

WSR 23-23-186

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed November 22, 2023, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-061.

Title of Rule and Other Identifying Information: Commercial shellfish fees for licenses, certificates, monitoring, and testing. The department of health (department) is proposing a fee increase and adding new fees in WAC 246-282-990 (fees for sanitary control of shellfish) to cover the operational costs of the shellfish program.

Hearing Location(s): On January 4, 2024, at 1:00 p.m., at the Department of Health, 111 Israel Road S.E., Town Center 2, Rooms 166 and 167, Tumwater, WA 98501; or virtually. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_JPYDiV9lT8ujFfpjF-8fFA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: January 10, 2024.

Submit Written Comments to: Peter Beaton, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, email peter.beaton@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview/>, by January 4, 2024.

Assistance for Persons with Disabilities: Contact Dani Toepelt, phone 360-890-6054, TTY 711, email danielle.toepelt@doh.wa.gov, by December 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amending fees to cover operational costs of the shellfish programs. The department completed an in-depth fee analysis and determined the program is not generating sufficient revenue to cover the cost of the program. The proposal amends the existing fees for operator licenses, export certificates, biotoxin monitoring, paralytic shellfish poisoning testing, and creates new fees in other cost recovery mechanisms for the program. The proposal also adds a new or expired license fee or a non-compliance driven virtual and on-site inspection fees. The department is also proposing changes to the fee categories and the fee schedule.

Reasons Supporting Proposal: RCW 43.70.250 requires fees to fully fund the work of licensing and regulating the commercial shellfish program and grants the secretary of health authority to establish fees to fund the costs of administering the program. The fee increase is needed to cover the costs of the program. Some of the commercial shellfish fees have not changed in decades and the program has been subsidizing the costs with general fund state monies that is no longer available. The department is also proposing changes to the fee categories and the fee schedule. This will allow the department to better allocate separate program costs to the appropriate fee payers. This increase will align fees with cost recovery for service costs. The proposed changes equitably assigns fees based on the cost of service for the varying types of shellfish operations. Other costs not included in this increase will undergo a program audit and could result in future fee increases.

Statutory Authority for Adoption: RCW 43.70.110 and 43.70.250.

Statute Being Implemented: RCW 43.70.110 and 43.70.250.

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

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, 360-890-6054.

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 proposal sets or adjust fees which is exempt under RCW 34.05.328 (5) (b) (vi).

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

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.

November 22, 2023
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5058.2

AMENDATORY SECTION (Amending WSR 23-17-073, filed 8/14/23, effective 9/14/23)

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

<u>(Type of Operation</u>	<u>Annual Fee</u>
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))

<u>Type of Operation</u>	<u>Annual Fee</u>
<u>Harvester 2 or less</u>	<u>\$528</u>
<u>Harvester 3 or more</u>	<u>\$543</u>
<u>Shellstock Shipper 0-49 Acres 2 or less</u>	<u>\$1,096</u>
<u>Shellstock Shipper 0-49 Acres 3 or more</u>	<u>\$1,173</u>
<u>Shellstock Shipper 50 or greater Acres</u>	<u>\$1,262</u>

<u>Type of Operation</u>	<u>Annual Fee</u>
Shellstock Shipper Wholesale Only	\$1,097
Shellstock Shipper Wholesale Only DNR Tracts	\$1,021
Shucker Packer (plants < 2,000 sq. ft.) 2 or less	\$2,437
Shucker Packer (plants < 2,000 sq. ft.) 3 or more	\$2,657
Shucker Packer (plants 2,000-5,000 sq. ft.) 2 or less	\$3,049
Shucker Packer (plants 2,000-5,000 sq. ft.) 3 or more	\$2,993
Shucker Packer (plants > 5,000 sq. ft.) N/A	\$2,967

(2) The fee for each export certificate is ((~~\$55.00~~)) \$75.

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

((Fee Category

<u>Type of Operation</u>	<u>Number of Harvest Sites</u>	<u>Fee</u>
Harvester	≤2	\$353
Harvester	3 or more	\$535
Shellstock Shipper Wholesale Company		\$198
Shellstock Shipper 0-49 acres	≤2	\$393
Shellstock Shipper 0-49 acres	3 or more	\$610
Shellstock Shipper 50 or greater acres	N/A	\$961
Shucker-Packer (plants < 2000 ft ²)	≤2	\$752
Shucker-Packer (plants < 2000 ft ²)	3 or more	\$1,076
Shucker-Packer (plants 2000 - 5000 ft ²)	≤2	\$882
Shucker-Packer (plants 2000 - 5000 ft ²)	3 or more	\$1,297
Shucker-Packer (plants > 5000 ft ²)	N/A	\$2,412))

<u>Operation</u>	<u>Acres</u>	<u>HS</u>	<u>Fee</u>
Harvester		2 or less	\$665
		3 or more	\$1,009

<u>Operation</u>	<u>Acres</u>	<u>HS</u>	<u>Fee</u>
<u>Shellstock Shipper</u>	<u>Wholesale</u>	<u>Wholesale</u>	<u>\$373</u>
	<u>0-49 acres</u>	<u>2 or less</u>	<u>\$741</u>
	<u>0-49 acres</u>	<u>3 or more</u>	<u>\$1,150</u>
	<u>50 or greater</u>	<u>N/A</u>	<u>\$1,812</u>
<u>Shucker Packer</u>	<u>Plants < 2,000 sq. ft.</u>	<u>2 or less</u>	<u>\$1,418</u>
	<u>Plants < 2,000 sq. ft.</u>	<u>3 or more</u>	<u>\$2,029</u>
	<u>Plants 2,000-5,000 sq. ft.</u>	<u>2 or less</u>	<u>\$1,663</u>
	<u>Plants 2,000-5,000 sq. ft.</u>	<u>3 or more</u>	<u>\$2,445</u>
	<u>Plants > 5,000 sq. ft.</u>	<u>N/A</u>	<u>\$4,547</u>

~~((a))~~ (b) 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))~~ April 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:))~~ \$305 per test.

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

(5) Noncompliance inspection fee - Virtual is \$56.

(6) Noncompliance inspection fee - On-site is \$252.

(7) New/expired license fee is \$279.

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

~~((+6+))~~ (9) 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.