



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Washington State Patrol

Emergency Rule Only

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 existing rules affected by this order:

Repealed:
 Amended: 448-16-040
 Suspended:

Statutory authority for adoption: RCW 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.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

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.

Date adopted: July 24, 2017

NAME (TYPE OR PRINT)

John R. Batiste

SIGNATURE

TITLE

Chief

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 24, 2017

TIME: 2:20 PM

WSR 17-16-052

**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> 1 </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> 0 </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> 0 </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>

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.