



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Patrol

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 15-14-028 ; or | <input checked="" type="checkbox"/> Original Notice       |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or           | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).                  | <input type="checkbox"/> Continuance of WSR _____         |

Title of rule and other identifying information: (Describe Subject) Administration of Breath Test Program

Hearing location(s): Washington State Patrol  
General Administration Building Room G-3  
210 11<sup>th</sup> Avenue SW  
Olympia WA 98504-2600

Date: September 27, 2016 Time: 10:00 AM

Date of intended adoption: September 28, 2016  
(Note: This is NOT the effective date)

**Submit written comments to:**

Name: Lieutenant Rob Sharpe Washington State Patrol Impaired Driving Section  
Address: 811 W. Roanoke Street Seattle WA 98102  
e-mail [Robert.sharpe@wsp.wa.gov](mailto:Robert.sharpe@wsp.wa.gov)  
fax (206) 720-3023 by (date) September 26, 2016

Assistance for persons with disabilities: Contact  
Melissa Van Gorkom by September 26, 2016  
(360) 596-4017

Purpose of the proposal and its anticipated effects, including any changes in existing rules: 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.

Reasons supporting proposal: Updates are to reflect current procedures and clean up existing language.

Statutory authority for adoption: RCW 46.61.506

Statute being implemented:

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: **August 15, 2016**

TIME: **4:31 PM**

WSR **16-17-065**

DATE  
8-4-16

NAME (type or print)  
John R. Batiste

SIGNATURE

TITLE  
Chief

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

**Name of proponent:** (person or organization)

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

| Name                                | Office Location                                  | Phone          |
|-------------------------------------|--|----------------|
| Drafting..... Lieutenant Rob Sharpe | 811 East Roanoke Street Seattle WA 98102         | (206) 720-3018 |
| Implementation.... Toxicology Lab   | 2203 Airport Way S., Suite 360, Seattle WA 98134 | (206) 262-6100 |
| Enforcement..... Toxicology Lab     | 2203 Airport Way S., Suite 360, Seattle WA 98134 | (206) 262-6100 |

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared.

The proposed changes do not impact small businesses.

**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 ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain: This proposal is not a significant rules change.

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.