WSR 12-01-008

EMERGENCY RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 8, 2011, 9:06 a.m., effective December 8, 2011, 9:06 a.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The amendments are necessary to comply with ESHB 2082, Laws of 2011, terminating all components of the disability lifeline (DL) program effective October 31, 2011, and establishing the aged, blind, or disabled (ABD) assistance and the pregnant women assistance (PWA) programs effective November 1, 2011.

Purpose: The department is amending WAC 388-406-0035, 388-412-0005, 388-446-0005, 388-450-0025, 388-450-0245 and 388-472-0005 to eliminate reference to general assistance (GA) and DL, and include reference to the new programs (ABD assistance and PWA) established November 1, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0035, 388-412-0005, 388-446-0005, 388-450-0025, 388-450-0245, and 388-472-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, chapter 74.12 RCW.

Other Authority: ESHB 2082, chapter 36, Laws of 2011.

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: These changes are necessary to update existing regulations to eliminate reference to DL October 31, 2011, and include reference to the new programs (ABD and PWA) established November 1, 2011, as required by ESHB 2082.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: December 5, 2011.

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-129, filed 9/22/09, effective 11/1/09)

WAC 388-406-0035 How long does the department have to process my application? (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your eligibility determination is delayed for good cause under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

(a) If you are pregnant, we must process your application for medical within fifteen working days;

(b) If you are applying for ((~~general assistance (GA-U)~~)) aged, blind, or disabled (ABD) assistance, alcohol or drug addiction treatment (ADATSA), or medical assistance, we must process your application within forty-five calendar days unless there is good cause as described in WAC 388-406-0045; and

(c) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days.

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for Supplemental Security Income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

WAC 388-412-0005 General information about your cash benefits. (1) Each separate cash assistance unit (AU) gets a separate benefit amount. If several AUs live in the same house, each AU gets a separate benefit amount.

(2) You cannot receive the same type of benefits in:

(a) Two states in the same month; or

(b) Two AUs in the same month; unless

(c) You left the AU to live in a shelter for battered women and children. See WAC 388-408-0045.

(3) If you are married and both you and your spouse get ((~~Disability Lifeline~~)) aged, blind, or disabled (ABD) assistance, you and your spouse are one AU.

(4) Your grant is rounded down to the next whole dollar amount unless:

(a) You get a clothing and personal incidental (CPI) allowance; or

(b) Your benefits are reduced to pay an overpayment.

(5) We do not issue any cash benefits if you are eligible for less than ten dollars unless:

(a) You get a CPI allowance;

(b) Your benefits are reduced to pay an overpayment; or

(c) You get Supplemental Social Security (SSI) interim assistance payments.

(6) You may use your cash benefits to pay for basic living expenses as detailed under WAC 388-412-0046 (1)(c).

(7) You may not use your electronic benefit transfer (EBT) cards or cash obtained with EBT cards for any of the activities specified under WAC 388-412-0046 (1)(d).

(8) If you choose to withdraw your cash benefits using an automated teller machine (ATM), our EBT vendor may charge a fee for the transaction in addition to any charges by the bank or ATM owner.

AMENDATORY SECTION (Amending WSR 04-13-097, filed 6/21/04, effective 7/22/04)

WAC 388-446-0005 Disqualification period for cash assistance. (1) An applicant or recipient who has been convicted of unlawful practices in obtaining cash assistance is disqualified from receiving further cash benefits if:

(a) For TANF/SFA, the conviction was based on actions which occurred on or after May 1, 1997; or

(b) For general assistance or aged, blind, or disabled (ABD) assistance, the conviction was based on actions which occurred on or after July 23, 1995.

(2) The disqualification period must be determined by the court and will be:

(a) For a first conviction, no less than six months; and

(b) For a second or subsequent conviction, no less than twelve months.

(3) The disqualification applies only to the person convicted and begins on the date of conviction.

(4) A recipient's cash benefits are terminated following advance or adequate notice requirements as specified in WAC 388-458-0030.

AMENDATORY SECTION (Amending WSR 02-20-069, filed 9/30/02, effective 10/31/02)

WAC 388-450-0025 What is unearned income? This section applies to cash assistance, food assistance, and medical programs for families, children, and pregnant women.

(1) Unearned income is income you get from a source other than employment or self-employment. Some examples of unearned income are:

(a) Railroad retirement;

(b) Unemployment compensation;

(c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);

(d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or

(e) Veteran Administration benefits.

(2) For food assistance we also count the total amount of cash benefits due to you before any reductions caused by your failure (or the failure of someone in your assistance unit) to perform an action required under a federal, state, or local means-tested public assistance program, such as TANF/SFA, ((~~GA~~)) ABD, PWA, and SSI.

(3) When we count your unearned income, we count the amount you get before any taxes are taken out.

AMENDATORY SECTION (Amending WSR 03-21-029, filed 10/7/03, effective 11/1/03)

WAC 388-450-0245 When are my benefits suspended? (1) For TANF/SFA, RCA, ((~~GA~~)) ABD and Basic Food, "suspend" means the department stops your benefits for one month.

(2) We suspend your AU's benefits for one month when your expected total countable income under WAC 388-450-0162:

(a) Is more than the dollar limit for your AU; and

(b) If over these limits for only that one month.

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

WAC 388-472-0005 What are my rights and responsibilities? For the purposes of this chapter, "we" and "us" refer to the department and "you" refers to the applicant or recipient.

