

WASHINGTON STATE BOARD OF HEALTH AND
WASHINGTON STATE DEPARTMENT OF HEALTH

Significant Legislative Rule Analysis

Chapter 246-282 WAC
a Rule Concerning the
Sanitary Control of Shellfish

September 2025

WASHINGTON STATE 
BOARD OF **HEALTH**



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SECTION 1

A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed.

The Washington Department of Health (department) regulates the commercial shellfish industry in order to prevent illness or death from consumption of contaminated molluscan shellfish. Chapter 246-282 WAC, Sanitary Control of Shellfish, establishes standards for the growing, harvesting, processing, and marketing of molluscan shellfish for human consumption. The State Board of Health (board) serves as the rulemaking body, while 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). The Model Ordinance, a consensus code, contains requirements for both the shellfish industry and state shellfish control agencies (e.g., the department) that must be followed in order for shellfish to be shipped interstate and abroad.

Chapter 246-282 WAC is the primary mechanism used by the department for ensuring that the industry meets the requirements of NSSP and for fulfilling its statutory direction to regulate the commercial shellfish industry for the protection of public health.

Consuming raw or undercooked oysters can lead to a gastrointestinal illness called Vibriosis caused by the pathogenic form of *Vibrio parahaemolyticus* (Vp) bacteria found in oysters. Vp is a naturally occurring bacteria found in marine waters. Molluscan bivalve shellfish acquire Vp through filter feeding. Vp bacterium is active in warmer temperatures and dormant in cooler temperatures and has one of the fastest reproductive rates among human pathogens. As a result, vibriosis occurs primarily during the summer months with an increased incidence of illness during warmer years compared to cooler years.

In 2021, there were 87 confirmed Vp cases¹ involving Washington shellfish largely due to exceedingly high temperatures during the summer months. The department expects this trend to continue. Together, the board and department determined rule revisions were necessary to ensure current controls are adequate to protect consumers. They also want to consider more proactive measures to prevent illness and protect public health.

Additionally, the board is proposing to modify the definition of “seed” to reduce the maximum shell length for other oyster species from 2 inches to 1 and 1/2 inches. The reduction is based on the evaluation of available data to determine shellfish growth rates. “Seed” refers to shellfish that are less than market size for human consumption. The Model Ordinance requires each shellfish authority to set the maximum seed size (based on current market size and a minimum of 120 days of growing outside the initial waters) for shellfish moved from Unclassified or Prohibited waters to waters in other classifications. While shell length in chapter 246-282 WAC has, until now, remained unchanged, the market for Pacific and other oyster species has become smaller in recent years, with Pacific oysters now reaching the market in sizes around 2 inches. The proposed change is necessary to meet the requirements of the Model Ordinance, ensure safe shellfish, and protect the health of shellfish consumers.

¹ This number includes multisource, single source and recreational illnesses.

To address concerns regarding the use of shell length for measurement (as opposed to width or weight), the board is proposing rule language that will allow this requirement to be waived provided a substitute measurement accurately protects public health and meets the requirements of the NSSP. To be granted a waiver, the shellfish operation would have to complete a study that determines shellfish growth in the defined time period.

Finally, the proposed rule revision includes updating definitions, tagging requirements, and other technical and editorial changes.

SECTION 2

Significant Analysis Requirement

As defined in RCW 34.05.328, portions of the rule require significant analysis because the proposed rule changes are not exceptions provided in RCW 34.05.328(5)(b) and (c).

The following SA Table 1. identifies rule sections or portions of rule sections that have been determined exempt from significant analysis based on the exemptions provided in RCW 34.05.328(5) (b) and (c).

SA Table 1. Summary of Sections not requiring Significant Analysis

WAC Section and Title	Description of Proposed Changes	Rationale for Exemption Determination
WAC 246-282-001, Scope and purpose	• Clarified that the minimum performance standards include shellfish for human consumption or for bait.	This section is rule is exempt from analysis under RCW 34.05.328(5)(b)(iv). The proposed change clarifies the language in the rule without changing its effect.
WAC 246-282-005, Minimum performance standards	• Clarified that the minimum performance standards include shellfish for human consumption or for bait. • Updated the Department of Health office name. • Added reference to chapter 69.30 RCW. • Amended language to conform with the 2025 bill drafting guide.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iii) and (iv). The proposed changes are editorial, incorporate state statute by reference without material change, and are intended to provide clarification without changing the effects of the rule.
WAC 246-282-010, Definitions	• Removed definitions that are the same as those in chapter 69.30 RCW and the NSSP Model Ordinance. • Added definitions of “beach wet storage”, “marina”, “mooring area”,	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iv). Terms defined in this section are intended to clarify the meaning of the terms used throughout the chapter and

	“mooring buoy” and “transplant.” Updated definitions to improve clarity.	are not intended to set standards.
WAC 246-282-012, Certificates of approval— Operation licenses, harvest site certificates.	- Clarified that the requirements for a harvest site certificate include shellfish for human consumption or for bait. - Amended language to conform with the 2025 bill drafting guide. - Made editorial changes to existing language. - Clarified application requirements.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv) and (c)(i). The proposed changes are editorial, are intended to provide clarification without changing the effects of the rule and are related to a process requirement for making an application to the agency for a license or permit.
WAC 246-282-014, Operating provisions	- Clarified that the requirements for a harvest site certificate include shellfish for human consumption or for bait. - Amended language to conform with the 2025 bill drafting guide. - Made editorial changes to existing language.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv). The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule.
NEW WAC 246-282-017, Mooring areas	Added a new section that requires the department to conduct a pollution assessment in mooring areas.	This section of rule is exempt under RCW 34.05.328(5)(b)(ii). The proposed new section relates only to internal governmental operations that are not subject to violation by a nongovernment party.
WAC 246-282-020, Growing areas	- Clarified the requirements for a Restricted classification. - Clarified the types of harvesting that are	This section of rule is exempt under RCW 34.05.328(5)(b)(iv).

	prohibited in unclassified areas. • Amended language to conform with the 2025 bill drafting guide. • Made editorial changes to existing language.	The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule.
WAC 246-282-036, Bait permit	• Clarified that this section applies to shellfish harvested for bait from unclassified areas. • Amended language to conform with the 2025 bill drafting guide. • Made editorial changes to existing language. • Clarified application requirements.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv) and (c)(i). The proposed changes are editorial, related to a process requirement for making an application to the agency for a license or permit, and are intended to provide clarification without changing the effects of the rule.
WAC 246-282-042, Wet Storage Permit	• Amended language to conform with the 2025 bill drafting guide. • Clarified application requirements for getting a wet storage permit from the department. • Clarified the requirements for shellstock wet stored in a natural body of water for less than 14 days.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv) and (c)(i). The proposed changes are editorial, related to a process requirement for making an application to the agency for a license or permit, and are intended to provide clarification without changing the effects of the rule.
WAC 246-282-060, Personal health and cleanliness	• Amended language to conform with the 2025 bill drafting guide. • Made editorial changes to existing language.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv). The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule.

