

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: All Rules in 11 NCAC 05A for State Fire Marshal

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

X Extend the period of review

COMMENT:

On October 20, 2016, the Department of Insurance filed 26 rules for review by the Rules Review Commission. Staff counsel issued numerous technical changes requests, along with various staff opinions. Staff counsel was unable to receive revised rules prior to the Rules Review Commission's November 17th meeting. At that meeting, staff counsel recommended and the Rules Review Commission approved to extending the period of review for the 26 rules set forth in 11 NCAC 05. Staff counsel has been working with the agency since the grant of the extension of the period of review, but as of 4:00 p.m. on Monday, December 12, 2016, staff counsel still does not have properly formatted revised rules from the agency. Staff counsel has issued a total of 11 staff opinions on nine rules, and an advisory opinion for the use of "general rulemaking" power on 11 other rules. If the Rules Review Commission does not accept all of the recommended objections of staff counsel, staff counsel does not have properly formatted revised rules for the consideration of the Rules Review Commission at the December meeting.

Based upon the current procedural status of the pending 26 rules, staff counsel will recommend continuing the extension of the period of review for one more month, until the January

Abigail M. Hammond
Commission Counsel

19, 2017 meeting. The Rules Review Commission must act on these rules at the January 2017 meeting.

§ 150B-21.10. Commission action on permanent rule.

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

- (1) Approve the rule, if the Commission determines that the rule meets the standards for review.
- (2) Object to the rule, if the Commission determines that the rule does not meet the standards for review.
- (3) Extend the period for reviewing the rule, if the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

In reviewing a new rule or an amendment to an existing rule, the Commission may request an agency to make technical changes to the rule and may condition its approval of the rule on the agency's making the requested technical changes. (1991, c. 418, s. 1.)

§ 150B-21.13. Procedure when Commission extends period for review of permanent rule.

When the Commission extends the period for review of a permanent rule, it must notify the agency that adopted the rule of the extension and the reason for the extension. After the Commission extends the period for review of a rule, it may call a public hearing on the rule. Within 70 days after extending the period for review of a rule, the Commission must decide whether to approve the rule, object to the rule, or call a public hearing on the rule. (1991, c. 418, s. 1.)

Summary:

Properly revised rules have not been submitted by the agency and staff counsel is unable to fully advise and make recommendation to the Rules Review Commission about the 26 rules filed by the State Fire Marshal and pending before the Rules Review Commission for their review and approval. Therefore, staff counsel is recommending continued extension of the period of review.



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

November 17, 2016

Via Email Only: loretta.peace-bunch@ncdoi.gov
Loretta Peace-Bunch, Rulemaking Coordinator
Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

Re: State Fire Marshal – 11 NCAC 0101, .0105, .0201, .0202, .0301, .0302, .0303, .0501, .0503, .0504, .0505, .0506, .0507, .0508, .0510, .0511, .0512, .0601, .0602, .0603, .0604, .0701, .0702, .0703, .0704, .0705.

Dear Ms. Peace-Bunch:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the rulemaking coordinator to extend the period in order to allow the agency additional time to make technical changes, and to review and prepare responses to the staff opinions.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

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

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
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Clerk's Office
919/431-3000
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Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: All rules

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

The rules submitted for review contain track changes as used by Word. This is incorrect. Rule [26 NCAC 02C .0405](#) reflects how changes to rule content should be formatted. Please review this example, as the technical change requests will require changes after publication:

<http://www.ncoah.com/rules/examples/Permanent%20Amendment%20with%20Changes%20for%20Publication%20in%20the%20NCAC.pdf>

The first page of this technical change packet also contains additional instructions for properly formatting rules. Please remove all Word track changes on each rule and format the amendments in accordance with Rules 26 NCAC 02C .0108, .0404, .0405.

All history notes need to be updated to correctly reflect the amendment date.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

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 05A .0101

RECOMMENDED ACTION:

- X 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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

Please note that this Rule, 11 NCAC 05A .0101 Definitions, cites the statutory authority as G.S. 58-2-40; 58-79-45. Those statutes are set forth below:

§ 58-2-40. Powers and duties of Commissioner.

The Commissioner shall:

Abigail M. Hammond
Commission Counsel

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.
- (9) Repealed by Session Laws 2000-19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b).)

§ 58-79-45. Fire incident reports.

- (a) Whenever a fire department responds to a fire, the chief of that department shall complete or cause to be completed a fire incident report, which report

shall be on a form prescribed by the Department of Insurance. When such report is made without fraud, bad faith, or actual malice, the person making the report is not subject to liability for libel or slander.

- (b) The fire department shall forward a copy of the completed form to the fire marshal of the county in which the fire occurred. If there is no fire marshal in that county, the fire department shall forward a copy of the report to the county commissioners. The fire department shall retain the original of the report. The fire department and the fire marshal or county commissioners to whom reports are sent shall retain the reports for a period of five years.
- (c) At the request of any person, the county fire marshal or county commissioners shall provide such person, for a reasonable copying charge, a certified copy of the report. (1989 (Reg. Sess., 1990), c. 1054, s. 7.)

In a technical change request, an inquiry was made regarding the applicability of G.S. 58-79-45 to this Rule. The agency responded that there is no opposition to deleting the reference to G.S. 58-79-45, which leaves the remaining statute of G.S. 58-2-40. Please note that this Rule filed by the Commissioner of Insurance acting in the capacity of State Fire Marshal relies on the general rulemaking authority provided to the Commissioner of Insurance as set forth in Article 2 of Chapter 58 of the General Statutes.

SUMMARY:

Staff counsel is providing notice to the Rules Review Commission that this Rule, as adopted by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1, relies on the general rulemaking authority vested in the Commissioner of Insurance by G.S. 58-2-40. Staff counsel recommends approval of this Rule, contingent on review of remaining technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0101

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 14, delete the comma after "fee"

Line 14, delete "subject to change,"

Line 28, verify the citation as it contains the word "fore"

Line 33, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, G.S. 58-79-45 deals with fire reporting requirements. Please review and updated accordingly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0101 is amended as published in 31.04 NCR 281-282 as follows:

2
3 **CHAPTER 05 – OFFICE OF STATE FIRE MARSHAL**
4 **SUBCHAPTER 05A - FIRE AND RESCUE SECTION**

5
6 **SECTION .0100 - GENERAL PROVISIONS**

7
8 **11 NCAC 05A .0101 DEFINITIONS**

9 As used in this Subchapter:

- 10 (1) "ISO" means the Insurance Services Office, Inc., or any successor organization.
- 11 (2) "North Carolina Fire Suppression Rating Schedule" or "NCFRS" means the ISO Fire Suppression
12 Rating Schedule. The NCFRS is incorporated into this Subchapter by reference, including
13 subsequent amendments or editions. The NCFRS may be obtained from the ISO at
14 <http://www.iso.com/> for ~~fifty five dollars (\$55.00)~~ a fee, subject to change, of one hundred dollars
15 (\$100.00). Fire chiefs and local government chief administrative officials may request a single copy
16 of the FRS, ~~or on line access to the FRS and commentaries,~~ free of ~~charge~~ charge at
17 www.iso.com.
- 18 (3) "NFIRS" means the National Fire Incident Reporting System administered by the United States Fire
19 Administration (USFA) and coordinated and collected in North Carolina by the Office of the State
20 Fire Marshal. ~~The NFIRS can be accessed electronically and free software and copies of the program~~
21 ~~may be obtained by contacting the NC Office of the State Fire Marshal at:~~
22 ~~Office of the State Fire Marshal~~
23 ~~P.O. Box 1202 Mail Service Center~~
24 ~~Raleigh, NC 27699-1202~~
25 ~~or by contacting the USFA at <http://www.usfa.dhs.gov>.~~ State fire incident reporting instructions are
26 provided by OSFM
27 at
28 http://www.ncdoi.com/OSFM/Fore_Rescue_Commission/Default.aspx?field1=Incident_Reporting
29 - Information&user=Incident_Reporting for no charge and satisfy NFIRS reporting requirements.
- 30 (4) "Office of State Fire Marshal" or "OSFM" means the Office of State Fire Marshal of the North
31 Carolina Department of Insurance

32
33 *History Note:* Authority G.S. 58-2-40; 58-79-45;
34 Eff. February 1, 1976;
35 Readopted Eff. May 12, 1978;
36 Amended Eff. December 1, 2016; September 1, 2010; October 1, 2006; July 1, 1986.

RRC STAFF OPINION

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AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0105

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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

In addition to the general rulemaking authority vested in the Commissioner of Insurance by G.S. 58-2-40, this Rule, 11 NCAC 05A .0105 Training Operations, cites G.S. 58-78-10. Article 78 of Chapter 58 of the General Statutes is a separate agency, the State Fire and Rescue Commission. The State Fire and Rescue Commission, as a separate agency from the Commissioner of Insurance, has independent rulemaking authority:

Abigail M. Hammond
Commission Counsel

§ 58-78-10. State Fire and Rescue Commission - Organization; rules and regulations; meetings.

- (a) Organization. - The Commission shall elect from its voting members a chair and vice-chair to serve as provided by the rules adopted by the Commission.
- (b) Rules and Regulations. - The Commission shall adopt such rules and regulations, not inconsistent with the laws of this State as may be required by the federal government for programs and grants-in-aid for fire protection, firefighting, and rescue purposes which may be made available to the State by the federal government. The Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all programs of and grants to the State by the United States Fire Administration, Federal Emergency Management Agency. In respect to such programs and grants, the Commission shall have authority to review, approve and maintain general oversight to the State plan and its implementation, including subgrants and allocations to local units of government and local fire prevention and control and rescue agencies. All actions taken by the Commission in the performance of its duties shall be implemented and administered by the Department.
- (c) Meetings. - The Commission shall meet quarterly. Seven members shall constitute a quorum. All meetings shall be open to the public. (1977, c. 1064, s. 1; 1981, c. 791, s. 5; 1983, c. 840, s. 3; 1985, c. 757, s. 167(b), (c), (e), (f); 1989, c. 750, s. 1; 2015-39, s. 3.)

The State Fire and Rescue Commission, in compliance with the following directives of the General Assembly, has promulgated and adopted rules set forth in 11 NCAC 05B:

§ 58-78-5. State Fire and Rescue Commission - Powers and duties.

- (a) The Commission shall have the following powers and duties:
- (1) To formally adopt a State Fire Education and Training Plan, a State Master Plan for Fire Prevention and Control, a Rescue Training Plan, and a State Master Plan for Rescue Services;
 - (2) To assist and participate with State and local fire prevention and control agencies in the improvement of fire prevention and control in North Carolina and to work with State and local rescue agencies to improve rescue services in the State;
 - (3) To increase the professional skills of fire protection and fire-fighting personnel and rescue personnel;
 - (4) To encourage public support for fire prevention and control and rescue services;
 - (5) To accept gifts, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;
 - (6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary and such other powers as may be necessary to carry out the State's duties with respect to all grants to the State by the United States Fire Administration and the National Fire Academy; and all support programs brought into the State by these two entities shall be coordinated and controlled by the Commission;
 - (7) To make studies and recommendations for the improvement of fire prevention and control and rescue services in the State and to make studies and recommendations for the coordination and implementation of effective fire prevention and control and rescue services and for effective fire prevention and control and rescue services education;

- (8) To set objectives and priorities for the improvement of fire prevention and control and rescue services throughout the State;
 - (9) To advise State and local interests of opportunities for securing federal assistance for fire prevention and control and rescue services and for improving fire prevention and control and rescue services administration and planning within the State of North Carolina;
 - (10) To assist State agencies and institutions of local government and combinations thereof in the preparation and processing of applications for financial aid and to support fire prevention and control, rescue services, and planning and administration;
 - (11) To encourage and assist coordination at the federal, State and local government levels in the preparation and implementation of fire prevention and control and rescue services administrative improvements and crime reduction plans;
 - (12) To apply for, receive, disburse and audit the use of funds received from any public and private agencies and instrumentalities for fire prevention and control and rescue services, their administration and plans therefor;
 - (13) To enter into monitoring and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;
 - (14) To provide technical assistance to State and local fire prevention and control and rescue agencies in developing programs for improvement;
 - (14a) To serve as a central office for the collection and dissemination of information relative to fire service and rescue service activities and programs in State government. All State government agencies conducting fire service and rescue service related programs and activities shall report the status of these programs and activities to the Commission on a quarterly basis and they shall also report to the Commission any new programs or changes to existing programs as they are implemented;
 - (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.
 - (14c) To prepare an annual report to the Governor on its fire prevention and control activities and plans, rescue activities and plans, and to recommend legislation concerning fire prevention and control and rescue services;
 - (14d) To reimburse the members of the Commission's certification board, in accordance with G.S. 138-5, for travel and subsistence expenses incurred by them in their duties as certification board officers; and
 - (15) To take such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.
 - (16) To provide workers' compensation benefits under G.S. 58-87-10, to create a Volunteer Safety Workers' Compensation Board to assist it in performing this duty, and to reimburse the members of the Commission's Volunteer Safety Workers' Compensation Board in accordance with G.S. 138-5 for travel and subsistence expenses incurred by them.
- (b) Each State agency involved in fire prevention and control or rescue related activities shall furnish the executive director of the Commission such information as may be required to carry out the intent of this section. (1977,

c. 1064, s. 1; 1981, c. 791, ss. 3, 4; 1985, c. 757, s. 167(b); 1989, c. 750, s. 1; 1993, c. 321, s. 41; 1995, c. 507, s. 7.21A(c); 2011-284, s. 58; 2015-39, s. 2.)

G.S. 150B-21.9 requires the following of the Rules Review Commission:

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

This Rule was promulgated by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1. However, the content of this Rule addresses rulemaking authority that was vested by the General Assembly into a separate agency with independent rulemaking authority, the State Fire and Rescue Commission.

SUMMARY:

It is staff counsel's opinion that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(1), as the rulemaking authority for this Rule belongs to the State Fire and Rescue Commission and not the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0105

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, delete "but not be limited to"

Lines 7 thru 15 appears to be a list. Begin clauses on lines 7, 9, 11, 12, and 14 with lowercase letters. Replace the periods on lines 8, 10, 11, and 13 with semicolons. Line 13, add an "and" at the end of the clause.

Line 8, add a comma after "firefighters"

Lines 9 and 12 thru 13 use a different clause than on line 11. Please add "State Fire and Rescue" before "Commission" on line 11 to be consistent, as "Commission" is not defined.

Line 14, add a comma after "develop"

Line 15, add a comma after "universities"

Line 17, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, G.S. 58-78-10 is the rulemaking authority for a separate and distinct agency of the State Fire and Rescue Commission. That is not rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. Please review and updated accordingly.

Line 20, correct the amendment dates on this line to match the current content of the NC Administrative Code.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0105 is amended as published in 31.04 NCR 282 as follows:

2 **11 NCAC 05A .0105 TRAINING OPERATIONS**

3 ~~The Field Training Staff of the Fire and Rescue Division of the Department of Insurance shall serve as staff to the~~
4 ~~State Fire Commission. OSFM Staff staff~~ duties shall include but not be limited to the following:

- 5 (1) Research and development of new techniques, tools, and procedures in order to develop specialized
6 training for firefighters as well as instructor training.
- 7 (2) Provide input to the State Fire and Rescue Commission regarding changes in standards based on
8 research.
- 9 (3) Provide technical support to the ~~State Fire~~ Commission.
- 10 (4) Evaluate and audit delivery programs ~~when~~ as authorized by the State Fire Commission ~~State Fire~~
11 ~~and Rescue Commission. requests and approves such evaluations.~~
- 12 (5) Plan, develop and deliver training programs for fire departments, rescue squads, colleges,
13 universities and other governmental agencies.

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15 *History Note: Authority G.S. 58-2-40; 58-78-10;*

16 *Eff. February 1, 1976;*

17 *Readopted Eff. May 12, 1978;*

18 *Amended Eff. December 1, 2016; September 1, 2010; October 1, 2006; July 1, 1986.*

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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 05A .0201

RECOMMENDED ACTION:

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

COMMENT:

The agency has adopted the following rule:

~~The Fire and Rescue Services Division~~ OSFM shall be prepared to administer the State Volunteer Fire Department in case of emergencies caused by fire, floods, ~~wars~~, tornadoes or otherwise in the manner and subject to the conditions provided in G.S. 58, Article 80. As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.

G.S. 58-80-1 states the following:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".
The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, **in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

A comparison of Rule 11 NCAC 05A .0201 to the applicable statute, G.S. 58-80-1, "Purpose of Article, meaning of "State Fire Marshal"," reflects that a substantial portion of the rule is duplicative of the statutory language. G.S. 150B-21.9 requires the following of the Rules Review Commission:

- (a) Standards. - The Commission must determine whether a rule meets all of the following criteria:
 - (1) It is within the authority delegated to the agency by the General Assembly.
 - (2) It is clear and unambiguous.
 - (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
 - (4) It was adopted in accordance with Part 2 of this Article.

In light of the duplicative content of this Rule, 11 NCAC 05A .0201 does not appear necessary to implement or interpret G.S. 58-80-1. The information that is contained within this Rule and not duplicative of G.S. 58-80-1 merely identifies that the "Office of State Fire Marshal" appears to have replaced the "State Volunteer Fire Department."

SUMMARY:

Staff is concerned that the adoption of 11 NCAC 05A .0201 by the State Fire Marshal, the Commissioner of Insurance of the State of North Carolina, is an unnecessary rule. It is staff's opinion that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(3).

1 11 NCAC 05A .0201 is amended as published in 31.04 NCR 282 as follows:

2 **SECTION .0200 - STATE VOLUNTEER FIRE DEPARTMENT**

3
4 **11 NCAC 05A .0201 ADMINISTRATION OF STATE VOLUNTEER FIRE DEPARTMENT**

5 ~~The Fire and Rescue Services Division-OSFM~~ shall be prepared to administer the State Volunteer Fire Department in
6 case of emergencies caused by fire, floods, ~~wat~~, tornadoes or otherwise in the manner and subject to the conditions
7 provided in G.S. 58, Article 80. As used in this Article and elsewhere in the General Statutes, "State Fire Marshal"
8 means the Commissioner of Insurance of the State of North Carolina.

