

Burgos, Alexander N

Subject: FW: 11 NCAC 05B .0301

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

Sent: Monday, November 15, 2021 4:02 PM

To: May, Amber Cronk <amber.may@oah.nc.gov>

Cc: Hoomani, A. John <john.hoomani@ncdoi.gov>

Subject: 11 NCAC 05B .0301

Amber,

Please return 11 NCAC 05B .0301 in accordance with G.S. 150B-21.12(d). Let us know if more information is needed. Thank you.

Loretta

Loretta Peace-Bunch | Program Coordinator



N.C. Department of Insurance

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**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

October 21, 2021

Loretta Peace-Bunch
Department of Insurance
Sent via email only to: loretta.peace-bunch@ncdoi.gov

Re: Objection to Rule 11 NCAC 05B .0301

Dear Ms. Peace-Bunch:

At its meeting this morning, the Rules Review Commission objected to Rule 11 NCAC 05B .0301 for lack of statutory authority. Specifically, the Commission found that professional minimum qualifications for fire service personnel are within the authority of the State Fire and Rescue Commission, rather than the Department of Insurance. Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

Please note that the Commission also rescheduled the readoption deadline for this Rule to October 31, 2022 in order to allow the State Fire and Rescue Commission to readopt this Rule.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amber May
Commission Counsel

cc: John Hoomani, Department of Insurance

Donald R. van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

Linda T. Worth
Deputy Director

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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
- X ☐ Object, based on:
 - X ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review
- X ☐ Reschedule the Readoption Deadline

Staff is recommending objection to 11 NCAC 05B .0301 for lack of statutory authority. 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,

Amber May
October 18, 2021

modify, or repeal any rules and regulations necessary for the purpose of carrying out the provisions of this Article."

In order to allow the State Fire and Rescue Commission, the correct rule-making body with authority over this Rule, to complete the readoption process on this Rule, staff recommends that the readoption deadline be rescheduled to October 31, 2022.

Amber May
October 18, 2021

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