

Burgos, Alexander N

Subject: FW: Staff Opinion Recommending Readoption Deadlines

From: Martin, Sharon J <sharon.martin@commerce.nc.gov>
Sent: Tuesday, January 21, 2025 12:57 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; David Nance <DavidNance@nccpaboard.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Staff Opinion Recommending Readoption Deadlines

Thank you Mr. Ascher,

The only change I have is that it should be “DOC” for Department of Commerce rather than “DEC.” Sharon Martin

<i>DEC-Employment Security</i>	<i>04 NCAC 24</i>	<i>February 1, 2030</i>	<i>152</i>
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Sharon J. Martin
Division Counsel
Rulemaking Coordinator
North Carolina Department of Commerce
Division of Employment Security



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Burgos, Alexander N

From: Martin, Sharon J
Sent: Tuesday, January 7, 2025 4:25 PM
To: Ascher, Seth M
Cc: Fathi-Nejad, Sara; Burgos, Alexander N
Subject: RE: Existing Rule Review 04 NCAC 24

Seth,

Thank you, I appreciate the follow up.

Regards,

Sharon

Sharon J. Martin

Interim Division Counsel
Rulemaking Coordinator
North Carolina Department of Commerce
Division of Employment Security



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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, January 7, 2025 3:35 PM
To: Martin, Sharon J <sharon.martin@commerce.nc.gov>
Cc: Fathi-Nejad, Sara <sara.fathinejad@commerce.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: Existing Rule Review 04 NCAC 24

Sharon,

I have had a chance to review the memo and the timeline and process you lay out makes sense to me. I plan to recommend a readoption deadline of February 1st 2030 for this subchapter. The Commission will vote on this recommendation at their meeting on Thursday, January 30 at 10:00 AM. I'll let you know if anything comes up between now and the meeting.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

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From: Martin, Sharon J <sharon.martin@commerce.nc.gov>

Sent: Tuesday, January 7, 2025 12:23 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>

Cc: Fathi-Nejad, Sara <sara.fathinejad@commerce.nc.gov>

Subject: RE: Existing Rule Review 04 NCAC 24

Good afternoon Seth,

Just wanted to follow up since today was the day for the Division to get you the Division's requested readoption schedule. Please let me know if there is anything you need or the next step.

Regards, Sharon

Sharon J. Martin

Interim Division Counsel

Rulemaking Coordinator

North Carolina Department of Commerce

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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Friday, January 3, 2025 12:12 PM
To: Martin, Sharon J <sharon.martin@commerce.nc.gov>
Cc: Fathi-Nejad, Sara <sara.fathinejad@commerce.nc.gov>
Subject: Re: Existing Rule Review 04 NCAC 24

Yes, I have it thank you for checking. I will review and follow up next week.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

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From: Martin, Sharon J <sharon.martin@commerce.nc.gov>
Sent: Friday, January 3, 2025 12:08 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Fathi-Nejad, Sara <sara.fathinejad@commerce.nc.gov>
Subject: RE: Existing Rule Review 04 NCAC 24

Good afternoon Seth,

I wanted to make sure you received the Memorandum I emailed yesterday evening.

Thank you,

Sharon

Sharon J. Martin
Interim Division Counsel
Rulemaking Coordinator
North Carolina Department of Commerce
Division of Employment Security



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From: Martin, Sharon J
Sent: Thursday, January 2, 2025 5:39 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Fathi-Nejad, Sara <sara.fathinejad@commerce.nc.gov>
Subject: RE: Existing Rule Review 04 NCAC 24
Importance: High

Good evening Seth,

I hope that you had a nice holiday and are looking forward to the new year.

There has been a lot going on at DES with the Chief Counsel having retired December 31, 2024 and making arrangements for work coverage.

Attached please find the Division's request for a five (5) year readoption schedule and I have outlined the reasons therein. I am available for further discussion if necessary.

I look forward to working with you on this.

Regards, Sharon

Sharon J. Martin
Interim Division Counsel
Rulemaking Coordinator
North Carolina Department of Commerce
Division of Employment Security



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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Friday, November 8, 2024 3:04 PM
To: Martin, Sharon J <sharon.martin@commerce.nc.gov>
Subject: Re: Existing Rule Review 04 NCAC 24


Good afternoon,

The attached periodic review reports have been finalized. The next step is to set a deadline for the readoption of these rules. Pursuant to G.S. 150B-21.3A and 26 NCAC 05 .0212, the RRC sets this deadline after consultation with the agency, and this email serves as the RRC's request for that consultation. Please review 26 NCAC 05 .0212 for the information required to be submitted to the RRC, and the deadlines for doing so.

It appears that the deadline for your agency to provide this information is January 7, 2025. As a starting point, I would recommend a February 1, 2027 readoption deadline, but I am open to considering a different recommendation based on the needs of your agency.

