



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 21, 2018

TIME: 9:47 AM

WSR 18-07-107

Agency: Washington State Patrol

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-21-010 ; 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) Proposed new chapter 446-95 WAC Statewide Sexual Assault Kit Tracking System sections:

Authority and purpose, 446-95-010

Definitions, 446.95-020

Washington sexual assault kits, 446-95-030

Survivor tracking of their Washington sexual assault kit, 446-95-040

Receipt and processing of sexual assault kit, 446-95-050

Updates and tracking of sexual assault kits, 446-95-060

Hearing location(s):

Date: Time: Location: (be specific) Comment:

Date:	Time:	Location: (be specific)	Comment:
April 24, 2018	11:00am – 12:00pm	Washington State Patrol Helen Somers Building 106 11 th Street SE; Room 4060 Olympia WA 98507	

Date of intended adoption: on or after May 1, 2018 (Note: This is NOT the effective date)

Submit written comments to:

Name: Kimberly Mathis, Rules Coordinator

Address: 106 11th Street SE; Olympia, WA 98507

Email: wsprules@wsp.wa.gov

Fax:

Other:

By (date) April 23, 2018

Assistance for persons with disabilities:

Contact Kimberly Mathis

Phone: 360-596-4017

Fax:

TTY:

Email: wsprules@wsp.wa.gov

Other:

By (date) April 20, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposed new WAC section in chapter 446-95 WAC seeks to prescribe and standardize the format of sexual assault kits used by medical facilities throughout the state.

Reasons supporting proposal: The Legislature passed 2SHB 2530 during the 2016 legislative session that directed the WSP to create and operate a statewide sexual assault kit tracking system.

Statutory authority for adoption: 43.17.060

Statute being implemented: Chapter 43.43 RCW

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:

Name of proponent: (person or organization) Washington State Patrol

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jennifer Burkdoll	Seattle, WA	206-262-6002
Implementation:	Washington State Patrol	Seattle, WA	206-262-6002
Enforcement:	Washington State Patrol	Seattle, WA	206-262-6002

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: This rule is exempt pursuant to RCW 34.05.328(5)(b)(v).

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(g) ((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 ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If 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 analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert 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: March 20, 2018

Name: John R. Batiste

Title: Chief

Signature:

Chapter 446-95 WAC
STATEWIDE SEXUAL ASSAULT KIT TRACKING SYSTEM

NEW SECTION

WAC 446-95-010 Authority and purpose. (1) RCW 43.43.545 requires the Washington state patrol to create and operate a statewide sexual assault kit tracking system. The authority the legislature gave to the Washington state patrol to implement a tracking system requires adoption of rules establishing a uniform sexual assault kit to allow successful implementation of the sexual assault kit tracking initiative.

(2) The purposes of these rules are to:

(a) Implement the intent and purpose of RCW 43.43.545 and 43.43.546 to track the location and status of sexual assault kits throughout the criminal justice process, including the initial collection and possible storage at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and possible destruction.

(b) Establish standards and procedures to track the location and status of sexual assault kits throughout the criminal justice process.

(3) These rules are necessary to:

(a) Ensure all sexual assault kits used within the state of Washington are standardized for tracking in the sexual assault kit tracking system;

(b) Allow medical facilities performing sexual assault forensic examinations, law enforcement agencies, prosecutors, the Washington state patrol forensic laboratory services bureau, and other entities having custody of sexual assault kits to update the status and location of sexual assault kits; and

(c) Allow survivors of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits.

(4) These rules apply to all entities participating in the sexual assault kit tracking system established by the Washington state patrol. Pursuant to RCW 35.21.195, 36.27.020, 36.28.200, 43.43.546, and 70.41.365, those entities include, but are not limited to:

(a) Hospitals licensed under chapter 70.41 RCW performing sexual assault forensic examinations in the state of Washington;

(b) Washington state patrol forensic laboratory services bureau;

(c) All commissioned city, county, and state law enforcement officers; and

(d) Prosecuting attorneys.

