

ERRATUM

Due to an inadvertent clerical error the published version of WSR 17-05-055 incorrectly stated that the document was filed on February 9 when it was actually filed on February 10. The corrected form including the correct filing and effective dates are shown below.

WSR 17-05-055
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed February 10, 2017, 12:29 p.m., effective February 10, 2017, 12:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The WAC needs to be amended to implement Title V, Sec. 5007 the 21st Century Cures Act to allow for a person to create his or her own D4A special needs trust. The agency also needs to revise references to incorrect WAC citations in WAC 182-516-0100.

Citation of Existing Rules Affected by this Order: Amending WAC 182-516-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 21st Century Cures Act, Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts (Section 1917 (d)(4)(A) of the Social Security Act/42 U.S.C. 1396p (d)(4)(A)).

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

Reasons for this Finding: To incorporate changes prompted by Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts of the 21st Century Cures Act, signed on December 13, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 10, 2017.

Wendy Barcus
Rules Coordinator

WSR 17-06-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-29—Filed February 15, 2017, 12:53 p.m., effective March 1, 2016]

Effective Date of Rule: March 1, 2016.

Purpose: Amends recreational salmon rules for the Lewis River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-185.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 preseason forecast is for a return of seven hundred adult spring chinook to the Lewis River in 2017 compared to a hatchery escapement goal of approximately one thousand three hundred fifty fish. The closure is necessary to provide the hatchery with as many returning fish as possible to minimize the shortfall. 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 15, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500N Southwest Washington—Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 220-310-185, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

Lewis River (Clark/Cowlitz counties): Effective March 1, 2017 until further notice, all chinook must be released from the mouth upstream to the overhead powerlines below Merwin Dam.

WSR 17-06-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-32—Filed February 16, 2017, 3:48 p.m., effective February 16, 2017, 3:48 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational razor clam rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000B; and amending WAC 220-56-360.

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 3, 4 and 5. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 16, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-56-36000B Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. February 23, 2017 through 11:59 p.m. February 28, 2017, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. February 24, 2017 through 11:59 p.m. February 26, 2017, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. February 24, 2017 through 11:59 p.m. February 26, 2017, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) It is unlawful to dig for razor clams at any time in the Copalis Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 1, 2017:

WAC 220-56-36000B Razor clams—Areas and seasons.

WSR 17-06-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-31—Filed February 17, 2017, 12:06 p.m., effective March 11, 2017]

Effective Date of Rule: March 11, 2017.

Purpose: Amend recreational fishing rules for bottomfish.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-235 and 220-56-250.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: These emergency rules are necessary to keep recreational catch within federal harvest limits and to conform to rules already approved by the National Marine Fisheries Service (NMFS). The Pacific Fishery Management Council adopted changes to the recreational bottomfish harvest limits and fishing regulations for the Washington coast as part of its management process for the 2017 and 2018 bottomfish seasons. 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 17, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-23500G Possession limits—Bottomfish.

Notwithstanding the provisions of WAC 220-56-235, effective immediately until further notice, it is unlawful to violate the following provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) Coastal (Catch Record Card Areas 1 through 3 and Marine Area 4 (west of the Bonilla-Tatoosh line): Limit 9 fish total, of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod: 2 fish in Catch Record Card Areas 1 through 3 and Marine Area 4 (west of the Bonilla-Tatoosh line).

(b) Rockfish: 7 fish in aggregate which can include up to one canary rockfish in Catch Record Card Areas 1 and 2. The possession limit for yelloweye rockfish is 0.

Reviser's note: The spelling 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.

NEW SECTION

WAC 220-56-25000A Lingcod—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-250, effective immediately until further notice, it is unlawful to violate the following provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) Catch Record Card Areas 1 through 3: Open the second Saturday in March, 2017, until further notice.

(2) It is unlawful to fish for, retain, or possess lingcod in Catch Record Card Area 1 seaward of a line extending from 46°38.17'N. lat., 124°21.00'W. long. to 46°33.00'N. lat., 124°21.00'W. long. year-round.

**WSR 17-06-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-34—Filed February 21, 2017, 3:18 p.m., effective February 25, 2017, 8:00 a.m.]

Effective Date of Rule: February 25, 2017, 8:00 a.m.

Purpose: Amend recreational smelt fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-27000N; and amending WAC 220-56-270.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Sets a limited sport fishery for eulachon smelt. The regulations are consistent with a reduced Level One fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. Returns of eulachon to the Columbia River have improved since 2010. The modest return expected in 2017 has been substantiated by results from the ongoing research test fishery in the mainstem Columbia River. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. National Oceanic Atmospheric Administration Fisheries concurs that the limited fishery is consistent with recovery of eulachon smelt. 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 21, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-27000N Smelt—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240, WAC 220-56-265, and WAC 220-56-275, it is unlawful to fish for or possess eulachon smelt in those waters of the Columbia River and Washington tributaries except as provided below:

Open Dates: Saturday February 25, 2017.

Hours: 8:00 a.m. to 1:00 p.m. (5-hour period).

Open Area: Cowlitz River (bank only) from the HWY 432 Bridge upstream to the Al Helenberg Memorial Boat Ramp located approximately 1,300 feet upstream of the HWY 411/A Street Bridge in Castle Rock.

Daily limit: 10 pounds. Possession limit equal to one daily limit.

Gear: Dip net.

REPEALER

The following section of the Washington Administrative Code is repealed effective 1:01 p.m. February 25, 2017:

WAC 220-56-27000N Smelt—Areas and seasons.

WSR 17-06-023
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed February 22, 2017, 10:48 a.m., effective February 22, 2017, 10:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is creating new WAC 182-546-4600 for ambulance transportation for involuntary substance use disorder treatment as directed by the Washington state legislature in E3SHB 1713, also known as the Ricky Garcia Act.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1713, chapter 29, Laws of 2016 1st sp. sess.

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

Reasons for this Finding: Directed by the Washington state legislature to implement under E3SHB 1713, this continues the emergency rule filed under WSR 16-22-031. The agency continues to work with stakeholders to refine the rule text. This work overlapped with current rule making to chapter 182-526 WAC. Work on chapter 182-526 WAC has stalled. Therefore, the agency decided the permanent rule making for WAC 182-546-4600 must no longer be delayed. The review processes have begun for the permanent rule.

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 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 1, 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: February 22, 2017.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-546-4600 Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act. (1) Definitions. For the purposes of this section,

the following definitions and those found in chapter 182-500 WAC apply:

(a) **"Behavioral health organization (BHO)"** - See WAC 182-500-0015.

(b) **"Designated chemical dependency specialist"** means a person appointed by the behavioral health organization (BHO) or by the BHO-designated county substance use disorder treatment program coordinator to perform the duties specified in this section.

(c) **"Detention" or "detain"** means the lawful confinement of a person, under the provisions of this chapter.

(d) **"Evaluation and treatment facility"** means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to people suffering from a mental disorder, and which is certified as such by the department of social and health services (DSHS). DSHS may certify single beds as temporary evaluation and treatment beds under RCW 71.05.-745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, DSHS or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility under this chapter.

(e) **"Gravely disabled"** means that a person experiences a loss of cognition or control over the person's actions, is not receiving care essential for the person's health or safety, and is in danger of serious physical harm.

(f) **"Involuntary Treatment Act"** means, for adults, chapter 71.05 RCW; for juveniles, chapter 71.34 RCW. See also chapter 388-865 WAC.

(g) **"Less restrictive alternative treatment"** means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585.

(h) **"Nearest and most appropriate destination"** means the nearest facility able and willing to accept the involuntarily detained person for treatment, not the closest facility based solely on driving distance.

