(4) If the medical examiner finds any physical condition listed in subsection (2)(a) through (m) of this section that is likely to interfere with the driver's ability to operate or control a motor vehicle safely, it shall be the responsibility of the driver to immediately forward a copy of the driver's medical examination to the Department of Licensing, Responsibility Division, Medical Section, PO Box 9030, Olympia WA 98507-9030. Upon receipt of the medical examination, the department of licensing will review and evaluate the driver's physical qualifications to operate the class of motor vehicle the person intends to drive.

The department of licensing shall send a notice of determination to the driver. A department of licensing clearance notification shall be sufficient cause for the medical examiner to issue a medical examiner's certificate.

A failure by the driver to furnish a copy of the medical examination to the department of licensing as required above shall result in no clearance action being taken by the department of licensing.

[Statutory Authority: RCW 46.32.020. 95-13-080, § 448-13-020, filed 6/20/95, effective 7/21/95.]

**Title 448 WAC**

**STATE TOXICOLOGIST**

**Chapters**

**448-13** Administration of breath test program.

**Chapter 448-13 WAC**

**ADMINISTRATION OF BREATH TEST PROGRAM**

**WAC**

448-13-020 Approval of breath test instruments.

448-13-030 Definitions.

448-13-050 Test defined.

448-13-055 Interference with breath test.

448-13-060 Validity and certification of test results.

448-13-065 Interpretation of breath test results.

448-13-070 External standard simulator solution.

448-13-080 Preparation and certification of external standard simulator solution.

448-13-090 Software.

448-13-100 Use of the data base on the DataMaster.

448-13-110 Quality assurance program.

448-13-130 Review, approval, and authorization of protocols of procedures and methods by the state toxicologist.

448-13-140 Instructors.

448-13-150 Operators.

448-13-160 Solution changers.

448-13-170 Technicians.

448-13-200 Information concerning technical aspects of the breath test program.

448-13-210 Address for correspondence.

448-13-220 Effective date.

**WAC 448-13-020 Approval of breath test instruments.** Pursuant to RCW 46.61.506, the DataMaster is the only breath test instrument approved by the state toxicologist as a device for the measurement of alcohol in a person's breath. A simulator filled with a certified simulator solution will be attached to each instrument to provide a known external standard as defined in WAC 448-13-030(13). The simulator used must be on the National Highway Traffic Safety Administration (NHTSA) conforming products list. Any agency, group, or individual seeking approval or certification from the state toxicologist for the use of other breath test instruments for evidential breath testing programs in the state of Washington should contact the state toxicologist at the address given in WAC 448-13-210.


**WAC 448-13-030 Definitions.** (1) "Accuracy" means the proximity of a measured value to a reference value.

(2) "Alcohol" means the unique chemical compound ethyl alcohol.

(3) "Blank test" means the testing of a DataMaster instrument to ensure that no alcohol from a previous test can interfere with a person's breath test.

(4) "Breath alcohol analysis" means analysis of a sample of a person's expired breath, using a breath testing instrument designed for this purpose, which instrument is approved by the state toxicologist, in order to determine the alcohol concentration in that breath sample.

(5) "Breath test document" means the form which is printed by the DataMaster on the completion of a breath alcohol test.

(6) "Calibration" means the process of standardizing the DataMaster using a certified simulator solution to allow by proportion, the measurement of the alcohol concentration of a person's breath. Calibration will be performed periodically as required and at least once a year during quality assurance.

(7) "Certified" when used in conjunction with breath test personnel means an operator, instructor, solution changer or technician possessing a valid permit.

(8) "Certified simulator solution" means an alcohol/water solution prepared and tested by an approved protocol, and meeting the criteria specified therein.

(9) "Certified test" means a test conducted in accordance with WAC 448-13-040 and 448-13-050. A test which meets these requirements as determined from the breath test document is a certified test.

(10) "Concentration" means the weight amount of alcohol, expressed in grams, contained in two hundred ten liters of breath or alcohol/water vapor.

