

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

NOVEMBER 18, 2016

PUBLIC HEARING BEFORE THE FULL COMMISSION

REGARDING

PROPOSED RULE AMENDING RULE 04 NCAC 10A .0108

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

A P P E A R A N C E S

COMMISSIONERS:

Charlton L. Allen, Chairman

Bernadine S. Ballance

Linda Cheatham

Christopher C. Loutit

Tammy R. Nance

I N D E X

SPEAKERS:

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Kendall Bourdon	2
Michael Bertics	5

E X H I B I T S

IDENTIFIED ADMITTED

(Bourdon) Exhibit Number 1	3	7
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P R O C E E D I N G S

1
2 CHAIRMAN ALLEN: Okay. We are on the record.
3 Good morning. I am Charlton Allen. I'm Chairman of
4 the North Carolina Industrial Commission. Today is
5 November 18, 2016. In compliance with the
6 requirements of Chapter 138A-15(e) of the State
7 Government Ethics Act, I remind all members of the
8 Commission of their duty to avoid conflicts of
9 interest under Chapter 138A. I will also inquire as
10 to whether there is any known conflict of any -
11 conflict of interest to any matters coming before the
12 Commission at this time. Hearing none, this is a
13 North Carolina Industrial Commission public hearing on
14 proposed rulemaking. The purpose of this hearing is
15 to receive comments from the public regarding the
16 e-filing rule amendment proposed for permanent
17 rulemaking by the Commission and published in the
18 *North Carolina Register* on October 17, 2016. We have
19 not yet received written comments from the public, but
20 the record will be held open to receive written
21 comments from the public through the close of business
22 on December 16th, 2016. At this time, I would like to
23 introduce the other Commissioners here with me today.
24 To my right - immediate right is Commissioner
25 Ballance - Bernadine Ballance and to the far right of

1 the podium and the left from the audience is
2 Commissioner Christopher Loutit; to my immediate left
3 is Commissioner Linda Cheatham and to my far left and
4 the far right from the audience is Commissioner Tammy
5 Nance. Commissioner Bill Daughtridge could not be
6 with us this morning. At this time, the Commission
7 wishes to thank the members of the public and the
8 various stakeholders who gave recommendations or input
9 regarding the proposed rule changes considered by the
10 Commissioners. The Commission very much appreciates
11 everyone's time and efforts. Anyone who wishes to
12 speak at this hearing must sign-up to do so with
13 Kendall Bourdon so that we may have the correct
14 spelling of your name and can call you in order to
15 speak. If anyone would like to speak and has not yet
16 signed up, please do so now. The first speaker will
17 be Kendall Bourdon, the rulemaking coordinator of the
18 Commission, followed by any members of the public in
19 the order that they signed up. Ms. Bourdon, you may
20 approach the podium.

21 KENDALL BOURDON

22 MS. BOURDON: Good morning.

23 CHAIRMAN ALLEN: Good morning. If you would tell
24 us your name, position and for whom you work.

25 MS. BOURDON: My name is Kendall Bourdon, and I am

1 the rulemaking coordinator for the North Carolina
2 Industrial Commission.

3 CHAIRMAN ALLEN: And do you have any prepared
4 exhibits that you would like to place into the record
5 of these proceedings?

6 MS. BOURDON: Yes. I have Exhibit 1, which is a
7 copy of the proposed rule as published in the *North*
8 *Carolina Register* on October 17th, 2016, and also
9 Exhibit 2, which is a copy of the fiscal note
10 analyzing the regulatory impact of this proposed rule
11 as marked as Exhibit 2.

12 (Exhibit Numbers 1 and 2 are
13 identified.)

14 CHAIRMAN ALLEN: Okay. And would you briefly give
15 us some background and list the rule that will be
16 affected by the proposed rule changes?

17 MS. BOURDON: Yes. We have one rule for
18 amendment. This rule is found in Title 04 of the
19 Administrative Code, Subchapter 10A. We propose for
20 amendment Rule .0108, which is titled "Electronic
21 Filings with the Commission; How to File." This
22 proposed rule would be effective February 1, 2017.
23 The primary reason for this rulemaking is to provide
24 further guidance on electronic filing and other
25 filings before the Commission. The recently expanded

1 capacity of the Commission's electronic document
2 filing portal, otherwise known as EDFP, will allow for
3 more document types to be submitted to the Commission
4 in a safer, more cost-effective manner and can only be
5 employed with a rule change. The amendment simplifies
6 its filing instructions by providing one method for
7 electronic filing for most documents with specific,
8 well-defined exceptions. Additionally, the amendment
9 provides protections for personal, identifying
10 information of injured workers that were absent from
11 the original rule. The statutory basis for these
12 changes is General Statute 97-80. The Commission has
13 followed the permanent rulemaking procedures of the
14 Administrative Procedure Act in proposing these rules.
15 The relevant dates involved include the following:
16 The proposed rules were filed with a notice of text
17 with the Office of Administrative Hearings on
18 September 26, 2016; they were then published in the
19 *North Carolina Register*, as I said before, in the
20 October 17th issue of this year, and on that same
21 date - October 17th - the Commission published a notice
22 of these rules in a link to the fiscal note on the
23 Commission's website as required and also emailed
24 notice with a link to this proposed rule and fiscal
25 note to the Industrial Commission's Listserv. The

1 Listserv is an interested person's Listserv that we
2 are required to maintain, and copies of the rule and
3 fiscal note were also provided to the North Carolina
4 League of Municipalities and the North Carolina
5 Association of County Commissioners as required by
6 statute.

7 CHAIRMAN ALLEN: Do any members of the Commission
8 have any questions for Ms. Bourdon?

9 COMMISSIONER BALLANCE: No.

10 CHAIRMAN ALLEN: Okay. All right. Ms. Bourdon,
11 you may return to your seat.

12 (SPEAKER DISMISSED)

13 CHAIRMAN ALLEN: It's my understanding only one
14 speaker has signed up - Michael Bertics. Mr. Bertics,
15 if you would, please approach that table (indicating).

16 MICHAEL BERTICS

17 MR. BERTICS: Thank you very much, Commissioner.

18 CHAIRMAN ALLEN: If you would, please state your
19 name for the record and tell us whom you represent, if
20 any particular organization.

21 MR. BERTICS: My name is Michael Bertics. I'm an
22 attorney with the Law Firm of Lennon, Camak and
23 Bertics. I'm appearing on my own behalf.