9
10 *History Note: Authority G.S. 58-2-40; 58-80-1 thru 58-80-60;*
11 *Eff. February 1, 1976;*
12 *Readopted Eff. May 12, 1978;*
13 *Amended Eff. December 1, 2016; April 8, 2002; July 1, 1986.*

Article 80.

State Volunteer Fire Department.

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina. (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

1 11 NCAC 05A .0201 is amended as published in 31.04 NCR 282 as follows:

2 **SECTION .0200 - STATE VOLUNTEER FIRE DEPARTMENT**

3
4 **11 NCAC 05A .0201 ADMINISTRATION OF STATE VOLUNTEER FIRE DEPARTMENT**

5 ~~The Fire and Rescue Services Division-OSFM~~ shall be prepared to administer the State Volunteer Fire Department in
6 case of emergencies caused by fire, floods, ~~war~~, tornadoes or otherwise in the manner and subject to the conditions
7 provided in G.S. 58, Article 80. As used in this Article and elsewhere in the General Statutes, "State Fire Marshal"
8 means the Commissioner of Insurance of the State of North Carolina.

9
10 *History Note: Authority G.S. 58-2-40; 58-80-1 thru 58-80-60;*
11 *Eff. February 1, 1976;*
12 *Readopted Eff. May 12, 1978;*
13 *Amended Eff. December 1, 2016; April 8, 2002; July 1, 1986.*

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 05A .0202

RECOMMENDED ACTION:

- X 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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

Please note that this Rule, 11 NCAC 05A .0202 Comprehensive Emergency Management Plan, cites the statutory authority as G.S. 58-2-40; 58-80-1 thru 58-80-60. Those statutes are set forth below:

§ 58-2-40. Powers and duties of Commissioner.

Abigail M. Hammond
Commission Counsel

The Commissioner shall:

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.
- (9) Repealed by Session Laws 2000-19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b).)

Article 80.

State Volunteer Fire Department.

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina. (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

§ 58-80-5. Personnel.

The personnel of the North Carolina State Volunteer Fire Department shall consist of all active members of the organized fire departments, who are members of the North Carolina State Firemen's Association, of municipalities whereof the governing bodies shall subscribe to and endorse this Article. (1939, c. 364, s. 2.)

§ 58-80-10. Organization.

The North Carolina State Fire Marshal shall be chief of the State Volunteer Fire Department; regular municipal fire chiefs shall be assistant chiefs; assistant chiefs shall be deputy chiefs; battalion chiefs, captains; lieutenants and privates shall hold the same position that they occupy in their municipal companies. When engaged in rendering assistance at the scene of any emergency, the ranking officer of the first department arriving at the scene of the emergency shall have complete charge of all operations until the arrival of a superior officer. All subordinate officers and men shall act under the direction of such ranking officer. Whenever present at the scene of an emergency, the chief shall have full and complete control and authority over operations of all members of the Department. (1939, c. 364, s. 3.)

§ 58-80-15. Acceptance by municipalities.

Any municipality having an organized fire department and desiring to participate in the establishment of the State Volunteer Fire Department, may do so by a resolution of the governing body accepting and endorsing the provisions of this Article: Provided, that acceptance shall not be compulsory. (1939, c. 364, s. 4.)

§ 58-80-20. Withdrawal.

Any municipality which has accepted the provisions of this Article may withdraw its fire departments from membership in the State Volunteer Fire Department by resolution of the governing body thereof. Notice of such withdrawal shall be given to the State Fire Marshal and withdrawal shall not become effective until 60 days after his receipt thereof. (1939, c. 364, s. 5.)

§ 58-80-25. Dispatching firemen and apparatus from municipalities.

Municipalities endorsing this Article shall retain full and complete control and authority in sending or permitting firemen and apparatus to go beyond the limits of the municipality. The governing bodies of such municipalities shall designate and authorize a person, and at least two alternates, who shall have authority to grant or deny permission to firemen and apparatus to leave the municipality in all cases where request is made for assistance beyond its corporate limits, and the municipality shall, through the office of its municipal fire chief, furnish to the office of the State Commissioner of Insurance, and to the secretary of the North Carolina State Firemen's Association, a list of the persons so authorized by the municipality. The secretary of the State Firemen's Association shall furnish to all municipalities

and counties accepting this Article a list of all such persons so designated in all municipalities within the State. (1939, c. 364, s. 6; 1943, c. 170.)

§ 58-80-30. No authority in State Volunteer Fire Department to render assistance to nonaccepting counties.

The State Volunteer Fire Department shall not have authority to render assistance in any emergency occurring within a county which has not accepted the terms and conditions of this Article by resolution of the board of county commissioners: Provided, that nothing in this Article shall be construed to prevent any municipality from voluntarily permitting its fire department to render assistance in any emergency, notwithstanding that it may arise in a county which has failed to accept this Article. (1939, c. 364, s. 7.)

§ 58-80-35. Acceptance by counties.

Any county desiring to accept the benefits of this Article may do so by resolution of the board of county commissioners. Any such county may thereupon make agreements and enter into contracts with respect to payment for services rendered by the State Volunteer Fire Department within its boundaries in the following manner:

The county may contract with any municipality which has accepted the terms of this Article, whether within or without said county, to pay to such municipality an annual fee as a consideration for the municipality providing equipment and carrying compensation insurance which will enable it to respond to calls from within the county so contracting, and to pay an additional sum per truck for each mile traveled from the station house to the scene of the emergency, and to pay an additional sum per truck per hour or fraction thereof for the use of its water or chemical pumping equipment. Said sums shall be paid to the city within 30 days after such services have been performed: Provided, that nothing in this section shall be construed to prevent the county and municipality from adopting a different schedule of fees in cases where those provided above shall be considered excessive or inadequate: Provided, that if the emergency shall occur within the limits of another city or town, such city or town and not the county wherein it lies shall be responsible for the payments and shall assume all liabilities as provided in this section. (1939, c. 364, s. 8; 1973, c. 803, s. 5.)

§ 58-80-40. Municipalities not to be left unprotected.

At no time shall the entire personnel or equipment of any municipal fire department be absent from the municipality in response to a call to another municipality, or other place lying at a distance exceeding two miles from the corporate limits, but there shall remain within the municipal limits such personnel and equipment as in the judgment of the local fire chief might provide sufficient protection during the absence of the remainder. (1939, c. 364, s. 9.)

§ 58-80-45. Rights and privileges of firemen; liability of municipality.

When responding to a call and while working at a fire or other emergency outside the limits of the municipality by which they are regularly employed or in volunteer fire service, all members of the State Volunteer Fire Department shall have the same authority, rights, privileges and immunities which are afforded them while responding to calls within their home municipality. In permitting its fire department or equipment to attend an emergency or answer a call beyond the municipal limits, whether under the terms of this Article or otherwise, a municipality shall be deemed in exercise of a governmental function, and shall hold the privileges and immunities attendant upon the exercise of such functions within its corporate limits. (1939, c. 364, s. 10.)

§ 58-80-50. Relief in case of injury or death.

In case of injury or death of any member of the State Volunteer Fire Department arising out of and in the course of the performance of his duties, while such member is assisting at any emergency arising beyond the limits of the municipality with which he is connected, or while going to or returning from the scene of such emergency, such fireman shall be entitled to compensation under the terms of the North Carolina Workers' Compensation Act, and the municipality with which he is connected shall be liable for the compensation provided under that Act. (1939, c. 364, s. 11; 1991, c. 636, s. 3.)

§ 58-80-55. Local appropriations.

Each county and municipality is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. Sanitary districts are authorized to make appropriations for the purposes of this Article and to fund them by annual levy of a tax on property having a situs in the district under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II) and by the allocation of other revenues whose use is not otherwise restricted by law. (1973, c. 803, s. 4.)

§ 58-80-60. Sums from contingent fund of State made available for administration of Article.

In order to assist in carrying out the purposes of the Article the Governor may, from time to time, make provisions for assistance to the North Carolina State Firemen's Association in a sum not to exceed two thousand five hundred dollars (\$2,500), in any one year, out of the contingent fund appropriated in the General Appropriation Act. One half of the amount so provided shall, in each instance, go to the State Firefighters' Relief Fund, and one half to the expenses of the said Association incurred in carrying out the provisions of this Article. (1939, c. 364, s. 12; 2007-246, s. 2.)

In a technical change request, an inquiry was made regarding the broad reference to every statute set forth in Article 80 of Chapter 58 of the General Statutes. The agency responded that there is no opposition to deleting the reference to G.S. 58-79-45, which leaves the remaining statute of G.S. 58-2-40. Please note that this Rule filed by the Commissioner of Insurance acting in the capacity of State Fire Marshal relies on the general rulemaking authority provided to the Commissioner of Insurance as set forth in Article 2 of Chapter 58 of the General Statutes.

SUMMARY:

Staff counsel is providing notice to the Rules Review Commission that this Rule, as adopted by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1, relies on the general rulemaking authority vested in the Commissioner of Insurance by G.S. 58-2-40. Staff counsel recommends approval of this Rule, contingent on review of remaining technical change requests.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0202

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

This Rule was last amended in 1986. Please verify that the "Commissioner of Insurance acts as advisor to the Governor for Structural Fire Suppressions and Rescue Services" process still exists and the current name. Please provide proof of its continued existence, as there is no current record on the Governor's website.

Lines 6 thru 12 appears to be a list. Begin clauses on lines 6, 7, 9, and 11 with lowercase letters. Line 10, add an "and" at the end of the clause.

Line 14, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, the broad reference to G.S. 58-80-1 thru 58-80-60 is not specific to provide notice for the content of this Rule, such as "planning," "training," "serving as the lead agency," or "serving as a support agency." Please review and updated accordingly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0202 is amended as published in 31.04 NCR 282 as follows:

2 **11 NCAC 05A .0202 **COMPREHENSIVE EMERGENCY MANAGEMENT PLAN****

3 The Commissioner of Insurance acts as an advisor to the Governor for Structural Fire Suppressions and Rescue
4 Services under the North Carolina ~~Comprehensive-Emergency Management Operations~~ Plan and assists other state
5 and local agencies through the ~~Fire and Rescue Services Division OSFM~~ in the following areas:

- 6 (1) Planning in the fire and rescue services;
- 7 (2) Training in the various fields of emergency structural fire suppression, rescue services, search and
8 rescue, fire prevention and education;
- 9 (3) ~~The Fire and Rescue Services Division serves~~ Serving as the lead agency for Structural Fire
10 Suppressions and Rescue Services during these declared emergencies;
- 11 (4) ~~The Fire and Rescue Services Division serves~~ Serving as a support agency for search and rescue
12 functions during these declared emergencies.

13
14 *History Note: Authority G.S. 58-2-40; 58-80-1 thru 58-80-60;*
15 *Eff. February 1, 1976;*
16 *Readopted Eff. May 12, 1978;*
17 *Amended Eff. December 1, 2016; July 1, 1986.*

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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 05A .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

COMMENT:

The agency has adopted the following rule:

The certification provided by the North Carolina State Firemen's Association to the Department of Insurance, Office of State Fire Marshal under G.S. 58-84-40(b) shall contain the balance in each local fund, and a verification that a financial statement and status of fire department membership was ~~submitted.~~ submitted, in addition to other information required by statute or process.

G.S. 58-84-40 states the following:

§ 58-84-40. Trustees to keep account and file certified reports.

(a) Each local board of trustees shall keep a correct account of all moneys received and disbursed by them. On a form prescribed by the North Carolina State Firemen's Association, each local board shall certify by October 31 of each year the following to the Association: **the balance of the local fund, proof of sufficient bonding, a full and detailed accounting of the previous year's expenditures, and a full accounting of membership qualifications.** Such certification shall be made concurrently with the local unit's statement of Fire Readiness. The accounting of the previous year's expenditures shall include the amounts spent on each of the purposes listed

in G.S. 58-84-35(a), including the number of firefighters that received benefits for each of the purposes.

(b) In turn, the State Firemen's Association shall certify to the Department of Insurance by January 1 of each year on a form prescribed by the Department, the following:

- (1) The local units that have complied with the requirements of subsection (a) of this section.
- (2) A listing of the members of each of the local units.
- (3) The fund balances for each of the local units' relief funds.
- (4) Any departments that have exceeded the maximum balance provided under G.S. 58-84-33(a).
- (5) Details on the disbursements from local relief funds, including how much was disbursed for each allowable purpose and how many members received disbursements for those purposes, on both a unit-by-unit basis and total basis.
- (6) Information on any improper disbursements.

A comparison of Rule 11 NCAC 05A .0301 to the applicable statute, G.S. 58-84-40, "Trustees to keep account and file certified records," reflects that a substantial portion of the rule is duplicative of the statutory language. G.S. 150B-21.9 requires the following of the Rules Review Commission:

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

In light of the duplicative content of this Rule, 11 NCAC 05A .0301 does not appear necessary to implement or interpret G.S. 58-84-40. The information that is contained within this Rule and not duplicative of G.S. 58-84-40 merely identifies that the certification should be filed with the "Office of State Fire Marshal" of the Department of Insurance.

Rule 11 NCAC 05A .0301 has one additional clause that creates an unclear reporting requirement or ambiguity in the Rule. The last clause of this Rule states "in addition to other information required by statute or process," but does not clearly identify the additional information that the State Firemen's Association is required to certify to the Department of Insurance by January 1. Therefore, the proposed amendment is unclear of the requirements and creates an ambiguity.

SUMMARY:

Staff is concerned that the adoption of 11 NCAC 05A .0301 by the State Fire Marshal, the Commissioner of Insurance of the State of North Carolina, is an unnecessary rule. Staff is further concerned that the amended language at the end of the Rule is unclear and creates ambiguity as to what is required in the certification by the State Fireman's Association. It is

staff's opinion that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(2), (a)(3).

1 11 NCAC 05A .0301 is amended as published in 31.04 NCR 282 as follows:

2 **SECTION .0300 - FIREFIGHTERS' RELIEF FUND**

3
4 **11 NCAC 05A .0301 ELIGIBLE MEMBERS**

5 The certification provided by the North Carolina State Firemen's Association to the Department of Insurance, Office
6 of State Fire Marshal under G.S. 58-84-40(b) shall contain the balance in each local fund, and a verification that a
7 financial statement and status of fire department membership was ~~submitted.~~ submitted, in addition to other
8 information required by statute or process.

9
10 *History Note: Authority G.S. 58-2-40(1); 58-84-40;*
11 *Eff. February 1, 1976;*
12 *Readopted Eff. May 12, 1978;*
13 *Amended Eff. December 1, 2016; September 1, 2010; October 1, 2006; February 1, 1993; July 1,*
14 *1986.*

§ 58-84-40. Trustees to keep account and file certified reports.

(a) Each local board of trustees shall keep a correct account of all moneys received and disbursed by them. On a form prescribed by the North Carolina State Firemen's Association, each local board shall certify by October 31 of each year the following to the Association: the balance of the local fund, proof of sufficient bonding, a full and detailed accounting of the previous year's expenditures, and a full accounting of membership qualifications. Such certification shall be made concurrently with the local unit's statement of Fire Readiness. The accounting of the previous year's expenditures shall include the amounts spent on each of the purposes listed in G.S. 58-84-35(a), including the number of firefighters that received benefits for each of the purposes.

(b) In turn, the State Firemen's Association shall certify to the Department of Insurance by January 1 of each year on a form prescribed by the Department, the following:

- (1) The local units that have complied with the requirements of subsection (a) of this section.
- (2) A listing of the members of each of the local units.
- (3) The fund balances for each of the local units' relief funds.
- (4) Any departments that have exceeded the maximum balance provided under G.S. 58-84-33(a).
- (5) Details on the disbursements from local relief funds, including how much was disbursed for each allowable purpose and how many members received disbursements for those purposes, on both a unit-by-unit basis and total basis.
- (6) Information on any improper disbursements.

(c) In the event that any board of trustees in any of the towns and cities benefited by this Article shall neglect or fail to perform their duties, or shall willfully misappropriate the funds entrusted in their care by obligating or disbursing such funds for any purpose other than those set forth in G.S. 58-84-35, then the Insurance Commissioner shall withhold any and all further payments to such board of trustees, or their successors, until the matter has been fully investigated by an official of the State Firemen's Association, and adjusted to the satisfaction of the Insurance Commissioner.

(d) In the event that any local relief fund provided for in this Article becomes impaired, then the Statewide Firefighters' Relief Fund may in the discretion of its board of trustees assist the local unit administering the fund in providing for relief to injured firefighters and their dependents or survivors; provided, however, that any funds so provided to such impaired units shall be repaid in full at the statutory rate of interest from future local unit receipts if the impairment resulted from violations of this Article. (1907, c. 831, s. 7; C.S., s. 6070; 1925, c. 41; 1985, c. 666, s. 63; 2007-246, s. 5; 2014-64, s. 1(a).)

1 11 NCAC 05A .0301 is amended as published in 31.04 NCR 282 as follows:

2 **SECTION .0300 - FIREFIGHTERS' RELIEF FUND**

3
4 **11 NCAC 05A .0301 ELIGIBLE MEMBERS**

5 The certification provided by the North Carolina State Firemen's Association to the Department of Insurance, Office
6 of State Fire Marshal under G.S. 58-84-40(b) shall contain the balance in each local fund, and a verification that a
7 financial statement and status of fire department membership was ~~submitted.~~ submitted, in addition to other
8 information required by statute or process.

9
10 *History Note: Authority G.S. 58-2-40(1); 58-84-40;*
11 *Eff. February 1, 1976;*
12 *Readopted Eff. May 12, 1978;*
13 *Amended Eff. December 1, 2016; September 1, 2010; October 1, 2006; February 1, 1993; July 1,*
14 *1986.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0302

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, delete the clause in the parentheses

Lines 4 thru 5, delete the clause "in addition to the information required by G.S. 58-84-46," as the referenced statute does not list any required information, but states that "[t]he certificate shall contain information prescribed by administrative rule adopted by the Commissioner."

