



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL PUBLIC HEALTH
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November 13, 2024

TO: Michelle 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,
Minimum performance standards, Sanitary Control of Shellfish.

The Department of Health (department) is requesting delegation of rule-making authority from the State Board of Health (board) to amend WAC 246-282-005 to adopt by reference the 2023 revision to the National Shellfish Sanitation Program's (NSSP) *Guide for the Control of Molluscan Shellfish*.

Changes to the rule under this delegation request, if approved, will be limited to amending subsection (1)(a) in WAC 246-282-005, to update the current reference from the 2019 version of the *Guide for the Control of Molluscan Shellfish* to the 2023 version.

WAC 246-282-005 sets minimum performance standards for any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption. One of the standards adopted by reference in this WAC section is the NSSP's *Guide for the Control of Molluscan Shellfish*, which consists of a Model Ordinance, supporting guidance documents, recommended forms, and other related materials. The NSSP releases a revision to the *Guide for the Control of Molluscan Shellfish* every odd year. On September 3, 2024, the 2023 revision to the Model Ordinance was released, superseding the 2019 version currently referenced in WAC 246-282-005(1)(a).

This rule change is needed because the department cannot enforce the 2023 Model Ordinance without adopting this current version. Department staff have reviewed the changes in the 2023 Model Ordinance and determined that they will not impact the rules that are currently open as part of the Sanitary Control of Shellfish project.

For prior revisions, the board has delegated rule-making authority to the department to make this change. If granted rule-making authority, the department will use an exception rule-making process and anticipates completing this project by May 2025.

Conformance with the State Board of Health Delegation Criteria:

The board's policy (Policy Number 2000-001) for Considering Delegation of Rule to the Department of Health provides the following elements for consideration:

The extent to which the proposed rule revision is expected to include editorial and/or grammatical changes that do not change the substance of the rule:

- The department does not anticipate the inclusion of editorial or grammatical changes in the proposed rule revision.

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

- The scope of the proposed rule will be limited to changing the "2019" to "2023" in WAC 246-282-005 (1)(a). The changes in the 2023 Model Ordinance do not affect the regulations in chapter 246-282 WAC.

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

- The scope of the rule change will be limited to changing the "2019" to "2023" in WAC 246-282-005(1)(a) to adopt by reference the newest version of the federal NSSP Model Ordinance.

The extent to which the substance and direction of the proposed rule is expected to have broad public and professional consensus.

- The department does not anticipate any controversy or opposition to this rule change. The process of updating WAC 246-282-005 to adopt the most recent version of the *Guide for the Control of Molluscan Shellfish* is one that interested parties are familiar with.

The extent to which the rule revision process would benefit from the board's role as a convener of interested parties.

- The department will keep interested parties engaged and informed throughout rule-making process via an up-to-date webpage and GovDelivery notifications that will be distributed using existing listservs. The department will have a formal comment period, as well as hold a public hearing.

For additional information, please contact Todd Phillips, Director of the Office of Environmental Health and Safety, at 360-236-3302 and todd.phillips@doh.wa.gov.