

SUBCHAPTER 41B – INJURY CONTROL

SECTION .0100 – GENERAL POLICIES

10A NCAC 41B .0101 DEFINITIONS

The definitions in G.S. 18B-101, G.S. 20-4.01, G.S. 130A-3 and the following shall apply throughout this Subchapter:

- (1) "Alcoholic Breath Simulator" means a constant temperature water-alcohol solution bath instrument devised for the purpose of providing a standard alcohol-air mixture;
- (2) "Breath-testing Instrument" means an instrument for making a chemical analysis of breath and giving the resultant alcohol concentration in grams of alcohol per 210 liters of breath;
- (3) "Controlled Drinking Program" means a bona fide scientific, experimental, educational, or demonstration program in which tests of a person's breath or blood are made for the purpose of determining his alcohol concentration when such person has consumed controlled amounts of alcohol;
- (4) "Director" means the Director of the Division of Public Health of the Department;
- (5) "Handling Alcoholic Beverages" means the acquisition, transportation, keeping in possession or custody, storage, administration, and disposition of alcoholic beverages done in connection with a controlled-drinking program;
- (6) "Observation Period" means a period during which a chemical analyst observes the person or persons to be tested to determine that the person or persons has not ingested alcohol or other fluids, regurgitated, vomited, eaten, or smoked in the 15 minutes immediately prior to the collection of a breath specimen. The chemical analyst may observe while conducting the operational procedures in using a breath-testing instrument. Dental devices or oral jewelry need not be removed;
- (7) "Permittee" means a chemical analyst possessing a valid permit from the Department to perform chemical analyses, of the type set forth within the permit;
- (8) "Simulator Solution" means a water-alcohol solution made by preparing a stock solution of distilled or American Society for Testing and Materials Type I water and 48.4 grams of alcohol per liter of solution. Each 10 ml. of this stock solution is further diluted to 500 ml. by adding distilled or American Society for Testing and Materials Type I water. The resulting simulator solution corresponds to the equivalent alcohol concentration of 0.08;
- (9) "Verify Instrument Accuracy" means verification of instrumental accuracy of an approved breath testing instrument or approved alcohol screening test device by employment of a control sample from an alcoholic breath simulator using simulator solution and obtaining the expected result or 0.01 less than the expected result as specified in Item (8) of this Rule; or by employment of a control sample from an ethanol gas canister and obtaining the expected result or 0.01 less than the expected result as specified in Item (10) of this Rule. When the procedures set forth for approved breath testing instruments in Section .0300 of this Subchapter and for approved alcohol screening test devices in Section .0500 of this Subchapter are followed and the result specified herein is obtained, the instrument shall be deemed accurate;
- (10) "Ethanol Gas Canister" means a dry gas calibrator producing an alcohol-in-inert gas sample at an accurately known concentration from a compressed gas cylinder. The resulting alcohol-in-inert gas sample corresponds to the equivalent concentration of 0.08.

History Note: Authority G.S. 20-139.1(b); 20-139.1(g);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. November 1, 2007; April 1, 2001; January 1, 1995; January 4, 1994; October 1, 1990; September 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0102 CONSULTANT PANEL AND REVIEW BOARD FEES

History Note: Authority G.S. 20-9; 143B-10;

Eff. December 22, 1980;
Amended Eff. July 1, 2005; January 1, 1990; October 1, 1986;
Repealed Eff. November 1, 2005.

SECTION .0200 - BLOOD ALCOHOL TEST REGULATIONS

10A NCAC 41B .0201 INITIAL PERMIT FOR BLOOD ANALYST

- (a) Any person desiring an initial permit as a blood analyst shall make written application to the Director.
- (b) In the application, the applicant shall set out his professional qualifications and experience and describe in detail the method intended to be used in performing chemical analyses of blood, the equipment and chemicals to be employed, the names and professional qualifications of any persons who will assist him in any of the incidental phases of the analyses to be made, and the location in and conditions under which the analyses shall be made. The Director shall prepare application forms to assist applicants in presenting the required information in an orderly fashion.

