

**WSR 20-23-052**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed November 13, 2020, 11:24 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-241 Radio and television broadcasting.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed technical corrections to edit two typographical errors and make a nonsubstantive change replacing "special programming" with "custom-made programming" for consistent usage.

Reasons Supporting Proposal: Technical corrections.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Statute Being Implemented: RCW 82.04.280.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue (DOR), governmental.

Name of Agency Personnel Responsible for Drafting: Tim Danforth, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1538; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: DOR is making technical corrections for accuracy and consistency.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Tim Danforth, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1538, fax 360-534-1606, email TimD@dor.wa.gov, AND RECEIVED BY January 18, 2021.

November 13, 2020

Atif Aziz

Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-20-036, filed 9/30/20, effective 9/30/20)

**WAC 458-20-241 Radio and television broadcasting.**

**(1) Introduction.**

(a) This section provides tax reporting instructions for persons in the radio and television broadcasting industry. It

explains the application of business and occupation (B&O) tax, retail sales tax, and use tax to the industry and provides an explanation of the various deductions available.

(b) For a discussion of the tax liabilities of subscriber television services, see WAC 458-20-227.

(c) For a discussion of the taxability of digital products, see WAC 458-20-15503.

**(2) Definitions.** For the purpose of this rule:

(a) "Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

(b) "Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

(c) "National advertising" means broadcast advertising paid for by sponsors that supply goods or services on a national or international basis.

(d) "Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

(e) "Regional advertising" means broadcast advertising paid for by sponsors that supply goods or services on a regional basis over two or more states.

**(3) Business and occupation tax classifications.** Persons in the radio and television broadcasting industry must report business and occupation (B&O) tax based on the B&O classification of their income, as follows:

(a) **Radio and television broadcasting.** Gross income from the sale of radio or television advertising is taxable under the radio and television broadcasting classification, subject to the deduction authorized under RCW 82.04.280 (1)(f)(i) or (ii). (See subsection (4)(b) of this section for more information on the deduction);

(b) **Service and other activities.** Gross income from personal or professional services not taxed under a different classification, such as gross income from producing and making custom commercials or custom-made (~~programming~~) programming, fees for providing writers, directors, artists, and technicians, and granting a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211) is taxable under the service and other classification;

(c) **Royalties.** Gross income from charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material) is taxable under the royalties classification;

(d) **Retailing or wholesaling.** Gross income from sales of tangible personal property to consumers, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., is taxable under the retailing classification even though the original was not subject to retail sales tax. Gross income from sales of tangible personal property to persons other than consumers is taxable under the wholesaling classification. Gross income from the sale of custom-made programs, commercials, films, etc., is taxable under the service and other activities classification; and

(e) **Manufacturing.** The value of programs, such as public affairs, religious, travelogues, and other general programming, which are distributed via tangible media to other broadcasters under a lease or contract granting a mere license to use, is taxable under the manufacturing classification. (For a discussion of the taxability of digital products transferred electronically, see WAC 458-20-15503.) Manufacturing B&O tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and promotions, (~~special~~) custom-made and syndicated programming, and "entire day" programming.

**(4) Deductions from gross income from advertising.**

(a) **Agency fees.** It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance is deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

(b) **Gross receipts from national, network, and regional advertising.** The broadcasting station may deduct actual gross receipts from national, network, and regional advertising, as included in the gross amount reported under radio and television broadcasting, either by using the "standard deduction" or by itemization of the individual broadcasting station's actual receipts.

(i) The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, is a percentage based on the national average of national, network, and regional advertising as reported by the United States Census Bureau's economic census. The standard deduction percentage must be published by the department by rule by September 30, 2020, and by September 30th of every fifth year thereafter. The standard deduction percentage as of September 30, 2020, is sixty-two percent.

(ii) As an alternative to using the standard deduction in (b)(i) of this subsection, a broadcasting station may opt to deduct gross receipts from national, network, and regional advertising (~~on an~~) by itemizing the actual receipts therefrom.

(c) **Allocation of local advertising revenues.** Revenues from local advertising may be allocated to remove from the tax base the gross income from advertising that is intended to reach potential customers of the advertiser who are located outside the state of Washington.

(i) **Presumption.** It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising is subject to tax unless the taxpayer submits proof to the department that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

**(ii) Method of allocation.**

(A) When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the broadcasting station's total audience as measured

by the .5 millivolt/meter signal strength contour for AM radio, the one millivolt/meter or sixty dBu signal strength contour for FM radio, the twenty-eight dBu signal strength contour for television channels two through six, the thirty-six dBu signal strength contour for television channels seven through thirteen, and the forty-one dBu signal strength contour for television channels fourteen through sixty-nine with delivery by wire, satellite, or any other means, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

(B) The most current United States and Canadian census figures must be used to determine the in-state and out-of-state audience.

