STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

MARCH 2, 2018

PUBLIC HEARING BEFORE THE FULL COMMISSION

REGARDING

PROPOSED RULE AMENDING 04 NCAC 10A .0107

GRAHAM ERLACHER & ASSOCIATES
3504 VEST MILL ROAD - SUITE 22
WINSTON-SALEM, NORTH CAROLINA 27103
336/768-1152
APPEARANCES

COMMISSIONERS:
Charlton L. Allen, Chairman
Yolanda K. Stith, Vice-Chairman
Philip A. Baddour, III, Commissioner
Christopher C. Loutit, Commissioner
Tammy R. Nance, Commissioner

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SPEAKERS:
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EXHIBITS

IDENTIFIED  ADMITTED
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PROCEEDINGS

CHAIRMAN ALLEN: Good morning. We are on the record. Today is March 2nd, 2018. I am Charlton Allen, Chairman of the North Carolina Industrial Commission. In compliance with the requirements of Chapter 138A-15(e) of the State Government Ethics Act, I remind all members of the Commission of their duty to avoid conflicts of interest under Chapter 138A. I also inquire as to whether there is any known conflict of interest to the matter coming before the Commission at this time.

VICE-CHAIRMAN STITH: No.

CHAIRMAN ALLEN: Okay. Hearing none, we will proceed. This is a North Carolina Industrial Commission public hearing on proposed rulemaking. The purpose of this hearing is to receive comments from the public regarding the amendment to 04 NCAC 10A .0107 proposed for permanent rulemaking by the Commission and published in the North Carolina Register on January 16, 2018. We have received no written comments from the public thus far, but the record will be held open to receive written comments from the public through the close of business on March 19, 2018. At this time, I would like to introduce the other Commissioners. To my immediate
right is Vice-Chairman Yolanda Stith, and then further
to the right is Commissioner Christopher Loutit. To
my immediate left is Commissioner Tammy Nance, and
further to the left is Commissioner Philip Baddour.
Anyone who wishes to speak at this hearing must
sign-up to do so with Kendall Bourdon so that we have
the correct spelling of your name and can call you in
order to speak. If anybody would like to speak and
has not yet signed up, please do so now. The first
speaker will be Kendall Bourdon, rulemaking
coordinator of the North Carolina Industrial
Commission, followed by the members of the public in
the order that they signed up. Ms. Bourdon, please
approach the podium.

KENDALL BOURDON

MS. BOURDON: Good morning.

CHAIRMAN ALLEN: Good morning.

VICE-CHAIRMAN STITH: Good morning.

CHAIRMAN ALLEN: Ms. Bourdon, will you please
state your name, your position and whom you work for?

MS. BOURDON: My name is Kendall Bourdon, and I am
the rulemaking coordinator for the North Carolina
Industrial Commission.

CHAIRMAN ALLEN: Do you have any prepared exhibits
that you would like to place into the record of these
proceedings?

MS. BOURDON: Yes. I have Exhibit 1, which is a copy of the proposed rule as published in the North Carolina Register on January 16th, 2018. Next, I have Exhibit 2, which is a copy of the letter from Carrie Hollis at OSBM stating that OSBM reviewed the proposed changes and determined that the amendments have little to no impact on State or local governments and no substantial economic impact; therefore, a Fiscal Note is not required.

(Exhibit Numbers 1 and 2 are identified for the record.)

CHAIRMAN ALLEN: Would you briefly give us some background and list the rule that would be affected by the proposed rule change?

MS. BOURDON: Yes. We have one rule for amendment. This rule is found in Title 04 of the Administrative Code, Subchapter 10A. We propose to amend Rule .0107, which is titled “Computation of Time.” The proposed effective date is May 1st, 2018. It is submitted to you as Exhibit 1. In the Appropriations Act of 2017, Session Law 2017-57, Section 15.17, the General Assembly amended provisions of the North Carolina General Statute 97-86 pertaining to the method of sending notice of Commission awards.
Previously, the statute allowed for notice to be sent by registered or certified mail. Currently, the statute, as amended, specifies that notice shall be sent by any class of U.S. mail that is fully prepaid or electronic mail. Therefore, the Commission is engaging in permanent rulemaking to establish a time certain for the sending of notices pursuant to N.C. General Statute 97-86. The statutory basis for these changes are North Carolina General Statutes 97-80, 97-81, 97-84, 97-86 and Session Law 2017-57, Section 15.17. The Commission has followed the permanent rulemaking procedures of the Administrative Procedure Act in proposing these rules. Prior to proposing the rule amendment, the Commission consulted with OSBM regarding whether a Fiscal Note would be necessary. OSBM reviewed the proposed changes to the rule in accordance with G.S. 150B-21.4. As submitted to you in Exhibit 2, it was OSBM’s determination that the amendments have little to no impact on State or local governments and no substantial economic impact; thus, a Fiscal Note was not required. The relevant dates involved include the following: The proposed rule amendment was filed with a notice of text to the Office of Administrative Hearings on December 19th, 2017; they were then published in the January 16, 2018
issue of the North Carolina Register, and on that same day – January 16th – the Commission published a notice of this rule amendment on the Commission’s website, as required, and also emailed notice with a link to this proposed rule to the Industrial Commission’s Listserv. It is an interested person’s Listserv that we are required to maintain for rulemaking purposes. Copies of the rule were also provided to the North Carolina League of Municipalities and the North Carolina Association of County Commissioners as required by statute.

CHAIRMAN ALLEN: Ms. Bourdon, the rule in question is found in Title 04, but it is subject to be transferred to Title 11 due to the Commission’s transfer to the Department of Insurance together with all other Industrial Commission rules at some date to be determined, is that correct?

