

**NOTICE OF PROPOSED INDUSTRIAL COMMISSION RULES**

**DATE: OCTOBER 17, 2016**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Industrial Commission intends to amend the rule cited as 04 NCAC 10A .0108.*

This proposed rule amendment was also published today in Volume 31, Issue 8, of the North Carolina Register at Page 741, available at <http://www.oah.state.nc.us/rules/register/Volume%2031%20Issue%2008%20October%2017,%202016-Online.pdf>.

**Proposed Effective Date:** *February 1, 2017*

**Oral comments on the proposed rule amendment may be made at the Public Hearing before the Industrial Commission:**

**Date:** *November 18, 2016*

**Time:** *10:00 a.m.*

**Location:** *Room 2149, 2<sup>nd</sup> Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, NC 27603*

**Written comments on the proposed rule amendment may be submitted to:** *Kendall M. Bourdon, 4333 Mail Service Center, Raleigh, NC 27699-4333; phone (919) 807-2644; email [kendall.bourdon@ic.nc.gov](mailto:kendall.bourdon@ic.nc.gov)*

**The written comment period ends:** *December 16, 2016*

**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.

**Reason for Proposed Action:** *The Industrial Commission proposes for amendment the comprehensive electronic filing rule, 04 NCAC 10A .0108, for two primary reasons. First, the recently expanded capacity of the Commission's Electronic Document Filing Portal, which will allow for more document types to be submitted to the Industrial Commission in a safer, more cost-effective manner, can only be employed with a rule change. The amendment simplifies filing instructions by providing one method for electronic filing for most documents with specific, well-defined exceptions. Second, the amendment provides protections for the personal identifying information of injured workers that were absent from the original rule.*

**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 ( $\geq$ \$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4**

The approved fiscal note is available on the Industrial Commission website at <http://www.ic.nc.gov/proposedNCICAmend0108FiscalNote.pdf> and on the website of the Office of State Budget and Management at [https://ncosbm.s3.amazonaws.com/s3fs-public/documents/files/IndustrialCommission\\_2016-09-12.pdf](https://ncosbm.s3.amazonaws.com/s3fs-public/documents/files/IndustrialCommission_2016-09-12.pdf).

**Text of Proposed Rule Amendment:**

**CHAPTER 10 – INDUSTRIAL COMMISSION**

**SUBCHAPTER 10A - WORKERS' COMPENSATION RULES**

**SECTION .0100 - ADMINISTRATION**

**04 NCAC 10A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE**

(a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission which requires contemporaneous payment of a processing fee pursuant to Rule 04 NCAC 10E.0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to ~~claimants and claimants, medical providers, or non-insured employers~~ without legal representation. ~~Claimants~~ Claimants, medical providers, and non-insured employers without legal representation may file documents with the Commission via ~~EDFP, the Commission's Electronic Document Filing Portal ("EDFP")~~, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) ~~Except as set forth below in Paragraphs (d) and (e) of this Rule, All all documents listed in Table 1 below~~ shall be transmitted to the Commission via ~~the Commission's Electronic Document Filing Portal ("EDFP")~~, EDFP. Information regarding how to register for and use EDPF is available at <http://www.ic.nc.gov/training.html>. In the event EDPF is inoperable, all documents ~~listed in Table 1 below~~ required to be filed via EDPF shall be ~~sent~~ transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents ~~listed in Table 1 below~~ required to be filed via EDPF which are sent to the Commission via electronic mail when EDPF is operable shall not be accepted for filing.

Table 1: Documents to be filed via EDPF

Appeal of Administrative Order to Full Commission
Appeal of Medical Motion Order to Full Commission
Appeal of Opinion and Award of Deputy Commissioner
Appeal of Order of Executive Secretary (Non-Medical)
Attorney Representation Letter (in cases with an IC file number)
Brief to the Full Commission
Brief or Contentions
Compromise Settlement Agreement
Confirmation of Scheduling of Mediation
Court of Appeals – Notice of Appeal
Deposition
Form 18M
Form 21
Form 23 Application
Form 23 Response
Form 23 Additional Documentation
Form 24 Application
Form 24 Response
Form 24 Additional Documentation
Form 26
Form 26A
Form 33
Form 33R
Form 44
MSC2
MSC4
MSC5
Pre-trial Agreement
Notice of Scheduled Mediation

(c) Transcripts of depositions shall be filed with the Commission pursuant to this Paragraph by the court reporting service. The transcripts filed with the Commission shall have only one page of text per page and shall include all ~~exhibits. The exhibits.~~ The parties shall provide the Commission's court reporting service with the information necessary to effectuate electronic filing of the deposition transcripts and attached exhibits. If an exhibit to a deposition is in a form that makes submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not be accepted for filing.

(d) A Form 19 shall be filed as the first report of injury (FROI) via electronic data interchange (EDI), except in claims involving non-insured employers or in claims for lung disease, in which case the Form 19 shall be filed in accordance with Paragraph (e) of this Rule. Information regarding how to register for and use EDI is available at [www.ncicedi.info](http://www.ncicedi.info).

(e) The workers' compensation forms and documents listed in ~~Table 2~~ Table 1 below and all other documents to be filed with the Commission's Claims Administration Section shall be sent to the Commission via electronic mail to [forms@ic.nc.gov](mailto:forms@ic.nc.gov), shall not be required to be transmitted via EDPF provided all applicable qualifying conditions are met.