(1) If you apply for or get cash, food or medical assistance benefits you have the right to:

(a) Have your rights and responsibilities explained to you and given to you in writing;

(b) Have us explain the legal use of DSHS benefits to you;

(c) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender, disability or birthplace;

(d) Request benefits by giving us an application form using any method listed under WAC 388-406-0010. You can ask for and get a receipt when you give us an application or other documents;

(e) Have your application processed as soon as possible. Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty days, except:

(i) If you are eligible for expedited services under WAC 388-406-0015, you get food assistance within seven days. If we deny you expedited services, you have a right to ask that the decision be reviewed by the department within two working days from the date we denied your request for expedited services;

(ii) If you are pregnant and otherwise eligible, you get medical within fifteen working days;

(iii) ((~~Disability lifeline (DL)~~)) Aged, blind, or disabled (ABD) assistance, alcohol or drug addiction treatment (ADATSA), or medical assistance may take up to forty-five days; and

(iv) Medical assistance requiring a disability decision may take up to sixty days.

(f) Be given at least ten days to give us information needed to determine your eligibility and be given more time if you ask for it. If we do not have the information needed to decide your eligibility, then we may deny your request for benefits;

(g) Have the information you give us kept private. We may share some facts with other agencies for efficient management of federal and state programs;

(h) Ask us not to collect child support or medical support if you fear the noncustodial parent may harm you, your children, or the children in your care;

(i) Ask for extra money to help pay for temporary emergency shelter costs, such as an eviction or a utility shutoff, if you get TANF;

(j) Get a written notice, in most cases, at least ten days before we make changes to lower or stop your benefits;

(k) Ask for an administrative hearing if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(l) Have interpreter or translator services given to you at no cost and without delay;

(m) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits; and

(n) Get help from us to register to vote.

(2) If you get cash, food, or medical assistance, you are responsible to:

(a) Tell us if you are pregnant, in need of immediate medical care, experiencing an emergency such as having no money for food, or facing an eviction so we can process your request for benefits as soon as possible;

(b) Report the following expenses so we can decide if you can get more food assistance:

(i) Shelter costs;

(ii) Child or dependent care costs;

(iii) Child support that is legally obligated;

(iv) Medical expenses; and

(v) Self-employment expenses.

(c) Report changes as required under WAC 388-418-0005 and 388-418-0007.

(d) Give us the information needed to determine eligibility;

(e) Give us proof of information when needed. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(f) Cooperate in the collection of child support or medical support unless you fear the noncustodial parent may harm you, your children, or the children in your care;

(g) Apply for and get any benefits from other agencies or programs prior to getting cash assistance from us;

(h) Complete reports and reviews when asked;

(i) Look for, get, and keep a job or participate in other activities if required for cash or food assistance;

(j) Give your Provider One services card to your medical care provider;

(k) Cooperate with the quality control review process;

(l) Keep track of your EBT card for cash and food assistance and keep your personal identification number (PIN) secure. If you receive multiple replacement EBT cards, this may trigger an investigation to determine if you are trafficking benefits as described under WAC 388-412-0046 (2)(d); and

(m) Use your cash and food assistance benefits only as allowed under WAC 388-412-0046.

(3) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you comply with the requirements of this section.

WSR 12-01-019

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed December 9, 2011, 10:15 a.m., effective December 9, 2011, 10:15 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 458-20-273 (Rule 273) explains the cost recovery incentive program for renewable energy systems. Rule 273 is amended to provide appeal rights to a determination by the department of revenue regarding a (1) revocation or denial of approval to certify a renewable energy system for eligibility in the incentive payment program or (2) revocation or denial of approval to certify a module, inverter, or blade as manufactured in Washington state for purposes of increased factors in calculating the amount of incentive payments. There are no changes from the previous emergency rule filed August 12, 2011, under WSR 11-17-053.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-273 Renewable energy system cost recovery.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Other Authority: RCW 34.05.350.

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

Reasons for this Finding: Taxpayers need to be aware of their appeal rights and responsibilities if the department denies certification or intends to revoke certification.

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 1, Repealed 0.

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

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

Date Adopted: December 9, 2011.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-17-004, filed 8/5/10, effective 9/5/10)

WAC 458-20-273 Renewable energy system cost recovery. (1) **Introduction.** This section explains the renewable energy system cost recovery program provided in RCW 82.16.110 through 82.16.140. This program authorizes a customer investment cost recovery incentive payment (incentive payment) to help offset the costs associated with the purchase and use of renewable energy systems located in Washington state that produce electricity. Qualified renewable energy systems include:

• Solar energy systems;

• Wind generators; and

• Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(a) Any individual, business, local government, or participant in a qualifying community solar project that purchases and uses or supports such a system may apply for an incentive payment from the light and power business that serves the property. Neither a state governmental entity nor a federal governmental entity can participate in the incentive payment program.

(b) Participation by a light and power business in this incentive payment program is discretionary.

(c) No incentive payment may be made for kilowatt-hours generated before July 1, 2005, or after June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(2) **Definitions.** The definitions in this section apply throughout this section unless the context clearly requires otherwise.

(a) "Administrator" means an owner and assignee of a community solar project defined in (c)(i) and (iii) of this subsection, that is responsible for applying for the investment cost recovery incentive on behalf of the other owners and performing such administrative tasks on behalf of the other owners as may be necessary; such as receiving investment cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to other owners.

(b) "Applicant" has the following three meanings in this definition.

(i) For other than community solar projects, applicant means an individual, business, or local government, that owns the renewable energy system that qualifies under the definition of "customer-generated electricity."

(ii) For purposes of a community solar project defined in (c)(i) or (iii) of this subsection, the administrator, defined in (a) of this subsection, is the applicant.

(iii) For purposes of a utility-owned community solar project defined in (c)(ii) of this subsection, the utility will act as the applicant for its ratepayers that provide financial support to participate in the project.

(c) "Community solar project" means any one of the three definitions, below:

(i) A solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business.

(ii) A utility-owned solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for their share of the value of the electricity generated by the solar energy system.

(iii) A solar energy system located in Washington state, placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for an investment cost recovery incentive payment for the same customer-generated electricity as defined in (e) of this subsection.

(A) The cooperating local governmental entity that owns the property on which the solar energy system is located may also be a member of the company.