History Note: Authority G.S. 20-139.1(b);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0202 GRANTING PERMITS

- (a) After receiving the application, the Director shall grant or deny permits to perform chemical analyses of the blood on the basis of his determination of the character and qualifications of the applicant and whether the method of chemical analysis proposed will be sufficiently reliable to meet generally accepted forensic standards.
- (b) If from any application it appears that the chemical analysis of the blood will be done by persons under the supervision of the applicant, the Director shall require each person slated to perform chemical analyses of the blood to submit application. Where the Director is satisfied that the critical professional phases of the analysis will be performed by the applicant and that assistance from others will be incidental phases, he may grant the permit to the applicant.
- (c) Permits granted under this Section shall be granted only to persons performing chemical analyses of blood for law enforcement officers under the provisions of G.S. 20-139.1. The Director may require such documentation or conduct such investigations as may be necessary to insure that applicants for initial or renewal permits meet this requirement before granting permits.

History Note: Authority G.S. 20-139.1(b);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990; July 1, 1985; January 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0203 APPROVED PERMITS

- (a) A blood analyst performing chemical analyses of blood in accordance with the description set out in the application for an initial, renewal, or modified permit shall be deemed to be performing such analyses in a manner approved by the Director.
- (b) All initial, modified, and renewal permits shall be valid for a period of two years.

History Note: Authority G.S. 20-139.1(b);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. April 1, 1992; September 1, 1990; July 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0204 MODIFICATION OF PERMIT

Before making any material alteration in method or procedure for performing chemical analyses of blood, a blood analyst must be granted a modified permit from the Director. The provisions applicable for the granting of initial permits shall govern. When the blood analyst who holds a permit has assistants performing incidental phases of chemical analyses, replacement of these individuals with other assistants shall not be deemed a material alteration of procedure so long as any assistant has the same general qualifications and abilities as the person replaced.

History Note: Authority G.S. 20-139.1(b);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0205 RENEWAL OF PERMIT

- (a) At least three months prior to the expiration of the permit, a blood analyst desiring to renew the permit must submit written application for renewal to the Director.
- (b) The procedure applicable to the granting of initial applications shall govern the granting of renewal applications.

History Note: Authority G.S. 20-139.1(b);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. January 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0206 DETERMINATION OF RENEWAL OF PERMIT

- (a) In determining whether to renew the permit of a blood analyst, the Director shall consider whether the method and procedure continues to meet the generally accepted forensic standards for chemical analyses of blood; he shall also take into account evidence available concerning the character and continuing ability of the blood analyst.
- (b) If in acting upon an application for renewal of permit the Director returns the application for additional information, or requests a modification of method, so as to cause a delay in granting the renewal or modified permit, the Director at his discretion may grant the blood analyst a provisional permit under the conditions applicable to the expiring permit. A provisional permit shall be valid for the period stated in the permit, but shall not be issued for a period longer than three months. A provisional permit may be renewed once.

History Note: Authority G.S. 20-139.1(b);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990; July 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0207 EVALUATION OF BLOOD ANALYSTS

The Director may institute a procedure for periodically testing the competence of blood analysts, which may include supervisory inspections of laboratories in which chemical analyses of blood are being performed.

History Note: Authority G.S. 20-139.1(b);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0208 REVOCATION OF PERMIT

- (a) If the Director receives unfavorable information concerning the character or ability of any blood analyst, he shall direct an investigation to be made. If the Director becomes satisfied that the unfavorable information is accurate, and that the blood analyst would for this reason no longer be eligible to be granted an initial or renewal permit, he shall

suspend or revoke the permit using the same procedures that are used for the suspension or revocation of permits in G.S. 130A-23.

(b) Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B.

History Note: Authority G.S. 20-139.1(b);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990; December 1, 1987; April 1, 1987; January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0209 REPORTING OF ALCOHOL CONCENTRATIONS BY BLOOD ANALYSTS

When performing chemical analyses of blood under the authority of G.S. 20-139.1 and the provisions of these rules, blood analysts shall report alcohol concentrations based on grams of alcohol per 100 milliliters of whole blood.

