

REGULAR

(See instructions on rev)

For use by Secretary of State only

ORIGINAL
WITHDRAWN

STD. 400 (REV. 01-2013)

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| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2014-0617-04 | REGULATORY ACTION NUMBER 2014-1031-055 | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| NOTICE | | REGULATIONS | |

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| AGENCY WITH RULEMAKING AUTHORITY Department of Public Health | AGENCY FILE NUMBER (if any) DPH-06-006 |
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

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| 1. SUBJECT OF NOTICE Raw Gulf Oysters | | TITLE(S) 17 | FIRST SECTION AFFECTED 1367 | 2. REQUESTED PUBLICATION DATE June 27, 2014 |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON Laurel Prior | TELEPHONE NUMBER (916) 440-7673 | FAX NUMBER (Optional) (916) 440-5747 |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER 2014, 262 | PUBLICATION DATE 6/27/2014 |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

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| 1a. SUBJECT OF REGULATION(S) Raw Gulf Oysters | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
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| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT |
| | AMEND 13675, 13676 |
| TITLE(S) 17 | REPEAL |

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| 3. TYPE OF FILING | | | |
| <input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input type="checkbox"/> Other (Specify) _____ | |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | | | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

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| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | |
| <input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> §100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) _____ |

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| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | | |
| <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal | |
| <input type="checkbox"/> Other (Specify) _____ | | | |

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| 7. CONTACT PERSON Laurel Prior | TELEPHONE NUMBER (916) 440-7673 | FAX NUMBER (Optional) (916) 440-5747 | E-MAIL ADDRESS (Optional) lprior@cdph.ca.gov |
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE 10/21/14 |
| TYPED NAME AND TITLE OF SIGNATORY Karin S. Schwartz, Deputy Director and Chief Counsel | |

Per agency request, JTC, 12-03-2014

**Title 17. Public Health
Division 1. State Department of Health Services
Chapter 5. Sanitation (Environmental)
Subchapter 2. Foods and Drugs
Group 1. Rules and Regulations
Article 10.5. Raw Oysters**

Amend Section 13675 to read as follows:

§13675. Raw Gulf Oysters: Labeling, Written Warnings and Additional Requirements.

(a) For purposes of this article, the following definitions shall apply:

(1) "Dealer" means a person who shucks, packs, re-packs, processes, labels, re-labels, ships, re-ships, holds or otherwise sells shellfish. "Dealer" does not include persons solely engaged in retail activities as defined in the Health and Safety Code, Section 1138795.

(2) ~~"Gulf oyster" means any oyster harvested from the states of Alabama, Florida, Louisiana, Mississippi, or Texas.~~ "FDA" means the United States Food and Drug Administration.

(3) ~~"Half shell oyster" means any oyster from which one shell has been removed.~~ "Gulf oyster" means any oyster harvested from the states of Alabama, Florida, Louisiana, Mississippi, or Texas.

(4) ~~"MPN" (Most Probable Number) means a statistical estimate of the number of bacteria per unit volume determined from the number of positive results in a series of fermentation tubes.~~ "Half-shell oyster" means any oyster from which one shell has been removed.

(5) ~~"Non-detectable level" means that the MPN of *Vibrio vulnificus* bacteria is less than 3 MPN per gram of product as determined by the *Vibrio vulnificus* testing method in the U.S. Food and Drug Administration Bacteriological Analytical Manual, 8th Edition, 1995, pages 9.01-9.27, hereby incorporated by reference.~~ "MPN" (Most Probable Number) means a statistical estimate of the number of bacteria per unit volume determined from the number of positive results in a series of fermentation tubes.