(C) In the event that community antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must be provided to the department upon request. The number of subscribers will be multiplied by a factor of 2.5, representing the average size household.

(D) Upon request by the department, the broadcasting station must submit documentation substantiating the computation of the out-of-state exclusion to the department, as directed.

**(5) Retail sales tax.**

(a) Purchases by broadcasters of equipment, supplies and materials for the broadcaster's own use and not for resale are subject to the retail sales tax. This includes purchases of raw or unprocessed film, magnetic tape, DVDs, and other transcription material.

(b) If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

(c) The broadcaster must collect retail sales tax on sales to consumers of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to retail sales tax.

**(6) Use tax.**

(a) Acquisition or exercise of the right to broadcast material under a right or license granted by lease or contract is not the use of tangible personal property by the broadcaster and the use tax is not applicable.

(b) Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which include, but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of production) of programming when the broadcaster sells merely the

right to broadcast such material under a right or license granted by lease or contract.

**WSR 20-23-089**  
**EXPEDITED RULES**  
**DEPARTMENT OF HEALTH**

[Filed November 17, 2020, 2:23 p.m.]

Title of Rule and Other Identifying Information: WAC 246-335-510 Definitions, in-home services, home health. The department of health (department) is proposing a permanent rule amendment to WAC 246-335-510(3), adding physician assistants to the list of practitioners authorized to order home health services and to sign plans of care, consistent with federal changes due to the coronavirus disease (COVID-19) pandemic.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amendment to WAC 246-335-510(3) is to add physician assistants to the list of practitioners authorized to order home health services and to sign plans of care. This change will expand health care facilities' ability to provide appropriate care for individuals who no longer need to be in a hospital or other health care facility, while also allowing health care facility resources to be used more effectively, facilitating the response to the public health emergency created by the coronavirus disease (COVID-19) pandemic.

This rule amendment would make permanent the amendments adopted as emergency rules initially filed on June 1, 2020, as WSR 20-12-075, and continued in subsequent emergency rule packages. This rule amendment is consistent with the change authorizing physician assistants to order home health services that was enacted by the 116th United States Congress in Section 3708 of H.R. 748 "Coronavirus Aid, Relief and Economic Security (CARES) Act." The CARES Act requires that this become a permanent federal regulation change effective no later than six months after the signing of the CARES Act.

Reasons Supporting Proposal: The proposed amendment to WAC 246-335-510(3) is prompted by the federal CARES Act, codified at 42 U.S.C. 1395f. The CARES Act requires that this change be incorporated into federal regulation, effective no later than six months after the signing of the CARES Act, which occurred March 27, 2020. The proposed amendment will align the department's rules with both the CARES Act and forthcoming federal regulations. The amendments will also align department rules with amendments made by the Washington health care authority in WAC 182-543-0500 and 182-551-2040 under WSR 20-09-016.

Statutory Authority for Adoption: RCW 70.127.120.

Statute Being Implemented: 42 U.S.C. 1395f.

Rule is necessary because of federal law, PL 116-136 3708, codified at 42 U.S.C. 1395f.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: John Hilger, 111 Israel Road S.E., Tumwater, WA, 360-236-2929; Enforcement: John Williams, 111 Israel Road S.E., Tumwater, WA, 360-236-2950.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This amendment is being proposed pursuant to the federal CARES Act and forthcoming federal regulations required by the CARES Act. The proposed rules incorporate changes made at the federal level without material change.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2929, email <https://fortress.wa.gov/doh/policyreview>, AND RECEIVED BY January 18, 2020.

November 16, 2020

Jessica Todorovich

Chief of Staff

for John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

**WAC 246-335-510 Definitions—Home health.** The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW; ((or))

(c) A physician assistant licensed under chapter 18.71A or 18.57A RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

(4) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

(5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

(6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(11) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

(13) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

(14) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietitian or nutritionist, or social worker to assess a patient's health status and progress.

(15) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

(16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

(17) "Patient" means an individual receiving home health services.

(18) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

(19) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(21) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

(22) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the

patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

(23) "Therapist" means an individual who is:

(a) A physical therapist licensed under chapter 18.74 RCW;

(b) A respiratory therapist licensed under chapter 18.89 RCW;

(c) An occupational therapist licensed under chapter 18.59 RCW;

(d) A speech therapist licensed under chapter 18.35 RCW; or

(e) A massage therapist licensed under chapter 18.108 RCW.