History Note: Authority G.S. 20-139.1(b);
Eff. October 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

SECTION .0300 - BREATH ALCOHOL TEST REGULATIONS

10A NCAC 41B .0301 APPLICATION FOR INITIAL PERMIT

(a) Application for an initial permit to perform chemical analysis of a person's breath to determine his alcohol concentration shall be made in writing to the Director. The applicant shall have the endorsement of his supervisor, or his supervisor's representative. The Director shall issue, deny, terminate, and revoke permits for individuals to perform chemical analyses.

(b) Permits shall be granted to individuals who:

- (1) demonstrate the ability to perform chemical analyses accurately and reliably;
- (2) can explain the method of operation of the breath-testing instrument for which he is applying for a permit to operate;
- (3) provide a statement on the application from the applicant's supervisor attesting to the good character of the applicant; and
- (4) are employed by a law enforcement agency, the Forensic Tests for Alcohol Branch or members of its instructional staff, or by some other federal, state, county or municipal agency with the responsibility of administering chemical analyses to drivers charged with implied consent offenses.

(c) Individuals successfully completing a minimum of 35 course hours conducted by the Forensic Tests for Alcohol Branch shall be deemed to have met the requirements of Subparagraphs (b)(1) and (2) of this Rule.

History Note: Authority G.S. 20-139.1(b);
Eff. January 1, 1982;
Amended Eff. May 1, 2007; October 1, 1993; September 1, 1990; September 1, 1989; January 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0302 LIMITATION OF PERMIT

(a) Permits shall be limited in scope to the methods or instruments for performing chemical analyses in which the individual applying for a permit has demonstrated competence. This limitation shall be upon the basis of the methods or instruments that received primary emphasis in the particular course of instruction attended by the applicant in the event that successful completion of the course is offered as proof of ability to perform chemical analyses. Initial and renewal permits shall state the date upon which they are to become effective and the date upon which they are to expire. The expiration date shall be no more than 24 months after the effective date.

(b) Permits granted under this Section, initial and renewals, shall be valid only during the period the permittee is employed by a law enforcement agency, the Forensic Tests for Alcohol Branch or a member of its instructional staff, or by some other federal, state, county or municipal agency with the responsibility of administering chemical analyses to drivers charged with implied consent offenses.

*History Note: Authority G.S. 20-139.1(b);
Eff. January 1, 1982;
Amended Eff. April 1, 2007; April 1, 1992; September 1, 1990; January 1, 1985; October 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

10A NCAC 41B .0303 RENEWAL OF PERMIT

The Director shall issue, deny, terminate, and revoke renewal permits for individuals to perform chemical analyses. Where there is a question on the need for a permit, the Director may require the individual to submit a written application for renewal. The applicant shall have the endorsement of his appropriate supervising law enforcement officer, or his designated representative, unless an exception is granted by the Director.

*History Note: Authority G.S. 20-139.1(b);
Eff. January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

10A NCAC 41B .0304 CONDITIONS FOR RENEWAL OF PERMIT

(a) Permits may be renewed at expiration, or at such time prior to expiration as is convenient for the Director, upon demonstration by the permittee of:

- (1) continuing ability to perform accurate and reliable chemical analyses;
- (2) ability to explain the method of operation of the breath-testing instrument for which he is applying for a renewal permit to operate; and
- (3) continued employment by a law enforcement agency, the Forensic Tests for Alcohol Branch or a member of its instructional staff, or by some other federal, state, county or municipal agency with the responsibility of administering chemical analyses to drivers charged with implied consent offenses.

(b) The permittee shall provide a statement on the application from the applicant's supervisor attesting to the good character of the applicant.

(c) Individuals successfully completing a forensic test for alcohol recertification course conducted by the Forensic Tests for Alcohol Branch prior to the expiration of their permits shall be deemed to have met the requirements of Subparagraphs (a)(1) and (2) of this Rule for the renewal of permits.

(d) In addition to meeting the requirements of Paragraph (a) of this Rule, individuals desiring renewal permits, after expiration of their permits, shall successfully complete the following Forensic Tests for Alcohol Branch course requirements prior to the granting of renewal permits:

- (1) Forensic Tests for Alcohol Recertification Course if the permit has been expired less than six months;
- (2) Forensic Tests for Alcohol Operators Course if the permit has been expired six months or longer.

