

WSR 22-17-156

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed August 24, 2022, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-099.

Title of Rule and Other Identifying Information: WAC 448-16-060
Determining agreement of duplicate breath samples.

Hearing Location(s): On September 27, 2022, at 10:00 a.m., Call-in 1-253-215-8782, Meeting ID 921 0040 6923, Passcode 969488. Hearing to be held via Zoom.

Date of Intended Adoption: September 30, 2022.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by September 23, 2022.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by September 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct an administrative oversight in WAC 448-16-060(2) regarding the method for determining agreement between duplicate breath samples obtained during an evidential breath test.

WAC 448-16-060, in its current form, provides a method of determining agreement between duplicate breath samples by rounding the mean of the four results to the fourth decimal place. However, the evidential instrument, known as the Draeger Alcotest 9510, truncates to the fourth decimal place. This rule change is necessary to align WAC language and the method employed by the Draeger Alcotest 9510.

Reasons Supporting Proposal: The amendment would align the rule with the method currently utilized by the Draeger Alcotest 9510. The amendment is intended to be remedial in nature.

Statutory Authority for Adoption: RCW 46.61.506.

Statute Being Implemented: RCW 46.61.506.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state patrol (WSP), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lt. Jeffrey Leonard, Seattle, Washington, 206-720-3018; Enforcement: Washington state patrol, Olympia, Washington, 206-720-3018.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 provides that a cost-benefit analysis (CBA) is required before adopting a rule described in subsection (5) of the statute. RCW 34.05.328 (5) (a) (i) makes the requirements applicable to significant legislative rules of certain identified agencies. WSP is not one of those identified agencies. The requirements also apply to any rule of an agency if the section is voluntarily made applicable to the rule by the agency or by a majority vote of the joint administrative rules review committee. Neither of these conditions have been met, therefore the requirement of preparing a CBA is not applicable to this rule making. See RCW 34.05.328 (5) (a) (ii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: A small business economic impact statement is not required because the proposed rule change in WAC 448-16-060 would modify the internal standards approved by the state toxicologist and would not affect small business and would not be subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

August 24, 2022
John R. Batiste
Chief

OTS-3911.1

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-060 Determining agreement of duplicate breath samples. Pursuant to RCW 46.61.506 the following method is approved for determining whether two breath samples agree to within plus or minus (~~ten~~) 10 percent of their mean.

(1) The breath test results will be reported, truncated to three decimal places.

(2) For the DataMaster instruments, the mean of the two breath test results will be calculated and rounded to four decimal places. For the Drager instrument, the mean of all four results will be calculated and (~~rounded~~) truncated to four decimal places.

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

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

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

[Statutory Authority: RCW 46.61.506. WSR 10-24-066, § 448-16-060, filed 11/30/10, effective 12/31/10; WSR 04-19-144, § 448-16-060, filed 9/22/04, effective 10/23/04.]