WAC 246-282-070, Construction and maintenance	Amended language to conform with the 2025 bill drafting guide.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv). The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule.
WAC 246-282-092, Inspection by department	- Amended language to conform with the 2025 bill drafting guide. - Made editorial changes to existing language. - Clarified department operations.	This section of rule is exempt under RCW 34.05.328(5)(b)(ii) and (iv). The proposed changes are editorial and are intended to provide clarification without changing the effects of the rule. The proposed changes also relate only to internal governmental operations that are not subject to violation by a nongovernment party.
WAC 246-282-100, Notice of decision – Adjudicative proceeding	- Amended language to conform with the 2025 bill drafting guide. - Made editorial changes to existing language. - Clarified department operations.	This section of rule is exempt under RCW 34.05.328(5)(b)(ii) and (iv). The proposed changes are editorial and are intended to provide clarification without changing the effects of the rule. The proposed changes also relate only to internal governmental operations that are not subject to violation by a nongovernment party.
WAC 246-282-102, Denial, revocation, suspension of license, certificate, or permit—Civil penalties.	- Amended language to conform with the 2025 bill drafting guide. - Made editorial changes to existing language.	This section of rule is exempt under RCW 34.05.328(5)(b)(ii) and (iv). The proposed changes are editorial and are intended to provide clarification without

	Clarified department operations.	changing the effects of the rule. The proposed changes also relate only to internal governmental operations that are not subject to violation by a nongovernment party.
WAC 246-282-104, Penalty assignment—Calculation of penalty and proportionate adjustment—Aggravating and mitigating factors.	- Amended language to conform with the 2025 bill drafting guide. - Made editorial changes to existing language.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv). The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule.
WAC 246-282-110, Administrative provisions	- Amended language to conform with the 2025 bill drafting guide. - Made editorial changes to existing language. - Clarified department operations. - Added reference to the NSSP Model Ordinance.	This section of rule is exempt under RCW 34.05.328(5)(b)(iii) and (iv). The proposed changes are editorial, incorporate federal model ordinance by reference without material change, and are intended to provide clarification without changing the effects of the rule.
WAC 246-282-120, Penalty clause	Amended language to conform with the 2025 bill drafting guide.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv). The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule.
WAC 246-282-130, Separability clause	Amended the title to conform with the 2025 bill drafting guide.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv).

		The proposed change is editorial only and is intended to provide clarification without changing the effects of the rule.
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SECTION 3

Goals and objectives of the statute that the rule implements.

Chapter 69.30 RCW requires the board and department to ensure the sanitary control of shellfish. Safeguarding public health requires that commercial shellfish are harvested only from approved growing areas and processing of shellfish is conducted in a safe and sanitary manner.

The statute authorizes the board to adopt rules governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations. Additionally, the board must consider the most recent version of the NSSP.

The statute authorizes the department to license, permit, inspect, and impose penalties on shellfish operations in Washington state.

The proposed rules meet these goals and objectives to ensure current controls are adequate to protect consumers, prevent illness, and protect public health.

SECTION 4

Explanation of why the rule is needed to achieve the goals and objectives of the statute, including alternatives to rulemaking and consequences of not adopting the proposed rule.

There are no alternatives to rulemaking. For the board and department to achieve the goals and objectives of the statute, the board must adopt rules. Amendments to chapter 246-282 WAC must be adopted to ensure current controls are adequate to protect consumers, prevent illness, and protect public health.

SECTION 5

Analysis of the probable costs and benefits (both qualitative and quantitative) of the proposed rule being implemented, including the determination that the probable benefits are greater than the probable costs.

To gather information on the costs and benefits of the proposed rule changes, the board and the department collaborated to create a cost survey that was distributed to shellfish operations and Tribal partners. This survey was distributed via email which included a SurveyMonkey link. The survey was open from June 5th through June 19th.

The cost survey was intended to serve as a snapshot of potential costs and benefits associated with complying with the proposed rule. The cost survey was not designed or analyzed with the purpose of producing cost estimates that are representative of all shellfish operations in Washington state, nor was it intended to provide inference about the costs of any Shellfish operations that did not respond to the cost survey. Throughout section 5, the cost survey presents the board and department with informed insight about the types and ranges of costs that shellfish operations could experience to comply with the proposed rule.

25 respondents started the survey, however 10 of these respondents did not answer any of the survey questions. Of the 15 respondents that provided answers, 12 identified as small businesses, meaning that they have 50 or fewer employees². One respondent said that they were not sure how many employees their operation has.

Throughout each of the WAC sections in this analysis, the board has provided the number of respondents that answered each question.

For the purposes of the analysis, increased cost was defined as the costs to adhere to the proposed rule that are in addition to what a shellfish operation already incurs, both up front and ongoing costs. Cost savings is defined as funds saved due to adherence to the proposed rule. One-time costs are defined as costs that occur only once, whereas recurring costs are costs that occur one time per year.

WAC 246-282-006, Washington state *Vibrio parahaemolyticus* control plan.

WAC 246-282-006(4):

² [RCW 19.85.020: Definitions. \(wa.gov\)](#)“(3) “Small business” means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.”

Description: The current rule requires a harvester or shellfish dealer to submit new harvest plans, or changes to their current harvest plan, to the department by March 1st each year. The proposed rule requires submission of the harvest plan at least 14 calendar days before the first planned harvest.

Survey Respondents: 14 shellfish operations provided an answer to this survey question.

Cost(s): Based on responses from the survey it is estimated that the one-time costs could range from neutral or insignificant to \$5,000, while the annual recurrent costs could range from neutral or insignificant to \$2,000.

One respondent (1/14) estimated a one-time cost of \$5,000 and an annual recurrent cost of \$2,000 but did not provide an explanation for their estimate.

Five respondents (5/14) indicated that this question did not apply to their operation. One of these respondents (1/5) provided the following explanation:

- “We are a shellfish shipper always handling shellfish under temperature control during shipment and holding. We do not harvest.”

Most survey respondents (8/14) indicated that the impact would be cost neutral or insignificant. These operations made the following statements:

- “As I understand it – this doesn’t add to our expense. But I might not understand it.”
- “14 days makes more sense.”
- “The current rule aligns with my annual license renewal, which is convenient. Our active harvest season goes through the new year, so any interruption to harvest in January, waiting on approval of harvest plans, would affect my and employee earnings.”
- “Nothing has changed on our farm so my plan doesn’t change. If the plan requirements or format change, I will have additional costs.”
- “This is helpful. Thanks!”

Benefit(s): The proposed rule change will allow growers greater flexibility when submitting their harvest plans to the department.

WAC 246-282-006(10):

Description: The current rule specifies time of harvest to cooling requirements based on certain dates (i.e. from June 1st through September 30th or from July 1st through August 31st). The proposed rule removes these dates and specifies that the conditions listed in the table apply during all control months, which are from May 1st through September 30th.

Survey Respondents: 12 shellfish operations provided an answer to this survey question.

Cost(s): Based on responses from the survey it is estimated that both the one-time and annual recurrent costs could range from neutral or insignificant to \$25,000.

One respondent (1/12) estimated a one-time cost of \$1,000 and an annual recurrent cost of \$2,000. This respondent did not provide an explanation for their estimate.

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An additional respondent (1/12) estimated a one-time cost ranging from \$18,750 to \$25,000 and an annual recurrent cost of \$25,000. This respondent explained that the provided values are “based on estimated opportunity cost of removing 3 potential harvest month[s] during the year. We cannot predict the future but harvest value will increase with inflation, so [the] estimate will increase annually above \$25K eventually.”

Another respondent (1/12) estimated an annual recurrent cost of \$200, saying that “this was estimated as the hours needed for recording during May.”

Two respondents (2/12) indicated that this question did not apply to their operation. These operations made the following statements:

- “[We] do not transport shellfish after harvest, so this rule change does not apply. However, if transportation of shellfish to a facility was part of the business operation, then this can cause an increase[d] cost due to changes in temperature, which can change due to need to purchase ice to cool oysters, or the cancellation of orders or delayed orders, therefore the increase cost varies and depends on order size.”
- “We purchase from SP. Perhaps there are higher costs associated with more temperature control/ice costs that might impact costs. It is hard to say impact. Yet cooling is key control to health during vibrio season.”

Most survey respondents (7/12) indicated that the impact would be cost neutral or insignificant. These operations made the following statements:

- “We already follow strict temperature controls from moment of harvest to cooler with ice and document the temperature every hour. This is not only during the control period of May 1 to Sept 30, but all year long.”
- “The dates in Washington already are May 1 to September 30.”
- “This makes sense from a health perspective, although, we do not currently produce oysters in the May-Sept vibrio season.”
- “[We] operate as if the VP rule covers all control months in all growing areas already. This brings the rule up to the standard we have set internally.”