*History Note: Authority G.S. 20-139.1(b);
Eff. January 1, 1982;
Amended Eff. May 1, 2007; October 1, 1993; April 1, 1992; September 1, 1990; September 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

10A NCAC 41B .0305 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0306 TESTING OF EQUIPMENT

The Director or his representative shall have the authority to verify periodically the condition of all breath-testing instruments used by permittees.

History Note: Authority G.S. 20-139.1(b);
Eff. January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0307 EVALUATION OF PERMITTEES

The Director or his representative may at any time examine permittees to determine their continuing ability to perform accurate and reliable chemical analyses.

History Note: Authority G.S. 20-139.1(b);
Eff. January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0308 REVOCATION OF PERMIT

(a) If the Director receives unfavorable information concerning the character or ability of any permittee, he shall direct an investigation to be made. If the Director determines, after investigation, that the permittee would no longer be eligible to be granted an initial or renewal permit, he shall suspend or revoke the permit using the same procedures that are used for suspension or revocation of permits in G.S. 130A-23.

(b) Appeals concerning the interpretation and enforcement of the Rules in this Section shall be made in accordance with G.S. 150B.

History Note: Authority G.S. 20-139.1(b);
Eff. January 1, 1982;
Amended Eff. September 1, 1990; December 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0309 QUALIFICATIONS OF MAINTENANCE PERSONNEL

History Note: Authority; G.S. 20-139.1(b2);
Eff. January 1, 1982;
Amended Eff. October 1, 1993; April 1, 1992; September 1, 1990; September 1, 1989;
Repealed Eff. May 1, 2007.

10A NCAC 41B .0310 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0311 LOG

History Note: Authority G.S. 20-16.5(j); 20-139.1(b);
Eff. January 1, 1982;
Amended Eff. April 1, 1992; October 1, 1990;
Repealed Eff. November 1, 2007.

10A NCAC 41B .0312 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0313 BREATH-TESTING INSTRUMENTS: REPORTING OF SEQUENTIAL TESTS

The Department approves breath-testing instruments listed on the National Highway Traffic Safety Administration, Conforming Products List of Evidential Breath Measurement Devices. Instruments are approved on the basis of results of evaluations by the Forensic Tests for Alcohol Branch. Evaluations are not limited in scope and may include any factors deemed appropriate to ensure the accuracy, reliability, stability, cost, and ease of operation and durability of the instrument being evaluated.

History Note: Authority G.S. 20-16.5(j); 20-139.1(b);
Eff. January 1, 1982;

Amended Eff. May 1, 2007; April 1, 1993; September 1, 1990; March 1, 1989; December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0314 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0315 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0316 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0317 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0319 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0319 RESERVED FOR FUTURE CODIFICATION

10A NCAC 41B .0320 INTOXILYZER: MODEL 5000

10A NCAC 41B .0321 PREVENTIVE MAINTENANCE: INTOXILYZER: MODEL 5000

*History Note: Authority G.S. 20-139.1(b); 20-139.1(b)(b2);
Eff. January 1, 1985;
Temporary Amendment Eff. September 1, 1989 for a period of 180 days to expire on February 28, 1990;
Amended Eff. November 1, 2007; April 1, 2001; April 1, 1993; April 1, 1992; January 1, 1990;
March 1, 1989;
Expired Eff. February 1, 2018 pursuant to G.S. 150B-21.3A.*

**10A NCAC 41B .0322 INTOXIMETERS: MODEL INTOX EC/IR II AND MODEL INTOX EC/IR II
(ENHANCED WITH SERIAL NUMBER 10,000 OR HIGHER)**

The following operational procedures shall be followed when administering a test using the Intoximeters, Model Intox EC/IR II and Model Intox EC/IR II (Enhanced with serial number 10,000 or higher):

- (1) Ensure instrument displays time and date;
- (2) Ensure observation period requirements have been met;
- (3) Initiate breath test sequence;
- (4) Enter information as prompted by the instrument;
- (5) Verify instrument accuracy;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample; and
- (8) Print test record.

