

WASHINGTON STATE BOARD OF HEALTH

Date: March 9, 2022

To: Washington State Board of Health Members

From: Keith Grellner, Board Chair

Subject: Department of Health Request for Delegation of Emergency Rulemaking Authority to amend the *Vibrio Parahaemolyticus* Control Plan, WAC 246-282-006

Background and Summary:

The State Board of Health (Board) and the Washington Department of Health (Department) collaborate to regulate the sanitary control of molluscan shellfish. The Board serves as the rulemaking body and the Department serves as the regulatory agency. The Department also serves as the state shellfish authority administering the model ordinance of the National Shellfish Sanitation Program (NSSP). NSSP members must establish plans to control *Vibrio Parahaemolyticus* (Vp). These plans are established in rules.

Under RCW 69.30.030, the Board is specifically authorized to adopt rules governing the sanitation of shellfish. Under RCW 34.05.350, emergency rules may be adopted when an agency for good cause finds adoption of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. The Board may delegate any of its rulemaking authority to the Department under RCW 43.20.050(4).

On February 23, 2022, the Board filed a CR-101, Preproposal Statement of Inquiry, to initiate rulemaking to update chapter 246-282 WAC, Sanitary Control of Shellfish. The rulemaking will consider miscellaneous technical updates to the rules along with updates to WAC 246-282-006, *Vibrio parahaemolyticus* (Vp) Control Plan. As standard Board rulemaking, the work will likely take two or more years to complete.

As added background, Vp is naturally occurring marine bacteria that can cause serious illness when consumed in raw or undercooked molluscan shellfish. Vp levels can dramatically worsen during warm-weather events as water and air temperatures rise. Time-to-cooling requirements reduce risk.

The current Vp Control Plan, last revised in 2015, establishes a control season between May 1st and September 30th and authorizes enforcement of the rule's strictest time-to-cooling requirements for harvested oysters starting July 1 of the Vp control season. However, recent events illustrate the need for a more flexible rule. From June 26 to July 2, 2021 the National Weather Service in Seattle reported a long-duration, unprecedented heat wave throughout the Pacific Northwest. Shellfish-related Vp

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illnesses increased sharply. The current rule does not allow enforcement of the strictest control measures before July 1 if temperatures are high due to unpredictable weather events.

The Department is requesting delegation of emergency rulemaking authority from the Board so an emergency rule amending WAC 246-282-006 can be prepared for adoption in the event of a heat wave. An emergency rule would be adopted to allow for enforcement of the strictest time-to-cooling standards to protect public health and safety when heat-wave temperatures occur. Delegated emergency rulemaking authority would be exercised only in the event heat-wave conditions occur prior to July 1 of the Vp control season and prior to completion of concurrent rulemaking to revise chapter 246-282 WAC.

Dani Toepelt, manager of the Department's Shellfish Certification & Licensing Section, will join us to present and explain the Department's request for delegation of emergency rulemaking authority to address unpredictable heat-wave events, and the related work already underway to revise chapter 246-282 WAC.

Recommended Board Actions:

The Board may wish to consider, amend if necessary, and adopt the following motion:

The Board delegates to the Washington Department of Health emergency rulemaking authority to amend WAC 246-282-006 to allow enforcement of the strictest time-to-cooling standards in the event heat-wave conditions occur prior to July 1 of the Vp control season and prior to completion of concurrent rulemaking to revise chapter 246-282 WAC.

Staff

Stuart Glasoe

To request this document in an alternate format or a different language, please contact Kelie Kahler, Washington State Board of Health Communication Manager, at 360-236-4102 or by email at kelie.kahler@sboh.wa.gov. TTY users can dial 711.

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