(11) "DataMaster" means BAC Verifier DataMaster, instruments including those carrying the designation BAC Verifier DataMaster II, and the BAC DataMaster. These are the only approved breath test instruments in the state of Washington.

(12) "Data base" means information collected primarily for the purposes of statistical analysis of patterns of drinking and driving in the state of Washington.

(13) "Data entry" means the process of providing information through a keyboard to the DataMaster for the purposes of (a) identifying a breath test document to an individual, and (b) statistical analysis.
WAC 448-13-055 Interference with breath test. If during a breath test, an interference is detected, this will invalidate the test. If a breath test document is produced which notes the presence of an interference, the breath test will not be valid. The subject will be required to repeat the test. A subject whose breath registers the presence of an interference on two or more successive breaths shall be presumed to be incapable of providing a valid breath sample.
of the two subject sample breath test results, and truncating this to two decimal places. (E.g., if a person's two breath test results were 0.106 and 0.121, the person's presumed breath alcohol content would be 0.10 g/210L.)

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-065, filed 9/27/95, effective 10/28/95.]

WAC 448-13-070 External standard simulator solution. In order to validate and certify the proper working order of the DataMaster at the time of a person's breath test, the vapor from a certified external standard simulator solution will be tested, separated by blank tests, between the two valid breath samples provided by the subject per WAC 448-13-050. This test of the vapor from the certified external standard simulator solution concentration, by the infrared technique employed by the DataMaster, will confirm the certification of the person's test results as they appear on the breath test document, provided that the results of such analysis also meet the criteria of WAC 448-13-060. At such time as the concentration of the vapor from the external standard simulator solution measured by the DataMaster approaches the lower acceptable limit of .090, the solution will be discarded and replaced with a new solution which meets the criteria of WAC 448-13-080. In any event, the solution will be replaced no more than sixty days from the date of its installation. As there is no meaningful way to interpret data resulting from reanalysis of the simulator solution following its removal after use on a DataMaster instrument, collection and reanalysis of such solutions is neither recommended nor approved by the state toxicologist. The internal standard test conducted with every breath test provides a check that the instrument has remained in calibration while in use in the field.


WAC 448-13-080 Preparation and certification of external standard simulator solution. The external standard simulator solutions shall be prepared by the forensic toxicology staff or by persons certified as technicians in the state toxicology laboratory, using standard laboratory procedures, in such a manner that when heated to 34°C ± 0.2°C it will produce a vapor with an ethanol concentration of between .090 and .110 inclusive, at the time of the test. The principle used for the preparation of the simulator solutions is that a 0.123g/100mL solution will give a vapor ethanol concentration at 34°C of 0.100g/210L. The protocol which shall be followed for the preparation and certification of the external standard simulator solution will be that protocol currently approved and authorized by the state toxicologist according to WAC 448-13-130 and conforming to WAC 448-14-010. Details of the currently approved and authorized protocols are available upon request from the office of the state toxicologist. Sworn statements regarding the preparation, testing, and certification of the simulator solution are available under the provisions of CrRLJ 6.13. The simulator solution shall have an expiration date of one calendar year following the date of its preparation.


WAC 448-13-090 Software. The software which shall be used in the data collection by, in the operation of, and in the measurements made by the DataMaster, will be those versions currently approved for use by the state toxicologist. A list of those versions of software currently approved for use can be obtained from the office of the state toxicologist. The state toxicologist shall approve software which allows the DataMaster to meet the strict accuracy and precision standards of the quality assurance procedure, and which can perform breath tests in compliance with the standards set out herein.


WAC 448-13-100 Use of the data base on the DataMaster. The specific purpose of the data base functions of the DataMaster is to provide statistical analysis and remote monitoring of the instruments to determine their current operational status. The information contained in the data base is separate from, and does not affect the results of, any individual breath test. All information required to certify a breath test per WAC 448-13-060 is contained in the breath test document. The presence or absence of data base information does not compromise the validity of a breath test certified per WAC 448-13-060.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-100, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-100, filed 2/26/91, effective 3/29/91.]