Lines 6 thru 10 appears to be a list. Begin clauses on lines 6, 7, 9, and 10 with lowercase letters.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0302 is amended as published in 31.04 NCR 282 as follows:

2 **11 NCAC 05A .0302 CERTIFICATION OF ELIGIBILITY**

3 The certification form required by G.S. 58-84-46 shall be entitled "Local Relief Fund Board of Trustees Report"
4 (previously entitled "Report of Fire ~~Conditions~~"Conditions") and shall, in addition to the information required by G.S.
5 58-84-46, include the following:

- 6 (1) The name of the city, fire district, or sanitary district;
- 7 (2) ~~Names~~Names, home addresses, email addresses, and phone numbers of the "board of trustees of
8 the local Firefighters' Relief Fund"; ~~and~~
- 9 (3) Identity of the treasurer and board chair of the local Firefighters' Relief ~~Fund~~Fund; and
10 (4) The date each person was (re)elected or (re)appointed to the board.

11

12 *History Note: Authority G.S. 58-2-40(1); 58-84-46;*

13 *Eff. February 1, 1976;*

14 *Readopted Eff. May 12, 1978;*

15 *Amended eff. December 1, 2016; September 1, 2010; October 1, 2006; July 1, 2002; February 1,*
16 *1993; July 1, 1986.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0303

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5 thru 12 appears to be a list. Begin clauses on lines 5, 8, 10, and 12 with lowercase letters.

Line 6, the word "clerks" is used twice. Please clarify.

Lines 5 thru 7, this appears to a restatement of G.S. 58-84-46, but allows "fire chiefs" if delegated, which is not what the statute states. Consider re-writing as follows:

"certifications of the "Local Relief Fund Board of Trustee Report" filed in accordance with G.S. 58-84-46;"

Lines 8 thru 9, this appears to be restatement of G.S. 58-84-40, and Rule 11 NCAC 05A .0301, for which is there an outstanding staff opinion recommending objection to that rule for being unnecessary. Consider re-writing as follows:

"certifications filed by the State Firemen's Association in accordance with G.S. 58-84-40(b);"

Line 19, replace "funds mentioned in Article 84 of the Chapter 58." with "Firefighters' Relief Fund" to be consistent with Line 15.

Lines 20, 21, and 22, add "and certified" to "rated" to clarify the statutory requirement and language set forth in G.S. 58-84-5.

Lines 20, 21, and 22, how is a district or fireman "rated and certified" in accordance with G.S. 58-84-5? Is there another statute or rule that sets forth the process used by the Commissioner? Is this Rule 11 NCAC 05A .0503? If so, please add an appropriate cross-reference to clarify.

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

Line 22, replace “when” with “after”

Line 25, add a comma after “Transfer”

Line 28, why is G.S. 58-86-25 included in the statutory authority for this Rule? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0303 is amended as published in 31.04 NCR 282-283 as follows:

2 **11 NCAC 05A .0303 ADMINISTRATION OF FIREFIGHTERS' RELIEF FUND**

3 (a) ~~The Fire and Rescue Services Division~~OSFM shall compile and maintain ~~accurate records utilizing computer or~~
4 ~~paper~~ records, including the following information:

- 5 (1) Certifications of the ~~"Report of Fire Conditions"~~ "Local Relief Fund Board of Trustees Report" filed
6 by the local clerks~~clerks, or finance officers;~~ officers, or fire chiefs if delegated by the local clerks
7 or finance officers;
8 (2) Certifications of the member fire departments, the fund balance of each fund, and the bond amount
9 covering each fund, filed by the North Carolina State Firemen's Association each year;
10 (3) Amount of Firefighters' Relief Fund tax assigned by the North Carolina Department of Revenue;
11 and
12 (4) Amount of property tax values for each rated fire district as filed by each County.

13 (b) If a fire department dissolves, the following procedures apply:

- 14 (1) If a neighboring fire department elects to expand its boundaries to include the area served by the
15 dissolved fire department, the Firefighters' Relief Fund account shall be transferred to the expanding
16 fire department.
17 (2) If no neighboring fire department elects to include the dissolved fire department's territory into its
18 own, the dissolved fire department shall not be certified and shall forfeit its right to future annual
19 payments from the funds mentioned in Article 84 of Chapter 58.

20 (c) If a rated fire department that is serving two or more rated districts divides into separate fire departments, the
21 original rated fire department shall retain the relief fund for each rated district. Any new fire department resulting
22 from the division shall be entitled to receive relief fund money when it has been rated.

23 (d) Fire department checks shall be disbursed by the ~~Department of Insurance to the finance officer of the local~~
24 ~~government entity.~~ Department of Insurance Controllers office to the fire departments in that county through Electronic
25 Funds Transfer unless a fire department's account cannot accept electronic funds transfers, in which case the
26 Commissioner shall distribute the department's allocation by paper check.

27
28 *History Note: Authority G.S. 58-2-40(1); 58-84-25; 58-84-40; 58-84-50; 58-85-1; 58-86-25;*
29 *Eff. February 1, 1976;*
30 *Readopted Eff. May 12, 1978;*
31 *Amended Eff. December 1, 2016; September 1, 2010; February 1, 1993; July 1, 1986.*
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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 05A .0501

RECOMMENDED ACTION:

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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

Please note that this Rule, 11 NCAC 05A .0501 Purpose, cites the statutory authority as G.S. 58-2-40; 58-86-25. Those statutes are set forth below:

§ 58-2-40. Powers and duties of Commissioner.

The Commissioner shall:

Abigail M. Hammond
Commission Counsel

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.
- (9) Repealed by Session Laws 2000-19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b).)

§ 58-86-25. Determination and certification of eligible firefighters.

For purposes of this Article, eligible firefighters must attend 36 hours of training sessions in each calendar year. Each eligible fire department shall annually

determine and report a certified roster of the names of those firefighters meeting the eligibility qualifications of this Article to its respective governing body, which upon determination of the validity and accuracy of the qualification, the department shall promptly submit the list to the North Carolina State Firemen's Association. Submission of such information by a department to the North Carolina State Firemen's Association constitutes a certification of its accuracy under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The Firemen's Association shall provide a list of those persons meeting the eligibility requirements of this Article to the State Treasurer by January 31 of each year. For the purposes of the preceding sentences, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board. An "eligible firefighter" may not also qualify as an "eligible rescue squad worker" in order to receive double benefits available under this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1983, c. 416, s. 7; 1985, c. 241; 2000-67, s. 26.22; 2001-222, s. 1; 2003-362, s. 1; 2009-66, s. 2(b); 2013-284, s. 1(a); 2015-88, s. 3.)

In a technical change request, an inquiry was made to the purpose of citing G.S. 58-86-25. The statute is cited as authority for the rulemaking, but the statute is an independent requirement that this Rule is merely identifying in the content of this Rule. Rule 11A NCAC 05A .0501 states the following:

11 NCAC 05A .0501 PURPOSE

The purpose of this Section is to set forth the ~~minimum~~ requirements that a fire department ~~must~~shall meet in order to qualify for eligibility for death benefits under Article 12A of Chapter 143 of the North Carolina General Statutes, and the North Carolina Firemen's Pension Fund under G.S. 58-86-25; for initial recognition in insurance premiums for a responding fire department; and for response rating to designate insurance premiums. (remainder of the rule not provided)

The agency responded that there is no opposition to deleting the reference to G.S. 58-86-25, which leaves the remaining statute of G.S. 58-2-40.

In further review of the content of this Rule, the language of this Rule appears to indicate that the determination of the death benefits under Article 12A of Chapter 143 of the North Carolina General Statutes is governed by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1. However, this determination and the award of such death benefits is exclusively within the jurisdiction of the North Carolina Industrial Commission, a separate agency, as set forth in G.S. 143-166.3:

§ 143-166.3. Payments; determination.

(a) When any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member shall be killed in the line of duty, the Industrial Commission shall award a death benefit to be paid...

Article 12A of Chapter 143 further defines "line of duty" as follows:

§ 143-166.2. Definitions.

...

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, firefighter, rescue squad worker who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties.

When applied to a senior member of the Civil Air Patrol as defined in this Article, "killed in the line of duty" shall mean any such senior member of the North Carolina Wing-Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while engaged in a State requested and approved mission pursuant to Article 13 of Chapter 143B of the General Statutes. For purposes of this Article, when a law enforcement officer, firefighter, rescue squad worker, or senior Civil Air Patrol member dies as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation, the law enforcement officer, firefighter, rescue squad worker, or senior Civil Air Patrol member is presumed to have been killed in the line of duty.

(d) The term "law-enforcement officer", "officer", or "firefighter" shall mean a sheriff and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a NC General Statutes - Chapter 143 Article 12A 2 sheriff, the State of North Carolina or any county or municipality thereof, whether paid or unpaid; and all full-time custodial employees and probation and parole officers of the Division of Adult Correction of the Department of Public Safety; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Division of Juvenile Justice of the Department of Public Safety and full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid. The term "firemen" shall mean both firefighter or firemen as defined in G.S. 58-84-5(3a), or "eligible firemen" as defined in Article 86 of Chapter 58 of the General Statutes, notwithstanding any age requirements set out in that Article, and all full-time, permanent part-time and temporary employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services during the time they are actively engaged in firefighting activities; or engaged in emergency response activities pursuant to G.S. 166A-19.77; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in firefighting activities, during the time they are training firefighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated; and shall mean all otherwise eligible persons who, while actively engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor outside their own department or squad. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Inc., and the person must have attended a minimum of 36 hours of training in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue and Emergency Medical Services, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 31 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 31 of each year. The term "Civil Air Patrol members" shall

mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-1031. The term "firefighter" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties.

Based upon the directives to the North Carolina Industrial Commission as set forth in Article 12A of Chapter 143 of the North Carolina General Statutes, it does not appear that the Commissioner of Insurance acting in the capacity of State Fire Marshal has the authority "to set forth the requirements that a fire department shall meet in order to qualify for eligibility for death benefits."

The language of this Rule further references insurance premiums for fire departments. Based upon the cited statutory authority, this rate discussion by the Commissioner of Insurance acting in the capacity of State Fire Marshal appears to lack statutory authority. Article 40 of Chapter 58 of the General Statutes sets forth a process for rating property insurance.

§ 58-40-25. Rating methods.

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

- ...
- (4) In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 16; 1991, c. 644, s. 40; 2000-176, s. 2; 2004-203, s. 5(b).)

It is unclear if the authority granted to the Commissioner of Insurance to set rates in G.S. 58-40-25 is being implemented in this Rule by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1.

SUMMARY:

Staff counsel has concerns that this Rule is attempting to regulate a determination within the exclusive jurisdiction of the North Carolina Industrial Commission. It is staff counsel's recommendation that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(1). Further, staff counsel is concerned that the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1 is attempting to regulate premium rates in a process that is contrary to the requirements of G.S. 58-40-25(4). It is staff counsel's recommendation to the Rules Review Commission to object to this Rule for issues of clarity in applicability of this Rule. It is staff counsel's recommendation that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(2).

Abigail M. Hammond
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0501

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 7 thru 8 reference two phrases of insurance premiums. The statutory authority for this Rule is G.S. 58-2-40, which is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal, and G.S. 58-83-25. G.S. 58-86-25 deals with identifying "eligible firefighters" under the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund. Neither of the cited statutes reference premium or rate determinations. Please review and either update the history note accordingly, or delete the references to premium or rate determinations.

Line 8, delete "initial"

Line 9, move period outside the quotation marks inside the quotation marks

Line 11, please clarify how this determination is made by the OSFM.

Line 12, please clarify what is meant by "given period of time." Is there not a standard period, such as 60 or 90 days?

Line 15, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, what is the purpose of citing G.S. 58-86-25 when the statute is specifically discussed in the rule? The citation does not appear to support the authority for this Rule. Please update accordingly.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0501 is amended as published in 31.04 NCR 283 as follows:

2 **SECTION .0500 - INITIAL CERTIFICATION AND RESPONSE RATINGS FOR FIRE DEPARTMENTS**

3
4 **11 NCAC 05A .0501 PURPOSE**

5 The purpose of this Section is to set forth the ~~minimum~~ requirements that a fire department ~~must~~shall meet in order to
6 qualify for eligibility for death benefits under Article 12A of Chapter 143 of the North Carolina General Statutes, and
7 the North Carolina Firemen's Pension Fund under G.S. 58-86-25; for initial recognition in insurance premiums for a
8 responding fire department; and for response rating to designate insurance premiums. Upon meeting the initial
9 requirements for certification, a fire district shall be given a rating of "9S". A fire district may get a rating from "1
10 through 8" upon improving its response capabilities with "1" being the best rating. For ratings of 1 through 8, the fire
11 department shall be evaluated using the current NCFRSRS. If at any time a department is determined by OSFM to be
12 unable to meet the requirements set forth in these standards for a given period of time, they may be designated a "Class
13 10" (non-certified).

14
15 *History Note: Authority G.S. 58-2-40; 58-86-25;*

16 *Eff. September 1, 1985;*

17 *Amended Eff. December 1, 2016; October 1, 2006; July 1, 1992; July 1, 1986.*

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 05A .0503; .0504; .0505; 0506; .0507; .0508; .0510; .0511, .0512

RECOMMENDED ACTION:

- X 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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

For purposes of this Staff Opinion, below is a summary of the referenced rules, the title of the rule, and the cited statutory authority:

Rule	Title	Authority
------	-------	-----------

Abigail M. Hammond
Commission Counsel

11 NCAC 05A .0503	Establish of Fire Department	G.S. 58-2-40; 58-86-25
11 NCAC 05A .0504	Primary Personnel	G.S. 58-2-40; 58-86-25
11 NCAC 05A .0505	Training Requirements	G.S. 58-2-40; 58-78-5; 58-86-25
11 NCAC 05A .0506	Alarm and Communications	G.S. 58-2-40; 58-86-25
11 NCAC 05A .0507	Records and Documents	G.S. 58-2-40; 58-79-45; 58-86-25
11 NCAC 05A .0508	Apparatus	G.S. 58-2-40; 58-36-10(3); 58-86-25
11 NCAC 05A .0510	Inspection	G.S. 58-2-40; 58-36-10(3); 58-86-25
11 NCAC 05A .0511	Six Mile Insurance District	G.S. 58-2-40; 58-40-25(4); 58-86-25
11 NCAC 05A .0512	Standards and Policies	G.S. 58-2-40; 58-36-10(3); 58-86-25

Below are the statutes cited in the above table:

§ 58-2-40. Powers and duties of Commissioner.

The Commissioner shall:

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided

by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.

- (9) Repealed by Session Laws 2000-19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b).)

§ 58-36-10. Method of rate making; factors considered.

The following standards shall apply to the making and use of rates:

- (1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.
- (2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.
- (3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.
- (4) Risks may be grouped by classifications and lines of insurance for establishment of rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with

rating plans that establish standards for measuring variations in hazards or expense provisions or both. Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or gender of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.

- (5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97.
- (6) To ensure that policyholders in the beach and coastal areas of the North Carolina Insurance Underwriting Association whose risks are of the same class and essentially the same hazard are charged premiums that are commensurate with the risk of loss and premiums that are actuarially correct, the North Carolina Rate Bureau shall revise, monitor, and review the existing territorial boundaries used by the Bureau when appropriate to establish geographic territories in the beach and coastal areas of the Association for rating purposes. In revising these territories, the Bureau shall use statistical data sources available to define such territories to represent relative risk factors that are actuarially sound and not unfairly discriminatory. The new territories and any subsequent amendments proposed by the North Carolina Rate Bureau or Association shall be subject to the Commissioner's approval and shall appear on the Bureau's Web site, the Association's Web site, and the Department's Web site once approved.
- (7) Property insurance rates established under this Article may include a provision to reflect the cost of reinsurance to protect against catastrophic exposure within this State. Amounts to be paid to reinsurers, ceding commissions paid or to be paid to insurers by reinsurers, expected reinsurance recoveries, North Carolina exposure to catastrophic events relative to other states' exposure, and any other relevant information may be considered when determining the provision to reflect the cost of reinsurance. (1977, c. 828, s. 6; 1979, c. 824, s. 1; 1981, c. 521, s. 5; c. 790; 1987, c. 632, s. 1; 1991, c. 644, s. 39; 1999-132, s. 3.3; 2000-176, s. 1; 2004-203, s. 5(a); 2009-472, s. 2; 2012-162, s. 3.)

§ 58-40-25. Rating methods.

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

- (1) Due consideration shall be given to past and prospective loss and expense experience within this State, to catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to trends within this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors; however, regional or countrywide expense or loss experience and other regional or countrywide data may be considered only when credible North Carolina expense or loss experience or other data is not available.

- (2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any differences among risks that have probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Those classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.
- (3) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, as far as it is credible, its own expense experience.
- (4) In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. **The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes.** The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 16; 1991, c. 644, s. 40; 2000-176, s. 2; 2004-203, s. 5(b).)

§ 58-78-5. State Fire and Rescue Commission - Powers and duties.

