



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL PUBLIC HEALTH
PO Box 47820 • Olympia, Washington 98504-7820
TDD Relay Service: 1-800-833-6388

May 30, 2013

TO: Michelle Davis, Executive Director
Washington State Board of Health

FROM: ^{MW} Maryanne Guichard, Assistant Secretary
Division of Environmental Public Health

SUBJECT: RULEMAKING AUTHORITY DELEGATION REQUEST
WAC 246-282-005, Sanitary Control of Shellfish, Minimum Performance Standards

The Department of Health is requesting the board's delegation of rule-making authority to amend Chapter 246-282-005 WAC, Sanitary Control of Shellfish, Minimum Performance Standards, to update the reference of the National Shellfish Sanitation Program Guide. The shellfish industry actively participated in the development of this national consensus document. The department does not anticipate any controversy or opposition to this rule change. This change will help assure that Washington State remains in compliance with the national shellfish sanitation standards, allowing our state's shellfish producers to place shellfish into interstate commerce.

Federal and State Requirements

The U.S. Food and Drug Administration (FDA) oversees a cooperative program between the shellfish producing states and the shellfish industry for the production and processing of shellfish in a manner specified by the National Shellfish Sanitation Program (NSSP). The FDA evaluates each state's shellfish sanitation control plan to ensure compliance with the NSSP.

Chapter 69.30 RCW directs the State Board of Health to adopt rules governing the sanitation of shellfish, shellfish growing areas, shellfish processing, plant facilities, and shellfish operations in order to protect the public health. The statute further directs the board to consider the most recent version of the national shellfish sanitation program model ordinance when adopting rules. Chapter 246-282 WAC, Sanitary Control of Shellfish, establishes minimum performance standards for the growing, harvesting, processing, packing, storage, transporting, and selling of shellfish for human consumption. Currently, these rules reference the FDA 2009 NSSP Guide for the Control of Molluscan Shellfish. All states must follow this model ordinance to place shellfish into interstate commerce. FDA has now adopted a 2011 version of the model ordinance, leaving the current rules out of date.

State Board of Health Delegation Criteria

The board's "Policy for Considering Delegation of Rule to the Department of Health" provides the following elements for consideration. The following criteria apply:

- ***The extent to which the proposed rule seeks to adopt federal requirements in which the state has little or no discretion:*** The FDA approves new Model Ordinance's biennially to address new and emerging issues in the shellfish industry. This proposed rule amendment will eliminate inconsistencies between state and federal requirements.
- ***The extent to which the proposed rule may make significant changes to a policy or regulatory program:*** Changes to the state regulation will be limited to those required by the federal 2011 Model Ordinance. No significant changes will be proposed.
- ***The extent to which the rule revision process would benefit from the board's role as a convener of interested parties:*** The department does not expect the rule revision to be controversial or contentious. Stakeholders will be fully involved through program activities to seek input on proposed amendments and the public hearing. The draft rule will be made available through the department's website and email notification to stakeholders and interested parties. The department will distribute the proposed rule to stakeholders and post it on the department's rules comment website during the formal public comment period.

*Contact: Jerrod Davis; Office of Shellfish and Water Protection at (360) 236-3391
Jerrod.Davis@doh.wa.gov*