

## Burgos, Alexander N

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**Subject:** FW: DOI Request for Changes - May 2023 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Monday, May 1, 2023 3:46 PM

**To:** Peace-Bunch, Loretta Y <loretta.peace-bunch@ncdoi.gov>

**Cc:** Hoomani, A. John <john.hoomani@ncdoi.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Summey, Davie <Davie.Summey@ncdoi.gov>

**Subject:** RE: DOI Request for Changes - May 2023 RRC

Hi Loretta,

Thanks for sending this over. It looks like you've made all the recommended changes, and I will recommend approval of both rules at this month's meeting.

If you would, please send the final, amended versions of both rules to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov), and to Alex Burgos, copying me as well.

Best,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## **Burgos, Alexander N**

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**Subject:** FW: DOI Request for Changes - May 2023 RRC  
**Attachments:** 11 ncac 05a .0910 - OAH 5.01-23.doc

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**From:** Peace-Bunch, Loretta Y <loretta.peace-bunch@ncdoi.gov>  
**Sent:** Monday, May 1, 2023 3:09 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Hoomani, A. John <john.hoomani@ncdoi.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Summey, Davie <Davie.Summey@ncdoi.gov>  
**Subject:** RE: DOI Request for Changes - May 2023 RRC

Please see the attached revised rule.

1 11 NCAC 05A .0910 is amended with changes as published in 37:16 NCR 1097-1098 as follows:

2  
3 **11 NCAC 05A .0910 INCIDENT REPORTING**

4 (a) In addition to the requirements of this Rule regarding the storage and deployment of Aqueous Film Forming  
5 Foam (AFFF), ~~When~~ when a fire department responds to a fire, the fire chief shall ensure that a fire incident report  
6 is completed ~~on~~ using software ~~[the]~~ that complies with the current version of the National Fire Incident Reporting  
7 System (NFIRS).

8 (b) A fire department shall keep records on dates, times, and locations of all fires ~~on~~ using software ~~[the]~~ that  
9 complies with the current version of the NFIRS.

10 (c) All reports shall be submitted to OSFM within 120 days of incident occurrence.

11 (d) When a fire department responds to a fire involving fatalities, an initial report shall be filed by the fire chief or  
12 fire marshal of the authority having jurisdiction within 48 hours of the incident to the Office of State Fire Marshal.

13 (e) In accordance with G.S. 58-82B-10, an online reporting portal for the storage and deployment of AFFF has been  
14 created at the following website: <https://www.ncosfm.gov/fire-rescue/ratings-and-inspections/afff-foam>. This  
15 online reporting portal consists of an online database and an online reporting tool to capture the storage and  
16 deployment of AFFF.

17 (f) The fire chief ~~[for every fire department or unit of local government]~~ or fire marshal of the authority having  
18 jurisdiction shall ensure that the following information regarding AFFF inventory for their fire department is entered  
19 into the online database:

20 (1) The number of trucks at each department that carry AFFF, and the fire station or other location,  
21 including street address, where each truck is located.

22 (2) The ~~[volume and, where possible, trade name]~~ volume, trade name, and Chemical Abstract  
23 Service (CAS) number of the AFFF on each truck.

24 (3) An inventory, ~~[including the volume and, where possible, trade name]~~ including the volume, trade  
25 name, and CAS number of AFFF stored by each fire department at a fire station or other location,  
26 including the street address where the AFFF is stored.

27 (4) The ~~[volume and, where possible, trade name]~~ volume, trade name, and CAS number of AFFF  
28 products that are no longer utilized and could be removed from inventory for disposal, including  
29 the street address where the AFFF is stored.

30 (5) A photograph of the label and the container of the AFFF. For the purpose of this Subparagraph, a  
31 photograph includes an electronic image produced by the camera of an electronic device.

32 The information entered in the online database shall be updated annually in accordance with G.S. 58-82B-5.

33 (g) When a fire department responds to a ~~[fire or]~~ fire, conducts training involving AFFF foam in any ~~[quantity,~~  
34 quantity, or has an accidental spill, the fire chief shall ensure an initial report is entered in the online reporting tool  
35 within 15 days of the incident or the training event, including the following:

1 (1) The date, time, and location, including street address and GPS coordinates, where AFFF was  
2 [used,] involved, [and, where possible, the trade name] the trade name, and CAS number of the  
3 AFFF used.

4 (2) The total volume of AFFF [used,] involved, including gallons of foam and gallons of water and  
5 total concentration of foam.