(B) A member may hold an interest in the company constituting ownership of either a portion of the solar energy system or a portion of the value of the electricity generated by the solar energy system, or both.

(d) For purposes of "community solar project" as defined in (c) of this subsection, the following definitions apply.

(i) "Capable of generating up to seventy-five kilowatts of electricity" means that the solar energy system will qualify if it generates seventy-five kilowatts of electricity or less. If the solar energy system or a community solar project produces more than seventy-five kilowatts the entire project is ineligible for the incentive payment program.

(ii) "Company" means an entity that is:

(A)(I) A limited liability company created under the laws of Washington state;

(II) A cooperative formed under chapter 23.86 RCW; or

(III) A mutual corporation or association formed under chapter 24.06 RCW; and

(B) Not a "utility" as defined in (d)(v) of this subsection.

(iii) "Local individuals, households, nonprofit organizations, or nonutility businesses" mean individuals, households, nonprofit organizations, or nonutility businesses that are:

• Located within the service area of the light and power business where the renewable energy system is located; and

• Residents of Washington state.

(iv) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

(v) "Owned in fee simple" means an interest in land that is the broadest property interest allowed by law.

(vi) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(e) "Customer-generated electricity" means the alternating current electricity that is generated from a renewable

energy system located in Washington state, that is installed on an individual's, businesses', local government's or utility's real property and the real property involved is served by a light and power business.

(i) Except for utility-owned community solar systems, a system located on a leasehold interest does not qualify under this definition. For a community solar project requiring the cooperation of a local governmental entity, the cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a cooperating local governmental entity will not qualify. However, for nonutility community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity."

(ii) Except for a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(f) "Local governmental entity" means any unit of local government of Washington state including, but not limited to:

- Counties;
- Cities;
- Towns;
- Municipal corporations;
- Quasi-municipal corporations;
- Special purpose districts;
- Public stadium authorities; or
- Public school districts.

"Local governmental entity" does not include a state or federal governmental entity, such as a:

- State park;
- State-owned building;
- State-owned university;
- State-owned college;
- State-owned community college; and
- Federal-owned building.

(g) "Light and power business" means the business of operating a plant or system of generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(h) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(i) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(j) "Renewable energy system" means:

- A solar energy system used in the generation of electricity;
- An anaerobic digester that processes livestock manure into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity; or
- A wind generator used for producing electricity.

(k) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(l) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(m) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(3) **Who may receive an incentive payment?** Any of the following may receive an incentive payment:

(a) An individual, business, or local governmental entity, not in a light and power business or in a gas distribution business owning a qualifying renewable energy system; or

(b) A participant in a community solar project with an ownership interest in the:

- Solar energy system;
- Company that owns the solar energy system; or
- Value of the electricity produced by the solar energy system.

(4) **Must you be a customer of a light and power business to be a recipient of an incentive payment?** Yes, only owners of qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible to receive incentive payments. This is because the electricity generated by the renewable energy system must be able to be transformed or transmitted for entry into or operated in parallel with electricity transmission and distribution systems. In the case of community solar projects, the land on which the renewable energy system is located may be owned in fee simple by a local governmental entity or owned in fee simple or leased by a utility and they will be the customer of the light and power business.

(5) **To whom do I apply?** An applicant must apply to the light and power business serving the real property on which the renewable energy system is located. The applicant applies for an incentive payment based on customer-generated electricity during each fiscal year beginning on July 1st and ending on June 30th. Participation by a light and power business in the cost recovery incentive program is voluntary. An applicant should first contact their light and power business to verify that it is participating

(6) **Do I need a certification before applying to the light and power business?** Before submitting the first application to the light and power business for the incentive payment allowed under this section, the applicant must submit to the department of revenue a certification request in a form and manner prescribed by the department of revenue.

(a) There are two forms for this certification found at the department of revenue's web site at www.dor.wa.gov, entitled:

- Community Solar Project Renewable Energy System Cost Recovery Certification; and
- Renewable Energy System Cost Recovery Certification.

(b) The department of revenue will evaluate these certification requests with assistance from the climate and rural

energy development center at the Washington State University.

(c) In the case of community solar projects:

• Only one certification can be obtained for each system;

• Applicants may rely upon a prior issued certification of the system;

• The administrator must apply for the certification if it is a community solar project placed on property owned by a cooperating local government and owned by individuals, households, nonprofit organizations, or nonutility businesses;

• The company acting as an administrator must apply for the certification if it is a community solar project placed on property owned by a cooperating local government and owned by a company; and

• The utility acting as administrator must apply for the certification if it is a utility-owned community solar project on property owned or leased by the utility.

(d) **Property purchased with existing system.** Except for community solar projects, if an applicant has just purchased a property with a certified renewable energy system, the applicant must reapply for certification as the new owner with the department of revenue.

(e) **Requirements of the certification request.** This certification request must contain, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the certification request must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the certification request must also include the current name and address of each member of the company that is a participant in the community solar project.

(ii) The applicant's tax registration number;

(iii) Confirmation that the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A wind generator with an inverter manufactured in Washington state;

(D) A solar inverter manufactured in Washington state;

(E) A solar module manufactured in Washington state;

(F) Solar or wind equipment manufactured outside of Washington state; or

(G) An anaerobic digester which processes manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(iv) Confirmation that the electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems;

(v) The date that the local jurisdiction issued its final electrical permit on the renewable energy system; and

(vi) A statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(f) **Response from the department of revenue.** Within thirty days of receipt of the certification the department of revenue must notify the applicant whether the renewable energy system qualifies for an incentive payment under this section. This notification may be delivered by either mail or electronically as provided in RCW 82.32.135.

(i) The department of revenue may consult with the climate and rural energy development center to determine eligibility for the incentive.

(ii) System certifications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).

