

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05B .0301

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

Staff is recommending objection to 11 NCAC 05B .0301 for lack of statutory authority, clarity, and necessity. This Rule provides for minimum professional qualifications for fire service personnel and was published in the Register and filed with the Rules Review Commission under the authority of the Department of Insurance.

It is staff's opinion that G.S. 58-78-5(14b) provides clear authority regarding the minimum professional qualifications of fire service personnel to the State Fire and Rescue Commission, which is a separate rulemaking body from the Department of Insurance.

§ 58-78-5. State Fire and Rescue Commission – Powers and duties. (a) The Commission shall have the following powers and duties:... (14b) To establish voluntary minimum professional qualifications for all levels of fire service and rescue service personnel, and to issue, deny, suspend, revoke or take similar actions with respect to certifications issued by the Commission of minimum professional qualifications established under this subdivision.

Staff notes that Session Law 2019-179, Section 8, amended G.S. 58-78-5(a) to clarify the rulemaking authority of the State Fire and Rescue Commission as follows:

PART VIII. CLARIFY RULE-MAKING AUTHORITY FOR STATE FIRE AND RESCUE COMMISSION SECTION 8. G.S. 58-78-5(a) is amended by adding a new subdivision to read: "(a) The Commission shall have the following powers and duties: ... (17) To adopt, modify, or repeal any rules and regulations necessary for the purpose of carrying out the provisions of this Article."

Amber May
October 1, 2021

Further, it is staff's opinion that 11 NCAC 05B .0301 is unclear as written. Specifically, this rule provides that "the Commission shall establish voluntary minimum professional qualifications for all levels of fire service personnel," but does not provide what those qualifications are.

Finally, it is staff's opinion that 11 NCAC 05B .0301 is unnecessary. As currently written, this Rule does not provide any additional information beyond what is contained in G.S. 58-78-5(a)(14b). To the extent that any additional information is provided as to what process will be used to create these standards, the information provided in this Rule appears to be internal management.

1 **11 NCAC 05B .0301** is readopted as published in NCR 35:14 1559 as follows:

2

3 **SECTION .0300 - CERTIFICATION OF FIRE SERVICE PERSONNEL**

4

5 **11 NCAC 05B .0301 MINIMUM PROFESSIONAL QUALIFICATIONS**

6 The commission shall establish voluntary minimum professional qualifications for all levels of fire service personnel. These
7 shall be developed by special committees, appointed by the chairman or full commission, and shall be subject to final
8 approval of the full commission. All boards, committees and sub-committees, having recommendations for changes to these
9 standards shall make them to the full commission for approval. The commission shall make final ruling on appeals to these
10 standards, and shall have the authority to appoint boards or committees to act as intermediaries.

11

12 *History Note: Authority G.S. 58-2-40; 58-78-5(a)(14b);*

13 *~~Eff. November 1, 1988~~-Eff. November 1, 1988;*

14 *Readopted Eff. October 1, 2021.*

15