Benefit(s): The proposed rule change is intended to prevent illnesses when harvest temperatures are higher than normal that occur before July and after August. The proposed change is intended to reduce the risk of the public acquiring vibriosis from the consumption of raw and undercooked oysters, by establishing more stringent time-to-temperature controls during the months of most concern (May through September) in growing areas most likely to be associated with Vp. This change is directly tied to the increase of Vp illnesses due to the heat dome in 2021. There were low tides, hot weather, and the strictest time to cooling was not in effect. The department saw a large increase in confirmed Vp illnesses from that timeframe, demonstrating that a rule change was needed.

WAC 246-282-006(10)(d):

Description: The current rule specifies that when a harvester or shellfish dealer places oysters in a container or conveyance but does not remove them from the tide flat as part of their

harvest and the harvest exceeds the time to cooling requirements, the oysters must be covered by the tide for a minimum of four hours before the harvest can be completed. The proposed rule keeps the four-hour resubmergence requirement but also requires the oysters to be returned to approximately the same tidal level or lower than where they were collected.

Survey Respondents: 13 shellfish operations provided an answer to this survey question.

Cost(s): Based on responses from the survey it is estimated that the one-time costs could range from neutral to insignificant to \$1,600, while the annual recurrent costs could range from neutral to insignificant to \$15,000.

Three respondents (3/13) indicated that the proposed change would result in both one-time and annual recurrent increased costs for their operations. The respondents estimated one-time costs of \$250, \$500, and \$1,600 and annual recurrent costs of \$2,500, \$10,000, and \$500, respectively. These operations provided the following statements regarding costs:

- “Additional gear and labor is needed.”
- “Tides are changing every day and harvest times are always changing. Sometimes it’s best [to] place the harvest where it will be best for the next harvest.”
- “This seems a little ridiculous. If the 4 hours is important, just require that they are submerged for minimum 4 hours. Growers do not have access to all tidal elevations all the time, but they can figure out where to locate product to meet the requirement of 4 hours without returning to a specified elevation. Also, growers harvest from multiple elevations at the same time - so which elevation would be relevant with the new rule?”

One survey respondent (1/13) estimated an annual recurrent cost of \$15,000. This respondent provided the following comment:

- “On our Oakland Bay farm, when water temperatures are not at risk of approaching the limit (May, June, September) we will put sacks of oysters on the ramp and harvest them on the falling tide before they are uncovered. This process would no longer be permitted, so our boat will have to pick the sacks at high tide and make a special delivery to the processing plant for all control months, despite water temperature.”

Five respondents (5/13) indicated that this question did not apply to their operation. One of these respondents (1/5) said that “when oysters are harvested and bagged, they are left at the tidal level where they are harvested.” Another respondent (1/5) said that “as a dealer, this is not going to change our operation.”

Three respondents (3/13) indicated that the impact would be cost neutral or insignificant and one respondent (1/13) said that they are “unable to determine cost. It depends on the level of the tide any given day.”

Benefit(s): The proposed rule will prevent illnesses by requiring bagged shellstock to be stored at the same or lower tidal height to limit the amount of air and sun the oysters are directly exposed to.

WAC 246-282-006(12):

Description: The current rule specifies that harvesters and shellfish dealers shall take measurements with a thermometer that is verified weekly using manufacturer specifications or with a method approved in a harvest plan. The proposed rule requires measurements to be taken either with a thin-tip digital thermometer that is verified monthly using manufacturer specifications or with a method approved in a harvest plan, or with an NIST certified thermometer that has a manufacturer certificate that does not need to be verified monthly.

Survey Respondents: 12 shellfish operations provided an answer to this survey question.

Cost(s): Based on responses from the survey it is estimated that both the one-time and annual recurrent costs could range from neutral or insignificant to \$500.

Two respondents (2/12) indicated that the proposed change would result in only a one-time increased cost for their operation. These respondents estimated one-time costs of \$55 and \$100 and said the following regarding their estimates:

- “I must purchase a new, instant read, thin tipped digital thermometer that can be verified monthly.”
- “Bought a new thermometer which can be calibrated as per our HACCP plan. Our current thermometers are tested every week during Vibrio season but can’t be calibrated. I understand the need for accurate temps so I bought a third one that can be calibrated.”

One respondent (1/12) indicated that the proposed change would result in only an annual recurrent increased cost of \$300 for their operation, stating that “although our digital thermometers have always matched the inspector’s temp, we need to buy new ones because we don’t have NIST certified.”

Three respondents (3/12) indicated that the proposed change would result in both a one-time and an annual recurrent increased cost for their operation. The respondents estimated one-time costs of \$400, \$500, and \$500, and annual recurrent costs of \$100, \$500, and \$50, respectively. Two of these respondents (2/3) said the following about costs:

- “New digital thermometers cost. Ongoing annual replacement costs.”
- “New rule sounds fine. We would just need to source new thermometers.”

One respondent (1/12) indicated that this question did not apply to their operation.

Three respondents (3/12) indicated that the impact would be cost neutral or insignificant, with one of these respondents explaining that “we already do this.”

The cost survey revealed potential misunderstandings regarding the proposed rule change. Operations must use a thin-tip digital thermometer (as low as \$10 on Amazon³) or a NIST certified thermometer (as low as \$34⁴). Either will suffice. The department does not anticipate a reoccurring cost unless the thermometers must be replaced. However, depending on the size

³ [Amazon.com: Professional Meat Thermometer Digital, ±0.5°F NIST Certified Accuracy, Instant Read Food Thermometer for Cooking Grill, 100% Waterproof, Auto-Rotate Backlit Display, Motion-Sensing On/Off, Red : Industrial & Scientific](https://www.amazon.com/Professional-Meat-Thermometer-Digital-0.5F-NIST-Certified-Accuracy-Instant-Read-Food-Thermometer-for-Cooking-Grill-100-Waterproof-Auto-Rotate-Backlit-Display-Motion-Sensing-On/Off-Red-Industrial-Scientific/dp/B073183834)

⁴ [McMaster-Carr](https://www.mcmaster.com/carr/)

of the operation and how many growing areas the operation is harvesting from, multiple thermometers may need to be purchased.

Benefit(s): One respondent (1/12) indicated a one-time cost savings of \$45 and another (1/12) indicated an annual recurrent cost savings of \$240, stating that there would be a “small savings by not having to recalibrate every week by moving to annual recalibration [of] thermometers.” While the proposed rule would require monthly, rather than annual, recalibration of thermometers, this would still result in potential cost savings for shellfish operations.

An additional benefit of the proposed rule change is that by removing the usage of analog thermometers, shellfish operations can more accurately measure temperatures without requiring continual recalibration.

WAC 246-282-006(18)

Description: The current rule outlines record-keeping requirements when ownership of oysters is transferred prior to the oysters being cooled in accordance with the time of harvest to cooling requirements. It also requires the receiving dealer to meet the time of harvest to cooling requirements for the original harvest time. The proposed rule adds a new requirement for the harvester to provide the receiving dealer with the total time of harvest to cooling for the oysters, based on the growing area risk category.

Survey Respondents: 12 shellfish operations provided an answer to this survey question.

Cost(s): Based on the responses from the survey it is estimated that the one-time costs could range from cost neutral or insignificant to \$250, while the annual recurrent costs could range from cost neutral to insignificant to \$50.

Two respondents (2/12) indicated that the proposed change would result in an increased cost for the operation. One of these respondents (1/2) estimated a one-time cost of \$200 and a recurrent cost of \$50. This respondent said the following about costs:

- “Increased training of supervisors and employees; increased documentation and guide and map of growing areas, classes, and time to temperature requirements.”

The other respondent (1/2) estimated a one-time cost of \$250, stating that the “new rule requires an update to farm documentation.”