24 CHAIRMAN ALLEN: Very well. And would you also
25 please identify the specific proposed rule that you

1 will be addressing in your remarks?

2 MR. BERTICS: It is .0108, the electronic filing
3 rule. I have no specific comment on the rule itself;
4 only the system - the EDFP system and maybe some of
5 its limitations. Earlier this week, we sought to file
6 an appearance on behalf of a medical provider in an
7 existing workers' comp case, and the EDFP system did
8 not appear to accommodate that. The rule clearly
9 seems to contemplate medical providers making
10 appearances in cases pursuant to N.C. Gen. Stat.
11 97-26(i) - enter intervention right - but the actual
12 process of an attorney appearing on behalf of a
13 medical provider, filing that appearance through EDFP,
14 getting attached to an existing I. C. file number does
15 not currently appear to be accommodated. We sought
16 some recommendations from the docket director, Linda
17 Langdon, and it's not apparent what we're supposed to
18 do, so I think the rule is fine. I'm concerned that
19 the technology as to this sort of narrow issue may
20 have some limitations. That's all.

21 CHAIRMAN ALLEN: Okay. Commissioners, do you have
22 any questions for Mr. Bertics?

23 COMMISSIONER BALLANCE: No, no.

24 CHAIRMAN ALLEN: Okay. Very well, sir.

25 MR. BERTICS: Okay.

1 CHAIRMAN ALLEN: If you have prepared a summary of
2 your remarks, you're more than welcome to provide
3 those---

4 MR. BERTICS: No.

5 CHAIRMAN ALLEN: ---to the court reporter, and we
6 thank you for your input, and we'll certainly consider
7 your concern.

8 MR. BERTICS: Thank you very much, Your Honor.

9 CHAIRMAN ALLEN: Thank you.

10 (SPEAKER DISMISSED)

11 CHAIRMAN ALLEN: Thank you all for participating
12 in this public hearing. The period for written
13 comments will be held on through the close of business
14 on December 16th, 2016, so if you have any further
15 comments, please send them to Ms. Bourdon as directed
16 in the hearing notice in the *North Carolina Register*.
17 The written comments and the comments made at the
18 hearing today will be part of the public record of
19 these proceedings. We would like to include in the
20 transcript of this proceeding the materials submitted
21 by Ms. Bourdon as Exhibit 1 and Exhibit 2.

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

24 CHAIRMAN ALLEN: Are there any further matters to
25 come before this public hearing? If not, the hearing

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is adjourned, and we'll go off the record.

(WHEREUPON, THE HEARING WAS ADJOURNED.)

RECORDED BY MACHINE

TRANSCRIBED BY: Lisa D. Dollar, Graham Erlacher and
Associates

1 STATE OF NORTH CAROLINA

2 COUNTY OF GUILFORD

3 C E R T I F I C A T E

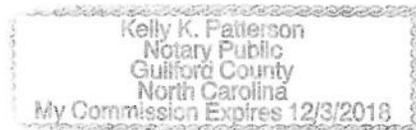
4 I, Kelly K. Patterson, Notary Public, in and for the
5 State of North Carolina, County of Guilford, do hereby
6 certify that the foregoing eight (8) pages prepared under
7 my supervision are a true and accurate transcription of the
8 testimony of this trial which was recorded by Graham
9 Erlacher & Associates.

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

13 WITNESS my Hand and Seal on this 28th day of November
14 2016.

15 My commission expires on December 3, 2018.

16
17
18
19
20 Kelly K. Patterson
21 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 if specified in the notice by the agency. 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 NC Industrial Commission intends to amend the rule cited as 04 NCAC 10A .0108.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ic.nc.gov/proposedNCICAmend0108.html

Proposed Effective Date: February 1, 2017

Public Hearing:

Date: November 18, 2016

Time: 10:00 a.m.

Location: Room 2149, 2nd Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, NC 27603

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.

Comments 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

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.

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.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 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 EDFP is available at http://www.ic.nc.gov/training.html. In the event EDFP is inoperable, all documents listed in Table 1 below required to be filed via EDFP 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 EDFP which are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

EXHIBIT # / 31:08

PROPOSED RULES

Table 1: Documents to be filed via EDFP

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
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.nccedi.info.

(e)(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, shall not be required to be transmitted via EDFP 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 exempt from EDFP filing requirements and how to file them:

Form 18
Form 18B
Form 26D
Form 28
Form 28B
Form 28C
Form 28T
Form 29
Form 30
Form 30A
Form 30D
Form 31
Form 60
Form 61
Form 62
Form 63

DOCUMENT	QUALIFYING CONDITION(S)	HOW TO FILE
Form 18	No IC file number has been assigned	Electronically to forms@ic.nc.gov , by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 18B	Always	Electronically to forms@ic.nc.gov , by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 19	1. The claim involves a non-insured employer; or 2. The claim is for lung disease.	Electronically to forms@ic.nc.gov , by mail to 4335 Mail Service Center, Raleigh, North Carolina 27699-4335, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 51	Always	Electronically to forms@ic.nc.gov
Plaintiff's Attorney Representation Letter	No IC file number has been assigned	Electronically to forms@ic.nc.gov

PROPOSED RULES

Medical motions, responses, and appeals of administrative orders on medical motions filed pursuant to Rule .0609A of this Subchapter	Always	Electronically to medicalmotions@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Compliance & Fraud Investigative Division	Always	Electronically to fraudcomplaints@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Medical Fees Section	Always	Electronically to medicalfees@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Safety Education & Training Section	Always	Electronically to safety@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
A Form 25N to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to 25n@ic.nc.gov
Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to rehab.referrals@ic.nc.gov

(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.

- (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.
- (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.
- (4) Motions before the Full Commission filed pursuant to Rule .0609(e) 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.
- (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.
- (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.
- (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.
- (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 fraudecomplaints@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.
- (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.
- (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. 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.

(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

PROPOSED RULES

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.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0327.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncwildlife.org

Proposed Effective Date: April 1, 2017

Public Hearing:

Date: November 3, 2016

Time: 10:00 a.m.

Location: WRC Headquarters 5th Floor, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action: The NC Wildlife Resources Commission identified a need to establish a no wake zone in the vicinity of the Lilly's Bridge Boating Access Area in Montgomery County, shore to shore, to mitigate hazards to boater safety that include the boating access area, nearby fueling docks, a waterfront restaurant, and two bridge structures.

Comments may be submitted to: Betsy Haywood, 1701 Mail Service Center, Raleigh, NC 27699-1701, phone (919) 707-0013, email betsy.haywood@ncwildlife.org

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.