If the alcohol concentrations differ by more than 0.02, a third or fourth breath sample shall be collected when "PLEASE BLOW" appears. Sequential tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

*History Note: Authority G.S. 15A-534.2(d); 20-139.1(b);
Eff. November 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. April 1, 2020.*

**10A NCAC 41B .0323 PREVENTIVE MAINTENANCE: INTOXIMETERS: MODEL INTOX EC/IR II
AND MODEL INTOX EC/IR II (ENHANCED WITH SERIAL NUMBER 10,000
OR HIGHER)**

The preventive maintenance procedures for the Intoximeters, Model Intox EC/IR II and Model Intox EC/IR II (Enhanced with serial number 10,000 or higher) to be followed at least once every four months are:

- (1) Verify the ethanol gas canister displays at least 51 pounds per square inch (psi) of pressure, or the alcoholic breath simulator thermometer shows 34 degrees, plus or minus .2 degree centigrade;

- (2) Verify instrument displays time and date;
- (3) Initiate breath test sequence;
- (4) Enter information as prompted;
- (5) Verify instrument accuracy;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample;
- (8) Print test record;
- (9) Run diagnostic program and confirm preventive maintenance status of "Pass"; and
- (10) Verify that the ethanol gas canister is being changed before expiration date, or the alcoholic breath simulator solution is being changed every four months or after 125 Alcoholic Breath Simulator tests, whichever occurs first.

A signed original of the preventive maintenance record, or an electronic copy of the signed original of the preventive maintenance record, shall be kept on file at the North Carolina Department of Health and Human Services for three years.

History Note: Authority G.S. 15A-534.2(d); 20-139.1(b2);
Eff. November 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. April 1, 2020.

SECTION .0400 - CONTROLLED DRINKING PROGRAMS

10A NCAC 41B .0401 APPLICATION OF REGULATIONS

(a) The regulations of this Section apply to the handling of alcoholic beverages in connection with one or a series of controlled-drinking programs when any aspect of the handling would not be lawful except for the provisions of G.S. 20-139.1(g) and these regulations. If all aspects of the handling of alcoholic beverages in connection with one or a series of controlled-drinking programs may be effected in accordance with North Carolina's laws and regulations of general application pertaining to the regulation of alcoholic beverages, compliance with these regulations is not necessary. In all events, governing provisions of federal law must be met in the handling of alcoholic beverages.

(b) Persons authorized to obtain and possess alcohol exempt from the taxes of the United States and of North Carolina may utilize such alcohol in controlled-drinking programs to the extent authorized by law. Handling of such tax-exempt alcohol shall not be governed by these regulations provided there is compliance with all the other applicable laws of the United States and of North Carolina.

History Note: Authority G.S. 20-139.1(g);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0402 AUTHORIZATION

(a) Any person may conduct a controlled-drinking program without special authorization from the Director if such program is either under the supervision of a public agency or institution or presented with the participation of a public employee possessing a valid permit from the Director to perform chemical analyses of breath or blood and participation by the permittee has been authorized by his superiors.

(b) Any other person desiring to conduct a controlled-drinking program under the authority of these regulations must apply for authorization from the Director. The Director may grant the authorization if it appears that the proposed controlled-drinking program or series of programs will be conducted in a manner so as to minimize danger or annoyance to the public on the part of the drinking subjects and that the program or series of programs will in general further the bona fide objectives of the chemical testing programs within this state. Request for such authority shall be submitted so as to reach the Director at least 10 days prior to the proposed controlled-drinking program or the initial program of a proposed series.

History Note: Authority G.S. 20-139.1(g);

Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0403 HANDLING ALCOHOLIC BEVERAGES

- (a) Alcoholic beverage intended for use in a controlled-drinking program authorized under these regulations shall be procured from alcoholic beverage control stores, from the North Carolina Alcoholic Beverage Control Commission, or from retail establishments duly licensed to sell wine or malt beverages. Each purchase shall be covered by a requisition, bill of sale, or other record evidence, showing the date, place of purchase, type of alcoholic beverage, and the quantity.
- (b) An individual procuring alcoholic beverage for use in a controlled-drinking program shall be of lawful age to buy alcoholic beverages.
- (c) Alcoholic beverages required for use in a specific controlled-drinking program shall be procured on the basis of estimated requirements and wherever feasible procured just prior to its use.

