

WSR 23-12-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-84—Filed May 24, 2023, 3:20 p.m., effective May 25, 2023]

Effective Date of Rule: May 25, 2023.

Purpose: The purpose of this emergency rule is to raise commercial troll landing and possession limits in Areas 1 and 2.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000R; and amending WAC 220-354-300.

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: A harvestable quota of salmon is available for the troll fleet, and the remaining quota is sufficient to allow larger landing and possession limits for Areas 1 and 2. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fishery Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 24, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-30000S Coastal salmon troll seasons—Commercial.

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective May 25, 2023, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00"W longitude and south of 48°23'00"N latitude open: May 25 through June 29, 2023.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.), open: May 25 through June 29, 2023.

(3) In Washington Catch Reporting Areas 1, 2, 3 and 4, landing and possession limits combined across all areas of:

(a) 200 Chinook per vessel per landing week, defined as Thursday through Wednesday, from May 25 through June 21

(b) 200 Chinook per vessel for the landing period June 22 through June 29

(4) In Washington Catch Reporting Area 1, landing and possession limits of:

(a) 80 Chinook per vessel per landing week, defined as Thursday through Wednesday, from May 25 through June 21

(b) 80 Chinook per vessel for the landing period June 22 through June 29

(5) In Washington Catch Reporting Area 2, landing and possession limits of:

(a) 200 Chinook per vessel per landing week, defined as Thursday through Wednesday, from May 25 through June 21

(b) 200 Chinook per vessel for the landing period June 22 through June 29

(6) In Washington Catch Reporting Areas 3 and 4, landing and possession limits of:

(a) 35 Chinook per vessel per landing week, defined as Thursday through Wednesday, from May 25 through June 21

(b) 35 Chinook per vessel for the landing period June 22 through June 29

(7) The Cape Flattery and Columbia River Control Zones are closed. The Salmon Troll Yelloweye Rockfish Conservation Area is closed.

(8) Minimum size for Chinook salmon is 27 inches in length (20 1/2 inches frozen dressed). No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

(11) During any single trip, only one side of the Leadbetter Point line (46°38'10"N. lat.) may be fished.

(a) Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area south of Leadbetter Point.

(b) For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery.

(c) Vessels may not land fish east of Tongue Point, Oregon.

(12) Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license.

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42"N. lat.) without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 or by email at Danielle.williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(c) Vessels may not land fish east of the Sekiu River.

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REPEALER

The following section of Washington Administrative Code is repealed, effective May 25, 2023:

WAC 220-354-30000R Coastal salmon troll seasons—
Commercial. (23-76)

WSR 23-12-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-83—Filed May 24, 2023, 3:23 p.m., effective May 25, 2023]

Effective Date of Rule: May 25, 2023.

Purpose: The purpose of this emergency rule is to open salmon and steelhead fisheries in the Lewis River and close salmon fisheries in Klickitat River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000X; and amending WAC 220-312-030.

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 open salmon and steelhead fisheries in the Lewis River and close salmon fisheries in Klickitat River.

Spring Chinook salmon returns to the Lewis Hatchery are projected to meet broodstock collection goals for the Lewis Hatchery programs. Modifying fisheries will provide additional fishing opportunities while still meeting program and reintroduction goals.

As of May 22, 2023, the Klickitat Salmon Hatchery has not had any adult spring Chinook return to contribute to the 500 fish broodstock goal. The estimated return for 2023 was anticipated to be among the lowest since 2009 and likely impacted by hatchery releases for brood year 2019 that were significantly below the release goal. Closing the river to spring Chinook retention will increase the number of hatchery fish available for broodstock and help ensure future hatchery returns. The Washington department of fish and wildlife will continue working with comanagers to monitor the progress of broodstock collection and reopen the fishery if returns indicate that hatchery goals will be met.

This rule also carries forward emergency rules previously filed in WSR 23-07-016 (Order 23-35), on March 3, 2023, for Salmon Creek and Wind River.

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: May 24, 2023.

Kelly Susewind

NEW SECTION

WAC 220-312-03000B Freshwater exceptions to statewide rules—Southwest. Effective May 25, 2023, until further notice, the provisions of WAC 220-312-030 regarding Klickitat River, Lewis River, Salmon Creek, and Wind River salmon and steelhead seasons shall be modified during times and as described below, as well as all species rules for Lewis River. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Klickitat River (Klickitat Co.):

(a) From the mouth to Fisher Hill Bridge:

(i) Effective May 25, through May 26, 2023: Salmon and steelhead:

(A) Open Mondays, Wednesdays, and Saturdays only.

(B) Salmon and hatchery steelhead: Daily limit 2 hatchery steelhead may be retained. Release all salmon.

(ii) Effective May 27, 2023, until further notice: Salmon: Closed

(b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery: Effective May 27, 2023, until further notice: Salmon: Closed.