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 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0327 MONTGOMERY COUNTY

(a) Regulated Areas. This Rule applies to the waters and portions of waters described as follows:

- (1) Badin Lake: (A) Lakeshore Drive Cove as delineated by appropriate markers. (B) Entrance to fueling site and marina west of the main channel of Lake Forest Drive Cove. (C) Gar Creek. (D) Beyer's Island waterfront channel facing the mainland
(2) Lake Tillery: (A) Woodrun Cove as delineated by appropriate markers. (B) Carolina Forest Cove as delineated by appropriate markers. (C) The waters in the vicinity of the Lilly's Bridge Boating Access Area shore to shore, from a line north of the Route 1110 bridge at a point on the eastern shore at 35.23223 N, 80.06166 W, to a point on the western shore at 35.23289 N, 80.06318 W, to a line southwest of the Lilly's Bridge Boating Access Area, from a point on the eastern shore at 35.23067 N; 80.06262 W, to a point on the western shore at 35.23156 N; 80.06437 W.
(3) Tuckertown Reservoir.

(b) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat

Regulatory Impact Analysis
Codification of and/or changes to filing requirements
Updated by agency: September 12, 2016

Agency: North Carolina Industrial Commission
Contact: Kendall Bourdon – (919) 807-2644
Proposed New Rule Title:
Rules proposed for amendment: Rule 04 NCAC 10A .0108
(See proposed rule text in Appendix 1)

State Impact: Yes
Local Impact: Yes
Private Impact: Yes
Substantial Economic Impact: Yes

Statutory Authority: G.S. §§ 97-80(a)

Introduction/Background:

Prior to the Industrial Commission's adoption of Rule 10A NCAC .0108, which went into effect on February 1, 2016, the Commission's rules gave specific direction in a few places about how to file certain kinds of documents. There was no guidance in the rules for the bulk of the documents filed with the Commission. The Commission attempted to communicate desired filing methods by providing information on its website, in its correspondence, and at educational events. However, many documents were still filed with the wrong office or person. The Commission previously offered and requested electronic filing of documents for several years via information campaigns. While the Commission was successful in efforts to encourage electronic filings, many documents continued to be filed via paper or facsimile, or filed via multiple methods at the same time.

To alleviate confusion and uncertainty for the public and inefficiency and errors in the filing of documents, the Commission started a pilot project a few years ago to build a secure Electronic Document Filing Portal (EDFP) to allow external users to upload certain high-volume documents instead of e-mailing, faxing, and/or mailing them to the Commission. This method of receiving documents was very efficient for users inside the Commission and increased filing and processing accuracy. The Commission received positive feedback from the external users of EDFP in the pilot phase. However, even though the Commission was able to develop the EDFP capabilities for accepting document filings via EDFP, the Commission was not able to achieve high compliance rates with information campaigns alone.

The Commission proposed e-filing rules in 2015. After receiving public comments and holding a public hearing, the Commission adopted the proposed rules and filed them with the Rules Review Commission on November 20, 2015. On December 17, 2015, the Rules Review Commission approved the adoption of 04 NCAC 10A .0108 and the amendments to nine other



rules. The rules approved in the 2015 rulemaking went into effect on January 1, 2016 and February 1, 2016. These rules provided direction regarding electronic filing requirements and supported the Commission's implementation of a Clerk's Office.

The Commission has noted a positive impact, both internally at the Commission as well as on the workers' compensation system as a whole, following the implementation of the electronic filing rules. Since the rules went into effect on February 1, 2016 requiring all documents to be filed electronically in accordance with the new rule 04 NCAC 10A .0108, the Commission has recorded exceptional compliance rates from users of the system. Notably, the Commission has received only four requests for a one-year waiver as provided under 04 NCAC 10A .0108(e). It should be noted that the one-year waiver provision will no longer be included in the rule as the electronic filing rules have been in effect for one year, giving users ample time to be able to comply with these electronic filing requirements. Furthermore, the Commission's intent of the waiver provision was not meant to continue in perpetuity.

Based on the efficiencies of EDFP and the success of the first phase of the electronic filing rules, the Commission has continued programming efforts to expand the list of documents accepted via EDFP. The Commission also desires to make the use of EDFP mandatory for those documents that can be filed via EDFP. This goal is the primary purpose of the set of rule amendments that are the subject of this fiscal note. For those documents that will not be able to be filed via EDFP, the Commission also wants to provide clear direction regarding alternate electronic filing. These changes will require substantial revisions to 04 NCAC 10A .0108.

Proposed Rule Changes and Their Estimated Impact:

The proposed rule additions and changes include the following:

1. *Amendment of comprehensive electronic filing rule – Rule 04 NCAC 10A .0108*

This existing rule, adopted in the first phase of the Commission's transition to an electronic filing system, mandates and describes the electronic filing requirements for all workers' compensation-related documents filed with the Commission. The rule disallows the filing of documents with individual employees at the Commission and disallows the filing of documents via multiple methods. This rulemaking amends this rule to expand the documents to be filed via EDFP and to clarify the documents to be filed via electronic mail or other alternate means. The rule, as amended, reflects the expanded capacity of EDFP and will overhaul the rule such that, unless a document qualifies for one of the specific exemptions set forth in the rule, the document shall be filed via EDFP. Please note that this rule as amended clarifies the existing exception for parties without legal representation.

a. Description of baseline situation:

Prior to the first phase of the e-filing rulemaking, directions regarding the filing of various documents were scattered throughout the rules with only some rules

indicating a desired method of filing (mail, facsimile, electronic mail, etc.). The Commission's website also provided additional filing method information that was not in the rules; however, it did not provide it on one centralized webpage. The lack of clear and comprehensive directions regarding the filing location and method for document filings resulted in additional time/resources spent by the filers trying to determine how and where to file documents and additional time/resources spent by Commission staff answering related calls, rerouting documents, tracking down documents, and wading through unnecessary multiple filings of the same misfiled document.

As a result of the first phase of the e-filing rulemaking, currently, 29 document-types, set forth in Table 1 of the adopted rule 04 NCAC 10A .0108, are filed to the Commission via EDPF. At the time 04 NCAC 10A .0108 went into effect on February 1, 2016, the 29 documents listed in Table 1 reflected the extent of the Commission's EDPF capability. Documents addressed in parts (c) and (d) of the current rule, are filed by electronic mail to the corresponding e-mail address. In the initial phase of the e-filing transition, 13 e-mail addresses were created to streamline document intake and direct particular document types to the appropriate section at the Commission. The changes that are the subject of this fiscal note will transition many documents that are currently being filed via electronic mail to instead be filed via EDPF. Information and training on the Commission's filing methods is conspicuously provided on the Commission's website.