WAC 448-13-110 Quality assurance program. Technicians authorized per WAC 448-13-170 and 448-13-180 shall carry out on a regular periodic basis a quality assurance program which shall include recalibration, and checks of components and function of every DataMaster instrument used for evidential breath testing purposes in the state of Washington. The protocol which shall be followed for quality assurance will be that protocol currently approved and authorized by the state toxicologist pursuant to WAC 448-13-130.

Upon successfully meeting all the requirements of the quality assurance program, the instrument is approved by the state toxicologist for use over a period of not more than one year, or until such time as one of the following operations is required: Replacement of the central processing unit (CPU) board, replacement of the infrared detector, replacement of the infrared detector block, replacement of the infrared detector board, replacement or updating of the software, disassembly and then reassembly of the sample chamber, or recalibration. On successful completion of the quality assurance procedure the instrument is approved for use for a further one-year period. As the quality assurance procedure includes all the elements of the procedure previously known as "certification," the use of DataMaster Certification documents described in CrRLJ 6.13 is recommended by the state toxicologist to indicate compliance with this quality assurance program.

[1996 WAC Supp—page 1531]
WAC 448-13-130  Review, approval, and authorization of protocols of procedures and methods by the state toxicologist. The state toxicologist shall review, approve, and authorize such protocols of procedures and methods of the toxicologist’s own promulgation or submitted by outside agencies or individuals for consideration required in the administration of the breath test program. Such review, approval, and authorization will be so signified by a signed statement attached to each protocol, and kept on file in the office of the state toxicologist. These protocols will be updated as necessary to maintain the quality of the breath test program in light of new findings in the scientific literature or from peer discussion, or the availability of superior equipment or services. Information concerning currently approved protocols can be obtained on application to the office of the state toxicologist.

WAC 448-13-140  Instructors. The state toxicologist shall certify persons found by him to be competent and qualified, as “instructors.” Instructors are authorized to administer breath tests for alcohol concentration using the DataMaster 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 the DataMaster breath test instrument. Details of persons certified as instructors shall be maintained by the state toxicologist and available upon request.

If an instructor fails or refuses to demonstrate to the state toxicologist or to his representative, that they have the ability to adequately perform their responsibilities as an instructor, then the state toxicologist will suspend their permit.

WAC 448-13-150  Operators. The state toxicologist, or instructors on his behalf, shall certify as “operators” persons found by them to be competent and qualified to administer breath tests for alcohol concentration using the DataMaster breath testing instrument. Persons who have attended courses in the operation of the DataMaster breath testing instrument taught by an instructor qualified by the state toxicologist, upon certification of attendance and qualification, shall be designated as “operators.” Details of persons so certified shall be maintained by the state toxicologist and available upon request.

If an operator fails or refuses to demonstrate to the state toxicologist or to an instructor certified by the state toxicologist, that he or she has the ability to adequately perform his or her responsibilities as an operator, then the state toxicologist will suspend their permit.

WAC 448-13-160  Solution changers. The state toxicologist, or instructors on his behalf, shall certify as “solution changers” operators found by them to be competent and qualified. In addition to being qualified as "operators" these persons must receive approved instruction covering the changing of simulator external standard solutions for the DataMaster, taught by an instructor qualified by the state toxicologist. Details of persons so certified shall be maintained by the state toxicologist and available upon request.

If a solution changer fails or refuses to demonstrate to the state toxicologist or to an instructor certified by the state toxicologist, that he or she has the ability to adequately perform his or her responsibilities as a solution changer, then the state toxicologist will suspend their permit.

WAC 448-13-170  Technicians. The state toxicologist shall certify as “technicians” such persons found by him to be competent and qualified to maintain the proper working order of the DataMaster infrared breath testing instrument, through adjustment, repair, and regular service. Further, technicians are authorized by the state toxicologist to prepare simulator external standard solutions and to perform the procedures approved for periodic quality assurance of the DataMaster instruments as required pursuant to WAC 448-13-110. Details of persons so certified shall be maintained by the state toxicologist and available upon request.

Technicians are also authorized to instruct persons otherwise qualified as "instructors," "operators," and "solution changers" according to training outlines approved by the state toxicologist. Certified technicians are themselves authorized to perform the duties of "instructors," "operators," and "solution changers."