(2) Lewis River (Clark/Cowlitz Co.):

(a) Salmon: From the mouth to Colvin Creek: Effective May 25 through July 31, 2023: Daily limit 6 including no more than 1 adult. Release all salmon other than hatchery Chinook.

(b) All Species: From Johnson Creek to Colvin Creek: Effective May 25 through May 31, 2023:

(i) Bank angling only. Fishing from a vessel is prohibited.

(ii) Night Closure.

(iii) Anti-snagging rule.

(c) Hatchery steelhead: From Johnson Creek to Colvin Creek: Effective May 25 through May 31, 2023: Daily limit 3.

(3) Salmon Creek (Clark Co.): From the mouth to the 182nd Avenue Bridge: Effective immediately, through May 26, 2023: Hatchery Steelhead: Daily limit 3. Selective Gear Rules in effect, except use of barbed hooks is allowed.

(4) Wind River (Skamania Co.): From the mouth to 800 yards downstream of Carson National Fish Hatchery: Effective immediately, until further notice: Salmon and hatchery steelhead: Daily limit 6; up to 1 adult salmon and 1 hatchery steelhead, or up to 2 hatchery steelhead may be retained. Release all salmon other than hatchery Chinook.

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REPEALER

The following section of the Washington Administrative Code is repealed, effective May 25, 2023:

WAC 220-312-03000X Freshwater exceptions to statewide rules—Southwest. (23-35)

WSR 23-12-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-85—Filed May 24, 2023, 3:29 p.m., effective May 24, 2023, 3:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to extend recreational spring Chinook seasons below Bonneville Dam.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000M and 220-312-03000A; and amending WAC 220-312-060 and 220-312-030.

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: On May 22, 2023, the *U.S. v. Oregon* technical advisory committee (TAC) updated the Columbia River upriver spring Chinook return to 153,000 compared to the preseason forecast of 198,600. The recreational fishery downstream of Bonneville Dam has sufficient remaining allocation of upriver spring Chinook Endangered Species Act (ESA) impacts to allow for an extension. Insufficient allocation of ESA impacts remain for the fishery from Bonneville Dam upstream to the Washington/Oregon border and therefore [it] was not extended.

The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. The regulation is consistent with the compact actions of February 22, April 4, May 17, and May 24, 2023. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

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 *U.S. 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. There is insufficient time to promulgate 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 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: May 24, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia. Effective immediately through June 4, 2023, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Rocky Point/Tongue Point line upstream to Hwy. 730 at the Washington/Oregon border shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) upstream to a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

Salmon and steelhead: Immediately through June 4, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(2) From a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock upstream to Bonneville Dam: Salmon and steelhead:

(a) Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Immediately through June 4, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(3) From Bonneville Dam to Tower Island power lines (approximately 6 miles below The Dalles Dam): Salmon and steelhead:

(a) Immediately through May 24, 2023: Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Immediately through May 24, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(4) From Tower Island power lines to The Dalles Dam: Salmon and steelhead:

Immediately through May 24, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(5) From The Dalles Dam to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

Immediately through May 24, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

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NEW SECTION

WAC 220-312-03000C Freshwater exceptions to statewide rules—Southwest. Effective immediately through June 4, 2023, the provisions of WAC 220-312-030 regarding Deep River salmon and steelhead seasons shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Deep River (Wahkiakum Co.): Salmon and steelhead:

Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-312-06000M Freshwater exceptions to statewide rules—Columbia River. (23-80)

WAC 220-312-03000A Freshwater exceptions to statewide rules—Southwest. (23-80)

WSR 23-12-019

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2023-03.01—Filed May 25, 2023, 5:46 p.m., effective May 25, 2023, 5:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is creating a new section in WAC 182-12-5000 Retirees who regained eligibility for public employees benefits board (PEBB) retiree insurance coverage as authorized in SSB 5490, chapter 15, Laws of 2023, 68th legislature, 2023 regular session.

Citation of Rules Affected by this Order: New WAC 182-12-5000.

Statutory Authority for Adoption: SSB 5490, chapter 15, Laws of 2023, 68th legislature, 2023 regular session.

Other Authority: RCW 41.05.021 and 41.05.160.

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 making is necessary to preserve the public peace, health, safety, or support of the state government and its existing public institutions by establishing rules to implement the special enrollment opportunity for retired or disabled employees who were denied coverage for failure to timely notify HCA of their intent to defer coverage and who appealed the denial of benefits to HCA on or before December 31, 2022. The emergency is necessary to implement SSB 5490, chapter 15, Laws of 2023, while the authority conducts the permanent rule-making 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 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 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 1, Amended 0, Repealed 0.

Date Adopted: May 25, 2023.

