

(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, § 446-65-020, 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

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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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-020, filed 9/27/95, effective 10/28/95; 91-21-040, § 448-13-020, filed 10/11/91, effective 11/11/91; 91-06-022, § 448-13-020, filed 2/26/91, effective 3/29/91.]

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.

(14) "Interference" means a test result whose infrared absorbance properties are not consistent with ethanol.

(15) "External standard test" means the use of a simulator containing a certified simulator solution, to provide a known alcohol vapor concentration to test the accuracy and proper working order of the DataMaster and confirm its calibration at the time of a person's breath test. This test of the function of the DataMaster is performed with every breath test. The external standard test does not calibrate the DataMaster.

(16) "Internal standard test" means the use of a quartz filter to provide a check that the instrument has maintained calibration since the last time calibration was performed and is in proper working order at the time of the test.

(17) "Precision" means the ability of a technique to perform a measurement in a reproducible manner.

(18) "Procedure" and "method" are used interchangeably to indicate a series of steps which, when carried out as directed, constitute the means by which a given task is performed in a reproducible manner.

(19) "Protocol" means the written record of any method or procedure.

(20) "Quality assurance program" means an ongoing program designed to perform preventative maintenance and identify potential defects before they affect the operation of the instrument.

(21) "Simulator" means a device which when filled with a certified simulator solution, maintained at a known temperature, provides a vapor sample of known alcohol concentration.

(22) "Software" means the computer program stored in the DataMaster which allows it to operate.

(23) "Valid breath sample" means a sample of a person's breath provided in such a manner to be accepted for analysis by the DataMaster.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-030, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-030, filed 2/26/91, effective 3/29/91.]

WAC 448-13-050 Test defined. The test of a person's breath for alcohol concentration using the DataMaster shall consist of the person insufflating end-expiratory air samples at least twice into the instrument, sufficient to allow two separate measurements. There will be sufficient time between the provision of each sample to permit the instrument to measure each sample individually. Two valid breath samples, provided consecutively, will constitute one test.

The DataMaster will perform this test according to the following protocol when being employed to measure an individual's breath alcohol concentration. Any test not performed according to the following protocol is not a valid test. Successful compliance with each step of this protocol is determined from an inspection of the breath test document. These steps are necessary to ensure accuracy, precision, and confidence in each test.

- Step 1. Data entry.
- Step 2. Blank test with a result of .000.
- Step 3. Internal standard verified.
- Step 4. First breath sample provided by subject.
- Step 5. Blank test with a result of .000.

Step 6. External standard simulator solution test. The result of this test must be between .090 and .110 inclusive.

Step 7. Blank test with a result of .000.

Step 8. Second breath sample provided by subject.

Step 9. Blank test with a result of .000.

Step 10. Printout of results on a breath test document.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-050, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-050, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-055, filed 9/27/95, effective 10/28/95.]

WAC 448-13-060 Validity and certification of test results. A test shall be a valid test and so certified, if the requirements of WAC 448-13-040, 448-13-050 and 448-13-055 are met, and in addition the following criteria for precision and accuracy, as determined solely from the breath test document, are met:

(1) The internal standard test results in the message "verified."

(2) In order to be valid, the two breath samples must agree to within plus or minus ten percent of their mean. This shall be determined as follows:

(a) The breath test results shall be reported, truncated to three decimal places.

(b) The mean of the two breath test results shall be calculated and rounded to four decimal places.

(c) The lower acceptable limit shall be determined by multiplying the above mean by 0.9, and truncating to three decimal places.

(d) The upper acceptable limit shall be determined by multiplying the mean by 1.1 and truncating to three decimal places.

(e) If the results fall within and inclusive of the upper and lower acceptable limits, the two breath samples are valid.

(3) The simulator external standard result must lie between .090 to .110 inclusive.

(4) All four blank tests must give results of .000.

If these criteria are met, then these and no other factors are necessary to indicate the proper working order of the instrument, and so certify it, at the time of the breath test.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-060, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-060, filed 2/26/91, effective 3/29/91.]

WAC 448-13-065 Interpretation of breath test results. Once it is determined that a breath test has met all the above criteria and is valid, the person's presumed breath alcohol content for the purposes of the interpretation of civil and criminal statutes shall be determined by taking the lower

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-070, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-070, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-080, filed 9/27/95, effective 10/28/95; 91-21-040, § 448-13-080, filed 10/11/91,

effective 11/11/91; 91-06-022, § 448-13-080, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-090, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-090, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-110, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-110, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-130, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-130, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-140, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-140, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-150, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-150, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-160, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-160, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506. 95-20-025, § 448-13-170, filed 9/27/95, effective 10/28/95; 91-21-040, § 448-13-170, filed 10/11/91, effective 11/11/91; 91-06-022, § 448-13-170, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506, 95-20-025, § 448-13-210, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-210, filed 2/26/91, effective 3/29/91.]

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.

[Statutory Authority: RCW 46.61.506, 95-20-025, § 448-13-220, filed 9/27/95, effective 10/28/95; 91-06-022, § 448-13-220, filed 2/26/91, effective 3/29/91.]

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

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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