

WSR 23-05-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-16—Filed February 1, 2023, 2:28 p.m., effective February 3, 2023]

Effective Date of Rule: February 3, 2023.

Purpose: The purpose of this emergency rule is to open recreational razor clam seasons for Copalis Beach.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000T; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Area 4 for recreational harvest. Washington department of health has certified clams from Razor Clam Area 4 to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 1, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000T Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. February 03, 2023 through 11:59 p.m. February 07, 2023, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Table with 3 columns: Razor Clam Area, Date, Time. Row 1: Area 1, Closed, Closed.

Razor Clam Area	Date	Time
Area 2	Closed	Closed
Area 3	Closed	Closed
Area 4	February 3, 5, and 7	From 12:01 p.m. to 11:59 p.m.
Area 5	Closed	Closed
Area 6	Closed	Closed
Area 7	Closed	Closed

(2) It is unlawful to dig for razor clams at any time in the Long Beach and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

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REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 8, 2023:

WAC 220-330-16000T Razor clams—Areas and seasons.

WSR 23-05-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-18—Filed February 3, 2023, 12:04 p.m., effective February 3, 2023, 12:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open razor clam seasons for Copalis and Mocrocks beaches.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000T and 220-330-16000U; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for recreational harvest in Razor Clam Areas 4 and 5. Washington department of health has certified clams from Razor Clam Areas 4 and 5 to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 3, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000U Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. February 03, 2023, through 11:59 p.m. February 08, 2023, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Table with 3 columns: Razor Clam Area, Date, Time. Row 1: Area 1, Closed, Closed.

Razor Clam Area	Date	Time
Area 2	Closed	Closed
Area 3	Closed	Closed
Area 4	February 3, 5, and 7	From 12:01 p.m. to 11:59 p.m.
Area 5	February 4, 6, and 8	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

(2) It is unlawful to dig for razor clams at any time in the Long Beach and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

[ ]

REPEALER

The following section of the Washington Administrative Code is repealed, effective immediately:

WAC 220-330-16000T Razor clams—Areas and seasons.

The following section of the Washington Administrative Code are repealed effective 12:01 a.m. February 9, 2023:

WAC 220-330-16000U Razor clams—Areas and seasons.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 23-05-016  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 23-17—Filed February 3, 2023, 2:29 p.m., effective February 4, 2023]

Effective Date of Rule: February 4, 2023.

Purpose: The purpose of this emergency rule is to return Nooksack River, North Fork fisheries to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000C.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is necessary to return Nooksack River, North Fork fisheries to permanent rules, as written in WAC 220-312-040. Kendall Hatchery eggtake goals for hatchery steelhead have been reached, allowing opportunity for recreational anglers to access surplus hatchery steelhead that remain in the system.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 3, 2023.

Kelly Susewind  
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective February 4, 2023:

WAC 220-312-04000C Freshwater exceptions to statewide rules—Puget Sound. (23-02)

**WSR 23-05-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-19—Filed February 6, 2023, 2:51 p.m., effective February 6, 2023, 2:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to correct WSR 23-04-097 in order to return the lower portion of Willapa River, from the mouth to the Washington department of fish and wildlife (WDFW) access site at the mouth of Ward/Wilson creeks, to permanent rules. The previous filing incorrectly extended that section upstream of the WDFW access site.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000Z; and amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to [correct] WSR 23-04-097, filed January 31, 2023. The lower portion of Willapa River, returned to permanent rules, should have been from the mouth of Willapa River to the WDFW access site at the mouth of Ward/Wilson creeks, not the second bridge on Camp One Road as listed in the previous rule. Other rules from the previous filing of WSR 23-04-097 are carried forward and remain in effect.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 6, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-02000A Freshwater exceptions to statewide rules—Coast.** Effective immediately, through April 30, 2023, the following provisions of WAC 220-312-020, regarding gamefish seasons, fishing from a floating device, and gear and hook restrictions for coastal

tributaries, including tributaries of Grays Harbor and Willapa Bay shall be modified as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

**1. Bear River (Pacific Co.):**

(a) Effective immediately, through February 28, 2023:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed.

**2. Big River (Clallam Co.),** outside Olympic National Park:

(a) Effective immediately, through February 28, 2023:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed.

**4. Bogachiel River (Clallam Co.):** Effective immediately, until further notice:

(a) From the mouth to Mill Creek:

(i) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(ii) Steelhead: Daily limit is 2 hatchery steelhead

(b) From Mill Creek to Olympic National Park Boundary:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Steelhead: Daily limit is 2 hatchery steelhead.

**5. Calawah River (Clallam Co.):** Effective immediately, until further notice:

(a) From the mouth to the Hwy. 101 Bridge:

(i) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(ii) Steelhead: Daily limit is 2 hatchery steelhead.

(b) From the Hwy. 101 Bridge to the forks:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Steelhead: Daily limit is 2 hatchery steelhead.

**6. Calawah, South Fork (Clallam Co.),** from the mouth to Olympic National Park boundary: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

**7. Cedar Creek (Jefferson Co.),** outside Olympic National Park boundary: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

**8. Chehalis River (Grays Harbor Co.):** From the mouth upstream, including all forks: Effective immediately, until further notice:

All species: Closed.

**9. Cloquallum Creek (Grays Harbor/Mason Co.),** from the mouth to the outlet at Stump Lake: Effective immediately, through February 28, 2023:

All species: Closed.

**10. Copalis River (Grays Harbor Co.):** Effective immediately, through February 28, 2023:

All species: Closed.

**11. Dickey River (Clallam Co.),** from the Olympic National Park boundary upstream including the East and West forks: Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

**12. Elk Creek (Lewis/Pacific Co.):** Effective immediately, until further notice:

All species: Closed.

**13. Elk River (Grays Harbor Co.):** Effective immediately, through February 28, 2023:

All species: Closed.

**14. Fork Creek (Pacific Co.):** from Fork Creek Hatchery rack upstream 500 feet at fishing boundary sign, Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

**15. Goodman Creek (Jefferson Co.),** outside of Olympic National Park boundary: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

**16. Hoh River (Jefferson Co.),** from Olympic National Park boundary upstream to Olympic National Park boundary below mouth of South Fork Hoh: Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Steelhead: Daily limit is 2 hatchery steelhead.

**17. Hoh River, South Fork (Jefferson Co.),** outside of Olympic National Park boundary: Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

**18. Hoquiam River including West and East forks (Grays Harbor Co.):** Effective immediately, through February 28, 2023:

All species: Closed.

**19. Humptulips River (Grays Harbor Co.):**

From the mouth to confluence of East and West forks and West Fork from mouth to Donkey Creek: immediately, until further notice:

All species: Closed.

**20. Johns River (Grays Harbor Co.),** from the mouth (Hwy. 105 Bridge) to Ballon Creek: Effective immediately, through February 28, 2023:

All species: Closed.

**21. Kalaloch Creek (Jefferson Co.),** outside Olympic National Park boundary: Effective immediately, through February 28, 2023:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release wild rainbow trout.

**22. Moclips River (Grays Harbor Co.),** from the mouth to Quinault Indian Reservation boundary: Effective immediately, through February 28, 2023:

All species: Closed.

**23. Mosquito Creek (Jefferson Co.),** from Olympic National Park boundary upstream to Goodman 3000 Mainline Bridge: Effective immediately, through February 28, 2023:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release wild rainbow trout.

**24. Naselle River (Pacific Co.),** from the Hwy. 101 Bridge to the North Fork: Effective immediately, until further notice:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release wild rainbow trout.

**25. Naselle River, South (Pacific Co.),** from the mouth to Bean Creek: Effective immediately, through February 28, 2023:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release wild rainbow trout.

**26. Nemah River, Middle (Pacific Co.):**

- (a) Effective immediately, through February 28, 2023:
  - (i) All species: Fishing from a floating device is prohibited.
  - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
  - (iii) Release wild rainbow trout.
- (b) Effective March 1, 2023, until further notice: All species: Closed

**27. Nemah River, North (Pacific Co.),** from Hwy. 101 Bridge to Cruiser Creek:

- (a) Effective immediately, through February 28, 2023:
  - (i) All species: Fishing from a floating device is prohibited.
  - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
  - (iii) Release wild rainbow trout.
- (b) Effective March 1, 2023, until further notice: All species: Closed

**28. Nemah River, South (Pacific Co.):**

- (a) Effective immediately, through February 28, 2023:
  - (i) All species: Fishing from a floating device is prohibited.
  - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
  - (iii) Release wild rainbow trout.
- (b) Effective March 1, 2023, until further notice: All species: Closed

**29. Newaukum River, including South Fork (Lewis Co.),** from mouth to Hwy. 508 Bridge near Kearny Creek: Effective immediately, until further notice:

All species: Closed.

**30. Newaukum River, Middle Fork (Lewis Co.),** from mouth to Taucher Rd. Bridge: Effective immediately, until further notice:

All species: Closed.

**31. Newaukum River, North (Lewis Co.),** from mouth to 400' below Chehalis City water intake: Effective immediately, until further notice:

All species: Closed.

**32. North River (Grays Harbor/Pacific Co.),** from the Hwy. 105 bridge to Raimie Creek: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

**33. Palix River (Pacific Co.):**

(a) From Hwy. 101 Bridge to the mouth of the Middle Fork:

(i) Effective immediately, through February 28, 2023:

(A) All species: Fishing from a floating device is prohibited.

(B) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(C) Release wild rainbow trout.

(ii) Effective March 1, 2023, until further notice: All species: Closed

(b) From the confluence with the Middle Fork upstream (all forks including South fork Palix River and Canon River):

(i) Effective immediately, through February 28, 2023:

(A) All species: Fishing from a floating device is prohibited.

(B) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(C) Release wild rainbow trout.

(ii) Effective March 1, 2023, until further notice: All species: Closed

**34. Quillayute River (Clallam Co.),** from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers: Effective immediately, until further notice:

(a) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(b) Steelhead: Daily limit 2 hatchery steelhead.

**35. Quinault River (Grays Harbor/Jefferson Co.),** from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary: Effective immediately, until further notice:

All species: Closed.

**36. Satsop River and East Fork (Grays Harbor Co.):**

(a) From the mouth to bridge at Schafer State Park: Effective immediately, until further notice:

All species: Closed.

(b) From 400' below Bingham Creek Hatchery dam to the dam and all Forks: Effective immediately, until further notice:

All species: Closed.

**37. Satsop River, Middle Fork (Grays Harbor Co.),** Effective immediately, through February 28, 2023.

All species: Closed

**38. Satsop River, West Fork (Grays Harbor Co.),** Effective immediately, through February 28, 2023.

All species: Closed

**39. Skookumchuck River (Lewis/Thurston Co.)**, from mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam: Effective immediately, until further notice: All species: Closed.

**40. Smith Creek (near North River) (Pacific Co.)**: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

**41. Sol Duc River (Clallam Co.)**: Effective immediately, until further notice:

(a) From mouth to the WDFW boat launch at Maxfield Rd:

All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(b) From the WDFW boat launch at Maxfield Rd. to Hwy. 101 Bridge upstream of Klahowya campground:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

**42. Sooes River (Clallam Co.)**, outside of Makah Indian Reservation: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

**43. Stevens Creek (Grays Harbor Co.)**, from mouth to Hwy 101 Bridge: Effective immediately, through February 28, 2023:

All Species: Closed.

**44. Thunder Creek (Clallam Co.)**, from mouth to D2400 Rd.:

(a) Effective immediately, through February 28, 2023:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release wild rainbow trout

(b) Effective March 1, 2022, until further notice: All species: Closed

**45. Willapa River (Pacific Co.)**, the WDFW access site at the mouth of Ward/Wilson creeks to Hwy. 6 Bridge (near the town of Lebam): Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

**46. Willapa River, South Fork (Pacific Co.)**: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

**47. Wishkah River (Grays Harbor Co.)**, from the mouth to 200' below the weir at the Wishkah Rearing Ponds and from 150' upstream to 150' downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary): Effective immediately, through February 28, 2023:

All species: Closed.

**48. Wynoochee River (Grays Harbor Co.):** Effective immediately,  
until further notice:  
All species: Closed.

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**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of Washington Administrative code is repealed, effective immediately:

WAC 220-312-02000Z Freshwater exceptions to statewide  
rules—Coast. (23-14)

**WSR 23-05-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed February 8, 2023, 10:11 a.m., effective February 11, 2023]

Effective Date of Rule: February 11, 2023.

Purpose: The department is extending the amendment of the rules listed below. Due to the ongoing COVID-19 public health emergency, on January 18, 2022, home and community services (HCS) temporarily suspended conducting ongoing assessments for HCS clients living in adult family homes, assisted living facilities, and enhanced services facilities. The intent of this suspension is to allow HCS staff to focus on conducting assessments for patients staying in hospitals to facilitate their discharge to long-term care facilities and improve the current surge capacity in hospitals. This emergency rule continues to suspend the regulatory requirement for these facilities to complete assessments for HCS clients while the HCS assessors are not available. The Centers for Medicare and Medicaid Services (CMS) approved this flexibility for medicaid beneficiaries needing specific long-term care services and supports whose assessments meet the requirements under 42 C.F.R. 441.720.

Citation of Rules Affected by this Order: Amending WAC 388-76-10350, 388-78A-2100, and 388-107-0080.

Statutory Authority for Adoption: RCW 18.20.090, 70.97.230, and 70.128.040(1).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule was put in place at a time when many hospitals in this state were at or over capacity, leading them to redirect patients who are needing emergency care and delaying procedures that are necessary but nonemergent. This put the health of all residents of Washington at risk if they were not able to get the care they needed at their local hospital. By temporarily suspending assessment requirements for residents living in adult family homes, assisted living facilities, and enhanced services facilities, HCS was able to focus personnel resources on assessing patients in hospitals, which facilitated admissions to long-term care facilities and increased the bed availability in hospitals. HCS is continuing to use the extended timelines in this rule to address hospital capacity surges as they arise and to focus on significant change assessments. The department is proceeding with permanent adoption. We filed a CR-101 under WSR 22-13-121 and have been working on proposed language to file with a CR-102 in the near future. This emergency will keep the rule in place as the department completes the permanent adoption process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: February 8, 2023.

Katherine I. Vasquez  
Rules Coordinator

## SHS-4914.2

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

**WAC 388-76-10350 Assessment—Updates required.** The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

(1) When there is a significant change in the resident's physical or mental condition;

(2) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

(3) At the resident's request or at the request of the resident's representative; or

(4) At least every ((twelve)) 12 months, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10350, filed 10/16/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

**WAC 388-78A-2100 On-going assessments.** The assisted living facility must:

(1) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency;

(2) Complete an assessment specifically focused on a resident's identified problems and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

(b) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2100, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 18.20.090. WSR 06-01-047, § 388-78A-2100, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. WSR 04-16-065, § 388-78A-2100, filed 7/30/04, effective 9/1/04.]