Wendy Barcus
Rules Coordinator

OTS-4596.2

NEW SECTION

WAC 182-12-5000 Retirees who regained eligibility for public employees benefits board (PEBB) retiree insurance coverage under chapter 15, Laws of 2023 (SSB 5490). (1) For this section only, "subscriber" means a retired or disabled employee who:

(a) Is receiving a retirement allowance under chapter 41.32, 41.35, 41.37, or 41.40 RCW;

(b) Was previously denied coverage solely for failure to timely notify the health care authority (HCA) of their plan to defer public employees benefits board (PEBB) retiree insurance coverage;

(c) Appealed the denial of benefits to HCA on or before December 31, 2022; and

(d) Is eligible for and enrolled in medicare Parts A and B.

(2) Subscribers may enroll only in a medicare advantage (MA), medicare advantage-prescription drug (MA-PD), or a medicare supplement plan. Subscribers may also enroll their dependents who are eligible under WAC 182-12-260 and must include the dependent's enrollment information on the required forms.

(a) The dependent must be enrolled in the same PEBB medical plan as the subscriber;

(b) If the subscriber selects a medicare supplement plan or MA-PD plan, nonmedicare enrollees will be enrolled in the UMP Classic plan. If the subscriber selects any other medicare plan, the subscriber must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(3) The subscriber must submit the required forms to enroll in PEBB retiree insurance coverage and they must be received by the PEBB program by November 30, 2023.

(a) If the subscriber elects to enroll in a medicare supplement plan, the effective date of PEBB retiree insurance coverage described in this section is the first day of the month following the date the PEBB program receives the required forms. If the required forms are received on the first day of the month, the effective date of PEBB retiree insurance coverage is that day.

(b) Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If the subscriber elects to enroll in a MA or MA-PD plan, coverage will be effective the first of the month following the signature date on the form.

(4) Subscribers may enroll in a PEBB dental plan if they also enroll in a MA or MA-PD plan or medicare supplemental plan. Subscribers may also enroll their dependents who are eligible under WAC 182-12-260 and must include the dependent's enrollment information on the required forms.

(5) The subscriber's first premium payment for PEBB retiree insurance coverage is due to the HCA no later than 45 days after the effective date of PEBB retiree insurance coverage as described in subsection (3) of this section. Following the subscriber's first premium payment, premiums must be paid as described in WAC 182-08-180 (1)(a).

(6) Subscribers are not eligible to elect retiree term life insurance as described in WAC 182-12-209.

(7) Once enrolled in PEBB retiree insurance coverage, subscribers and their dependents are subject to all applicable rules in chapters 182-08, 182-12, and 182-16 WAC.

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WSR 23-12-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-86—Filed May 30, 2023, 7:25 a.m., effective June 1, 2023]

Effective Date of Rule: June 1, 2023.

Purpose: The purpose of this emergency rule is to open spring Chinook seasons in the upper Skagit and Cascade rivers.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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 open salmon seasons in the Skagit River and Cascade River as agreed to with comanagers during the 2023 North of Falcon proceedings. Harvestable numbers of hatchery spring Chinook are forecast to return to Marblemount Hatchery. 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: May 26, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000G Freshwater exceptions to statewide rules—Puget Sound. Effective June 1, through July 15, 2023, the following provisions of WAC 220-312-040 and regarding salmon seasons for portions of the Skagit River and Cascade River, shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) **Cascade River (Skagit Co.):** From mouth to Rockport-Cascade Rd. Bridge: Salmon:

(a) Open Wednesdays through Saturdays. Closed Sundays through Tuesdays.

(b) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.

(c) Night Closure in effect.

(d) Anti-snagging rule in effect.

(2) **Skagit River (Skagit Co.):** From the Hwy. 530 Bridge at Rockport to Cascade River Rd. (Marblemount Bridge): Salmon:

(a) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.

(b) Night Closure in effect.

(c) Anti-snagging rule in effect.

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WSR 23-12-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-88—Filed May 30, 2023, 4:26 p.m., effective June 1, 2023]

Effective Date of Rule: June 1, 2023.

Purpose: This rule opens an additional day for recreational spot shrimp fishing in Marine [Area] 11 on June 9, and opens the recreational nonspot shrimp fishery in Marine Areas 9 and 13 beginning June 1 with associated nonspot shrimp fishing depth restrictions.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000S; and amending WAC 220-330-070.

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 opens an additional day for recreational spot shrimp fishing in Marine [Area] 11 on June 9, and opens the nonspot shrimp fishery in Marine Areas 9 and 13 beginning June 1, with associated nonspot shrimp fishing depth restrictions. This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and meet conservation objectives. 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: May 30, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000T Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective June 1, 2023, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Ta-toosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open daily, from 1 hour before official sunrise to 1 hour after official sunset, until further notice for all shrimp species.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open from 1 hour before official sunrise to 1 hour after official sunset on June 8 through 10, June 22 through 24, July 7 through 10, and July 21 through 23 for all shrimp species.

(3) Marine Areas 7 South and 7 East: Open from 1 hour before official sunrise to 1 hour after official sunset on June 8 through 10 for all shrimp species.

(4) Marine Area 7 West: Open from 1 hour before official sunrise to 1 hour after official sunset on June 8 through 10, June 22 through 24, and July 7 through 10 for all shrimp species.

