

WSR 21-10-087

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 3, 2021, 12:34 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: WAC 246-282-005 Sanitary control of shellfish minimum performance standards, the department of health (department) is amending WAC 246-282-005 which references the 2017 version of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (guide). The rule making is necessary to update the publication date of the NSSP guide adopted by reference in the rule from 2017 to the most recently adopted 2019 version.

Hearing Location(s): On June 10, 2021, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register at <https://attendee.gotowebinar.com/register/6909954906774766608>. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer mic and speakers (VoIP) United States +1 (631) 992-3221.

Date of Intended Adoption: June 17, 2021.

Submit Written Comments to: Nina Helpling, Washington State Department of Health (DOH), Division of Environmental Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by June 10, 2021.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov, by June 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments will update the reference to the NSSP guide to assure [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 The rule currently references the 2017 NSSP guide, leaving the current rules out of date. The proposed rule updates the reference to the 2019 version of the NSSP 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: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Nina Helpling, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3065; Implementation and Enforcement: Scott Berbells, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3324.

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 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: RCW 69.30.030(2) mandates the state board of health to consider the most recent version of the national shellfish sanitation program model ordinance, adopted by the interstate shellfish sanitation conference, when adopting rules. In order to remain compliant with the FDA requirements to place molluscan shellfish into interstate commerce, the department must adopt rules that are at least as stringent as the most recent version of the NSSP guide. The proposed amendments are needed to remain compliant with the 2019 NSSP guide.

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.

April 21, 2021
Lauren Jenks
Assistant Secretary

OTS-2971.1

AMENDATORY SECTION (Amending WSR 19-14-094, filed 7/1/19, effective 8/1/19)

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 (~~((2017))~~) (2019) (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 established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

[Statutory Authority: RCW 96.30.030 [69.30.030]. WSR 19-14-094, § 246-282-005, filed 7/1/19, effective 8/1/19; WSR 17-12-047, § 246-282-005, filed 6/1/17, effective 7/2/17. Statutory Authority: RCW 60.30.030 [69.30.030]. WSR 15-04-049, § 246-282-005, filed 1/29/15, effective 1/29/15. Statutory Authority: RCW 60.30.030 [69.30.030]. WSR 14-09-003, § 246-282-005, filed 4/3/14, effective 5/4/14; WSR 14-01-002, § 246-282-005, filed 12/4/13, effective 1/4/14; WSR 11-17-104, § 246-282-005, filed 8/22/11, effective 9/22/11; WSR 09-08-116, § 246-282-005, filed 3/31/09, effective 5/1/09; WSR 07-20-014, § 246-282-005, filed 9/20/07, effective 10/21/07; WSR 06-01-055, § 246-282-005, filed 12/16/05, effective 1/16/06. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-005, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 69.30.030. WSR 98-18-066, § 246-282-005, filed 8/31/98, effective 10/1/98; WSR 98-03-096, § 246-282-005, filed 1/21/98, effective 2/21/98; WSR 96-18-096, § 246-282-005, filed 9/4/96, effective 10/5/96; WSR 94-23-026, § 246-282-005, filed 11/8/94, effective 12/9/94.]