AMENDATORY SECTION (Amending WSR 16-14-078, filed 7/1/16, effective 8/1/16)

**WAC 388-107-0080 Ongoing comprehensive assessments.** The enhanced services facility must:

(1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070(~~(r)~~) on the following timelines:

(a) Upon a significant change in the resident's condition; or

(b) (~~(or)~~) At least every 180 days if there is no significant change in condition, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

(2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(b) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

(c) When the resident has an injury requiring the intervention of a practitioner(~~(r)~~).

(3) Review each resident's needs to evaluate discharge or transfer options when the resident:

(a) No longer needs the level of behavioral support provided by the facility; or

(b) Expresses the desire to move to a different type of community based setting(~~(r)~~).

(4) Ensure that the person-centered service planning team discusses all available placement options; and

(5) Ensure the staff person performing the ongoing assessments is a qualified assessor.

[Statutory Authority: RCW 70.97.230 and HCBS Final Rule 42 C.F.R. WSR 16-14-078, § 388-107-0080, filed 7/1/16, effective 8/1/16. Statutory Authority: Chapter 70.97 RCW. WSR 14-19-071, § 388-107-0080, filed 9/12/14, effective 10/13/14.]

**WSR 23-05-041**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed February 9, 2023, 1:15 p.m., effective February 9, 2023, 1:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of social and health services (department) is amending the rules listed below to ensure nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. The department is proposing adopting new sections to implement section 6 of ESHB 1120 (chapter 203, Laws of 2021). The statute directs the department to adopt rules to grant exceptions to requirements in RCW 74.42.360 (2) through (4), waive penalties, and suspend oversight activities for nursing homes. The emergency rule will be effective retroactively to October 27, 2022, the end date of the Governor's Proclamation 20-18, which had suspended RCW 74.42.360(3) and WAC 388-97-1080(3).

Citation of Rules Affected by this Order: New WAC 388-97-1081, 388-97-1082, and 388-97-1091.

Statutory Authority for Adoption: RCW 18.51.070, 74.42.360(6), and 74.42.620.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Current nursing home rules require large nonessential community providers to have a registered nurse on duty directly supervising resident care 24 hours per day, seven days per week, and to provide a minimum of 3.4 hours of direct care for each resident every day. These rules are necessary to instruct and inform nursing homes on the process the department will use to prioritize and resume oversight of minimum staffing standards, bringing all service providers back into compliance with statutory requirements by October 27, 2023. The emergency rules are necessary to maintain the suspension of requirements related to nursing home minimum staffing standards consistent with ESHB 1120 and allow the department to adopt permanent rules to maintain the suspension for the duration required under the statute.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 0, Repealed 0.

Date Adopted: February 8, 2023.

Katherine I. Vasquez  
Rules Coordinator

## SHS-4966.5

### NEW SECTION

**WAC 388-97-1081 Reimplementation of 3.4 hours per resident day minimum staffing standards.** (1) In response to the COVID-19 pandemic, the governor issued proclamation 20-18 suspending RCW 74.42.360(2) and WAC 388-97-1090. Pursuant to the authority granted the department in RCW 74.42.360(6), this rule section establishes requirements to gradually re-implement the staffing requirements under RCW 74.42.360(2) for facilities to provide a minimum of 3.4 hours per resident day of direct care so that nursing homes may incrementally return to compliance with the statute without being assessed a fine or receiving a citation for non-compliance.

(2) From October 27, 2022, to April 30, 2023, the department will take the following actions:

(a) Continue to suspend enforcement of RCW 74.42.360(2) and WAC 388-97-1090;

(b) Not report to the complaint resolution unit non-compliance with staffing requirements in RCW 74.42.360(2); and

(c) Report to the complaint resolution unit for investigation the nursing home's failure to report data to the center for medicare and medicaid services' payroll-based journal.

(3) From May 1, 2023, to October 27, 2023, the department will:

(a) Calculate fines for noncompliance with RCW 74.42.360(2) and WAC 388-97-1090;

(b) Notify the nursing home of what the fine would have been if it had been issued;

(i) Upon the first notice of non-compliance issued to the nursing home, the department will:

(A) Offer targeted support to the nursing home to move toward compliance;

(B) Discuss with the nursing home how it is meeting care and service needs for all residents while providing fewer than 3.4 hours per resident day of direct care;

(C) Not report to the complaint resolution unit non-compliance with staffing requirements in RCW 74.42.360(2); and

(D) Report to the complaint resolution unit for investigation the nursing home's failure to report data to the center for medicare and medicaid services' payroll-based journal.

(ii) Upon the second notice of non-compliance issued to the nursing home, the department will report to the complaint resolution unit for investigation:

(A) A nursing home's failure to report data to the center for medicare and medicaid services' payroll-based journal; and

(B) Care and services concerns related to providing fewer than 3.4 hours per resident day of direct care and offer targeted support to assist the facility to move towards compliance.

[]

NEW SECTION

**WAC 388-97-1082 Reimplementation of 24-hour registered nurse staffing standards.** (1) In response to the COVID-19 pandemic, the governor issued proclamation 20-18 suspending RCW 74.42.360(3) and WAC 388-97-1080(3). Pursuant to the authority granted the department under RCW 74.42.360(6), this rule waives the requirement for large nonessential community nursing home providers to have a registered nurse on duty directly supervising resident care 24 hours per day, seven days per week; and waives related penalties and oversight activities under RCW 74.42.360(3) and WAC 388-97-1080(3).

(2) The department must repeal this rule when staffing returns to pre-pandemic levels or by October 27, 2023, whichever occurs first.

(3) This rule supersedes WAC 388-97-1080(3). If a conflict arises, this rule prevails.

[]

NEW SECTION

**WAC 388-97-1091 Reimplementation of registered nurse minimum staffing standards.** (1) In response to the COVID-19 pandemic, the governor issued proclamation 20-18 suspending RCW 74.42.360(4) and WAC 388-97-1080(8). Pursuant to the authority granted the department under RCW 74.42.360(6), this rule waives the requirement for essential community providers and small nonessential community nursing home providers to have a registered nurse on duty directly supervising resident care a minimum of 16 hours per day, seven days per week, and a registered nurse or a licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week; and waives related penalties and oversight activities under WAC 388-97-1080(8).

(2) The department must repeal this rule when staffing returns to pre-pandemic levels or by October 27, 2023, whichever occurs first.

(3) This rule supersedes WAC 388-97-1080(8). If a conflict arises, this rule prevails.

[]

**WSR 23-05-044**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-21—Filed February 9, 2023, 2:57 p.m., effective February 13, 2023]

Effective Date of Rule: February 13, 2023.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000L; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule extends the 2023 tribal winter gillnet fishery in The Dalles and John Day pools. Sufficient fish remain on the harvestable guideline to support this extension. This rule is consistent with actions of the Columbia River compacts on January 24 and February 9, 2023. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *United States v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 9, 2023.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000M Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G (The Dalles Pool)

(a) Season: 6 AM Monday, February 13, 2023, until 6 PM Tuesday, February 14, 2023.

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length caught in The Dalles Pool may be sold or kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1H (John Day Pool)

(a) Season: immediately through 6 PM Monday, February 20, 2023.

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for

subsistence. Sturgeon from 43 to 54 inches fork length caught in the John Day Pool may be sold or kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(3) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: immediately through 6 PM Saturday, March 18, 2023.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length caught in the Bonneville Pool, and from 43 to 54 inches fork length caught in The Dalles and John Day Pools, may be kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold only if caught during the open period and open Pool of an open gillnet fishery.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(5) Fish caught during the open period may be sold after the period concludes.

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**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### REPEALER

The following section of Washington Administrative Code is repealed, effective February 13, 2023:

WAC 220-359-02000L Columbia River salmon seasons above Bonneville Dam. (23-12)

**WSR 23-05-045**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-20—Filed February 9, 2023, 2:58 p.m., effective February 11, 2023]

Effective Date of Rule: February 11, 2023.

Purpose: The purpose of this emergency rule is to open three additional sturgeon retention days for John Day Pool.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000I; and amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to open additional days of recreational white sturgeon retention in the John Day reservoir.

In John Day Pool, 21 fish remain on the harvest guideline and the relatively low daily catch rates indicate this fishery can support the additional three days of retention fishing. The project harvest through February 18, 2023, is 96 fish out of the 105 fish harvest guideline. These populations are managed under sustainable harvest guidelines and this action is intended to keep harvest within that guideline. This action is consistent with decisions made by the states of Washington and Oregon during Columbia River compact hearings on November 9, 2022, January 10 and 24, and February 9, 2023.

The general public welfare is protected with the immediate and limited duration opening of recreational sturgeon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 9, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-06000J Freshwater exceptions to statewide rules—Columbia River.** Effective February 11, through April 30, 2023 the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons from Bonneville Dam to McNary Dam are as follows. All other provisions of WAC 220-312-060, WAC 220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) From Bonneville Dam upstream to The Dalles Dam,** including adjacent tributaries:

(a) Effective immediately, through April 30, 2023, sturgeon retention is prohibited.

(b) Catch and release angling for sturgeon is permissible on days not open to sturgeon retention.

**(2) From The Dalles Dam upstream to John Day Dam,** including adjacent tributaries:

(a) Effective immediately, through April 30, 2023, sturgeon retention is prohibited.

(b) Catch and release angling for sturgeon is permissible on days not open to sturgeon retention.

**(3) From John Day Dam to McNary Dam,** including adjacent tributaries:

(a) Effective immediately through April 30, 2023, with the exception of the dates included in Section 3(b):

(i) Sturgeon retention is prohibited.

(ii) Catch and release angling for sturgeon is permissible on days not open to sturgeon retention.

(b) Effective February 11, February 15, and February 18, 2023, it is permissible to retain white sturgeon:

(i) Minimum fork length 43 inches. Maximum fork length 54 inches.

(ii) Catch and release angling for sturgeon is permissible on days not open to sturgeon retention.

[ ]

REPEALER

The following section of Washington Administrative Code is repealed, effective February 11, 2023:

WAC 220-312-06000I Freshwater exceptions to statewide rules—Columbia River. (23-10)

**WSR 23-05-047**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-22—Filed February 9, 2023, 4:11 p.m., effective February 11, 2023]

Effective Date of Rule: February 11, 2023.

Purpose: The purpose of this emergency rule is to suspend recreational salmon seasons in Catch Record Card Area 10.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Estimates of Chinook encounters to date indicate that the fishery has reached 55 percent of the total projected encounters (7,152), 55 percent of sublegal projected encounters (6,295), and 77 percent of unmarked encounters (1,089) agreed to in this year's list of agreed fisheries for Catch Record Card Area 10. Feedback from Puget Sound recreational advisors indicates a priority for preserving fishing opportunity for March. The Washington department of fish and wildlife is suspending the fishery to preserve opportunity for later in the winter season. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 9, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000N Puget Sound salmon—Saltwater seasons and daily limits.** Effective February 11, 2023, until further notice, salmon seasons rules for Catch Record Card Area 10 shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 10 except Seacrest Pier, Waterman Pier,  
Bremerton Boardwalk, and Illahee State Park Pier: Salmon: Closed.

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**WSR 23-05-055**  
**EMERGENCY RULES**  
**STATE BOARD OF HEALTH**

[Filed February 10, 2023, 1:07 p.m., effective February 10, 2023, 1:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The state board of health (board) adopted an emergency rule regarding certification and registration of proprietary treatment products used in on-site sewage systems and it was filed on October 13, 2022 (WSR 22-21-070). This filing followed the initial emergency rule filed on June 15, 2022 (WSR 22-13-101). Both emergency rules amended WAC 246-272A-0110 to allow manufacturers to make a written request to the department of health (department) to substitute components of a registered product's construction in cases of a demonstrated supply chain shortage or similar manufacturing disruptions that may impact installations, operation, or maintenance. The request must include information that demonstrates that the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and maintenance of the original registered product.

This third emergency rule adopts the same process but with some minor changes to allow manufacturers of registered proprietary treatment products to replace components of their products that are not available due to supply chain shortages or similar manufacturing disruptions with like components, as long as the components will not negatively impact performance, treatment, operation, or maintenance of the original registered product.

The underlying justification for the initial and second emergency rule still applies because without the emergency rule, the current rule would impede home sales when maintenance of these devices is noted on home inspections for property transfers because replacement parts are unavailable. New construction is likewise impacted as many active or pending permits include on-site sewage systems using Salcor products. There are other manufacturers of disinfecting ultraviolet (UV) light systems that can be substituted into the proprietary treatment products that use Salcor products. Since the filing of the second emergency rule, Salcor was sold and the new owner is working with the National Science Foundation to get their products approved, but this process will take several months. In order to continue to protect the public's health, safety, and welfare, it is necessary to adopt a third emergency rule to allow the department to consider written requests from manufacturers of proprietary treatment products for substitutes to proprietary treatment product components so their systems will be able to function properly without negatively impacting treatment, operation, or maintenance during supply chain shortages. To date, three manufacturers have received department approval to substitute the Salcor 3G UV lamp with an alternate UV lamp.

In 2018, the board filed a CR-101, preproposal statement of inquiry (WSR 18-06-082), to initiate permanent rule making and update the on-site sewage system rules. That rule making is still underway and is expected to conclude in 2023. As directed by the board at the June 8, 2022, meeting, the emergency rule amendment will be considered for incorporation into the permanent rule making that is currently underway.

Citation of Rules Affected by this Order: Amending WAC 246-272A-0110.

Statutory Authority for Adoption: RCW 43.20.050(3).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The board finds that in order to protect the public's health, safety, and welfare it is necessary to adopt the emergency rule to amend WAC 246-272A-0110 to allow the department to consider written request from manufacturers of proprietary treatment products to substitute a proprietary treatment product component so their systems may continue to function properly without negatively impacting performance or diminish the effect of the treatment, operation, or maintenance during supply chain shortages.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 10, 2023.

Michelle A. Davis, MPA  
Executive Director

### OTS-3856.3

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0110 Proprietary treatment products—Certification and registration.** (1) Manufacturers shall register their proprietary treatment products with the department before the local health officer may permit their use.

(2) To qualify for product registration, manufacturers desiring to sell or distribute proprietary treatment products in Washington state shall:

(a) Verify product performance through testing using the testing protocol established in Table I and register their product with the department using the process described in WAC 246-272-0120;

(b) Report test results of influent and effluent sampling obtained throughout the testing period (including normal and stress loading phases) for evaluation of constituent reduction according to Table II;

(c) Demonstrate product performance according to Table III. All (~~thirty-day~~) 30-day averages and geometric means obtained throughout

the test period must meet the identified threshold values to qualify for registration at that threshold level; and

(d) For registration at levels A, B, and C verify bacteriological reduction according to WAC 246-272A-0130.

(3) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility accredited by ANSI:

(a) ANSI/NSF Standard 40—Residential Wastewater Treatment Systems;

(b) NSF Standard 41: Non-Liquid Saturated Treatment Systems;

(c) NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation; or

(d) Protocol for bacteriological reduction described in WAC 246-272A-0130.

(4) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility meeting the requirements established by the Testing Organization and Verification Organization, consistent with the test protocol and plan:

(a) EPA/NSF—Protocol for the Verification of Wastewater Treatment Technologies; or

(b) EPA Environmental Technology Verification Program protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction.