(1) Electronic Mail baseline use:

Filing documents with the Commission by electronic mail involves addressing an e-mail to the correct e-mail address and attaching the documents to be filed by clicking and dragging them to the electronic mail or browsing and selecting them. This filing method requires that documents be created electronically or that electronic copies of paper documents be created in order to be attached.

The Commission created electronic mail accounts related to particular types of filings or particular sections of the Commission (e.g., execsec@ic.nc.gov for the Executive Secretary's Office). In the Commission's experience, filing documents via electronic mail creates the potential for various complications. Some parties either do not use the designated e-mail address and continue to file via mail, facsimile, and/or e-mail accounts of individual Commission employees, or they use the designated e-mail address but continue to carbon copy multiple individual employees at the Commission and sometimes send additional copies via mail and facsimile. These complications to the system lead to an increase in phone calls to the Commission requesting assistance or clarification as to which e-mail address to use. The Commission has noted gradual improvement in compliance with the new electronic filing system following the effective date of 04 NCAC 10A .0108.

While electronic mail is still greatly preferred over paper filings, moving documents from e-mails to the Commission's electronic claim file system is cumbersome and creates opportunities for misfiling. Each attachment to an e-mail must be dragged to the staff member's computer "desktop" and then uploaded to the electronic file using a browse and select method. An alternative method is to drag all of the documents to the "desktop" then combine them into one .pdf, which is then uploaded using a browse and select method. The staff member must also choose the document type from a drop-down menu and click to confirm and submit.

With the uploading process detailed above, there is an increased risk in human error. When staff members are uploading a document, filed via electronic mail, into the electronic file, there is a greater risk of error, which would result in the document not ending up in the electronic file. For example, the e-mail address directing documents to the Claims Administration section of the Commission received 70,000 documents between February 1, 2016 and May 31, 2016. Estimating an average of 22 working days per month, that approximates 17,500 documents into one e-mail address per month. With the high volume of documents coming into one e-mail address, there is an increased potential for mishandling of a document between receipt and processing. This potential risk is further complicated when looking at it in conjunction with the Commission's function of assessing penalties to parties who do not comply with required procedures, such as filing a particular document within a defined timeframe. Since the electronic filing rules went into effect and a larger volume of documents are coming in via electronic mail, 5-10% of the penalties assessed by the Commission are having to be waived. This is due to human error from Commission staff in mishandling properly-filed documents into the electronic file. Because of the error in the uploading stage, the document does not end up in the file, and thus appears to have not been filed in conformance with the Commission's procedures. The Commission is having to waive more penalty assessments in these circumstances than prior to the adoption of 04 NCAC 10A .0108.

Prior to creating EDFP, the Commission promoted the use of electronic mail filing as the preferred method to avoid having to receive and scan paper filings. During the period of the first phase into the Commission's electronic filing system, there was an increase in documents filed via electronic mail. While most documents, filed via electronic mail, can be uploaded to the electronic file in the manner detailed above, certain documents cannot follow that standard process, and instead must be printed and scanned into the electronic file. For this set of documents, which were previously received via paper mail, the Commission would simply scan the document into the electronic file. Now those documents, received via electronic mail, must be printed by the Commission and then scanned into the electronic file. For that reason, the Commission's claims section is generating more paper thus increasing the operating costs.

(2) EDFP baseline use:

EDFP requires users to register and receive an NCID. Users must review brief training materials regarding how to use EDFP. Documents are uploaded to EDFP using the file number of the claim and a browse and select function for each document to be uploaded. For each document uploaded, the user must select the document type from a drop-down menu. To complete the upload, the user must review and click to confirm and submit. The user receives a receipt confirming the upload via e-mail. EDFP is currently required for the filing of twenty-nine types of documents (Table 1, Rule 04 NCAC 10A .0108) and users are complying. In fact, many users frequently request to file other documents via EDFP rather than via e-mail because EDFP is preferable to users of the system.

On the Commission side, staff members process documents submitted via EDFP by confirming the correct file number and party names, one or more of the documents in a particular filing may also be opened and viewed to confirm that the correct document types were used. Thereafter, the staff member clicks "Process Documents" and the documents appear in the electronic file. At that point, an e-mail is generated with the document name identified, and information pre-populated to allow the staff member to notify the appropriate Commission staff of the document's existence in the file. This procedure greatly reduces the time spent moving electronic documents around to get them into the claim file and the chances of misfiling.

b. Description of proposed changes:

The proposed Rule 04 NCAC 10A .0108 as amended will require, as a general rule, all documents to be filed with the Commission to be filed via EDFP. The proposed rule then carves out specific exceptions to this general rule. For documents satisfying the qualifying conditions to fall within one of the articulated exceptions, the alternative filing method is provided in the rule. The proposed rule provides a chart listing document types that will be required to be filed in a method other than EDFP if the qualifying requirement is met.

Based on the success of the first phase of electronic filing rules, the Commission staff worked diligently to expand the EDFP capabilities; and, as a result, the Commission is able to accept most documents through EDFP. This proposed rule change seeks to modify the rule to reflect the expanded EDFP capability, thus moving more documents from electronic mail filing to EDFP to further streamline document filing at the Commission. For those documents that will not be able to be uploaded via EDFP, the proposed rule provides clear direction regarding the use of electronic mail filing or optional U.S. Mail filing, when applicable, with a comprehensive list of the e-mail addresses and postage addresses to use. This change will significantly reduce confusion as to how and where to file documents

to the Commission. The answer as to the method of filing for 90% of documents will be EDFP. The rule, as amended, retains the prohibition against duplicate filings.

Both the Commission and its users will benefit from the filing of more documents via EDFP for several reasons, but there is a cost to the Commission in staff and programming time to set up and then to maintain EDFP and a cost to users in terms of slightly increased time to file documents. The costs and benefits of the proposed electronic filing rule changes are estimated below.

c. Economic Impact:

(1) Costs to the State through the Commission:

The Commission is expending and will continue to expend funds to reprogram and maintain EDFP in accordance with the requirements of the proposed rule changes.