(g) **What happens if the department of revenue notifies me that the original certification does not qualify for an incentive payment or upon notice of intent to revoke approval of certification?**

(i) If the department of revenue finds the certification does not qualify for an incentive payment, it will notify you of the reasons why and advise you how you may appeal the decision if you disagree with their reason.

(ii) Any appeal must be served on the department of revenue within thirty days of the notice of intention to disapprove or revoke approval of certification or the decision will be final.

(7) **How often do I apply to the light and power business?** You must annually apply by August 1st of each year to the light and power business serving the location of your renewable energy system. The incentive payment applied for covers the production of electricity by the system between July 1st and June 30th of each prior fiscal year.

(8) **What about the application to the light and power business?** The department of revenue has two application forms for use by customers when applying for the incentive payment with their light and power business. These applications are found at the department of revenue's web site at www.dor.wa.gov, entitled:

• Community Solar Project Renewable Energy System Cost Recovery Annual Incentive Payment Application; and

• Renewable Energy System Cost Recovery Annual Incentive Payment Application.

However, individual light and power businesses may create their own forms or use the department of revenue's form in conjunction with their additional addendums.

(a) **Information required on the application to the light and power business.** The application must include, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the application must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the application must also include the current name and address of each member of the company that is a participant in the community solar project.

(C) If the applicant is the utility involved with a utility-owned community solar project that is acting as an administrator, the application must also include the current name and address of each customer-ratepayer participating in the community solar project.

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of gross kilowatt-hours generated by the renewable energy system in the prior fiscal year; and

(v) A statement that the applicant understands that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that the statements are true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(b) **Light and power business response.** Within sixty days of receipt of the incentive payment application the light and power business serving the location of the system must notify the applicant in writing whether the incentive payment will be authorized or denied.

(i) The light and power business may consult with the climate and rural energy development center to determine eligibility for the incentive payment.

(ii) Incentive payment applications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).

(c) **Light and power business may verify initial certification of system.** Your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems, then the determination by the light and power business will be controlling and it has the authority to decertify your system.

(9) **What are the possible procedures an applicant and their light and power business may follow in setting up incentive payments?** This subsection first discusses recommended procedures an applicant should follow when requesting that the light and power businesses set up an applicant's incentive payments and second discusses the possible procedures the light and power business may follow.

(a) **Steps an applicant may take include, but are not limited to:**

• Contacting their light and power business to ask whether it is participating and what application procedures apply;

• Submitting an application to the light and power business that serves their property;

• Submitting to the light and power business proof that the applicant's renewable energy system is certified by the department of revenue for the incentive payment program;

• Submitting to the light and power business a copy of the approved certification and letter from the department of revenue; and

• Signing an agreement that the light and power business will provide to the applicant.

(b) **Steps the applicant's local light and power business may take include, but are not limited to:**

• Sending a utility serviceman to inspect the system;

• Installing an electric production meter if one meeting its specifications is not already installed since a meter is required to properly measure production;

• Reading the applicant's production meter at least annually;

• Processing the annual incentive payment;

• Notifying the applicant within sixty days whether the incentive payment is authorized or denied;

• Calculating annual production payments based on the meter reading or readings made prior to the accounting date of July 1st; and

• Sending the applicant's incentive payment check on or before December 15th; and

• Alternatively, the light and power business may credit the applicant's account on or before December 15th.

However, if the applicant is a net generator, that applicant must be paid by check. Net generator means the measured difference, in kilowatt-hours between the electricity supplied to a power and light business' customer and the electricity generated by the same customer from the renewable energy system and delivered to the light and power business at the same point of interconnection that is in excess of the electricity used at the same location.

(10) **How may the procedures differ with my light and power business when dealing with a utility-owned solar energy system?** A utility-owned community solar project is voluntarily funded by ratepayers of the specific light and power business offering the program. Only customer-ratepayers of that utility may participate in the program. In exchange for a customer's support the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project. It is important that the customer-ratepayer realize when contributing to this program, they are in effect investing in the utility to receive a stated "value." This value is defined in the agreement between the customer-ratepayer and the utility and this agreement is a contract. Customer-ratepayers need to protect their interest in this investment the same as a person would in any other investment.

(11) **What is the formal agreement between the applicant and the light and power business?** The formal agreement between the applicant and the light and power business serving the property governs the relationship between the parties. This document may:

• Contain the necessary safety requirements and interconnection standards;

• Allow the light and power business the contractual right to review the applicant's substantiation documents for four years, upon five working days' notice;

• Allow the light and power business the contractual right to assess against the applicant, with interest, for any overpayment of incentive payments;

• Delineate any extra metering costs for an electric production meter to be installed on the applicant's property;

• Contain a statement allowing the department of revenue to send proof of the applicant's system certification electronically to applicant's light and power business, which will include the applicant's department of revenue taxpayer's identification number;

• Contain other information required by the light and power business to effectuate and properly process the applicant's incentive payment; and

• In the case of a utility-owned solar energy system, contain a detailed description of the "value" the customer-ratepayer will receive in consideration of the financial support given to the utility.

(12) **Must the renewable energy system be owned or can it be leased?** The renewable energy system must be owned by the individual, business, local governmental entity, utility in a utility-owned renewable energy system, local individuals, households, nonprofit organizations or nonutility business in a community-solar project, or company in a company-owned system. Leasing a renewable energy system does not constitute ownership.

(13) **Must you keep records regarding your incentive payments?** Applicants receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

(a) **Examination of records.** Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department of revenue.

(b) **Overpayment.** If upon examination of any records or from other information obtained by the light and power business or department of revenue it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the light and power business may assess against the person the amount found to have been paid in excess of the correct amount of the incentive payment. Interest will be added to that amount in the manner that the department of revenue assesses interest upon delinquent tax under RCW 82.32.050.