(5) Treatment levels used in these rules are not intended to be applied as field compliance standards. Their intended use is for establishing treatment product performance in a product testing setting under established protocols by qualified testing entities.

(6) Manufacturers may submit a written application to the department requesting to substitute components of a registered product's construction in cases of supply chain shortage or similar manufacturing disruptions that may impact installations, operation, or maintenance. The application must include a report stamped, signed, and dated by a professional engineer that demonstrates the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and maintenance of the original registered product. The department's approval of the substituted component is in effect until it is rescinded by the department.

**TABLE I**

<b>Testing Requirements for Proprietary Treatment Products</b>	
<b>Treatment Component/ Sequence Category</b>	<b>Required Testing Protocol</b>
<b>Category 1</b> Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.	ANSI/NSF 40—Residential Wastewater Treatment Systems (protocols dated between July 1996 and the effective date of these rules)
<b>Category 2</b> Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E.	EPA/NSF Protocol for the Verification of Wastewater Treatment Technologies/ EPA Environmental Technology Verification (April 2001)

Testing Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	Required Testing Protocol
(Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	
<b>Category 3</b> Black water component of residential sewage (such as composting and incinerating toilets).	NSF/ANSI Standard 41: Non-Liquid Saturated Treatment Systems (September 1999)  NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation (April 2000)
<b>Total Nitrogen Reduction in Categories 1 &amp; 2 (Above)</b>	Protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction/EPA Environmental Technology Verification Program (November, 2000)

TABLE II

Test Results Reporting Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	Testing Results Reported
<b>Category 1</b> Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.	Report test results of influent and effluent sampling obtained throughout the testing period for evaluation of constituent reduction for the parameters: CBOD <sub>5</sub> , and TSS:  <input type="checkbox"/> Average <span style="float: right;"><input type="checkbox"/> Standard Deviation</span> <input type="checkbox"/> Minimum <span style="float: right;"><input type="checkbox"/> Maximum</span> <input type="checkbox"/> Median <span style="float: right;"><input type="checkbox"/> Interquartile Range</span> <input type="checkbox"/> 30-day Average (for each month) For bacteriological reduction performance, report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within ( <del>thirty-day</del> ) 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period. See WAC 246-272A-0130. Test report must also include the individual results of all samples drawn throughout the test period.
<b>Category 2</b> Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E.  (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	Report all individual test results and full test average values of influent and effluent sampling obtained throughout the testing period for: CBOD <sub>5</sub> , TSS and O&G. Establish the treatment capacity of the product tested in pounds per day for CBOD <sub>5</sub> .
<b>Category 3</b> Black water component of residential sewage (such as composting and incinerating toilets).	Report test results on all required performance criteria according to the format prescribed in the NSF test protocol described in Table I.
<b>Total Nitrogen Reduction in Categories 1 &amp; 2 (Above)</b>	Report test results on all required performance criteria according to the format prescribed in the test protocol described in Table I.

TABLE III

Product Performance Requirements for Proprietary Treatment Products						
Treatment Component/Sequence Category	Product Performance Requirements					
<p><b>Category 1</b> Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.</p>	<b>Treatment System Performance Testing Levels</b>					
	<b>Level</b>	<b>Parameters</b>				
		<b>CBOD<sub>5</sub></b>	<b>TSS</b>	<b>O&amp;G</b>	<b>FC</b>	<b>TN</b>
	<b>A</b>	10 mg/L	10 mg/L	—	200/100 ml	—
	<b>B</b>	15 mg/L	15 mg/L	—	1,000/100 ml	—
	<b>C</b>	25 mg/L	30 mg/L	—	50,000/100 ml	—
	<b>D</b>	25 mg/L	30 mg/L	—	—	—
	<b>E</b>	125 mg/L	80 mg/L	20 mg/L	—	—
	<b>N</b>	—	—	—	—	20 mg/L
<p>Values for Levels A - D are 30-day values (averages for CBOD<sub>5</sub>, TSS, and geometric mean for FC.) All 30-day averages throughout the test period must meet these values in order to be registered at these levels.                      Values for Levels E and N are derived from full test averages.</p>						
<p><b>Category 2</b> Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E.</p> <p>(Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)</p>	<p>All of the following requirements must be met:</p> <p style="margin-left: 40px;">(1) All full test averages must meet Level E; and</p> <p style="margin-left: 40px;">(2) Establish the treatment capacity of the product tested in pounds per day for CBOD<sub>5</sub>.</p>					
<p><b>Category 3</b> Black water component of residential sewage (such as composting and incinerating toilets).</p>	<p>Test results must meet the performance requirements established in the NSF test protocol.</p>					
<p><b>Total Nitrogen Reduction in Categories 1 &amp; 2 (Above)</b></p>	<p>Test results must establish product performance effluent quality meeting Level N, when presented as the full test average.</p>					

[Statutory Authority: RCW 43.20.050. WSR 05-15-119, § 246-272A-0110, filed 7/18/05, effective 9/15/05.]

**WSR 23-05-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-23—Filed February 10, 2023, 2:56 p.m., effective February 13, 2023]

Effective Date of Rule: February 13, 2023.

Purpose: The purpose of this emergency rule is to close harvest of red sea urchins in Districts 1, 2, and 3.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000S; and amending WAC 220-340-750.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule closes harvest for red sea urchins in Districts 1, 2, and 3 because the quotas are likely to be reached before February 13. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 10, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-75000T Commercial sea urchin fishery.** Effective February 13, 2023, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for red sea urchin harvest only, seven days-per-week: Sea Urchin District 4.

(3) The maximum cumulative landings for red sea urchins for each weekly fishery opening period is 1,500 pounds per valid designated sea urchin harvest license.

(4) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1.

(5) The maximum cumulative landings for green sea urchins for each weekly fishery opening period is 2,500 pounds per valid designated sea urchin harvest license.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective February 13, 2023:

WAC 220-340-75000S Commercial sea urchin fishery. (23-15)

**WSR 23-05-063**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed February 13, 2023, 10:48 a.m., effective February 13, 2023, 10:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These changes are necessary to implement amendments to the developmental disabilities administration's home and community-based services waivers as approved by the federal Centers for Medicare and Medicaid Services. Amendments remove the prohibition to receive employment services and community inclusion services concurrently. Removing "consecutive" from WAC 388-845-0603 aligns the rule with RCW 71A.12.280.

Citation of Rules Affected by this Order: Amending WAC 388-845-0603, 388-845-0610, and 388-845-2110.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.120.

Other Authority: 42 C.F.R. 441.301, Section 1915(c) of the Social Security Act; RCW 71A.12.280.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: February 13, 2023.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4958.2**

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

**WAC 388-845-0603 Who is eligible to receive community inclusion services?** You are eligible for community inclusion services if you are enrolled in the basic plus or core waivers and:

- (1) You are (~~sixty-two~~) 62 or older; or
- (2) You meet age requirements under WAC 388-845-2110(1) and:

(a) You have participated in developmental disabilities administration (DDA) supported employment services for at least nine (~~con-~~  
~~secutive~~) months; or

(b) DDA has determined that you are exempt from the nine-month DDA supported employment service requirement because:

(i) Your medical or behavioral health records document a condition that prevents you from completing nine (~~con-~~  
~~secutive~~) months of DDA supported employment services; or

(ii) You were referred to and were available for DDA supported employment services, but the service was not delivered within (~~nine-~~  
~~ty~~) 90 days of the referral.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0603, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030. WSR 17-12-002, § 388-845-0603, filed 5/24/17, effective 6/24/17. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0603, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0603, filed 8/1/12, effective 9/1/12.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-0610 Are there limits to community inclusion services you may receive?** (~~((1) You must not receive community inclusion services if you are receiving prevocational or supported employment services.~~

~~(2))~~) The maximum hours of community inclusion services you may receive are determined by the developmental disabilities administration (~~((DDA))~~) assessment under WAC 388-828-9310.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0610, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c) (4)-(5). WSR 18-03-174, § 388-845-0610, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0610, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0610, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0610, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0610, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 22-01-216, filed 12/22/21, effective 1/22/22)

**WAC 388-845-2110 Are there limits to the supported employment services you may receive?** The following limits apply to your receipt of supported employment services:

(1) To receive supported employment services, you must be age:

(a) (~~Twenty~~) 20 and graduating from high school before your July or August (~~(twenty-first)~~) 21st birthday(~~(+)~~);

(b) (~~Twenty-one~~) 21 and no longer eligible to enroll in high school; or

(c) (~~Twenty-two~~) 22 or older.

(2) Payment for individual supported employment services excludes the supervisory activities rendered as a normal part of the business setting.

(3) (~~You will not be authorized to receive supported employment services in addition to community inclusion services.~~

~~(4)~~) Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325 and might not equal the number of hours you spend on the job or in job related activities.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 22-01-216, § 388-845-2110, filed 12/22/21, effective 1/22/22. Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c) (4)-(5). WSR 18-03-174, § 388-845-2110, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2110, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2110, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2110, filed 12/13/05, effective 1/13/06.]

## WSR 23-05-069

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

[Filed February 13, 2023, 12:30 p.m., effective February 13, 2023, 12:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Drinking water state revolving fund (DWSRF) loan terms. Under WAC 246-296-050 (DWSRF loan terms), the department of health (department) may approve a qualifying disadvantaged community for a DWSRF loan for principal forgiveness up to 50 percent of the loan amount, or in a case of an emergency for up to 75 percent of the loan amount. The current rule does not allow for any principal forgiveness to an applicant that does not qualify as a disadvantaged community. The amended rule allows the department to forgive a portion or all of the loan amount to both disadvantaged and nondisadvantaged communities in conformance with the federal bipartisan infrastructure law (BIL) to meet the federal deadline for awarding loans within this current loan cycle.

Citation of Rules Affected by this Order: Amending WAC 246-296-050.

Statutory Authority for Adoption: RCW 70A.125.160.

Other Authority: Federal Safe Drinking Water Act, 40 C.F.R. Part 35, Subpart L; and BIL P.L. 117-58.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The rule amendment is necessary for the preservation of the public health, safety, and general welfare of state citizens so that applicants can immediately receive a loan during the current cycle from November 30, 2022, to May 1, 2023, which allows for up to full principal forgiveness to communities that qualify as disadvantaged and nondisadvantaged in conformance with the requirements under BIL. This rule amendment increases public health protection by broadening the types of qualifying infrastructure improvements as outlined in BIL, in addition to traditional funding uses such as replacing aging infrastructure, installing treatment to remove regulated contaminants, restructuring failing water systems, and responding to public health emergency events.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 13, 2023.

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

**OTS-4344.1**

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

**WAC 246-296-050 DWSRF loan terms.** (1) The department may approve a DWSRF loan for a project that will not serve a disadvantaged community:

(a) That partially or fully forgives the principal amount of the loan; or

(b) At an interest rate at or below market interest rates for a maximum of ((twenty)) 20 years from project completion.

(2) The department may approve a DWSRF loan for a project((s)) that will serve a disadvantaged ((communities)) community:

(a) That partially or fully forgives the principal amount of the loan; or

(b) At an interest rate set at or below market interest rates for up to ((thirty)) 30 years, as long as the DWSRF loan does not exceed the useful life of the project((;

~~(b) That qualifies for principal forgiveness for up to fifty percent of the principal DWSRF loan amount; or~~

~~(c) That qualifies for principal forgiveness for up to seventy-five percent of the principal DWSRF loan amount for an emergency loan).~~

(3) A project is considered complete when the department approves the construction completion report.

(4) The borrower shall begin repaying the principal and interest no later than one year after the project is complete.

(5) The department shall:

(a) Set terms that secure repayment of the debt and maintain a financially sound DWSRF program in perpetuity; and

(b) Publish specific rates and contract terms in the annual application package.

[Statutory Authority: RCW 70.119A.170 as amended by 2016 c 111. WSR 16-14-086, § 246-296-050, filed 7/5/16, effective 8/5/16. Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-050, filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-050, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-050, filed 10/24/01, effective 11/24/01.]

**WSR 23-05-072**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-24—Filed February 14, 2023, 8:14 a.m., effective March 1, 2023]

Effective Date of Rule: March 1, 2023.

Purpose: The purpose of this emergency rule is to close clam, mussel, and oyster seasons on Penrose Point State Park beaches.

Citation of Rules Affected by this Order: Amending WAC 220-330-110 and 220-330-140.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045 and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2023 recreational clam, mussel, and oyster seasons are set in permanent rule making that is currently ongoing. Some beaches must be closed via emergency regulation because permanent rules won't become effective in time to update seasons currently described in permanent WAC. Therefore, the Washington department of fish and wildlife is closing Penrose State Park to the harvest of clams, mussels, and oysters immediately. This change will be reflected in permanent rule making for 2023. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 13, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-330-11000N Clams other than razor clams, mussels—Areas and seasons.** Effective March 1, through April 30, 2023, the provisions of WAC 220-330-110 regarding personal-use clam and mussel and seasons for Penrose Point State Park beaches shall be modified as described below. All other provisions of WAC 220-330-110 not addressed herein remain in effect unless otherwise amended by emergency rule:

Penrose Point State Park: Closed.

[]

NEW SECTION

**WAC 220-330-14000L Oysters—Areas and seasons.** Effective March 1, through April 30, 2023, the provisions of WAC 220-330-140 regarding personal-use oyster seasons for Penrose Point State Park beaches shall be modified as described below. All other provisions of WAC 220-330-140 not addressed herein remain in effect unless otherwise amended by emergency rule:

Penrose Point State Park: Closed.

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## WSR 23-05-083

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

[Filed February 14, 2023, 12:56 p.m., effective February 14, 2023, 12:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-980-100 Examination and reexamination for home care aide certification, in chapter 246-980 WAC, Home care aide rules. WAC 246-980-100 (5)(c) requires that home care aide certification testing occur within two years of training. This emergency rule removes the two-year limit on the validity of training.

Lasting impacts from the coronavirus disease 2019 (COVID-19) pandemic have impacted the home care aide workforce by creating backlogs that limit access to training and testing. Continuing to require testing within two years of training would require many uncertified individuals to repeat training, delaying and possibly preventing them from becoming credentialed as a home care aide. This would negatively impact the individuals working toward a credential, the home care aide workforce, and the clients for whom they provide care.

These rules continue emergency rules initially filed on October 17, 2022, under WSR 22-21-102. They are being continued while permanent rule making is in progress to consider training timelines for home care aides.

Citation of Rules Affected by this Order: Amending WAC 246-980-100.

Statutory Authority for Adoption: RCW 18.88B.021.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is necessary to avoid a critical shortage of home care aides, support the clients who rely on home care aides, and avoid increasing existing training and testing backlogs.

