



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Washington State Patrol

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose:

Certain changes are needed to provide clarity and consistency in terms used throughout the Chapter and to ensure that the language aligns with recent changes to the statute.

Citation of existing rules affected by this order:

Repealed:
Amended: 448-16-020, 448-16-040, 448-16-080, and 448-16-120
Suspended:

Statutory authority for adoption: RCW 46.61.506

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-17-065 on August 15, 2016 (date).
Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone _____
Address: _____ fax _____
e-mail _____

Date adopted:

September 28, 2016

NAME (TYPE OR PRINT)

John R. Batiste

SIGNATURE

TITLE

Chief

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 10, 2016

TIME: 2:24 PM

WSR 16-21-025

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>4</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>0</u>	Amended	<u>4</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-020 Approval of breath test equipment. (1) Pursuant to RCW 46.61.506, the following instruments are approved for the quantitative measurement of alcohol in a person's breath:

- (a) The DataMaster;
- (b) The DataMaster CDM; and
- (c) The (~~Dräger~~) Draeger or Dräger Alcotest 9510.

(2) Pursuant to RCW 46.61.506, the following thermometers are approved:

(a) Mercury in glass thermometers with a scale graduated in tenths of a degree measuring a range between 33.5 and 34.5 degrees centigrade.

(b) Digital thermometer system contained within the Guth 2100 wet bath simulator.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-040 Foreign substances, interference, and invalid samples. (1) A determination as to whether a subject has a foreign substance in his or her mouth will be made by either an examination of the mouth or a denial by the person that he or she has any foreign substances in their mouth. A test mouthpiece is not considered a foreign substance for purposes of RCW 46.61.506.

(2) If a subject is wearing jewelry or ornamentation pierced through their tongue, lips, cheek, or other soft tissues in the oral cavity, they will be required to remove this prior to conducting the breath test. If the subject declines to remove the jewelry or ornamentation, they will be deemed to have a physical limitation rendering them incapable of providing a valid breath sample (~~and will be required to provide a blood sample under the implied consent statute, RCW 46.20.308~~)).

(3) If during a breath test, interference is detected, this will invalidate the test. The subject will be required to repeat the test. A subject whose breath registers the presence of interference on two or more successive breaths shall be deemed to have a physical limitation rendering them incapable of providing a valid breath sample (~~and will be required to provide a blood sample under the implied consent statute, RCW 46.20.308~~)).

(4) In the event that the instrument records an "invalid sample" result at any point during the subject's test, that subject's test should be readministered, after again determining that the subject has no foreign substance in their mouth as outlined in WAC 448-16-040(1), and repeating the fifteen minute observation period.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-080 Instructors. The state toxicologist or technician will certify persons found to be competent and qualified, as "instructors." Instructors are authorized to administer breath tests for alcohol concentration using approved instruments and are further authorized to train and certify as operators, according to outlines approved by the state toxicologist, those persons the instructor finds qualified to administer the breath test utilizing approved instruments. Instructors who are also certified as PBT technicians may instruct other individuals as PBT technicians according to the approved outlines.

If an instructor fails or refuses to demonstrate to the state toxicologist, that they have the ability to adequately perform their responsibilities as an instructor, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-120 Permits ((cards)). Pursuant to RCW 46.61.506, the state toxicologist will authorize the issuance to persons deemed qualified as "instructors," "operators," "solution changers" or "technicians," a ((wallet-sized card)) permit bearing his or her name and designation. Permits ((cards)) will bear the signature or facsimile signature of the state toxicologist. Such permits ((cards)) will expire three years after the date on the ((card)) permit, unless renewed for a like three-year period. Operators whose authorization expires may take recertification training within ninety days following expiration of their prior certification, but are not certified to perform any evidential breath tests during that period. Once ninety days have elapsed after the expiration of authorization, the operator must repeat the basic certification training.