(24) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

**WSR 20-23-094**  
**EXPEDITED RULES**  
**BUILDING CODE COUNCIL**  
 [Filed November 17, 2020, 3:15 p.m.]

Title of Rule and Other Identifying Information: Chapter 51-11C WAC, 2018 Washington state energy code, commercial.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This filing corrects errors in the minimum efficiency tables.

Reasons Supporting Proposal: It was brought to our attention that Table C403.3.2(3), filed with the adoption of the 2018 Energy Code under WSR 19-24-040, contains some errors where the efficiency does not match that in ASHRAE 90.1 as was intended.

AMENDATORY SECTION (Amending WSR 19-24-040, filed 11/26/19, effective 7/1/20)

**WAC 51-11C-403233 Table C403.3.2(3)—Minimum efficiency requirements—Electrically operated PTAC, PTHP, SPVAC, SPVHP, room air conditioners.**

**Table C403.3.2(3)**

**Minimum Efficiency Requirements—Electrically Operated Packaged Terminal Air Conditioners, Packaged Terminal Heat Pumps, Single-Package Vertical Air Conditioners, Single-Package Vertical Heat Pumps, Room Air Conditioners and Room Air-Conditioner Heat Pumps**

Equipment Type	Size Category (Input)	Subcategory or Rating Condition	Minimum Efficiency		Test Procedure <sup>a</sup>
PTAC (cooling mode) new construction	All Capacities	95°F db outdoor air		14.0 - (0.300 × Cap/1000) EER	AHRI 310/380
PTAC (cooling mode) replacements <sup>b</sup>	All Capacities	95°F db outdoor air		10.9 - (0.213 × Cap/1000) EER	
PTHP (cooling mode) new construction	All Capacities	95°F db outdoor air		14.0 - (0.300 × Cap/1000) EER	
PTHP (cooling mode) replacements <sup>b</sup>	All Capacities	95°F db outdoor air		10.8 - (0.213 × Cap/1000) EER	

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Statute Being Implemented: Chapter 19.27A RCW.

Rule is necessary because of federal law, [no information supplied].

Name of Proponent: [No information supplied], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, 1500 Jefferson Street S.E., Olympia, 360-407-9278; Enforcement: Local jurisdictions.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Diane Glenn, Chair, Washington State Building Code Council, P.O. Box 41449, Olympia, WA 98504-1449, phone 360-407-9255, email sbcc@des.wa.gov, AND RECEIVED BY January 19, 2021.

November 16, 2020  
 Diane Glenn  
 Council Chair

Equipment Type	Size Category (Input)	Subcategory or Rating Condition	Minimum Efficiency		Test Procedure <sup>a</sup>
PTHP (heating mode) new construction	All Capacities	—		3.7 - (0.052 × Cap/1000) COP	
PTHP (heating mode) replacements <sup>b</sup>	All Capacities	—		2.9 - (0.026 × Cap/1000) COP	
SPVAC (cooling mode)	< 65,000 Btu/h	95°F db/75°F wb outdoor air		11.0 EER	AHRI 390
	≥ 65,000 Btu/h and < 135,000 Btu/h	95°F db/75°F wb outdoor air		<del>((11.0))</del> 10.0 EER	
	≥ 135,000 Btu/h and < 240,000 Btu/h	95°F db/75°F wb outdoor air		<del>((11.0))</del> 10.0 EER	
SPVHP (cooling mode)	< 65,000 Btu/h	95°F db/75°F wb outdoor air		11.0 EER	
	≥ 65,000 Btu/h and < 135,000 Btu/h	95°F db/75°F wb outdoor air		<del>((11.0))</del> 10.0 EER	
	≥ 135,000 Btu/h and < 240,000 Btu/h	95°F db/75°F wb outdoor air		<del>((11.0))</del> 10.0 EER	
SPVHP (heating mode)	<65,000 Btu/h	47°F db/43°F wb outdoor air		3.3 COP	AHRI 390
	≥ 65,000 Btu/h and < 135,000 Btu/h	47°F db/43°F wb outdoor air		<del>((3.3))</del> 3.0 COP	
	≥ 135,000 Btu/h and < 240,000 Btu/h	47°F db/43°F wb outdoor air		<del>((3.3))</del> 3.0 COP	
Room air conditioners, with louvered sides	< 6,000 Btu/h	—		11.0 CEER	ANSI/AHA-MRAC-1
	≥ 6,000 Btu/h and < 8,000 Btu/h	—		11.0 CEER	
	≥ 8,000 Btu/h and < 14,000 Btu/h	—		10.9 CEER	
	≥ 14,000 Btu/h and < 20,000 Btu/h	—		10.7 CEER	
	≥ 20,000 Btu/h and < 25,000 Btu/h	—		9.4 CEER	
	≥ 25,000 Btu/h	—		9.0 CEER	
Room air conditioners, without louvered sides	< 6,000 Btu/h	—		10.0 CEER	
	≥ 6,000 Btu/h and < 8,000 Btu/h	—		10.0 CEER	
	≥ 8,000 Btu/h and < 11,000 Btu/h	—		9.6 CEER	
	≥ 11,000 Btu/h and < 14,000 Btu/h	—		9.5 CEER	
	≥ 14,000 Btu/h and < 20,000 Btu/h	—		9.3 CEER	
	≥ 20,000 Btu/h	—		9.4 CEER	
Room air-conditioner heat pumps with louvered sides	< 20,000 Btu/h	—		9.8 CEER	
	≥ 20,000 Btu/h	—		9.3 CEER	
Room air-conditioner heat pumps without louvered sides	< 14,000 Btu/h	—		9.3 CEER	
	≥ 14,000 Btu/h	—		8.7 CEER	
Room air conditioner casement only	All capacities	—		9.5 CEER	

