



# 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 246-282-012, Certificates of Approval Operation Licenses, Harvest Site Certificates (shellfish license renewal date change for Shellstock Shippers and Shucker Packers); and WAC 246-282-990, Fees (2011 shellfish operation license fee proration due to the annual license renewal date change, annual paralytic shellfish poison (PSP) fees adjustment according to samples taken from the prior year, and export certificate fee increase pursuant to legislative approval in HB 1087)

**Hearing location(s):** Department of Health  
Town Center 2  
111 Israel Road SE  
Tumwater, WA 98501

Date: 08/05/2011 Time: 10:00 am

**Submit written comments to:**

Name: Brandy Brush  
Address: Department of Health  
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) 08/05/2011

**Assistance for persons with disabilities:** Contact

Brandy Brush by 07/29/2011

TTY (800) 833-6388 or () 711

**Date of intended adoption:** 08/08/2011

(Note: This is NOT the effective date)

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

The purpose of the proposal is to change the annual shellfish operation license renewal date for Shellstock Shippers and Shucker Packers from October 1 to July 1 of each year, and to prorate the 2011 fee amount for the transition to the new date. Changing the renewal date will allow inspectors to focus on illness prevention and investigation during the summer months when *Vibrio parahaemolyticus* (Vp) poses the most serious public health threat. The proposal also equitably assesses the costs of commercial geoduck PSP testing following the redistribution formula. The formula is based on the number of tests done in the previous year. The testing is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck, and ensure toxic shellfish do not reach consumers. The proposed rule also increases the export certificate fee per legislative approval in HB 1087.

**Reasons supporting proposal:**

The proposed shellfish license renewal date will allow the department and shellfish industry to focus on essential activities when Vp is most dangerous to the public. The proposed 2011 prorated shellfish operation license renewal fee is not a permanent change to the annual fee and will not change the total revenue generated by the fee. The proposed geoduck PSP fee redistribution is based on 2010 total cost of service and number of tests done for the entities that submitted geoduck tests in 2009. The proposed export certificate fees increase is necessary to adequately fund the program.

**Statutory authority for adoption:**  
RCW 69.30.030 and RCW 43.20.030

**Statute being implemented:**  
RCW 69.30.030 and RCW 43.20.030

**Is rule necessary because of a:**

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

**DATE** 06/21/11

**NAME** (type or print)  
Mary C. Selecky

**SIGNATURE**

**TITLE**  
Secretary

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** June 21, 2011

**TIME:** 4:28 PM

**WSR 11-13-122**

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

None

**Name of proponent:** (person or organization) State Board of Health and Department of Health

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Brandy Brush	111 Israel Road SE, Tumwater WA 98501	360-236-3342
Implementation.... Rick Porso	111 Israel Road SE, Tumwater WA 98501	360-236-3302
Enforcement..... Rick Porso	111 Israel Road SE, Tumwater WA 98501	360-236-3302

**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.

A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310(4)(f), a SBEIS is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

**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: 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.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

**WAC 246-282-012 Certificates of approval--Operation licenses, harvest site certificates.** (1) The department issues two types of certificates of approval to persons who conduct shellfish operations. They are shellfish operation licenses and harvest site certificates.

(2) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid shellfish operation license. To obtain a shellfish operation license, a person must:

(a) Submit to the department a completed application on a form developed by the department;

(b) Submit to the department an acceptable written plan of operations that completely describes the shellfish operation;

(c) Pass a preoperational inspection demonstrating compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance; and

(d) Pay the department any shellfish operation license fee required by this chapter.

(3) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid harvest site certificate. In order for a person to obtain a harvest site certificate, all of the following requirements must be met.

(a) The person possesses a valid shellfish operation license.

(b) The person submits to the department a completed application that describes the following characteristics of the site:

(i) Geographic location;

(ii) Map showing legal boundaries;

(iii) Unique government identification number, such as county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, or tribal identification number; and

(iv) Documentation of legal ownership or lease for shellfish harvesting.

(c) The harvest site is in a growing area that meets the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance for a commercial shellfish growing area.

(d) The harvest site is not impacted by any actual or potential sources of pollution.

(e) The harvest site passes a pollution assessment inspection conducted by the department if necessary to determine if the site

is impacted by any actual or potential sources of pollution.

(f) The person signs the current conditionally approved area management plan, if applicable.

(g) The person pays the department any harvest site application fee required by this chapter.

(4) All shellfish operation licenses and harvest site certificates for shellfish dealers expire on the thirtieth day of (~~September~~) June each year. All shellfish operation licenses and harvest site certificates for harvesters expire on the thirty-first day of March each year (~~(, beginning in 2002)~~).

AMENDATORY SECTION (Amending WSR 10-19-034, filed 9/9/10, effective 10/10/10)

**WAC 246-282-990 Fees.** (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) 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

~~((2))~~ (3) The fee for each export certificate is \$~~((10.30))~~ 20.00.

~~((3))~~ (4) Annual PSP 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	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		

**Fee Category**

<b>Type of Operation</b>	<b>Number of Harvest Sites</b>	<b>Fee</b>
Shellstock Shipper 0 - 49 acres	3 or more	\$292
Shellstock Shipper 50 or greater acres	N/A	\$468
Shucker-Packer (plants < 2000 ft <sup>2</sup> )	≤ 2	\$354
Shucker-Packer (plants < 2000 ft <sup>2</sup> )	3 or more	\$533
Shucker-Packer (plants 2000 - 5000 ft <sup>2</sup> )	≤ 2	\$429
Shucker-Packer (plants 2000 - 5000 ft <sup>2</sup> )	3 or more	\$644
Shucker-Packer (plants > 5000 ft <sup>2</sup> )	N/A	\$1,189

(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 1 of each year for companies licensed as harvesters; or
- (iii) July 1 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))~~ (5) Annual PSP testing fees for companies harvesting geoduck are as follows:

<b>Harvester</b>	<b>Fee</b>
<del>((Discovery Bay Shellfish</del>	<del>\$464))</del>
Department of natural resources (quota tracts harvested by DNR contract holders)	<del>\$(8,507))</del> <u>9,616</u>
Jamestown S'Klallam Tribe	<del>\$(1,237))</del> <u>1,221</u>
Lower Elwha Klallam Tribe	<del>\$(4,485))</del> <u>4,274</u>
<del>((Lummi Nation</del>	<del>\$155))</del>
Nisqually Indian Tribe	<del>\$(2,011))</del> <u>3,968</u>
Port Gamble S'Klallam Tribe	<del>\$(4,021))</del> <u>3,053</u>
Puyallup Tribe of Indians	<del>\$(8,971))</del> <u>6,868</u>
<del>((Skokomish Indian Tribe</del>	<del>\$155))</del>
<u>Seattle Shellfish</u>	<u>\$1,374</u>
Squaxin Island Tribe	<del>\$(618))</del> <u>3,968</u>

<b>Harvester</b>	<b>Fee</b>
Suquamish Tribe	\$ <del>((21,189))</del> <u>16,026</u>
Swinomish Tribe	\$ <del>((619))</del> <u>458</u>
<u>SYS Enterprises</u>	<u>\$611</u>
<u>Taylor Shellfish</u>	<u>\$2,900</u>
Tulalip Tribe	\$ <del>((5,568))</del> <u>3,663</u>

~~((5))~~ (6) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

~~((6))~~ (7) Refunds for PSP 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.