Table 2: Table 1: Forms and documents to be filed via electronic mail to [forms@ic.nc.gov](mailto:forms@ic.nc.gov) exempt from EDPF filing requirements and how to file them:

<u>Form 18</u>		
<u>Form 18B</u>		
<u>Form 26D</u>		
<u>Form 28</u>		
<u>Form 28B</u>		
<u>Form 28C</u>		
<u>Form 28T</u>		
<u>Form 29</u>		
<u>Form 30</u>		
<u>Form 30A</u>		
<u>Form 30D</u>		
<u>Form 31</u>		
<u>Form 60</u>		
<u>Form 61</u>		
<u>Form 62</u>		
<u>Form 63</u>		
<u>DOCUMENT</u>	<u>QUALIFYING CONDITION(S)</u>	<u>HOW TO FILE</u>
<u>Form 18</u>	<u>No IC file number has been assigned</u>	<u>Electronically to <a href="mailto:forms@ic.nc.gov">forms@ic.nc.gov</a>, by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Form 18B</u>	<u>Always</u>	<u>Electronically to <a href="mailto:forms@ic.nc.gov">forms@ic.nc.gov</a>, by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Form 19</u>	<u>1. The claim involves a non-insured employer; or 2. The claim is for lung disease.</u>	<u>Electronically to <a href="mailto:forms@ic.nc.gov">forms@ic.nc.gov</a>, by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Form 51</u>	<u>Always</u>	<u>Electronically to <a href="mailto:forms@ic.nc.gov">forms@ic.nc.gov</a></u>
<u>Plaintiff's Attorney Representation Letter</u>	<u>No IC file number has been assigned</u>	<u>Electronically to <a href="mailto:forms@ic.nc.gov">forms@ic.nc.gov</a></u>
<u>Medical motions, responses, and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter</u>	<u>Always</u>	<u>Electronically to <a href="mailto:medicalmotions@ic.nc.gov">medicalmotions@ic.nc.gov</a> or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Documents to be filed with the Commission's Compliance &amp; Fraud Investigative Division</u>	<u>Always</u>	<u>Electronically to <a href="mailto:fraudcomplaints@ic.nc.gov">fraudcomplaints@ic.nc.gov</a> or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Documents to be filed with the Commission's Medical Fees Section</u>	<u>Always</u>	<u>Electronically to <a href="mailto:medicalfees@ic.nc.gov">medicalfees@ic.nc.gov</a> or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>

<u>Documents to be filed with the Commission's Safety Education &amp; Training Section</u>	<u>Always</u>	<u>Electronically to <a href="mailto:safety@ic.nc.gov">safety@ic.nc.gov</a> or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>A Form 25N to be filed with the Commission's Medical Rehabilitation Nurses Section</u>	<u>No IC file number has been assigned</u>	<u>Electronically to <a href="mailto:25n@ic.nc.gov">25n@ic.nc.gov</a></u>
<u>Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section</u>	<u>No IC file number has been assigned</u>	<u>Electronically to <a href="mailto:rehab.referrals@ic.nc.gov">rehab.referrals@ic.nc.gov</a></u>

(d) ~~Motions, motion responses, and all other documents not referenced in Paragraphs (b) and (c) of this Rule shall be filed with the Commission via electronic mail in accordance with Subparagraphs (1) through (11) (6) below:~~

- ~~(1) Medical motions and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter shall be filed via electronic mail to [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov).~~
- ~~(2) Motions or notices filed with the Office of the Executive Secretary pursuant to Rule .0609(b) of this Subchapter and any other documents to be filed with the Office of the Executive Secretary which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [execsec@ic.nc.gov](mailto:execsec@ic.nc.gov).~~
- ~~(3) Motions before a Deputy Commissioner filed pursuant to Rule .0609(a) of this Subchapter and any other documents to be filed with a Deputy Commissioner which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [deputy@ic.nc.gov](mailto:deputy@ic.nc.gov).~~
- ~~(4) Motions before the Full Commission filed pursuant to Rule .0609(c) of this Subchapter and any other documents to be filed with the Full Commission which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [fullecommission@ic.nc.gov](mailto:fullecommission@ic.nc.gov).~~
- ~~(5) Motions and any other documents to be filed with the Commission's Claims Administration Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [forms@ic.nc.gov](mailto:forms@ic.nc.gov).~~
- ~~(6) Documents to be filed with the Commission's Docket Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [dockets@ic.nc.gov](mailto:dockets@ic.nc.gov).~~
- ~~(7) Documents to be filed with the Commission's Mediation Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [mediation@ic.nc.gov](mailto:mediation@ic.nc.gov).~~
- ~~(8) Documents to be filed with the Commission's Compliance & Fraud Investigative Division which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [fraudcomplaints@ic.nc.gov](mailto:fraudcomplaints@ic.nc.gov).~~
- ~~(9) Documents to be filed with the Commission's Medical Fees Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [medicalfees@ic.nc.gov](mailto:medicalfees@ic.nc.gov).~~
- ~~(10) Documents to be filed with the Commission's Safety Education & Training Section which are not listed in Table 1 or Table 2 above shall be sent via electronic mail to [safety@ic.nc.gov](mailto:safety@ic.nc.gov).~~
- ~~(11) Forms 25N to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to [25n@ic.nc.gov](mailto:25n@ic.nc.gov). Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section shall be sent via electronic mail to [rehab.referrals@ic.nc.gov](mailto:rehab.referrals@ic.nc.gov).~~

~~(e) A one year waiver shall be granted to a self-insured employer, carrier, third party administrator, or law firm that notifies the Commission of its inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall indicate why the entity is unable to comply with the rule and outline its plan for coming into compliance within the one year period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S Mail.~~

~~(f) A self-insured employer, ~~carrier, carrier or guaranty association~~, third-party administrator, ~~court reporting service~~, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems and/or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.~~

~~(g) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDPF or U.S. Mail.~~

Authority G.S. 97-80.