



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health

- Preproposal Statement of Inquiry was filed as WSR ; or
- Expedited Rule Making--Proposed notice was filed as WSR ; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)
WAC 246-282-005 Sanitary Control of Shellfish - Minimum Performance Standards.

Hearing location(s): Department of Health
Point Plaza East
310 Israel Rd SE Room 152 & 153
Tumwater, WA

Date: 03/11/2009 Time: 2:00 p.m.

Submit written comments to:

Name: Jan Jacobs
Address: Office of Shellfish and Water Protection
PO Box 47824
Olympia, WA 98504-7824

Website: <http://www3.doh.wa.gov/policyreview/>
fax 360-236-2257 by (date) 03/04/2009

Assistance for persons with disabilities: Contact

Jan Jacobs by 03/03/2009

TTY (800) 833-6388 or () 711

Date of intended adoption: 03/11/2009

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Currently, WAC 246-282-005 references the U.S. Food and Drug Administration (FDA) 2005 NSSP guide, which all shellfish-producing states are required to follow in order to place molluscan shellfish into interstate commerce. FDA has now adopted a 2007 version of the NSSP guide, leaving the current rules out of date. This rulemaking will amend the section to update the reference to the current code. The attached document summarizes differences between the 2005 and 2007 version of the NSSP guide.

Reasons supporting proposal:

The FDA oversees a cooperative program between the shellfish-producing states and the shellfish industry for the production and processing of shellfish in a manner specified by the NSSP. The FDA evaluates each state's shellfish sanitation control program to ensure compliance with the NSSP. Therefore, an update to 246-282-005 is needed so that Washington state remains compliant with the NSSP and molluscan shellfish products from the state can continue to be placed into interstate commerce.

Statutory authority for adoption:

RCW 69.30.030

Statute being implemented:

RCW 69.30.030

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE 02/04/09

NAME (type or print)

Craig McLaughlin

SIGNATURE

TITLE

Executive Director, State Board of Health

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 04, 2009

TIME: 10:21 AM

WSR 09-04-097

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

None

Name of proponent: (person or organization) Department of Health

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Jan Jacobs	111 Israel Rd SE, Tumwater, WA	360-236-3316
Implementation.... Maryanne Guichard	111 Israel Rd SE, Tumwater, WA	360-236-3391
Enforcement..... Maryanne Guichard	111 Israel Rd SE, Tumwater, WA	360-236-3391

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared.

Under RCW 19.85.025(3) and RCW 19.85.061, this proposed rule is exempt from the requirements of Chapter 19.85 RCW because it adopts national consensus codes without material change. By federal rule/statute (list CFR/USC citation), the FDA requires shellfish-producing states to follow the NSSP guide in order to place molluscan shellfish into interstate commerce.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No: Please explain: Under RCW 34.05.328(5)(b)(viii), this proposed rule is exempt from the requirements of RCW

34.05.328 because it adopts a national consensus code without material change. By federal rule/statute (list CFR/USC citation), the FDA requires shellfish producing-states to follow the NSSP guide in order to place molluscan shellfish into interstate commerce.

AMENDATORY SECTION (Amending WSR 07-20-014, filed 9/20/07, effective 10/21/07)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((2005)) 2007 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of food safety and shellfish programs);

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 CFR, Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.