(5) Marine Areas 8-1 and 8-2:

(a) Open June 9 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on June 9 in Marine Area 8-2.

(6) Marine Area 9: Open daily through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(7) Marine Area 11: Open June 9 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(8) Marine Area 12: Open June 9, June 11, June 24, and June 28 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(9) Marine Area 13: Open daily through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

[]

REPEALER

The following section of the Washington Administrative Code is repealed, effective June 1, 2023:

WAC 220-330-07000S Shrimp—Areas and seasons. (23-51)

WSR 23-12-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-89—Filed May 31, 2023, 5:41 p.m., effective June 1, 2023]

Effective Date of Rule: June 1, 2023.

Purpose: The purpose of this emergency rule is to close salmon and steelhead fisheries in the Columbia River downstream of Bonneville Dam and return Deep River salmon and steelhead fisheries to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000C and 220-312-06000N; 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: On May 30, 2023, the *U.S. v. Oregon* technical advisory committee (TAC) updated the Columbia River upriver spring Chinook return to 143,000 compared to a preseason forecast of 198,600 and the previous week's inseason run size estimate of 153,000. Based on TAC's current abundance expectation of 143,000 fish, treaty fisheries are allowed a harvest rate of 7.4 percent and the nontreaty fisheries are allowed a harvest rate of 1.6 percent with the total allowable harvest rate on Endangered Species Act (ESA)-listed spring/summer Snake River Chinook and Upper Columbia spring Chinook both at 9.0 percent. As of May 31, the treaty harvest rate is 8.38 percent and the nontreaty harvest rate is 0.71 percent, which results into a combined 9.09 percent which is over the allowable ESA impact rate. Given the current run size and estimated ESA impacts to date for combined treaty and nontreaty fisheries, remaining fisheries expected to accrue additional upriver spring Chinook ESA impacts must close.

The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. The regulation is consistent with the compact actions of February 22, April 4, May 17, May 24, and May 31, 2023. The general public welfare is protected with the immediate closure of recreational salmon and steelhead fishing below Bonneville Dam. This closure protects the resource and provides sustainability to future fisheries.

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 *U.S. 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. There is insufficient time to promulgate 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: May 31, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia. Effective June 1 through June 15, 2023, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Rocky Point/Tongue Point line upstream to the I-5 Bridge shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) upstream to Interstate 5 Bridge:

Salmon and steelhead: June 1 through June 15, 2023: Closed to angling for and retention of salmon and steelhead.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed, effective June 1, 2023:

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia River. (23-85)

WAC 220-312-03000C Freshwater exceptions to statewide rules—Southwest. (23-85)

WSR 23-12-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-87—Filed June 1, 2023, 3:01 p.m., effective June 1, 2023, 3:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open additional dates for the recreational all depth halibut fisheries in Catch Record Card Areas 1, 3, and 4.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000N; and amending WAC 220-314-030.

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 add open dates to the all depth halibut fisheries in Catch Record Card Areas 1, 3, and 4. To date, catch rates indicate there is sufficient quota to allow for these additional openings. This rule is also needed to conform with proposed federal rules.

This rule also brings forward seasons and rules set in WSR 23-08-023, filed March 24, [2023], and WSR 23-11-013, filed May 5, 2023.

Halibut catch will continue to be closely monitored by Washington department of fish and wildlife staff and may close earlier if quotas are achieved. Halibut seasons are open only by emergency rule (see WAC 220-314-040(1)).

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: May 31, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000P Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, and 220-314-010,

effective immediately, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-030, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

(1) Catch Record Card Area 1 All Depth Fishery, including Southern Near Shore Fishery area described in section (2):

Open June 1, 4, 8, 11, 13, 15, 18, 20, 22, 25, and 29, 2023.

(2) Catch Record Card Area 1 Southern Near Shore Fishery; Those waters shoreward of a lined from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40-fathom depth contour in Oregon):

(a) Open during dates listed for Catch Record Card Area 1 All Depth Fishery in section (1), and open Mondays, Tuesdays, and Wednesdays, each week, until further notice.

(b) Bottomfish, otherwise legal to retain, may be retained and landed when a vessel has landed or brought halibut into port on days when only the Southern Near Shore Fishery is open for halibut retention, but not on days when the All Depth halibut fishery is open as listed in section (1).

(3) Catch Record Card Area 2 All Depth Fishery, including Northern Near Shore Fishery area:

Open June 15, 18, 22, and 25, 2023.

(4) Card Record Areas 3 and 4:

Open June 1, 3, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 29, and 30.

(5) Catch Record Card Areas 5 through 10:

Open June 1 through June 30, 2023.

(6) Catch Record Card Areas 11, 12 and 13: Closed.

(7) It is unlawful to fish for, retain, possess, or land halibut into a port located within an area that is closed to halibut fishing, except it is lawful to land halibut into a port with Marine Area 4, that were lawfully retained in Marine Area 5.