MS. BOURDON: Yes, that is correct. Any transfer in the code of the Industrial Commission rules will be subsequent to this currently pending rulemaking. It is the intention of the Commission to transfer the rules from Title 04 to Title 11 by approximately May 1st, 2018, to be in line with the proposed effective date of this rule amendment. At such time as the title of the Industrial Commission’s rules are
transferred in the North Carolina Administrative Code, this rule will then be 11 NCAC 10A .0107.

CHAIRMAN ALLEN: Okay. Do any of the members of the Commission have questions for Ms. Bourdon? Okay. All right. Thank you, Ms. Bourdon.

(SPEAKER DISMISSED)

CHAIRMAN ALLEN: Are there any other speakers who wish to address the Commission regarding this proposed rule? Seeing and hearing none, thank you all for participating in the public hearing. The period for written comments will be held open through the close of business on March 19, 2018, so if you have any further comments, please send them to Kendall Bourdon as directed in the hearing notice in the North Carolina Register and as found on the Commission website. The written comments and the comments made at the hearing today will be made part of the public record of these proceedings. We would like to include in the transcript of the proceeding the material submitted by Ms. Bourdon as Exhibit 1 and Exhibit 2, and they are entered into the record.

(Exhibit Numbers 1 and 2 are admitted into the record.)

CHAIRMAN ALLEN: Are there any further matters to come before the public hearing? Hearing none, the
hearing is adjourned, and we will go off the record.
Thank you very much.

(WHEREUPON, THE HEARING WAS ADJOURNED.)

RECORDED BY MACHINE
TRANSCRIBED BY: Lisa D. Dollar, Graham Erlacher and Associates
STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

CERTIFICATE

I, Kelly K. Patterson, Notary Public, in and for the State of North Carolina, County of Guilford, do hereby certify that the foregoing seven (7) pages prepared under my supervision are a true and accurate transcription of the testimony of this trial which was recorded by Graham Erlacher & Associates.

I further certify that I have no financial interest in the outcome of this action. Nor am I a relative, employee, attorney or counsel for any of the parties.

WITNESS my Hand and Seal on this 12 day of March 2018. My commission expires on December 3, 2018.

Kelly K. Patterson
NOTARY PUBLIC
PROPOSED RULES

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date, whichever is later. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Industrial Commission intends to amend the rule cited as 04 NCAC 10A .0107.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ic.nc.gov/proposed/04/0107/notices-011618.pdf

Proposed Effective Date: May 1, 2018

Public Hearing:
Date: March 2, 2018
Time: 10:30 a.m.
Location: Room 240, 2nd Floor, Department of Insurance, Albemarle Building, 325 North Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: In the Appropriations Act of 2017, Session Law 2017-57, Section 15.17, the General Assembly amended provisions of NC General Statute § 97-86 pertaining to the method of sending notice of Commission awards. Previously, the statute allowed for notice to be sent by registered or certified mail. Currently, the statute, as amended, specifies that notice shall be sent by any class of U.S. mail that is fully prepaid or electronic mail. Therefore, the Commission is engaging in permanent rulemaking to establish a time certain for the sending of notices pursuant to NC General Statute § 97-86.

Comments may be submitted to: Kendall Bourdon, 1233 Mail Service Center, Raleigh, NC 27699-1233; phone (919) 807-2644; email Kendall.Bourdon@ic.nc.gov

Comment period ends: March 19, 2018

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1).

The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply). ☐ State funds affected ☐ Environmental permitting of DOT affected ☐ Analysis submitted to Board of Transportation ☐ Local funds affected ☐ Substantial economic impact (≥$1,000,000) ☒ Approved by OSBM ☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 10 - INDUSTRIAL COMMISSION

SUBCHAPTER 10A - WORKERS’ COMPENSATION RULES

SECTION .0100 - ADMINISTRATION

04 NCAC 10A.0107 COMPUTATION OF TIME AND NOTICE BY THE COMMISSION

(a) Except as otherwise provided by statute or rule, in computing any period of time prescribed or allowed by the Commission Rules, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or a holiday established by the State Personnel Human Resources Commission, in which event the period runs until the end of the next day that is not a Saturday, Sunday or a holiday established by the State Personnel Human Resources Commission. The period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. When a party has the right to do some act or take some proceedings within a prescribed period after the service of any document, document by mail, three days shall be added to the prescribed period.

(b) If service is provided by electronic mail, notice pursuant to G.S. 97-86 is complete one hour after it is sent, provided that:

1. Notice sent after 5:00 p.m. is complete at 8:00 a.m. the following business day; and
2. Notice sent by electronic mail that is not readable by the recipient is not complete. Within five business days of receipt of an unreadable document, the receiving party shall notify the Commission of the unreadability of the document.

(c) If service is provided by U.S. Mail, notice pursuant to G.S. 97-86 is complete upon the Commission's placing the item to be served, enclosed in a wrapper addressed to the party to be served, in the custody of the Mail Service Center or an official depository of the United States Postal Service.

Authority G.S. 97-80; 97-81; 97-84; 97-86; S.L. 2017-57, s. 15.17.
OSBM has reviewed the Industrial Commission’s proposed changes to rule 04 NCAC 10A .0107 in accordance with G.S. 150B-21.4. OSBM has determined the amendments have little to no impact on state or local governments and no substantial economic impact. A fiscal note is not required.

Please let me know if you have any questions.

Regards,

Carrie

Carrie Hollis
Economic Analyst
Demographic and Economic Analysis Section
NC Office of State Budget and Management

919 807 4757 office
carrie.hollis@osbm.nc.gov

116 West Jones Street
20320 Mail Service Center
Raleigh, NC 27699-0320

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law (GS 132) and may be disclosed to third parties by an authorized state official.