- Time period of the project: October 2015 – September 2016, plus ongoing maintenance and troubleshooting
- Salary funds expended to expand and reprogram EDFP:
 - 75% of the time of a programmer, 12 months, no benefits paid: \$124,800.
- Opportunity Costs of Current Employees (note, there are no additional budgetary expenditures related to these costs):
 - Value of 40% of the time of one business process analyst, 8 months, expressed in terms of the person's total compensation (salary and benefits, assuming social security, leave, and retirement and health benefits are about 53% of salary for state employees)¹ with varying hours over the course of project: \$30,400.
 - Value of 50% of the time of a second business analyst, 5 months, no benefits paid: \$31,200
 - Value of 32 committee meeting hours for nine employees with salaries ranging from \$28,000 to \$109,000 with an average of \$50,000, or about \$76,500 in total compensation², creating an opportunity cost of approximately \$10,600. This estimate assumes that employees work 2,080 hours a year.
 - Ongoing maintenance costs: The Commission's IT section indicates that no additional portion of any IT staff member's time will be required to maintain EDFP in working order due to the proposed rule changes. The primary opportunity cost

¹ NC Office of State Human Resources. "State of North Carolina: 2015 Compensation and Benefits Report." http://s3.amazonaws.com/oshr.ncgovstaging.fayze2.com/s3fs-public/migrated_files/Guide/CompWebSite/2015%20CompBenefits%20Report%20_finalpdf.pdf.

² Id. (Total compensation calculated as salary and benefits, assuming social security, leave, and retirement and health benefits are about 53% of salary for state employees).

incurred by the Commission's IT section will be from time spent on the phone helping users to navigate and/or troubleshoot when accessing EDPF.

- Other costs: Commission's IT department reports staff time as the only cost associated with building and maintaining EDPF. The electronic mail accounts listed in Rule 04 NCAC 10A .0108 cost \$6.25 per month each. All of these accounts already exist, therefore no additional expenditure will be necessary.

(2) Costs to the State as an employer:

While it is unlikely that the State as an employer will have to expend additional funds to be able to comply with the technological aspects of the proposed rule changes, state employees such as attorneys and paralegals representing the State will file documents in workers' compensation claims via EDPF and electronic mail under this rule. The State's third-party administrator will also file documents with the Commission via EDPF and electronic mail. Similarly, local government units will file documents directly with the Commission or may have private sector third party administrators or law firms file on their behalf. Local government is included in the public sector cost analysis in this section.

- Costs associated with electronic mail filing:
Because most documents are filed with the Commission via EDPF or electronic mail at this time, it is not anticipated that there will be a measurable cost to requiring documents, other than those filed via EDPF, to be filed via electronic mail. It is assumed that some documents that are generated and kept in paper format will have to be scanned in order to be e-mailed and it is possible that some office processes will have to be rearranged, but it is not possible to estimate the related costs. Similarly, this rulemaking is expanding upon the existing rule, so it will not likely require a different office process than how offices are operating under the existing rule. It is also assumed that some of the time spent trying to determine where and how to file documents with the Commission and time and resources spent on postage and paper mailing and facsimile submission will be saved. It is not possible to estimate the related savings because there is no reliable information from which to project the number of paper and facsimile filings that would be replaced with electronic filings.
- Costs associated with EDPF filing:
Because EDPF is free to use, it is assumed that the most likely potential source of increased cost would be any increase in time required to file via EDPF as opposed to via electronic mail. Prior to the initial rulemaking adopting the first phase of 04 NCAC 10A .0108, some law firms estimated that it would take between 1-2 minutes more

and 5-10 minutes more per set of documents filed via EDPF as opposed to e-mail. Other law firms declined to estimate the difference in time, stating that the benefits of a centralized filing location and a single, paperless method for submitting documents outweighed any time cost associated with using EDPF. In fact, it should be noted that following the electronic filing rules taking effect, filers have requested and conveyed their preference to use EDPF rather than electronic mail due to its convenience.

Based on this wide variation in responses, the Commission undertook a brief study prior to the initial implementation of the electronic filings rules. In the original test, the Commission recorded filing times using an experienced staff member to submit the same sets of documents via electronic mail and via EDPF in a test environment. The results for ten sets of documents, reflective of the electronic filing capabilities in that first phase, indicated a 1:3 ratio, with an average of 1.5 minutes difference per filing. In preparing this analysis, the Commission re-conducted this same study, this time selecting a sample set that accurately reflects the body of documents that will be filed through EDPF under the expanded rule. It should be noted that of all of the document-types that will be coming in through EDPF under the expanded rule, only one document-type will involve payment of a fee at the time of submission. The Commission reviewed the data for submissions of this document-type under the current rule. Significantly, for all filings of this one document-type that requires payment of a fee, only 25% of the filings included payment online. That is, 75% of the filings include a certification that payment has been made via U.S. Mail. Previous testing indicated that document filings with electronic payment take longer than filings without the additional payment steps. However, because 25% of one document type is such a minimal subset of the overall population of documents to be filed via EDPF, a document with a fee payment was not included in the Commission's sample set for purposes of the timed testing. The Commission anticipated that the difference in filing time between electronic mail versus EDPF would be reduced as a result of practice and familiarity with the EDPF portal and electronic filing methods. As anticipated, the results for ten sets of documents indicated a 1.3:1 ratio, with an average of .25 of a minute (15 seconds) difference per filing (see Table B in Appendix 2). Assuming that not all users would have yet reached this level of proficiency with the system, but factoring in that these filing methods have been used since February 1, 2016 thus resulting in documents being filed more quickly, an estimated average of the two test results should be used to measure the additional time spent filing a document via EDPF. Therefore, it is estimated that it takes .875 of a minute (53 seconds) longer to file a document via EDPF than via electronic mail.

- The Commission uploaded to its electronic file repository a total of 280,805 documents between February 1, 2016 and May 31, 2016 (see Table B in Appendix 2). Of those, 26,469 parent documents and 29,336 document attachments were submitted via EDFP for a total of 55,805. These numbers can be extrapolated to cover a one-year period. The Commission's filing intake is mostly consistent year-round and does not experience significant seasonality in the filing rates.³ Similarly, the Commission assumes that the number of filings will be relatively consistent year-over-year.⁴ Therefore, over a one-year period under the current electronic filing rules, the Commission would anticipate 842,415 documents being uploaded to its electronic file repository. Of those, 167,415 would be submitted via EDFP.⁵ It is estimated that 302,526 more parent documents would have been filed via EDFP annually under the proposed rules than the current baseline, for a total of 381,933. If it is assumed that the 302,526 additional documents would have otherwise been filed via e-mail and that it takes an average of .875 of a minute longer to file them via EDFP, the difference will total 4412 hours. Assuming that the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 11% of these hours could be attributed to state and local government filings and 89% to private sector.⁶ If it is assumed that the average state legal or administrative assistant who would be doing the EDFP filing is paid on average \$33.09 in total compensation,⁷ the cost of

³ The Commission notes an increase in the filing of compromise settlement agreements in the months of November and December. However, the Commission does not have data on the fluctuations of any other specific document-type. So while the overall number of documents filed is relatively consistent year-round, there could be fluctuations in the specific document-type filing rates. With the full implementation of EDFP, better data will be available on the fluctuations of filings in the future.

