

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?*

*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.*

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...”*

*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.*

*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.*

*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.*

*In your History Note, please specify 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.

Brian Liebman  
Commission Counsel

Date submitted to agency: April 25, 2023

1 11 NCAC 05A .0910 is amended 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 complies with the current version of the National Fire Incident Reporting System  
7 (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 shall ensure that the following information  
18 regarding AFFF inventory for their fire department is entered into the online database:

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

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

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

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

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

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

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

35 (1) The date, time, and location, including street address and GPS coordinates, where AFFF was used,  
36 and, where possible, 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.

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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.*  
10                    *Eff. January 1, 2018.*

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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.**

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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.*

*In your History Note, please specify 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 .0911 is amended as published in 37:16 NCR 1097-1098 as follows:

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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.

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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.*

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