During the COVID-19 pandemic, the home care aide training, testing, and certification pipeline was severely impacted. Early 2020 closures and capacity restrictions created long-lasting backlogs, preventing individuals from becoming credentialed within statutory time frames. While certification requirements were temporarily waived by governor's proclamations, individuals working toward home care aide certification now need to meet requirements in chapter 246-980 WAC despite backlogs. If the two-year limit on the validity of training remains in place, individuals trained earlier in the pandemic will be required to repeat training. This could have negative impacts, including (1) certification delays while individuals wait for training availability and then repeat training; (2) increased training backlogs; (3) loss of potential home care aides, as individuals who repeat training may then be unable to meet certification time frames; and (4) forcing more medically vulnerable patients to rely on other care options, such as higher-level residential care settings or hospitals.

Removing this limit by emergency rule will support the home care aide workforce and the public health by (1) removing a barrier to certification while still requiring that home care aides receive appropriate training; (2) enabling more vulnerable individuals to receive care in their homes, rather than needing to obtain care in residential

care settings; and (3) helping to create a smooth transition away from regulation through pandemic emergency measures and back to statutory time frames.

These emergency rules will be continued as the department of health pursues permanent rule making to consider how training timelines should function in the long term.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 14, 2023.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary of Health

## OTS-4130.1

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

**WAC 246-980-100 Examination and reexamination for home care aide certification.** (1) The certification examination will consist of both a written knowledge test and a skills demonstration.

(2) The certification examination will test the core competencies, including but not limited to:

- (a) Communication skills;
- (b) Worker self-care;
- (c) Problem solving;
- (d) Maintaining dignity;
- (e) Consumer directed care;
- (f) Cultural sensitivity;
- (g) Body mechanics;
- (h) Fall prevention;
- (i) Skin and body care;
- (j) Home care aide roles and boundaries;
- (k) Supporting activities of daily living; and
- (l) Food preparation and handling.

(3) An applicant must apply to take the examination by completing the application for both certification and the examination and returning it to the department. The department will notify the examination contractor once an applicant meets all requirements to take the certification examination.

(4) The examination contractor will notify an applicant of the date, time, and place of the examination.

(5) The examination contractor will notify both the department and an applicant of the examination results.

(a) An applicant who does not successfully pass any portion of the examination can follow the examination contractor's procedures for review and appeal.

(b) An applicant who does not successfully pass any portion of the examination may retake that portion of the examination two times.

(i) To retake the examination, an applicant must submit an application for reexamination, along with the required reexamination fee directly to the examination contractor.

(ii) An application for reexamination may be submitted any time after an applicant receives notice of not successfully completing any portion of the certification examination.

(c) An applicant who does not successfully pass both portions of the certification examination (~~(within two years of successfully completing the required training or who does not successfully pass both portions of the certification examination)~~) after completing the certification examination three consecutive times:

(i) Must retake and successfully complete the core competencies portion of the entry-level training as required by RCW 74.39A.074 before retaking both portions of the certification examination; and

(ii) Cannot continue to provide care as a long-term care worker until the certification has been issued.

[Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-100, filed 9/28/18, effective 10/29/18. Statutory Authority: Chapters 18.88B and 18.130 RCW, 2012 c 164, and 2013 c 259. WSR 13-19-087, § 246-980-100, filed 9/18/13, effective 10/19/13. Statutory Authority: Chapters 18.88B and 74.39A RCW. WSR 10-15-103, § 246-980-100, filed 7/20/10, effective 1/1/11.]

**WSR 23-05-091**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-28—Filed February 15, 2023, 7:28 a.m., effective February 15, 2023, 7:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000M; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule rescinds the previously adopted 2023 tribal winter gillnet fisheries in The Dalles and John Day pools. This rule is consistent with actions of the Columbia River Compact on January 24, February 9, and February 14, 2023. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *United States v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 14, 2023.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000N Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately, until 6 PM Saturday, March 18, 2023.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length caught in the Bonneville Pool, and from 43 to 54 inches fork length caught in The Dalles and John Day Pools, may be kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold only if caught during the open period and open Pool of an open gillnet fishery.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(3) Fish caught during the open period may be sold after the period concludes.

[]

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-359-02000M Columbia River salmon seasons above  
Bonneville Dam. (23-21)

## WSR 23-05-093

## EMERGENCY RULES

## TRANSPORTATION COMMISSION

[Filed February 15, 2023, 8:51 a.m., effective February 15, 2023, 8:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend WAC 468-300-080 related to the ferry fare fuel surcharge for Washington state ferries (WSF). Under the emergency rule, the fuel surcharge may only be implemented with approval of the Washington state transportation commission (WSTC), as opposed to it being automatically triggered.

This is the third emergency filing in sequence for WAC 468-300-080. On October 12, 2022, WSTC filed the CR-101 preproposal statement of inquiry to begin the regular full rule-making process.

Citation of Rules Affected by this Order: Amending WAC 468-300-080.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.315, 34.05.350.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In addition to the conditions identified above, RCW 34.05.350 (1)(c) states in part:

*In order to implement the requirements or reductions in appropriations enacted ... in an omnibus transportation appropriations act for the 2021-2023 biennium related to setting toll rates or ferry fares, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis.*

The current WAC policy sets forth an automatic trigger for the fuel surcharge when specified thresholds are met. Under the current provisions, there is no subsequent review by WSTC, nor the ability to stop, delay, or modify the way in which the surcharge is applied.

Given current economic challenges which directly impact the state and public financially, assessment of further charges upon ferry riders must include full review and approval by WSTC before it is implemented to ensure all current efforts, including WSF's fuel hedging program, are fully considered in the assessment. In support of this assessment, this rule change will enable WSTC to consider factors such as the revenue requirements of the ferry system, available funding, and impacts on ferry riders and local communities when determining whether to implement the fuel surcharge.

Should current fuel market trends continue, it is possible the fuel surcharge could be automatically triggered before a regular rule-making process could be completed. Thus, this emergency rule making is needed to ensure the change is effective immediately, followed by a full rule-making process that will include gathering public input.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0,

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 15, 2023.

Reema Griffith  
Executive Director

### OTS-3891.1

AMENDATORY SECTION (Amending WSR 13-18-019, filed 8/26/13, effective 9/26/13)

**WAC 468-300-080 Fuel surcharge.** (1) In order to manage the financial risk associated with fuel price volatility, it is hereby declared to be the policy of the Washington state transportation commission (~~(to)~~) (WSTC) that the WSTC may implement a fuel surcharge as an added component to the regular posted fares for passage on vessels operated by Washington state ferries (WSF) to mitigate the financial impacts associated with unexpected increases in fuel prices which exceed those incorporated in WSF's fuel budget. Upon WSTC approval, the total ferry fare charged will consist of the base fare plus an (~~automatic,~~) incremental, additional surcharge as calculated according to the formula set forth in this rule.

(2) The method for calculating the fuel surcharge amount shall be as follows:

(a) Determine excess fuel costs for the current quarter by subtracting budgeted fuel costs from actual fuel costs for the quarter. For the purposes of this rule, quarters shall be consistent with the state fiscal year definition of quarters.

(b) To minimize lags in the application of this rule, the quarter will be closed one month prior to the actual end of the quarter, and an estimate of actual costs will be prepared to account for the third month and any lags in accounting for actual purchases.

(c) The estimate of costs for the missing month shall be developed as follows:

(i) Estimated fuel costs for the third month of the quarter will be based on the Oil Price Information Service (OPIS) daily contract average rack prices for ultra low-sulfur dyed diesel fuel for the first (~~(fifteen)~~) 15 days of the missing month as reported by the Washington state department of general administration's office of state procurement for Tacoma and Anacortes fuel price data as of the cutoff date.

(ii) Applicable taxes and fees are added to the Anacortes and Tacoma rack prices to derive total estimated cost per gallon for purchases at Anacortes and Tacoma on the missing days.

(iii) Total price per gallon is multiplied by budgeted gallons of fuel for the missing month in the quarter, where gallons are split into estimated purchases at Anacortes and Tacoma prices based on the year-to-date shares of gallons purchased at Tacoma and Anacortes rack prices.

(d) Net excess fuel costs for the quarter shall be determined on the basis of the current estimate of the excess fuel costs for the quarter plus an accounting for the following:

(i) Any necessary reconciliation from the previous quarter's estimate of actual costs once full accounting of actual costs is complete.

(ii) Any necessary adjustments to ensure actual costs reflect budget assumptions regarding the appropriate share of biodiesel fuel or total diesel gallons to be purchased. Where actual gallons purchased or share of biodiesel vary from the assumptions used to develop the budget, the actual costs shall be reduced by the amount that these variations may have increased costs beyond the amounts assumed in the budget appropriation.

(iii) Subtracting any fuel surcharge revenues collected in the current quarter.

(iv) Adding net excess fuel costs from the previous quarter.

(e) Calculate an excess fuel cost percentage by dividing adjusted excess fuel costs by the current quarter's budgeted fuel costs.

(f) A fuel surcharge amount is then calculated as follows:

(i) Multiply the excess fuel cost percentage by the share of budgeted fuel costs to total operating costs for the current biennium (defined as the specific fuel appropriation divided by the total appropriation made to "Program X - Marine" as provided in the current transportation budget and supporting financial plan); then

(ii) Divide the result by the farebox recovery rate for the current biennium (defined as the fare revenue target divided by total appropriation to "Program X - Marine" as provided in the current transportation budget and supporting financial plan).

(3) A fuel surcharge shall be determined based on the calculation of the surcharge amount (as defined in subsection (2)(f) of this section) and applied to applicable fares as follows:

(a) If the surcharge amount is less than 2.5%, then a fuel surcharge shall not be applied.

(b) Upon final approval by the WSTC, if the surcharge amount is equal to or greater than 2.5%, then the surcharge shall be determined as follows:

(i) Surcharge amount is equal to or greater than 2.5% and less than 5% then the surcharge shall be 2.5% of the applicable fare.

(ii) Surcharge amount is equal to or greater than 5% and less than 7.5% then the surcharge shall be 5% of the applicable fare.

(iii) Surcharge amount is equal to or greater than 7.5% and less than 10% then the surcharge shall be 7.5% of the applicable fare.

(iv) Surcharge amount is 10% or greater, the surcharge shall be 10% of the applicable fare.

(c) In determining final approval for the surcharge, the WSTC may consider factors including, but not limited to, the revenue requirements of the ferry system, available funding, and the impacts on users and local communities.

(d) The surcharge shall be applied to all fares, with resulting fares rounded to the nearest nickel.

(4) WSF shall estimate the need for a fuel surcharge on a quarterly basis, based upon the formula prescribed in this rule (~~(, and if)~~). If the WSTC approves such a surcharge (~~(is to be added or modified, then)~~), the department shall:

(a) Notify ORCA partners and customers of the pending surcharge changes at least (~~(thirty)~~) 30 days prior to implementation of said changes.

(b) Make all surcharge changes effective on the first of the month.

(5) Excess fuel costs shall be reset to zero at the beginning of the biennium.

(6) The amount of any fuel surcharge shall be shown separately on customer receipts.

(7) WSF shall provide an annual report to the legislature, OFM, and the Washington state transportation commission summarizing its fuel cost mitigation activities, including how the department has managed its costs as well as the application, performance and impact of fuel surcharges pursuant to this authority.

(8) To facilitate understanding on the part of WSF customers and to ensure a transparent process, an explanation of how the surcharge is applied, including a summary of the actual calculation of the surcharge percentage, shall be described on the WSF website.

(9) This rule goes into effect on October 1, 2011.

[Statutory Authority: RCW 47.56.030 and 47.60.315. WSR 13-18-019, § 468-300-080, filed 8/26/13, effective 9/26/13; WSR 11-18-034, § 468-300-080, filed 8/30/11, effective 10/1/11 and 5/1/12.]

**WSR 23-05-095**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-27—Filed February 15, 2023, 9:10 a.m., effective February 16, 2023]

Effective Date of Rule: February 16, 2023.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-358-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets 2023 winter, spring, and summer select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal, and local Chinook stocks reared for the select area sites are available for harvest. Preseason modeling results in a select area commercial fisheries allocation of ≤675 upriver spring Chinook. The fishery is consistent with the *United States v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 14, 2023. The general public welfare is protected with the immediate opening of nontreaty select area fisheries. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these

species in the fisheries as described in the 2018-2027 *United States v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 14, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000T Columbia River seasons below Bonneville.**

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Tongue Point and South Channel areas:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 16 - Mar 10	Sun, Tue, Thu (nights)	7:00 pm - 7:00 am	10 nights
Apr 27 - May 5	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	4 nights
May 8 - Jun 9	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	20 nights
Jun 12 - Jun 15	Mon, Tue, Wed (nights)	7:00 pm - 7:00 am	3 nights
Jun 19 - Jul 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	12 nights

**Tongue Point Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 12 - Mar 13	Sun (nights)	10:00 pm - 2:00 am	4 hrs

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 15	Wed (morning)	12:00 am - 4:00 am	4 hrs
Mar 17	Fri (morning)	3:00 am - 7:00 am	4 hrs
Mar 20	Mon (night)	7:00 pm - 11:00 pm	4 hrs

**South Channel Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 12 - Mar 17	Sun, Tue, Thu (nights)	7:00 pm - 7:00 am	3 nights
Mar 20 - Mar 24	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Mar 27 - Mar 28	Mon, (nights)	11:30 pm - 3:30 am	4 hrs
Mar 31	Fri (morning)	3:00 am - 7:00 am	4 hrs
Apr 3	Mon (night)	6:00 pm - 10:00 pm	4 hrs
Apr 6	Thu (night)	7:30 pm - 11:30 pm	4 hrs
Apr 10 - Apr 11	Mon (night)	10:00 pm - 2:00 am	4 hrs
Apr 14	Fri (morning)	1:30 am - 5:30 am	4 hrs
Apr 17	Mon (night)	5:30 pm - 9:30 pm	4 hrs
Apr 20	Thu (night)	7:30 pm - 11:30 pm	4 hrs
Apr 25 - Apr 26	Tue (nights)	7:00 pm - 7:00 am	1 night

(a) Area definitions:

(i) February 16 through June 15, 2023:

(A) Tongue Point: Waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

(B) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(ii) June 19 through July 14, 2023:

(A) Tongue Point: Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler

Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) Gear: Gillnets:

(i) February 16 through April 14, 2023: 7-inch minimum mesh size.

(ii) April 17 through July 14, 2023: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 1,500 feet (250 fathoms).

(iv) In the Tongue Point Area, the lead line weight may not exceed two pounds per any one fathom.