(5) The sexual assault kit tracking system is not intended to replace or alter existing chain of custody systems, processes, procedures, rules, regulations, or legal requirements of any participating entity.

(6) This rule is not intended to provide grounds to challenge the admissibility of DNA evidence in court proceedings. Nothing in this section is intended to create a private right of action or claim on the part of any individual, entity, or agency against commissioned city, county, and state law enforcement agencies.

NEW SECTION

WAC 446-95-020 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Hospital" means any institution, place, building, or agency licensed under chapter 70.41 RCW;

(2) "Sexual assault kit" or "SAK" means a standardized box containing items for collecting and storing forensic evidence;

(3) "Washington sexual assault kit" or "WSAK" means a standardized SAK distributed by the approved vendor including a unique identifier, containing items for collecting and storing forensic evidence; with unique login information to be provided to the survivor allowing tracking of the WSAK;

(4) "Sexual assault kit tracking system" or "tracking system" means a secure system accessible via the internet intended for the purposes of tracking all Washington sexual assault kits, regardless of when they were collected;

(5) "Survivor" or "victim" means any person who suffers physical, emotional, financial, and/or psychological impact as a proximate result of a sexual assault;

(6) "Sexual assault" has the same meaning as in RCW 70.125.030;

(7) "Unique identifier" means a numeric or alphanumeric string that is associated with a single entity within a given system (i.e., barcode).

NEW SECTION

WAC 446-95-030 Washington sexual assault kits. (1) The Washington state patrol shall ensure that the standards for the WSAK are consistent with the standards or guidelines established by a committee which may include representatives from medical specialists, sexual assault nurse examiners, attorneys, forensic scientists, and law enforcement personnel in Washington state. The Washington state department of enterprise services may establish a master contract for the supply of WSAKs that meet these standards or guidelines.

(2) WSAKs procured by hospitals or other entities shall be ordered from and payment provided to the approved contracted vendor.

(3) Each WSAK shall bear a Washington sexual assault kit tracking system unique identifier.

(4) Each WSAK shall contain the information needed for a survivor to track the location of their WSAK using the tracking system.

NEW SECTION

WAC 446-95-040 Survivor tracking of their Washington sexual assault kit. (1) The tracking system shall allow survivors of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits.

(2) Survivors shall be given unique login information to access the status and location of their WSAK at the discretion of the appro-

priate hospital, medical facility, or law enforcement agency personnel.

(3) Destruction of a WSAK shall be documented in the system.

NEW SECTION

WAC 446-95-050 Receipt and processing of sexual assault kits.

(1) The approved vendor will distribute WSAKs with a unique identifier. The WSAK is entered by the vendor using the tracking system prior to shipment. Upon delivery, the WSAKs are entered using the tracking system as acknowledgment of receipt.

(2) The WSAK becomes trackable by the survivor when the unique identifier is entered to document that a forensic medical examination has taken place.

(3) The tracking system is not intended to replace existing processes and procedures established regarding the collection of evidence, or delay in any way the care of the survivor or law enforcement notification.

NEW SECTION

WAC 446-95-060 Updates and tracking of sexual assault kits. (1)

The use of the tracking system or a WSAK should not alter the existing procedures, rules, regulations, or legal requirements for hospitals and law enforcement agencies.

(2) The tracking system is not intended to provide "real-time" location data. There are circumstances (such as shipping times) that might create delays in location status being reported. Kits are entered into the tracking system upon arrival at their intended destination. WSAKs are not recorded as they leave a destination.

(3) To ensure proper tracking of the WSAK, the affixed unique identifier must be readable. The WSAK should be packaged separately from other evidence, and without secondary packaging.

(4) Tracking begins when a WSAK or SAK is initially entered in the tracking system.

(a) Sexual assault kits not bearing a tracking system unique identifier, located at hospitals and law enforcement agencies, shall be provided a unique identifier. This shall be affixed to the SAK and entered for use by the tracking system.

(b) The tracking system will not provide historical data for existing SAKs prior to the initial entry.

(5) Subsequent transfers/changes in location will be documented by the tracking system.