



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

Commission for Public Health

**ROY COOPER** • Governor

**MANDY COHEN, MD, MPH** • Secretary

**MARK T. BENTON** • Assistant Secretary for Public Health

Division of Public Health

**MEMORANDUM**

**DATE:** December 2, 2019

**TO:** Rulemaking Interested Persons

**FROM:** Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health  
Joel Johnson, Rulemaking Coordinator, Department of Health and Human Services

**RE:** Notification of Proposed Amendment of 10A NCAC 41B .0322, .0323, and .0503 –  
Forensic Tests for Alcohol

Pursuant to G.S. 150B-21.2, this memorandum serves as the required notice to interested persons that the NC Commission for Public Health (CPH) and NC Department of Health and Human Services (DHHS) are proposing to amend rules 10A NCAC 41B .0322, .0323, and .0503. The proposed rules amend the breath alcohol test and alcohol screening test rules to add one additional breath testing instrument and five additional alcohol screening test devices. CPH and DHHS have submitted notice of the intent to make these rule changes to the NC Office of Administrative Hearings (OAH).

In accordance with G.S. 150B-21.4, a fiscal note was prepared for these proposed rules and approved by CPH and DHHS. The changes will have an impact on state and local funds, but will not have a substantial economic impact. The fiscal note was approved by the NC Office of State Budget and Management (OSBM) on October 31, 2019.

The notice of text that was published in today's edition of the NC Register is attached to this memorandum and may be found on OAH's website at <https://www.oah.nc.gov/documents/nc-register>. The text of the proposed rules and the fiscal note may be found on CPH's website at <https://cph.publichealth.nc.gov/>.

A public hearing on these rules is scheduled for Friday, December 20, 2019 at 10:00 a.m. in the Cardinal Conference Room, Building 3, 5605 Six Forks Road, Raleigh, NC 27609.

CPH and DHHS are accepting public comments on the proposed rules and fiscal note from December 2, 2019 – January 31, 2020. You may submit comments by email to [cphcomment@lists.ncmail.net](mailto:cphcomment@lists.ncmail.net) or by mail to Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931. Comments will also be accepted at the public hearing. The proposed effective date of these proposed rules is April 1, 2020.

Should you have questions related to this memorandum, the proposed rules, or the fiscal note, please contact Fritz LaBarge, Division of Public Health, Branch Head, Forensic Tests for Alcohol Branch at 919-707-5253.

**NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH**

LOCATION: 5605 Six Forks Road, Building 3, Raleigh, NC 27609  
MAILING ADDRESS: 1931 Mail Service Center, Raleigh, NC 27699-1931  
www.ncdhhs.gov • TEL: 919-707-5000 • FAX: 919-870-4829

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Attachment

cc: Dr. Ronald May, Chair, Commission for Public Health  
Mr. Mark Benton, Assistant Secretary, Division of Public Health  
Dr. Susan Kansagra, Chronic Disease and Injury Section Chief, Division of Public Health  
Ms. Sharon Rhyne, Chronic Disease and Injury Deputy Section Chief, Division of Public Health  
Mr. Fritz LaBarge, Forensic Tests for Alcohol Branch Head, Division of Public Health

## TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health and Department of Health and Human Services intend to amend the rules cited as 10A NCAC 41B .0322, .0323, and .0503.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://cph.publichealth.nc.gov>

**Proposed Effective Date:** April 1, 2020

**Public Hearing:**

**Date:** December 20, 2019

**Time:** 10:00 a.m.

**Location:** Cardinal Conference Room, located at 5605 Six Forks Road, Raleigh, NC 27609

**Reason for Proposed Action:** *The proposed rules amend the breath alcohol test and alcohol screening test rules to add one additional breath testing instrument and five additional alcohol screening test devices.*

**Comments may be submitted to:** Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 707-5006; email [cphcomment@lists.ncmail.net](mailto:cphcomment@lists.ncmail.net)

**Comment period ends:** January 31, 2020

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact ( $\geq$  \$1,000,000)
- Approved by OSBM
- No fiscal note required

### CHAPTER 41 - EPIDEMIOLOGY HEALTH

#### SUBCHAPTER 41B – INJURY CONTROL

#### SECTION .0300 - BREATH ALCOHOL TEST REGULATIONS

#### 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 operational procedures to be followed in using the Intoximeters, Model Intox EC/IR II and Model Intox EC/IR II (Enhanced with serial number 10,000 or higher) are:

- (1) ~~Insure~~ Ensure instrument displays time and date;
- (2) ~~Insure~~ Ensure observation period requirements have been met;
- (3) Initiate breath test sequence;
- (4) Enter information as prompted by the instrument; ~~prompted~~;
- (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. Subsequent tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

*History Note: Authority G.S. 20-139.1(b).*

**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 "; ~~Verify Diagnostic Program;~~ 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~~ 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 at least three years.

*History Note:* Authority G.S. 20-139.1(b2).

**SECTION .0500 - ALCOHOL SCREENING TEST DEVICES**

**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 ~~made~~ by Intoximeters, Inc.
- (2) ALCO-SENSOR III (with three-digit display), manufactured ~~made~~ 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 ~~by employment of~~ an alcoholic breath simulator with a ~~using~~ simulator solution in accordance with Paragraph (c) of this Rule ~~the rules in this Section~~ or an ethanol gas canister in accordance with Paragraph (d) of this Rule. ~~canister.~~

(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. ~~agency.~~

*History Note:* Authority G.S. 20-16.3.