(2) The Medicaid agency pays for transportation services for a person detained for involuntary chemical dependency treatment when the following apply:

(a) The person has been assessed by a designated chemical dependency specialist and found to be:

- (i) A danger to self;
- (ii) A danger to others;
- (iii) Gravely disabled as a result of chemical dependency.

(b) The transportation is from:

- (i) The site of the initial detention;
- (ii) An evaluation and treatment facility designated by DSHS; or
- (iii) A court hearing.

(c) The transportation is to:

- (i) An evaluation and treatment facility;
- (ii) A less restrictive alternative setting, except when ambulance transport to a client's home is not covered; or
- (iii) A court hearing.

(d) The transportation is provided by a qualified transportation provider. The qualified transportation provider must:

(i) Be substance use disorder treatment provider designated as such by:

- (A) The local community mental health center; or
- (B) The BHO.

(ii) Comply with DSHS requirements for drivers, driver training, vehicle and equipment standards and maintenance.

(3) The transportation must be to the nearest and most appropriate destination. The reason for the diversion to a more distant facility must be clearly documented in the person's file.

(4) The designated chemical dependency specialist authorizes the level of transportation provided to and from covered facilities based on the person's need. A copy of the agency's Authorization for Substance Use Disorder (SUD) Ambulance Transportation form by the designated chemical dependency specialist must be kept in the person's file.

(5) The DSHS chemical dependency division establishes payment for substance use disorder transportation. Providers must clearly identify Involuntary Treatment Act transportation on the claim form when submitting claims to the agency.

WSR 17-06-025

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-35—Filed February 22, 2017, 1:53 p.m., effective February 22, 2017, 1:53 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100K and 220-32-05100L; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Extends the treaty winter fishery in The Dalles and John Day pools. The Columbia River

treaty tribes have delayed the use of gillnets in SMCRA 1F, however sales of fish caught with platform/hook and line gear in that area is allowed (as described in subsection (2)(c)). Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 31, February 7, 14, and 21, 2017. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, 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 2008-2017 *U.S. v. Oregon* Management Agreement.

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

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

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

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

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

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

Date Adopted: February 22, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100L Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G and 1H (The Dalles Pool and John Day Pool):

Season: Immediately through 6:00 p.m. March 01, 2017

(a) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(b) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.

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

(a) Season: Immediately through 6:00 p.m. March 21, 2017.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon from 43-54 inches caught in the John Day and Dalles pools may be sold only if caught during open commercial gillnet periods for that pool. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam. (17-30)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2017:

WAC 220-32-05100L Columbia River salmon seasons above Bonneville Dam.

WSR 17-06-031
EMERGENCY RULES
BIG BEND
COMMUNITY COLLEGE

[Filed February 23, 2017, 12:49 p.m., effective February 23, 2017, 12:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On December 1, 2016, the court of appeals of the state of Washington Division III filed an opinion regarding full adjudicative proceedings required by the Washington Administrative Procedure Act (APA), chapter 34.05 RCW in the *Arishi v. Washington State University* case (No. 33306-0-III). Big Bend Community College (BBCC) currently provides a full adjudicative process in situations where a student is alleged to have violated the standards of conduct for students and suspension of more than ten instructional days or dismissal/expulsion might be a result and also for all allegations of student sexual misconduct; however, BBCC will provide additional clarification regarding the adjudicative process and incorporate language from the APA and model rules of procedure (chapter 10-08 WAC) in its student conduct code WAC to ensure compliance with the court of appeals decision. Further clarification regarding the equal rights of a complainant in sexually violent conduct complaints will also be added for compliance with Title IX guidance from the United States Department of Education's Office for Civil Rights.

Citation of Existing Rules Affected by this Order: Amending WAC 132R-04-067 Appeal from disciplinary action, 132R-04-130 Student disciplinary committee process, and 132R-04-150 Appeal from student disciplinary committee initial order.

Statutory Authority for Adoption: RCW 28B.50.140.

Other Authority: Chapter 34.05 RCW, APA.

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

Reasons for this Finding: The reason for this finding is that on December 1, 2016, the court of appeals of the state of Washington Division III filed an opinion regarding full adjudicative proceedings required by the APA, chapter 34.05 RCW in the *Arishi v. Washington State University* case (No. 33306-0-III) in order to be in full compliance with this decision some amendments are necessary.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 17, 2017.

Dawna L. Haynes
Dean of Students

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-067 Appeal from disciplinary action.

(1) The respondent may appeal the results of a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty days of service of the discipline order. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's order shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student disciplinary committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) In the event of a conflict between this student conduct code and the Administrative Procedure Act, chapter 34.05 RCW, ((governs committee proceedings and controls in the event of any conflict with these rules)) this student conduct code will govern.

(6) The college hereby adopts the Model rules of procedure, chapter 10-08 WAC, by reference. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(7) Imposition of discipline for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(8) The student disciplinary committee shall hear ~~((appeals from))~~ the following cases as fully adjudicated proceedings:

(a) Appeals from suspensions in excess of ten instructional days;

(b) Appeals from dismissals; ~~((and))~~

(c) Discipline cases referred to the committee by the student conduct officer; and

(d) Cases in which students request to have their discipline case heard by the committee.

(9) Student conduct appeals involving the following disciplinary actions shall be heard as brief adjudicative proceedings:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Reprimands; and any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-130 Student disciplinary committee process. (1) Student disciplinary committee process.

The student conduct administrative panel will conduct full adjudicative proceedings in accordance with the provisions of this Standards of Conduct for Students Code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC) including a hearing, determination of findings, conclusions, and sanctions. To the extent there is a conflict between the conduct code and the model rules, this student conduct code shall control.

(a) The committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. ~~((To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.))~~ The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause.

(b) The committee chair is authorized to conduct pre-hearing conferences and/or to make prehearing decisions concerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

(c) Upon request filed at least five days before the hearing by either party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present in their respective cases. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, unless the party can show good cause for such failure.

(d) The committee chair may provide to the committee members in advance of the hearing copies of (i) the conduct officer's notification of imposition of discipline (or referral to the committee) and (ii) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(e) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(f) The vice president of instruction and student services (or designee) shall provide reasonable assistance to the respondent, upon request, in obtaining relevant and admissible evidence that is within the college's control.

(g) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate; any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(h) ~~((Each party))~~ Both parties may be accompanied at the hearing by a nonattorney assistant of ~~((his or her))~~ their choice. ~~((A))~~ Respondents may elect to be represented by an

attorney at ~~((his or her))~~ their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(i) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings.

(2) Student disciplinary committee hearings - Presentation of evidence.

(a) Upon the failure of any party to attend or participate in a hearing, the committee may either (i) proceed with the hearing and issuance of its order or (ii) serve an order of default in accordance with RCW 34.05.440. If an accused student, with notice, does not appear before a student conduct administrative panel hearing, the information in support of the complaint is presented and considered in the absence of the accused student.

(b) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings should be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(c) The chair shall cause the hearing to be recorded by a method that ~~((he or she))~~ the chair selects, in accordance with RCW 34.05.449. Panel deliberations are not recorded. That recording, or a copy, is property of the college, but shall be made available to the respondent upon written request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by the respondent. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(d) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee, and make rulings on the admissibility of evidence, motions, objections, and on challenges to the impartiality of board members, unless a hearing examiner is appointed as provided below. These rulings shall be made on the record. The Washington rules of evidence shall serve as guidelines for those rulings on the admissibility of evidence. Questions related to the order of the proceedings are also determined by the student conduct administrative panel chair.

(e) The vice president of ~~((instruction))~~ learning and student ~~((services))~~ success or a designee (unless represented by an assistant attorney general) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.

