RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Washington State Toxicologist

☐ Permanent Rule
☒ Emergency Rule
☐ Expedited Rule Making

(1) Date of adoption: September 22, 2004

(2) Purpose: The purpose of this emergency rule making is to indicate approval by the state toxicologist of thermometers used in the breath alcohol testing program. This extends the emergency amendment filed as WSR 04-12-051 while the permanent rule is adopted.

(3) Citation of existing rules affected by this order:
Repealed:
Amended: WAC 448-13-020
Suspended:

(4) Statutory authority for adoption: RCW 46.61.506
Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)
Adopted under notice filed as WSR _____ on _____ (date).
Describe any changes other than editing from proposed to adopted version:

EMERGENCY RULE ONLY
Under RCW 34.05.350 the agency for good cause finds:
☐ (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☒ (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Chapter 68, 2004 Laws (SHB 3055), effective June 10, 2004, amends RCW 46.61.506(4) to require that prior to the start of a breath alcohol test, the temperature of the simulator solution must be measured by a thermometer approved of by the state toxicologist. It is therefore necessary for the state toxicologist to approve thermometers on or before June 10, 2004.

An emergency rule was filed on May 28, 2004 (WSR 04-12-051), with an effective date of June 10, 2004. A permanent rule is being adopted on September 22, 2004 and will be effective 31 days after filing.

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:
☐ Yes ☒ No If Yes, explain:

(6) Effective date of rule:

Permanent Rules	Emergency Rules
☐ 31 days after filing	☒ Immediately
☐ Other (specify) _____*	☐ Later (specify)

***(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)**

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED
SEP 22 2004
TIME 925 AM PM
WSR 04-19-145

Name (Type or Print)
Barry K. Logan PhD

Signature

Title
Washington state toxicologist

Date
September 21st, 2004

(COMPLETE REVERSE SIDE)

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New _____	Amended _____	Repealed _____
Federal rules or standards:	New _____	Amended _____	Repealed _____
Recently enacted state statutes:	New _____	Amended 1	Repealed _____

The number of sections adopted at the request of a nongovernmental entity:

New _____ Amended _____ Repealed _____

The number of sections adopted in the agency's own initiative:

New _____ Amended _____ Repealed _____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____ Amended _____ Repealed _____

The number of sections adopted using:

Negotiated rule making:	New _____	Amended _____	Repealed _____
Pilot rule making:	New _____	Amended _____	Repealed _____
Other alternative rule making:	New _____	Amended _____	Repealed _____

WAC 448-13-020 Approval of breath test ((~~instruments~~)) equipment. ((~~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.~~)) (1) Pursuant to RCW 46.61.506, the following instruments are approved for the quantitative measurement of alcohol in a person's breath:

(a) The DataMaster.

(2) Pursuant to RCW 46.61.506, the following thermometers are approved:

(a) Mercury in glass thermometers with a scale graduated in tenths of a degree measuring a range between 33.5 and 34.5 degrees centigrade; and

(b) Digital thermometer system contained within the Guth 2100 wet bath simulator.

[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.]