Electronics technicians who repair component parts of the DataMaster, and who are not certified as technicians under this section, are not authorized to conduct quality assurance, conduct training, or perform duties in the above categories.

If a technician fails or refuses to demonstrate to the state toxicologist or his representative, that he or she has the ability to adequately perform his or her responsibilities as a technician, then the state toxicologist will suspend their permit.

WAC 448-13-200  Information concerning technical aspects of the breath test program. Documents used by the state toxicologist and personnel involved in breath testing for the state of Washington, which are available on request include: The breath test document, simulator solution preparation protocol, alcohol analysis protocol, certification document for simulator solution, affidavit from analyst of simulator solution, data base, quality assurance protocol,
quality assurance procedure report, affidavit concerning quality assurance procedure, operator course outline, operator refresher course outline, and operator training record. A fee may be charged to cover the cost of providing these copies.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-200, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-200, filed 2/26/91, effective 3/29/91.]

WAC 448-13-210  Address for correspondence. Persons seeking information regarding currently approved protocols and procedures, or information regarding those persons currently authorized as operators, instructors, solution changers, or technicians for the DataMaster, shall direct their request to the State Toxicologist, State Toxicology Laboratory, University of Washington, Department of Laboratory Medicine, 2203 Airport Way S., Seattle, WA 98134.


WAC 448-13-220  Effective date. These provisions, WAC 448-13-010 through and including WAC 448-13-210, and any subsequent amendments will be adopted and in full force and effect for all aspects of the operation of the breath alcohol concentration test program in the state of Washington thirty-one days after the filing of the permanent rules. These new provisions are not retroactive and will not apply to the interpretation of results from any breath test conducted prior to thirty-one days after the filing of the permanent rules.


Title 456 WAC
TAX APPEALS, BOARD OF

Chapters

456-09  Formal hearings—Practice and procedure.
456-10  Informal hearings—Practice and procedure.

Chapter 456-09 WAC
FORMAL HEARINGS—PRACTICE AND PROCEDURE

WAC
456-09-110  Definitions.
456-09-130  Organization and office.
456-09-230  Ex parte communication.
456-09-320  Notice of appeal—Service and filing.
456-09-325  Date of filing—Filing via facsimile machine transmission.
456-09-330  Acknowledgement of notice of appeal.
456-09-340  Jurisdiction—Issue raised by board—Procedure.
456-09-350  Notice of appeal—Response.
456-09-365  Conversion of hearing.
456-09-540  Subpoena—Service.
456-09-705  Advance submission of evidence—Delivery to adverse party.
456-09-710  Hearing—Setting of time and place.
456-09-725  Briefs.
456-09-730  Hearing—Notice of hearing—Time—Contents.
456-09-930  Initial or final decision.
456-09-935  Petition for review and replies.
456-09-945  Final decision following initial decision—Record.
456-09-955  Petition for reconsideration.

WAC 456-09-110  Definitions. As used in this chapter, the following terms shall have the following meaning:

(1) "Board" means the board of tax appeals as described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers or agents of the board of tax appeals.

(2) "Presiding officer" or "hearing officer" shall mean any member of the board, tax referee, administrative law judge, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer shall have authority as provided by WAC 10-08-200 and chapter 34.05 RCW.

(3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.

(4) "Respondent" means a person, natural or otherwise, who is named as a responding party in any appeal before the board of tax appeals.

(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.

(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.

[Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-110, filed 5/2/89.]

WAC 456-09-130  Organization and office. The board consists of three members, one of whom is elected chair. Members of the board are appointed by the governor with the consent of the senate and serve on a full-time basis.

The board offices are open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and legal holidays. All submissions, requests, and communications shall be sent to the board at its principal office at 910 5th Avenue S.E., Post Office Box 40915, Olympia, Washington 98504-0915.

[Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-130, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-130, filed 5/2/89.]

WAC 456-09-230  Ex parte communication. (1) No one shall make or attempt to make any ex parte communications prohibited by the Administrative Procedure Act. The