- (a) The Commission shall have the following powers and duties:
 - (1) To formally adopt a State Fire Education and Training Plan, a State Master Plan for Fire Prevention and Control, a Rescue Training Plan, and a State Master Plan for Rescue Services;
 - (2) To assist and participate with State and local fire prevention and control agencies in the improvement of fire prevention and control in North Carolina and to work with State and local rescue agencies to improve rescue services in the State;
 - (3) To increase the professional skills of fire protection and fire-fighting personnel and rescue personnel;
 - (4) To encourage public support for fire prevention and control and rescue services;
 - (5) To accept gifts, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;
 - (6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary and such other powers as may be necessary to carry out the State's duties with respect to all grants to the State by the United States Fire Administration and the National Fire Academy; and all support programs brought into

- the State by these two entities shall be coordinated and controlled by the Commission;
- (7) To make studies and recommendations for the improvement of fire prevention and control and rescue services in the State and to make studies and recommendations for the coordination and implementation of effective fire prevention and control and rescue services and for effective fire prevention and control and rescue services education;
 - (8) To set objectives and priorities for the improvement of fire prevention and control and rescue services throughout the State;
 - (9) To advise State and local interests of opportunities for securing federal assistance for fire prevention and control and rescue services and for improving fire prevention and control and rescue services administration and planning within the State of North Carolina;
 - (10) To assist State agencies and institutions of local government and combinations thereof in the preparation and processing of applications for financial aid and to support fire prevention and control, rescue services, and planning and administration;
 - (11) To encourage and assist coordination at the federal, State and local government levels in the preparation and implementation of fire prevention and control and rescue services administrative improvements and crime reduction plans;
 - (12) To apply for, receive, disburse and audit the use of funds received from any public and private agencies and instrumentalities for fire prevention and control and rescue services, their administration and plans therefor;
 - (13) To enter into monitoring and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;
 - (14) To provide technical assistance to State and local fire prevention and control and rescue agencies in developing programs for improvement;
 - (14a) To serve as a central office for the collection and dissemination of information relative to fire service and rescue service activities and programs in State government. All State government agencies conducting fire service and rescue service related programs and activities shall report the status of these programs and activities to the Commission on a quarterly basis and they shall also report to the Commission any new programs or changes to existing programs as they are implemented;
 - (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.
 - (14c) To prepare an annual report to the Governor on its fire prevention and control activities and plans, rescue activities and plans, and to recommend legislation concerning fire prevention and control and rescue services;
 - (14d) To reimburse the members of the Commission's certification board, in accordance with G.S. 138-5, for travel and subsistence expenses incurred by them in their duties as certification board officers; and
 - (15) To take such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

(16) To provide workers' compensation benefits under G.S. 58-87-10, to create a Volunteer Safety Workers' Compensation Board to assist it in performing this duty, and to reimburse the members of the Commission's Volunteer Safety Workers' Compensation Board in accordance with G.S. 138-5 for travel and subsistence expenses incurred by them.

(b) Each State agency involved in fire prevention and control or rescue related activities shall furnish the executive director of the Commission such information as may be required to carry out the intent of this section. (1977, c. 1064, s. 1; 1981, c. 791, ss. 3, 4; 1985, c. 757, s. 167(b); 1989, c. 750, s. 1; 1993, c. 321, s. 41; 1995, c. 507, s. 7.21A(c); 2011-284, s. 58; 2015-39, s. 2.)

§ 58-79-45. Fire incident reports.

(a) Whenever a fire department responds to a fire, the chief of that department shall complete or cause to be completed a fire incident report, which report shall be on a form prescribed by the Department of Insurance. When such report is made without fraud, bad faith, or actual malice, the person making the report is not subject to liability for libel or slander.

(b) The fire department shall forward a copy of the completed form to the fire marshal of the county in which the fire occurred. If there is no fire marshal in that county, the fire department shall forward a copy of the report to the county commissioners. The fire department shall retain the original of the report. The fire department and the fire marshal or county commissioners to whom reports are sent shall retain the reports for a period of five years.

(c) At the request of any person, the county fire marshal or county commissioners shall provide such person, for a reasonable copying charge, a certified copy of the report. (1989 (Reg. Sess., 1990), c. 1054, s. 7.)

§ 58-86-25. Determination and certification of eligible firefighters.

For purposes of this Article, eligible firefighters must attend 36 hours of training sessions in each calendar year. Each eligible fire department shall annually determine and report a certified roster of the names of those firefighters meeting the eligibility qualifications of this Article to its respective governing body, which upon determination of the validity and accuracy of the qualification, the department shall promptly submit the list to the North Carolina State Firemen's Association. Submission of such information by a department to the North Carolina State Firemen's Association constitutes a certification of its accuracy under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The Firemen's Association shall provide a list of those persons meeting the eligibility requirements of this Article to the State Treasurer by January 31 of each year. For the purposes of the preceding sentences, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board. An "eligible firefighter" may not also qualify as an "eligible rescue squad worker" in order to receive double benefits available under this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1983, c. 416, s. 7; 1985, c. 241; 2000-67, s. 26.22; 2001-222, s. 1; 2003-362, s. 1; 2009-66, s. 2(b); 2013-284, s. 1(a); 2015-88, s. 3.)

The nine rules identified by this Staff Opinion pertain to requirements placed on fire departments. A review of the cited statutes and Article 80 of Chapter 58 of the General Statutes does not provide clarification as to the Commissioner of Insurance's authority, acting as the State Fire Marshal under G.S. 58-80-1, to place these requirements on fire departments. In a

technical change request to the agency to seek clarification, the response of the agency was that there is no opposition to deleting the references to other statutes. Below is a summary of the implication of the agency's response:

Rule	Title	Authority
11 NCAC 05A .0503	Establish of Fire Department	G.S. 58-2-40
11 NCAC 05A .0504	Primary Personnel	G.S. 58-2-40
11 NCAC 05A .0505	Training Requirements	G.S. 58-2-40; 58-78-5**
11 NCAC 05A .0506	Alarm and Communications	G.S. 58-2-40
11 NCAC 05A .0507	Records and Documents	G.S. 58-2-40; 58-79-45
11 NCAC 05A .0508	Apparatus	G.S. 58-2-40; 58-36-10(3)**
11 NCAC 05A .0510	Inspection	G.S. 58-2-40
11 NCAC 05A .0511	Six Mile Insurance District	G.S. 58-2-40; 58-40-25(4)
11 NCAC 05A .0512	Standards and Policies	G.S. 58-2-40

**Please note that G.S. 58-36-10 is a statute set forth in Article 36 of Chapter 58 of the General Statutes, which pertains to a separate entity, or bureau, named the North Carolina Rate Bureau.

**Please note that G.S. 58-78-5 is a statute set forth in Article 78 of Chapter 58 of the General Statutes, which pertains to a separate agency named the State Fire and Rescue Commission.

Staff counsel is unclear if the purpose of these rules is to identify the process for a fire district to be "rated and certified" as set forth in G.S. 58-84-5:

§ 58-84-5. Definitions.

The following definitions apply in Articles 84, 85, 85A, 87, and 88 of this Chapter:

- (1) City. - A fire district.
- (2) Clerk. - The clerk of a fire district or, if there is no clerk, the person so designated by the governing body of the fire district.
- (3) Fire district. - Any political subdivision of the State or federally recognized Native American tribe within the State that meets all of the following conditions:
 - a. It has an organized fire department under the control of its governing body.
 - b. Its fire department has apparatus and equipment that is in serviceable condition for fire duty and is valued at one thousand dollars (\$1,000) or more.
 - c. It is rated and certified by the Commissioner.
 - d. Its response area has been approved by the local municipal government or, if there is no local municipal government, by the local board of county commissioners.
- (3a) Firefighter or Fireman. - Any person who meets all of the following requirements:
 - a. Is a volunteer, employee, contractor, or member of a rated and certified fire department.
 - b. Performs work or training connected with fire protection, fire prevention, fire control, fire education, fire inspection, fire investigation, rescue, Emergency Medical Services, special

- operations, or performs the statutory duties and responsibilities of the fire chief as set forth in G.S. 160A-292.
- c. Performs work or training at the direction of the fire chief.
 - d. Is included on the certified roster submitted to the North Carolina State Firemen's Association pursuant to G.S. 58-86-25.
- (4) Town. - A fire district. (1951, c. 1032, s. 1; 1995 (Reg. Sess., 1996), c. 747, s. 5; 2014-64, s. 1(a); 2015-88, s. 1.)

However, another statute requires a different body to “certify” a fire department. Further, G.S. 58-36-10(3) and 58-40-25(4) may also limit the scope of the Commissioner of Insurance review of fire districts. It is unclear from the statutory structure of referenced Articles set forth in Chapter 58 of the General Statutes if the Commission of Insurance acting as the State Fire Marshal under G.S. 58-80-1 has the authority to promulgate the nine identified rules relying on G.S. 58-2-40.

SUMMARY:

Staff counsel is providing notice to the Rules Review Commission that these Rules, as adopted by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1, relies on the general rulemaking authority vested in the Commissioner of Insurance by G.S. 58-2-40. Staff counsel recommends approval of the following rules, contingent on review of remaining technical change requests:

- 11 NCAC 05A .0503
- 11 NCAC 05A .0504
- 11 NCAC 05A .0506
- 11 NCAC 05A .0507
- 11 NCAC 05A .0510
- 11 NCAC 05A .0511
- 11 NCAC 05A .0512

Rules 11 NCAC 05A .0505; .0508; and .0511 have additional staff opinions recommending objection to those three rules.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0503

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 3, add "rated and" to "certified" to clarify the statutory requirement and language set forth in G.S. 58-84-5. Add this authority to the history note.

Lines 4 thru 12 appears to be a list. Begin clauses on lines 4, 6, 8, and 10 with lowercase letters. Replace the periods on lines 5, 7, and 9 with semicolons. Line 9, add an "and" or "or" at the end of the clause.

Line 6, is this statement correct? Line 4 discusses a fire department incorporated. Is this line also discussing an incorporated fire department? Please clarify if necessary.

Line 14, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, what is the purpose of citing G.S. 58-86-25? The citation does not appear to support the authority for this Rule. Please update accordingly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0503 is amended as published in 31.04 NCR 283 as follows:

2 **11 NCAC 05A .0503 ESTABLISHMENT OF FIRE DEPARTMENT**

3 To become a certified fire department, a fire department shall apply and meet the following criteria:

- 4 (1) The fire department shall be incorporated under Chapter 55A of the General Statutes or be operated
5 by a city, county, or sanitary district as a division of that governmental unit.
- 6 (2) If the fire department is incorporated, it shall operate under a contract with either a city, county, or
7 sanitary district or any combination thereof.
- 8 (3) Boundaries defining the area of responsibility shall be established by a County Board of
9 Commissioners for areas outside municipalities pursuant to G.S. 153A-233.
- 10 (4) The fire department shall provide ~~the~~ OSFM with a hand drawn map ~~and with a~~ written description
11 or a GIS computer generated map of its initial or revised fire ~~insurance district.~~ district with the
12 documentation of the approval by the County Commissioners.

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14 *History Note: Authority G.S. 58-2-40; 58-86-25;*
15 *Eff. September 1, 1985;*
16 *Amended Eff. December 1, 2016; October 1, 2006; July 1, 1992; July 1, 1986.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0504

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5 and 10, what is meant by "member"? Please clarify.

Line 8, add a comma after "fire"

Line 13, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, what is the purpose of citing G.S. 58-86-25? The citation does not appear to support the authority for this Rule. This Rule appears to address inspecting and establishing personnel requirements. Please update the statutory authority accordingly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0504 is amended as published in 31.04 NCR 283 as follows:

2 **11 NCAC 05A .0504 PRIMARY PERSONNEL**

3 Upon initial or re-inspection for certification as a Class "9S" fire department, the fire department shall have ~~a minimum~~
4 ~~of 20 primary personnel. with at least two designated as traffic control and at least 18 designated as firefighters. No~~
5 ~~member may be counted as a primary member of two, on call, volunteer departments.~~ At the time of re-inspection, a
6 fire department shall maintain 20 primary personnel on their certified state roster ~~or show, through documentation,~~
7 ~~that an average of 12 personnel have responded on each of the last 20 structure fires.~~ At least one engine with four
8 personnel must respond to each reported structure fire which includes fire alarm, alarm activations where fire or
9 damage has occurred. ~~A roster of personnel containing names and attendance of business meetings and training~~
10 ~~meetings shall be kept. For the purpose of this Section "primary personnel" means a member that is associated with~~
11 the fire department for the purpose of satisfying certification inspection requirements.

12

13 *History Note: Authority G.S. 58-2-40; 58-86-25;*
14 *Eff. September 1, 1985;*
15 *Amended Eff. December 1, 2016; October 1, 2006; July 1, 1992.*

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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 05A .0505

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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina. (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

In addition to the general rulemaking authority vested in the Commissioner of Insurance by G.S. 58-2-40, this Rule, 11 NCAC 05A .0505 Training Requirements, cites G.S. 58-78-5 and 58-86-25. Article 78 of Chapter 58 of the General Statutes is a separate agency, the State Fire and Rescue Commission. The State Fire and Rescue Commission, as a separate agency from the Commissioner of Insurance, has independent rulemaking authority:

Abigail M. Hammond
Commission Counsel

§ 58-78-10. State Fire and Rescue Commission - Organization; rules and regulations; meetings.

- (a) Organization. - The Commission shall elect from its voting members a chair and vice-chair to serve as provided by the rules adopted by the Commission.
- (b) Rules and Regulations. - The Commission shall adopt such rules and regulations, not inconsistent with the laws of this State as may be required by the federal government for programs and grants-in-aid for fire protection, firefighting, and rescue purposes which may be made available to the State by the federal government. The Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all programs of and grants to the State by the United States Fire Administration, Federal Emergency Management Agency. In respect to such programs and grants, the Commission shall have authority to review, approve and maintain general oversight to the State plan and its implementation, including subgrants and allocations to local units of government and local fire prevention and control and rescue agencies. All actions taken by the Commission in the performance of its duties shall be implemented and administered by the Department.
- (c) Meetings. - The Commission shall meet quarterly. Seven members shall constitute a quorum. All meetings shall be open to the public. (1977, c. 1064, s. 1; 1981, c. 791, s. 5; 1983, c. 840, s. 3; 1985, c. 757, s. 167(b), (c), (e), (f); 1989, c. 750, s. 1; 2015-39, s. 3.)

The State Fire and Rescue Commission, in compliance with the following directives of the General Assembly, has promulgated and adopted rules set forth in 11 NCAC 05B:

§ 58-78-5. State Fire and Rescue Commission - Powers and duties.

- (a) The Commission shall have the following powers and duties:
- (1) To formally adopt a State Fire Education and Training Plan, a State Master Plan for Fire Prevention and Control, a Rescue Training Plan, and a State Master Plan for Rescue Services;
 - (2) To assist and participate with State and local fire prevention and control agencies in the improvement of fire prevention and control in North Carolina and to work with State and local rescue agencies to improve rescue services in the State;
 - (3) To increase the professional skills of fire protection and fire-fighting personnel and rescue personnel;
 - (4) To encourage public support for fire prevention and control and rescue services;
 - (5) To accept gifts, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;
 - (6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary and such other powers as may be necessary to carry out the State's duties with respect to all grants to the State by the United States Fire Administration and the National Fire Academy; and all support programs brought into the State by these two entities shall be coordinated and controlled by the Commission;
 - (7) To make studies and recommendations for the improvement of fire prevention and control and rescue services in the State and to make studies and recommendations for the coordination and implementation of effective fire prevention and control and rescue

- services and for effective fire prevention and control and rescue services education;
- (8) To set objectives and priorities for the improvement of fire prevention and control and rescue services throughout the State;
 - (9) To advise State and local interests of opportunities for securing federal assistance for fire prevention and control and rescue services and for improving fire prevention and control and rescue services administration and planning within the State of North Carolina;
 - (10) To assist State agencies and institutions of local government and combinations thereof in the preparation and processing of applications for financial aid and to support fire prevention and control, rescue services, and planning and administration;
 - (11) To encourage and assist coordination at the federal, State and local government levels in the preparation and implementation of fire prevention and control and rescue services administrative improvements and crime reduction plans;
 - (12) To apply for, receive, disburse and audit the use of funds received from any public and private agencies and instrumentalities for fire prevention and control and rescue services, their administration and plans therefor;
 - (13) To enter into monitoring and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;
 - (14) To provide technical assistance to State and local fire prevention and control and rescue agencies in developing programs for improvement;
 - (14a) To serve as a central office for the collection and dissemination of information relative to fire service and rescue service activities and programs in State government. All State government agencies conducting fire service and rescue service related programs and activities shall report the status of these programs and activities to the Commission on a quarterly basis and they shall also report to the Commission any new programs or changes to existing programs as they are implemented;
 - (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.
 - (14c) To prepare an annual report to the Governor on its fire prevention and control activities and plans, rescue activities and plans, and to recommend legislation concerning fire prevention and control and rescue services;
 - (14d) To reimburse the members of the Commission's certification board, in accordance with G.S. 138-5, for travel and subsistence expenses incurred by them in their duties as certification board officers; and
 - (15) To take such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.
 - (16) To provide workers' compensation benefits under G.S. 58-87-10, to create a Volunteer Safety Workers' Compensation Board to assist it in performing this duty, and to reimburse the members of the Commission's Volunteer Safety Workers' Compensation Board in accordance with G.S. 138-5 for travel and subsistence expenses incurred by them.

- (b) Each State agency involved in fire prevention and control or rescue related activities shall furnish the executive director of the Commission such information as may be required to carry out the intent of this section. (1977, c. 1064, s. 1; 1981, c. 791, ss. 3, 4; 1985, c. 757, s. 167(b); 1989, c. 750, s. 1; 1993, c. 321, s. 41; 1995, c. 507, s. 7.21A(c); 2011-284, s. 58; 2015-39, s. 2.)

In addition to the staff counsel's recommendation to object based upon the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1 to adopt rules within the authority of the State Fire and Rescue Commission, lines five through seven of this Rule has added the following language:

Fire departments shall provide at least 4 hours of training per month, with each firefighter obtaining a minimum of 36 hours of training per year. A signed or verified roster of personnel containing the names and hours of training attendance shall be kept for each training session.

The proposed amended rule language does not indicate who is signing or verifying the roster, or who is responsible for keeping the documentation. G.S. 58-86-25 addresses the requirements for rosters of the training. G.S. 58-86-25 states the following:

§ 58-86-25. Determination and certification of eligible firefighters.

For purposes of this Article, eligible firefighters must attend 36 hours of training sessions in each calendar year. Each eligible fire department shall annually determine and report a certified roster of the names of those firefighters meeting the eligibility qualifications of this Article to its respective governing body, which upon determination of the validity and accuracy of the qualification, the department shall promptly submit the list to the North Carolina State Firemen's Association. Submission of such information by a department to the North Carolina State Firemen's Association constitutes a certification of its accuracy under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The Firemen's Association shall provide a list of those persons meeting the eligibility requirements of this Article to the State Treasurer by January 31 of each year. For the purposes of the preceding sentences, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board. An "eligible firefighter" may not also qualify as an "eligible rescue squad worker" in order to receive double benefits available under this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1983, c. 416, s. 7; 1985, c. 241; 2000-67, s. 26.22; 2001-222, s. 1; 2003-362, s. 1; 2009-66, s. 2(b); 2013-284, s. 1(a); 2015-88, s. 3.)