⁴ The Commission assumes that the number of cases are relatively consistent year-over-year. There is a direct relationship between the number of cases and the number of documents filed. The Commission notes that there may be fluctuations in the number of cases of roughly +/- 10% year-over-year. However, these fluctuations cannot be predicted, and therefore no trend can be assigned. The primary variable that impacts the total case volume is the economy. In a recession economy, there are fewer workers in the workforce, and therefore fewer workplace injuries brought before the Commission. Alternatively, in periods of economic growth, the workforce population expands, and with more active employees, there are more claims under the Workers' Compensation Act.

⁵ The estimated 167,415 documents reflect the combined total of 79,407 parent documents and 88,008 document attachments.

⁶ Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

⁷ 2016 total compensation estimates adjusted to 2017 using North Carolina wage projections.

Bureau of Labor Statistics. Employer Costs per Hour Worked for Employees Compensation and Costs as a Percentage of Total Compensation: State and local government workers, by occupation and industry group, March 2016 (Release Date June 9, 2016) <http://www.bls.gov/news.release/ecec.t04.htm>

IHS Connect. Regional Economics Database. North Carolina Annual Forecast Data. Accessed August 25, 2016.

added time to state and local governments as filers would be about \$16,058 in FY2017.

As discussed above, electronic mail is a very common method for filing documents at the Commission already. In most cases, unless a user operates in a paper-heavy environment and would have to scan documents in order to e-mail them to the Commission, the proposed rule changes should not have a significant impact financially. While the Commission has good data on uploads via EDPF, it is not practical to determine how many of the documents uploaded to the electronic file came in via e-mail as opposed to fax or paper. Looking at Table B below, only the 129,336 documents uploaded to the electronic file via "Scanning Team" or "Commission Staff" could have possibly come in via paper mail or hard fax in the four-month period in which the current electronic filing rules have been in place. This would equate to 388,008 documents over a one-year period. However, there is no accurate way to determine the correct proportion. Even if it is assumed that 25% of them came in via mail, it is difficult to estimate whether there is a cost difference between printing and mail and hard faxing these documents versus attaching them to e-mails, which could include some scanning, without information regarding the business processes of all the various filers.

(3) Costs to private sector filers:

There are potential costs to the private sector associated with the additional time of uploading via EDPF. If it is assumed that 302,526 additional documents would now be filed through EDPF (see section on additional costs to state associated with EDPF filings) and that it takes an average of .875 of a minute longer to file these documents, the difference will total 4412 hours. Assuming that the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 89% of these hours should be attributed to the private sector.⁸ If it is assumed that the legal or administrative assistants who would be doing the EDPF filing are paid an hourly total compensation rate of \$26.98,⁹ the cost of added time to private sector filers would be about \$105,298 in FY2017.

(4) Benefits to the state through the Commission:

⁸ Supra note 6.

⁹ 2016 total compensation estimates adjusted to 2017 using North Carolina wage projections.

Bureau of Labor Statistics. Employer Costs per Hour Worked for Employees Compensation and Costs as a Percentage of Total Compensation: Private Industry, Office and Administrative Support, March 2016 (Release Date June 9, 2016) <http://www.bls.gov/news.release/ecec.t04.htm>.

IHS Connect. Regional Economics Database. North Carolina Annual Forecast Data. Accessed August 25, 2016.

The proposed rule changes will greatly improve the efficiency of receiving and processing documents at the Commission. There are numerous benefits that will accrue to the Commission and result in the customer service improvements for external users referenced above. Below is a list of the anticipated improvements to efficiency at the Commission and savings in time and money costs:

- Reduced time to upload documents to the electronic claim file of 1-2 minutes per set of documents filed. Similar to the analysis above, if 302,526 more documents are filed in a year via EDPF and they take 1.5 minutes less to upload per document, the savings to the Commission in opportunity cost can be monetized at about \$250,261 in FY2017. This is assuming that the average state legal or administrative assistant who would be doing the EDPF uploading is paid on average \$33.09 in total compensation.¹⁰
- Reduced time spent on telephone calls and e-mails regarding where and how to file documents, re-routing documents within the Commission, and correcting misfiled documents. As with any newly implemented process, there is a system-wide initial adjustment period for all users of the system that results in an increase in calls and requests for assistance as filers learn and familiarize themselves with the new system. This was the experience of the Commission upon the effective date of the first phase of the electronic filing rules. The average time spent by processing assistants temporarily spiked, but then gradually began to taper out as users became more familiarized with the new system. Prior to the first phase of the electronic filing rules, the Commission's 57 processing assistants were averaging 25% of the working day spent on this task. The Commission has reported a gradual reduction in time spent on this task. The Commission anticipates similar outcomes upon the new electronic filing rules taking effect and after the initial upsurge in help-line requests subside. As a baseline, the Commission purports the amount of time Commission processing assistants spend handling these issues as ranging approximately 5% and 30% of the work day, depending on the nature of the position. This average time spent on this task is approximately 15% of the work day for a total of 57 processing assistants. The new process is anticipated to gradually cut this average down to 4% of the work day, saving the Commission an average of 27 hours a day by 2018, assuming an 8-hour work day and a 2080-hour work year.¹¹ With an assumed average total compensation rate of \$33.09 per hour for administrative or legal assistants in state government¹², the opportunity cost savings would be about \$275,000

¹⁰ Supra note 7.

¹¹ The Commission estimated time savings based on consultation with the Commission Clerk and a random sampling of processing assistants.

¹² Supra note 7.

in FY2017 during the initial learning period and \$450,000 by FY2018 once the time spent on filing assistance reached an average of 4%.