6 (3) The reason for the deployment of AFFF, such as firefighting, fire prevention, other emergency  
7 response actions intended to protect property or public safety, training, or an accidental spill.

8 (h) The fire chief [for every fire department or unit of local government] or fire marshal of the authority having  
9 jurisdiction shall ensure that an annual report is available in the online reporting tool by July 1<sup>st</sup> of each year that  
10 includes the information required by Paragraph (g) of this Rule.

11  
12 *History Note:* Authority G.S. 58-2-40; 58-36-10; 58-40-25; 58-79-1; 58-79-45; 58-82-5; ~~58-82-10~~; 58.82.10; SL  
13 2021-180, Section 8.10(i);  
14 Eff. January 1, 2018. Eff. January 2018;  
15 Amended Eff. June 1, 2023.  
16

## Burgos, Alexander N

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**Subject:** FW: DOI Request for Changes - May 2023 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Friday, April 28, 2023 1:42 PM

**To:** Peace-Bunch, Loretta Y <loretta.peace-bunch@ncdoi.gov>

**Cc:** Hoomani, A. John <john.hoomani@ncdoi.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: DOI Request for Changes - May 2023 RRC

Hi Loretta,

Thanks for the quick turnaround. I have a few follow ups for you:

With respect to the statutory authority issue, I think I largely concur with my unnamed colleague who you quoted in your response. I will advise the Commission of the issue, but I won't be recommending objection on that basis. I cannot guarantee that they'll follow my recommendation or that they will not have questions about the effect of 58-82B-10(3) on your rulemaking authority, so my best advice to you is to be prepared to speak about that issue at the meeting.

In Rule .0910, I appreciate the changes made. However, there are four things I think still need fixing:

First, in (b), line 8, you still have the "using software the complies" language. "The" needs to be changed to "that".

Second, in (g)(1) and (2), you refer to the amount of AFFF "used". I don't think "used" fits with a spill. I'd suggest something like "used or spilled".

Third, in (h), you have the "fire chief for every fire department or unit of local government" language. This is on me—I didn't flag this instance—but since you changed it in (f), I'd change it equivalently here, as well.

Fourth, in your History Note, I think the correct reference to the SL would be to Section 8.10(i), not (h).

Best,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

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**Subject:** FW: DOI Request for Changes - May 2023 RRC  
**Attachments:** 11 ncac 05a .0911 OAH 4.27.23.doc; 11 ncac 05a .0910 - OAH 4.27.23.doc; 05.2023 - DOI Request for Changes 11 NCAC 05A - AJH.docx

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**From:** Peace-Bunch, Loretta Y <loretta.peace-bunch@ncdoi.gov>  
**Sent:** Friday, April 28, 2023 8:55 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Hoomani, A. John <john.hoomani@ncdoi.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: DOI Request for Changes - May 2023 RRC

Brian,  
Attached are the revised rules and the "DOI Request for Changes" document with the department's responses. Please let us know if you have any questions or need additional information.

Loretta

Loretta Peace-Bunch | Program Coordinator

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N.C. Department of Insurance  
325 N. Salisbury Street

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Insurance

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Monday, May 8, 2023.

***PLEASE NOTE:*** *This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

*In G.S. 58-82B-10(3), the General Assembly directed that the OSFM “shall adopt permanent rules no later than January 1, 2023.” Per your Forms, both of these Rules were adopted on April 18, 2023. Does the failure to meet the statutory deadline strip you of statutory authority to engage in rulemaking?*

**Agency Response:** The Agency is aware of the deadline contained in N.C. Gen. Stat. § 58-82B-10(3) (Session Law 2021-180, s. 8.10.(h)). In fact, prior to initiating this rulemaking action, the Agency reached out to the OAH Rules Division to discuss. What we heard back from staff counsel was that they would not recommend objection based upon the tardiness of the rules, but that they would make the RRC aware of the tardiness and then the RRC would be “free to do as they may.”

Notwithstanding the statutory deadline contained in N.C. Gen. Stat. § 58-82B-10(3), the Agency already has rulemaking authority. The new statute did not grant the Agency rulemaking authority because the Agency already had such authority pursuant to N.C. Gen. Stat. § 58-2-40(1). Rather, the new statute required the Agency to adopt rules regarding AFFF – which is what the Agency has proposed – an Amendment to already existing rules.