(v) In the South Channel Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

**(2) Blind Slough and Knappa Slough areas:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 16 - Mar 17	Sun, Tue, Thu (nights)	7:00 pm - 7:00 am	13 nights
Mar 20 - Mar 31	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights
Apr 17 - Apr 20	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 25 - Apr 28	Tue, Thu (nights)	7:00 pm - 7:00 am	2 nights
May 1 - May 5	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
May 8 - Jun 9	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	20 nights
Jun 12 - Jun 15	Mon, Tue, Wed (nights)	7:00 pm - 7:00 am	3 nights
Jun 19 - Jul 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	12 nights

**Blind Slough Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 3 - Apr 14	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights

**Knappa Slough Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 3	Mon (night)	7:00 pm - 11:00 pm	4 hrs
Apr 6 - Apr 7	Thu (night)	8:30 pm - 12:30 am	4 hrs
Apr 10 - Apr 11	Mon (night)	11:00 pm - 3:00 am	4 hrs
Apr 14	Fri (morning)	2:30 am - 6:30 am	4 hrs

(a) Areas:

(i) The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

(ii) The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed. Prior to May 6, 2023, the western (downstream) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(b) Gear: Gillnets:

- (i) February 16 through April 14, 2023: 7-inch minimum mesh size.
- (ii) April 17 through Jul 14, 2023: 9 3/4-inch maximum mesh size.
- (iii) The maximum net length is 600 feet (100 fathoms).
- (iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

**(c) Miscellaneous:**

Permanent transportation rules in effect. In accordance with WACs 220-352-040 (1)(i) and 220-301-010 (11)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

**(3) Deep River Select Area:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 16 - Mar 17	Sun, Tue, Thu (nights)	7:00 pm - 7:00 am	13 nights
Mar 20 - Apr 14	Mon, Thu (nights)	7:00 pm - 7:00 am	8 nights
Apr 17 - Apr 21	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 25 - Apr 28	Tue, Thu (nights)	7:00 pm - 7:00 am	2 nights
May 1 - May 5	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
May 8 - Jun 9	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	20 nights
Jun 12 - Jun 15	Mon, Tue, Wed (nights)	7:00 pm - 7:00 am	3 nights

**(a) Area:**

From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

**(b) Gear: Gillnets:**

- (i) February 16 through April 14, 2023: 7-inch minimum mesh size.
- (ii) April 17 through June 15, 2023: 9 3/4-inch maximum mesh size.
- (iii) The maximum net length is 600 feet (100 fathoms).
- (iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(v) Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-354-010(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided by department rule (WAC 220-353-060(1)).

**(c) Miscellaneous:**

(i) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

(ii) February 16 through June 15, 2023: fishers are required to call 360-846-5268 or 360-795-0319 to confirm the place and time of sampling.

(iii) April 18 through June 14, 2022: a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

**(4) Allowable Sales:** Salmon (except Chum) and shad.

**(5) 24-hour quick reporting** is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

**(6) Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

**(7) Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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## WSR 23-05-101

## EMERGENCY RULES

## DEPARTMENT OF COMMERCE

[Filed February 15, 2023, 10:04 a.m., effective February 15, 2023, 10:04 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The clean buildings performance standard requires certain buildings in the state to meet energy performance metrics over time. The standard exempts several building categories from compliance with the standard, for example, buildings scheduled for demolition or facing financial hardship, through the department of commerce (commerce) approval process. The rules promulgated in chapter 194-50 WAC contain a process for building owners to apply for exemptions. WAC 194-50-150 states that building owners may apply for an exemption no sooner than 365 days prior to the date of compliance. However, commerce has received feedback from stakeholders that, if an exemption application is denied by the agency, building owners require more time to bring buildings into compliance given the amount of time and financial resources it may take. Thus, commerce has concluded that providing a greater window of time for building owners to apply for, and for commerce to grant, exemptions is in the public interest and is likely to result in more buildings being compliant with the standard by the statutory compliance date.

Citation of Rules Affected by this Order: Amending WAC 194-50-150.

Statutory Authority for Adoption: Chapter 19.260 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: As WAC 194-50-150 stands, building owners can apply for a single-cycle exemption to the statewide clean building performance standard if they are eligible as outlined in WAC 194-50-150 Normative Annex Z4.1. However, commerce has found in its stakeholder work through implementing the clean buildings program that building owners facing long lead times for capital-intensive energy efficiency improvements require more than 365 days to apply for and receive an exemption decision. Without a change in the rule, building owners who are denied exemption approval may face difficulties coming into compliance with the performance standard in time for their applicable compliance date. As a result, commerce has determined that the immediate amendment of the rule to provide more time for building owners to apply for an exemption and make decisions based on an exemption ruling is in the public interest and is necessary to preserve the general welfare. Commerce finds that immediate adoption of the proposed rule amendment is necessary in order to provide clear direction to exemption applicants so that they may immediately begin preparing exemption applications and act on potential exemption denials. Observing the time requirements of standard rule making would be contrary to the public interest, in that it would only result in a costly delay for building owners and lack of regulatory clarity as we approach scheduled compliance dates.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0,

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 15, 2023.

Amanda Hathaway  
Rules Coordinator

## OTS-4350.1

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-150 Normative Annex Z—Washington state reporting requirements.**

### **Z1 Building owner notifications by the AHJ.**

**Z1.1 Notification to building owners of covered commercial buildings by the AHJ.** Based on records obtained from each county assessor and other available information sources, the AHJ must create a database of *covered commercial buildings* and *building owners* required to comply with the standard established in accordance with this section. The database may include buildings and *building complexes* presumed to meet the definition of *covered commercial building* and *multifamily buildings* greater than 50,000 square feet in floor area.

**Z1.1.1** The database will contain information about buildings that may be subject to compliance, their owners, and information about multifamily residential buildings eligible for incentives. The database will also contain information to assist tracking and reporting on building owner compliance, and incentive application and distribution. Commerce will create a method for tracking building owner notification responses. Each building or building complex will be assigned a unique building identifier.

**Z1.2** By July 1, 2021, the AHJ must provide the owners of covered commercial buildings with notification of compliance requirements. Notifications will be mailed to the mailing addresses county assessors have on file.

**Z1.3** Failure by the AHJ to provide the notification in Z1.2 does not release the *building owner* of the legal obligation to comply with this law.

**Z1.4** By July 1, 2021, the AHJ must provide notifications to the building owners of multifamily residential building where the floor area

exceeds (~~(fifty thousand)~~) 50,000 gross square feet, excluding the parking garage area.

## **Z2 Building owner response to notifications.**

**Z2.1 Correction of errors.** *Building owners* are responsible for reviewing the property and building information provided by the AHJ through notification including, but not limited to, *building or building complex ownership details, gross floor area, and other information as identified by the building owner.*

**Z2.1.1 Correction of errors documentation form.** Building owners who are notified in error may submit a correction form to the AHJ. The correction form will be used to document gross floor area (conditioned and unconditioned) and/or building type. Building owners that submit the correction form must also submit the documentation required to demonstrate an exception as required in Section Z4.1 prior to the compliance date if applicable.

## **Washington State Reporting Requirements for Building Owners.**

**Z3 General compliance.** The building owner of a *covered commercial building* must report compliance with the standard to the AHJ in accordance with the compliance schedule established under Section Z3.1 and every five years thereafter. For each reporting date, the building owner must submit documentation to demonstrate that:

1. The weather normalized energy use intensity of the *covered commercial building* measured in a period not to exceed two years prior to the compliance deadline specified in Normative Annex Z3.1 is less than or equal to the energy use intensity target (buildings that meet their energy targets); or
2. The *covered commercial building* has received conditional compliance from the department based on energy efficiency actions prescribed by the standard; or
3. The *covered commercial building* is exempt from the standard by demonstrating that the building meets one of the criteria for an exemption.

**Z3.1 Compliance schedule.** The building owner of a covered commercial building must report the building owner's compliance with the standard to the department in accordance with the appropriate initial compliance date as follows and every five years thereafter.

1. For a building with more than (~~(two hundred twenty thousand)~~) 220,000 gross square feet, June 1, 2026;
2. For a building with more than (~~(ninety thousand)~~) 90,000 gross square feet but less than (~~(two hundred twenty thousand)~~) 220,000 and one gross square feet, June 1, 2027; and
3. For a building with more than (~~(fifty thousand)~~) 50,000 gross square feet but less than (~~(ninety thousand)~~) 90,000 and one square feet, June 1, 2028.

**Z3.1.1 Early compliance option.** Building owners may submit for compliance to the AHJ beginning July 1, 2023. The weather normalized energy use intensity of the covered commercial building shall be measured in a period not to exceed two years prior to the submission of compliance documentation. This section expires June 1, 2028.

**Z3.1.2 Application for conditional compliance.** Applications for conditional compliance must be submitted to the AHJ (~~(one hundred eighty)~~) 180 days prior to the compliance date to receive conditional compliance approval prior to the compliance date.

**Z3.1.3 Application for exemption.** Building owners submitting an application for exemption as specified in Section Z4.1 must be submitted to the AHJ (~~(one hundred eighty)~~) 180 days prior to the compliance date to receive exemption approval prior to the compliance date.

**Z4 Documentation of compliance with the standard.** Documentation of compliance shall be submitted to the AHJ demonstrating the building owner has complied with the standard through submission of documentation in accordance with Section Z4.1, Z4.2, Z4.3, Z4.4 or Z4.5. Additional requirements for continued reporting may be required as specified in Z4.6.

**Z4.1 Documentation of compliance through exemption.** *Building owners* seeking approval of exemption shall submit to the AHJ the Z6.7 Form H, Application for exemption certificate documenting the following:

1. The building qualifies for one of the following exemptions:
  - a. Compliance with the exemption must be verified by the owner based on the building as it is to be occupied and operating on the compliance date;
  - b. Applications for exemptions may be submitted no sooner than (~~(1 year)~~) three years prior to the compliance date and submitted to the AHJ no later than (~~(one hundred eighty)~~) 180 days prior to the compliance date;
  - c. Exemptions certificates are only valid for the current compliance review cycle.
  - d. Within six months before the compliance date, building owners who have received exemption approval must certify that the building still meets the eligibility qualifications for the exemption and that there have been no material changes to qualifying conditions. A template for acceptable declarations will be made available by the AHJ on the agency website.

2. Covered commercial buildings are not eligible for exemption from the standards unless they meet one of the following criteria:
  - a. The building did not have a certificate of occupancy or temporary certificate of occupancy for a consecutive (~~(twelve)~~) 12 months period within two years prior to the compliance date;
  - b. The building did not have physical occupancy by owner or tenant for at least (~~(fifty)~~) 50 percent of the *conditioned floor area* throughout the consecutive (~~(twelve month)~~) 12-month period prior to the building compliance date;
  - c. The sum of the *building's gross floor area* minus *unconditioned and semi-conditioned spaces*, as defined in the Washington State Energy Code, is less than (~~(fifty thousand)~~) 50,000 square feet;
  - d. More than 50% of the gross floor area of the building is primarily used for manufacturing or other industrial purposes, as defined under the following use designations of the Washington state edition of the *International Building Code*:
    - i. Factory group F; or
    - ii. High hazard group H.
  - e. The building is an agricultural structure;
  - f. The building is pending demolition; or
  - g. The building meets at least one of the following conditions of financial hardship:
    - i. The building had arrears of property taxes or water or wastewater charges that resulted in the building's inclusion, within the prior two years, on a city's or county's annual tax lien sale list;

- ii. The building has a court appointed receiver in control of the asset due to financial distress;
- iii. The building is owned by a financial institution through default by a borrower;
- iv. The building has been acquired by a deed in lieu of foreclosure within the previous (~~twenty-four~~) 24 months;
- v. The building has a senior mortgage subject to a notice of default;
- vi. The building owner has an immediate and heavy financial need which cannot be satisfied from other reasonable available resources and which are caused by events that are beyond their control.

3. After documents have been submitted and reviewed, the AHJ will send notification of approval or denial.

a. If the exemption is approved the AHJ shall notify the applicant stating the application has been approved and update the AHJ records for the building.

b. If the exemption is denied the AHJ shall notify the applicant stating the application has been denied and update the AHJ records for the building.

4. When an application for exemption is denied the building owner must proceed with the process to demonstrate compliance with one of the compliance options in Washington state reporting requirements for building owners, Z4.2-Z4.5.

**Z4.2 Buildings that meet the  $EUI_t$ .** *Building owners* must provide the following documentation to verify that the building *weather normalized*  $EUI$  is less than the building  $EUI_t$  and that the energy management plan is complete and being implemented.

- Form A;
- Form B;
- Form C.

**Z4.3 Buildings that will meet the building investment criteria prior to the compliance date.** Building owners must provide the following documentation to verify that the building has implemented all EEMs that meet the cost effectiveness criteria resulting from the energy audit and economic evaluation criteria from Normative Annex X. The energy management plan must be completed and implemented and all EEMs must be installed and commissioned prior to the compliance date.

- Form A;
- Form B;
- Form C, except buildings unable to meet Section 5.2, Building energy monitoring;
- Energy audit report:
  - Level 2 energy audit;
  - Normative Annex X - Investment Criteria Form.

**Z4.4 Buildings that will meet the  $EUI_t$  through conditional compliance.** *Building owners* must provide the following documentation to verify that the building *weather normalized*  $EUI$  is projected to be less than the building  $EUI_t$  at the end of the measurement and verification period and that the energy management plan is complete and being implemented. EEMs required to meet the  $EUI_t$  must be installed and commissioned prior to the compliance date. Verification and completion shall be documented as required in Section Z4.6.

- Form A;
- Form B;

- Form C;
- Energy audit report:
  - Level 2 Energy Audit.
- Continued reporting until completion as specified in Section 24.6.

**Z4.5 Buildings that will meet the building investment criteria through conditional compliance.** Building owners must provide the following documentation to verify that the building has implemented all EEMs that meet the cost effectiveness criteria resulting from the energy audit and economic evaluation criteria from Normative Annex X. The energy management plan must be completed and implemented and all EEMs must be installed and commissioned prior to the compliance date. Verification and completion shall be documented as required in Section 24.6.

- Form A;
- Form B;
- Form C, except buildings unable to meet Section 5.2 Building Energy Monitoring;
- Energy audit report:
  - Level 2 energy audit;
  - Normative Annex X - Investment Criteria Form.
- Continued reporting until completion as specified in Section 24.6.

**Z4.5.1 Phased implementation.** The building owner may include phased implementation of EEMs such that the *building owner* is not required to replace a system or equipment before the end of the system or equipment's useful life. System or equipment fitting this description shall be included in the energy audit and Normative Annex X - Investment Criteria submission with a schedule for replacement. Phased implementation shall be documented in the *energy management plan* and *capital management plan* required in Section 5.

**Z4.6 Continued reporting until completion.** Continued reporting is required as specified in Sections 24.6.1 and 24.6.2 until completion when: a) measurement and verification extends one year or more beyond the compliance date, or b) implementation is extended phased implementation.

**Z4.6.1 Annual reporting.** The following up to date reports shall be submitted to the AHJ annually, (date specific).

- Form A;
- Form B;
- Form C, except buildings unable to meet Section 5.2, Building energy.

**Z4.6.2 Completion Reporting.** The following up to date reports shall be submitted to the AHJ when all conditions of compliance have been verified and documented:

- Form A;
- Form B;
- Form C, except buildings unable to meet Section 5.2, Building energy monitoring. Buildings unable to meet Section 5.2 shall include the verification specified in Section 9.2.2 in the *building energy management plan*.

**Z5 Violations, assessment of administrative penalties, mitigation and review of penalty decisions.**

**25.1 Authorization.** The AHJ is authorized to impose administrative penalties upon building owners for failing to submit documentation demonstrating compliance with the requirements of this standard.