- Reduced usage of in-house scanning department due to reduced number of documents filed on paper or via electronic mail. This will save on the cost of scan cover sheets, time to complete cover sheets and pack documents into boxes for scanning, time and resources for scanning department to scan, and time for each section to do quality control on scanned documents before recycling them. Additional savings will include a reduced need for cardboard boxes and storage space.
- Costs for recycling and shredding services may also go down if fewer bins are required to be emptied per week.
- By expanding the documents coming in through EDPF, two e-mail addresses will be closed out. That results in a savings of \$12.50 per month or \$150 a year.
- By expanding the documents coming in through EDPF, fewer documents will be filed via electronic mail. The Commission would anticipate one benefit of the reduction in e-mail volume to be a reduction in penalties, assessed in error, having to be waived. As discussed above, the heavy volume of documents being filed via electronic mail has increased the mishandling of properly-filed documents by Commission staff in transferring documents, filed via e-mail, into the electronic file. Since the first phase of the electronic filing rules went into effect, the Commission reported approximately 5-10% of the penalties assessed have been waived because the penalty was assessed in error. Documents filed via EDPF are deposited directly into the electronic file, negating the risk of mishandling of documents by Commission staff in transferring the documents to the electronic file. As e-mail filing volumes decrease, the occurrence of Commission staff mishandling documents in the process of transferring documents into the electronic file repository will decrease, thus resulting in fewer penalties being initially assessed in error and then having to be waived. There is an avoided transaction cost to the Commission by reducing the number of penalties assessed in error and thus reducing the number of penalties, assessed in error, having to be waived.

(5) The benefits to the public and private sector as filers:

The proposed rule changes will benefit the public and private sector (employees, employers, insurers, administrators, law firms, etc., including state and local government in their capacities as employers) in several ways. Below is a list of anticipated benefits that will accrue to users of the Commission:

- Improved information and clear directions regarding how and where to file documents with the Commission will save users time spent on

communicating with the Commission about how to file documents, re-routing documents within the Commission, and correcting misfiled documents. This time saved will equal at least the time saved by the Commission and include additional time filers spend trying to fix these issues on their own before they contact the Commission. There is no way of knowing how much time users spend before contacting the Commission, so this cannot be quantified. Users will save in total the same 27 hours a day the Commission saves. As stated earlier, administrative staff for the private sector are expected to make \$26.98 an hour in total compensation and public sector administrative staff are expected to make \$33.09.¹³ If we continue to assume that the private sector accounts for 89% of the filings and the public sector accounts for 11%,¹⁴ then private and public sector filers will save about \$321,137 and \$49,755 in FY2018, respectively, after an initial learning period.

- Postage, paper, and faxing costs will be saved due to electronic filing requirements.
- Any time or resources spent on filing duplicate copies of the same document will be saved.
- Users' customer service experience will improve based on the following:
 - (1) Commission staff will have more time to answer calls and inquiries on substantive matters.
 - (2) Commission staff will be able to process documents more efficiently which will improve turnaround times.
 - (3) Documents previously filed on paper that had to be sent to the scanning department will be available in the electronic file right away.

Summary of aggregate impact:

The monetized costs and benefits cited above, in the aggregate, range from \$197,000 in FY 2016 to over \$1.4 million in FY 2022. Costs and benefits will continue indefinitely. Most of the immediate costs related to the proposed rules come from the opportunity costs to Commission staff in building out EDFP. The ongoing costs relate to the slight increase in time required to file documents via EDFP. The bulk of the estimated savings related to the proposed rules comes from time saved by the Commission and its users based on a comprehensive set of rules guiding users on where and how to file documents with the Commission.

Benefits that are not quantified in this analysis due to lack of data or uncertainty include: improved customer service; reduced errors; and savings on postage, paper, faxing, scanning, and copying.

¹³ Supra notes 7 and 9.

¹⁴ Supra note 6.

For future costs and net present value (NPV) calculated in Table 1. Summary of Impacts, it is assumed that public sector wages will grow at an average annualized rate of 2.6%, and that private sector administrative support position wages will grow at an average annualized rate of 4.6%.¹⁵ The NPV is calculated as of July 1, 2016 using a 7% discount rate.

¹⁵ IHS Connect. Regional Economics Database. North Carolina Annual Forecast Data. Accessed August 25, 2016.

Table 1. Summary of Impacts

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022 (Recurring)
COSTS							
<i>State</i>							
Reprogramming	186,400						
Committee Meetings	10,600						
Added Filing Time Costs		16,058	16,831	17,591	18,392	19,210	20,068
<i>Private</i>							
Added Filing Time Costs		105,928	108,637	111,810	114,930	117,880	120,821
Total Costs	197,000	121,987	125,469	129,401	133,322	137,090	140,888
NPV of Costs*		2,211,498					
BENEFITS							
<i>State</i>							
Time Saved - Processing Filings		250,261	262,308	274,140	286,631	299,378	312,742
Time Saved - Filing Assistance (Commission)		274,617	452,314	472,717	494,256	516,235	539,281
Time Saved - Filing Assistance (Public Filers)		30,208	49,755	51,999	54,368	56,786	59,321
E-mail Accounts		150	150	150	150	150	150
<i>Private</i>							
Time Saved - Filing Assistance		199,264	321,137	330,516	339,738	348,459	357,152
Total Benefits	-	754,500	1,085,664	1,129,522	1,175,143	1,221,007	1,268,646
NPV of Benefits*		17,568,292					
TOTAL IMPACT	197,000	876,486	1,211,133	1,258,923	1,308,465	1,358,097	1,409,535
NET IMPACT	(197,000)	632,513	960,195	1,000,121	1,041,821	1,083,917	1,127,758
NPV*		15,356,794					

*Net present value calculated as of July 1, 2016 at a 7% discount rate. Costs and benefits are assumed to continue indefinitely.

Alternatives:

Alternatives to the proposed rule change include maintaining the status quo, adopting rules that provide direction regarding the correct filing of documents but are permissive as to electronic filing, or adopting rules that require electronic filing but are permissive as to filing via EDPF.

If the Commission were to adopt rules that provided comprehensive directions regarding the proper electronic filing of various documents but that did not require electronic filing, the benefits in terms of time saved for Commission staff and external users would be greatly reduced. While the rules would help external users determine where to file documents and therefore potentially reduce telephone calls to the Commission, it would be unlikely to cut down on duplicate filings and mislabeling or to increase the usage of electronic filing methods, particularly EDPF, to an extent that would make the processing of filed documents more efficient for Commission staff.

