

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05D .0113

DEADLINE FOR RECEIPT: Friday, October 15, 2021

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 6, what are "normal working hours"? 8-5, Monday through Friday, except for State holidays?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: October 1, 2021

1 **11 NCAC 05D .0113** is readopted as published in NCR 35:14 1560 as follows:

2

3 **11 NCAC 05D .0113 REPORT OF THEFT OR LOSS OF PYROTECHNICS**

4 (a) A permittee shall report the theft or loss of pyrotechnics to the county sheriff or city police, to ATF and to OSFM, by
5 telephone, within eight hours after the permittee discovers the theft or loss. OSFM may be reached at 919-661-5880
6 during normal working hours and at the North Carolina Highway Patrol dispatch number, 919-733-3861, outside normal
7 working hours.

8 (b) Within 24 hours after discovery of the loss or theft, the permittee shall provide OSFM written notice that includes a
9 description of the pyrotechnics, including the manufacturer, brand name, any manufacturer marking and quantity, and a
10 description of the circumstances surrounding the theft or loss. The written notice shall also name the law enforcement
11 agencies contacted by the permittee under Paragraph (a) of this Rule.

12

13 *History Note: Authority G.S. 58-82A-1;*

14 ~~*Eff. February 1, 2010.*~~ *Eff. February 1, 2010;*

15 *Readopted Eff. October 1, 2021.*

16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05D .0114

DEADLINE FOR RECEIPT: Friday, October 15, 2021

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Delete the "or" at the end of (a)(1).

In (b), line 9, what are "normal working hours"? 8-5, Monday through Friday, except for State holidays?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: October 1, 2021

1 **11 NCAC 05D .0114** is readopted as published in NCR 35:14 1560 as follows:

2

3 **11 NCAC 05D .0114 REPORT OF INJURY OR PROPERTY DAMAGE**

4 (a) A permittee shall notify OSFM within 24 hours after any of the following involving pyrotechnics:

5 (1) A fire causing property damage in excess of one thousand dollars (\$1,000) to an automobile or ten
6 thousand dollars (\$10,000) to real property; or

7 (2) An injury to any person caused by the display resulting in hospitalization; or

8 (3) Damage to property in excess of one thousand dollars (\$1,000), not related to fire.

9 (b) OSFM may be reached at 919-661-5880 during normal working hours and at the North Carolina Highway Patrol
10 dispatch number, 919-733-3861, outside normal working hours.

11 (c) The permittee shall submit a written report to OSFM within three days after a pyrotechnics display conducted by the
12 permittee if any of the following occurred:

13 (1) Any of the incidents identified in Paragraph (a) of this Rule; or

14 (2) Whenever a defective pyrotechnic product or equipment resulting in any amount of injury or damage
15 occurs.

16

17 *History Note:* Authority G.S. 58-82A-1;

18 ~~Eff. February 1, 2010.~~ Eff. February 1, 2010;

19 Readopted Eff. October 1, 2021.

20

1 **11 NCAC 05D .0115** is readopted as published in NCR 35:14 1560 as follows:

2

3 **11 NCAC 05D .0115 INSPECTIONS** is proposed for readoption as follows:

4 (a) A permittee shall make any records required under Article 54 of Chapter 14 of the General Statutes and Article 82A
5 of Chapter 58 of the General Statutes available to authorized representatives of OSFM or a city or county fire code
6 official.

7 (b) A permittee shall allow the display site, storage facility, or delivery point to be inspected at all times by authorized
8 representatives of OSFM or a city or county fire code official.

9

10 *History Note: Authority G.S. 58-82A-1;*

11 *~~Eff. February 1, 2010.~~ Eff. February 1, 2010;*

12 *Readopted Eff. October 1, 2021.*

13