



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: August 24, 2022

TIME: 8:21 AM

WSR 22-17-156

Agency: Washington State Patrol

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 22-14-099 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject) WAC 448-16-060 Determining agreement of duplicate breath samples

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 27, 2022	10:00am	Call-in 1-253-215-8782 Meeting ID: 921 0040 6923 Passcode: 969488	Hearing to be held via Zoom

Date of intended adoption: 9/30/2022 (Note: This is NOT the effective date)

Submit written comments to:

Name: Kimberly Mathis, Agency Rules Coordinator

Address: 106 11<sup>th</sup> Street SE, Olympia WA 98507

Email: [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov)

Fax:

Other:

By (date) 9/23/2022

Assistance for persons with disabilities:

Contact Kimberly Mathis, Agency Rules Coordinator

Phone: 360-596-4017

Fax:

TTY:

Email: [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov)

Other:

By (date) 9/23/2022

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** To correct an administrative oversight in WAC 448-16-060(2) regarding the method for determining agreement between duplicate breath samples obtain during an evidential breath test.

WAC 448-16-060, in its current form, provides a method of determining agreement between duplicate breath samples by rounding the mean of the four results to the fourth decimal place. However, the evidential instrument, known as the Draeger Alcotest 9510, truncates to the fourth decimal place. This rule change is necessary to align the WAC language and the method employed by the Draeger Alcotest 9510.

**Reasons supporting proposal:** The amendment would align the rule with the method currently utilized by the Draeger Alcotest 9510. The amendment is intended to be remedial in nature.

**Statutory authority for adoption:** RCW 46.61.506

**Statute being implemented:** RCW 46.61.506

Is rule necessary because of a:

Federal Law?  Yes  No

Federal Court Decision?  Yes  No

State Court Decision?  Yes  No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

**Type of proponent:**  Private  Public  Governmental  
**Name of proponent:** (person or organization) Washington State Patrol

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Lt. Jeffrey Leonard	Seattle, WA	206-720-3018
Implementation:	Lt. Jeffrey Leonard	Seattle, WA	206-720-3018
Enforcement:	Washington State Patrol	Olympia, WA	206-720-3018

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No  
If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:  
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**  
 Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:  
 No: Please explain: RCW 34.05.328 provides that a CBA is required before adopting a rule described in subsection (5) of the statute. RCW 34.05.328(5)(a)(i) makes the requirements applicable to significant legislative rules of certain identified agencies. Washington State Patrol (WSP) is not one of those identified agencies. The requirements also apply to any rule of an agency if the section is voluntarily made applicable to the rule by the agency or by a majority vote of the joint administrative rules review committee. Neither of these conditions have been met, therefore the requirement of preparing a CBA is not applicable to this rulemaking. See RCW 34.05.328(5)(a)(ii).

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):  
 This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.  
Citation and description:  
 This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.  
 This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- |  |   |
|--|---|
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)                | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)               | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).  
 This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule: A SBEIS is not required because the proposed rule change in WAC 448-16-060 would modify the internal standards approved by the State Toxicologist and would not affect small business and would not be subject to violation by a nongovernment party.

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.  
 The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):  
 The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*


If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_  
 Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** 8/24/2022  
**Name:** John R. Batiste  
**Title:** Chief

**Signature:**  


**WAC 448-16-060 Determining agreement of duplicate breath samples.** Pursuant to RCW 46.61.506 the following method is approved for determining whether two breath samples agree to within plus or minus (~~ten~~) 10 percent of their mean.

(1) The breath test results will be reported, truncated to three decimal places.

(2) For the DataMaster instruments, the mean of the two breath test results will be calculated and rounded to four decimal places. For the Drager instrument, the mean of all four results will be calculated and (~~rounded~~) truncated to four decimal places.

(3) The lower acceptable limit will be determined by multiplying the above mean by 0.9, and truncating to three decimal places.

(4) The upper acceptable limit will be determined by multiplying the mean by 1.1 and truncating to three decimal places.

(5) If the individual results fall within and inclusive of the upper and lower acceptable limits, the two breath samples are valid.