



STATE OF WASHINGTON

DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL PUBLIC HEALTH
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March 1, 2021

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

FROM: Lauren Jenks, Assistant Secretary
Division of Environmental Public Health

SUBJECT: State Board of Health Rule Making Authority Delegation Request
WAC 246-282-005, Sanitary Control of Shellfish, Minimum Performance Standards

The Department of Health (department) is requesting the board delegate its rule making authority to amend WAC 246-282-050, *Sanitary Control of Shellfish, Minimum Performance Standards*, to update the rule to change the publication of the NSSP model ordinance from '2017' to '2019'.

Chapter 69.30 RCW, *Sanitary control of shellfish*, directs the State Board of Health (board) 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 (NSSP) model ordinance when adopting rules.

The NSSP model ordinance is updated on a biennial basis and was recently updated to the 2019 version. The changes to the 2019 NSSP model ordinance was proposed by the Interstate Shellfish Sanitation Conference members with representation and input from the shellfish industry.

The department evaluated the 2019 NSSP model ordinance with the board's current chapter of rules in chapter 246-282 WAC and created a summary of changes table (attached) outlining the changes from the 2017 NSSP guide to the 2019 NSSP guide. The results of the evaluation did not find any rule requirements that need to be amended other than to change the publication date from '2017' to '2019'.

The U.S. Food and Drug Administration 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 NSSP model ordinance. The NSSP model ordinance includes license requirements for growing, harvesting, processing, and shipping molluscan shellfish in a way that is safe for human consumption. States must regulate these activities consistent with the NSSP model ordinance in order for licensees to place molluscan shellfish into interstate commerce. The U.S. Food and Drug Administration evaluates each state's shellfish sanitation control plan to ensure compliance with the most recent NSSP model ordinance.

This rule making delegation request is based on the following criteria included in the board's Policy Number 2000-001, *Considering Delegation of Rule to the Department of Health*:

The extent to which the proposed rule seeks to adopt federal requirements in which the state has little or no discretion.

The U.S. Food and Drug Administration updates the NSSP model ordinance biennially to address new and emerging issues in the shellfish industry. There are no discretion items for the department to consider. This rule making will amend the board's rule to incorporate, by reference, the recently published 2019 federal requirements.

The extent to which the proposed rule may make significant changes to a policy or regulatory program.

Changes to the state rule will be limited to:

- Revise the date reference to the 2019 version of NSSP model ordinance.

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 anticipate any controversy or opposition to this rule change. The department will provide the proposed rule to stakeholders and interested parties through the department's website and an e-mail notice.

If you have questions or need additional information, please contact Todd Phillips, Director, Office of Environmental Health and Safety, 360-236- 3302 or todd.phillips@doh.wa.gov.

cc: Todd Phillips, Director, Office of Environmental Health and Safety