(f) All testimony shall be given under oath or affirmation. The panel chair determines which records, exhibits, and written statements may be accepted as information for consideration by the panel. These rulings shall be made on the record. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(g) The president of the college or designee, the chair of the student conduct administrative panel, the administrators assigned to the student conduct administrative panel, deans, and/or the student conduct officer have the authority to issue subpoenas.

(h) The accused student and the student conduct officer may arrange for witnesses to present pertinent information to the student conduct administrative panel. The accused students are responsible for informing their witnesses of the time and place of the hearing.

(i) The panel chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means. In making such accommodations, the rights of the other parties must not be prejudiced and must have the opportunity to participate effectively in, to hear, and, if technically economically feasible, to see the entire proceeding while it is taking place.

(j) At the conclusion of the hearing, the panel shall permit the parties to make closing arguments in whatever form it wishes to receive them. The panel may also permit each party to propose findings, conclusions, and/or an order for its consideration.

(3) Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial discipline action and to appeal the student conduct officer's disciplinary order.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct. In such cases, these procedures shall supplement the student disciplinary procedures. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

(4) Supplemental definitions. For purposes of student conduct code proceedings involving sexual misconduct, the following definitions apply:

(a) The "complainant" is the alleged victim of sexual misconduct. Complainant also refers to the college when the college files the complaint.

(b) "Sexual misconduct" is a sexual or gender-based violation of the student conduct code including, but not limited to:

(i) Sexual activity for which clear and voluntary consent has not been given in advance;

(ii) Sexual activity with someone who is incapable of giving valid consent because of being, for example, ~~((she or he is))~~ underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(iii) Sexual harassment;

(iv) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking;

(v) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual

recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

(5) **Supplemental complaint process.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(a) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(b) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(c) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(d) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(e) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of ~~((his or her))~~ their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

(f) Hearings involving sexual misconduct allegations shall be closed to the public, unless accused student and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, accused student and their respective attorney representatives may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct administrative panel.

(g) The complainant has the right to appeal an order of the student conduct administrative panel consistent with WAC 132R-04-150. In the event of an appeal by the accused student or complainant, the chief student conduct officer shall provide a copy of the appeal to the nonappealing party. The complainant and accused student have the right to be accompanied by an advisor of their choosing during the appeal process at their own expense, but will be deemed to have waived that right unless they file a written notice of the attorney's

identity and participation within four business days before the hearing with the chief student conduct officer.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-150 Appeal from student disciplinary committee initial order. (1) Appeal from student disciplinary committee initial order.

(a) A respondent who is aggrieved by the findings or conclusions issued by the student disciplinary committee may appeal the committee's initial order to the president by filing a notice of appeal with the president's office within twenty days of service of the committee's initial order.

(b) The notice of appeal must assign error to specific findings of fact and/or conclusions of law in the initial order and must contain argument regarding why the appeal should be granted. The president's review on appeal shall be limited to a review of those issues and arguments raised in the notice of appeal. Review shall be restricted to the record created below.

(c) The president shall provide a written order to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final.

(d) The president may ~~((at his or her))~~ exercise discretion ~~((:))~~ to suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(e) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

(2) Supplemental appeal rights for sexual misconduct cases.

(a) In addition to the appeal rights provided to the respondent above, a complainant may also appeal the following actions by the student conduct officer ~~((may be appealed by the complainant))~~:

(i) The dismissal of a sexual misconduct complaint; or

(ii) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(b) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty days of service of the notice of the discipline decision provided for in WAC 132R-04-140. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(c) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal, and provide the complainant an opportunity to intervene as a party to the appeal.

(d) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(e) Respondents and complainants shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be

represented at the hearing by an attorney at ~~((his or her))~~ their own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(f) During the proceedings, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the chair, who will act as an intermediary and pose questions on the parties' behalf.

(g) Hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(h) The student conduct committee will serve complainant a written notice indicating that an initial order has issued on the same date that the initial order is served on respondent. This notice shall inform the complainant whether the sexual misconduct allegations were found to have merit and describe any sanctions and/or conditions imposed upon the respondent for complainant's protection. The notice shall also provide directions on how the complainant can appeal the decision to the president.

(i) Complainant may appeal the student conduct committee's initial order to the president subject to the same procedures and deadlines applicable to other parties.

(j) The president will serve complainant a written notice indicating that the appeal has been resolved on the same date that the final order is served upon the respondent. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

96-211, 388-96-218, 388-96-505, 388-96-525, 388-96-534, 388-96-542, 388-96-556, 388-96-560, 388-96-580, 388-96-585, 388-96-709, 388-96-710, 388-96-713, 388-96-758, 388-96-781, 388-96-782, and 388-96-901.

Statutory Authority for Adoption: RCW 74.46.800, 74.46.561(1).

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

Reasons for this Finding: The statute has a deadline for the new rules of July 1, 2016. Permanent rules are currently under development with stakeholder involvement.

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 22, Repealed 24.

Number of Sections Adopted at 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 22, Repealed 24.

Date Adopted: February 16, 2017.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 17-07 issue of the Register.

WSR 17-06-036

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 24, 2017, 8:29 a.m., effective February 24, 2017]

Effective Date of Rule: February 24, 2017.

Purpose: The department is amending these rules to implement the nursing facility methodology changes from SHB 1274, found in chapter 2, Laws of 2015 2nd sp. sess.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-96-540, 388-96-552, 388-96-553, 388-96-554, 388-96-558, 388-96-559, 388-96-561, 388-96-562, 388-96-564, 388-96-565, 388-96-572, 388-96-574, 388-96-708, 388-96-744, 388-96-746, 388-96-747, 388-96-748, 388-96-759, 388-96-762, 388-96-767, 388-96-776, 388-96-783, 388-96-784 and 388-96-786; and amending WAC 388-96-010, 388-96-022, 388-96-107, 388-96-205, 388-96-208, 388-

WSR 17-06-037

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-36—Filed February 24, 2017, 9:00 a.m., effective March 1, 2017]

Effective Date of Rule: March 1, 2017.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000K; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Sets the 2017 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to the Oregon/Washington border. The regulation allows for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery Chinook. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. 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. Regulation is consistent with compact action of February 23, 2017.

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 federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, 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 treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. 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, the 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 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: February 24, 2017.

Ron Warren
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-2000K Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective March 1 through April 6, 2017

(a) Open for fishing for salmonids and shad. From a true north-south line through Buoy 10 upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse #2.

(b) Closed to fishing from boats upstream of Beacon Rock (defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock).

(c) No angling is allowed within a closure area near the mouth of the Lewis River. This closure area is defined as: A line from a marker on the lower end of Bachelor Island through USCG buoy Red #4 to the Oregon shore, downstream to a line from the lower (north) end of Sauvie Island across the Columbia River to the downstream range marker (0.7 miles downstream of the Lewis River) and continuing along the wing jetty to the Washington shore.

(d) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(e) Release all wild Chinook and wild steelhead.

(f) Salmon minimum size is 12 inches.

(2) Effective March 16 through May 5, 2017:

(a) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

- (b) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.
- (c) Release all wild Chinook and wild steelhead.
- (d) Salmon minimum size is 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 6, 2017:

WAC 220-310-20000K Exceptions to statewide rules—
Columbia River.

WSR 17-06-043**EMERGENCY RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed February 24, 2017, 3:03 p.m., effective February 24, 2017, 3:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These revisions are necessary to comply with recent state appellate court authority indicating that we must offer a full adjudicative hearing if a sanction could lead to suspension, expulsion or if charges were filed for felony level sexual misconduct. Other procedural changes were made to comply with the requirements of a full adjudicative hearing. The dean is given primary responsibility for the academic integrity programs and the vice provost's responsibility was removed.