The proposed amended rule language does not appear to clarify G.S. 58-86-25, but appears to add unclear additional requirements. The proposed amended rule language replaces the statutory requirement of the record being a "certified roster" to being a "signed or verified roster." G.S. 58-86-25 should control the reporting requirements.

G.S. 150B-21.9 requires the following of the Rules Review Commission:

- (a) Standards. - The Commission must determine whether a rule meets all of the following criteria:
- (1) It is within the authority delegated to the agency by the General Assembly.

- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

SUMMARY:

It is staff counsel's opinion that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(1), as the State Fire and Rescue Commission is a separate agency and rulemaking body. The agency and rulemaking body that promulgated this Rule is the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1.

Further, the proposed amended rule language on lines five through seven is unclear and appears to contradict G.S. 58-86-25. It is staff' counsel's opinion that this Rule should also be objected to for failure to comply with G.S. 150B-21.9(a)(2).

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0505

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, spell out "4" in accordance with [26 NCAC 02C .0108\(9\)](#)

Lines 6 thru 7, what is the purpose of the proposed amendment? It appears to change the requirements of G.S. 58-86-25, which requires the following:

"Each eligible fire department shall annually determine and report a certified roster of the names of those firefighters meeting the eligibility qualifications of this Article to its respective governing body, which upon determination of the validity and accuracy of the qualification, the department shall promptly submit the list to the North Carolina State Firemen's Association."

This Rule appears to change "certified" to "signed or verified" and does not indicate who keeps these records. Please consider the following re-write:

"Fire departments shall provide at least four hours of training per month for eligible fireman to comply with G.S. 58-86-25. The fire department shall maintain copies of the reports submitted in compliance with G.S. 58-86-25."

In light of G.S. 58-86-2(4), what is the purpose of this amendment? Is the certification of departments of members occurring in this Section outside the scope of the North Carolina Firefighters' and Rescue Squad Workers' Pension Fund? Please clarify.

Considering adding something to this Rule to clarify how long the fire department must maintain the reports. Please note that G.S. 58-79-45 requires that those records be kept for only five years.

Lines 9 thru 17, who is providing the course referenced in these two Subparagraphs? The State Fire Marshal or the State Fire and Rescue Commission? Please clarify. Why is the title only in the second Subparagraph, and who is titling this course? If this course is

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

created by the State Fire and Rescue Commission in accordance with G.S. 58-78-5, how is this Rule mandating the title of the course? If the State Fire and Rescue Commission has rules addressing this training, consider simply replacing this language with a cross-reference to the appropriate rule.

Line 10, add "State" between "Carolina" and "Fire"

Line 12, delete "but not limited to"

Line 14, delete "subject to change,"

Line 19, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, G.S. 58-78-5 is the rulemaking authority for a separate and distinct agency of the State Fire and Rescue Commission. That is not rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. Please review and updated accordingly.

Line 19, changes in the text of the rule and history note must be tracked in accordance with [26 NCAC 02C .0405](#). Please update the authority line to match the current content of the NC Administrative Code and the amendment.

Line 19, what is the purpose of citing G.S. 58-86-25 when the statute is specifically discussed in the rule? The citation does not appear to support the authority for this Rule. Please update accordingly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0505 is amended as published in 31.04 NCR 283-284 as follows:

2 **11 NCAC 05A .0505 TRAINING REQUIREMENTS**

3 (a) All members of fire departments shall comply with the ~~drills and meetings training~~ requirements of G.S. 58-
4 86-25.

5 (1) Fire departments shall provide at least 4 hours of training per month, with each firefighter obtaining
6 a minimum of 36 hours of training per year. A signed or verified roster of personnel containing the
7 names and hours of training attendance shall be kept for each training session.

8 (b) The chief officer of each fire department shall:

9 (1) within one year of appointment, complete a class on basic management of fire department operations
10 ~~and records~~ approved by the North Carolina Fire and Rescue Commission for chief officer based
11 upon National Fire Protection Association (NFPA) standards for chief officer. NFPA Standard 1021
12 is incorporated into this Subchapter by reference, including but not limited to subsequent
13 amendments or editions. NFPA Standard 1021 is available from the National Fire Protection
14 Association at <http://www.nfpa.org/> for a fee subject to change, of ~~thirty seven dollars (\$37.00);~~
15 forty-four dollars and fifty cents (\$44.50); and

16 (2) complete the course as described in Subparagraph (1) of this Paragraph, which shall be titled "Chief
17 101" ~~a minimum of~~ every five years.

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19 *History Note: Authority G.S. 58-2-40; 58-78-5; 58-86-25;*

20 *Eff. September 1, 1985;*

21 *Amended Eff. December 1, 2016; October 1, 2010; October 1, 2006; July 1, 1992.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0506

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 3, add a comma after "dispatching"

Line 3, delete the added "and"

Line 4, what is meant by "The system"? Please clarify.

Line 6, add a comma after "day"

Line 6 thru 8, what is the purpose of this sentence in light of the remainder of this Rule? It appears duplicative.

Line 9, consider the following re-write:

"The alert may be provided by..."

Line 10, delete "duty (paid)" and replace with "paid"

Line 11, delete "creditable"

Line 13, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, what is the purpose of citing G.S. 58-86-25? The citation does not appear to support the authority for this Rule. Please update the statutory authority accordingly.

Line 13, changes in the text of the rule and history note must be tracked in accordance with [26 NCAC 02C .0405](#). Please update the authority line to match the current content of the NC Administrative Code and the amendment.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0506 is amended as published in 31.04 NCR 284 as follows:

2 **11 NCAC 05A .0506 ALARM AND COMMUNICATIONS**

3 Communications facilities shall be provided for the receipt of reported~~reporting~~ emergencies, dispatching and
4 documentation of responding fire apparatus, and notification of firefighters. The system shall provide ~~one telephone~~
5 ~~listing facilities~~ for dispatching assistance to fire emergencies ~~that reaches a location that receives calls and responds~~
6 24 hours a day seven days a week. ~~That~~The communications facility location shall have the capability of activating
7 ~~sirens or pagers all types of systems utilized in order~~ to dispatch the fire apparatus and notify firefighters of an
8 emergency. department. Communications facilities shall have the means to alert all firefighters in the event of an
9 emergency call. This may be done by pagers, portable radios with alerting capabilities, siren activation from the
10 communications center, or station alerting devices with on duty (paid) personnel. Text paging or phone paging shall
11 not be a creditable means of notification.

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13 *History Note: Authority G.S. 58-2-40; 58-86-25;*
14 *Eff. September 1, 1985;*
15 *Amended Eff. December 1, 2016; October 1, 2006.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0507

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 3 thru 5 appears to address the reporting requirements set forth in G.S. 58-79-45. Does the NFIRS satisfy the statutory requirement of reporting "on a form prescribed by the Department of Insurance"?

Line 3, what is the purpose of the clause "in addition to personnel records" to this Rule? Consider deleting as personnel requirements are not addressed in G.S. 58-79-45, which addresses fire incident reports.

Line 3, add a comma after "manager"

Line 3, delete the "or" between "manager" and "fire"

Line 3, add a comma after "chief"

Line 7, replace "and/or" with "and" or "or"

Lines 6 thru 9, what is the authority for these additional reporting requirements? Please clarify.

Lines 10 thru 11 is duplicative of the statutory directive in G.S. 58-79-45. Consider the following re-write:

"A fire department may comply with G.S. 58-79-45 by using the NFIRS reporting requirements found at no charge at the following link:..."

Please make certain the link is accurate, as a review of it does not make it clear how a department would report a fire incident.

Line 16, add a period between the website link and "All"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

Lines 16 thru 17, what is the authority for this clause? The cited authority is only the general rulemaking authority of the Commissioner of Insurance, who serves as the State Fire Marshal, and the reporting of fire incident statute. What is the authority regarding this "inspection deficiency" language? Please clarify.

Line 19, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, what is the purpose of citing G.S. 58-86-25? The citation does not appear to support the authority for this Rule. Please update the statutory authority accordingly.

Line 19, changes in the text of the rule and history note must be tracked in accordance with [26 NCAC 02C .0405](#). Please update the authority line to match the current content of the NC Administrative Code and the amendment.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0507 is amended as published in 31.04 NCR 284 as follows:

2 **11 NCAC 05A .0507 RECORDS AND DOCUMENTS**

3 (a) In addition to personnel records, the city or county manager or fire department chief or county fire marshal shall
4 keep records on dates, times and locations of emergencies on the current version of the National Fire Incident
5 Reporting System (NFIRS) as prescribed in ~~Rule .0101 of this Subchapter; 11 NCAC 05A .0101(3); inventory of~~
6 ~~equipment, and maintenance of apparatus;~~ and shall submit the following documents to the Department of Insurance:
7 ~~certified state~~ roster, charter, contract(s) with city(ies) and/or county(ies), service test report, weight tickets, ~~current~~
8 ~~map and written description of the map;~~ an inventory of protective clothing, and verification ~~of workers compensation~~
9 ~~coverage, from the county approving the fire district boundaries.~~

10 (b) Whenever a fire department ~~responds to a fireis dispatched to a call, a the~~ chief of that department shall complete
11 or cause to be completed ~~a fire an~~ incident report ~~on the current version of the National Fire Incident Reporting System~~
12 ~~(NFIRS)~~ in accordance with ~~the State Fire Incident reporting instructions, 11 NCAC 05A .0101(3) and otherwise~~
13 ~~comply with G.S. 58-79-45. OSFM provides State fire incident reporting instructions, that satisfy the NFIRS reporting~~
14 ~~requirements, for no charge at the following link:~~
15 ~~[http://www.ncdoi.com/OSFM/Fire_Rescue_Commission/Default.aspx?field1=Incident_Reporting -](http://www.ncdoi.com/OSFM/Fire_Rescue_Commission/Default.aspx?field1=Incident_Reporting_-_Information&user=Incident_Reporting)~~
16 ~~[Information&user=Incident_Reporting](http://www.ncdoi.com/OSFM/Fire_Rescue_Commission/Default.aspx?field1=Incident_Reporting_-_Information&user=Incident_Reporting) All reports shall be submitted within 120 days of incident occurrence. Failure~~
17 ~~to report shall be an inspection deficiency.~~

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19 *History Note: Authority G.S. 58-2-40; 58-79-45; 58-86-25;*
20 *Eff. September 1, 1985;*
21 *Amended Eff. December 1, 2016; September 1, 2010; October 1, 2006; July 1, 1992.*
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Field Code Changed

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 05A .0508

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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

Please note that this Rule, 11 NCAC 05A .0508 Apparatus, cites the statutory authority as G.S. 58-2-40; 58-36-10(3); 58-86-25. Those statutes are set forth below:

§ 58-2-40. Powers and duties of Commissioner.

The Commissioner shall:

Abigail M. Hammond
Commission Counsel

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.
- (9) Repealed by Session Laws 2000-19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b).)

§ 58-36-10. Method of rate making; factors considered.

The following standards shall apply to the making and use of rates:

- (1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.
- (2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.
- (3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. **In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes.** The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.
- (4) Risks may be grouped by classifications and lines of insurance for establishment of rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions or both. Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or gender of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.
- (5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97.
- (6) To ensure that policyholders in the beach and coastal areas of the North Carolina Insurance Underwriting Association whose risks are of the same

class and essentially the same hazard are charged premiums that are commensurate with the risk of loss and premiums that are actuarially correct, the North Carolina Rate Bureau shall revise, monitor, and review the existing territorial boundaries used by the Bureau when appropriate to establish geographic territories in the beach and coastal areas of the Association for rating purposes. In revising these territories, the Bureau shall use statistical data sources available to define such territories to represent relative risk factors that are actuarially sound and not unfairly discriminatory. The new territories and any subsequent amendments proposed by the North Carolina Rate Bureau or Association shall be subject to the Commissioner's approval and shall appear on the Bureau's Web site, the Association's Web site, and the Department's Web site once approved.

- (7) Property insurance rates established under this Article may include a provision to reflect the cost of reinsurance to protect against catastrophic exposure within this State. Amounts to be paid to reinsurers, ceding commissions paid or to be paid to insurers by reinsurers, expected reinsurance recoveries, North Carolina exposure to catastrophic events relative to other states' exposure, and any other relevant information may be considered when determining the provision to reflect the cost of reinsurance. (1977, c. 828, s. 6; 1979, c. 824, s. 1; 1981, c. 521, s. 5; c. 790; 1987, c. 632, s. 1; 1991, c. 644, s. 39; 1999-132, s. 3.3; 2000-176, s. 1; 2004-203, s. 5(a); 2009-472, s. 2; 2012-162, s. 3.)

§ 58-86-25. Determination and certification of eligible firefighters.

For purposes of this Article, eligible firefighters must attend 36 hours of training sessions in each calendar year. Each eligible fire department shall annually determine and report a certified roster of the names of those firefighters meeting the eligibility qualifications of this Article to its respective governing body, which upon determination of the validity and accuracy of the qualification, the department shall promptly submit the list to the North Carolina State Firemen's Association. Submission of such information by a department to the North Carolina State Firemen's Association constitutes a certification of its accuracy under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The Firemen's Association shall provide a list of those persons meeting the eligibility requirements of this Article to the State Treasurer by January 31 of each year. For the purposes of the preceding sentences, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board. An "eligible firefighter" may not also qualify as an "eligible rescue squad worker" in order to receive double benefits available under this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1983, c. 416, s. 7; 1985, c. 241; 2000-67, s. 26.22; 2001-222, s. 1; 2003-362, s. 1; 2009-66, s. 2(b); 2013-284, s. 1(a); 2015-88, s. 3.)

In a technical change request, an inquiry was made regarding the applicability of G.S. 58-86-25 to this Rule. The agency responded that there is no opposition to deleting the reference to G.S. 58-86-25, which leaves the remaining statutes of G.S. 58-2-40 and 58-36-10(3).

The use of G.S. 58-36-10(3) as the authority for Rule 11 NCAC 05A .0508 is questionable, as Article 36 of Chapter 58 of the General Statutes pertains to the Rate Bureau, a separate entity, and the specific cited statutes sets forth a process for rating property insurance. It is unclear if the authority granted to the Commissioner of Insurance to set rates in G.S. 58-36-10(3) is being implemented in this Rule by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1.

G.S. 150B-21.9 requires the following of the Rules Review Commission:

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

SUMMARY:

Staff counsel is concerned that the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1 is attempting to regulate premium rates in a process that is contrary to the requirements of G.S. 58-36-10(3). It is staff counsel's recommendation to the Rules Review Commission to object to this Rule for issues of clarity regarding applicability of G.S. 58-36-10(3) in implementation of this Rule. It is staff counsel's recommendation that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(2). Alternatively, if the Commissioner of Insurance is implementing the rate review process of G.S. 58-36-10(3) as a rule of the State Fire Marshal, it is staff counsel's recommendation that this Rule should be objected to for lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1).

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0508

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Who is providing the "certification" as discussed in this Rule? The reference to certification in G.S. 58-86-2(4) provides that "fire department which is certified to the Commissioner of Insurance by the governing body" and G.S. 58-86-25 provides the following:

"...the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board."

In light of the above statutes, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, G.S. 58-36-10(3) is the authority of rate making, which is not the content of this Rule. It is unclear how the Commissioner of Insurance may address the apparatus required based upon the statutes provided.

Line 12, whose "certification"? Please clarify.

Line 15, delete the comma after "fee"

Line 15, delete "subject to change,"

Lines 24 through 29, what is the authority for requiring this record keeping? Please clarify.

Lines 25 and 28, add a comma after "service trucks"

Line 32, add a comma after "capacity"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

Line 32, replace “for” with “combined between the”

Lines 34 thru 35, is this sentence an accurate description of the process? Could “the necessary” be replaced with “a”? Is the clause “or refiling” necessary language? Is the added “with hoses or equipment” necessary language? Consider the following re-write:

“The tanker shall be equipped with a hose for filling the tank for transferring water to the engine or other devices.”

Line 36, define or delete “fully”

Page 2, line 1, is “baffled” a known industry term? If not, define or delete.

Page 2, line 15, who is doing the “issu[ing] to all firefighters” in this Rule? Please clarify.

Page 2, line 29, should there be a period after “pound” or should it be a comma? Please clarify.

Page 2, line 33, what is the purpose of citing G.S. 58-86-25 when the statute is specifically discussed in the rule? The citation does not appear to support the authority for this Rule. Please update accordingly.

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 .0508 is amended as published in 31.04 NCR 284-285 as follows:

2 **11 NCAC 05A .0508 APPARATUS**

3 To qualify for ~~initial inspection~~ certification and receive or maintain a minimum rating of Class "9S", the fire
4 department shall have the following apparatus, ~~and equipment: equipment, and documentation:~~

5 (1) ~~Pumper. Engine.~~

6 (a) The fire department shall have an approved ~~pumper engine~~ (automotive fire apparatus
7 equipped with a fire pump and tank). To be approved, the fire department ~~pumper engine~~
8 ~~must shall~~ be certified by Underwriters Laboratories, Inc., and constructed in accordance
9 with the National Fire Protection Association Standard 1901 - Standard for Automotive
10 Fire Apparatus. The apparatus shall not be loaded beyond limits certified by the "Gross
11 Vehicle Weight" label attached to the vehicle; nor shall the vehicle be modified in a manner
12 that would invalidate this certification. NFPA Standard 1901 is incorporated into this
13 Subchapter by reference, but not including subsequent amendments or editions. NFPA
14 Standard 1901 is available from the National Fire Protection Association at
15 <http://www.nfpa.org/> for ~~a fee, subject to change, of fifty dollars (\$50.00). forty-four~~
16 ~~dollars and fifty cents (\$44.50).~~

17 (b) The pump shall have a rated capacity of not less than 750 gallons per minute at 150 pounds
18 per square inch net pump pressure.

19 (c) The ~~pumper engine~~ shall be equipped with at least a ~~500 300~~ gallon water tank.

