

REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 04 NCAC 10A .0108

DEADLINE FOR RECEIPT: Friday, January 13, 2017

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 6, replace "which" with "that"

Have you considered making the language on lines 8 through 12 its own Paragraph?

On line 10, is this for all documents? If so, you may wish to state that.

On lines 11 – 12, do these individuals know the physical and electronic address, as well as the fax number, to do this?

In (b), line 13, delete "below"

So that I'm clear – on line 16, the individual will know the portal is inoperable? This won't be caused by user error?

On line 18, replace "which" with "that"

In (c), Page 2, line 5, what is "necessary to effectuate"? Does your regulated public know?

And is "electronic filing" using the EDFP or via email? If it is the EDFP, why not state that?

On line 6, who determines if this is impractical? The court reporting service?

So that I'm clear – on lines 7 and 8, will these be accepted if a claimant, medical provider, or non-insured employer?

In (d), what is EDI? I take it this is different from EDFP? Does your regulated public know this?

In (e), line 13, delete "below"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 30, 2016

On line 15, they do not have to be transmitted by EDFP no matter who submits it?

On Pages 3 and 4, you list several forms. While generally G.S. 150B-2(8a) requires that the forms of contents be in Rule, I take it you are relying upon G.S. 97-81, which states:

§ 97-81. Blank forms and literature; statistics; safety provisions; accident reports; studies and investigations and recommendations to General Assembly; to cooperate with other agencies for prevention of injury.

(a) The Commission shall prepare and cause to be printed, and upon request furnish, free of charge to any employee or employer, such blank forms and literature as it shall deem requisite to facilitate or prompt the efficient administration of this Article. Notwithstanding G.S. 150B-2(8a)d., any new forms or substantive amendments to old forms adopted after July 1, 2013, shall be adopted in accordance with Article 2A of Chapter 150B of the General Statutes. The Commission may authorize the use of electronic submission of forms and other means of transmittal of forms and notices when it deems appropriate.

I take it that these forms, which I can't find in other Rules, have not been adopted as new forms or had substantive amendments made to them?

Do these forms have names, or are they generally known by the number?

In the Qualifying Condition(s) for several of the forms and documents filed, you state "Always" What does this mean? Does your regulated public know?

On Page 4, do individuals know the Division within the Industrial Commission where the documents are to be filed (Fraud v. Medical Fees v. Safety Education Training)?

I am just inquiring – for the Form 25N, is the "n" meant to be lowercase in the email address?

In (f), Page 5, line 23, I recommend stating "requirement set forth in..."

On line 24, replace "and/or" with "or"

In (h), line 28, does your regulated public know the mailing address for this?

So that I'm clear – how long is this "temporary" waiver good for? And under what circumstances is the waiver granted?

In the History Note, isn't 97-81 also applicable to this Rule?

In the History Note, line 31, please replace the period after "2016" with a semicolon. You do not need to show the change – simply do it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 30, 2016

04 NCAC 10A .0108 is amended as published in 31:08 NCR 741 as follows:

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.

~~(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

<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,</u> <u>by mail to 4335 Mail Service</u> <u>Center, Raleigh, North Carolina</u> <u>27699-4335, or as otherwise</u> <u>permitted pursuant to Paragraph</u> <u>(a) of this Rule</u>
<u>Form 18B</u>	<u>Always</u>	<u>Electronically to forms@ic.nc.gov,</u> <u>by mail to 4335 Mail Service</u> <u>Center, Raleigh, North Carolina</u> <u>27699-4335, or as otherwise</u> <u>permitted pursuant to Paragraph</u> <u>(a) of this Rule</u>
<u>Form 19</u>	<u>1. The claim involves a non-insured</u> <u>employer; or</u> <u>2. The claim is for lung disease.</u>	<u>Electronically to forms@ic.nc.gov,</u> <u>by mail to 4335 Mail Service</u> <u>Center, Raleigh, North Carolina</u> <u>27699-4335, or as otherwise</u> <u>permitted pursuant to Paragraph</u> <u>(a) of this Rule</u>
<u>Form 51</u>	<u>Always</u>	<u>Electronically to forms@ic.nc.gov</u>
<u>Plaintiff's Attorney</u> <u>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</u> <u>appeals of administrative orders</u> <u>on medical motions filed</u>	<u>Always</u>	<u>Electronically to</u> <u>medicalmotions@ic.nc.gov or as</u> <u>otherwise permitted pursuant to</u> <u>Paragraph (a) of this Rule</u>

<u>pursuant to Rule .0609A of this Subchapter</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 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.~~
- (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, 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. February 1, 2017.