(c) **Underpayment.** If it appears that the amount of incentive paid is less than the correct amount of incentive payable, the light and power business may authorize additional payment.

(14) **How is an incentive payment computed?** The computation for the incentive payment involves a base rate that is multiplied by an economic development factor determined by the amount of the system's manufacture in Washington state to determine the incentive payment rate. The incentive payment rate is then multiplied by the system's gross kilowatt-hours generated to determine the incentive payment.

(a) **Determining the base rate.** The first step in computing the incentive payment is to determine the correct base rate to apply, specifically:

• Fifteen cents per economic development kilowatt-hour; or

• Thirty cents per economic development kilowatt-hour for community solar projects.

If requests for incentive payments exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(b) **Economic development factors.** For the purposes of this computation, the base rate paid for the investment cost recovery incentive may be multiplied by the following economic development factors:

(i) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(ii) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(iii) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(iv) For all other customer-generated electricity produced by wind, eight-tenths.

(c) **What if a solar system has both a module and inverter manufactured in Washington state or a wind generator has both blades and inverter manufactured in Washington state?** In these two situations the above-described economic development factors are added together. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your incentive payment by using the factor three and six-tenths (3.6) (computed 2.4 plus 1.2). Therefore, you would multiply either the fifteen cent or thirty cent base rate by three and six-tenths (3.6) to get your incentive payment rate and then multiple this by the gross kilowatt-hours generated to get the incentive payment amount. Further, if your wind generator has both blades and an inverter manufactured in Washington state you would multiply the fifteen cents base rate by two and two-tenths (2.2) (computed 1.0 plus 1.2) to get your incentive payment rate and then multiply this by the kilowatt-hours generated to get the incentive payment amount.

(d) **Tables for use in computation.** The following tables describe the computation of the incentive payment using the appropriate base rate and then multiplying it by the applicable economic development factors to determine the incentive payment rate. The incentive payment rate is then multiplied by the gross kilowatt-hours generated. The actual incentive payment you receive must be computed using your renewable energy system's actual measured gross electric kilowatt-hours generated.

Annual Incentive Payment Calculation Table for Noncommunity Projects

Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.36		
Solar or wind generating equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state **Factor: 1.0** (one)	$0.15		
All other electricity produced by wind **Factor: 0.8** (eight-tenths)	$0.12		
Both solar modules and inverters manufactured in Washington state. **Factor:** (2.4 + 1.2) =3.6	$0.54		
Wind generator equipment with both blades and inverter manufactured in Washington state. **Factor:** (1.0 + 1.2) =2.2	$0.33		

Annual Incentive Payment Calculation Table for Community Solar Projects

Customer-generated power applicable factors	Base rate (0.30) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.72		
Solar equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.36		
Other solar equipment **Factor: 1.0** (one)	$0.30		

Customer-generated power applicable factors	Base rate (0.30) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Both solar modules and inverters manufactured in Washington state. **Factor:** (2.4 + 1.2) =3.6	$1.08		

(e) **Examples to illustrate how incentive payments are calculated.** Assume for the following ten examples that the renewable energy system involved generates 2,500 kilowatt-hours.

(i) If a noncommunity solar system has a module manufactured in Washington state and an inverter manufactured out-of-state the computation would be as follows: (0.15 x 2.4) x 2,500 = $900.00.

(ii) If a noncommunity solar system has an out-of-state module and inverter manufactured in Washington state the computation would be as follows: (0.15 x 1.2) x 2,500 = $450.00.

(iii) If a noncommunity solar system has both modules and an inverter manufactured in Washington state the computation would be as follows: (0.15 x (2.4 + 1.2)) x 2,500 = $1,350.00.

(iv) If wind generator equipment has out-of-state blades and an inverter manufactured in Washington state the computation would be as follows: (0.15 x 1.2) x 2,500 = $450.00.

(v) If wind generator equipment has blades manufactured in Washington state and an out-of-state inverter the computation would be as follows: (0.15 x 1.0) x 2,500 = $375.00.

(vi) If wind generator equipment has both blades and an inverter manufactured in Washington state the computation would be as follows: (0.15 x (1.0 + 1.2)) x 2,500 = $825.00.

(vii) If wind generator equipment has both out-of-state blades and an out-of-state inverter the computation would be as follows: (0.15 x 0.8) x 2,500 = $300.00.

(viii) If a community solar system has a module manufactured in Washington state and an out-of-state inverter the computation would be as follows: (0.30 x 2.4) x 2,500 = $1,800.00.

(ix) If a community solar system has an out-of-state module and inverter manufactured in Washington state the computation would be as follows: (0.30 x 1.2) x 2,500 = $900.00.

(x) If a community solar system has both modules and an inverter manufactured in Washington state the computation would be as follows: (0.30 x (2.4 + 1.2)) x 2,500 = $2,700.00.

(15) **What constitutes manufactured in Washington?** The statute authorizing this incentive payment program defines a "solar module" to mean the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. Thus, for a module to qualify as manufactured in Washington state, the manufactured module must meet this definition. However, when determining whether an inverter or blades are manufactured in Washington the department of revenue will apply the definition of manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing a request for certification.

(16) **How can an applicant determine the system's level of manufacture in Washington state?** For systems installed after the date this section is adopted, the manufacturer must supply the department of revenue with a statement delineating the system's level of manufacture in Washington state, signed under penalty of perjury. The department of revenue will issue a binding letter ruling (approval of manufacturer's certification request) to the manufacturer stating its determination.

(a) **Manufacturer's statement.** This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the system for one or more of the multiplying economic development factors discussed in subsection (13) of this section. The manufacturer can request a binding letter ruling from the department of revenue at this web address:

http://dor.wa.gov/content/contactus/con_TaxRulings.aspx.

(b) **Penalty of perjury.** The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program.

(c) **Document retention.** The applicant must retain this documentation for five years after the receipt of applicant's last incentive payment from the light and power business.