(8) Halibut caught in Canadian waters may be landed into a port located within a marine area that is closed to halibut fishing. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(9) A violation of this section is punishable under RCW 77.15.370 or RCW 77.15.380, depending on the violation.

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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 immediately:

WAC 220-314-03000N Halibut—Seasons—Daily and possession limits. (23-66)

WSR 23-12-057

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2023-03.02—Filed June 2, 2023, 8:34 a.m., effective June 2, 2023, 8:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is creating new WAC 182-12-5100 What options for health plan enrollment are available to a retired employee of an employer group that previously ended participation in public employees benefits board (PEBB) insurance coverage, as authorized in SHB 1804, section 3, chapter 312, Laws of 2023.

Citation of Rules Affected by this Order: New WAC 182-12-5100.

Statutory Authority for Adoption: SHB 1804, section 3, chapter 312, Laws of 2023, 68th legislature, 2023 regular session.

Other Authority: RCW 41.05.021 and 41.05.160.

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 making is necessary to preserve public peace, health, or safety, or support of the state government and its existing public institutions by establishing enrollment rules for eligible retired or disabled employees of employer groups whose participation in insurance plans or contracts under RCW 41.05.080(1) ended due to the termination of the contractual agreement between HCA and an employer group on or before January 1, 2023. This emergency is necessary to implement SHB 1804, section 3, chapter 312, Laws of 2023, while the authority conducts the permanent rule-making 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 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 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 1, Amended 0, Repealed 0.

Date Adopted: June 2, 2023.

Wendy Barcus
Rules Coordinator

OTS-4617.2

NEW SECTION

WAC 182-12-5100 What options for health plan enrollment are available to a retired employee of an employer group that previously ended participation in public employees benefits board (PEBB) insurance coverage? (1) A retired employee of an employer group as defined in WAC 182-12-109, whose participation in public employees benefits board (PEBB) retiree insurance coverage ended due to the employer group ending participation in PEBB insurance coverage on or before January 1, 2023, must be allowed to enroll in PEBB health plan coverage if the requirements as described in subsection (4) of this section are met.

(2) For this section only, "subscriber" means the retired employee as described in subsection (1) of this section who is requesting enrollment in PEBB health plan coverage.

(3) The subscriber may elect to enroll in PEBB medical, dental, or both by self-paying the premium and applicable premium surcharges set by the health care authority (HCA). The subscriber enrolled under this section is not eligible for any subsidy provided under RCW 41.05.085.

(4) The subscriber must submit the required forms to the PEBB program, and they must be received by December 31, 2023:

(a) The subscriber may enroll eligible dependents as described in WAC 182-12-260 and must include the dependent's enrollment information on the required forms;

(b) If the subscriber elects to enroll a dependent in PEBB health plan coverage, the dependent will be enrolled in the same PEBB medical and PEBB dental plans as the subscriber;

Exception: If the subscriber selects a medicare supplement plan or medicare advantage prescription-drug (MA-PD) plan, nonmedicare enrollees will be enrolled in the UMP Classic. If the subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(c) The subscriber's account may incur a premium surcharge in addition to their monthly medical premium and the subscriber must attest as described in WAC 182-08-185 (1) and (2). A premium surcharge will be applied to a subscriber who does not attest. If the subscriber's attestation results in a premium surcharge, it will take effect the same date as PEBB medical begins;

(d) The subscriber's first premium payment and applicable premium surcharges are due to HCA no later than 45 days after the effective date of coverage as described in subsection (5) of this section. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due. If the subscriber's monthly premium and applicable premium surcharges remain unpaid for 60 days from the original due date, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1) (c).

Exception: For a subscriber enrolled in a medicare advantage (MA) or a MA-PD plan a notice will be sent to them notifying them that they are delinquent on their monthly premiums and that the enrollment will be terminated prospectively to the end of the month after the notice is sent.

(5) The effective date of enrollment in PEBB health plan coverage will be the first day of the month following the date the required form is received. If that day is the first of the month, then enrollment begins on that day except for a MA or MA-PD plan which will begin the first day of the month following the signature date on the form.

(6) PEBB health plan coverage may continue unless the subscriber requests to terminate enrollment as described in subsection (8) of

this section, or premiums and applicable premium surcharges are no longer paid as described in subsection (4)(d) of this section. If PEBB health plan coverage is terminated for these reasons, the subscriber and their enrolled dependents will not be eligible to reenroll.

(7) The subscriber enrolled under this section may make enrollment changes on the same terms and conditions as retirees who are eligible for Consolidated Omnibus Budget Reconciliation Act (COBRA) as described in WAC 182-08-185, 182-08-196, 182-08-198, and 182-12-262.

(8) The subscriber enrolled under this section who requests to voluntarily terminate their PEBB health plan coverage must do so in writing. PEBB health plan coverage will end on the last day of the month in which the PEBB program receives the termination request or on the last day of the month specified in the subscriber's termination request, whichever is later. If the termination request is received on the first day of the month, PEBB health plan coverage will end on the last day of the previous month.