Citation of Existing Rules Affected by this Order: Amending WAC 172-90-010, 172-90-020, 172-90-100, 172-90-120, 172-90-140, 172-90-160, 172-90-170, 172-90-180, and 172-90-200.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Reasons for this Finding: Per the court of appeals decision in *Arishi v. Washington State University* any student conduct code that is not a full adjudicative proceeding, when there is a potential sanction of suspension, expulsion or there are felony level sexual misconduct charges filed, is a violation. The decision invalidated portions of our current conduct code, this emergency rule is to bring our student conduct code into compliance.

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 3, Repealed 0.

Number of Sections Adopted at 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 6, Repealed 0.

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

Date Adopted: February 24, 2017.

Chelsea Lamberson
Title IX Coordinator
University Compliance
and Policy Administrator

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-010 General. These rules establish standards for student academic integrity at Eastern Washington University (EWU). EWU expects the highest standards of academic integrity of its students. Academic integrity is the responsibility of both students and instructors. The university supports the instructor in setting and maintaining standards of academic integrity. Academic integrity is the foundation of a fair and supportive learning environment for all students. Personal responsibility for academic performance is essential for equitable assessment of student accomplishments. Charges of violations of academic integrity are reviewed through a process that allows for student learning and impartial review.

These rules apply to all EWU instructors, staff, and students admitted to the university, including conditional or probationary admittance, and to all departments and programs, in all locations, including online. These rules provide procedures for resolving alleged violations by students. All academic integrity proceedings are brief adjudicative proceedings and shall be conducted in an informal manner. If the potential sanction for a violation of this policy is a suspension or expulsion, the academic integrity board will refer the matter for a full adjudicative proceeding under the Student conduct code, chapter 172-121 WAC, as detailed below in WAC 172-90-100, 172-90-160, and 172-90-170.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-020 Responsibilities. (1) (~~Vice provosts: The vice provosts responsible for undergraduate and graduate education, or their designees, have primary responsibility~~) Dean: The dean of the university is primarily responsible for the university academic integrity program. The (~~vice provosts~~) dean shall:

- (a) Oversee the academic integrity program;
- (b) Appoint the chair and members of the academic integrity board (AIB);
- (c) Maintain a system for academic integrity reporting and recordkeeping;
- (d) Serve as the final authority in administering the academic integrity program;
- (e) Maintain all academic integrity records per Washington state records retention standards;
- (f) Coordinate academic integrity training for instructors and students, as needed or requested; and
- (g) Develop and/or facilitate development of academic integrity program support resources, including guides, proce-

dures, web presence, training materials, presentations, and similar resources.

Throughout this chapter and unless otherwise stated, the term "~~((vice provost)) dean,~~" ~~((when used in the singular,))~~ shall mean the ~~((vice provost)) dean~~ who is handling the academic integrity case or their designee.

(2) Academic integrity board (AIB): The academic integrity board is a standing committee of the faculty organization. The academic integrity board is responsible for administering and managing academic integrity functions.

(a) The AIB shall:

(i) Promote academic integrity at EWU;

(ii) Review academic integrity cases, make determinations as to whether a violation occurred, and impose academic and/or institutional sanctions;

(iii) Conduct academic integrity board hearings;

(iv) Assist ~~((vice provosts)) dean~~ in development of academic integrity program support resources;

(v) Respond, as appropriate, to campus needs related to the academic integrity program;

(vi) Coordinate AIB activities with the ~~((vice provosts)) dean~~; and

(vii) Continually assess academic integrity process outcomes to ensure equitability of sanctions vis-à-vis violations.

(b) The AIB is appointed by the ~~((vice provosts jointly)) dean~~, based on recommendations from represented groups (e.g., colleges, library, ASEWU). Board composition or membership may be modified to support university needs with the consent of the ~~((vice provosts)) dean~~ and approval of the provost. At a minimum, AIB membership will include:

(i) Two members from each college, one primary and one alternate. Both must hold or have held instructor rank. The primary and alternate must be from different academic departments. The alternate shall serve when a case involves an instructor in the primary member's own department. The alternate may also serve when the primary member is not available. One of the primary members shall also be designated as vice chair.

(ii) One member representing EWU libraries.

(iii) One student member representing ASEWU.

(iv) One chair (does not vote except to break a tie).

(c) The AIB holds regular meetings every two weeks at fixed times and reviews cases at these meetings. The AIB also conducts AIB hearings, as needed, for academic integrity cases involving possible sanctions of suspension or expulsion. AIB reviews and hearings are held in abeyance during holidays, academic breaks, and other times when no classes are scheduled. AIB reviews and hearings may be canceled in other circumstances with the consent of the AIB chair. Any member who is unavailable shall inform the AIB chair who will arrange for a replacement.

(d) A quorum shall consist of three voting members plus the chair or vice chair.

(3) Instructors shall:

(a) Know and follow the academic integrity rules and policies of the university;

(b) Include, in each course syllabus, a reference to university academic integrity standards and a clear statement that suspected violations will be handled in accordance with those standards;

(c) Hold students responsible for knowing these rules;

(d) Foster an environment where academic integrity is expected and respected;

(e) Endeavor to detect and properly handle violations of academic integrity; and

(f) Support and comply with the determinations of the AIB and the ~~((vice provost)) dean~~.

(4) Students shall:

(a) Demonstrate behavior that is honest and ethical in their academic work; and

(b) Know and follow the academic integrity rules and policies of the university.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-100 Violations and sanctions. (1) **Violations:** Violations of academic integrity involve the use or attempted use of any method or technique enabling a student to misrepresent the quality or integrity of any of his or her work. Violations of academic integrity include, but are not limited to:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) **Classes of violations:**

(a) Class I violations are acts that are mostly due to ignorance, confusion and/or poor communication between instructor and class, such as an unintentional violation of the class rules on collaboration. Sanctions for class I offenses typically include a reprimand, educational opportunity, and/or a grade penalty on the assignment/test.

(b) Class II violations are acts involving a deliberate failure to comply with assignment directions, some conspiracy and/or intent to deceive, such as use of the internet when prohibited, fabricated endnotes or data, or copying answers from another student's test. Sanctions for class II offenses typically include similar sanctions as described for class I violations, as well as a course grade penalty or course failure.

(c) Class III violations are acts of violation of academic integrity standards that involve significant premeditation, conspiracy and/or intent to deceive, such as purchasing or selling a research paper. Sanctions for class III violations typically include similar sanctions as given for class I and II violations, as well as possible removal from the academic program and/or suspension or expulsion.

(3) **Sanctions:** A variety of sanctions may be applied in the event that a violation of academic integrity is found to have occurred. Sanctions are assigned based primarily on the class of the violation and whether or not the student has previously violated academic integrity rules. Absent extenuating circumstances, assigned sanctions are imposed without delay

and are not held in abeyance during appeal actions. Sanctions may be combined and may include, but are not limited to:

- (a) Verbal or written reprimand;
- (b) Educational opportunity, such as an assignment, research or taking a course or tutorial on academic integrity;
- (c) Grade penalty for the assignment/test;
- (d) Course grade penalty;
- (e) Course failure;
- (f) Removal from the academic program;
- (g) Suspension for a definite period of time; and
- (h) Expulsion from the university.

If a student was previously found to have violated an academic integrity standard, the sanction imposed for any subsequent violations should take into account the student's previous behavior.

(4) Sanctioning authorities:

(a) Instructors may impose reprimands, educational opportunities, grade penalties, and/or course failure sanctions and may recommend more severe sanctions.