(d) **Certificate of manufacture in Washington state.** If the department of revenue has issued a binding letter ruling stating a module, inverter, or blade((s)) qualifies as manufactured in Washington state, the manufacturer may apply to the climate and rural energy development center at Washington State University energy program for a certificate stating the same.

(i) The department of revenue may revoke the approval of certification that a part or component is "made in Washington state" when it finds that a module, inverter, or blade does not qualify as manufactured in Washington state. The department of revenue will notify the manufacturer of the reason why and advise the manufacturer how to appeal the decision if the manufacturer disagrees with the reason.

(ii) Any appeal must be served on the department of revenue within thirty days of the notice or the decision will be final. The procedures for serving the department of revenue

will be explained in their notice of intention to revoke approval of certification.

(17) **What about guidelines and standards for manufactured in Washington?** The climate and rural energy development center at the Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(18) **Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each owner, in the case of a condominium, or each applicant, in the case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.

(19) **Is there an annual limit on an incentive payment to one payee?** There is an annual limit on an incentive payment.

(a) **Applicant limit.** No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year.

(b) **Community solar projects.**

• Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

• Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.

(20) **Are the renewable energy system's environmental attributes transferred?** Except for utility-owned community solar systems, the environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the incentive payment. In the case of utility-owned community solar system, the utility involved owns the environmental attributes of the renewable energy system.

(21) **Is the light and power business allowed a tax credit for the amount of incentive payments made during the year?** A light and power business will be allowed a credit against public utility taxes in an amount equal to incentive payments made in any fiscal year under RCW 82.16.120. The following restrictions apply:

• The credit must be taken in a form and manner as required by the department of revenue.

• The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater.

• Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business' taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollars, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

• Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.-110 (1)(a)(ii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar projects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollars, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.

Computation examples. The following table provides:

Taxable Power Sales by the light and power business	Maximum tax credit (greater of .5% of total taxable power sales or $100,000)	Maximum amount of tax credit available for incentive payments in a utility-owned community solar project	Maximum amount of tax credit available for incentive payments in a company-owned community solar project
$5,000,000	$100,000	$25,000	$5,000
$50,000,000	$250,000	$62,500	$12,500
$500,000,000	$2,500,000	$625,000	$125,000

• The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

• Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(22) **When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation?** In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:

• Separate meters;

• Separate inverters;

• Separate certification documents submitted to the department of revenue; and

• Separate owners in each community solar project, except for utility-owned systems that are voluntarily funded by the utility's ratepayers, which must have a majority of different ratepayers funding each system.

(23) **What if a light and power business claims an incentive payment in excess of the correct amount?** For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

• The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

• Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.

(24) **Does the department of revenue consider the incentive payment taxable income?** No, the department of revenue does not consider the incentive payment an applicant receives to be taxable income.

(25) **What is the relationship between the department of revenue and the light and power business under this program?** The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, for purposes of the customer investment cost recovery incentive payment, the department of revenue will generally focus its audit of light and power businesses to include, but not be limited to, whether:

• Claimed credit amount equals the amount of the total incentive payments made during the fiscal year;

• Each individual incentive payment is properly calculated;

• Payment to each applicant or participant in a community solar project is proportionally reduced by an equal percentage if the limit of total allowed credits is reached;

• Applicant payments are based on measured gross production of the renewable energy systems; and

• The credit and incentive payment limitations have not been exceeded.

WSR 12-01-020
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-311—Filed December 9, 2011, 12:03 p.m., effective December 9, 2011, 12:03 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600P; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area. 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 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: December 9, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000I Commercial crab fishery. Lawful and Unlawful gear, methods and other unlawful acts. (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean through February 15, 2012, from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from December 14, 2011 to January 13, 2012 are only valid for the area south of 46º28.00 N. Lat.

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through February 29, 2012.

(2) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(3) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46º28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47º00.00 N. Lat., provided the crab were taken south of Klipsan (46º28.00 N. Lat.).

(b) The vessel does not enter the area north of 47º00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and allows a vessel-hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47º00.00 N. Lat., the vessel operator must call 360-581-3337, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

NEW SECTION

WAC 220-52-04600Q Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) Open area: The area from Klipsan Beach (46º28.00) to the WA/OR border (46º15.00) and Willapa Bay.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46º44.76 N, 124º05.76 W and 46º38.93 N, 124º04.33 W.

(3) Crab gear may be set beginning at 8:00 a.m., December 12, 2011.

(4) It is permissible to pull crab gear beginning at 12:01 a.m., December 15, 2011.

(5) Vessels that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46º28.00), including Willapa Bay, before the area north of Klipsan Beach (46º28.00) opens, are prohibited from:

a. Fishing in the area between Klipsan Beach (46º28.00) and Oysterville (46º33.00) until 10 days have elapsed from the time that the area north of Klipsan Beach opens.

b. Fishing in the area between Oysterville (46º33.00) and the U.S. Canadian border until 35 days have elapsed from the time that the area north of Oysterville opens

(6) All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600P	Coastal crab seasons. (11-310)

WSR 12-01-037
EMERGENCY RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 13, 2011, 12:18 p.m., effective December 13, 2011, 12:18 p.m.]

Effective Date of Rule: Immediately.

Purpose: The proposed rules are to support the 2011 legislature in that the legislature finds that the current economic environment requires that the state, when appropriate, charge for some of the services provided directly to the users of those services. The legislature finds that the processing of certifications should be moved to an on-line system that allows educators to manage their certifications and provides better information to policymakers. The legislature intends to assess a certification processing fee to eliminate state-funded support of the cost to issue educator certificates.

Statutory Authority for Adoption: ESHB 1449 (chapter 23, Laws of 2011).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The Appropriations Act reduced the state funding for the office of superintendent of public instruction (OSPI) certification office in anticipation of OSPI collecting the certification processing fee that this rule would institute.

