of Natural Resources and is a necessary requirement of certification. The certificate held by any person may be revoked by the Georgia Department of Agriculture because of the violation of any section or part of these regulations, provided, that after complying with such violation, the owner or operator may appeal to the Georgia Department of Agriculture for reinstatement of such certificate.

Authority Ga. L. 1933, p. 7, as amended by Ga. L. 1972, p. 1015. O.C.G.A. Sec. 26-2-310 et seq. **History.** Original Rule entitled "Certificates and Permits" was filed on August 8, 1972; effective August 28, 1972. **Repealed:** New Rule, same title, adopted. F. Sept. 27, 1993; eff. Oct. 17, 1993.

40-7-12-.14 Shellfish Sampling and Standards.

(1) Sampling and Testing. Samples of shellfish may be taken and examined for bacteriological, chemical, or any other public health reason by agents of the Department at any time or place. Operators of plants, trucks, carriers, stores, restaurants, and other places where shellfish are sold shall furnish samples of shellfish as necessary.

(2) Shellfish offered for sale or possessed that exceed an Escherichia coli Most Probable Number of 230 per 100 grams of sample or total bacteria count of more than 500,000 per gram or contain pathogenic organisms in sufficient

numbers to be hazardous to the public health shall be deemed adulterated by the Department. Shellfish contaminated by any other substance, which renders it unsafe for human consumption, shall be deemed adulterated by the Department.

(3) In addition to the labeling requirements in Guide for the Control of Molluscan Shellfish, at Chapter X.06, all containers of shucked oyster meats processed or distributed in commerce shall have permanently recorded on the principal display panel, all information required by 21 CFR 101 and the name of each such food as specified in the applicable definition and standard of identity prescribed in 21 CFR 161.130 to 161.140, inclusive. The standard of fill for containers of shucked oyster meats shall meet NCWM (National Conference of Weights and Measures) recommended standards as determined in NIST Handbook 130.

Authority O.C.G.A. Secs. 26-2-20, 26-2-310 et seq. **History.** Original Rule entitled "Shellfish Sampling and Standards" adopted. F. Sept. 27, 1993; eff. Oct. 17, 1993. **Amended:** F. Jan. 10, 2001; eff. Jan. 31, 2001, as specified by Agency.

40-7-12-.15 Laboratory Procedures, Methods.

(1) General. Laboratory analyses shall be performed by a State laboratory or a laboratory approved by the Department.

(2) Microbiological. Microbiological analyses of shellfish for microorganisms shall be in accordance with American Public Health Association Laboratory Procedures, the Food and Drug Administration Bacteriological Analytical Manual, or by other accepted methods.

(3) Physical and Chemical. Physical and chemical analyses of shellfish for determinations such as salinity, radionuclides, heavy metals, or poisonous or deleterious substances shall be in accordance with American Public Health Association Laboratory Procedures, the Official Methods of Analysis of the Association of Analytical Chemists, or by other accepted methods.

Authority O.C.G.A. Sec. 26-2-310 et seq. **History.** Original Rule entitled "Laboratory Procedures, Methods" adopted. F. Sept. 27, 1993; eff. Oct. 17, 1993.

40-7-12-.16 Compliance and Enforcement Procedures.

(1) Suspension of Permits. Whenever the Department has reason to believe that the operator of a shellfish activity or operation has created or is responsible for conditions that may render shellfish to become adulterated or be misbranded, the permit or certificate may be suspended or revoked upon notice to the permit or certificate holder.

(2) Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing suspension of the permit have been corrected, the Department shall make a reinspection. If the applicant is complying with the requirements of these regulations, the permit shall be reinstated. Summaries of the finding of reinspection shall be provided to the facility at the conclusion of the inspection.

(3) Revocation of Permits. For serious or repeated violations of any of the requirements of these regulations, or for interference with the Department in the performance of its duties, the permit or certificate may be revoked. Prior to such action, the Department shall issue notice, in writing, stating the reasons for which the permit or certificate is subject to revocation and advising that the permit or certificate shall be permanently revoked at the end of 15 days following servicing of such notice, unless a request for a hearing is filed with the Department within such 15 day period. If no written request for a hearing is filed within the 15 day period, revocation becomes final. A permit or certificate may be suspended for cause pending its revocation or a hearing relative thereto.