Six respondents (6/12) indicated that the question did not apply to their operation. The following are some of the reasons that were provided by these respondents:

- “Our operations do not involve transporting shellfish from [the] area after harvest; therefore, [this] change will not apply to [our] operation.”
- “In our case, ownership is never transferred prior to the oysters being cooled in accordance with the time of harvest to cooling requirements.”
- “I do not sell to a dealer or wholesale. I am strictly retail.”
- “Dealer does not have changed actions in this.”

Finally, four respondents (4/12) indicated that the impact would be cost neutral or insignificant, with three of these respondents (3/4) stating that they already do this practice.

Benefit(s): The proposed rule change provides clarification on who is responsible for cooling, and the time they have remaining to cool if ownership is transferred, leaving less room for error.

In addition to the proposed changes described above, the board made the following changes in this section, which are exempt from analysis:

WAC 246-282-006: The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide and make several editorial changes to existing language. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-006(3): The proposed changes clarify the type of information that harvesters or shellfish dealers shall report to the department. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-006(6): The proposed changes reduce the time for the department to review and either approve or deny the harvest plan from 30 days to 14 calendar days of receipt. The proposed changes relate only to internal governmental operations that are not subject to violation by a nongovernment party. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(ii).

WAC 246-282-006(8): The proposed changes clarify that growing area risk categories are based on the number of single source cases that occurred during the previous consecutive five-year period that were within the control months and attributed to that growing area. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-006(11): The proposed changes clarify the requirements for recording and maintaining a harvest temperature record. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-006(14): The proposed changes reduce the department's review time for harvest plans from 30 days to 14 days. The proposed changes relate only to internal governmental operations that are not subject to violation by a nongovernment party. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(ii).

WAC 246-282-006(16): The proposed changes clarify the requirements for the more stringent time of harvest to cooling to be used if shellstock is beach wet stored in a growing area with a different risk category than where it was harvested. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-006(19): The proposed changes clarify that a person who trains another must have completed the department-approved training within the last 5 years. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-006(24): The proposed changes add a new definition for ‘time of harvest’ and amended ‘harvest temperature’ and ‘single source case.’ Terms defined in this section are intended to provide clarification on the meaning of the term used throughout the section without changing the effects of the rule. The proposed changes are considered exempt RCW 34.05.328(5)(b)(iv).

WAC 246-282-016, Aquaculture.

WAC 246-282-016:

Description: The current rule sets a maximum shell length of fifty-one millimeters or 2 inches for other oyster species. This definition currently impacts only permits issued for wild seed. The proposed rule reduces the maximum shell length to thirty-eight millimeters or 1 and 1/2 inches for other oyster species. This will impact the permits issued for wild seed, as well as those for aquaculture activities.

Survey Respondents: 12 shellfish operations provided an answer to this survey question.

Cost(s): Based on responses from the survey it is estimated that the one-time costs could range from cost neutral or insignificant to \$20,000, while the annual recurrent costs could range from neutral or insignificant to \$1,800.

Three respondents (3/12) indicated that the proposed rule would result in both one-time and annual recurrent costs for their operations. One of these respondents (1/3) estimated a one-time cost of \$1,800 and a annual recurrent cost of \$1,800. This operation provided the following explanation:

- “Increased training of supervisors and employees, increased labor to measure, increased labor to cull commercial oysters from seed and/or cultch, mortality of seed from additional required handling.”

Another respondent (1/3) estimated a one-time cost of \$20,000 but did not provide an explanation for their estimate.

Finally, the third respondent (1/3) estimated a one-time cost of \$3,000,000 and an annual recurrent cost of \$250,000, which relate to the establishment of nurseries in Approved areas to enable the operation to grow bigger seed. Since this is not a requirement of the proposed rule, these estimates have been excluded from the summary of costs. This operation provided the following explanation and information regarding this proposed change:

- “The sections of WAC 262-282-010 and WAC 246-282-016 regarding seed size have the potential to have financial implications on the shellfish industry. [We] appreciate[s] the Department’s option for a waiver and how this may allow for seed greater than 1.5” in length. Record keeping to confirm grow out in approved waters for 120 days, regardless of seed size is a solution [we] support[s]. [We] [are] investing more than \$3,000,000 to

develop infrastructure, with an annual operating cost of more than \$250,000, to grow seed larger in approved waters before planting onto the beach. Seed cost is a significant portion of a shellfish farm's expenses and the larger the seed when out planted, the higher the survival. Our experience shows that 1.5" – 2" oysters survive 50% better than 0.5" – 0.75" oysters planted onto the farm. With threats from invasive species, such as European Green Crab, and other unknown future predators / diseases, [we] [are] concerned that the importance of planting larger oyster seed will only continue to grow. While [we] [have] the resources and scale to invest in secondary nurseries in approved waters, permitting and environmental monitoring costs, which were greater than \$500,000 for this project, are cost prohibitive for most of the industry. In the fast-growing summer months, seed that is 0.75" will pass the 1.5" size maximum in 3 weeks. In 2 weeks or less, you may find more than 5% of the fastest growing animals in that bin has passed the 1.5" mark. [We] [urge] the Department to consider increasing this allowance to 10%. These oysters are comingled with smaller oysters and will be treated as a single lot, so risk to human health is insignificant compared to the cost of depletion. The cost of depletion on oysters within a single nursery bin in our flupsy is more than \$8,000. [We] [urge] the Department to consider increasing the seed size exceedance allowance to 10% and consider how waivers could be utilized to grant shellfish farms the flexibility to grow seed to the size that best fits their farm's needs while ensuring 120 days of grow out in approved waters.

The majority of respondents (8/12) indicated that the question did not apply to their operation. The following are the explanations provided by these operations:

- "We don't buy large seed."
- "Small business operations do not involve seed purchase or planting."
- "This rule is based on no science and should not be adopted. As a dealer, it does not change anything for me."

Finally, one respondent (1/12) indicated that the impact would be cost neutral or insignificant, with this respondent stating that this was "not applicable to my operation."

Benefit(s): One respondent (1/12) estimated a one-time cost savings of \$5,000 and an annual recurrent cost savings of either \$15,000 or \$150,000, but did not provide an explanation. The department does not anticipate that shellfish operations will experience any cost savings associated with this proposed rule change.

The proposed rule change would bring the state of Washington into compliance with the federal rule regarding shellfish seed size from Prohibited areas. Maximum seed size in the current rule is large enough to allow shellfish to directly enter the market without the required grow-out period. The proposed rule will ultimately protect public health.

WAC 246-282-016(3)(a):

WASHINGTON STATE DEPARTMENT OF HEALTH

Significant Analysis

July 2025

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Description: The proposed rule adds new language to clarify the requirements for aquaculture operations harvesting oyster seed, other than Kumamoto and Olympia, that have a seed size greater than one (1) inch and less than one and one half (1½) inches. One of these requirements is starting the minimum grow-out period the moment when the entire lot is added to the grow-out site.

Survey Respondents: 11 shellfish operations provided an answer to this survey question.

Cost(s): The majority of respondents (9/11) indicated that this question did not apply to their operation.

One respondent (1/11) indicated that the impact would be cost neutral or insignificant. Another respondent (1/11) indicated that the impact would be cost neutral or insignificant and also stated that this was “not applicable to my operation.”

Benefit(s): The proposed rule will ensure that all of the oysters have at least the minimum grow-out time.

WAC 246-282-016(3)(b):

Description: The proposed rule adds new language to clarify the requirements for aquaculture operations harvesting oyster seed, other than Kumamoto and Olympia, that have a seed size greater than one (1) inch and less than one and one half (1½) inches. One of these requirements is to keep records for each lot of shellfish that show the species, location, date, and quantity moved from the initial site, the grow-out location, and the date of first harvest of any of those shellfish from the grow-out site.

Survey Respondents: 12 shellfish operations provided an answer to this survey question.

Cost(s): One respondent (1/12) indicated that the proposed rule would result in an annual recurrent cost of \$15,000 for their operation, but did not provide an explanation.

The majority of respondents (10/12) indicated that this question did not apply to their operation. One of these respondents (1/10) also stated that the impact would be cost neutral or insignificant.