*Also, the statute directs the Office of the State Fire Marshal, rather than the Department of Insurance, to engage in rulemaking. I know that the Commissioner of Insurance is also the State Fire Marshal, but I'm curious why these were published and filed as DOI rules rather than OSFM rules.*

**Agency Response:** As you alluded to above, pursuant to N.C. Gen. Stat. § 58-80-1 the Commissioner of Insurance is the “State Fire Marshal.” The Office of the State Fire Marshal is not it's own entity – rather, it is a Division of the N.C. Department of Insurance, which also includes the Company Services Group, Consumer Services, Criminal Investigations Division, etc. N.C. Gen. Stat. § 58-2-40(1) provides that the Commissioner of Insurance is

Brian Liebman

Commission Counsel

Date submitted to agency: April 25, 2023

**“responsible for administering . . . the provisions of [Chapter 58]” and to “adopt rules in accordance with Chapter 150B of the General Statutes.” So, it is the Commissioner of Insurance, through the Department of Insurance, that is the rulemaking authority. The Agency exercises this rulemaking authority on behalf of its’ various divisions.**

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: April 25, 2023



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0910

**DEADLINE FOR RECEIPT: Tuesday, May 9, 2023.**

***PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

*In (a), line 6 and (b) line 8, the phrase “using software the complies with...” should say “using software that complies with...”*

**Agency Response: The rule has been amended to reflect this suggested change.**

*In (f), line 17, would you have a fire chief of a “unit of local government” without having a fire department? I’m not sure why you need to say this.*

*In (f) and (g), the Rule requires that the trade name and CAS number be provided “where possible.” However, Section 8.10.(i) of SL 2021-180 says that the inventory data “shall include” the trade name and CAS number; it isn’t optional. I don’t think you have statutory authority to say “where possible” but I’d like to hear why you put this here and your argument on authority.*

**Agency Response: Sometimes the barrels that contain the AFFF are old and the CAS number may not be legible or may be gone completely.**

*Also with respect to (f) and (g), what does “possible” mean? Also, who decides that it was not possible to obtain this information?*

*In (g), line 32, I think the opening paragraph contradicts item (3). The opening paragraph says “when a fire department responds to a fire or conducts training” but (3) references “accidental spill[s]” which I don’t think is encompassed by “responds to a fire or conducts training”. Please revise.*

*In your History Note, why do you have references to 58-36-10 and 58-40-25? They don’t seem to have anything to do with fires, AFFF, or reporting.*

**Agency Response: N.C. Gen. Stat. § 58-36-10(3) and N.C. Gen. Stat. § 58-40-25(4) provide that the Commissioner may establish and modify public**

Brian Liebman

Commission Counsel

Date submitted to agency: April 25, 2023

protection districts and in so doing “shall use standards at least as equivalent” as those used by ISO. Further, those statutes provide that in establishing these standards, the Commissioner is subject to Article 2A of Chapter 150B. That is what is being done here – the Commissioner is modifying the standards for the various districts across the state in accordance with the General Assembly’s instruction.

*In your History Note, while we usually frown on citations to session laws, here SL 2021-180 explicitly states what must be in the Rule. I think a cite to that particular section of the SL is necessary here.*

**Agency Response: The rule has been amended to include SL 2021-180 section.**

*In your History Note, please specify the Amended Eff. date.*

**Agency Response: The rule has been changed to include the Amended Eff. Date.**

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0911

**DEADLINE FOR RECEIPT: Tuesday, May 9, 2023.**

***PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

*In your History Note, why do you have references to 58-36-10 and 58-40-25? They don't seem to have anything to do with fires, AFFF, reporting, or records retention.*

**Agency Response: N.C. Gen. Stat. § 58-36-10(3) and N.C. Gen. Stat. § 58-40-25(4) provide that the Commissioner may establish and modify public protection districts and in so doing “shall use standards at least as equivalent” as those used by ISO. Further, those statutes provide that in establishing these standards, the Commissioner is subject to Article 2A of Chapter 150B. That is what is being done here – the Commissioner is modifying the standards for the various districts across the state in accordance with the General Assembly’s instruction.**

*In your History Note, please specify the Amended Eff. date.*

**Agency Response: The rule has been changed to include the Amended Eff. Date.**

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

1 11 NCAC 05A .0910 is amended with changes as published in 37:16 NCR 1097-1098 as follows:

2  
3 **11 NCAC 05A .0910 INCIDENT REPORTING**

4 (a) In addition to the requirements of this Rule regarding the storage and deployment of Aqueous Film Forming  
5 Foam (AFFF), ~~When~~ when a fire department responds to a fire, the fire chief shall ensure that a fire incident report  
6 is completed ~~on~~ using software ~~[the]~~ that complies with the current version of the National Fire Incident Reporting  
7 System (NFIRS).

