



EXPEDITED RULE MAKING

CR-105 (August 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: August 16, 2017

TIME: 1:30 PM

WSR 17-17-081

Agency: Washington State Patrol

Title of rule and other identifying information: (describe subject) Foreign substances, interference, and invalid samples. (WAC 448-16-040)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed changes to WAC 448-16-040 will reflect the update to the RCW 46.61.506 by removing the requirement that piercings be removed prior conducting a breath test. (RCW 46.61.506 specifically excludes piercings as a foreign object for the purposes of an evidential breath test effective July 23, 2017.)

Reasons supporting proposal: The update will bring the WAC in line with the new statutory requirements.

Statutory authority for adoption: 46.61.506

Statute being implemented: 46.61.506

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

Name of proponent: (person or organization)

- Private
- Public
- Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Lieutenant Rob Sharpe	811 E. Roanoke St., Seattle, WA 98102	(206) 720-3018
Implementation:	Washington State Patrol	PO Box 42600, Olympia, WA 98504-2600	(360) 596-4000
Enforcement:	Washington State Patrol	PO Box 42600, Olympia, WA 98504-2600	(360) 596-4000

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

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): RCW 46.61.506 specifically excludes piercings as foreign objects for the purposes of an evidential breath test.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: Sara Staab

Agency: Washington State Patrol

Address: PO Box 42600, Olympia, WA 98504-2600

Phone: 360-596-4017

Fax:

Email: Sara.Staab@wsp.wa.gov

Other:

AND RECEIVED BY (date) 10/23/2017

Date: August 15, 2017

Name: John R. Batiste

Title: Chief

Signature:



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.