If the Commission were to adopt rules that required electronic filing and provided direction regarding EDPF filing but did not require it, some benefits would be realized in terms of a continued reduction in paper and fax filings, a continued reduction in duplicate filings, and a reduction in telephone calls regarding how to file documents. However, unless EDPF usage increased, the Commission would not capture the benefits of reduced time to upload documents or the benefits of fewer misfiled documents or documents needing rerouting.

In terms of opportunity costs, if EDPF use did not increase without a mandate, the Commission would be unlikely to reap the full benefits estimated above for the requirement of EDPF, which is then passed on to external users as improved turnaround times and customer service. However, external users would not have the \$121,987-140,888 (FY2017-FY2022) in added cost to file via EDPF.

Without a mandate for electronic mail filing, the Commission would reap something less than the \$274,617 - 539,281 (FY2017-2022) cost savings estimated for reducing the time spent on document filing issues from 15% to 4%. It is difficult to estimate what percentage of time would be saved by a rule that gave comprehensive directions for filing but did not mandate electronic filing. If the processing assistants' time saving is only reduced to 8%, the savings to the Commission are reduced by approximately 1/3. If the reduction only amounts to 6%, the savings to the Commission are reduced by approximately 1/5. If the external users' time savings mirror that of the Commission as discussed above, the potential reductions in time savings will also be similar.

Other areas in which less savings would be realized include reduced usage of the in-house scanning department and related preparation of documents for scanning, reduced cardboard boxes and storage space, reduced in-section scanning by staff for documents that cannot be sent to the scanning department due to time constraints, and reduced costs for recycling and shredding services.

Any reductions in potential time and resource savings based on alternative, less stringent rules will result in less improvement in external users' customer service experience, turnaround times

for matters filed with the Commission, and the immediate availability of filed documents in the electronic file.

Risk Analysis:

There are two main calculations that are based on assumptions/estimates that may not hold to be true. The first one is the increased time to file. The increased time to file via EDPF was estimated by employees inside of the Commission who have experience and knowledge of EDPF and e-mail filing and comparatively small numbers of filings were tested. Therefore, the average increased time per filing via EDPF may change. Table 2 below shows how the NPV of Costs would change if those assumptions were to change.

Table 2. Sensitivity Analysis for Additional Time to Filing Process

Added Time to File	NPV of Costs
0 Minutes	\$ 210,790
.25 Minute	\$ 782,421
.5 Minute	\$ 1,354,052
0.875 Minute	\$ 2,211,498
1 Minutes	\$ 2,497,314
1.5 Minutes	\$ 3,640,575
2 Minutes	\$ 4,783,837

The second calculation is the change in the average percentage of time spent per day by the Commission through not having to spend as much time assisting filers or correcting as many filing errors, or the assumption that this amount of time is equal to the quantifiable amount of time saved by filers. The calculation was based on estimates by Commission employees of the percentage of time spent on these issues. There was no source of hard data from which to derive more solid estimates. The Commission assumes that the amount of time spent on filing assistance will decrease gradually from 15% in 2016 to 4% by 2018, allowing for a learning period. Table 3 shows how the NPV of Benefits would change if this assumption would not hold.

Table 3. Sensitivity Analysis for Percentage of Time Spent on Filing Assistance

Percentage of Time Spent on Filing Assistance after Learning Period	NPV of Benefits
10%	\$ 10,508,258
8%	\$ 12,957,619
6%	\$ 15,262,956
4%	\$ 17,568,292
2%	\$ 19,873,628



APPENDIX 1

Proposed Rule Text

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 <u>(in cases with an IC file number)</u>
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 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.

(e) The workers' compensation forms and documents listed in 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, 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 exempt from EDPF filing requirements and how to file them:

Form 18
Form 18B

Form-26D		
Form-28		
Form-28B		
Form-28C		
Form-28T		
Form-29		
Form-30		
Form-30A		
Form-30D		
Form-31		
Form-60		
Form-61		
Form-62		
Form-63		
<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 forms@ic.nc.gov, 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 forms@ic.nc.gov, 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 forms@ic.nc.gov, 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 forms@ic.nc.gov</u>
<u>Plaintiff's Attorney Representation Letter</u>	<u>No IC file number has been assigned</u>	<u>Electronically to forms@ic.nc.gov</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 medicalmotions@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Documents to be filed with the Commission's Compliance & Fraud Investigative Division</u>	<u>Always</u>	<u>Electronically to fraudcomplaints@ic.nc.gov 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 medicalfees@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule</u>
<u>Documents to be filed with the Commission's Safety Education & Training Section</u>	<u>Always</u>	<u>Electronically to safety@ic.nc.gov 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 25n@ic.nc.gov</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 rehab.referrals@ic.nc.gov</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.~~
- ~~(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.~~
- ~~(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.~~
- ~~(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 fullcommission@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.~~
- (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.~~
- (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.~~
- (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 fraudecomplaints@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.~~
- (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.~~
- (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. 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.~~
- (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.~~
- (h) 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.

History Note: Authority G.S. 97-80;
Eff. February 1, 2016.
*Amended Eff. ***** **, ****.*

APPENDIX 2

Data Summary

Table A

Document	Action	# of Attachments	Total Size	EDFP Total Time	E-mail Time	EDFP Total – E-mail
Form 33	Submit	2	267 KB	1:07	:38	:29
Form 33R	Submit	0	110 KB	:33	:26	:07
26A	Submit	5	5.87 MB	1:47	1:36	:11
Clincher	Submit	4	12.6 MB	2:38	1:10	1:28
Form 23	Submit	2	955 KB	:42	:46	-.04
Attorney Rep letter	Submit	0	128 KB	:28	:33	-.05
Form 24	Submit	4	1.5 MB	1:24	:53	:31
MSC4	Submit	0	29 KB	:28	:22	:06
MSC2	Submit	0	659 KB	:30	:35	-.05
Brief	Submit	2	779 KB	:36	:44	-.08

Table B

Upload Method	February 1, 2016 – May 31, 2016	One Year Estimate
Loaded by Scanning Team	83,726	251,178
Uploaded by Commission Staff	45,610	136,830
Loaded by EDFP	55,805	167,415
Loaded by CCMS / Mainframe Interface	95,664	286,992
Total	280,805	842,415
EDFP Uploads		
Parent Documents without new rules	26,469	79,407
Document Attachments without new rules	29,336	88,008
Total without new rules	55,805	167,415
Estimated new documents with new rules	100,842	302,526
Total EDFP after new rules	127,311	381,933