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

Number of Sections Adopted at 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: December 13, 2011.

Randy Dorn
State Superintendent
of Public Instruction

Chapter 392-194 WAC

SCHOOL PERSONNEL CERTIFICATE FEES

NEW SECTION

WAC 392-194-001 Purpose and authority. The purpose of this chapter is to establish the fee for processing initial educator certificate applications and subsequent actions. The authority for this chapter is chapter 23 (ESHB 1449), Laws of 2011.

NEW SECTION

WAC 392-194-002 Fee for processing initial educator certificate applications and subsequent actions. Effective October 1, 2011, the superintendent of public instruction will charge a nonrefundable fee of thirty-three dollars for processing any certificate application or requests for administrative action which results in the issuance, renewal or reissuance of a permit or certificate pursuant to RCW 28A.410.010, 28A.410.025, 28A.410.210, and chapters 181-85 and 181-77 WAC; for issuance of a letter authorizing internship/student teaching pursuant to WAC 181-78A-130; and any subsequent action upon any certificate or permit referred to within this chapter. Educator certificates governed under this chapter include:

(1) Teacher. The teacher certificate, including teacher exchange permits as provided in WAC 181-79A-140, authorizes service as a classroom teacher.

(2) Career and technical. The career and technical education certificate authorizes service in career and technical education programs in accordance with the provisions of chapter 181-77 WAC.

(3) First people's language/culture. The first peoples' language, culture, and oral tribal traditions teacher certificate authorizes service as defined under WAC 181-78A-700(8).

(4) Administrator.

(5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: Provided, That nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations promulgated by the appropriate licensure board or agency.

(6) Limited certificates. The following limited certificates are issued to individuals under specific circumstances set forth in WAC 181-79A-231:

(a) Conditional certificate.

(b) Substitute certificate.

(c) Emergency certificate.

(d) Emergency substitute certificate.

(e) Nonimmigrant alien exchange teacher.

(f) Intern substitute teacher certificate.

(g) Transitional certificate.

(h) Provisional alternative administrative certificate.

WSR 12-01-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-312—Filed December 15, 2011, 9:25 a.m., effective December 22, 2011, 6:00 p.m.]

Effective Date of Rule: December 22, 2011, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000H and 220-52-04600N; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 provisions of this rule are in conformity with agreed plans with applicable tribes, which have been entered as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives. Commercial harvest allocations will be met in Region 2 East and Region 2 West on December 22, 2011. 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 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: December 15, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000J Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123º 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(2) Effective 6:00 p.m. December 22, 2011, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1 (Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B), Crab Management sub area 3-1 (Marine Fish-Shellfish Catch Reporting Areas 23A and 23B) and Crab Management sub area 3-2 (Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A, 25E).

(3) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

NEW SECTION

WAC 220-52-04600R Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective immediately until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123º 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(3) Effective 6:00 p.m. December 22, 2011, until further notice, the following areas are closed to commercial crab fishing:

(a) Crab Management Region 2 East (Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-East) and Crab Management Region 2 West (Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26A West).

REPEALER

The following sections of the Washington Administrative Code are repealed effective 6:00 p.m. December 22, 2011:

WAC 220-52-04000H	Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (11-305)
WAC 220-52-04600N	Puget Sound crab fishery—Seasons and areas. (11-305)

WSR 12-01-058
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-313—Filed December 15, 2011, 1:44 p.m., effective December 22, 2011, 12:01 p.m.]

Effective Date of Rule: December 22, 2011, 12:01 p.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches 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: December 15, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000Z Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. December 22 through 11:59 p.m. December 23, 2011, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. December 22 through 11:59 p.m. December 23, 2011, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. December 22 through 11:59 p.m. December 23, 2011, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed 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 Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 24, 2011:

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

WSR 12-01-122
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed December 21, 2011, 9:51 a.m., effective December 21, 2011, 9:51 a.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These changes are required by state law and are necessary to comply with the department's appropriation for the 2011-2013 biennium, per RCW 34.05.350 as amended by ESSB [EHB] 1248 and as documented in the 2011-2013 TANF/WorkFirst spending plan.

Purpose: The department is filing an emergency rule, which clarifies ambiguities in the previous emergency rule while continuing the final rule-making process. This emergency rule supersedes the emergency rule adopted by WSR 11-18-056 filed September 1, 2011:

- WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance.
- WAC 388-484-0006 TANF/SFA time limit extensions.

As required by sections 1, 6 and 29 of ESSB 5921, which was signed into law on June 15, 2011, the department began counting months an ineligible parent receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance towards the parent's sixty-month TANF/SFA time limit effective September 1, 2011, by emergency adoption.

The department is clarifying the emergency rule filed as WSR 11-18-056 while also continuing the permanent rule-making process. The department filed a preproposal statement of inquiry on September 7, 2011, as WSR 11-18-100, and a proposed rule making (CR-102) on November 2, 2011 as WSR 11-22-102. On or about December 14, 2011, the department will file a supplemental notice that clarifies changes to the rules proposed under WSR 11-22-102. In particular, this amended emergency rule and the proposed supplemental rule delete an effective date from a prior rule codification, to further clarify the rule changes are implementing new legislation contained in sections 1, 6 and 29 of ESSB 5921, Laws of 2011, that did not go into effect until September 1, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-484-0005 and 388-484-0006.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: A second emergency adoption of this rule is required to realize $6.7 million in budgetary reductions for SFY 12, as documented in the TANF/WorkFirst spending plan for the 2011-2013 biennium. The department must make these changes to comply with the department's appropriation, per RCW 34.05.350 as amended by ESSB [EHB] 1248.

The department has experienced a budgetary shortfall since October 1, 2010, as a result of increased demand for TANF benefits due to the economic recession. The WorkFirst caseload grew by more than thirty percent, from 51,106 cases in July 2008 to 66,634 cases in June 2010. As of June 2011, the WorkFirst caseload is 58,610 cases, which is still well above the July 2008 levels, despite various program reductions in the past year.