(b) The academic integrity board has the authority to impose the same sanctions as an instructor, or to modify any sanctions imposed by the instructor. In addition, the AIB may remove a student from an academic program, with the concurrence of the instructor and the department chair. The AIB may also refer the case for an AIB hearing per WAC 172-90-170 for cases where possible sanctions include suspension or expulsion.

~~(c) ((In response to)) An AIB hearing panel's recommendation to suspend or expel a student((, the vice provost may concur with such recommendations and impose the suspension or expulsion, or may impose one or more lesser sanctions.~~

~~(d) In all cases, suspension and expulsion sanctions must also be approved by the provost before such sanction is imposed)) will be forwarded to the director of student rights and responsibilities. The director of student rights and responsibilities will ensure the student is provided with a full council hearing under the Student conduct code, chapter 172-121 WAC. In such cases, a member of the AIB hearing panel will serve as the "complainant" for purposes of the student conduct code process. The AIB hearing panel member will explain the hearing panel's findings and recommendations to the student discipline council. The student discipline council will make its own factual determinations and may impose a sanction of suspension or expulsion, or a lesser sanction, in accordance with the student conduct code.~~

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-120 Initiation. (1) **Reporting:** Each member of the university community is responsible for supporting academic integrity standards. Any person who suspects a violation of these rules is expected to report their suspicion to the course instructor or other appropriate university official. Students are strongly encouraged to report suspected violations to the course instructor, the ~~((vice provost))~~ dean, or other university official.

Throughout this chapter, the term "instructor" shall refer to the instructor or other university official who reports a suspected violation under this chapter.

A person who knowingly makes a false allegation that a violation of these rules has occurred, will be subject to disciplinary action as appropriate.

(2) **Authority:** The primary responsibility for bringing a charge of violating academic integrity standards rests with the instructor. Graduate assistants, teaching assistants, research assistants, student workers, exam proctors, online coordinators and any other persons who assist or support an instructor in teaching should report suspected violations of academic integrity standards to the instructor of record.

Instructors may be represented by their academic department chair in cases where the instructor is unavailable or otherwise unable to actively participate in the process.

(3) **Contact student:** If an instructor suspects that a violation has occurred, the instructor may elect to discuss the matter with the student prior to taking any other action.

(4) **Instructor action:** In response to a report or suspicion of violation of academic integrity standards, the instructor has the following options:

(a) Dismiss the matter: If the instructor concludes that there is no violation of these rules, the matter is over.

(b) Resolve internally (internal resolution): If the instructor believes that the student committed a class I violation of academic rules, the instructor may take one or more of the following actions without entering an official violation per subsection (5) of this section:

(i) Instruct the student on academic integrity standards and explain how the student failed to comply with those standards;

(ii) Allow the student to modify or redo the assignment; and/or

(iii) Provide the student with an educational opportunity to reiterate academic integrity (such as an assignment, research, course or tutorial on academic integrity).

Note: If an instructor intends to impose any sanction that will affect the student's course grade, he/she must initiate the academic integrity process; internal resolution may not be used in such cases.

If the student does not cooperate with the internal resolution, the instructor should initiate the formal academic integrity process by reporting the violation as described in subsection (5) of this section.

(c) Initiate the academic integrity process: If the instructor believes that the student violated academic integrity standards and internal resolution is not appropriate, the instructor shall initiate the academic integrity process by reporting the violation to the ~~((vice provost))~~ dean per institutional practice.

(5) **Report violation:** To initiate an academic integrity action, the instructor provides information regarding the violation to the ~~((vice provost))~~ dean, including:

(a) A description of the alleged violation;

(b) A summary of any conversations the instructor has had with the student regarding the violation;

(c) The sanction(s) imposed and/or recommended by the instructor; and

(d) The method of resolution desired by the instructor (i.e., summary process, AIB review, or AIB hearing).

When reporting the violation, the instructor may also submit documents (e.g., syllabus, test, essay, etc.) that are pertinent to the violation being reported. Alternatively, the instructor may elect to defer providing such documents unless or until the materials are later requested by the student, (~~vice provost~~) dean, or the AIB.

Instructors should initiate this process within seven calendar days after becoming aware of the suspected violation. In cases where the student has agreed to certain conditions to resolve the matter internally, per subsection (4)(b) of this section, and the student has failed to comply with those conditions, the instructor may initiate the process up to seven calendar days after the student has failed to meet a resolution condition.

(6) (~~Vice provost~~) Dean review. After a violation has been reported, the (~~vice provost~~) dean will determine whether the summary process, AIB review process, or AIB hearing process will be used.

In cases where the student has any prior violation, the (~~vice provost~~) dean must process the case for AIB review under WAC 172-90-160, or AIB hearing under WAC 172-90-170.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-140 Summary process. (1) Initiation: The summary process may be initiated when:

- (a) The instructor and student both agree to the summary process;
- (b) The (~~vice provost~~) dean agrees that the summary process is appropriate to the circumstances;
- (c) The student has no prior violations of academic integrity; and
- (d) The alleged behavior would most likely not warrant a sanction of suspension or expulsion.

(2) **Student notification:** The (~~vice provost~~) dean will notify the student of the violation, proposed sanctions, and of their response options. Notification will be made to the student's official university email address. If the student is no longer enrolled in the university, the (~~vice provost~~) dean shall send the notification to the student's last known address. Notification will include:

- (a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;
- (b) Documents related to the alleged violation;
- (c) A description of the university's academic integrity rules and processes, including a list of possible sanctions;
- (d) A description of the student's options; and
- (e) Contact information for the (~~vice provost's~~) dean's office where the student can request further information and assistance.

(3) **Student response options:**

(a) Concur: The student may accept responsibility for the stated violation and accept all sanctions imposed and/or recommended by the instructor. The student indicates their acceptance by following the instructions provided with the notification. The (~~vice provost~~) dean will coordinate sanctioning with the instructor and/or the AIB as needed.

(b) Conference: If a conference had not already occurred, the student may request to meet with the instructor in order to discuss the alleged violation and/or proposed sanction(s). If the instructor declines the request, the matter will be referred to the AIB for further review and action. The instructor and student may discuss the matter by any means that is agreeable to both (e.g., in-person, telephonically, or via email). The student shall contact the instructor to arrange a discussion time/method.

(i) In arranging a conference, the instructor shall make a reasonable effort to accommodate the student's preferences, but is not obligated to meet with the student outside of normal "office" hours. If the student and instructor cannot agree on a date/time to meet, the instructor or student may refer the matter to the AIB for review and action.

(ii) During a conference, the instructor and student will attempt to reach an agreement regarding the allegation and sanction(s).

(iii) If the student and instructor come to an agreement, the instructor will inform the (~~vice provost~~) dean of the outcome. The (~~vice provost~~) dean will coordinate sanctioning with the instructor and/or the AIB as needed.

(iv) If the student and the instructor cannot come to an agreement within seven instruction days, the instructor will inform the (~~vice provost~~) dean and the matter will then be referred for AIB review and action.

(c) AIB review: The student may request that the matter be referred to the AIB for review and further action.

(d) Failure to respond: If the student does not respond to the notification within three instruction days, the (~~vice provost~~) dean will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The (~~vice provost~~) dean will coordinate with the instructor to impose the appropriate sanction(s).

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-160 Academic integrity board review process. (1) Initiation: The AIB review process will be initiated when:

- (a) The instructor or student requests AIB review;
- (b) The instructor refers the matter to the AIB because the instructor and student could not agree to a conference date/time or did not reach an agreement during a conference; or
- (c) The (~~vice provost~~) dean determines that the AIB review process is appropriate to the circumstances.