Equipment Type	Size Category (Input)	Subcategory or Rating Condition	Minimum Efficiency		Test Procedure <sup>a</sup>
Room air conditioner casement-slider	All capacities	—		10.4 CEER	

For SI: 1 British thermal unit per hour = 0.2931 W, °C = [(°F) - 32]/1.8.

"Cap" = The rated cooling capacity of the product in Btu/h. If the unit's capacity is less than 7000 Btu/h, use 7000 Btu/h in the calculation. If the unit's capacity is greater than 15,000 Btu/h, use 15,000 Btu/h in the calculations.

- a Chapter 12 of the referenced standard contains a complete specification of the referenced test procedure, including the referenced year version of the test procedure.
- b Replacement unit shall be factory labeled as follows: "MANUFACTURED FOR NONSTANDARD SIZE APPLICATIONS ONLY; NOT TO BE INSTALLED IN NEW STANDARD PROJECTS" or "MANUFACTURED FOR REPLACEMENT APPLICATIONS ONLY: NOT TO BE INSTALLED IN NEW CONSTRUCTION PROJECTS." Replacement efficiencies apply only to units with existing sleeves less than 16 inches (406 mm) in height and less than 42 inches (1067 mm) in width.

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

**WSR 20-23-114**  
**EXPEDITED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed November 18, 2020, 8:28 a.m.]

Title of Rule and Other Identifying Information: Alternative learning experience requirements, WAC 392-550-025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Alternative learning experience (ALE) requirements were recodified in August 2020 as chapter 392-550 WAC. In this process, the codified timeline for implementation of an intervention plan, previously codified at WAC 392-121-182 (7)(a)(ii)(B), was unintentionally omitted. This expedited rule making corrects that drafting error and maintains the established intervention plan requirement.

Reasons Supporting Proposal: Prior to the August 2020 rule revision, schools offering ALE had five school days to implement an intervention plan after a determination of unsatisfactory student progress. Due to a typographical error, that requirement was unintentionally omitted when the ALE rules were recodified as chapter 392-550 WAC. There was no intention of removing the requirement, and schools offering ALE courses are accustomed to the five-day timeline. This expedited rule corrects the typographical drafting error.

Statutory Authority for Adoption: RCW 28A.232.010.

Statute Being Implemented: RCW 28A.232.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Anissa Sharratt, office of superintendent of public instruction (OSPI), 600 Washington Street S.E., Olympia, 360-725-4954.

This notice meets the following criteria to use the expedited adoption process for these rules:

- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Anissa Sharratt, OSPI, Alternative Learning Department, P.O. Box 47200, Olympia, WA 98504, phone 360-725-4954, email Anissa.Sharratt@k12.wa.us, AND RECEIVED BY January 19, 2021.

November 17, 2020  
 Chris P.S. Reykdal  
 State Superintendent of  
 Public Instruction

AMENDATORY SECTION (Amending WSR 20-15-062, filed 7/10/20, effective 8/10/20)

**WAC 392-550-025 Alternative learning experience requirements. (1) Written student learning plan.**

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs.

(b) A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress.

(c) The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(d) The written student learning plan must include the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv)(A) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(B) This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan;

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan; and

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school.

(2) **Contact.** Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(a) Direct personal contact must:

(i) Be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) At minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(b) In-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(c) Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

**(3) Monthly progress evaluation.**

(a) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section.

(b) The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student.

(c) Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan;

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher;

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame;

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan;

(vi)(A) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory.



(B) School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress.

(C) The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

**(4) Intervention plan.**

(a) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student within five school days of the date of the monthly progress evaluation.

(b) An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher.

(c) At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(d) An intervention plan is not required if the evaluation is delivered within the last five school days of the year.

**(5) Continued enrollment.** If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district or charter school.