Failure to submit documentation demonstrating compliance by the scheduled reporting date will result in progressive penalties by legal notice.

**25.2 Notice of violation and opportunity to correct (NOVC) (first notice).**

**25.2.1** The department may issue a NOVC when a building owner has failed to submit documentation that demonstrates compliance with this standard by the scheduled reporting date.

**25.2.2** A NOVC may be issued for any of the following reasons:

1. Failure to submit a compliance report in the form and manner prescribed by the AHJ;
2. Failure to meet an energy use intensity target or failure to receive conditional compliance approval;
3. Failure to provide accurate reporting consistent with the requirements of the standard; and
4. Failure to provide a valid exemption certificate.

The AHJ will identify in the NOVC which section(s) of law, code, or the standard for which the *building owner* has failed to demonstrate compliance.

**25.2.3** The NOVC will specify the time by which the building owner must cure the violation by submitting documentation that demonstrates compliance with the identified section(s) of law, code, or the standard. The AHJ will give the building owner at least seven calendar days to submit such documentation.

**25.2.4** If sufficient documentation is not submitted by the date specified in the NOVC, the AHJ will issue a notice of violation and intent to assess administrative penalties (NOVI) and the *building owner* will be subject to administrative penalties.

**25.3 Notice of violation and intent to assess administrative penalties (NOVI) (second notice).**

**25.3.1** If a *building owner* fails to respond to a NOVC by submitting documentation demonstrating compliance by the date specified in the NOVC, the AHJ will issue a NOVI.

**25.3.2** The AHJ will identify in the NOVI which section(s) of law, code, or the standard for which the building owner has failed to demonstrate compliance. The NOVI will also include a description of how the penalties the AHJ intends to assess will be calculated.

Building owners must respond to a NOVI within (~~thirty~~) 30 days by either:

1. Submitting an application for exemption in accordance with Section Z4.1 if applicable;
2. Submitting a noncompliance mitigation plan in accordance with 25.7;
3. Submitting its intent to pay the penalties by using the form provided by the AHJ; or
4. Submitting a request for an administrative proceeding to challenge or mitigate the penalty.

**25.3.3** If the *building owner* does not timely request a hearing or submit an application for exemption, the *building owner* waives its right

to a hearing and the director or their designee may issue a final order assessing the penalties described in the NOVI. If the *building owner* has submitted a mitigation plan, the final order will only assess penalties from the scheduled compliance date until the date of an approval of compliance or conditional compliance.

**25.3.4** Building owners who submit an application for exemption that is denied may request a hearing by submitting a request for a hearing within (~~(thirty)~~) 30 days of issuance of the decision denying its application for exemption. If the building owner does not request a hearing within (~~(thirty)~~) 30 days, the building owner waives its right to a hearing and the director or their designee may issue a final order assessing the penalties described in the NOVI.

**25.4 Assessment of administrative penalties.**

**25.4.1** Failure to submit documentation demonstrating compliance with the standard by the date specified in a NOVC will result in the issuance of a NOVI and the assessment of administrative penalties at an amount not to exceed (~~(five thousand dollars)~~) \$5,000 plus an amount based on the duration of any continuing violation. The additional amount for a continuing violation may not exceed a daily amount equal to one dollar per square foot of gross floor area per year.

**25.4.1.1 Penalties for building owners that submit a noncompliance mitigation plan.** For building owners subject to a NOVI who respond within (~~(thirty)~~) 30 days by submitting a noncompliance mitigation plan (25.7), fines shall be assessed on an annual basis or when the building owner achieves compliance or conditional compliance.

a. For applicants that submit a noncompliance mitigation plan and who submit documentation demonstrating completion, daily penalties will be assessed from the scheduled compliance date to the date of approval of compliance or conditional compliance. The penalty will be assessed at an amount not to exceed (~~(30% of five thousand dollars)~~) 30 percent of \$5,000 plus a daily amount equal to (~~(\$0.20)~~) 20 cents per square foot of gross floor area per year.

b. For applicants that submit a noncompliance mitigation plan but have not submitted documentation demonstrating completion, if the building does not comply with the standard by the next compliance date, the building owner will be assessed the maximum penalty of (~~(five thousand dollars)~~) \$5,000 plus a daily amount equal to (~~(\$1.00)~~) one dollar per square foot of gross floor area per year not to exceed a value greater than (~~(eighteen)~~) 18 months of accrued penalty.

The AHJ may by rule increase the penalty rates to adjust for the effects of inflation.

**25.4.1.2 Penalties for building owners that choose to pay the fine rather than pursuing compliance.** Building owners may choose to respond to the NOVI by paying the maximum penalty. The building owner will be assessed the maximum penalty of (~~(five thousand dollars)~~) \$5,000 plus a daily amount equal to (~~(\$1.00)~~) one dollar per square foot of gross floor area per year not to exceed a value greater than (~~(eighteen)~~) 18 months of accrued penalty. Penalties are assessed for each compliance period.

The AHJ may by rule increase the penalty rates to adjust for the effects of inflation.

**25.4.2** When assessed penalties are not paid within (~~(one hundred eighty)~~) 180 days of the date of a final order assessing penalties,

the AHJ may assess further penalties. Total penalties assessed will not exceed (~~five thousand dollars~~) \$5,000 plus a daily amount equal to (~~(\$1.00)~~) one dollar per square foot of gross floor area per year.

**25.4.3** Interest will accrue on civil penalties pursuant to RCW 43.17.240 if and when the debt becomes past due.

**25.5 Due date and collection of penalties.**

**25.5.1** Penalties shall become due and payable on the later of:

1. Thirty days after receipt of the final order imposing the penalty; or

2. The date specified in the final order imposing the penalty.

**25.5.2** If a penalty has not been paid by the due date, the AHJ may assign the debt to a collection agency as authorized by RCW 19.16.500 or take other action to pursue collection as authorized by law. If referred to a collection agency, the AHJ may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee.

**25.5.3** For building owners that are implementing a noncompliance mitigation plan but have not yet complied, the AHJ may assess the accumulated daily fine on June 1st of each year or shortly thereafter.

**25.6 Payment of administrative penalties.**

A check or money order payable in U.S. funds to the Washington state department of commerce can be mailed to:

Washington State Department of Commerce  
Re: Clean Buildings Initiative, Energy Division  
P.O. Box 42525  
Olympia, WA 98504-2525

**25.7 Noncompliance mitigation plan.** Owners of covered commercial buildings that are out of compliance by the scheduled compliance date and have not corrected the violation by the date noted in a NOVC may reduce possible penalties by demonstrating that they are taking action to achieve compliance with the standard. To begin the process of mitigating noncompliance, a building owner must submit to the AHJ the non-compliance mitigation plan form selecting one of the following actions within (~~(thirty)~~) 30 days of the date of a NOVI to avoid immediate issuance of penalty in accordance with Z5.4.1.

1. Compliance with the standard in accordance with Z4.2.

2. Conditional compliance with the standard in accordance with Z4.4.

3. Conditional compliance with the standard in accordance with Z4.5.

**25.7.1 Mitigation completion.** To demonstrate completion, the building owner shall complete all of the requirements of this standard and submit documentation as required by Section Z4.2, Z4.4 or Z4.5. After the building owner has demonstrated completion, the AHJ shall issue a final order assessing the reduced penalty as specified by Z5.4.1.1(a).

**25.8 Administrative hearings.**

**25.8.1 Requesting a hearing.** A *building owner* may request an administrative hearing after receiving an NOVI or after the denial of its application for an exemption by submitting a request within (~~(thirty)~~) 30 days of the date of a NOVI or the denial of a timely application for exemption. All requests must be made in writing and filed at the address specified on the NOVI. For convenience, the AHJ will attach a

form titled request for hearing to the NOVI that may be used to re-request an administrative hearing.

Requests for hearing must be accompanied by the following:

1. Washington State Building ID;
2. Submit Annex Z Forms A, B, and C.

**25.8.2 Hearing process.** The AHJ may refer matters to the office of administrative hearings (OAH). Administrative hearings will be conducted in accordance with chapter 34.05 WAC, Administrative Procedure Act, chapter 10-08 WAC, Model rules of procedure, and the procedural rules adopted in this chapter. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this section, the procedural rules adopted in this section take precedence.

**25.8.3 Initial orders to become final orders.** Initial orders issued by the presiding officer will become final without further agency action unless, within (~~twenty~~) 20 days:

1. The director determines that the initial order should be re-viewed; or
2. A party to the proceeding files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

**25.8.4. Judicial review.** A final order entered pursuant to this section is subject to judicial review pursuant to RCW 34.05.510 through 34.05.598.

**25.8.5 Collected penalties.** The AHJ will deposit all penalties collected and received by the department under this section into the low-income weatherization and structural rehabilitation assistance account created in RCW 70.164.030.

**Z6 Compliance forms.** The following section replace Normative Annex C Forms in Standard 100 and provide additional forms specified by rule Building owners are required to submit the applicable forms and the required supporting information to demonstrate compliance with the standard. These forms replace all referenced forms in this standard. The AHJ will make these forms available in an electronic format for submission to the AHJ.

**Z6.1 Compliance with Standard 100 (Form A)**

1. Building identification:
  - a. WA state building ID;
  - b. County;
  - c. County parcel number(s);
  - d. Portfolio manager property ID number;
  - e. Property name;
  - f. Parent property name;
  - g. Address 1 (street);
  - h. Address 2;
  - i. City;
  - j. State; and
  - k. Postal code.
2. Contact information:
  - a. *Building owner* name(s);
  - b. Contact name;
  - c. Address 1 (street);
  - d. Address 2;
  - e. City;
  - f. State/Province;

- g. Country;
- h. Postal code;
- i. Telephone number;
- j. Email address.
- 3. Qualified person:
  - a. Qualified person name;
  - b. Address 1 (street);
  - c. Address 2;
  - d. City;
  - e. State;
  - f. Postal code;
  - g. Telephone number;
  - h. Email address:
  - i. Licensed, certified (select all that apply);
  - ii. Licensure or certifying authority.
- 4. *Energy manager* (if different than the qualified person):
  - a. Energy manager name;
  - b. Address 1 (street);
  - c. Address 2;
  - d. City;
  - e. State/Province;
  - f. Postal code;
  - g. Country;
  - h. Telephone number;
  - i. Email address.
- 5. This compliance report is for:
  - a. Building that meets the  $EUI_t$ ;
  - b. Building that meets the building investment criteria prior to the compliance date;
  - c. Building that will meet the  $EUI_t$  through conditional compliance;
  - d. Building that will meet the building investment criteria through conditional compliance;
  - e. Annual reporting;
  - f. Completion reporting.
- 6. Summary data:
  - a. Energy utilization index target ( $EUI_t$ ) (kBtu/ft<sup>2</sup> yr) based on completed Z6.2 Form B;
  - b. Measured site  $EUI$  (kBtu/ft<sup>2</sup>) for the compliance year for this building based on Z6.3 Form C;
  - c. Measured weather normalized site  $EUI$  (kBtu/ft<sup>2</sup>) for the compliance year based on Z6.3 Form C;
  - d. List the months/year of the collected data (mm/yyyy - mm/yyyy) for the compliance year for this building from Z6.3 Form C;
  - e. Buildings unable to comply with Section 5.2, Building energy monitoring and complete Z6.3 Form C shall provide a reason statement.
- 7. Have the energy management requirements of Section 5 been met?
  - Yes  No
    - Upload energy management plan as specified by the AHJ.
- 8. Have the operation and maintenance requirements of Section 6 been met?  Yes  No
  - Upload operation and maintenance implementation documentation as specified by the AHJ.
- 9. Date the audit and economic evaluation was completed (N/A if none required).
  - Upload audit reports as specified by Z6.4 Form D.

10. Have all EEMs required by Section 8 been implemented? [ ] Yes  
[ ] No
11. Have the requirements of Section 9 been completed? [ ] Yes  
[ ] No
12. We state that this building complies with ANSI/ASHRAE/IES Standard 100 as amended by the AHJ to conform with RCW 19.27A.210:
- Signature of building owner:
    - Date:
  - Signature of qualified person:
    - Date:
  - Signature of energy manager:
    - Date:
  - Signature of authority having jurisdiction:
    - Conditional or final compliance:
    - Date:

**Z6.2 Building activity and energy use intensity target ( $EUI_t$ ) (Form B). - Complete form provided by the AHJ with the following information:**

- Building identification:
  - Washington state building ID;
  - County;
  - County parcel number(s);
  - Portfolio manager property ID number;
  - Property name;
  - Parent property name;
  - Address 1 (street);
  - Address 2;
  - City;
  - State; and
  - Postal code.
- List the building location climate zone, 4C or 5B. Determine the climate zone using ASHRAE climate zone as found on the map in Informative Annex G. Buildings located in Climate Zone 6 shall use Climate Zone 5B.
- The gross floor area in square feet shall be reported as defined in Section 3.
- If entire building is single activity/type not listed in Table 7-1, it should be listed as "building without target" on Z6.1 form. List "energy target" as "N/A" on Z6.2 Form B and Z6.2 Form B is considered complete.
- Fill in fraction of gross floor area (A)<sub>i</sub> for each activity. For single-activity buildings this is 1.0.
- Fill in the operating shifts normalization factor (S)<sub>i</sub> from Table 7-3 for each activity that has an area entered from Step 6.
- Fill in the activity energy target ( $EUI_{t1}$ )<sub>i</sub> from Table 7-2 (or table from AHJ) for each activity that has an area entered from Step 6.
- Calculate weighted space EUJ target ( $A \times S \times EUI_{t1}$ )<sub>i</sub> for each activity that has an area entered from Step 6.
- Add up fraction of floor area and enter sum in "Total fraction of floor area with target," and add up all weighted space EUJ targets and enter sum as the "energy target" on Z6.2 and Z6.1 Forms B and A.
- If more than 50% of gross floor area has no target, it should be listed as "building without target" on Z6.1 Form A. List "energy target" as "N/A" on Z6.2 Form B.  
For single-activity *buildings* this is 1.0.

**Z6.3 Energy-Use Intensity Calculations (Form C).**

Energy Use Intensity Calculations shall be reported via the U.S. EPA's ENERGY STAR Portfolio Manager ([www.energystar.gov/benchmark](http://www.energystar.gov/benchmark)). The *energy manager* is responsible for creating Energy Star portfolio manager record for each building.

**Exception to Z6.3:** Buildings unable to comply with Section 5.2, Building energy monitoring shall demonstrate compliance through Z4.3 or Z4.5.

The Energy Star portfolio manager building record shall be identical to the building activity/type, fraction floor area, operating shifts (hours of operation) and gross floor area of the building as reported on Form B. All inputs shall be up to date prior to reporting as required in Section Z4 and annually as required in Section 5.1.2.3, Annual updates of the *net energy use* and *EUI*.

Prior to submitting reports run the Energy Star portfolio manager data quality checker and make all corrections required to complete the report.

The energy manager shall use the EPA's Energy Star portfolio manager share properties feature and share the property data with the AHJ by enabling the read only access and exchange data feature.