(4) Stop Sale or Disposal of Shellfish.

(a) When it has been determined by the Department that shellfish have not been grown, harvested, stored, treated, transported, handled, shucked, packed, or offered for sale in compliance with these regulations, those shellfish shall be deemed adulterated.

(b) Shellfish or shellfish products determined to be adulterated or improperly identified shall be subject to stop sale or disposal by the Department. The Department may temporarily or permanently issue an order to stop sale, condemn, destroy, or otherwise dispose of all shellfish or shellfish containers found to be adulterated or improperly identified.

(c) All adulterated shellfish shall be disposed of at the discretion of the Department.

(d) Shellfish designated for a specific process not conducted in this state will be withheld from sale, condemned, destroyed or otherwise disposed of.

(5) Serving of Notices. A notice provided for these regulations is properly served when it is delivered to the permit holder or when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of any such notice shall be filed in the records of the Department.

Authority O.C.G.A. Secs. 26-2-20, 26-2-310 et seq. **History.** Original Rule entitled "Compliance Procedures" adopted. F. Sept. 27, 1993; eff. Oct. 17, 1993. **Amended:** F. Dec. 13, 1996; eff. Jan. 2, 1997. **Amended:** Rule retitled "Compliance and Enforcement Procedures". F. Jan. 10, 2001; eff. Jan. 31, 2001, as specified by Agency.

40-7-12-.17 Inspections.

(1) General. The Department shall inspect each shellfish plant periodically and shall make as many additional inspections and reinspections as are necessary for the effective enforcement of these regulations.

(2) Access to Processing Facilities, Distributors, Shippers, Reshippers, Vessels and Vehicles. Authorized representatives of the Department, after proper identification, shall be permitted to enter at any reasonable time, any facility, establishment, vessel or vehicle used to harvest, store or transport shellfish for the purpose of making inspections to determine compliance with these regulations. The Department's designated representatives shall be permitted to examine the records of a shellfish facility or establishment to obtain information pertaining to shellstock harvested and relayed; shellfish purchased, received, processed, sold, distributed, or shipped, and personnel employed.

Authority O.C.G.A. Sec. 26-2-310 et seq. **History.** Original Rule entitled "Inspections" adopted. F. Sept. 27, 1993; eff. Oct. 17, 1993.

40-7-12-.18 Remedies and Penalties.

(1) General. In addition to the provisions herein for suspension or revocation of operating permits, the Department may, at its discretion, institute civil or criminal proceedings or seek injunctions against any person who violates any provision of these regulations and the regulations thereunder.

(2) Penalties. Violations of these regulations shall be punishable in accordance with Sections 26-2-37, 26-2-38, 26-2-39, 26-2-40, 26-2-41 of the Georgia Food Act. (Ga. L. 1956, p. 195 Sec. 1).

Authority O.C.G.A. Sec. 26-2-310 et seq. **History.** Original Rule entitled "Remedies and Penalties" adopted. F. Sept. 27, 1993; eff. Oct. 17, 1993.

40-7-12-.19 Adoption of Reference. The following publications are adopted by reference and applicable parts become part of the rules:

(a) Federal Food, Drug and Cosmetic Act, as amended, and regulations issued thereunder.

(b) The Code of Federal Regulations, Title 21 Parts 110 Current Good Manufacturing Practices in manufacturing, packing, or handling human food, and all supplements thereto dated April 01, 1992.

(c) National Shellfish Sanitation Program Guide For The Control of Molluscan Shellfish Model Ordinance.

Authority O.C.G.A. Secs. 26-2-20, 26-2-310 et seq. **History.** Original Rule entitled "Adoption by Reference" adopted. F. Sept. 27, 1993; eff. Oct. 17, 1993. **Amended:** Rule retitled "Adoption of Reference." F. Jan. 10, 2001; eff. January 31, 2001, as specified by Agency.