

## WSR 21-07-027

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed March 8, 2021, 2:30 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: WAC

246-282-990(4) Sanitary control of shellfish—Fees, department of health (DOH) annual paralytic shellfish poisoning (PSP) testing fee redistribution.

Hearing Location(s): On April 28, 2021, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19), DOH will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register at <https://attendee.gotowebinar.com/register/5291559551359614734>. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer mic and speakers (VoIP), United States +1 (914) 614-3221.

Date of Intended Adoption: May 5, 2021.

Submit Written Comments to: Peter Beaton, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by April 28, 2021.

Assistance for Persons with Disabilities: Contact April Gilreath, phone 360-236-3301, TTY 711, email [april.gilreath@doh.wa.gov](mailto:april.gilreath@doh.wa.gov), by April 20, 2021.

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. Geoduck 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: The proposed geoduck PSP fee redistribution is based on the 2020 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, 43.20B.020.

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

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Israel Road S.E., Tumwater, 360-236-4031; Implementation and Enforcement: Jerry Borchert, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3328.

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 under RCW 34.05.328. 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:

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.

March 4, 2021  
Lauren Jenks  
Assistant Secretary

**OTS-2918.1**

AMENDATORY SECTION (Amending WSR 20-22-001, filed 10/21/20, effective 11/21/20)

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

| <b>Type of Operation</b>                             | <b>Annual Fee</b> |
|--|-------------------|
| 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.

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

| <b>Fee Category</b>      |                                |            |
|--------------------------|--------------------------------|------------|
| <b>Type of Operation</b> | <b>Number of Harvest Sites</b> | <b>Fee</b> |
| Harvester                | ≤ 2                            | \$353      |
| Harvester                | 3 or more                      | \$535      |
| Shellstock Shipper       |                                | \$198      |
| Wholesale Company        |                                |            |
| Shellstock Shipper       | ≤ 2                            | \$393      |
| 0 - 49 acres             |                                |            |
| Shellstock Shipper       | 3 or more                      | \$610      |
| 0 - 49 acres             |                                |            |
| Shellstock Shipper       | N/A                            | \$961      |
| 50 or greater acres      |                                |            |

Fee Category

| Type of Operation                                       | Number of Harvest Sites | Fee     |
|---|-------------------------|---------|
| Shucker-Packer<br>(plants < 2000 ft <sup>2</sup> )      | ≤ 2                     | \$752   |
| Shucker-Packer<br>(plants < 2000 ft <sup>2</sup> )      | 3 or more               | \$1,076 |
| Shucker-Packer<br>(plants 2000 - 5000 ft <sup>2</sup> ) | ≤ 2                     | \$882   |
| Shucker-Packer<br>(plants 2000 - 5000 ft <sup>2</sup> ) | 3 or more               | \$1,297 |
| Shucker-Packer<br>(plants > 5000 ft <sup>2</sup> )      | N/A                     | \$2,412 |

(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                            |
|-----------------------------------|-------------------|--------------------------------|
| <u>Chuckanut Shellfish, Inc.</u>  | <u>WA-1350-HA</u> | <u>\$626</u>                   |
| Department of Natural Resources   | NA                | (\$10,584))<br><u>\$11,266</u> |
| Jamestown S'Klallam Tribe         | WA-0588-SS        | (\$2,964))<br><u>\$4,590</u>   |
| Lower Elwha Klallam Tribe         | WA-0587-HA        | (\$3,810))<br><u>\$6,468</u>   |
| Lummi Indian Business Council     | WA-0098-SS        | (\$635))<br><u>\$209</u>       |
| <u>Nisqually Indian Tribe</u>     | <u>WA-1268-HA</u> | <u>\$209</u>                   |
| Port Gamble S'Klallam Tribe       | WA-0859-HA        | (\$2,540))<br><u>\$2,295</u>   |
| Puyallup Tribe of Indians         | WA-1137-HA        | (\$9,949))<br><u>\$7,302</u>   |
| <u>Seaproducts, Inc.</u>          | <u>WA-1416-SS</u> | <u>\$417</u>                   |
| Skokomish Indian Tribe            | WA-0577-HA        | (\$1,270))<br><u>\$1,878</u>   |
| Suquamish Tribe                   | WA-0694-SS        | (\$13,971))<br><u>\$7,719</u>  |
| Swinomish Indian Tribal Community | WA-1420-SS        | (\$423))<br><u>\$1,043</u>     |
| Taylor Shellfish Company, Inc.    | WA-0046-SP        | (\$7,409))<br><u>\$6,468</u>   |
| The Tulalip Tribes                | WA-0997-HA        | (\$4,445))<br><u>\$7,511</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 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.]