History Note: Authority G.S. 20-139.1(g);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990; January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0404 QUANTITY LIMITS

Any person handling alcoholic beverages in a manner consonant with the bona fide objectives of an authorized controlled-drinking program may possess and transport such alcoholic beverage wherever necessary or desirable in furtherance of the objectives of the program within the quantity limits specified in this Rule. Any person handling alcohol beverages in conjunction with a controlled-drinking program shall handle such beverages in accordance with G.S. 18B-303.

If the cap or seal on any container of alcoholic beverage has been opened or broken, such container may not be transported in the passenger area of a motor vehicle.

History Note: Authority G.S. 20-139.1(g);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990; January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0405 EXCESS OF QUANTITIES

- (a) Any person responsible for the handling of alcoholic beverages in connection with an authorized controlled-drinking program may procure, possess, and transport alcoholic beverages in excess of the quantities allowed by Rule .0404 of this Section provided the person or his employer holds a valid permit from the North Carolina Alcoholic Beverage Control Commission. Request for such a permit shall be forwarded to the Director, indicating the need for the permit, location of the testing program, the quantity and type alcoholic beverage to be procured and transported, and the name of the agency or individual to whom the permit should be issued.
- (b) Where a series of controlled-drinking programs are proposed, the request for the permit may generally state the nature, extent, and possible locations of such programs and the over-all duration of the series. Permits shall not be valid for more than one year. The Director shall forward such requests to the North Carolina Alcoholic Beverage Control Commission with appropriate recommendations concerning the issuance of each permit.

History Note: Authority G.S. 20-139.1(g);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990; January 1, 1982;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.

10A NCAC 41B .0406 RESTRICTED USE OF ALCOHOLIC BEVERAGES

- (a) When not being used, all alcoholic beverages shall be stored in a safe place, if possible under lock and key.
- (b) Alcoholic beverages procured for use in a controlled-drinking program shall be used only for this purpose. Malt beverages, unfortified wine, fortified wine or spirituous liquor shall not be given or otherwise administered to anyone under 21 years of age.
- (c) Any person, agency, or institution conducting a controlled-drinking program is authorized to store such quantities of alcoholic beverages as may be required for the conduct of the program.

*History Note: Authority G.S. 20-139.1(g);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. October 1, 1986; October 1, 1983; January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

10A NCAC 41B .0407 RECORDS

- (a) Any person, agency, or institution acquiring alcoholic beverages for use in a controlled-drinking program pursuant to these Rules shall keep records accounting for the disposition of all alcoholic beverages so acquired. Such records shall be made available for inspection upon the request of any federal or state law enforcement officer with jurisdiction over the laws relating to alcohol or alcoholic beverages.
- (b) As a minimum, records on alcoholic beverages procured for use in controlled-drinking programs will show the following:
 - (1) the date, place, type, and quantity of alcoholic beverages procured;
 - (2) the date and quantities of alcoholic beverages, by type, dispensed for controlled-drinking purposes;
 - (3) a running inventory, showing the quantity of each type alcoholic beverage on hand.

*History Note: Authority G.S. 20-139.1(g);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. September 1, 1990; January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

SECTION .0500 - ALCOHOL SCREENING TEST DEVICES

10A NCAC 41B .0501 SCREENING TESTS FOR ALCOHOL CONCENTRATION

- (a) This Section governs the requirement of G.S. 20-16.3 that the Department examine devices suitable for use by law enforcement officers in making on-the-scene tests of drivers for alcohol concentration and that the Department approve these devices and their manner of use. In examining devices for making chemical analyses, the Department finds that at present only screening devices for testing the breath of drivers are suitable for on-the-scene use by law enforcement officers.
- (b) This Section does not address or in any way restrict the use of screening tests for impairment other than those based on chemical analyses, including various psychophysical tests for impairment.