Exception: When a subscriber or their dependent is enrolled in a MA or MA-PD plan, then enrollment in PEBB health plan coverage will terminate on the last day of the month when the MA plan disenrollment form is received.

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WSR 23-12-069

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 6, 2023, 7:35 a.m., effective June 9, 2023]

Effective Date of Rule: June 9, 2023.

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 rules have been in effect retroactively to the end date of the Governor's Proclamation 20-18, which had suspended these rules. The department has filed a CR-101 under WSR 21-14-029.

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: June 6, 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.

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WSR 23-12-096
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-92—Filed June 7, 2023, 8:12 a.m., effective June 7, 2023, 8:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational salmon seasons in the Wenatchee River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000B; and amending WAC 220-312-050.

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: Inseason run size forecasts indicate sufficient numbers of both hatchery and wild spring Chinook are available to expand recreational harvest opportunities while remaining within Endangered Species Act (ESA) impact rates on wild fish. This fishery will be monitored closely and could potentially close at any time if ESA impact rates are met, the nontreaty harvest share is met, and/or if additional broodstock are needed.

This rule also corrects the salmon daily limit for the Icicle River, previously set by WSR 23-11-055.

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: June 6, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000C Freshwater exceptions to statewide rules—Eastside. Effective immediately, through June 30, 2023, provisions of WAC 220-312-050 regarding salmon seasons for the Icicle River and Wenatchee River shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) Icicle River (Chelan Co.):

(a) From the closure signs located 800 feet upstream of the mouth of the river to 500 feet downstream from the Leavenworth National Fish Hatchery Barrier Dam:

Effective immediately, through 1 hour after official sunset June 30, 2023: Salmon:

(i) Daily limit 3. Release all salmon other than hatchery Chinook.

(ii) Anglers must retain first 3 hatchery Chinook over 12 inches in length.

(iii) Night closure in effect.

(b) From the shoreline markers where Cyo Road intersects the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation Footbridge (approximately 750 feet upstream from the Snow Lakes trailhead parking area):

Effective immediately, through 1 hour after official sunset June 30, 2023: Salmon:

(i) Daily limit 3. Release all salmon other than hatchery Chinook.

(ii) Anglers must retain first 3 hatchery Chinook over 12 inches in length.

(iii) Night closure in effect.

(2) **Wenatchee River (Chelan Co.)**, from the Hwy. 2 Bridge crossing the Wenatchee River in Leavenworth to the upstream point of the confluence with the Icicle River and from that point to a line perpendicular with the Wenatchee River to the opposite riverbank (adjacent to the Leavenworth Golf Course):

Effective 1 hour before official sunrise June 9, through 1 hour after official sunset June 30, 2023: Salmon:

(a) Daily limit 3. Release all salmon other than hatchery Chinook.

(b) Anglers must retain first 3 legally landed hatchery Chinook over 12 inches in length.

(c) Selective Gear Rules in effect, except use of bait is allowed.

(d) Night closure in effect.

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REPEALER

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

WAC 220-312-05000B Freshwater exceptions to statewide rules—Eastside. (23-70)

WSR 23-12-099
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-91—Filed June 7, 2023, 8:21 a.m., effective June 17, 2023]

Effective Date of Rule: June 17, 2023.

Purpose: The purpose of this emergency rule is to set 2023 coastal recreational salmon seasons.

Citation of Rules Affected by this Order: Amending WAC 220-313-075.

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 purpose of this rule is to open ocean recreational salmon seasons in Marine Areas 1 through 4 in state waters in a manner consistent with federal salmon fishing regulations adopted by the National Marine Fisheries Service (NMFS) in response to actions taken by the Pacific Fishery Management Council (PFMC) to set annual salmon fishery harvest specifications and management measures; this action is intended to achieve regulatory consistency in federal and state waters for the ocean recreational salmon fishery, which operates in both areas.

The ocean recreational salmon fishing seasons are developed and considered through the annual PFMC process, which coincides with the North of Falcon salmon season setting process and is managed under the Pacific Coast Salmon Fishery Management Plan (FMP). By managing this fishery under the FMP, it is required to be consistent with national standard guidelines, which ensure conservation objectives are achieved as well as long-term fishery sustainability, and that the social and economic needs of fishing communities are taken into account.

Because the ocean recreational salmon fishery occurs in Pacific Ocean waters across multiple jurisdictions (states of Washington and Oregon, tribal, and federal), developing and considering ocean recreational salmon season options through PFMC ensures that fishing regulations are developed in a comprehensive, coordinated manner. Having consistent regulations in state and federal waters also promotes compliance with and enforcement of fishing regulations, particularly as anglers often fish in both state and federal waters on the same fishing trip.

