

WSR 25-02-007

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed December 18, 2024, 2:40 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Sanitary control of shellfish, minimum performance standards, WAC 246-282-005. The department of health (department) is proposing to amend WAC 246-282-005 (1)(a) to adopt by reference the 2023 version of the National Shellfish Sanitation Program's (NSSP) Guide for the Control of Molluscan Shellfish (guide). This rule making is necessary to update the publication date of the NSSP guide adopted by reference from 2019 to the 2023 version.

Hearing Location(s): On February 5, 2025, at 2:00 p.m., virtual hearing using Zoom. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_j0cKdrAOSGi32iZN3RAv8Q.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: February 12, 2025.

Submit Written Comments to: Kseniya Efremova, P.O. Box 47824, Olympia, WA 98504-7824, email shellfishrule@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview/>, beginning date and time of filing, by February 5, 2025, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Kseniya Efremova, phone 360-236-3449, TTY 711, email kseniya.efremova@doh.wa.gov, by January 22, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment will update the reference to the NSSP guide to ensure that the most current health and safety requirements are in rule as required by the statute. The United States Food and Drug Administration (FDA) requires all shellfish-producing states to follow the most current version of the NSSP guide in order to place molluscan shellfish into interstate commerce. The rule currently references an outdated 2019 version of the guide.

Reasons Supporting Proposal: The FDA oversees a cooperative program between the shellfish-producing states and the shellfish industry for the production and processing of shellfish consistent with the NSSP guide. The FDA evaluates each state's shellfish sanitation control program to ensure compliance with the NSSP guide. Therefore, an update of WAC 246-282-005 is needed so that Washington state remains compliant with the NSSP guide and the molluscan shellfish products from Washington can continue to be placed into interstate commerce.

Statutory Authority for Adoption: RCW 69.30.030.

Statute Being Implemented: RCW 69.30.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Kseniya Efremova, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3449; Implementation and Enforcement: Dani Toepelt, 111 Israel Road S.E., Tumwater, WA 98501, 360-890-6054.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The department did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Scope of exemption for rule proposal:

Is fully exempt.

December 18, 2024
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5985.1

AMENDATORY SECTION (Amending WSR 21-14-019, filed 6/28/21, effective 7/29/21)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the U.S. Food and Drug Administration National Shellfish Sanitation Program (NSSP), Guide for the Control of Molluscan Shellfish ((2019)) 2023 (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Model Ordinance or a provision of 21 C.F.R., Part 123, is inconsistent with a provision otherwise es-

established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.