(a)(6)-(a)(7) No change to text

(8) "Oyster treatment process" means a process that has been determined by the state shellfish control authority having jurisdiction, the U.S. Food and Drug

~~Administration~~FDA, or a recognized process authority to consistently reduce the level of *Vibrio vulnificus* ~~to a non-detectable level less than 30 MPN per gram and achieve a minimum 3.52 log reduction in processed oysters, as determined by the use of the *Vibrio vulnificus* EIA procedure of Tamplin et al. as described in Chapter 9 of the FDA *Bacteriological Analytical Manual*, 7th edition, 1992, or another method that is at least equivalent to this method in terms of accuracy, precision, and sensitivity in detecting *Vibrio vulnificus*.~~

(9) "Recognized process authority" means the person(s) or organization(s) recognized by the state shellfish control authority or the ~~U.S. Food and Drug Administration~~FDA as having expert knowledge of oyster treatment processes, and having adequate facilities for making such determinations.

(10) "Retail food facility" means "retail" as defined in ~~s~~Section 1138795 of the Health and Safety Code and "food facility" as defined in ~~s~~Section 1137859 of the Health and Safety Code.

(a)(11)-(a)(14) No change to text

(b)-(h) No change to text

(i) A dealer who has received verification pursuant to Section 13676 shall affix to each container of raw Gulf oysters ~~processed to reduce *Vibrio vulnificus* to a non-detectable level~~subjected to an oyster treatment process described in subsection (a)(8), a tag or label pursuant to subsections (c)(2), (c)(3), and (c)(4), as required. In addition to requirements of subsections (c)(2), (c)(3), and (c)(4), such tag or label shall clearly and prominently bear the phrase "PROCESSED TO REDUCE VIBRIO VULNIFICUS TO NON-DETECTABLE LEVELS", followed by a lot number traceable to the dealer's processing records. Use of the phrase "PROCESSED TO REDUCE VIBRIO VULNIFICUS TO NON-DETECTABLE LEVELS", or words of similar meaning on tags or labels of raw unprocessed oysters, or on tags or labels of processed raw oysters from other than a dealer who has a current verification from the department is unlawful, and causes the oysters to be misbranded.

NOTE: Authority cited: Sections ~~400275, 110065, 110105, 110430, 112165, and 1137407, 131050, 131051, 131052, 131055, 131056, and 131200~~, Health and Safety Code. Reference: Sections ~~110175, 110545, 112165(e), 110560, 110565, 110660,~~

110705, 112195, 112200, and 113980, 114029, 114039, 114039.1, 114039.2, 114039.3, and 114039.4, Health and Safety Code.

Amend Section 13676 to read as follows:

§13676. Request for Verification.

(a) A request for verification by the department that oysters supplied by a dealer are subjected to an oyster treatment process shall include all of the following:

~~(a)(1)-(a)(3) No change to text~~

(4) A report by the Shellfish Control Authority or a recognized process authority, accompanied by the concurrence of the U.S. Food and Drug Administration FDA verifying that the process used consistently reduces the level of *Vibrio vulnificus* to a non-detectable level less than 30 MPN per gram and achieves a minimum 3.52 log reduction in processed oysters.

~~(a)(5)-(f) No change to text~~

~~(g) The time periods for processing a request for verification from the date of receipt by the department are as follows:~~

~~—(1) The median time for processing a request is 45 days.~~

~~—(2) The minimum time for processing a request is 20 days.~~

~~—(3) The maximum time for processing a request is 60 days.~~

~~(h) The department may revoke or suspend a verification granted pursuant to subsection 13675(e) and this section for any failure of the dealer to ensure the use of the oyster treatment process as described in the request for verification, for any failure of the oyster treatment process to ~~reduce~~ meet the *Vibrio vulnificus* reduction standards in subsection 13675(a)(8), to non-detectable levels or for any violation by the dealer of this article. ~~The department shall inform the dealer of any denial, revocation, or suspension in writing, stating the reasons for the denial, revocation, or suspension.~~~~

(i)(h) The department shall inform the dealer of any denial, revocation, or suspension of any verification, in writing, stating the reasons for the denial, revocation, or suspension.

NOTE: Authority cited: ~~Section 15376, Government Code; Sections 100275, 110065, 110105, 110430 and, 112165(a), 131050, 131051, 131052, 131055, 131056, and 131200, Health and Safety Code.~~ Reference: Sections 110435, 110545, 110660, 112165(c), 112195, 112200, and 113980, and 131071, Health and Safety Code.