For each report submitted under Section Z4, the energy manager shall create and submit a report documenting the required data fields listed (below) and other fields deemed necessary by the AHJ for the reporting period. This shall be submitted using the Washington state report specified in Energy Star portfolio manager.

Report fields shall include:

- Portfolio manager property ID;
- Portfolio manager parent property ID;
- Property name;
- Parent property name;
- Address 1;
- Address 2;
- City;
- County;
- State/Province;
- Postal Code;
- Primary property type - Self-selected;
- Primary property type - EPA calculated;
- List of all property use types at property;
- Property GFA - Self-reported (ft<sup>2</sup>);
- Property GFA - EPA calculated (buildings and parking) (ft<sup>2</sup>);
- Property GFA - EPA calculated (buildings) (ft<sup>2</sup>);
- Property GFA - EPA calculated (parking) (ft<sup>2</sup>);
- Largest property use type;
- Largest property use type - Gross floor area (ft<sup>2</sup>);
- 2nd Largest property use type;
- 2nd Largest property use - Gross floor area (ft<sup>2</sup>);
- 3rd Largest property use type;
- 3rd Largest property use type - Gross floor area (ft<sup>2</sup>);
- Year built;
- Occupancy;
- Property notes;
- Property data administrator;
- Property data administrator - Email;

- Last modified date - Property;
- Last modified date - Electric meters;
- Last modified date - Gas meters;
- Last modified date - Nonelectric nongas energy meters;
- Local standard ID(s) Washington state building standard;
- Data center - Energy estimates applied;
- Electricity use - Grid purchase and generated from on-site renewable systems (kWh);
- Electricity use - Grid purchase (kWh);
- Electricity use - Generated from on-site renewable systems and used on-site (kWh);
- Natural gas use (therms);
- Fuel oil #1 use (kBtu);
- Fuel oil #2 use (kBtu);
- Fuel oil #4 use (kBtu);
- Fuel oil #5 and 6 use (kBtu);
- Diesel #2 use (kBtu);
- Kerosene use (kBtu);
- Propane use (kBtu);
- District steam use (kBtu);
- District hot water use (kBtu);
- District chilled water use (kBtu);
- Coal - Anthracite use (kBtu);
- Coal - Bituminous use (kBtu);
- Coke use (kBtu);
- Wood use (kBtu);
- Other use (kBtu);
- Default values;
- Temporary values;
- Estimated data flag - Electricity (grid purchase);
- Estimated data flag - Natural gas;
- Alert - Data center does not have an IT meter;
- Alert - Gross floor area is 0 ft<sup>2</sup>;
- Alert - Property has no uses;
- Data quality checker - Date run;
- Data quality checker run - ?
- Alert - Energy meter has less than 12 full calendar months of data;
- Alert - Energy meter has gaps;
- Alert - Energy meter has overlaps;
- Alert - Energy - No meters selected for metrics;
- Alert - Energy meter has single entry more than ((~~sixty-five~~)) 65 days;
- Estimated values - Energy;
- Energy Star score;
- National median site energy use (kBtu);
- Site energy use (kBtu);
- Site EUI (kBtu/ft<sup>2</sup>);
- Weather normalized site energy use (kBtu);
- Weather normalized site EUI (kBtu/ft<sup>2</sup>);
- Weather normalized site electricity (kWh);
- Weather normalized site electricity intensity (kWh/ft<sup>2</sup>);
- Weather normalized site natural gas use (therms);
- Weather normalized site natural gas intensity (therms/ft<sup>2</sup>) energy current date;

- Electricity use - Generated from on-site renewable systems (kWh);
- Electricity use - Generated from on-site renewable systems and exported (kWh);
- Electricity Use - Grid purchase and generated from on-site renewable systems (kBtu);
- Electricity use - Grid purchase (kBtu);
- Electricity use - Generated from on-site renewable systems and used on site (kBtu);
- Natural gas use (kBtu);
- Percent of total electricity generated from on-site renewable systems;
- Cooling degree days (CDD) (°F);
- Heating degree days (HDD) (°F);
- Weather station name;
- Weather station ID.

**Z6.4 End-use analysis requirements.** Building owners shall demonstrate compliance with Form D by providing the documentation required by section Z6.4.1.

**Z6.4.1 Energy Audit Forms (Form D).** The energy audit form shall be provided electronically by completing the energy audit form included in the U.S. Department of Energy, Energy Asset Score Tool, or an equivalent tool provided by the AHJ. This form shall be completed in compliance with the level 2 energy audit, as published in ASHRAE Standard 211, Standard for commercial building energy audits.

**Form E** - Not adopted.

**Z6.5 Annex X, Investment Criteria Tool (Form F).**

**Z6.5.1** To demonstrate compliance with the investment criteria of Normative Annex X, building owners shall complete and submit Form F.

**Z6.5.2 Form F shall be developed by the AHJ.** Form F shall be a life cycle cost evaluation tool compliant with NIST Standard 135 and capable of supporting the evaluation criteria required by Normative Annex X.

**Z6.6 Documentation of a building of historic significance (Form G).**

**Energy efficiency measure exemptions for historic buildings.** No individual energy efficiency measure identified by energy efficiency audits need to be implemented if it would compromise the historical integrity of a building or part of a building. Building owners seeking this exception shall provide the following documentation. Certified historic buildings are not exempt from the other requirements of this standard.

**Plan for compliance.** The owner of a qualifying historic building shall have the plan for compliance evaluated by a qualified historic preservationist, as defined in 36 C.F.R., Part 61, identifying any energy efficiency requirement that may compromise the historic integrity of the building or part of the building. Any element of the plan identified to compromise the historic integrity of the building or part of the building shall be omitted from the compliance plan. Evidence of this evaluation must be submitted to the AHJ for approval.

**Documentation of a historic building.** Building owners must provide documentation to the AHJ that proves its historic identification or eligibility. Valid documentation from any existing programs listed below is acceptable.

1. Examples of existing programs that verify historic property include:
  - a. The National Register of Historic Places;
  - b. The Washington heritage register;
  - c. Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and
  - d. Properties which are listed in a local register of historic places; or
2. Other documentation approved by the AHJ.

#### **Z6.7 Application for Exemption Certificate (Form H).**

Apply for an exemption certificate by submitting the following documentation to the building owner in the form specified by the AHJ. The application must include:

1. Building identification:
  - a. Washington state building ID;
  - b. County;
  - c. County parcel number(s);
  - d. Portfolio manager property ID number;
  - e. Property name;
  - f. Parent property name;
  - g. Address 1 (street);
  - h. Address 2;
  - i. City;
  - j. State; and
  - k. Postal code.
2. Contact information:
  - a. Building owner name(s);
  - b. Contact name;
  - c. Address 1 (street);
  - d. Address 2;
  - e. City;
  - f. State/Province;
  - g. Country;
  - h. Postal code;
  - i. Telephone number; and
  - j. Email address.
3. Building information:
  - a. Primary building activity from Table 7-1, or a description of the nonlisted building type;
  - b. Building gross floor area;
  - c. Building gross conditioned floor area.
4. Reason for exemption: Based on exemptions listed in Section 24.1(2).

A list all of documents enclosed and any facts in support of this application. Provide at least two of the acceptable documents listed below:

- a. Municipal or county records;
- b. Documents from a qualified person;
- c. Construction permit;
- d. Certificate of occupancy or application for certificate of occupancy;
- e. Demolition permit;
- f. Financial statements such as statement of assets; liabilities, capital, and surplus, statement of revenue and expenses; or statement of case flow;

g. A letter from the building owner stating facts and explaining financial hardships;

h. Other documentation approved by the AHJ.

5. Signature and statement of *building owner* stating that the authorized representative of the building, affirm and attest to the accuracy, truthfulness and completeness of the statements of material fact provided in this form.

**Z7 Section 7—Tables as modified by Washington state.**

**Table 7-1 Commercial Building Types/Activities**

Building Activity Type <sup>1,2</sup>				
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
1	Banking/financial services	Bank Branch		
2	Banking/financial services	Financial Office		
3	Education	Adult Education		
4	Education	College/University		
5	Education	K-12 School	Elementary/middle school	
6	Education	K-12 School	High school	
7	Education	Preschool/Daycare		
8	Education	Vocational School		
9	Education	Other - Education		
10	Entertainment/public assembly	Aquarium		
11	Entertainment/public assembly	Bar/Nightclub		
12	Entertainment/public assembly	Bowling Alley		
13	Entertainment/public assembly	Casino		
14	Entertainment/public assembly	Convention Center		
15	Entertainment/public assembly	Fitness Center/Health Club/Gym		
16	Entertainment/public assembly	Ice/Curling Rink		
17	Entertainment/public assembly	Indoor Arena		
18	Entertainment/public assembly	Movie Theater		
19	Entertainment/public assembly	Museum		
20	Entertainment/public assembly	Performing Arts		
21	Entertainment/public assembly	Race Track		
22	Entertainment/public assembly	Roller Rink		
23	Entertainment/public assembly	Social/Meeting Hall		
24	Entertainment/public assembly	Stadium (Closed)		
25	Entertainment/public assembly	Stadium (Open)		
26	Entertainment/public assembly	Swimming Pool		
27	Entertainment/public assembly	Zoo		
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture	
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library	
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly	
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation	
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting	

No.	Building Activity Type <sup>1,2</sup>			Notes
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	
33	Entertainment/public assembly	Other - Recreation		
34	Entertainment/public assembly	Other - Stadium		
35	Food sales and service	Bar/Nightclub		
36	Food sales and service	Convenience Store with Gas Station		
37	Food sales and service	Convenience Store without Gas Station		
38	Food sales and service	Fast Food Restaurant		
39	Food sales and service	Food Sales	Grocery/food market	
40	Food sales and service	Food Sales	Convenience store with gas	
41	Food sales and service	Food Sales	Convenience store	
42	Food sales and service	Food Sales	Other food sales	
43	Food sales and service	Food Service	Fast food	
44	Food sales and service	Food Service	Restaurant/cafeteria	
45	Food sales and service	Food Service	Other food service	
46	Food sales and service	Restaurant		
47	Food sales and service	Supermarket/Grocery Store		
48	Food sales and service	Wholesale Club/Supercenter		
49	Food sales and service	Other - Restaurant/Bar		
50	Healthcare	Ambulatory Surgical Center		
51	Healthcare	Hospital (General Medical & Surgical)*		
52	Healthcare	Medical Office		3
53	Healthcare	Outpatient Rehabilitation/Physical Therapy		
54	Healthcare	Residential Care Facility		
55	Healthcare	Senior Care Community		
56	Healthcare	Urgent Care/Clinic/Other Outpatient		
57	Healthcare	Other - Specialty Hospital		
58	Lodging/residential	Barracks		
59	Lodging/residential	Hotel	Hotel	
60	Lodging/residential	Hotel	Motel or inn	
61	Lodging/residential	Multifamily Housing		
62	Lodging/residential	Prison/Incarceration		
63	Lodging/residential	Residence Hall/Dormitory		
64	Lodging/residential	Residential Care Facility		
65	Lodging/residential	Senior Care Community		
66	Lodging/residential	Other - Lodging/Residential		
67	Mixed use	Mixed Use Property		4
68	Office	Medical Office		3
69	Office	Office	Admin/professional office	
70	Office	Office	Bank/other financial	
71	Office	Office	Government office	
72	Office	Office	Medical office (diagnostic)	3
73	Office	Office	Other office	

No.	Building Activity Type <sup>1,2</sup>			Notes
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	
74	Office	Veterinary Office		
75	Office	Other - Office		
76	Public services	Courthouse		
77	Public services	Fire Station		
78	Public services	Library		
79	Public services	Mailing Center/Post Office		
80	Public services	Police Station		
81	Public services	Prison/Incarceration		
82	Public services	Social/Meeting Hall		
83	Public services	Transportation Terminal/Station		
84	Public services	Other - Public Service		
85	Religious worship	Worship Facility		
86	Retail	Automobile Dealership		
87	Retail	Convenience Store with Gas Station		
88	Retail	Convenience Store without Gas Station		
89	Retail	Enclosed Mall		5
90	Retail	Lifestyle Center	Enclosed mall	5
91	Retail	Lifestyle Center	Other retail	
92	Retail	Lifestyle Center	Retail store	
93	Retail	Lifestyle Center		4
94	Retail	Retail Store		
95	Retail	Strip Mall		4
96	Retail	Supermarket/Grocery Store		
97	Retail	Wholesale Club/Supercenter		
98	Retail	Other - Retail/Mall	Enclosed mall	5
99	Retail	Other - Retail/Mall		4
100	Technology/science	Data Center		6
101	Technology/science	Laboratory		
102	Technology/science	Other - Technology/Science	Other service	
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)		
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop	
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop	
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance	
107	Services	Other - Services		
108	Utility	Energy/Power Station		7
109	Utility	Other - Utility		7
110	Warehouse/storage	Self-Storage Facility		
111	Warehouse/storage	Distribution Center		
112	Warehouse/storage	Nonrefrigerated Warehouse		
113	Warehouse/storage	Refrigerated Warehouse		

Notes: 1. Select the most specific building activity type that applies.

2. For building type definitions see Energy Star portfolio manager definitions except as follows:
  - Data center: Is an activity space designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more. Gross floor area shall only include space within the building including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment. Gross floor area shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.
  - Urgent care center/clinic/other outpatient office means the buildings used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.
3. All medical offices considered to be diagnostic type.
4. Must use of Section 7.2.3 method for mixed use buildings.
5. Suggest considering use of Section 7.2.3 method for mixed use buildings.
6. This is a building or activity without an energy target. Included to provide definition only.
7. This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.