(2) **Scheduling:** Within five instruction days of determining that an AIB review is in order, the (~~vice provost~~)

dean shall schedule a review for the next available meeting of the AIB.

(3) **Notification:** The ~~((vice provost))~~ dean will notify the student, instructor, and AIB chair. Notification will include:

(a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in this notification. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) The date/time of the AIB review;

(c) Instructions on how to submit documents, statements, and other materials for consideration by the AIB;

(d) A clear statement that the AIB review is a closed process (no student, instructor or person other than the board is present at the review);

(e) A description of the specific rules governing the AIB review process;

(f) A description of the university's academic integrity rules and processes; and

(g) Contact information for the ~~((vice provost's))~~ dean's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the ~~((vice provost))~~ dean to ensure that the student understands the process, the violation, and the potential sanctions.

(4) **Student and instructor response:** The student must prepare a written statement and submit the statement to the ~~((vice provost's))~~ dean's office within three instructional days after receiving the AIB review notice. The student may include any relevant written documentation, written third-party statements, or other evidence deemed relevant to the student's interests. Unless already provided, the instructor should submit the syllabus, the relevant test/assignment, and other materials that are pertinent to the violation to the ~~((vice provost's))~~ dean's office.

(5) **Failure to respond:** If the student does not respond to the notification of the AIB review within three instructional days, the ~~((vice provost))~~ dean will send another notification to the student. Failure of the student to respond to the second notification within three instructional days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The ~~((vice provost))~~ dean will coordinate sanctioning with the instructor and/or the AIB as needed. If a recommended sanction requires higher level authority to impose, the AIB will proceed with a hearing.

(6) **Proceedings:** The board's responsibility is to review the statements and other materials provided by each party, review other relevant records, information, or materials, and make a determination as to whether the alleged academic integrity violation occurred. The board primarily reviews written evidence. Neither the student nor the instructor is permitted to attend the AIB review. The board may, at its discretion, consult with the instructor, the student or others as deemed appropriate or necessary. All evidence collected in this process will be made available to the student and/or instructor upon request.

(7) **Sanctions:** The board will determine what, if any, sanctions will be imposed. The board may impose the same sanctions assigned and/or recommended by the instructor, or may impose greater or lesser sanctions. If the student has any previous violation(s) of academic integrity standards, the AIB may increase the sanction imposed to account for repeat offenses. If the board decides to pursue sanctions that include suspension or expulsion, the board shall initiate an AIB hearing per WAC 172-90-170.

(8) **Conclusion:** The board should conclude its review and issue a decision within thirty days after the violation was initially reported. The ~~((vice provost))~~ dean shall notify the student and instructor of the board's decisions, along with the right to request reconsideration.

(9) **Requests for review:** Either the student or the instructor may request reconsideration by the ~~((vice provost))~~ dean by submitting a request in writing to the ~~((vice provost))~~ dean within twenty-one days after the board issues its written decision. The ~~((vice provost))~~ dean shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the board, the ~~((vice provost))~~ dean shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the ~~((vice provost's))~~ dean's decision and notice that judicial review may be available. All decisions of the ~~((vice provost))~~ dean are final and no appeals are permitted.

AMENDATORY SECTION (Amending WSR 15-14-079, filed 6/29/15, effective 7/30/15)

WAC 172-90-170 Academic integrity board hearing. AIB hearings will only be conducted when the institution is pursuing sanctions that include either suspension or expulsion. The AIB hearing provides the instructor and the student with the opportunity to present evidence and witnesses.

(1) Scheduling and notification:

(a) **Initiation:** The AIB hearing process will be initiated when the ~~((vice provost))~~ dean or the AIB determines that the alleged violation may involve a possible sanction of suspension or expulsion.

(b) **Scheduling:** Within five instructional days of determining that an AIB hearing is in order, the ~~((vice provost))~~ dean shall schedule the hearing. The student must receive at least seventy-two hours' notice as to the time and place of the hearing. The ~~((vice provost))~~ dean may coordinate with the parties to facilitate scheduling, but is not required to do so.

(c) **Notification:** The ~~((vice provost))~~ dean will notify the student, instructor, and AIB hearing panel members. Notification will include:

(i) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in the notification sent to the student. Also, information and documents should be redacted to the extent their release would compromise test or examination

contents or if the documents include other students' education records;

(ii) A description of the university's academic integrity rules and processes, including any possible sanctions;

(iii) The date, time, and place of the AIB hearing;

(iv) Instructions on how to submit documents, statements, and other materials for consideration by the AIB hearing panel;

(v) A description of the specific rules governing the AIB hearing process;

(vi) A description of the student's options; and

(vii) Contact information for the ~~((vice provosts))~~ dean's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the ~~((vice provost))~~ dean to ensure that the student understands the process, the violation, and the potential sanctions.

(2) General provisions:

(a) All academic integrity board hearings are brief adjudicative proceedings in accordance with WAC 172-108-010 and shall be conducted in an informal manner.

(b) Nonjudicial proceedings: Formal rules of procedure, evidence, and/or technical rules, such as are applied in criminal or civil courts, do not apply to AIB hearings.

(c) Hearing authority: When scheduling an AIB hearing, a member of the AIB will be designated as hearing authority. The hearing authority exercises control over hearing proceedings. All procedural questions are subject to the final decision of the hearing authority.

(d) Hearing panel composition: In addition to the hearing authority, an AIB hearing panel shall consist of three voting members of the AIB.

(e) Closed hearings: All AIB hearings will be closed. Admission of any person, other than the instructor and the student involved, to an AIB hearing shall be at the discretion of the hearing authority.

(f) Consolidation of hearings: In the event that one or more students are charged with an academic integrity violation arising from the same occurrence, the university may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance:

(a) Failure to appear: The student is expected to attend the AIB hearing. In cases where proper notice has been given but the student fails to attend an AIB hearing, the hearing panel shall decide the case based on the information available.

(b) Disruption of proceedings: Any person, including the student, who disrupts a hearing, may be excluded from the proceedings.

(c) Alternative methods of appearance. In the interest of fairness and expedience, the hearing authority may permit any person to appear by telephone, written statement, or other means, as appropriate.

(d) The instructor may attend the hearing but is not required to do so. The instructor's report of the violation and all associated evidence shall constitute the appearance of the instructor.

(4) **Advisors:** The instructor and the student may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the instructor or the student that employed the advisor;

(b) The advisor may be an attorney;

(c) The instructor and the student are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any AIB hearing proceeding. The instructor and/or the student may, however, speak quietly with their advisor during such proceedings; and

(d) If an attorney is used as an advisor, the person using the attorney shall inform the AIB hearing authority of their intent to do so at least two business days prior to the hearing.

(5) **Review of evidence:** The student and the instructor may request to view material related to the case prior to a scheduled hearing by contacting the ~~((vice provost))~~ dean. To facilitate this process, the party should contact the ~~((vice provost))~~ dean as early as possible prior to the scheduled hearing. The ~~((vice provost))~~ dean shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(6) Evidence:

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing panel. However, AIB hearings are not bound by the rules of evidence observed by courts. The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The student and the instructor have the right to view all material presented during the course of the hearing.

(7) **Standard of proof:** The hearing panel shall determine whether the student violated student academic integrity standards, as charged, based on a preponderance of the evidence.

A preponderance means, based on the evidence admitted, whether it is more probable than not that the student violated academic integrity standards.

(8) Witnesses:

(a) The instructor, student, and hearing authority may present witnesses at AIB hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(9) Questioning:

(a) The instructor and the student may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitive.

tious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.

