

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Commerce, Division of Employment Security

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: April 9, 2021

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please format all rules in accordance with the requirements of 26 NCAC 02C .0108, including 1.5 line spacing.

In your History Notes, please state the proposed effective date in the last line. The earliest possible effective date is May 1, 2021.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: March 26, 2021

04 NCAC 24D .0102 is amended as published in 35:13 NCR 1441 as follows:

04 NCAC 24D .0102 NOTICE TO EMPLOYER OF POTENTIAL CHARGES

(a) DES shall notify each employer in writing of potential charges to the employer's account. The notice shall contain the:

- (1) date of the notice;
- (2) claimant's name and social security number;
- (3) date the claimant's benefit year began;
- (4) claimant's weekly benefit amount and weekly earnings allowance;
- (5) employer's reporting number used to report wages for the claimant;
- (6) base period wages reported by the employer by calendar quarter and dollar amount;
- (7) employer's percentage of total base period wages reported;
- (8) maximum potential charge amount that can be applied to the employer's experience rating account if the claimant exhausts his or her benefits;
- (9) a statement containing the employer's right to protest the notice; and
- (10) the time period within which a protest shall be filed pursuant to G.S. 96-15(b)(2).
a statement containing the employer's right to notify the Division within 15 days of the mailing date of the notice if the claimant did not work for the employer or the wages are incorrect.

(b) DES shall provide notice of potential charges to the employer's account using the following forms, as applicable:

- (1) Notice of ~~Combined Wage~~ Claim and Potential Charges to Your Account;
- (2) Notice of Unemployment Claim, Wages Reported and Potential Charges;
- (3) Notice of Initial Claim and Potential Charges to Reimbursable Employer;
- (4) Notice of Initial Claim and Potential Charges for Claimants on Temporary ~~Layoff;~~
Layoff.
- (5) ~~Reversal of Previously Allowed Noncharging;~~
- (6) ~~Reversal of Previously Denied Noncharging;~~
- (7) ~~Administrative Determination Disallowing Noncharging; or~~
- (8) ~~List of Charges to Your Account.~~

*History Note: Authority G.S. 96-4; 96-11.1; 96-11.2; 96-11.3; 96-11.4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018;
Amended Eff. _____.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Commerce, Division of Employment Security

RULE CITATION: 04 NCAC 24D .0201

DEADLINE FOR RECEIPT: April 9, 2021

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In your History Note, please change "96-1.5" to "96-11.5."

In your History Note, should you add G.S. 96-11.2?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: March 26, 2021

1 04 NCAC 24D .0201 is adopted as published in 35:13 NCR 1442 as follows:
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3 **04 NCAC 24D .0201 NOTICE OF EMPLOYER QUARTERLY CHARGES**

4 DES shall notify each employer in writing of the quarterly list of charges to the employer's
5 Account using Form NC CLM 626-9 that shall contain the:

- 6 (1) date of the notice;
- 7 (2) charging quarter ending date;
- 8 (3) employer's name and mailing address;
- 9 (4) claimant's name and social security number;
- 10 (5) date the claimant's benefit year began;
- 11 (6) employer's reporting number used to report wages for the claimant;
- 12 (7) benefit charges to the employer for each listed claimant; and
- 13 (8) a statement containing the employer's right to protest the list of charges.

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15 *History Note:* Authority G.S. 96-4; 96-11.3; 96-11.4; 96-1.5; 96-15;
16 Adoption Eff._____.

1 04 NCAC 24D .0202 is amended as published in 35:13 NCR 1442 as follows:

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04 NCAC 24D .0202 REQUIREMENTS FOR FILING PROTESTS TO LIST OF CHARGES

~~(a)~~ An employer who protests the benefit charges to its account shall make the protest in writing within ~~15~~ 30 days of the mailing date of ~~the notice of potential charges Form NC CLM 626-9~~ to DES's Claims Unit in accordance with 04 NCAC 24A .0104(s), and shall list all grounds for the protest as prescribed under Rule .0203 of this Section.

~~(b) Any of the following forms, when completed with the information indicated in Paragraph (a) of this Rule, shall constitute compliance with this Rule:~~

- ~~(1) Notice of Initial Claim and Potential Charges to Your Account; and~~
- ~~(2) Notice of Combined Wage Claim and Potential Charges to Your Account.~~

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .0103 Eff. March 1, 2017;
Amended Eff. October 1, 2017;
Amended Eff. _____.

1 04 NCAC 24D .0203 is amended as published in 35:13 NCR 1442 as follows:
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3 **04 NCAC 24D .0203 GROUNDS FOR PROTESTING LIST OF CHARGES**

4 An employer shall only file protests ~~for the following reasons:~~ for:

- 5 (1) the reasons set forth in G.S. 96-11.3;
6 ~~(1)(2)~~ clerical errors in the list of charges;
7 ~~(2)(3)~~ charges resulting from individuals who were never employed by the employer; or
8 ~~(3)(4)~~ the claimant has new separation from employment occurring between the date that the claimant's
9 benefit year began and the last week ending date for which the claimant was paid benefits, and a
10 base period employer did not have an opportunity to request noncharging on the subsequent
11 separation.