One respondent (1/12) indicated that the impact would be cost neutral or insignificant, stating that “[we] already collect this information.”

Benefit(s): One respondent (1/12) indicated that the proposed rule would result in an annual recurrent cost savings of \$80,000 for their operation, but did not provide an explanation.

The record keeping requirement in the proposed rule will allow seed to stay in Prohibited areas until they are 1 1/2 inches. Record keeping will ensure that shellfish are grown for a minimum of 120 days in Approved areas.

WAC 246-282-016(4):

Description: The proposed rule provides shellfish operations with the ability to apply for a seed size waiver if it is consistent with the applicable standards and intent of the definition, as related to market size and the 120-day grow-out time. As part of this process, the shellfish

operation will have to complete a study that determines shellfish growth in the defined time period.

Survey Respondents: 12 shellfish operations provided an answer to this survey question.

Cost(s): When asked whether they plan to apply for a seed size waiver, half of the respondents who answered this question (6/12) said that they do not plan to apply for a waiver, and half (6/12) said that they do not know at this time.

Shellfish operations who answered either “no” or “I don’t know at this time” to the question of whether they plan to apply for a waiver, were subsequently asked why they responded that way. The following were some of their responses:

- “Unsure of grow out calculation, seed size per species, seed size availability, ability to source cultch, etc.”
- “I buy seed oysters from Taylor Shellfish to grow out to a size I can sell retail. That usually takes 360 days or more.”
- “I don’t anticipate being in this situation.”
- “I don’t capture natural set seed. I don’t sell seed.”
- “We don’t want to waste time and money completing a study.”
- “Because I don’t understand.”
- “I’m a dealer in this case.”
- “[We] have invested in nursery infrastructure in approved waters.”
- “This is not applicable to my operation.”
- “[My] business operations do not involve seed purchase or planting.”

The board acknowledges that there will be a cost for those shellfish operations that decide to apply for a seed size waiver and have to complete the associated study. If the proposed rules are adopted, the department will work with shellfish operations on a guidance document establishing the parameters of the study. Since these parameters have not yet been established, the cost for this portion of the proposed rule language is indeterminate at this time.

Benefit(s): The current rule uses shell length to determine seed size in Prohibited areas. The proposed rule allows a waiver to the seed length requirement and provides an option to use weight, width, or other opportunities to define seed size after an appropriate study is completed to determine the growth rate and market size based on the parameter desired.

In addition to the proposed changes described above, the board made the following changes in this section, which are exempt from analysis:

WAC 246-282-016(1): The proposed changes amend language to conform with the 2025 bill drafting guide. The proposed changes are editorial only and are intended to provide

clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-016(2): The proposed changes add new language to clarify a complete application for getting an aquaculture permit from the department. The proposed changes are related to a process requirement for making an application to the agency for a license or permit and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(c)(i).

WAC 246-282-016(2): The proposed changes add new language to outline and clarify aquaculture activities that may be approved in Prohibited and unclassified areas. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-032, Relay permit.

WAC 246-282-032(8):

Description: The current rule exempts growers from the validation study requirement if relaying shellfish to an approved grow-out site for a minimum of six months (180 days). The proposed rule reduces the grow-out period from six months (180 days) to greater than 60 days, to align with the NSSP Model Ordinance.

Survey Respondents: 12 shellfish operations responded to this survey question. Shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following answer options: “Yes”, “No” and “Neutral (\$0).”

Cost(s): Three respondents (3/12) indicated no cost savings resulting from this proposed change and eight respondents (8/12) selected the neutral (\$0) option. One of the respondents (1/3) who indicated that there would be no cost savings provided the following explanation:

- “When a validation study is done, we are doing so to get quick turnaround on market ready products. While we appreciate the move towards alignment with the NSSP, the difference will not change the instances a validation study is required.”

Shellfish operations who indicated a neutral (\$0) impact chose this option because they are dealers, they do not relay, or their business operations do not involve growing of shellfish.

Benefit(s): One respondent (1/12) indicated a cost savings, explaining that “more exemptions = less cost.”

This proposed rule change aligns the WAC with the requirements of the NSSP Model Ordinance. It reduces that grow-out period for a relay without a validation study from 180 days down to 60 days, allowing a quicker harvest of the relayed product.

In addition to the proposed change described above, the board made the following changes in this section, which are exempt from analysis:

WAC 246-282-032: The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide and make several editorial changes to existing

language. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-032(2): The proposed changes clarify application requirements for getting a relay permit from the department. The proposed changes are related to a process requirement for making an application to the agency for a license or permit and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(c)(i).

WAC 246-282-032(8): The proposed changes clarify that only microbiological contaminants need to be reduced, to ensure consistency with the NSSP Model Ordinance. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-034, Wild Seed Permit.

WAC 246-282-034:

Description: The current rule sets a maximum shell length of fifty-one millimeters or 2 inches for other oyster species. This definition currently impacts only permits issued for wild seed. The proposed rule reduces the maximum shell length to thirty-eight millimeters or 1 and 1/2 inches for other oyster species. This will impact the permits issued for wild seed, as well as those for aquaculture activities.

The costs and benefits of this proposed rule change are captured under the Aquaculture section, WAC 246-282-016.

WAC 246-282-034(3)(g):

Description: The current rule requires a person operating under a wild seed permit to stake or mark the grow-out site. The proposed rule removes the requirement for staking or marking, but a person operating a wild seed permit must still keep records that identify the grow-out site.

Survey Respondents: 12 shellfish operations responded to this survey question. Shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following answer options: “Yes”, “No” and “Neutral (\$0).”

Cost(s): Three respondents (3/12) indicated no cost savings resulting from this proposed change and nine respondents (9/12) selected the neutral (\$0) option. One of the respondents (1/3) who indicated that there would be no cost savings stated that “we don’t use wild seed.”

Similarly to the responses provided in the relay permit section, shellfish operations who indicated a neutral (\$0) impact chose this option because they do not anticipate needing this, they are dealers, or because their business operations do not involve purchasing, planting, or

processing seed. Additionally, one operation stated that “this is appreciated, but not necessarily cost saving.”

Benefit(s): The proposed rule change removes the requirement for the operation to stake or mark the area, as it might not be possible to do so in reality. The operation is already tracking where the product is stored in the growing area using record keeping, so staking the site is redundant.

WAC 246-282-034(3)(h):

Description: The current rule requires a person operating under a wild seed permit to keep records for each lot of seed harvested that show a lot identification number. The proposed rule removes the requirement for a lot identification number as part of recordkeeping.

Survey Respondents: 12 shellfish operations responded to this survey question. Shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following answer options: “Yes”, “No” and “Neutral (\$0).”

Cost(s): Five respondents (5/12) indicated no cost savings resulting from this proposed change and six respondents (6/12) selected the neutral (\$0) option. One of the respondents (1/5) who indicated that there would be no cost savings stated that “we don’t use wild seed.”

The explanations given by the shellfish operations who indicated a neutral (\$0) impact were nearly identical to those described for WAC 246-282-034(3)(g) above. These operations stated that they are dealers, that their business operations do not involve seed purchase, planting, or processing, or that this was simply not applicable to them. Again, one operation stated that “this is appreciated, but not necessarily cost saving.”

Benefit(s): One respondent (1/12) indicated a cost savings, stating that “less regulations = less cost.”

The proposed rule change removes the requirement for a lot identification number, which is not necessary. There are other requirements in place that help with lot identification.

WAC 246-282-034(3) and (5):

Description: The current rule requires seed to be left in a grow-out site for a minimum of six months before final harvest. The proposed rule reduces the grow out period from six months (180 days) to 120 days, to align with the NSSP Model Ordinance.

Survey Respondents: 12 shellfish operations responded to this survey question. Shellfish operations were asked whether this proposed rule will result in cost savings for their operation, with the following answer options: “Yes”, “No” and “Neutral (\$0).”

