## WSR 23-10-070 PROPOSED RULES DEPARTMENT OF HEALTH [Filed May 2, 2023, 12:35 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: The department of health (department) is proposing amendments to redistribute annual paralytic shellfish poisoning (PSP) testing fees under WAC 246-282-990(4). The proposed amendments apply to harvesters of geoduck who had samples tested in 2022.

Hearing Location(s): On June 7, 2023, at 10:00 a.m. The department will be holding a virtual-only hearing. Register in advance for this webinar https://us02web.zoom.us/webinar/register/

WN\_6DNpU3Y0QhWhnG\_PEc5I2g. After registering, you will receive a confirmation email containing information about joining the webinar. Date of Intended Adoption: June 14, 2023.

Submit Written Comments to: Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email Peter.beaton@doh.wa.gov, https://fortress.wa.gov/doh/policyreview/, by June 7, 2023.

Assistance for Persons with Disabilities: Contact Dani Toepelt, phone 360-236-3347, TTY 711, email danielle.toepelt@doh.wa.gov, by May 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to equitably assess the costs of commercial geoduck PSP testing. PSP testing generates \$58,000 in testing fees annually. The fees are calculated by determining the cost per sample and multiplying this value by how many samples each harvester had tested in the previous year. The PSP testing, which is based on the department's risk assessment of the growing areas, is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck clams and ensure toxic shellfish do not reach the public.

Reasons Supporting Proposal: Proposed geoduck PSP fee redistribution is based on the 2022 total cost of service for the harvesters that submitted geoduck samples (\$58,000) and is based on the cost per sample multiplied by the number of tests done for each harvester.

Statutory Authority for Adoption: RCW 43.70.250 and 43.20B.020.

Statute Being Implemented: RCW 43.70.250 and 43.20B.020.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Dani Toepelt, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3347.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis. RCW 34.05.328 (5) (b) (vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

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Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045. Scope of exemption for rule proposal: Is fully exempt.

> May 2, 2023 Kristin Peterson, JD Chief of Policy for Umair A. Shah, MD, MPH Secretary

OTS-4372.2

AMENDATORY SECTION (Amending WSR 22-10-050, filed 4/29/22, effective 5/29/22)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	) \$656
Plants with floor space $> 5000$ sq. ft.	\$1,210

(2) The fee for each export certificate is \$55.00.

Fee Category

(3) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

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Type of Operation	Number of Harvest Sites	Fee
Harvester	≤2	\$353
Harvester	3 or more	\$535
Shellstock Shipper		\$198
Wholesale		
Company		
Shellstock Shipper	$\leq 2$	\$393
0 - 49 acres		
Shellstock Shipper	3 or more	\$610
0 - 49 acres		

Certified on 5/22/2023 [2]

## Fee Category

Type of Operation	Number of Harvest Sites	Fee
Shellstock Shipper	N/A	\$961
50 or greater acres		
Shucker-Packer	$\leq 2$	\$752
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$1,076
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	$\leq 2$	\$882
(plants 2000 - 5000	ft <sup>2</sup> )	
Shucker-Packer	3 or more	\$1,297
(plants 2000 - 5000	ft <sup>2</sup> )	
Shucker-Packer	N/A	\$2,412
(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate: (i) At the time of first licensure; or

(ii) January 1st of each year for companies licensed as harvesters; or

(iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
Chuckanut Shellfish Inc.	<u>WA-1350-HA</u>	<u>\$997</u>
Department of Natural Resources	NA	(( <del>\$15,037</del> )) <u>\$13,354</u>
Jamestown S'Klallam Tribe	WA-0588-SS	(( <del>\$5,618</del> )) <u>\$4,584</u>
Lower Elwha Klallam Tribe	WA-0587-HA	(( <del>\$2,644</del> )) <u>\$2,392</u>
Lummi Indian Business Council	WA-0098-SS	(( <del>\$496</del> )) <u>\$399</u>
Nisqually Indian Tribe	<u>WA-1268-HA</u>	<u>\$199</u>
Port Gamble S'Klallam Tribe	WA-0859-HA	(( <del>\$5,123</del> )) <u>\$3,388</u>
Puyallup Tribe of Indians	WA-1137-HA	(( <del>\$4,957</del> )) <u>\$5,381</u>
Rising Tide CE, LLC	<u>WA-1951-HA</u>	<u>\$199</u>
((Seaproducts, Inc.	<del>WA-1416-SS</del>	<del>\$661</del>
Skokomish Indian Tribe	<del>WA-0577-HA</del>	<del>\$165</del> ))
Suquamish Tribe	WA-0694-SS	(( <del>\$5,618</del> )) <u>\$7,175</u>
Swinomish Indian Tribal Community	WA-1420-SS	(( <del>\$661</del> )) <u>\$997</u>
Taylor Shellfish Company, Inc.	WA-0046-SP	(( <del>\$7,932</del> )) <u>\$9,168</u>
The Tulalip Tribes	WA-0997-HA	(( <del>\$9,088</del> )) <u>\$9,766</u>