20 (d) A service test ~~must shall~~ have been performed on the "first responding" ~~pumper engine~~
21 during the 12-month period before the inspection. If the ~~pumper engine has had~~ been
22 purchased as new within the 12-month period before the "9S" inspection, the U.L.
23 Certificate meets this requirement.

24 ~~(e) The fire departments shall maintain documentation of all equipment and apparatus~~
25 ~~including engines, tankers, service trucks and aerial apparatus through an inventory list.~~
26 ~~Monthly inventory checks shall be recorded for 12 consecutive months.~~

27 ~~(f) The fire departments shall maintain documentation of maintenance checklists for all~~
28 ~~apparatus including engines, tankers, service trucks and aerial apparatus and records~~
29 ~~verifying that all apparatus is checked monthly for 12 consecutive months.~~

30 (2) ~~Tanker. Tanker (or mobile water supply capacity).~~

31 (a) The fire department shall have a motorized tank truck of at least 1000 gallons water
32 capacity or enough to equal at least ~~1500 1300~~ gallons of water total for ~~pumper engine~~
33 and ~~tanker tanker~~.

34 (b) The tanker shall be equipped with the necessary hose for filling or refilling the tank ~~with and~~
35 ~~hose hoses or equipment~~ for transferring water to the ~~pumper engine or other devices~~.

36 (c) The tanker, when fully loaded, shall not exceed the Gross Vehicle Weight limits as certified
37 on the label attached to the vehicle; nor shall the vehicle be modified in a manner that

would invalidate this certification. All tankers shall be baffled in accordance with the National Fire Protection Association Standard 1901 – Standard for Automotive Fire Apparatus which is available from the National Fire Protection Association.

(3) The following equipment shall be carried on responding fire department pumpers:

- (a) The ~~pumper engine~~ shall be equipped with 2-~~150~~ 200 foot 1-1/2 inch or 1-3/4 inch pre-connected hose lines with fog nozzles attached;
- (b) One booster reel or a third three-200 foot pre-connected hose ~~lines; line of 1-1/2 inch or larger with a nozzle attached;~~
- (c) Suction hose - size necessary to flow the capacity of pump on the ~~Engine engine~~ - 2 - 10 foot ~~sections; sections~~ (If the insurance district is 85% or more covered by useable hydrants the ~~Engine~~ engine may have a 15 foot section of soft suction hose size necessary to flow the capacity of the pump on the Engine engine);
- (d) Four OSHA approved self-contained breathing apparatus in proper working condition;
- (e) OSHA approved protective clothing for all firefighters including helmets, hoods, coats, pants, boots, and gloves or issued to all firefighters; and reflective clothing and helmet for traffic control personnel;
- (f) One 12 foot or 14 foot roof ladder;
- (g) One ~~24 foot~~ 24 foot, 28 foot, or 35 foot extension ladder;
- (h) One axe;
- (i) One claw tool (~~Halligan~~ (One Halligan Tool may replace claw tool and or crowbar); crowbar but not both);
- (j) One crowbar (~~Halligan~~ (One Halligan Tool may replace crowbar and or claw tool); claw tool but not both);
- (k) One pike pole, minimum 8 foot;
- (l) Two mounted rechargeable type portable hand lights suitable for hazardous conditions; ("4V" wet or "6V" dry);
- (m) 100 feet of utility rope, minimum ~~1/2 inch;~~ 1/2 inch diameter;
- ~~(n) Two shovels;~~
- ~~(o)~~ (n) Two 20 pound. Class B-C portable extinguishers;
- ~~(p)~~ (o) One First Aid kit; and
- ~~(q)~~ (p) One bolt cutter, with 14 inches or ~~longer;~~ longer handles.

*History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-86-25;
Eff. September 1, 1985;
Amended Eff. December 1, 2016; October 1, 2006; August 3, 1992.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0510

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Is this Rule necessary? What "information" is in addition to these rules and statutes? Please clarify.

Line 6, review the provided statutory authority. G.S. 58-2-40 is the general rulemaking authority for the Commissioner of Insurance, who serves as the State Fire Marshal. However, G.S. 58-36-10(3) is the authority of rate making, which is not the content of this Rule.

Line 6, what is the purpose of citing G.S. 58-86-25? The citation does not appear to support the authority for this Rule. Please update accordingly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0510 is amended as published in 31.04 NCR 285 as follows:

2 **11 NCAC 05A .0510 INSPECTION**

3 Any persons or fire departments needing information on obtaining certification under this Section may contact ~~the~~
4 OSFM. See 11 NCAC 05A. 0103 for contact information.

5

6 *History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-86-25;*

7 *Eff. September 1, 1985;*

8 *Amended Eff. December 1, 2016; October 1, 2006; July 1, 1992.*

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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 05A .0511

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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

Please note that this Rule, 11 NCAC 05A .0511 Six Mile Insurance District, cites the statutory authority as G.S. 58-2-40; 58-40-25(4); 58-86-25. Those statutes are set forth below:

§ 58-2-40. Powers and duties of Commissioner.

The Commissioner shall:

Abigail M. Hammond
Commission Counsel

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.
- (9) Repealed by Session Laws 2000-19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b).)

§ 58-40-25. Rating methods.

In determining whether rates comply with the standards under G.S. 58-40-20, the following criteria shall be applied:

...

(4) In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. (1977, c. 828, s. 2; 1985 (Reg. Sess., 1986), c. 1027, s. 16; 1991, c. 644, s. 40; 2000-176, s. 2; 2004-203, s. 5(b).)

§ 58-86-25. Determination and certification of eligible firefighters.

For purposes of this Article, eligible firefighters must attend 36 hours of training sessions in each calendar year. Each eligible fire department shall annually determine and report a certified roster of the names of those firefighters meeting the eligibility qualifications of this Article to its respective governing body, which upon determination of the validity and accuracy of the qualification, the department shall promptly submit the list to the North Carolina State Firemen's Association. Submission of such information by a department to the North Carolina State Firemen's Association constitutes a certification of its accuracy under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The Firemen's Association shall provide a list of those persons meeting the eligibility requirements of this Article to the State Treasurer by January 31 of each year. For the purposes of the preceding sentences, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board. An "eligible firefighter" may not also qualify as an "eligible rescue squad worker" in order to receive double benefits available under this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1983, c. 416, s. 7; 1985, c. 241; 2000-67, s. 26.22; 2001-222, s. 1; 2003-362, s. 1; 2009-66, s. 2(b); 2013-284, s. 1(a); 2015-88, s. 3.)

In a technical change request, an inquiry was made regarding the applicability of G.S. 58-86-25 to this Rule. The agency responded that there is no opposition to deleting the reference to G.S. 58-86-25, which leaves the remaining statutes of G.S. 58-2-40 and 58-40-25(4).

It is unclear if the authority granted to the Commissioner of Insurance to set rates in G.S. 58-40-25 is being implemented in this Rule by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1.

G.S. 150B-21.9 requires the following of the Rules Review Commission:

- (a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

SUMMARY:

Staff counsel is concerned that the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1 is attempting to regulate premium rates in a process that is contrary to the requirements of G.S. 58-40-25(4). It is staff counsel's recommendation to the Rules Review Commission to object to this Rule for issues of clarity regarding applicability of G.S. 58-40-25(4) in implementation of this Rule. It is staff counsel's recommendation that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(2). Alternatively, if the Commissioner of Insurance is implementing the rate review process of G.S. 58-40-25(4) as a rule of the State Fire Marshal, it is staff counsel's recommendation that this Rule should be objected to for lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1).

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0511

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 3, where does "six miles" come from? This limitation does not appear to be within Chapter 58 of the G.S.. Is there another rule of the Commissioner that could be cross-referenced? Please clarify.

Lines 4 thru 13 appears to be a list. Begin clauses on lines 4, 6, 8, and 12 with lowercase letters. Replace the periods on lines 5, 7, and 11 with semicolons. Line 11, add an "and" at the end of the clause.

Lines 6 thru 7, uncapitalize "County Commissioners"

Line 7, what is the purpose of the clause "as set forth in G.S. 153A-233" as that statute does not require any maps. Please clarify.

Line 8, who is the "department"? If it is the "fire department" than add "fire" to clarify.

Line 12, is it the "County" or the "fire department" that is establishing the protocols? Please clarify.

Line 12, if "County" remains, uncapitalize the term

Line 15, what is the purpose of citing G.S. 58-86-25 when the statute is specifically discussed in the rule? The citation does not appear to support the authority for this Rule. Please update accordingly.

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

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0511 is amended as published in 31.04 NCR 285-286 as follows:

2 **11 NCAC 05A .0511 SIX MILE INSURANCE DISTRICT**

3 To extend its insurance district to six miles, each fire department shall apply and meet the following criteria:

- 4 (1) The fire department shall provide ~~the~~ OSFM with a hand drawn map and written description or a
5 GIS computer generated map of its fire district.
- 6 (2) The map and written ~~description~~ description, or GIS maps shall be presented to the County
7 Commissioners for their approval, as set forth in G.S. 153A-233.
- 8 (3) The department applying to extend its insurance district to six miles shall enter into a written
9 automatic aid contract with the adjoining districts to the area being extended specifying that "an
10 apparatus capable of transporting" a minimum of 1000 gallons of water shall be dispatched
11 simultaneously with the department whose district the incident is occurring within.
- 12 (4) The County shall establish automatic aid response protocols. These protocols shall be maintained at
13 the county communication center and shall be used on all alarms involving reported structure fires.

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15 *History Note: Authority G.S. 58-2-40; 58-86-25; 58-40-25(4);*

16 *Eff. October 1, 2006;*

17 *Amended Eff. December 1, 2016.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0512

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

What is the application of this rule? The statutory authority references G.S. 58-36-10(3), but that statute appears to restrict this review process to certain fire departments, such as rural areas and cities of certain size. That does not appear to be clear in this Rule. Please clarify.

Lines 8 and 10, what does "inadequate" mean? Is this term defined in statute or rule that could be cross-referenced? Please clarify.

Line 9, replace "will" with "shall"

Line 14 has "inadequate response" in quotation marks, but this is not a term being defined in this sentence. Please remove quotation marks, but review this request in light of the inquiry for the term on lines 8 and 10.

Lines 16, 32, and 34, what is meant by the term "deficiencies"? Deficiencies of what? Please clarify.

Lines 20, 26, 28, 30, and 33 add a comma after "manager"

Line 20 thru 21, 26, 28, 30, 33, and 35, why does this language allow the notice to be provided to the "fire department chief or county fire marshal" in lieu of the "city or county manager"? Rule .0503 requires a relationship with a "city, county, or sanitation district." Why would it not be sufficient to provide notice there and how it is decided by OSFM on how to elect with the "or" between "county manager" and "fire department." Please clarify.

Lines 21 thru 22, what is a "survey grading inspection"? Is this term defined in statute or rule that could be cross-referenced? Please clarify.

Line 24, add an "and" at the end of the clause

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

Line 25, who is providing this “community report”? Please clarify.

Lines 28 thru 32, this Paragraph is one entire sentence. The sentence contains over 80 words. Please review. Is that correct?

Line 31, uncapitalize “inspector”

Line 32, and page 2, line 2, the “that” should remain in this Rule and “which” deleted

Line 34, replace “which” with “that”

Line 35, in light on the inquire regarding who notice should be provided to initially and throughout the process, why is this notice mandated to cover all four groups? Please clarify.

Page 2, line 5, delete the slash between “apparatus” and “equipment” and add an “or”

Page 2, line 5, what is meant by “NC 9S”? Please clarify.

Page 2, line 5, replace “is” with “shall be”

Page 2, line 8, what is the purpose of citing G.S. 58-86-25 when the statute is specifically discussed in the rule? The citation does not appear to support the authority for this Rule. Please update accordingly.

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 .0512 is amended as published in 31.04 NCR 286 as follows:

2 **11 NCAC 05A .0512 STANDARDS AND POLICIES**

3 (a) The NCFRS shall be used by ~~the~~OSFM when ~~the~~OSFM inspects fire departments for the purpose of determining
4 Fire Insurance District Ratings Classifications. Each fire department shall assure the response of at least four members
5 and one engine to all fires and fire alarms where fire or damage occurred in structures. The chief may be one of the
6 four responding members. Response of a fire department, as primary first alarm department, to a fire or fire alarm in
7 a structure within its established fire insurance district with less than the minimum required engine or manpower shall
8 be considered by ~~the~~OSFM to be a Non-Response-an inadequate response. Fire alarms where no fire or damage has
9 occurred as determined by a fire official on-scene will not be considered by the inspector. Any department determined
10 by ~~the~~OSFM to have two or more "Non-Response" records-inadequate responses shall be placed ~~by the OSFM~~on
11 probation by OSFM for a period of 12 consecutive months. A fire department on probation shall submit quarterly
12 records to the OSFM inspector ~~copies of response records~~for all firefires and fire alarm-alarms reported in structure
13 structures for the next 12 consecutive calendar months that show-showing there have been no additional "non-
14 responses" "inadequate responses" within ~~that 12-month-the~~ period. If the fire department fails to submit the quarterly
15 report, the insurance district for the fire department shall be designated ~~a-as~~ "Class 10" (non-certified) by ~~the~~OSFM.
16 In addition, any department found to have any deficiencies during an Inspection shall be placed on probation until the
17 deficiency has been corrected, or up to 12 months at which time the department shall be designated a "Class 10"
18 insurance district by OSFM.

19 (b) After evaluation of data collected during an NCFRS inspection, if the results of the inspection indicate that a fire
20 department's ratings classification must be reduced, OSFM shall notify the city or county manager or fire department
21 chief or county fire marshal in writing of the reduction in ratings classification. ~~The~~For the purpose of survey grading
22 inspections notification shall include:

- 23 (1) ~~Hydrant~~hydrant flow tests and hauled water ~~evaluations.evaluations;~~
- 24 (2) ~~Ratings-ratings~~ classification ~~details-details;~~
- 25 (3) ~~Recommendations for improvement-community report of conditions found.~~

26 (c) If the city or county manager or fire department chief or county fire marshal fails to acknowledge receipt ~~with~~
27 within 30 days after receipt of the notification, ~~the~~OSFM shall reduce the ratings classification of the fire department.

28 (d) If the city or county manager or fire department chief or county fire marshal acknowledges receipt of the
29 notification to ~~the~~OSFM within 30 days after receipt of the notification and advises ~~the~~OSFM that the fire department
30 wants to retain its ratings classification, the city or county manager or fire department chief or county fire marshal
31 shall consult with the individual Inspector who conducted the NCFRS inspection and develop a plan of action to
32 correct the deficiencies~~that~~ which caused the reduction in ratings classification.

33 (e) Within 90 days after the consultation, the city or county manager or fire department chief or county fire marshal
34 shall submit the plan to ~~the~~OSFM which shall determine whether the plan is satisfactory to cover the deficiencies.
35 ~~The~~OSFM shall notify the city manager,or county manager, ~~or~~fire department chief, ~~or-and~~ county fire marshal in
36 writing when ~~the~~OSFM approves the plan.

1 (f) The fire department shall have one year after the receipt of the approval to complete the plan of action to correct
2 the deficiencies ~~that~~ which caused the reduction in ratings classification.

3 (g) The sharing or borrowing of equipment between or among fire departments or between or among stations within
4 a fire department, the falsifying of documents, or engaging in any other act of misrepresentation, for the purpose of
5 falsely satisfying the apparatus/equipment grading score of a NCFRS survey grading or NC 9S inspection is
6 ~~prohibited~~ prohibited, and shall result in the department being placed on probation.

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8 *History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-86-25;*
9 *Eff. October 1, 2006;*
10 *Amended Eff. December 1, 2016.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0601

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

What is the purpose of this Rule? It appears as though defining "Department" in just this Section of the rules would be confusing. Both G.S. 58-87-1 and 58-87-5 use the term "Department" to refer to the "Department of Insurance." The term "Office of State Fire Marshal" is defined in Rule .0101 and applies to this entire subchapter. The term "Fund" is defined in G.S. 58-87-1, and this definition seems redundant and unnecessary. Please review and clarify need of these definitions.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0601 is amended as published in 31.04 NCR 286 as follows:

2 **SECTION .0600 - VOLUNTEER FIRE DEPARTMENT FUND**

3

4 **11 NCAC 05A .0601 DEFINITIONS**

5 As used in this section:

6 (1) "Department" means a certified volunteer fire department ~~situated~~based in the State of North
7 Carolina.

8 (2) ~~"Division" means the Fire and Rescuc Services Division of the North Carolina Department of~~
9 ~~Insurance.~~ "Office of State Fire Marshal" or "OSFM" means the Office of State Fire Marshal of the
10 North Carolina Department of Insurance

11 (3) "Fund" means the Volunteer Fire Department Fund created in G.S. 58-87-1.

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13 *History Note: Authority G.S. 58-2-40(1); 58-87-1;*

14 *Eff. February 1, 1993;*

15 *Amended Eff. December 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0602

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Is a volunteer fire department that is “working with OSFM” on March 1 going to be “certified” by March 15 to be considered an “eligible fire department”? Is the Department of Insurance considering volunteer fire departments that are contingent on being “certified” and “eligible” to apply? Please verify and clarify if necessary.

Lines 3, 4, and 5, add “fire” before “department” to track statutory term.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0602 is amended as published in 31.04 NCR 286 as follows:

2 **11 NCAC 05A .0602 FIRE DISTRICT RATING CERTIFICATION**

3 If a department is ~~actively~~ working with ~~the Division OSFM~~ to obtain its fire district rating certification as of March
4 1, it may apply for a grant. In order to receive a grant, the department ~~must~~shall obtain its fire district rating certification
5 within 60 days after ~~the Division OSFM~~ has determined that the department has otherwise satisfied the requirements
6 of G.S. 58-87-1 and the Rules in this Section.

7

8 *History Note: Authority G.S. 58-2-40(1); 58-36-10(3); 58-87-1;*

9 *Eff. February 1, 1993;*

10 *Amended Eff. December 1, 2016.*

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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 05A .0603

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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

Please note that this Rule, 11 NCAC 05A .0603 Requirements, cites the statutory authority as G.S. 58-2-40; 58-36-10(3); 58-87-1; 143C-6-23(b). Those statutes are set forth below:

§ 58-2-40. Powers and duties of Commissioner.