(b) During an AIB hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

(10) Deliberations and sanctions:

(a) Within seven days after the hearing, the AIB hearing panel shall meet in closed session, without either of the parties present, and determine by majority vote whether, by a preponderance of the evidence, the accused violated academic integrity standards. If the hearing panel determines that the accused violated academic integrity standards, the panel shall then determine, by majority vote, what sanctions shall be imposed. This session may take place immediately following the hearing or at another time within the seven days following the hearing.

(b) In determining what sanctions shall be imposed, the hearing panel may consider the evidence presented at the hearing as well as any information contained in the student's records.

(11) **Notification:** If the panel determines that suspension or expulsion is appropriate, they will forward that recommendation to the ~~((vice provost))~~ director of student rights and responsibilities to conduct a hearing under the student conduct code. If the panel is not recommending suspension or expulsion, they shall notify the ~~((vice provost))~~ dean of the sanctions to be imposed.

(12) ~~((Vice provost))~~ Dean:

(a) If the AIB panel recommends suspension or expulsion, the ~~((vice provost may approve the recommendation, subject to the approval of the provost, or may impose lesser sanctions))~~ dean will appoint a member of the AIB hearing panel to serve as the complainant for purposes of the student conduct proceeding and will forward the records used during the academic integrity proceeding to the director of student rights and responsibilities. If the AIB panel does not recommend suspension or expulsion, the ~~((vice provost))~~ dean shall impose the sanctions determined by the AIB panel.

(b) The ~~((vice provost))~~ dean shall notify the student and the instructor of the hearing panel's decision, the sanctions to be imposed, and of the right to appeal.

(13) **Appeals of AIB hearing determinations:** Either the student or the instructor may request reconsideration by the provost by submitting a request in writing to the provost within twenty-one days after the hearing panel issues its decision. The provost shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the hearing panel, the provost shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the provost's decision and notice that judicial review may be available. All decisions of the provost are final and no appeals are permitted.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-180 Administration. After the resolution process, the ~~((vice provost))~~ dean will coordinate sanctions and administrative actions, including:

- (1) Notifying the parties of the results in writing;
- (2) Creating or updating the student's academic disciplinary record;
- (3) Updating academic integrity reporting and record-keeping systems;
- (4) Coordinating sanctioning; and
- (5) Referring cases to the student disciplinary council as needed.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-200 Failing grade. A sanction of a failing course grade is recorded on the transcript as an "XF" and indicates a failure of the course due to violation of academic integrity standards. An XF is counted as a 0.0 for purposes of grade point average calculation.

(1) To petition to have an XF grade changed to an "F" (0.0), a student must submit a written request to the ~~((vice provost))~~ dean. Requests will generally not be considered unless the following conditions are met:

- (a) At least one year has passed since the XF grade was entered;
- (b) The student has had no other violations of academic integrity standards; and
- (c) The student has successfully completed a university sponsored noncredit seminar on academic integrity; or, for a person no longer enrolled at the university, an equivalent educational activity as determined by the AIB.

(2) The ~~((vice provost))~~ dean will review the case and may consult with the referring instructor or academic unit head who originally reported the violation(s). If the ~~((vice provost))~~ dean denies the request, the student may submit a new request one year later.

WSR 17-06-060

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-37—Filed February 28, 2017, 1:58 p.m., effective March 1, 2017]

Effective Date of Rule: March 1, 2017.

Purpose: Amends recreational fishing rules for the Tucannon River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500V; and amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 needed to extend this fishery for forty-six days and to increase the daily limit to three hatchery steelhead to remove hatchery origin steelhead. This emergency rule will provide additional angling opportunity. 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 28, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500V Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective March 1 through April 15, 2017, it is permissible to fish in waters of the Tucannon River with the following rules. Unless otherwise amended all permanent rules remain in effect.

- (1) Daily Limit is increased to 3 hatchery steelhead per day.
- (2) Mandatory hatchery steelhead retention is required.
- (3) Barbless hooks are required while fishing for steelhead.
- (4) Release all other species.
- (5) The area from Tucannon Hatchery Rd Bridge upstream is closed to fishing.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 16, 2017:

WAC 220-310-19500V Freshwater exceptions to statewide rules—Eastside.

WSR 17-06-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-39—Filed February 28, 2017, 4:06 p.m., effective March 1, 2017]

Effective Date of Rule: March 1, 2017.

Purpose: Amend recreational fishing rules for hardshell clams and oysters.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Surveys at Indian Island County Park, Potlatch State Park, Potlatch DNR tidelands, Port Gamble Heritage Park and Twanoh State Park indicate that the clam population has increased, allowing for longer seasons. Surveys at North Bay indicate that the clam population has increased slightly, but a shift in season timing is recommended to reduce user group conflicts and increased pressure on infrastructure at the access site. The existing hours of darkness harvest restriction at Quilcene Bay Tidelands is no longer necessary; there is no conservation or management need to limit the hours of harvest.

Oyster seasons should coincide with the clam seasons on these beaches. A shift in season timing is recommended for Oyster Reserves - North Bay to reduce user group conflicts and increased pressure on infrastructure at the access site. The existing hours of darkness harvest restriction at Quilcene Bay Tidelands is no longer necessary; there is no conservation or management need to limit the hours of harvest. 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 28, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-35000J Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

(1) Oyster Reserves - North Bay: State-owned oyster reserves and contiguous state-owned tidelands south and east of the powerline crossing are closed until further notice.

(2) Penrose Point State Park: Open immediately through April 30 only.

(3) Port Gamble Heritage Park Tidelands: Open until further notice.

(4) Potlatch DNR tidelands: Open April 1, 2017 until further notice.

(5) Potlatch State Park: Open April 1, 2017, until further notice.

(6) Quilcene Tidelands: Open April 1, 2017, until further notice, with no restrictions on hours of harvest.

NEW SECTION

WAC 220-56-38000P Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands except during the open periods specified herein:

(1) Oyster Reserves - North Bay: State-owned oyster reserves and contiguous state-owned tidelands south and east of the powerline crossing are closed until further notice.

(2) Penrose Point State Park: Open immediately through April 30, 2017.

(3) Port Gamble Heritage Park Tidelands: Open until further notice.

(4) Potlatch DNR tidelands: Open April 1, 2017, until further notice.

(5) Potlatch State Park: Open April 1, 2017, until further notice.

(6) Quilcene Tidelands: Open April 1, 2017, until further notice, with no restrictions on hours of harvest.

WSR 17-06-068**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed March 1, 2017, 8:53 a.m., effective March 1, 2017]

Effective Date of Rule: March 1, 2017.

Purpose: The department is amending WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment? and 388-410-0033, How and when does the department collect a basic food, FAP, or WASHCAP overpayment?, to align these rules with federal regulations regarding who is considered eligible for benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-410-0030 and 388-410-0033.

Statutory Authority for Adoption: RCW 43.20A.550, 43.20B.630, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: 7 C.F.R. 273.18.

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: USDA Food and Nutrition Services (FNS) regulations allow Washington state to determine the amount at which pursuing an overpayment for SNAP benefits becomes cost effective. Once the state and FNS agree on an amount, it becomes part of the state plan for administering SNAP and the state must abide by the plan. Lack of compliance with FNS rules can result in loss of funding for or penalization to the SNAP in Washington. Additionally, the current rule applies unnecessary overpayments that can result in a hardship for our clients.