The Governor's Executive Order 10-04 (Ordering Expenditure Reductions in Allotments of State General Fund Appropriations), signed on September 13, 2010, found that:

- Revenues had fallen short of projections;
- The official state economic and revenue forecast of general fund revenues were less than the official estimate upon which the state's 2009-2011 biennial operating budget and supplemental operating budget were enacted; and
- The anticipated revenues combined with the beginning cash balance of the general fund were insufficient to meet anticipated expenditures from this fund for the remainder of the current fiscal period.

Accordingly, the governor ordered across-the-board reductions of state general fund allotments by 6.287 percent, effective October 1, 2010. There were further reductions in November 2010, December 2010 and March 2011. These reductions were inadequate for the department to stay within its 2011-2013 biennium appropriation and further reductions are needed.

The TANF/WorkFirst spending plan includes approximately $6.7 million in cost reduction during FY 2012 based on the ineligible parent time limit rules. Emergency rule making was necessary because required savings could not be achieved under permanent rule making. Failure to adopt an emergency rule would result in a $4.8 million dollar shortfall in FY 2012 and a $2.1 million shortfall for the 2011-2013 biennium.

Continuance of the emergency rule until a permanent rule is in place permits the department to avoid budget shortfalls, which will lessen the adverse impact on families. If continued budget reductions are not realized, the department will have to make additional cuts in the future to TANF/WorkFirst assistance programs to stay within budget. This could include greater reductions in benefits than currently proposed, and/or the elimination of benefits currently provided. This would have a much greater detrimental effect on vulnerable families with children in need.

The department filed the rule by emergency adoption on September 1, 2011, under WSR 11-18-056 effective immediately upon filing. A second emergency is required to allow the department to complete the permanent rule-making process. This emergency rule supersedes the emergency rule adopted by WSR 11-18-056 filed September 1, 2011. The department filed the CR 101 on September 7, 2011, under WSR 11-18-100, the CR-102 on November 2, 2011, under WSR 11-22-102 and will file a supplemental CR-102 on, or shortly after, December 14, 2011.

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: December 15, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-24-013, filed 11/18/10, effective 12/19/10)

WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance. (1) **What is the sixty-month time limit?**

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of sixty months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance or medicaid.

(2) **When did the sixty-month time limit go into effect?**

The sixty-month time limit applies to cash assistance received on or after August 1, 1997 for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999 through July 31, 1999.

(3) **Does the time limit apply to me?**

(a) The sixty-month time limit applies to you for any month in which you are an ineligible parent or a parent or other relative as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

(b) An ineligible parent is a natural, adoptive or step parent as defined in WAC 388-454-0010 who receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance.

(4) **Do any exceptions to the time limits apply to me?**

The department does not count months of assistance towards the sixty-month time limit if you are:

(a) An adult caretaker, other than an ineligible parent, as described in WAC 388-454-0005 through 388-454-0010, who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child;

(b) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

(c) An adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan native village

and you are receiving TANF, SFA, or GA-S cash assistance during a period when at least fifty percent of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

(5) **What happens if an ineligible parent in the home or a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?**

Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, or an ineligible parent in the home has received sixty months of cash assistance for themselves or their child, the entire assistance unit becomes ineligible for TANF or SFA cash assistance, unless ((~~you~~)) they qualify for a hardship extension and are eligible for an extended period of cash assistance called a TANF/SFA time limit extension under WAC 388-484-0006.

(6) **What can I do if I disagree with how the department has counted my months of cash assistance?**

(a) If you disagree with how we counted your months of cash assistance, you may ask for a hearing within ninety days of the date we sent you a letter telling you how many months we are counting.

(b) You will get continued benefits (the amount you were getting before the change) if:

(i) You have used all sixty months of benefits according to our records; and

(ii) You ask for a hearing within the ten-day notice period, as described in chapter 388-458 WAC.

(c) If you get continued benefits and the administrative law judge (ALJ) agrees with our decision, you may have to pay back the continued benefits after the hearing, as described in chapter 388-410 WAC.

(7) **Does the department ever change the number of months that count against my time limit?**

We change the number of months we count in the following situations:

(a) You repay an overpayment for a month where you received benefits but were not eligible for any of the benefits you received. We subtract one month for each month that you completely repay. If you were eligible for some of the benefits you received, we still count that month against your time limit.

(b) We did not close your grant on time when the division of child support (DCS) collected money for you that was over your grant amount two months in a row, as described in WAC 388-422-0030.

(c) An ALJ decides at an administrative hearing that we should change the number of months we count.

(d) You start getting worker's compensation payments from the department of labor and industries (L&I) and your L&I benefits have been reduced by the payments we made to you.

(e) You participated in the excess real property (ERP) program in order to get assistance and we collected the funds when your property sold.

(f) Another state gave us incorrect information about the number of months you got cash assistance from them.

AMENDATORY SECTION (Amending WSR 10-24-013, filed 11/18/10, effective 12/19/10)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) **What happens after I receive sixty or more months of TANF/SFA cash assistance?**

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) **Who is eligible for a hardship TANF/SFA time limit extension?**

((~~Effective February 1, 2011,~~)) You are eligible for a hardship TANF/SFA time limit extension if you are on TANF ((~~or~~)), are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a social security disability insurance recipient; or

(ii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(((~~ii~~))) (iii) Are working in unsubsidized employment for thirty-two hours or more per week; or

(((~~iii~~))) (iv) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities.

(3) **Who reviews and approves a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) **((~~Do~~)) When I have an individual responsibility plan, do my WorkFirst participation requirements change ((~~if~~)) when I receive a hardship TANF/SFA time limit extension?**

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-

310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) **Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) **How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.