The Commissioner shall:

Abigail M. Hammond
Commission Counsel

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.
- (9) Repealed by Session Laws 2000-19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b).)

§ 58-36-10. Method of rate making; factors considered.

The following standards shall apply to the making and use of rates:

- (1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.
- (2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.
- (3) In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. **In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes.** The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.
- (4) Risks may be grouped by classifications and lines of insurance for establishment of rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions or both. Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or gender of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.
- (5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97.
- (6) To ensure that policyholders in the beach and coastal areas of the North Carolina Insurance Underwriting Association whose risks are of the same

class and essentially the same hazard are charged premiums that are commensurate with the risk of loss and premiums that are actuarially correct, the North Carolina Rate Bureau shall revise, monitor, and review the existing territorial boundaries used by the Bureau when appropriate to establish geographic territories in the beach and coastal areas of the Association for rating purposes. In revising these territories, the Bureau shall use statistical data sources available to define such territories to represent relative risk factors that are actuarially sound and not unfairly discriminatory. The new territories and any subsequent amendments proposed by the North Carolina Rate Bureau or Association shall be subject to the Commissioner's approval and shall appear on the Bureau's Web site, the Association's Web site, and the Department's Web site once approved.

- (7) Property insurance rates established under this Article may include a provision to reflect the cost of reinsurance to protect against catastrophic exposure within this State. Amounts to be paid to reinsurers, ceding commissions paid or to be paid to insurers by reinsurers, expected reinsurance recoveries, North Carolina exposure to catastrophic events relative to other states' exposure, and any other relevant information may be considered when determining the provision to reflect the cost of reinsurance. (1977, c. 828, s. 6; 1979, c. 824, s. 1; 1981, c. 521, s. 5; c. 790; 1987, c. 632, s. 1; 1991, c. 644, s. 39; 1999-132, s. 3.3; 2000-176, s. 1; 2004-203, s. 5(a); 2009-472, s. 2; 2012-162, s. 3.)

§ 58-87-1. Volunteer Fire Department Fund.

- (a) Fund. - The Volunteer Fire Department Fund is created as an interest-bearing, nonreverting fund in the Department to provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. The Commissioner shall administer the Fund. Up to one percent (1%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year.
- (a1) **(Applicable to the 2015 grant process)** Grant Program. - An eligible fire department may apply to the Commissioner for a grant under this section. In awarding grants under this section, the Commissioner must, to the extent possible, select applicants from all parts of the State based upon need. The Commissioner must award the grants on May 15, or on the first business day after May 15 if May 15 falls on a weekend or a holiday, of each year subject to the following limitations:
- (1) The size of a grant may not exceed thirty thousand dollars (\$30,000).
 - (2) The applicant shall match the grant on a dollar-for-dollar basis, unless the applicant receives less than fifty thousand dollars (\$50,000) per year from municipal and county funding, in which case the applicant shall match one dollar (\$1.00) for each three dollars (\$3.00) of grant funds.
 - (3) The grant may be used only for equipment purchases, payment of highway use taxes on those purchases, costs of putting property acquired from the Department of Defense through the Firefighter Property (FFP) and federal Excess Property (FEPP) programs in service, or capital expenditures necessary to provide fire protection services.
 - (4) An applicant may receive no more than one grant per fiscal year.
- (b) Eligible Fire Department. - A fire department is eligible for a grant under this section if it meets all of the conditions of this subsection. No fire department may be declared ineligible for a grant solely because it is classified as a municipal fire department.

- (1) It serves a response area of 12,000 or less in population. In making the population determination, the Department must use the most recent annual population estimates certified by the State Budget Officer.
 - (2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of six full-time paid positions.
 - (3) It has been certified by the Department of Insurance.
- (c) Report. - The Commissioner must submit a written report to the General Assembly within 60 days after the grants have been made. This report must contain the following:
- (1) The amount of the grant and the name of the recipient.
 - (2) The Fund balance at the beginning of the grant cycle.
 - (3) Cash receipts through the grant cycle.
 - (4) Cash disbursements through the grant cycle.
 - (5) The Fund balance at the end of the grant cycle. (1987, c. 709, s. 1; 1987 (Reg. Sess., 1988), c. 1062, ss. 6-9; 1989, c. 770, s. 30; 1995, c. 507, s. 7.21A(k); 1998-212, s. 25(a); 1999-319, s. 1; 2004-203, s. 5(c); 2006-196, s. 8; 2007-250, s. 3; 2013-360, s. 20.2(b); 2014-64, ss. 4(a), (b).)

§ 143C-6-23. State grant funds: administration; oversight and reporting requirements.

(a) Definitions. – The following definitions apply in this section:

(1) Grant or grant funds. – State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs.

(2) Grantee. – A non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(3) Encumbrance. – A financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided, or other legally binding agreement. A financial obligation is not an encumbrance for purposes of this section unless it (i) is in writing and has been signed by a person or entity who has authority to legally bind the grantee or subgrantee to spend the funds or (ii) was created by the provision of goods or services to the grantee or subgrantee by a third party under circumstances that create a legally binding obligation to pay for the goods or services.

(4) Subgrantee. – A non-State entity that receives State funds as a grant from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(b) Conflict of Interest Policy. – Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

...

In a technical change request, an inquiry was made regarding the applicability of 58-36-10(3) to this Rule. The agency responded that there is no opposition to deleting the reference to 58-36-10(3). The use of G.S. 58-36-10(3) as the authority for Rule 11 NCAC 05A .0603 is questionable, as Article 36 of Chapter 58 of the General Statutes pertains to the Rate Bureau, a separate entity, and the specific cited statutes sets forth a process for rating property insurance. It is unclear if the authority granted to the Commissioner of Insurance to set rates in G.S. 58-36-10(3) is being implemented in this Rule by the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1.

Another technical change request inquired about the authority for the following proposed amended rule language:

(d) Any department that is on the North Carolina Department of Insurance Noncompliance list or Office of State Budget and Management Suspension of Funding List for Non State Entities at <http://www.osbm.state.nc.us/> shall be ineligible to participate in the Volunteer Fire Department Fund grant program. If a department is awarded a grant and becomes ineligible to receive funding due to being noncompliant with the requirements in this section, the grant shall be forfeited 10 business days after notification of noncompliance by OSFM. A department that provides false application information shall be ineligible for the following two grant cycles and shall forfeit any grant award already awarded during the current cycle.

The agency responded that the penalty is authorized by the general rulemaking authority of the Commissioner of Insurance set forth in G.S. 58-2-40(1). Staff counsel opines that the penalty of being ineligible for grants for two cycles, or forfeiture of awarded grants is not a penalty option offered to the State Fire Marshal under Article 87 of Chapter 58 of the General Statutes. Staff counsel's review of Chapter 143C found a specific statutory penalty for fraudulent representations that likely controls the fact pattern that the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1 is attempting to regulated by the proposed amended rule language:

§ 143C-10-1. Offenses for violation of Chapter.

- (a) Class 1 misdemeanor. - It is a Class 1 misdemeanor for a person to knowingly and willfully do any one or more of the following:
- (1) Withdraw funds from the State treasury for any purpose not authorized by an act of appropriation.
 - (2) Approve any fraudulent, erroneous, or otherwise invalid claim or bill to be paid from an appropriation.
 - (3) Make a written statement, give a certificate, issue a report, or utter a document required by this Chapter, any portion of which is false.
 - (4) Fail or refuse to perform a duty imposed by this Chapter.
- (b) Class A1 misdemeanor. - It is a Class A1 misdemeanor for a person to make a false statement in violation of G.S. 143C-6-23(c).
- (c) Forfeiture of Office or Employment. - An appointed officer or employee of the State or an officer or employee of a political subdivision of the State, whether elected or appointed, forfeits his office or employment upon conviction of an offense under this section. An elected officer of the State is subject to impeachment for committing any of the offenses specified in this section.(2006-203, s. 3.)

G.S. 150B-21.9 requires the following of the Rules Review Commission:

Abigail M. Hammond
Commission Counsel

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

SUMMARY:

Staff counsel is concerned that the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1 is attempting to regulate premium rates in a process that is contrary to the requirements of G.S. 58-36-10(3). It is staff counsel's recommendation to the Rules Review Commission to object to this Rule for issues of clarity regarding applicability of G.S. 58-36-10(3) in implementation of this Rule. It is staff counsel's recommendation that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(2). Alternatively, if the Commissioner of Insurance is implementing the rate review process of G.S. 58-36-10(3) as a rule of the State Fire Marshal, it is staff counsel's recommendation that this Rule should be objected to for lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1).

Second, staff counsel recommends objection to this Rule, as the proposed amended rule language imposes a penalty that is not supported by the cited statutory authority. It is staff counsel's recommendation that this Rule should be objected to for lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1).

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0603

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

All uses of the term "department" should add "fire" before "department" to track statutory term. Please review the entire Rule for this request.

Lines 3 and 6 references an "application form." G.S. [150B-2\(8a\)d](#) does not require a form to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.

Line 5, replace "This" with "The"

Lines 5 thru 6, delete "will be on a form as prescribed by the Commissioner and"

Line 6, replace "will" with "shall"

Line 8, replace "are" with "shall be"

Line 9 thru 10 restates G.S. 58-87-1(a1). Please delete. A cross-reference to the controlling statute may be added, if necessary.

Lines 15 thru 17 references certain information used by the Department of Insurance. Where is this information maintained by the Department of Insurance? And the website for OSBM's location of the information does not provide the documents referenced. Please review and clarify.

Line 15, what is the Department of Insurance's authority to maintain a "Noncompliance" list for volunteer fire departments? Please clarify.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

Lines 17 thru 21, what is the statutory authority for this language? Specifically, lines 19 thru 21 creates a penalty that does not appear to be authorized in Article 87 of G.S. 58. Please clarify.

Line 23, clarify what the referenced "maintenance records" apply to

Lines 26 thru 31, uncapitalize the "a"

Line 28, is the citation provided correct? Should it be G.S. 58-86-2(6)? If so, change the term being defined to "firefighter" to track the statutory term.

Line 29, the language requires the applicant or department to verify the population. However, G.S. 58-87-1(b)(1) places the burden of population determination on the Department of Insurance. Please review this language in light of the legislative directive.

Line 31, please add a citation to G.S. 58-87-1(a1)(2) to clarify the requirements set forth in the statute for matching of funds.

Page 2, line 3 indicates that an extension may be provided by the OSFM. Please clarify the process and factors of consideration in granting the extension.

Page 2, line 9, replace "is" with "shall be"

Page 2, line 9, the authority to inspect appears to be set forth in G.S. 58-87-7. If that is accurate, please update the history note accordingly.

Page 2, line 11, what is the purpose of citing G.S. 58-36-10(3)? The citation does not appear to support the authority for this Rule. Please update the statutory authority accordingly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0603 is amended as published in 31.04 NCR 286-287 as follows:

2 **11 NCAC 05A .0603 REQUIREMENTS**

3 (a) The Volunteer Fire Department Fund online application forms for requesting grants for equipment purchases and
4 capital expenditures, shall be made available by ~~the Division OSFM~~ to all departments registered with ~~the Division~~
5 OSFM and approved by ~~the Division OSFM~~ by the first business day of January of each year. This application will
6 be on a form as prescribed by the Commissioner and will contain information to determine grant eligibility and score.

7 (b) Online Applications applications shall be submitted to ~~the Division OSFM~~ and be ~~postmarked or~~ electronic date
8 stamped no later than March 1. Applications bearing ~~postmarks or~~ electronic date stamps later than March 1 are
9 disqualified. The names of grant recipients shall be announced on May 15. If May 15 falls on a weekend, the
10 announcement shall be made on the following Monday.

11 (c) Any application received by ~~the Division OSFM~~ that is incorrect or incomplete shall be returned to the department
12 with a request that the correct or complete information be sent to ~~the Division OSFM~~ within 10 business days after
13 receipt by the department. The failure of the department to return the requested correct or complete information shall
14 result in the forfeiture by the department of its eligibility for a grant during that grant cycle.

15 (d) Any department that is on the North Carolina Department of Insurance Noncompliance list or Office of State
16 Budget and Management Suspension of Funding List for Non State Entities at <http://www.osbm.state.nc.us/> shall be
17 ineligible to participate in the Volunteer Fire Department Fund grant program. If a department is awarded a grant and
18 becomes ineligible to receive funding due to being noncompliant with the requirements in this section, the grant shall
19 be forfeited 10 business days after notification of noncompliance by OSFM. A department that provides false
20 application information shall be ineligible for the following two grant cycles and shall forfeit any grant award already
21 awarded during the current cycle.

22 ~~(d)~~(e) If the application includes a request for a motor vehicle, the vehicle specifications shall accompany the
23 application and, if used, if a used vehicle is requested, then the previous year's maintenance records shall accompany
24 the application.

25 ~~(e)~~(f) The following documents shall accompany a grant application:

- 26 (1) A contract verification form showing an agreement between the department and a county for the
27 department to provide fire protection to a district;
- 28 (2) A current roster comprising a list of ~~eligible firemen~~ "eligible firemen" as defined in G.S. 58-86-25;
- 29 (3) A statement verifying the population that the department serves;
- 30 (4) A financial statement of the department; and
- 31 (5) A statement verifying that the department is financially able to match the grant.

32 ~~(f)~~(g) Statements that there are no overdue taxes, conflict of interest statements as defined in G.S. 143C-6-23(b),
33 payment agreements, and equipment invoices shall be received by ~~the Division OSFM~~ no later than September 30
34 following the announcement of grant recipients. Departments submitting incorrect invoices, such as sales orders,
35 acknowledgements, and packing slips, on or before September 30 shall be contacted by ~~the Division OSFM~~ and given
36 10 business days to submit correct documents. The failure of any department to comply shall result in the department
37 forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements that are ordered by a department

1 before May 15 or equipment that is back-ordered by a vendor for a department or equipment not received by a
2 department on or before September 30 shall not be funded by grants from the Fund.

3 (h) OSFM may extend the September 30 deadline for invoice submission for the following:

4 (1) new fire apparatus;

5 (2) self contained breathing apparatus;

6 (3) firefighter turnout gear;

7 (4) capital improvements; or

8 (5) specialized equipment.

9 ~~(h)(i)~~ Equipment purchased with grants is subject to inspection by ~~Division~~ OSFM personnel.

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11 *History Note: Authority G.S. 58-2-40(1); 58-36-10(3); 58-87-1; 143C-6-23(b);*

12 *Eff. February 1, 1993;*

13 *Amended Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0604

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Is the purpose of this Rule for review of a grant or for the Department of Insurance's certification of the volunteer fire department? Please clarify.

Line 3, who is "awarding grants" as stated in this Rule? The Rule references OSFM, but G.S. 58-87-1(a1) vests the ability to award to the Commissioner exclusively. Please clarify the process.

Lines 4 and 9, add "fire" before "department" to track statutory term.

When this Rule is compared to Rule .0705, why does this rule not contain "personnel salary paid by the unit or the city or county"? Please review for consistency.

Line 18, hyphenate "non OSFM"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0604 is amended as published in 31.04 NCR 287 as follows:

2 **11 NCAC 05A .0604 OTHER GRANT CRITERIA**

3 In addition to criteria in G.S. 58-87-1, in awarding grants ~~the Division~~ OSFM shall consider the following criteria in
4 relation to each department:

- 5 (1) number of paid personnel;
6 ~~(1)(2)~~ number and age of vehicles;
7 ~~(2)(3)~~ population served; county population density;
8 ~~(3)(4)~~ county per capita income;
9 ~~(4)(5)~~ source of department funding; funding, including the following funding sources for the last fiscal
10 year:
11 (a) city or county funding;
12 (b) fire tax;
13 (c) sales tax;
14 (d) contracted services;
15 (e) revenue from EMS billing;
16 (f) fund raising
17 (g) donations; and
18 (h) revenue from non OSFM grants;
19 ~~(5)(6)~~ money on hand; cash balance as of the beginning of current fiscal year;
20 ~~(6)(7)~~ protective equipment requested;
21 ~~(7)(8)~~ miscellaneous equipment requested;
22 ~~(8)(9)~~ vehicles requested;
23 ~~(9)(10)~~ capital improvements requested; and
24 ~~(10)(11)~~ current fire insurance rating.

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26 *History Note: Authority G.S. 58-2-40(1); 58-87-1;*
27 *Eff. February 1, 1993;*
28 *Amended Eff. December 1, 2016.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0701

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 7 thru 8, the term "Office of State Fire Marshal" is defined in Rule .0101 and applies to this entire subchapter.

Lines 10 thru 11 are unclear. Why not just use the proposed amended language? Consider the following re-write:

"Unit" means a volunteer rescue unit, a rescue/EMS unit, or an EMS unit recognized by OSFM in accordance with G.S. 58-87-5(b)(3)."

Does the term "recognized" need to be defined. Please review and clarify if necessary.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0701 is amended as published in 31.04 NCR 287-288 as follows:

2 **SECTION .0700 - VOLUNTEER RESCUE/EMS FUND**

3
4 **11 NCAC 05A .0701 DEFINITIONS**

5 As used in this Section:

- 6 (1) ~~"Division" means the Fire and Rescue Services Division of the North Carolina Department of~~
7 ~~Insurance;"Office of State Fire Marshal" or "OSFM" means the Office of State Fire Marshal of the~~
8 ~~North Carolina Department of Insurance.~~
9 (2) "Fund" means the Volunteer Rescue/EMS Fund created in G.S. 58-87-5.
10 (3) "Unit" means a volunteer rescue or rescue/EMS unit ~~that has been recognized by OSFM as a rescue~~
11 ~~unit, a rescue/EMS unit, or an EMS unit and is basedsituated~~ in the State of North Carolina.

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12
13 *History Note:* Authority G.S.58-2-40(1); 58-87-5;
14 *Eff. February 1, 1993;*
15 *Amended Eff. December 1, 2016.*

G.S. 58-87-5

G.S. 143C-6-23 (c)
G.S. 143C-10-1.(3)
G.S. 143C-6-22 (b) |

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0702

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

If a unit that is “working with Office of Emergency Medical Services” on October 15 to be considered an “eligible unit”? Is the Department of Insurance considering units that are contingent on being Advanced Life Support (ALS) certified to apply? Please verify and clarify if necessary.