**Table 7-2a Building Activity Site Energy Targets (EUI<sub>t</sub>) (I-P Units)**

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
1	Banking/financial services	Bank Branch			69	71
2	Banking/financial services	Financial Office			69	71
3	Education	Adult Education			49	51
4	Education	College/University			102	102
5	Education	K-12 School	Elementary/middle school		49	50
6	Education	K-12 School	High school		48	49
7	Education	Preschool/Daycare			59	59
8	Education	Vocational School			49	51
9	Education	Other - Education			49	51
10	Entertainment/public assembly	Aquarium			55	59
11	Entertainment/public assembly	Bar/Nightclub			55	59
12	Entertainment/public assembly	Bowling Alley			73	78
13	Entertainment/public assembly	Casino			55	59
14	Entertainment/public assembly	Convention Center			50	52
15	Entertainment/public assembly	Fitness Center/Health Club/Gym			73	78
16	Entertainment/public assembly	Ice/Curling Rink			73	78
17	Entertainment/public assembly	Indoor Arena			67	70
18	Entertainment/public assembly	Movie Theater			67	70
19	Entertainment/public assembly	Museum			67	70
20	Entertainment/public assembly	Performing Arts			55	59
21	Entertainment/public assembly	Race Track			67	70
22	Entertainment/public assembly	Roller Rink			73	78

	Building Activity Type <sup>1,2</sup>				Climate Zone 4C	Climate Zone 5B
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	EUI <sub>t</sub>	EUI <sub>t</sub>
23	Entertainment/public assembly	Social/Meeting Hall			50	52
24	Entertainment/public assembly	Stadium (Closed)			67	70
25	Entertainment/public assembly	Stadium (Open)			67	70
26	Entertainment/public assembly	Swimming Pool			73	78
27	Entertainment/public assembly	Zoo			55	59
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture		67	70
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library		56	59
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly		55	59
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation		73	78
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting		50	52
33	Entertainment/public assembly	Other - Recreation			73	78
34	Entertainment/public assembly	Other - Stadium			67	70
35	Food sales and service	Bar/Nightclub			361	378
36	Food sales and service	Convenience Store with Gas Station			244	253
37	Food sales and service	Convenience Store without Gas Station			260	269
38	Food sales and service	Fast Food Restaurant			427	454
39	Food sales and service	Food Sales	Grocery/food market		191	198
40	Food sales and service	Food Sales	Convenience store with gas		260	269
41	Food sales and service	Food Sales	Convenience store		244	253
42	Food sales and service	Food Sales	Other food sales		184	189
43	Food sales and service	Food Service	Fast food		427	454
44	Food sales and service	Food Service	Restaurant/cafeteria		361	378
45	Food sales and service	Food Service	Other food service		293	308
46	Food sales and service	Restaurant			361	378
47	Food sales and service	Supermarket/Grocery Store			191	198
48	Food sales and service	Wholesale Club/Supercenter			68	75
49	Food sales and service	Other - Restaurant/Bar			361	378
50	Healthcare	Ambulatory Surgical Center			90	96
51	Healthcare	Hospital (General Medical & Surgical)*			215	215
52	Healthcare	Medical Office		3		

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
53	Healthcare	Outpatient Rehabilitation/Physical Therapy			90	96
54	Healthcare	Residential Care Facility			78	82
55	Healthcare	Senior Care Community			78	82
56	Healthcare	Urgent Care/Clinic/ Other Outpatient			90	96
57	Healthcare	Other - Specialty Hospital			196	196
58	Lodging/residential	Barracks			88	90
59	Lodging/residential	Hotel	Hotel		68	72
60	Lodging/residential	Hotel	Motel or inn		74	77
61	Lodging/residential	Multifamily Housing			32	33
62	Lodging/residential	Prison/Incarceration			101	106
63	Lodging/residential	Residence Hall/ Dormitory			88	90
64	Lodging/residential	Residential Care Facility			78	82
65	Lodging/residential	Senior Care Community			78	82
66	Lodging/residential	Other - Lodging/ Residential			71	74
67	Mixed use	Mixed Use Property		4		
68	Office	Medical Office		3	60	65
69	Office	Office	Admin/professional office		63	66
70	Office	Office	Bank/other financial		69	71
71	Office	Office	Government office		66	69
72	Office	Office	Medical office (diagnostic)	3	60	65
73	Office	Office	Other office		66	68
74	Office	Veterinary Office			90	96
75	Office	Other - Office			66	68
76	Public services	Courthouse			101	106
77	Public services	Fire Station			65	68
78	Public services	Library			56	59
79	Public services	Mailing Center/Post Office			51	54
80	Public services	Police Station			65	68
81	Public services	Prison/Incarceration			101	106
82	Public services	Social/Meeting Hall			50	52
83	Public services	Transportation Terminal/ Station			55	59
84	Public services	Other - Public Service			66	69
85	Religious worship	Worship Facility			39	42
86	Retail	Automobile Dealership			59	66
87	Retail	Convenience Store with Gas Station			260	269

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
88	Retail	Convenience Store without Gas Station			244	253
89	Retail	Enclosed Mall		5	58	64
90	Retail	Lifestyle Center	Enclosed mall	5	58	64
91	Retail	Lifestyle Center	Other retail		55	62
92	Retail	Lifestyle Center	Retail store		68	75
93	Retail	Lifestyle Center		4		
94	Retail	Retail Store			68	75
95	Retail	Strip Mall		4		
96	Retail	Supermarket/Grocery Store			191	198
97	Retail	Wholesale Club/ Supercenter			68	75
98	Retail	Other - Retail/Mall	Enclosed mall	5	58	64
99	Retail	Other - Retail/Mall		4		
100	Technology/science	Data Center		6		
101	Technology/science	Laboratory			237	249
102	Technology/science	Other - Technology/ Science	Other service		66	69
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)			66	69
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop		36	39
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop		60	64
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance		41	44
107	Services	Other - Services			66	69
108	Utility	Energy/Power Station		7		
109	Utility	Other - Utility		7		
110	Warehouse/storage	Self-Storage Facility			36	44
111	Warehouse/storage	Distribution Center			36	44
112	Warehouse/storage	Nonrefrigerated Warehouse			36	44
113	Warehouse/storage	Refrigerated Warehouse			121	126

- Notes:
1. Select the most specific building activity type that applies.
  2. For building type definitions see Energy Star portfolio manager definitions except as follows:
    - Data center: Is an activity space designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more. Gross floor area shall only include space within the building including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment. Gross floor area shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.
    - Urgent care center/clinic/other outpatient office means the buildings used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.
  3. All medical offices considered to be diagnostic type.
  4. Must use of Section 7.2.3 method for mixed use buildings.
  5. Suggest considering use of Section 7.2.3 method for mixed use buildings.
  6. This is a building or activity without an energy target. Included to provide definition only.

7. This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.

**Table 7-3 Building Operating Shifts Normalization Factor**

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
1	Banking/financial services	Bank Branch		3	0.8	1.0	1.5
2	Banking/financial services	Financial Office		3	0.8	1.0	1.5
3	Education	Adult Education		4	0.9	1.1	1.9
4	Education	College/University		4	0.9	1.1	1.9
5	Education	K-12 School	Elementary/middle school	4	0.9	1.1	1.9
6	Education	K-12 School	High school	4	0.9	1.1	1.9
7	Education	Preschool/Daycare		4	0.9	1.1	1.9
8	Education	Vocational School		4	0.9	1.1	1.9
9	Education	Other - Education		4	0.9	1.1	1.9
10	Entertainment/public assembly	Aquarium		4	0.6	1.1	1.6
11	Entertainment/public assembly	Bar/Nightclub		4	0.6	1.1	1.6
12	Entertainment/public assembly	Bowling Alley		4	0.6	1.1	1.6
13	Entertainment/public assembly	Casino		4	0.6	1.1	1.6
14	Entertainment/public assembly	Convention Center		4	0.6	1.1	1.6
15	Entertainment/public assembly	Fitness Center/Health Club/Gym		4	0.6	1.1	1.6
16	Entertainment/public assembly	Ice/Curling Rink		4	0.6	1.1	1.6
17	Entertainment/public assembly	Indoor Arena		4	0.6	1.1	1.6
18	Entertainment/public assembly	Movie Theater		4	0.6	1.1	1.6
19	Entertainment/public assembly	Museum		4	0.6	1.1	1.6
20	Entertainment/public assembly	Performing Arts		4	0.6	1.1	1.6
21	Entertainment/public assembly	Race Track		4	0.6	1.1	1.6
22	Entertainment/public assembly	Roller Rink		4	0.6	1.1	1.6
23	Entertainment/public assembly	Social/Meeting Hall		4	0.6	1.1	1.6
24	Entertainment/public assembly	Stadium (Closed)		4	0.6	1.1	1.6
25	Entertainment/public assembly	Stadium (Open)		4	0.6	1.1	1.6
26	Entertainment/public assembly	Swimming Pool		4	0.6	1.1	1.6
27	Entertainment/public assembly	Zoo		4	0.6	1.1	1.6

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture	4	0.6	1.1	1.6
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library	4	0.6	1.1	1.6
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly	4	0.6	1.1	1.6
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation	4	0.6	1.1	1.6
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting	4	0.6	1.1	1.6
33	Entertainment/public assembly	Other - Recreation		4	0.6	1.1	1.6
34	Entertainment/public assembly	Other - Stadium		4	0.6	1.1	1.6
35	Food sales and service	Bar/Nightclub		4	0.6	1.1	1.5
36	Food sales and service	Convenience Store with Gas Station		4	0.5	0.9	1.3
37	Food sales and service	Convenience Store without Gas Station		4	0.5	0.9	1.3
38	Food sales and service	Fast Food Restaurant		4	0.6	1.1	1.5
39	Food sales and service	Food Sales	Grocery/food market	4	0.5	0.9	1.3
40	Food sales and service	Food Sales	Convenience store with gas	4	0.5	0.9	1.3
41	Food sales and service	Food Sales	Convenience store	4	0.5	0.9	1.3
42	Food sales and service	Food Sales	Other food sales	4	0.5	0.9	1.3
43	Food sales and service	Food Service	Fast food	4	0.6	1.1	1.5
44	Food sales and service	Food Service	Restaurant/cafeteria	4	0.6	1.1	1.5
45	Food sales and service	Food Service	Other food service	4	0.6	1.1	1.5
46	Food sales and service	Restaurant		4	0.6	1.1	1.5
47	Food sales and service	Supermarket/Grocery Store		4	0.5	0.9	1.3
48	Food sales and service	Wholesale Club/Supercenter		4	0.6	1.0	1.5
49	Food sales and service	Other - Restaurant/Bar		4	0.6	1.1	1.5
50	Healthcare	Ambulatory Surgical Center		4,7	0.8	1.1	1.3
51	Healthcare	Hospital (General Medical & Surgical)*			1.0	1.0	1.0
52	Healthcare	Medical Office		4,7	0.8	1.0	1.5
53	Healthcare	Outpatient Rehabilitation/Physical Therapy		4,7	0.8	1.1	1.3
54	Healthcare	Residential Care Facility			1.0	1.0	1.0
55	Healthcare	Senior Care Community			1.0	1.0	1.0
56	Healthcare	Urgent Care/Clinic/Other Outpatient		4,7	0.8	1.1	1.3
57	Healthcare	Other - Specialty Hospital			1.0	1.0	1.0

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
58	Lodging/residential	Barracks			1.0	1.0	1.0
59	Lodging/residential	Hotel	Hotel		1.0	1.0	1.0
60	Lodging/residential	Hotel	Motel or inn		1.0	1.0	1.0
61	Lodging/residential	Multifamily Housing			1.0	1.0	1.0
62	Lodging/residential	Prison/Incarceration			1.0	1.0	1.0
63	Lodging/residential	Residence Hall/ Dormitory			1.0	1.0	1.0
64	Lodging/residential	Residential Care Facility			1.0	1.0	1.0
65	Lodging/residential	Senior Care Community			1.0	1.0	1.0
66	Lodging/residential	Other - Lodging/ Residential			1.0	1.0	1.0
67	Mixed use	Mixed Use Property		6			
68	Office	Medical Office		4,7	0.8	1.1	1.3
69	Office	Office	Admin/professional office	3	0.8	1.0	1.5
70	Office	Office	Bank/other financial	3	0.8	1.0	1.5
71	Office	Office	Government office	3	0.8	1.0	1.5
72	Office	Office	Medical office (diagnostic)	4	0.8	1.1	1.3
73	Office	Office	Other office	3	0.8	1.0	1.5
74	Office	Veterinary Office		3	0.8	1.1	1.3
75	Office	Other - Office		3	0.8	1.0	1.5
76	Public services	Courthouse		4	0.8	0.8	1.1
77	Public services	Fire Station		3	0.8	0.8	1.1
78	Public services	Library		4	0.6	1.1	1.6
79	Public services	Mailing Center/Post Office		3	0.8	1.2	1.3
80	Public services	Police Station		3	0.8	0.8	1.1
81	Public services	Prison/Incarceration			1.0	1.0	1.0
82	Public services	Social/Meeting Hall		4	0.6	1.1	1.6
83	Public services	Transportation Terminal/Station		4	0.6	1.1	1.6
84	Public services	Other - Public Service		4	0.8	1.2	1.3
85	Religious worship	Worship Facility		5	0.9	1.7	1.7
86	Retail	Automobile Dealership		4	0.6	1.0	1.5
87	Retail	Convenience Store with Gas Station		4	0.5	0.9	1.3
88	Retail	Convenience Store without Gas Station		4	0.5	0.9	1.3
89	Retail	Enclosed Mall		4	0.6	1.0	1.5
90	Retail	Lifestyle Center	Enclosed mall	4	0.6	1.0	1.5
91	Retail	Lifestyle Center	Other retail	4	0.6	1.0	1.5
92	Retail	Lifestyle Center	Retail store	4	0.6	1.0	1.5
93	Retail	Lifestyle Center					
94	Retail	Retail Store		4	0.6	1.0	1.5

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
95	Retail	Strip Mall					
96	Retail	Supermarket/Grocery Store		4	0.5	0.9	1.3
97	Retail	Wholesale Club/Supercenter		4	0.6	1.0	1.5
98	Retail	Other - Retail/Mall	Enclosed mall	4	0.6	1.0	1.5
99	Retail	Other - Retail/Mall					
100	Technology/science	Data Center					
101	Technology/science	Laboratory		3	1.0	1.0	1.0
102	Technology/science	Other - Technology/Science	Other service	3	0.8	1.2	1.3
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)		4	0.8	1.2	1.3
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop	4	0.8	1.2	1.3
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop	4	0.8	1.2	1.3
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance	4	0.8	1.2	1.3
107	Services	Other - Services		4	0.8	1.2	1.3
108	Utility	Energy/Power Station					
109	Utility	Other - Utility					
110	Warehouse/storage	Self-Storage Facility		4	0.8	1.0	1.4
111	Warehouse/storage	Distribution Center		3	0.8	1.0	1.4
112	Warehouse/storage	Nonrefrigerated Warehouse		3	0.8	1.0	1.4
113	Warehouse/storage	Refrigerated Warehouse		3,8	1.0	1.0	1.4

- Notes: 1. Do not count the hours when the property is occupied only by maintenance, security, the cleaning crew, or other support personnel. Do not count the hours when the property is occupied only by maintenance staff.
2. Working hours are based on the average use over the ~~((twelve month))~~ 12-month period selected to document energy use in form C.
3. The weekly hours are the total number of hours per week where the majority of workers are present. If there are two or more shifts of workers, add the hours. When developing targets using Section 7.2.3 for mixed use buildings, use the hours each separate activity, the hours per week the majority of workers are present.
4. The weekly hours are the hours that be majority of the building is open to serve the public. When developing targets using Section 7.2.3 for mixed use buildings, the hours each separate activity is open to the public.
5. The weekly hours the facility is open for operation, which may include worship services, choir practice, administrative use, committee meetings, classes, or other activities.
6. Must use of Section 7.2.3 method for mixed use buildings.
7. Health care buildings may use other weekly hours if they are required to operate building systems additional hours to protect patient and staff safety. Provide documentation of the requirement in the energy management plan.
8. Refrigerated warehouse greater than 167 hours assumes the workers on shift are loading and/or unloading vehicles.

[Statutory Authority: RCW 19.27A.210. WSR 20-22-059, § 194-50-150, filed 10/30/20, effective 11/30/20.]