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13 *History Note:* *Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5;*
14 *Eff. July 1, 2015;*
15 *Recodified from 04 NCAC 24D .0105 Eff. March 1, 2017;*
16 *Amended Eff. October 1, 2017;*
17 *Amended Eff. _____.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Commerce, Division of Employment Security

RULE CITATION: 04 NCAC 24D .0206

DEADLINE FOR RECEIPT: April 9, 2021

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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In reviewing this Rule, the staff recommends the following technical changes be made:

Why is this Rule necessary since 04 NCAC 24A .0106 applies in this Chapter?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: March 26, 2021

1 04 NCAC 24D .0206 is adopted as published in 35:13 NCR 1443 as follows:
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3 **04 NCAC 24D .0206 TIME FOR FILING PROTESTS AND APPEALS**

4 The provisions of 04 NCAC 24A .0106 shall apply in determining the timeliness of protests and appeals.
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6 History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5;
7 Adoption Eff. _____.

Withdrawn

1 04 NCAC 24F .0303 is repealed as published in 35:13 NCR 1443 as follows:

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3 **04 NCAC 24F .0303 TELEPHONE HEARINGS BEFORE THE BOARD OF REVIEW**

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5 *History Note:* Authority G.S. 96-4;

6 *Eff. July 1, 2015;*

7 *Recodified from 04 NCAC 24D .1103 Eff. October 1, 2017;*

8 *Amended Eff. July 1, 2018;*

9 *Repealed Eff.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Commerce, Division of Employment Security

RULE CITATION: 04 NCAC 24F .0304

DEADLINE FOR RECEIPT: April 9, 2021

PLEASE NOTE: This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout this Rule, please use either "in-person" or "in person."

Why is the location portion of (a) necessary given G.S. 96-4(q)?

§ 96-4. Administration; powers and duties of the Assistant Secretary; Board of Review.

(q) The Board of Review after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of an employer. The Board of Review shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of an employer including the right to determine the amount of contributions, if any, which may be due the Division by any employer. **Hearings may be before the Board of Review and shall be held in the central office of the Board of Review or at any other designated place within the State.** They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Board of Review and a determination of the law applicable to that evidence....

In (a), does this allow a "Board designee" to hear appeals on behalf of the Board of Review? If so, where is the statutory authority for this provision?

In (b), by "alternate means of hearing" I take it you mean via telephone or video, correct?

In (b), does a party have to request a hearing be conducted by alternate means or does the Board make this determination of its own accord? Please make this clear.

I note you use the term "venue" in (c) and use "means of hearing" in (b). Can a party object if a hearing is scheduled via phone or only if it is scheduled in a different location? Based upon the language in 96-15(c), did you mean to use the same term in both places, thus allowing for objection to telephone hearings? Please make that clear.

Ashley Snyder
Commission Counsel
Date submitted to agency: March 26, 2021

§ 96-15. Claims for benefits.

(c) Appeals. - Unless an appeal from the adjudicator is withdrawn, an appeals referee or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable rules adopted by the Division. The rules need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. **The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Division prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Division by rule shall provide.** The hearing shall be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant....

At line 13, should "the" be deleted before "10 days?"

In (c), please change "must" to "shall."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: March 26, 2021

1 04 NCAC 24F .0304 is amended as published in 35:13 NCR 1443 as follows:

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3 **04 NCAC 24F .0304 IN-PERSON HEARINGS**

4 ~~(a) A party shall only request an in-person hearing at the time the appeal is filed in writing, or by filing a written~~
5 ~~objection to the telephone conference call, received at least seven days before the scheduled hearing.~~

6 (a) Hearings shall be conducted in person by the Board of Review, or a Board designee, at the Office of the
7 Board of Review in Raleigh, N.C.

8 ~~(b) If travel is required to conduct the in-person hearing, the objecting party shall travel to a location~~
9 ~~convenient to the non-objecting party, as determined by the Board of Review.~~

10 (b) Upon good cause, as defined in 04 NCAC 24A .0105(28), the Board of Review may designate alternate
11 means of hearing.

12 (c) A party may object to the venue of hearing designated by the Board. The Board will consider such
13 objection if it is filed with the Board within the 10 days of the issuance of a notice of hearing. The objection must be
14 in writing and provide good cause as to the reason for a request in a change of venue.

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16 *History Note:* Authority G.S. 96-4;
17 Eff. July 1, 2015;
18 Recodified from 04 NCAC 24D .1104 Eff. October 1, 2017;
19 Amended Eff. _____.