Cost(s): Six respondents (6/12) indicated no cost savings resulting from this proposed change and five respondents (5/12) selected the neutral (\$0) option. One of the respondents (1/6) who indicated that there would be no cost savings stated that “we don’t use wild seed.”

The three explanations given by the shellfish operations who indicated a neutral (\$0) impact were identical to those described for WAC 246-282-034(3)(h) above. In addition, one operation stated that “wild seed normally requires more time than this to mature anyway.”

Benefit(s): One respondent (1/12) indicated a cost savings, stating that “less regulations = less cost.”

The proposed rule change aligns the grow-out time for wild seed harvested from a Prohibited area with the Model Ordinance. This will allow a quicker harvest.

WAC 246-282-034(6):

Description: The current rule allows the harvesting of wild seed from a Conditionally Approved area in closed status or from a Restricted area, as long as live shellfish larger than seed size is limited to less than 5% and the shellfish are moved to a grow out site for a minimum of six months. The proposed rule allows the harvesting of wild seed from these areas as long as the relay standards in WAC 246-282-032 are followed. Shellfish can be moved to a grow out site for seven to greater than 60 days.

Survey Respondents: 12 shellfish operations responded to this survey question.

Cost(s): The majority of respondents (11/12) indicated that this question did not apply to their operation because they don’t plan to harvest wild seed and one respondent (1/12) indicated that the impact was cost neutral or insignificant.

Benefit(s): The proposed rule change will allow harvesters to move shellfish regardless of the size and define the grow-out time based on a study. The grow-out time will be significantly less than the proposed 120-day requirement for wild seed harvested from a Prohibited area. Harvesters will comply with the requirements in the Relay portion of the rule.

In addition to the proposed change described above, the board made the following changes in this section, which are exempt from analysis:

WAC 246-282-034: The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide and made several editorial changes to existing language. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-034(2): The proposed changes clarify application requirements for getting a wild seed permit from the department. The proposed changes are related to a process requirement for making an application to the agency for a license or permit and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(c)(i).

NEW WAC 246-282-044, Transplant.

WAC 246-282-044(1)(d):

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Description: The proposed rule adds new requirements for transplanting shellstock to another harvest site. One of these new requirements is to identify the shellstock during transit, by tagging or other methods approved by the department. This identification must include the date the shellstock was removed from the original harvest site(s), the quantity and species of shellstock, and the original harvest site(s) and grow out site(s).

Survey Respondents: 12 shellfish operations responded to this survey question.

Cost(s): Based on responses from the survey it is estimated that the one-time costs could range from neutral or insignificant to \$4,500, while the annual recurrent costs could range from neutral or insignificant to \$5,000.

Three respondents (3/12) indicated that the proposed change would result in increased costs for their operation. One respondent (1/3) estimated a one-time cost of \$500 and an annual recurrent cost of \$250. This operation indicated that the proposed change “would require an update to harvest bag tags for the purpose of transferring seed.” Another respondent (1/3) estimated a one-time cost of \$4,500 and an annual recurrent cost of \$5,000. This respondent explained that “with this requirement each time product is moved for any reason (husbandry, farming, thinning, finishing, etc) from harvest site to harvest site, tagging, records, labor to fill out forms, etc. is necessary.” Finally, one respondent (1/3) estimated a \$4,000 annual recurrent cost, which encompasses the “cost of tags and time to fill out tags.”

The majority of respondents (8/12) indicated that this question did not apply to their operation. The following are some of the reasons provided by this category of respondents:

- “We don’t transplant.”
- “Dealer.”
- “We are given transfer paperwork from Taylor Shellfish, which delineates how many baby oysters we are transporting to our site, which has a San Juan County parcel number on this paperwork.”
- “Shellfish are not moved or transplanted, they remain at [the] harvest site.”

One respondent (1/12) indicated that the impact was cost neutral or insignificant.

Benefit(s): The proposed rule aligns with current practices while complying with regulations. It will give the shellfish operation the flexibility to either fill out a tag or use some other approved method (such as a harvest log) to identify the shellstock while in transit.

WAC 246-282-044(1)(e):

Description: The proposed rule adds new requirements for transplanting shellstock to another harvest site. One of these new requirements is to keep and maintain accurate and detailed records of the original harvest site, transplant method, and destination of transplanted shellstock for one year.

Survey Respondents: 12 shellfish operations responded to this survey question.

Cost(s): Based on responses from the survey it is estimated that the one-time costs could range from neutral or insignificant to \$12,000, while the annual recurrent costs could range from neutral or insignificant to \$25,000.

Two respondents (2/12) indicated that the proposed change would result in increased costs for their operation. One respondent (1/2) estimated a one-time cost of \$1,000 and an annual recurrent cost of \$600. Another respondent (1/2) estimated a one-time cost of \$12,000 and an annual recurrent cost of \$25,000. This respondent explained that “one-time costs include adjusting current inventory tracking software to track transplant method, which in our opinion is unnecessary information to track. Ongoing costs is the additional time managers will spend inputting data entries for every lot of transplant instead of monthly entries as is our current practice.”

Half of the respondents (6/12) indicated that this question did not apply to their operation, with similar reasons provided as in the previous question.

Four respondents (4/12) indicated that the impact was cost neutral or insignificant. The following were some of the reasons provided by this category of respondents:

- “We already do this so there is no extra cost.”
- “Cannot determine the cost at this time. Likely minimal.”
- “We do this already.”

Benefit(s): Keeping accurate records is beneficial for public health in the event traceback is needed for an illness. The proposed rule is also beneficial for the shellfish operations as it will enable them to prove what was moved and when in case of a complaint.

In addition to the proposed new rules described above, the board is proposing the following rule in this section, which is exempt from analysis:

WAC 246-282-044(2): The proposed rule clarifies that after 14 days, the shellstock will take on the characteristics and properties of the transplant site. The proposed changes are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-080, Identification and records.

WAC 246-282-080(3) and (4):

Description: The proposed rule adds a new requirement for harvester tags to have the department harvest site application number, harvest ID, parcel number, or other approved harvest site identifier. This information must be listed on the harvester tag, harvest record, and harvest site certificate. The proposed rule also requires the dealer tag to have the exact harvest site information as provided on the original harvest tag, when shellstock is retagged.

Survey Respondents: 12 shellfish operations responded to this survey question.

Cost(s): Based on responses from the survey it is estimated that the one-time costs could range from cost neutral or insignificant to \$40,000, while the annual recurrent costs could range from cost neutral or insignificant to \$2,000.

The majority of shellfish operations that responded to this question (7/12) indicated that the proposed change would result in increased costs for their operation. One-time costs estimated by the respondents were as follows: \$40 - \$1,000; \$250; \$500; \$500; \$2,000, \$6,000, and \$40,000. Only four of those respondents (4/7) indicated that the proposed change would result in annual recurrent costs. The estimated annual recurrent costs were \$100, \$100, \$1,000, and \$2,000.

Respondents provided the following information regarding costs:

- “Adding harvest identifier or parcel number would take additional employee time and would vary depending on the quantity of orders at value of \$800-\$9,000 per order. The number of orders determines the amount of tags and time to add department harvest site number (or parcel number).”
- “Tag editing, printing and labor to make changes.”
- “This would require an upgrade to harvest bag tags.”
- “I will have to replace all of the tags I just purchased and reprogram the app we use to include the new requirements.”
- “We will have to figure out how we will do this. Some farms have the same code for different beaches.”
- “Initial costs include updating tag formatting, developing a database that connects internal tracking codes to a parcel ID/HSC and the labor it will take to do the data entry to develop the records in accordance with the new rule. Ongoing costs include maintaining this database as it needs updating.”

One respondent (1/12) indicated that this question did not apply to their operation, explaining that “we already include our harvest site ID on the tag.”