While these regulations are being adopted through an emergency rule, the seasons described in these rules were developed and considered through an extensive open public process, which began early in 2023. The process includes multiple opportunities for public engagement; throughout the course of a three-month process the public may: Submit written comments, provide testimony at the March and/or April PFMC meetings, attend public hearings held in each west coast state, or provide comment through representation on the PFMC's salmon advisory subpanel.

Following the April PFMC meeting, when these seasons were adopted, PFMC formally transmitted these regulations to NMFS for consistency determination. This transmittal occurred on April 18, 2023, and

the NMFS final rule that opened this fishery was published on May 11, 2023. There was insufficient time for the Washington department of fish and wildlife to adopt consistent regulations through the permanent rule-making 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 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: June 6, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500G Pacific Ocean Salmon—Seasons—Closed areas.

Effective June 17, through October 7, 2023, the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

(1) **Catch Record Card Area 1:** Open June 24, through September 30, 2023:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(2) **Catch Record Card Area 2:** Open June 24 through September 30, 2023:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(e) June 24, through September 30, 2023, the Grays Harbor Control Zone is open. See WAC 220-306-040.

(3) **Catch Record Card Area 3:**

(a) Open June 17, through September 30, 2023:

- (i) Daily limit of 2 salmon; no more than one may be a Chinook.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.
- (v) Release chum beginning August 1.

(b) Open October 3 through October 7, 2023, only in the area north of 47°50'00 N. lat. and south of 48°00'00"N. lat.:

- (i) Daily limit 1 Chinook salmon only.

(ii) Release all salmon except Chinook.

(iii) Chinook minimum length 24 inches.

(4) **Catch Record Card Area 4:**

(a) Open June 17, through September 30, 2023:

(i) Daily limit of 2 salmon; no more than one may be a Chinook.

(ii) Release wild coho.

(iii) Chinook minimum length 24 inches.

(iv) Coho minimum length 16 inches.

(v) No chinook retention in waters east of the Bonilla-Tatoosh line beginning August 1.

(vi) Release chum salmon beginning August 1.

(b) Waters east of a true north-south line through Sail Rock are closed through July 31.

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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.

WSR 23-12-100
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-93—Filed June 7, 2023, 8:27 a.m., effective June 16, 2023]

Effective Date of Rule: June 16, 2023.

Purpose: The purpose of this emergency rule is to set summer salmon and steelhead seasons for the Hanford Reach area and lower Columbia River.

Citation of Rules Affected by this Order: 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 action applies summer fishery regulations developed through the 2023 North of Falcon season setting process and is consistent with comanager agreements. The Endangered Species Act (ESA) impacts and allowable harvest allocations are available to recreational fisheries in order to access salmon and steelhead. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. The general public welfare is protected with the immediate opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

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 *U.S. 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. There is insufficient time to promulgate 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: June 7, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia River. Effective June 16 through July 31, 2023, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge to Priest Rapids Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From the Megler-Astoria Bridge upstream to The Dalles Dam: Salmon and steelhead:

Effective June 16 through July 31, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye and hatchery steelhead.

(2) From The Dalles Dam upstream to a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington southern shore located approximately 200' above the fish ladder exit: Salmon and steelhead:

Effective June 16, 2023, until further notice: Closed to fishing for and retention of salmon and steelhead.

(3) From a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington south shore located approximately 200' above the fish ladder exit upstream to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

Effective June 16 through July 31, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Re-

lease all salmon and steelhead other than hatchery Chinook, sockeye and hatchery steelhead.

(4) From Columbia Point (approximately 1/3 mile downstream of I-182 Bridge) upstream to I-182 Bridge: Salmon:

(a) Effective June 16 through July 15, 2023: Closed to angling from a floating device or by any method except hand-cast lines from the west shore (Richland side of the river).

(b) Effective June 16 through July 15, 2023: Daily limit 6, no more than 2 adult salmon may be retained. Release all salmon and steelhead other than hatchery Chinook and sockeye.

(5) From I-182 Bridge upstream to Priest Rapids Dam: Salmon:

Effective June 16 through July 31, 2023: Daily limit 6, no more than 2 adult salmon may be retained. Release all salmon and steelhead other than hatchery Chinook and sockeye.

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WSR 23-12-111

EMERGENCY RULES

DEPARTMENT OF COMMERCE

[Filed June 7, 2023, 11:01 a.m., effective June 7, 2023, 11:01 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 a 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.

Date Adopted: June 7, 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 Z4.6.

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 Z4.6.

- 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 Z4.6.

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 Z4.6.1 and Z4.6.2 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.

Z5.1 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.

Z5.2 Notice of violation and opportunity to correct (NOVC) (first notice).

Z5.2.1 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.

