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North Carolina Industrial Commission

April 11, 2018

VIA ELECTRONIC MAIL ONLY

Garth K. Dunklin, Chair
North Carolina Rules Review Commission
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6700
oah.rules@oah.nc.gov

Re: Exemption Request Regarding Industrial Commission's Rules Subject to the Current Round of Periodic Review of Existing Rules

Dear Mr. Dunklin:

The North Carolina Industrial Commission respectfully requests that the Rules Review Commission exempt the Industrial Commission's rules from the periodic review requirements of N.C.G.S. § 150B-21.3A. This is a follow-up request in response to the discussion of the Rules Review Commission at its March 15, 2018 hearing. The Rules Review Commission, at the conclusion of that discussion, advised the Industrial Commission to submit this request for an exemption pursuant to 26 NCAC 05 .0209 because all of the Industrial Commission's rules have been adopted and/or amended within the previous 10 years.

As you may know, the Industrial Commission was exempt from rulemaking under Article 2A until the General Assembly repealed that exemption in Session Law 2011-287. At such time, the Industrial Commission's rules were contained in Chapter 10 of Title 4 of the North Carolina Administrative Code. However, those rules were not adopted pursuant to APA rulemaking procedures, but were instead promulgated pursuant to a process specific to the Industrial Commission.

In Session Law 2011-287, the General Assembly further directed the Industrial Commission to readopt all of its rules pursuant to the APA by the end of 2012 or the rules would expire. Accordingly, the Industrial Commission began the process to adopt all rules in 04 NCAC 10 pursuant to APA rulemaking procedures. In October, November, and December 2012, the Rules Review Commission reviewed and approved over 150 rules adopted by the Industrial Commission. Two rounds of legislative review and additional rulemaking over the course of 2013 and 2014 delayed the entry of the rules into the Administrative Code. Ultimately, all of the Industrial Commission's rules in 04 NCAC 10 were adopted in accordance with the APA by the end of 2014. As a result of the multiple rounds of rulemaking and legislative review, the Industrial Commission's rules adopted pursuant to the APA were entered into the Code on the following timeline:

- January 1, 2013 – Rules 04 NCAC 10A .0301 and 04 NCAC 10J .0101.
- July 1, 2014 – 04 NCAC 10B, 10D, 10E, 10F, 10G, 10H, and 10I.
- November 1, 2014 – All remaining rules in 04 NCAC 10A and all rules in 04 NCAC 10C.

The Industrial Commission's regulated public was involved in the rulemaking process, in debate before the Rules Review Commission, and before the Legislature. Each of the Commission's rules have been thoroughly reviewed within the previous 10 years prior to this round of the periodic review of existing rules. For these reasons, the Industrial Commission respectfully requests the Rules Review Commission grant an exemption from the current round of the periodic review of existing rules for all rules currently in 04 NCAC 10.

Sincerely,



Charlton L. Allen, Chairman
North Carolina Industrial Commission



Kendall M. Bourdon, Rulemaking Coordinator
North Carolina Industrial Commission