Four respondents (4/12) indicated that the impact was cost neutral or insignificant. The following were some of the reasons provided by this category of respondents:

- “We seldom retag our shellfish and keep the original information as required from the SP we purchase from. If we retag we would provide this harvest site information.”
- “Any extra information I may need on the ticket I will write on it until I run out of stock. I already have most of the info on my tags.”
- “Just starting to get my first tags printed so this shouldn’t increase costs.”

The cost survey revealed potential misunderstandings regarding the proposed rule change. The proposed rule allows for flexibility with what is on the tag itself. It does not have to be the parcel number, but some other approved identifier that can be linked to a harvest site. The department anticipates that the majority of shellfish operations are already doing this or a portion of this, and that complex changes such as those to databases will not be required. Furthermore, shellfish operations will not be required to immediately replace all of their tags or purchase new tags once the rule goes into effect. They will be able to use up existing inventory first.

Benefit(s): The proposed rule will allow the department to identify the source/parcel of the shellstock as soon as the tag is received. Obtaining the parcel information typically takes 2-3 days on average. This will allow the department to act more quickly on harvest site closures to prevent further illnesses from happening. It will also require less back and forth with growers to establish which parcels or harvest sites were involved in illnesses.

In addition to the proposed change described above, the board made the following change in this section, which is exempt from analysis:

WAC 246-282-080: The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide and made several editorial changes to existing language. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-082, Export certificate.

WAC 246-282-082(2)(a):

Description: The current rule specifies that the department will issue an export certificate to a shellfish dealer for a specific lot if the dealer is “exporting the lot to an Asian country that requires a production certificate from a governmental health authority.” The proposed rule removes the language “an Asian country” to expand export certificates to be approved to any country that requires a production certificate from a governmental health authority.

Survey Respondents: 12 shellfish operations responded to this survey question.

Cost(s): None of the respondents (0/12) estimated increased costs as a result of this proposed change.

The majority of respondents (8/12) indicated that this question did not apply to their operation. The following were some of the reasons provided by this category of respondents:

- “This does not apply to business operations so cost will not be impacted.”
- “Our market is local, Lopez Island. We are too small to export anything.”

Four respondents (4/12) indicated that the impact was cost neutral or insignificant. One of these respondents (1/4) explained that “we are already paying for our exports”, while another (1/4) said that “we use this service weekly for our exports to Asia so this change won’t impact this program. However, perhaps countries outside of Asia will accept them as Health Certs instead of NOAA.”

Benefit(s): The proposed rule change will allow the department to issue export certificates to additional countries other than just Asian countries.

In addition to the proposed change described above, the board made the following changes in this section, which are exempt from analysis:

WAC 246-282-082: The proposed changes throughout the section amend language to conform with the 2025 bill drafting guide. The proposed changes are editorial only and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(b)(iv).

WAC 246-282-082(2): The proposed changes clarify application requirements for getting an export certificate from the department. The proposed changes are related to a process requirement for making an application to the agency for a license or permit and are intended to provide clarification without changing the effects of the rule. The proposed changes are considered exempt under RCW 34.05.328(5)(c)(i).

All WAC Sections: Operation documentation.

Description: Operation documentation is required to align with the most current WAC language. This rulemaking project amends nearly every WAC section within the chapter and will most likely require shellfish operations to update plans of operations, harvest and sales logs, etc.

Survey Respondents: 14 shellfish operations responded to this survey question.

Cost(s): Based on responses from the survey it is estimated that the one-time costs could range from cost neutral or insignificant to \$10,000, while the annual recurrent costs could range from cost neutral or insignificant to \$2,500.

The majority of respondents (9/14) estimated increased costs associated with updating their documentation. Five of these respondents (5/9) indicated that updating their documentation would result in only one-time costs for their operation. The one-time costs estimated by these operations were \$30, \$250, \$500, \$500, and \$5,000. The following were some of the explanations provided by these operations:

- “Employee time paid to make updates.”
- “Estimated administrative time.”
- “My harvest area is not yet fully approved so we are somewhat inactive and we are updating documents in an ongoing basis.”
- “Updating all required documents will take a significant number of hours to complete. The plan of operations and all harvest and sales documents will need to be updated. Hopefully that will be a one time requirement.”

One respondent (1/9) indicated that updating their documentation would result in only recurrent costs for their operation. This respondent estimated annual recurrent costs of \$2,235 but did not provide an explanation.

Three respondents (3/9) indicated that updating their documentation would result in both one-time and annual recurrent costs. These respondents estimated one-time costs of \$415, \$1,500, and \$10,000, as well as annual recurrent costs of \$515-750, \$250, and \$2,500 respectively. These operations provided the following explanations regarding their estimates:

- “Form editing & modification; printing expenses; management; supervisory and employee (harvester) training time; follow-up check of employee understanding; repeat of training for new hires.”
- “This question is so general that answering correctly is nearly impossible. Also, what cost, direct costs, new system costs, new data management costs?”
- “Administrative time is the primary cost driver. Also, I may need to re-print an inventory of harvest tags.”

One shellfish operation (1/14) stated that they are “unable to estimate additional cost until an inspector visits to tell me I need to adjust the record keeping.”

Two shellfish operations (2/14) indicated that this question did not apply to their operation.

Finally, two shellfish operations (2/14) indicated that the impact was cost neutral or insignificant, with one of these operations (1/2) stating that “[they] don’t see it increasing any time or cost for [their] small farm.”

Benefit(s): Up-to-date documentation will help ensure that shellfish operations are conducting activities in a manner that aligns with the new regulations in this chapter.

Summary of all Cost(s) and Benefit(s)

SA Table 2. Summary of Section 5 probable cost(s) and benefit(s)

WAC Citation and Description	Probable Cost(s)	Probable Benefit(s)
WAC 246-282-006(4): Harvest plans.	Cost neutral or insignificant up to \$5,000 in one-time costs and \$2,000 in annual recurrent costs	The proposed rule change will allow growers greater flexibility when submitting their harvest plans to the department.
WAC 246-282-006(10): Harvest to cooling requirements.	Cost neutral or insignificant up to \$25,000 in one-time costs and \$25,000 in annual recurrent costs.	The proposed rule change is intended to reduce the risk of the public acquiring vibriosis from the consumption of raw and undercooked oysters by establishing more stringent time-to-temperature controls during the months of most concern in growing areas likely to be associated with <i>Vp</i> .
WAC 246-282-006(10)(d): Returning oysters to the same tidal level or lower.	Cost neutral or insignificant up to \$1,600 in one-time costs and \$15,000 in annual recurrent costs.	The proposed rule will prevent illnesses by requiring bagged shellstock to be stored at the same or lower tidal height to limit

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		the amount of air and sun the oysters are directly exposed to.
WAC 246-282-006(12): Thermometers.	Cost neutral or insignificant up to \$500 in one-time costs and \$500 in annual recurrent costs.	The proposed rule may result in one-time cost savings of \$45 and recurrent cost savings of \$240. The proposed rule change will also remove the usage of analog thermometers, which will allow shellfish operations to more accurately measure temperatures without requiring continual recalibration.
WAC 246-282-006(18): Transfer of ownership documentation.	Cost neutral or insignificant up to \$250 in one-time costs and \$50 in annual recurrent costs.	The proposed rule change provides clarification on who is responsible for cooling, and the time they have remaining to cool if ownership is transferred, leaving less room for error.
WAC 246-282-016: Reducing the maximum shell length for seed.	Cost neutral or insignificant up to \$20,000 in one-time costs and \$1,800 in annual recurrent costs.	The proposed rule change would bring the state of Washington into compliance with the federal rule regarding shellfish seed size from Prohibited areas. Maximum seed size in the current rule is large enough to allow shellfish to directly enter the market without the required grow-out period. The proposed rule will ultimately protect public health.
WAC 246-282-016(3)(a): Minimum grow-out period start time.	Cost neutral or insignificant.	The proposed rule will ensure that all of the oysters have at least the minimum grow-out time.
WAC 246-282-016(3)(b): Record keeping for aquaculture operations harvest oyster seed with a seed size greater than 1 inch and less than 1 1/2 inches.	Cost neutral or insignificant up to \$15,000 in annual recurrent costs.	The proposed rule may result in a recurrent cost savings of \$80,000. The record keeping requirement in the proposed rule will allow seed to stay in Prohibited areas until they are 1 1/2 inches. Record keeping will ensure that shellfish are grown for a minimum of 120 days in Approved areas.
WAC 246-282-016(4): Seed size waiver and study.	Indeterminate at this time.	The current rule uses shell length to determine seed size in Prohibited areas. The proposed