*History Note: Authority G.S. 20-16.3; 20-16.3A;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. April 1, 2007; October 1, 1993; October 1, 1983; January 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

10A NCAC 41B .0502 APPROVAL: ALCOHOL SCREENING TEST DEVICES: USE

(a) Alcohol screening test devices that measure alcohol concentration through testing the breath of individuals are approved on the basis of results of evaluations by the Forensic Tests for Alcohol Branch. Devices shall meet the minimum requirements as set forth in the Department specifications for Alcohol Screening Test Devices. Evaluations are not limited in scope and may include any factors deemed appropriate to insure the accuracy, reliability, stability, cost, and ease of operation and durability of the device being evaluated. On the basis of evaluations to date, approved devices are listed in 10A NCAC 41B .0503 of this Section.

(b) When the validity of an alcohol screening test of the breath of a driver administered by a law enforcement officer depends upon approval by the Department of the test device and its manner of use, the test shall be administered as follows:

- (1) The officer shall determine that the driver has removed all food, drink, tobacco products, chewing gum and other substances and objects from his mouth. Dental devices or oral jewelry need not be removed.
- (2) Unless the driver volunteers the information that he has consumed an alcoholic beverage within the previous 15 minutes, the officer shall administer a screening test as soon as feasible. If a test made without observing a waiting period results in an alcohol concentration reading of 0.08 or more, the officer shall wait five minutes and administer an additional test. If the results of the additional test show an alcohol concentration reading more than 0.02 under the first reading, the officer shall disregard the first reading.
- (3) The officer may request that the driver submit to one or more additional screening tests.
- (4) In administering any screening test, the officer shall use an alcohol screening test device approved under 10A NCAC 41B .0503 of this Section in accordance with the operational instructions supplied by the Forensic Tests for Alcohol Branch and listed on the device.

*History Note: Authority G.S. 20-16.3;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. April 1, 2007; April 1, 2001; September 1, 1990; January 1, 1990; October 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018.*

10A NCAC 41B .0503 APPROVED ALCOHOL SCREENING TEST DEVICES: CALIBRATION

(a) The following breath alcohol screening test devices are approved as to type and make:

- (1) ALCO-SENSOR (with two-digit display), manufactured by Intoximeters, Inc.
- (2) ALCO-SENSOR III (with three-digit display), manufactured by Intoximeters, Inc.
- (3) ALCO-SENSOR IV, manufactured by Intoximeters, Inc.
- (4) ALCO-SENSOR FST, manufactured by Intoximeters, Inc.
- (5) S-D2, manufactured by CMI, Inc.
- (6) S-D5, manufactured by CMI, Inc.
- (7) ALCO-SENSOR III (Enhanced with Serial Numbers above 1,200,000), manufactured by Intoximeters, Inc.
- (8) ALCO-SENSOR FST (Enhanced with Serial Numbers 200,000 and higher), manufactured by Intoximeters, Inc.
- (9) LIFELOC FC10, manufactured by Lifeloc Technologies, Inc.
- (10) INTOXILYZER 500, manufactured by CMI, Inc.
- (11) ALCOVISOR MERCURY, manufactured by PAS International.

(b) The agency or operator shall verify instrument calibration of each alcohol screening test device at least once during each 30 day period of use. The verification shall be performed using an alcoholic breath simulator with a simulator solution in accordance with Paragraph (c) of this Rule or an ethanol gas canister in accordance with Paragraph (d) of this Rule.

(c) Alcoholic breath simulators used exclusively to verify instrument calibration of alcohol screening test devices shall have the solution changed every 30 days or after 25 calibration tests, whichever occurs first.

(d) Ethanol gas canisters used exclusively to verify instrument calibration of alcohol screening test devices shall not be utilized beyond the expiration date on the canister.

(e) Requirements of Paragraphs (b), (c), and (d) of this Rule shall be recorded on an alcoholic breath simulator log or an ethanol gas canister log designed by the Forensic Tests for Alcohol Branch within the North Carolina

Department of Health and Human Services and maintained by the user agency in accordance with the user agency's retention policy.

History Note: Authority G.S. 20-16.3; 20-138.7(d);
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. July 1, 2007; November 1, 2005; April 1, 2001; January 1, 1995; January 4, 1994;
April 1, 1993; January 4, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. April 1, 2020.