



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington State Patrol

- Preproposal Statement of Inquiry was filed as WSR 15-14-027 ; 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).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

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

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

Date: September 27, 2016 Time: 9:30 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
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.

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? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION: _____

DATE
8-4-16

NAME (type or print)
John R. Batiste

SIGNATURE

TITLE
Chief

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **August 15, 2016**

TIME: **4:28 PM**

WSR 16-17-064

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) <u>720-3018</u>
Implementation.... Toxicology Lab	2203 Airport Way S., Suite 360, Seattle WA 98134	<u>(206) 262-6100</u>
Enforcement..... Toxicology Lab	2203 Airport Way S., Suite 360, Seattle WA 98134	<u>(206) 262-6100</u>

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.

Chapter 448-15 WAC
ADMINISTRATION OF PRELIMINARY BREATH ((ALCOHOL SCREENING TEST)) TEST-
ING

NEW SECTION

WAC 448-15-005 Definitions. (1) Certifying agent means persons certified by the state toxicologist, certified technician, or certified instructor as a preliminary breath test instrument (PBT) technician.

(2) Operator means a person certified as an evidential breath test instrument operator as described in chapter 448-16 WAC and trained and authorized to perform the tests for a PBT instrument as outlined in this chapter.

(3) PBT instrument means preliminary breath test instrument.

(4) PBT technician means a person trained and certified as competent and qualified to certify a PBT instrument according to the protocol approved by the state toxicologist.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-010 Approval of devices. The following preliminary breath test (PBT) instruments are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in ~~((the following sections))~~ this chapter:

~~((Alcosensor))~~ (1) Alco-Sensor III (Intoximeters, St. Louis, MO).

~~((Alcosensor))~~ (2) Alco-Sensor FST (Intoximeters, St. Louis, MO).

(3) Any other instruments approved by the National Highway Traffic Safety Administration (NHTSA) will be considered for approval in Washington state on application to the state toxicologist, providing that a suitable program for maintenance, certification and operator training is also established and approved.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-020 Use of test results. ~~((The devices))~~ (1) Valid results from the PBT instruments described in WAC 448-15-010 are approved for use ((in establishing probable cause)) to determine that a subject has consumed alcohol and establish probable cause to place a person under arrest for alcohol related offenses or probable cause to support issuance of a search warrant for blood to test for alcohol.

(2) This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).

(3) For purposes of this section, valid results are considered those obtained ~~((from following the approved protocol, by a trained))~~ by an operator following the approved testing protocol described in WAC 448-15-030 while using an approved ((device)) PBT instrument which has been certified according to the rules described in WAC ((448-15-030)) 448-15-040.

(4) Valid results will show ~~((to a reasonable degree of scientific certainty,))~~ the test subject's breath alcohol concentration. ~~((Valid results are suitable to assist in establishing probable cause to place a person under arrest for alcohol related offenses.))~~ These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

~~((This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).))~~

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-030 Test protocol. The operator must perform the test according to the policies and procedures approved by the state toxicologist ~~((The operator will perform)),~~ using the following test protocol:

(1) The operator ~~((shall))~~ will advise the subject that this is a voluntary test, and that it is not an alternative to any evidential breath alcohol test.

(2) The operator ~~((shall))~~ will determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT instrument.

(3) Ensure a blank test result is obtained.

(4) Have the subject exhale into the mouthpiece with a full and continuous exhalation.

(5) Observe the results.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-040 Certification. Any PBT instrument used ~~((as described in the preceding sections,))~~ must ~~((be))~~ have been certified ~~((at least every))~~ within the previous six months. In order to certify a PBT instrument as accurate, the certifying ~~((agency))~~ agent must follow a protocol approved by the state toxicologist. ~~((Certification of PBTs can be performed by persons certified by the state toxicologist as PBT technicians, or by factory authorized representatives,~~

~~provided that the protocol for certification approved by the state toxicologist is followed.)~~)

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-060 PBT technicians. (~~(Persons trained according to outlines approved by the state toxicologist, in the proper procedures for certifying PBT instruments shall be certified as PBT technicians. Their responsibilities will include performing periodic certification and maintaining records on such certification. Wallet sized permits shall be issued to persons so qualified. The certification received on))~~ (1) PBT technicians will be issued a permit after:

(a) Successful completion of the training which must be renewed every three years(~~(. Persons))~~); or

(b) Being certified as evidential breath test instrument technicians as described in chapter 448-16 WAC (~~(are also certified to perform all the duties of PBT technicians))~~).

(2) PBT technicians will perform periodic certification and maintain records on PBT instrument certification.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 448-15-050 PBT operators.