		rule allows a waiver to the seed length requirement and provides an option to use weight, width, or other opportunities to define seed size after an appropriate study is completed to determine the growth rate and market size based on the parameter desired.
WAC 246-282-032(8): Reducing the grow-out period from 180 days to greater than 60 days.	Cost neutral (\$0).	This proposed rule change aligns the WAC with the requirements of the NSSP Model Ordinance. It reduces that grow-out period for a relay without a validation study from 180 days down to 60 days, allowing a quicker harvest of the relayed product.
WAC 246-282-034(3)(g): Removing the requirement for staking or marking the grow-out site.	Cost neutral (\$0).	The proposed rule change removes the requirement for the operation to stake or mark the area, as it might not be possible to do so in reality. The operation is already tracking where the product is stored in the growing area using record keeping, so staking the site is redundant.
WAC 246-282-034(3)(h): Removing the lot identification number as part of record keeping.	Cost neutral (\$0).	The proposed rule change removes the requirement for a lot identification number, which is not necessary. There are other requirements in place that help with lot identification.
WAC 246-282-034(3) and (5): Reducing the grow-out period from 180 days to 120 days.	Cost neutral (\$0).	The proposed rule change aligns the grow-out time for wild seed harvested from a Prohibited area with the Model Ordinance. This will allow a quicker harvest.
WAC 246-282-034(6): Harvest of wild seed and relay standards.	Cost neutral or insignificant.	The proposed rule change will allow harvesters to move shellfish regardless of the size and define the grow-out time based on a study. The grow-out time will be significantly less than the proposed 120-day requirement for wild seed harvested from a Prohibited area. Harvesters will

		comply with the requirements in the Relay portion of the rule.
WAC 246-282-044(1)(d): Identifying shellstock during transit.	Cost neutral or insignificant up to \$4,500 in one-time costs and \$5,000 in annual recurrent costs.	The proposed rule aligns with current practices while complying with regulations. It will give the shellfish operation the flexibility to either fill out a tag or use some other approved method (such as a harvest log) to identify the shellstock while in transit.
WAC 246-282-044(1)(e): Record keeping requirements for transplant.	Cost neutral or insignificant up to \$12,000 in one-time costs and \$25,000 in annual recurrent costs.	Keeping accurate records is beneficial for public health in the event traceback is needed for an illness. The proposed rule is also beneficial for the shellfish operations as it will enable them to prove what was moved and when in case of a complaint.
WAC 246-282-080(3) and (4): Requirements for harvester and dealer tags.	Cost neutral or insignificant up to \$40,000 in one-time costs and \$2,000 in annual recurrent costs.	The proposed rule will allow the department to identify the source/parcel of the shellstock as soon as the tag is received. Obtaining the parcel information typically takes 2-3 days on average. This will allow the department to act more quickly on harvest site closures to prevent further illnesses from happening. It will also require less back and forth with growers to establish which parcels or harvest sites were involved in illnesses.
WAC 246-282-082(2)(a): Expanding export certificates.	Cost neutral or insignificant.	The proposed rule change will allow the department to issue export certificates to additional countries other than just Asian countries.
All sections: Operation documentation.	Cost neutral or insignificant up to \$10,000 in one-time costs and \$2,500 in annual recurrent costs.	Up-to-date documentation will help ensure that shellfish operations are conducting activities in a manner that aligns with the new regulations in this chapter.

Determination

Probable Benefits greater than Probable Costs

It was determined by the board that the probable benefits of the proposed rule are greater than the probable costs.

SECTION 6

List of alternative versions of the rule that were considered including the reason why the proposed rule is the least burdensome alternative for those that are required to comply and that will achieve the goals and objectives of the proposed rule.

Board and department staff worked closely with industry and interested/impacted parties such as the Northwest Indian Fisheries Commission, Point No-Point Treaty Council, Pacific Coast Shellfish Growers Association, Willapa-Grays Harbor Oyster Growers Association, Washington State Department of Fish and Wildlife, U.S. Food and Drug Administration, tribal shellfish operations, and individual commercial shellfish companies to minimize the burden of this rule. The following alternatives were determined to be too burdensome or not supported by the industry and our partners.

Removal of control months and having *Vibrio* season be year-round: This would have required intensive record-keeping for all months of the year, instead of May through September, the time period during which the department sees most *Vibrio* illnesses. The decision was made not to change the control months to limit unnecessary record-keeping.

Labeling requirements for shucked meats: This change would have entailed adding language to labels to include a warning to cook product before service. This would have been burdensome to both growers and restaurants due to the costs of labels or the ordering of new containers.

Lowering maximum harvest temperatures for all risk categories: The department and board heard growers' concerns regarding this proposed change. The decision was made that a few degrees difference would be heavily burdensome on growers for unknown impacts on illnesses.

Adding *Vibrio vulnificus* (Vv) to the *Vibrio parahaemolyticus* control plan: The change was meant to be proactive, as the NSSP Model Ordinance requires a Vv control plan once two illnesses are recorded over a period of 10 years. Washington state has not met this requirement, so after hearing industry concern, the decision was made to remove this addition.

Increasing resubmergence of bagged shellstock from 4 hours to 18 hours: This change was based on a scientific study done in 2016. Growers voiced concerns that this change would not be feasible due to the tidal schedule, and instead recommended collaborating on a study to demonstrate that four hours is sufficient.

Removal of risk categories and restructuring time of harvest to cooling based on harvest type, location, and temperature: While the Rules Advisory Committee thought that eventually this would be a good idea, a scientific study would need to be done because each growing area is unique. It would also be difficult for those growers who have multiple growing areas to change their practices.

Removal of the wild seed section: The department currently does not have any approved wild seed permits. Through the Rules Advisory Committee meetings, it was discovered that some operations are doing some form of this, and it is necessary to have wild seed permits.

SECTION 7

Determination that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The proposed rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

SECTION 8

Determination that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The proposed rule does not impose more stringent performance requirements on private entities than on public entities.

SECTION 9

Determination if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The proposed rule does not differ from any applicable federal regulation or statutes. Several areas where the chapter is inconsistent with the NSSP Model Ordinance have been addressed.

SECTION 10

Demonstration that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

This rule has been coordinated to the maximum extent practicable with other federal, state, and local laws, as evidenced by the extensive engagement with federal, state, and local partners.

From October 2022 to April 2023, the department and the board held six Rules Advisory Committee meetings and seven tribal partner meetings to draft the initial version of rule changes. These discussions covered a range of topics, including Vp control plans, seed size, growing areas, and various operational provisions. Additionally, department staff participated in a panel at the 2024 Pacific Rim Shellfish Sanitation Conference to address seed size and measurement techniques. An informal comment period with the Rules Advisory Committee and tribal partners took place in April and May 2024, revealing the need for further engagement. Consequently, the board and department visited shellfish operations, collaborated with industry associations and tribal partners, and organized four additional workshops from August 2024 to February 2025. These sessions focused on critical issues such as harvest timing and practices, ownership transfer, and labeling requirements, leading to valuable feedback that informed a second draft. In March and April 2025, a second informal comment period was opened to the broader shellfish community, and feedback was also sought at the 2025 Pacific Rim Shellfish Sanitation Conference. A cost-benefit survey was distributed to industry and tribal partners in June 2025, and all feedback from these engagements was incorporated into the proposed rule changes.

The department also worked with the Department of Fish and Wildlife to ensure that the proposed rules are consistent with their enforcement activities.