Z5.2.2 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 (Z5.7), 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 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 reviewed; 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) ($\text{KBtu}/\text{ft}^2 \text{ yr}$) based on completed Z6.2 Form B;
 - b. Measured site EUI (KBtu/ft^2) for the compliance year for this building based on Z6.3 Form C;
 - c. Measured weather normalized site EUI (KBtu/ft^2) 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:
 - a. Signature of building owner:
 - Date:
 - b. Signature of qualified person:
 - Date:

- c. Signature of energy manager:
 - Date:
- d. 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:

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. 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.
3. The gross floor area in square feet shall be reported as defined in Section 3.
4. 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.
5. Fill in fraction of gross floor area (A)_i for each activity. For single-activity buildings this is 1.0.
6. Fill in the operating shifts normalization factor (S)_i from Table 7-3 for each activity that has an area entered from Step 6.
7. Fill in the activity energy target (EUI_{t1})_i from Table 7-2 (or table from AHJ) for each activity that has an area entered from Step 6.
8. Calculate weighted space EUJ target ($A \times S \times EUI_{t1}$)_i for each activity that has an area entered from Step 6.
9. 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.
10. 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). 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 (ft²);
- Property GFA - EPA calculated (buildings and parking) (ft²);
- Property GFA - EPA calculated (buildings) (ft²);
- Property GFA - EPA calculated (parking) (ft²);
- Largest property use type;
- Largest property use type - Gross floor area (ft²);
- 2nd Largest property use type;
- 2nd Largest property use - Gross floor area (ft²);
- 3rd Largest property use type;
- 3rd Largest property use type - Gross floor area (ft²);
- 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 ft²;
- 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/ft²);
- Weather normalized site energy use (kBtu);
- Weather normalized site EUI (kBtu/ft²);
- Weather normalized site electricity (kWh);
- Weather normalized site electricity intensity (kWh/ft²);
- Weather normalized site natural gas use (therms);
- Weather normalized site natural gas intensity (therms/ft²) 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 cash 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**

| No. | Building Activity Type ^{1,2} | | | Notes |
|-----|---------------------------------------|---------------------------------------|--------------------------|-------|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | |
| 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 | |
| 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 | |

| No. | Building Activity Type ^{1,2} | | | Notes |
|-----|---------------------------------------|--|-----------------------------|-------|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | |
| 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 | |
| 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 | | |

| No. | Building Activity Type ^{1,2} | | | Notes |
|-----|---------------------------------------|---|-----------------------------|-------|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | |
| 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_t) (I-P Units)

| No. | Building Activity Type ^{1,2} | | | Notes | Climate Zone 4C | Climate Zone 5B |
|-----|---------------------------------------|--------------------------------|--------------------------|-------|-----------------------|-----------------------|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | | EUI _t | EUI _t |
| 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 |
| 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 |

| | Building Activity Type ^{1,2} | | | | Climate Zone 4C | Climate Zone 5B |
|-----|---------------------------------------|--|-------------------------------|-------|-----------------------|-----------------------|
| No. | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | Notes | EUI _t | EUI _t |
| 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 | | |
| 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 |

| No. | Building Activity Type ^{1,2} | | | Notes | Climate Zone 4C | Climate Zone 5B |
|-----|---------------------------------------|--|--------------------------------|-------|-----------------------|-----------------------|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | | EUI _t | EUI _t |
| 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 |
| 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 |

| No. | Building Activity Type ^{1,2} | | | Notes | Climate Zone 4C | Climate Zone 5B |
|-----|---------------------------------------|---|------------------------------|-------|------------------|------------------|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | | EUI _t | EUI _t |
| 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 ^{1,2} | | | Notes | Weekly Hours ^{1,2} | | |
|-----|---------------------------------------|-----------------------------|---------------------|-------|-----------------------------|-----------|-----|
| | 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 |

| No. | Building Activity Type ^{1,2} | | | Notes | Weekly Hours ^{1,2} | | |
|-----|---------------------------------------|---|--------------------------|-------|-----------------------------|-----------|-----|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | | 50 or less | 51 to 167 | 168 |
| 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 |
| 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 |

| No. | Building Activity Type ^{1,2} | | | Notes | Weekly Hours ^{1,2} | | |
|-----|---------------------------------------|--|----------------------------|-------|-----------------------------|-----------|-----|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | | 50 or less | 51 to 167 | 168 |
| 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 |
| 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 |

| No. | Building Activity Type ^{1,2} | | | Notes | Weekly Hours ^{1,2} | | |
|-----|---------------------------------------|---------------------------------------|-----------------------------|-------|-----------------------------|-----------|-----|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | | 50 or less | 51 to 167 | 168 |
| 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 |
| 95 | Retail | Strip Mall | | | | | |
| 96 | Retail | Supermarket/Grocery Store | | 4 | 0.5 | 0.9 | 1.3 |

| No. | Building Activity Type ^{1,2} | | | Notes | Weekly Hours ^{1,2} | | |
|-----|---------------------------------------|---|---------------------------------|-------|-----------------------------|-----------|-----|
| | Portfolio Manager Types | Portfolio Manager Sub-Types | Sub-Types: Detailed | | 50 or less | 51 to 167 | 168 |
| 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.]

Reviser's note: The brackets and enclosed material in the text of 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.