What is the statutory authority to justify Advanced Life Support (ALS) certified for grant consideration? Please clarify.

Line 6, add “the Rules in” between “and” and “this”

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0702 is amended as published in 31.04 NCR 288 as follows:

2 **11 NCAC 05A .0702 ALS CERTIFICATION**

3 If a unit is ~~actively~~ working with the Office of Emergency Medical Services (OEMS) to obtain its Advanced Life
4 Support (ALS) certification as of October 1, that unit may apply for a grant. In order to receive a grant, the unit ~~must~~
5 shall obtain its ALS certification from OEMS within 60 days after ~~the Division~~ OSFM has determined that the unit
6 has otherwise satisfied the requirements in G.S. 58-87-5 and this Section.

7

8 *History Note: Authority G.S. 58-2-40(1); 58-87-5;*

9 *Eff. February 1, 1993;*

10 *Amended Eff. December 1, 2016.*

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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 05A .0703

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

COMMENT:

The rules filed by the Department of Insurance were filed on behalf of the State Fire Marshal. By statute, the State Fire Marshal is the Commissioner of Insurance, as set forth in G.S. 58-80-1:

§ 58-80-1. Purpose of Article; meaning of "State Fire Marshal".

The purpose of this Article shall be the creation of a State Volunteer Fire Department to provide protection for property lying outside the boundaries of municipalities, and to render assistance anywhere within the State of North Carolina, in municipalities or counties, in emergencies caused by fire, floods, tornadoes, or otherwise, in the manner and subject to the conditions provided in this Article. **As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.** (1939, c. 364, s. 1; 1985, c. 666, s. 66.)

The statutes set forth in Chapter 58 govern "Insurance" and consists of 92 different Articles. The State Fire Marshal is set forth in Article 80 of Chapter 58 of the General Statutes.

Please note that this Rule, 11 NCAC 05A .0703 Requirements for Units Required to Match Grants, cites the statutory authority as G.S. 58-2-40; 58-87-5; 143C-6-23(b). Those statutes are set forth below:

§ 58-2-40. Powers and duties of Commissioner.

The Commissioner shall:

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.
- (9) Repealed by Session Laws 2000-19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b).)

§ 58-87-5. Volunteer Rescue/EMS Fund.

(a) There is created in the Department of Insurance the Volunteer Rescue/EMS Fund to provide grants to volunteer rescue units, rescue/EMS units, and EMS units providing rescue or rescue and emergency medical services to purchase equipment and make capital improvements. An eligible unit may apply to the Department of Insurance for a grant under this section. The application form and criteria for grants shall be established by the Department. The North Carolina Association of Rescue and Emergency Medical Services, Inc., shall provide the Department with an advisory priority listing for rescue equipment eligible for funding, and the Department of Health and Human Services shall provide the Department with an advisory priority listing of EMS equipment eligible for funding. The State Treasurer shall invest the Fund's assets according to law, and the earnings shall remain in the Fund. On December 15, or on the first business day after December 15 if December 15 falls on a weekend or a holiday, of each year, the Department shall make grants to eligible units subject to all of the following limitations:

- (1) A grant to an applicant who is required to match the grant with non-State funds may not exceed twenty-five thousand dollars (\$25,000), and a grant to an applicant who is not required to match the grant with non-State funds may not exceed three thousand dollars (\$3,000).
- (2) An applicant whose liquid assets, when combined with the liquid assets of any corporate affiliate or subsidiary of the applicant, are more than one thousand dollars (\$1,000) shall match the grant on a dollar-for-dollar basis with non-State funds.
- (3) The grant may be used only for equipment purchases or capital expenditures.
- (4) An applicant may receive no more than one grant per fiscal year.
- (5) The grant may be used only for purposes related to services that the unit is authorized to provide.

In awarding grants under this section, the Department shall to the extent possible select applicants from all parts of the State based upon need, subject to the following priority order: (i) rescue units, (ii) rescue/EMS units, (iii) EMS units that are licensed as EMS providers under G.S. 131E-155.1, and, finally, (iv) EMS units that are volunteer fire departments that are a part of a county's EMS system plan. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year. In addition, notwithstanding G.S. 58-78-20, up to four percent (4%) of the Fund may be used for additional staff and resources for the North Carolina Fire and Rescue Commission.

(b) A unit is eligible for a grant under this section if it meets all of the following conditions:

- (1) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1066, s. 33(a).
- (2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of 10 full-time paid positions.
- (3) It has been recognized by the Department as a rescue unit, a rescue/EMS unit, or an EMS unit.
- (4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section.

(c) For the purpose of this section and Article 88 of this Chapter, "rescue" means the removal of individuals facing external, nonmedical, and nonpatient related peril to areas of relative safety. A "rescue unit" or "rescue squad" means a group of individuals who are not necessarily trained in emergency medical services, fire fighting, or law enforcement, but who

expose themselves to an external, nonmedical, and nonpatient related peril to effect the removal of individuals facing the same type of peril to areas of relative safety. The unit or squad must comply with existing State statutes and with eligibility criteria established by the North Carolina Association of Rescue and Emergency Medical Services, Inc.

- (d) For the purposes of this section, "emergency medical services" or "EMS" has the same meaning as in G.S. 131E-155(6). Unless otherwise more narrowly specified, an "EMS unit" means either (i) an EMS provider licensed under G.S. 131E-155.1 or (ii) a volunteer fire or fire/rescue department that is part of its county's EMS system plan. The unit or squad must comply with existing State statutes and with eligibility criteria established by the North Carolina Association of Rescue and Emergency Medical Services, Inc.
- (e) Report. - The Commissioner must submit a written report to the General Assembly within 60 days after the grants have been made. This report must contain the following:
- (1) The amount of the grant and the name of the recipient.
 - (2) The Fund balance at the beginning of the grant cycle.
 - (3) Cash receipts through the grant cycle.
 - (4) Cash disbursements through the grant cycle.
 - (5) The Fund balance at the end of the grant cycle. (1987 (Reg. Sess., 1988), c. 1062, s. 2; 1989, c. 115; c. 534, s. 2; 1989 (Reg. Sess., 1990), c. 1066, s. 33(a); 1991 (Reg. Sess., 1992), c. 943, s. 2; 1995, c. 507, s. 7.21A(l); 1997-443, s. 11A.20; 1998-212, s. 25(b); 1999-319, s. 2; 2005-283, s. 1; 2014-64, s. 4(c).)

§ 143C-6-23. State grant funds: administration; oversight and reporting requirements.

(a) Definitions. – The following definitions apply in this section:

(1) Grant or grant funds. – State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs.

(2) Grantee. – A non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(3) Encumbrance. – A financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided, or other legally binding agreement. A financial obligation is not an encumbrance for purposes of this section unless it (i) is in writing and has been signed by a person or entity who has authority to legally bind the grantee or subgrantee to spend the funds or (ii) was created by the provision of goods or services to the grantee or subgrantee by a third party under circumstances that create a legally binding obligation to pay for the goods or services.

(4) Subgrantee. – A non-State entity that receives State funds as a grant from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(b) Conflict of Interest Policy. – Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the

individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

...

A technical change request inquired about the authority for the following proposed amended rule language:

(d) Any department that is currently on the North Carolina Department of Insurance Noncompliance list or Office of State Budget and Management Suspension of Funding List for Non State Entities at <http://www.osbm.state.nc.us/> shall be ineligible to participate in the Volunteer Rescue/EMS fund grant program. If a department is awarded a grant and becomes ineligible to receive funding due to being noncompliant with the requirements in this section, the grant shall be forfeited after 10 business days of notification of noncompliance from OSFM. A department that provides false application information shall be ineligible for the following two grant cycles and shall forfeit any grant award already awarded during the current cycle.

The agency responded that the penalty is authorized by the general rulemaking authority of the Commissioner of Insurance set forth in G.S. 58-2-40(1). Staff counsel opines that the penalty of being ineligible for grants for two cycles, or forfeiture of awarded grants is not a penalty option offered to the State Fire Marshal under Article 87 of Chapter 58 of the General Statutes. Staff counsel's review of Chapter 143C found a specific statutory penalty for fraudulent representations that likely controls the fact pattern that the Commissioner of Insurance acting as the State Fire Marshal under G.S. 58-80-1 is attempting to regulated by the proposed amended rule language:

§ 143C-10-1. Offenses for violation of Chapter.

- (a) Class 1 misdemeanor. - It is a Class 1 misdemeanor for a person to knowingly and willfully do any one or more of the following:
- (1) Withdraw funds from the State treasury for any purpose not authorized by an act of appropriation.
 - (2) Approve any fraudulent, erroneous, or otherwise invalid claim or bill to be paid from an appropriation.
 - (3) Make a written statement, give a certificate, issue a report, or utter a document required by this Chapter, any portion of which is false.
 - (4) Fail or refuse to perform a duty imposed by this Chapter.
- (b) Class A1 misdemeanor. - It is a Class A1 misdemeanor for a person to make a false statement in violation of G.S. 143C-6-23(c).
- (c) Forfeiture of Office or Employment. - An appointed officer or employee of the State or an officer or employee of a political subdivision of the State, whether elected or appointed, forfeits his office or employment upon conviction of an offense under this section. An elected officer of the State is subject to impeachment for committing any of the offenses specified in this section.(2006-203, s. 3.)

G.S. 150B-21.9 requires the following of the Rules Review Commission:

- (a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

SUMMARY:

Staff counsel recommends objection to this Rule, as the proposed amended rule language imposes a penalty that is not supported by the cited statutory authority. It is staff counsel's recommendation that this Rule should be objected to for lack of statutory authority and failure to comply with G.S. 150B-21.9(a)(1).

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0703

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 3 and 5 references an "application form." G.S. [150B-2\(8a\)d](#) does not require a form to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.

Line 5, replace "This" with "The"

Lines 5 thru 6, delete "will be on a form as prescribed by the Commissioner and"

Line 6, replace "will" with "shall"

Line 8, replace "are" with "shall be"

Line 9 thru 10 restates G.S. 58-87-5(a). Please delete. A cross-reference to the controlling statute may be added, if necessary.

Lines 15 thru 17 references certain information used by the Department of Insurance. Where is this information maintained by the Department of Insurance? And the website for OSBM's location of the information does not provide the documents referenced. Please review and clarify.

Line 15, what is the Department of Insurance's authority to maintain a "Noncompliance" list for volunteer fire departments? Please clarify.

Lines 17 thru 21, what is the statutory authority for this language? Specifically, lines 19 thru 21 creates a penalty that does not appear to be authorized in Article 87 of G.S. 58. Please clarify.

Line 23, clarify what the referenced "maintenance records" apply to

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, October 27, 2016

Lines 26 thru 33, uncapitalize the “a”

Line 32, please add a citation to G.S. 58-87-5(a)(2) to clarify the requirements set forth in the statute for when matching of funds is required.

Page 2, line 4 indicates that an extension may be provided by the OSFM. Please clarify the process and factors of consideration in granting the extension.

Page 2, line 10, replace “is” with “shall be”

Page 2, line 10, the authority to inspect appears to be set forth in G.S. 58-87-7. If that is accurate, please update the history note accordingly.

Page 2, line 12, what is the purpose of citing G.S. 58-36-10(3)? The citation does not appear to support the authority for this Rule. Please update the statutory authority accordingly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0703 is amended as published in 31.04 NCR 288 as follows:

2 **11 NCAC 05A .0703 REQUIREMENTS FOR UNITS REQUIRED TO MATCH GRANTS**

3 (a) The Volunteer Rescue/EMS Fund online application forms for requesting grants for equipment purchases and
4 capital expenditures, shall be made available by ~~the Division OSFM~~ to all departments registered ~~with Division~~ and
5 approved by ~~the Division OSFM~~ by the first business day of August of each year. This application will be on a form
6 as prescribed by the Commissioner and will contain information to determine grant eligibility and score.

7 (b) ~~Online Applications applications~~ shall be submitted to ~~the Division OSFM~~ and be ~~postmarked or~~ electronic date
8 stamped no later than October 1. Applications bearing ~~postmarks or~~ electronic date stamps later than October 1 are
9 disqualified. The names of the grant recipients shall be announced on December 15. If December 15 falls on a
10 weekend, the announcement shall be made on the following Monday.

11 (c) Any application received by ~~the Division OSFM~~ that is incorrect or incomplete shall be returned to the unit with
12 a request that the correct or complete information be sent to ~~the Division OSFM~~ within 10 business days after receipt
13 by the unit. The failure by the unit to return the requested correct or complete information shall result in the forfeiture
14 by the unit of its eligibility for a grant during that grant cycle.

15 (d) Any department that is currently on the North Carolina Department of Insurance Noncompliance list or Office of
16 State Budget and Management Suspension of Funding List for Non State Entities at <http://www.osbm.state.nc.us/>
17 shall be ineligible to participate in the Volunteer Rescue/EMS fund grant program. If a department is awarded a grant
18 and becomes ineligible to receive funding due to being noncompliant with the requirements in this section, the grant
19 shall be forfeited after 10 business days of notification of noncompliance from OSFM. A department that provides
20 false application information shall be ineligible for the following two grant cycles and shall forfeit any grant award
21 already awarded during the current cycle.

22 ~~(d)(e)~~ If the application includes a request for a motor vehicle, the vehicle specifications shall accompany the
23 application. and, if used, if a used vehicle is requested, then the previous year's maintenance records shall accompany
24 the application

25 ~~(e)(f)~~ The following documents shall accompany a grant application;

- 26 (1) A Rescue Provider Statement showing that a county recognizes the unit as providing rescue or
27 rescue/EMS services to a specified district. As used in this Subparagraph, "rescue provider
28 statement" means a statement, signed by representatives of a unit and the county in which the rescue
29 or rescue/EMS services are provided, that the unit provides rescue or rescue/EMS services within
30 the county;
- 31 (2) A current roster of unit members;
- 32 (3) A statement verifying that the unit is financially able to match the amount of the grant; and
- 33 (4) A financial statement of the unit.

34 ~~(f)(g)~~ Statements that there are no overdue taxes, conflict of interest statements as defined in G.S. 143C-6-23(b),
35 payment agreements, and equipment invoices shall be received by ~~the Division OSFM~~ no later than April 30. Units
36 submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, before April 30 shall be
37 contacted by ~~the Division OSFM~~ and given 10 business days to submit the correct documents. The failure of any unit

1 to comply shall result in the unit forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements
2 that are ordered by a unit before December 15 or equipment that is back-ordered by a vendor for a unit or equipment
3 not received by a unit on or before April 30 shall not be funded by grants from the Fund.

4 (h) OSFM may extend the April 30 deadline for invoice submission for the following:

- 5 (1) new vehicles;
- 6 (2) self-contained breathing apparatus;
- 7 (3) firefighter turnout gear;
- 8 (4) capital improvements; and
- 9 (5) specialized equipment.

10 (h)(i) Equipment purchased with grants is subject to inspection by ~~Division~~ OSFM personnel

11
12 *History Note: Authority G.S. 58-2-40(1); 58-87-5; 143C-6-23(b);*

13 *Eff. February 1, 1993;*

14 *Amended Eff. December 1, 2016; September 1, 2010; January 1, 2007.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0704

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

If the language is clarified on line 32 of Rule .0703 that the requested information is only required when a unit is applying for matched funds under G.S. 58-87-5(a)(2), this Rule seems unnecessary. Please review technical change requests for Rule .0703 and the necessity for this Rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0704 is amended as published in 31.04 NCR 288 as follows:

2 **11 NCAC 05A .0704 REQUIREMENTS FOR UNITS NOT REQUIRED TO MATCH GRANTS**

3 Units that are not required to match funds ~~must~~shall comply with 11 NCAC 5A .0703 except for Subparagraph ~~(f)(3)~~
4 (f)(3) of that Rule, which requires the filing of a statement verifying that a unit is financially able to match a grant.

5

6 *History Note: Authority G.S. 58-2-40(1); 58-87-5;*

7 *Eff. February 1, 1993;*

8 *Amended Eff. December 1, 2016.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Insurance

RULE CITATION: 11 NCAC 05A .0705

DEADLINE FOR RECEIPT: Thursday, November 10, 2016

NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Is the purpose of this Rule for review of a grant or for the Department of Insurance's to recognize a rescue unit, rescue/EMS unit, or an EMS unit? Please clarify.

When this Rule is compared to Rule .0604, why does this rule not contain "county population density"? Please review for consistency.

Line 16, add an "and" at the end of the clause

Line 17, hyphenate "non OSFM"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, October 27, 2016

1 11 NCAC 05A .0705 is amended as published in 31.04 NCR 288-289 as follows:

2 **11 NCAC 05A .0705 OTHER GRANT CRITERIA**

3 In addition to criteria in G.S. 58-87-5 and other Rules in this Section, in awarding grants ~~the Division~~ OSFM shall
4 consider the following criteria in relation to each unit:

- 5 (1) number of paid personnel;
- 6 (2) personnel salary paid by the unit or the city or county;
- 7 (3) number and age of vehicles;
- 8 (4) county per capita income;
- 9 (5) unit funding ~~sources;~~ sources including the following funding sources for the last fiscal year:
 - 10 (a) city or county funding;
 - 11 (b) fire tax;
 - 12 (c) sales tax;
 - 13 (d) contracted services;
 - 14 (e) revenue from EMS billing;
 - 15 (f) fund raising;
 - 16 (g) donations;
 - 17 (h) revenue from non OSFM grants;
- 18 (6) ~~money on hand;~~ cash balance as of the beginning of current fiscal year;
- 19 (7) protective equipment requested;
- 20 (8) miscellaneous equipment requested;
- 21 (9) capital improvements requested; and
- 22 (10) vehicles requested.

23
24 *History Note: Authority G.S. 58-2-40(1); 58-87-5;*
25 *Eff. February 1, 1993;*
26 *Amended Eff. December 1, 2016.*
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