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 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: February 16, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-22-051, filed 10/29/15, effective 11/29/15)

WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment? (1) We calculate the amount of your basic food, ~~((or WASHCAP))~~ Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FAP) overpayment by counting the difference between:

- (a) The benefits your assistance unit (AU) received; and
- (b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

- (a) Had correct and complete information; and
- (b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) We ~~((must))~~ must set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) The overpayment is over eighty-five dollars and you currently receive basic food, FAP, or WASHCAP benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently receive basic food, FAP, or WASHCAP benefits.

(5) We ~~((do not))~~ do not set up an inadvertent household error or administrative error overpayment if all of the following are true:

(a) We did not discover the overpayment through the federal quality control process;

(b) You do not currently receive basic food, FAP, or WASHCAP benefits; and

(c) The total amount your household was overpaid was one hundred twenty-five dollars or less.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification hearing, we will not set up ~~((and))~~ or start collecting the overpayment if doing so could negatively impact this process.

(7) We must set up an intentional program violation overpayment based on the results of an administrative disqualification hearing ~~((chapter 388-02 WAC))~~ under chapter 388-02 WAC, unless:

(a) Your AU has repaid the overpayment; or

(b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

(8) We must calculate the overpayment amount:

(a) For an administrative error overpayment - up to twelve months prior to when we became aware of the overpayment;

(b) For an inadvertent household error overpayment - for no more than twenty-four months before we became aware of the overpayment; and

(c) For intentional program violation (IPV) overpayments - from the month the ~~((set of))~~ IPV first occurred as determined under WAC 388-446-0015, but no more than six years before we became aware of the overpayment.

(9) If we paid you too few basic food, FAP, or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

(a) We have ~~((not))~~ not already issued you benefits to replace what you were underpaid; and

(b) We have ~~((not))~~ not used this amount to reduce another overpayment.

(10) We will send you an overpayment notice under RCW 43.20B.630 and 7 C.F.R. Sec. 273.18. We send notices as required under chapter 388-458 WAC. If all adult AU members live at the same address, we serve an overpayment notice on the head of household.

(11) The overpayment becomes an established (set-up) debt in one of the following ways:

(a) By operation of law if you do not respond within ninety days of service of the overpayment notice;

(b) By administrative order if you timely request a hearing; or

(c) By written agreement.

(12) You may request a hearing to contest an overpayment of your basic food, FAP, or WASHCAP benefits.

(a) The hearing ~~((and))~~ may include issues such as whether you were overpaid, whether we calculated the amount of the overpayment correctly, and the type of the overpayment.

(b) The administrative law judge (ALJ) does not have the authority to compromise, terminate, write-off, defer, or otherwise waive the overpayment claim or recovery of the claim.

(13) If the overpayment has been referred for prosecution ~~((and))~~ in accordance with WAC 388-446-0001(4)~~((and))~~, you may request that the administrative hearing related to the overpayment be postponed.

AMENDATORY SECTION (Amending WSR 15-22-051, filed 10/29/15, effective 11/29/15)

WAC 388-410-0033 How and when does the department collect a basic food, FAP, or WASHCAP overpayment? (1) After we set up a basic food, ~~((FAP, WASHCAP))~~ Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FA) overpayment under WAC 388-410-0030, we collect the amount you were overpaid even when the total is less than ~~(((\$125 as discussed))~~ those in WAC 388-410-0030 (4)~~((b) or (c)).~~ This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) ~~((Set up))~~ Establish an overpayment that we do not have to ~~((set up))~~ establish under WAC 388-410-0030(4).

(2) You ~~((can))~~ may repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your ~~((EBT))~~ electronic benefit transfer (EBT) account;

(c) Making regular payments under a scheduled repayment agreement as described in subsection (4) of this section; or

(d) Having your current basic food, FAP, or WASHCAP benefits reduced.

(3) If you have an inactive EBT account and we cancelled basic food, FAP, or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled benefits to reduce the amount of your overpayment.

(4) If you are responsible for repaying an administrative or inadvertent household error overpayment, we reduce your monthly benefits unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; ~~((or))~~

(c) Arrange with us to ~~((compromise (reduce)))~~ reduce all or part of your overpayment under ~~((section))~~ subsection (13) ~~((below))~~ of this section; or

(d) Request a hearing and continued benefits under WAC 388-458-0040.

(5) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date we sent your collection action notice. If you do not do this, we reduce your current monthly benefits.

(6) If your AU currently receives basic food, FAP, or WASHCAP benefits, you ~~((can))~~ may choose to repay your overpayment by making monthly payments. The payments must be more than we would recover by reducing your benefits. Your AU or the department can request a change to the agreement if necessary.

(7) If you receive ongoing basic food, FAP, or WASHCAP benefits, we reduce your monthly benefits to repay the overpayment. We do not reduce your first basic food, FAP, or WASHCAP allotment when we first approve your application for benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

- (i) Ten percent of your monthly benefits; or
- (ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

- (i) Twenty percent of your monthly benefits; or
- (ii) Twenty dollars per month.

(8) We send you a change letter under WAC 388-458-0025 before we reduce your basic food, FAP, or WASHCAP benefits.

(a) You may request a hearing on the change letter ~~((, for instance,))~~ if you do not ~~((feel))~~ believe the amount of the overpayment was calculated correctly, making the reduction incorrect.

(b) The administrative law judge (ALJ) does not have authority to compromise, terminate, write-off, defer or otherwise waive the overpayment claim or recovery ~~((thereunder))~~.

(9) If you do not meet the terms of a repayment agreement, we reduce your current benefits unless you:

(a) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

(10) We may also collect overpaid food benefits with an order to withhold and deliver property under RCW 43.20B-635.

(11) If your overpayment claim is past due for one hundred twenty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, Social Security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date;

(b) Have your monthly benefits reduced to repay the overpayment; ~~((or))~~

(c) Arrange with us to ~~((compromise (reduce)))~~ reduce all or part of your overpayment under ~~((section))~~ subsection (13) ~~((below))~~ of this section; or

(d) Meet the requirements of your scheduled repayment agreement.

(12) If you no longer receive basic food, FAP, or WASHCAP benefits, we ~~((can))~~ may garnish your wages,

file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

(13) ~~((At any time))~~ Based on your request or our own, we may ~~((compromise (reduce)))~~ reduce all or part of your overpayment at any time.

(a) We may ~~((, at our discretion, compromise))~~ reduce a claim or any portion of a claim if we determine that your household's economic circumstances dictate that you will not be able to pay the claim in three years.

(b) If you disagree with our decision not to ~~((compromise))~~ reduce all or part of a food benefits overpayment, you may ask for a review of that decision.

(i) The review will be heard by someone other than the person who made the decision you disagree with.

(ii) You do not have a right to an administrative hearing to contest our decision not to ~~((compromise))~~ reduce all or part of a food benefits overpayment.

(c) If your claim becomes delinquent ~~((,))~~ because you have failed to follow a written repayment agreement entered with the office of financial recovery (OFR) ~~((,))~~ we may reinstate the ~~((compromised))~~ reduced portion of your claim.

(14) We write off unpaid overpayments and release any related liens when:

(a) The claim is invalid;

(b) All adult household members die;

(c) The claim balance is less than twenty-five dollars and ~~((has been))~~ is delinquent for ninety days or more;

(d) We determine it is not cost effective to pursue the claim further;

(e) We agreed to accept a partial payment that left an unpaid balance after this payment;

(f) You have paid ten percent of your monthly benefits, or ten dollars, whichever is greater, on an administrative or inadvertent household error overpayment for at least thirty-six months; or

(g) The claim ~~((has been))~~ is delinquent for three years or more unless we plan to pursue the claim through the treasury offset program.

(15) If your AU has an overpayment from another state, we ~~((can))~~ may collect this overpayment if the state where you were overpaid does not plan to collect it and ~~((they give))~~ gives us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.