(5) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

[Statutory Authority: RCW 43.70.250 and 69.30.050. WSR 22-10-050, § 246-282-990, filed 4/29/22, effective 5/29/22; WSR 21-11-080, § 246-282-990, filed 5/18/21, effective 6/18/21; WSR 20-22-001, § 246-282-990, filed 10/21/20, effective 11/21/20; WSR 19-10-026, § 246-282-990, filed 4/23/19, effective 5/24/19; WSR 18-09-067, § 246-282-990, filed 4/16/18, effective 5/17/18; WSR 17-06-062, § 246-282-990, filed 2/28/17, effective 3/31/17. Statutory Authority: RCW 43.70.250 and 60.30.005. WSR 16-07-094, § 246-282-990, filed 3/18/16, effective 4/18/16. Statutory Authority: RCW 43.70.250 and 77.32.555. WSR 16-01-041, § 246-282-990, filed 12/9/15, effective 1/9/16. Statutory Authority: RCW 43.70.250. WSR 15-11-053, § 246-282-990, filed 5/15/15, effective 6/15/15; WSR 14-12-082, § 246-282-990, filed 6/3/14, effective 7/4/14; WSR 13-11-038, § 246-282-990, filed 5/10/13, effective 6/10/13; WSR 12-14-073, § 246-282-990, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 11-19-011, § 246-282-990, filed 9/7/11, effective 10/8/11. Statutory Authority: RCW 43.70.250. WSR 10-19-034, § 246-282-990, filed 9/9/10, effective 10/10/10; WSR 09-19-067, § 246-282-990, filed 9/14/09, effective 10/15/09; WSR 08-13-067, § 246-282-990, filed 6/13/08, effective 7/14/08; WSR 07-17-159, § 246-282-990, filed 8/21/07, effective 9/21/07; WSR 06-15-131, § 246-282-990, filed 7/19/06, effective 8/19/06; WSR 05-17-120, § 246-282-990, filed 8/17/05, effective 9/17/05; WSR 04-15-154, § 246-282-990, filed 7/21/04, effective 8/21/04; WSR 03-18-093, § 246-282-990, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 43.70.250 and 34.70.250 [43.70.250]. WSR 03-14-037, § 246-282-990, filed 6/23/03, effective 7/24/03. Statutory Authority: RCW 43.70.250 and the 2002 supplemental operating budget. WSR 02-15-094, § 246-282-990, filed 7/16/02, effective 8/16/02. Statutory Authority: RCW 43.70.250, 70.90.150, and 43.20B.250. WSR 01-14-047, § 246-282-990, filed 6/29/01, effective 7/30/01. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-990, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.70.250. WSR 00-02-016, § 246-282-990, filed 12/27/99, effective 1/27/00; WSR 99-12-022, § 246-282-990, filed 5/24/99, effective 6/24/99. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 98-12-068, § 246-282-990, filed 6/1/98, effective 7/2/98. Statutory Authority: RCW 43.203.020 [43.20B.020]. WSR 97-12-031, § 246-282-990, filed 5/30/97, effective 6/30/97. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 96-16-073, § 246-282-990, filed 8/6/96, effective 10/1/96. Statutory Authority: RCW 43.70.040. WSR 93-17-096 (Order 389), § 246-282-990, filed 8/17/93, effective 9/17/93; WSR 91-02-049 (Order 121), recodified as § 246-282-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20A.055. WSR 85-12-029 (Order 2236), § 440-44-065, filed 5/31/85; WSR 84-13-006 (Order 2109), § 440-44-065, filed 6/7/84; WSR 83-15-021 (Order 1991), § 440-44-065, filed 7/14/83. Statutory Authority: 1982 c 201. WSR 82-13-011 (Order 1825), § 440-44-065, filed 6/4/82.]