8 (b) A fire department shall keep records on dates, times, and locations of all fires ~~on~~ using software ~~the~~ complies  
9 with the current version of the NFIRS.

10 (c) All reports shall be submitted to OSFM within 120 days of incident occurrence.

11 (d) When a fire department responds to a fire involving fatalities, an initial report shall be filed by the fire chief or  
12 fire marshal of the authority having jurisdiction within 48 hours of the incident to the Office of State Fire Marshal.

13 (e) In accordance with G.S. 58-82B-10, an online reporting portal for the storage and deployment of AFFF has been  
14 created at the following website: <https://www.ncosfm.gov/fire-rescue/ratings-and-inspections/afff-foam>. This  
15 online reporting portal consists of an online database and an online reporting tool to capture the storage and  
16 deployment of AFFF.

17 (f) The fire chief ~~[for every fire department or unit of local government]~~ or fire marshal of the authority having  
18 jurisdiction shall ensure that the following information regarding AFFF inventory for their fire department is entered  
19 into the online database:

20 (1) The number of trucks at each department that carry AFFF, and the fire station or other location,  
21 including street address, where each truck is located.

22 (2) The ~~[volume and, where possible, trade name]~~ volume, trade name, and Chemical Abstract  
23 Service (CAS) number of the AFFF on each truck.

24 (3) An inventory, ~~[including the volume and, where possible, trade name]~~ including the volume, trade  
25 name, and CAS number of AFFF stored by each fire department at a fire station or other location,  
26 including the street address where the AFFF is stored.

27 (4) The ~~[volume and, where possible, trade name]~~ volume, trade name, and CAS number of AFFF  
28 products that are no longer utilized and could be removed from inventory for disposal, including  
29 the street address where the AFFF is stored.

30 (5) A photograph of the label and the container of the AFFF. For the purpose of this Subparagraph, a  
31 photograph includes an electronic image produced by the camera of an electronic device.

32 The information entered in the online database shall be updated annually in accordance with G.S. 58-82B-5.

33 (g) When a fire department responds to a ~~[fire or]~~ fire, conducts training involving AFFF foam in any ~~[quantity,~~  
34 quantity, or has an accidental spill, the fire chief shall ensure an initial report is entered in the online reporting tool  
35 within 15 days of the incident or the training event, including the following:

36 (1) The date, time, and location, including street address and GPS coordinates, where AFFF was used,  
37 ~~[and, where possible, the trade name]~~ the trade name, and CAS number of the AFFF used.

1           (2)     The total volume of AFFF used, including gallons of foam and gallons of water and total  
2                    concentration of foam.

3           (3)     The reason for the deployment of AFFF, such as firefighting, fire prevention, other emergency  
4                    response actions intended to protect property or public safety, training, or an accidental spill.

5     (h) The fire chief for every fire department or unit of local government shall ensure that an annual report is  
6     available in the online reporting tool by July 1<sup>st</sup> of each year that includes the information required by Paragraph (g)  
7     of this Rule.

8  
9     History Note:     Authority G.S. 58-2-40; 58-36-10; 58-40-25; 58-79-1; 58-79-45; 58-82-5; ~~58-82-10~~; 58.82.10; SL

10                    2021-180, Section 8.10(h);

11                    Eff. January 1, 2018. Eff. January 2018;

12                    Amended Eff. June 1, 2023.

13

1 11 NCAC 05A .0911 is amended **with changes** published in 37:16 NCR 1097-1098 as follows:

2

3 **11 NCAC 05A .0911 RECORDS**

4 A fire department shall maintain the following records for 36 months:

5 (1) Apparatus maintenance logs for in service engines and tankers, in accordance with 11 NCAC 05A  
6 .0905.

7 (2) Apparatus equipment inventory checks for all in service engines and tankers, in accordance with  
8 11 NCAC 05A .0905.

9 (3) Fire pump performance tests, in accordance with 11 NCAC 05A .0905.

10 (4) Training records for all eligible firefighters, in accordance with 11 NCAC 05A .0907.

11 (5) The AFFF inventory and usage reports created in accordance with 11 NCAC 05A .0910.

12

13 *History Note: Authority G.S. 58-2-40; 58-36-10; 58-40-25; 58-82-5; 58-82-10.*

14 *~~Eff. January 1, 2018.~~ **Eff. January 1, 2018;***

15 ***Amended Eff. June 1, 2023.***

16