



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (October 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 05, 2017

TIME: 2:35 PM

WSR 17-24-096

Agency: Washington State Patrol

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

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

- Yes
- No
- If Yes, explain:

Purpose: ESSHB 1614 became session law with an effective date of July 23, 2017. The bill specifically excludes piercings as a foreign object for the purposes of an evidential breath test in RCW 46.61.506. WAC 448-16-040 requires piercing into the oral cavity to be removed in order to complete an evidential breath test.

Citation of rules affected by this order:

- New:
- Repealed:
- Amended: 448-16-040
- Suspended:

Statutory authority for adoption: 46.61.506

Other authority:

EMERGENCY RULE

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.
- 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: Having a rule that is more restrictive than law will jeopardize impaired driving cases reducing the effectiveness of swift and certain punishment.

The Washington State Patrol has filed its notice of intent to adopt the permanent rule through the expedited rulemaking process (WSR 17-17-081) and is actively undertaking the appropriate procedures to adopt the permanent rule.

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>1</u>	Repealed	___

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

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: December 4, 2017	Signature: 
Name: John R. Batiste	
Title: Chief	

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.~~

~~(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.

~~((4))~~ (3) 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.