NORTH CAROLINA DEPARTMENT OF COMMERCE
DIVISION OF EMPLOYMENT SECURITY
LEGAL SERVICES SECTION

TO: Seth Ascher, Commission Attorney, Rules Review Commission

FROM: Sharon J. Martin,  Rulemaking Coordinator

SUBJECT: Rules Readoption Schedule for
North Carolina Department of Commerce, Division of Employment Security

DATE: January 2, 2025

The Division of Employment Security (Division) is a division within the North Carolina Department of Commerce (Department). The Division respectfully request that it be granted five (5) years in which to readopt the 152 existing Division Rules, with the start date of February 1, 2025 through January 31, 2030. The basis for the request in accordance with 26 NCAC 05 .0212 and G.S. § 150B-21.2 is as follows:

The period of February 1, 2025 through August 31, 2025:

During this seven (7) month period, the Division is expecting individuals in key management positions to retire. The Chief Counsel for the Division retired December 31, 2024 and at this time, a replacement has not been officially named. The Chief of Programs, responsible for the Benefits, Appeals, and Tax sections, the three primary sections within the Division, will be retiring in March 2025. Two other key positions, Business Analyst and System Analyst, have plans to retire in March 2025 also.

A new Secretary for the Department of Commerce has been named but has not taken office yet. At this time, it is expected that the current Assistant Secretary for the Division, Antwon Keith, will continue in his position. The turnover in long-term staff and the upcoming change in staff affect the upfront work on Rule revisions while new individuals learn the operations of the Division. Moreover, it is unknown what positions will be filled or if filled, whether those positions will be filled with individuals familiar with the North Carolina unemployment system or from outside the Division.

Currently, the Division's staff in Benefits and Appeals is focusing on providing services to individuals affected by Hurricane Helene under the Disaster Unemployment Assistance (DUA) program. It is anticipated that the program ends March 29, 2024 with applications for assistance to continue throughout this time. Until that time, key resources are directed towards ensuring timely decisions to receive or continue receiving DUA benefits are made. Both Benefits and Tax are responding to increased reports of attempted fraud by bad actors that must be investigated and action taken to prevent fraud.

September 1, 2025 through December 31, 2027:

The Division has 152 Rules that need to be reviewed and revised or rewritten. The Division requests twenty-eight (28) months to allow Division staff time to review and revise or rewrite each of the existing Rules relevant to their section. Also, each section will need to review and revise or rewrite relevant portions of subsection 24A General while continuing to carry out their work of supporting individuals, employers, and the public in implementing the Employment Security Law.

The process used by the Division for Rule review and revision or rewrite is for each business section to review each Rule relevant to their section. All sections must review subsection 24A for any Rule that pertains to their section. Each business section decides who has specific knowledge of the topic covered by the Rule. Any revisions are shared with direct and indirect supervisors. The Division's Legal Services Section has attorneys that assist different business sections with questions. Prior to my appointment as the Rulemaking Coordinator, as a staff attorney, I had several meetings with my business section to discuss the rewrite or revision of Rules, why they wanted the rewrite or revision, how it complied with the law, and would it fall under the Rule making requirements. Several drafts were reviewed and notes made on how to justify the changes.

Once the business sections and staff attorneys were satisfied, the proposed language was submitted to the Rulemaking Coordinator for review and any questions regarding the proposed change. I know there were times when the Rulemaking Coordinator would have a question about what was being proposed. I expect this to be the continuing process in my role as Rulemaking Coordinator to review each proposed change and to ask questions for clarification and ensure legality from the standpoint of how the Rules Review Commission will review the proposed Rule which is whether (1) it is within the Division's authority delegated by the General Assembly, (2) it is clear and unambiguous, (3) it is reasonably necessary to implement or interpret State or Federal law or regulation, and (4) it was adopted in accordance with Part 2 of Article 2A of the Administrative Procedures Act.

During the review process, work of the Division must continue. The Division's Rules are divided into six (6) subchapters. Subchapters 24B Benefits, 24C Initial Appeals from Determination (Appeals), and 24C Tax Administration (Tax) are the largest Sections at the Division.

In 2023, the Tax Administration Section modernized and replaced the existing mainframe tax system. The project went live in November 2023. Since that time, Tax staff and the contractor have continued to implement and address issues with the system. This includes updating notice requirements, contact information, and discussion of potential form changes.

There are currently two key projects planned that will involve staff time, especially in the larger sections of Benefits, Appeals, and Tax. One key project requires staff in the relevant Section to review and revise or rewrite all website pages for Plain English. Additionally, in or about February 2025, the Division will begin reviewing and revising or rewriting the correspondence mailed to individuals, claimants, and employers to meet Plain English requirements. There is also a Limited English Proficiency project underway to determine the documents for translation, which includes up to 300 essential documents.

June through November of each year is Hurricane Season. During this time, the Division must be concerned with any natural disasters that could trigger a disaster declaration by the President of the United States. The time needed by staff to handle disasters at the Division must be taken into account.

This twenty-eight (28) month period should also be able to accommodate other unforeseen events that add to the workload of the Division's staff.

January 1, 2028 through December 31, 2028:

The Division plans to request prereview of the Rules. Twelve (12) months is being requested to allow time for Commission Counsel to review the 152 proposed Rules, including response time.

January 1, 2029 through January 31, 2030:

The Division requests thirteen (13) months for publication, public comment and hearing(s), and submission to the Rules Review Commission.

Legal Aid of North Carolina and the Justice Center have been very active in reviewing and commenting on proposed Rules in the past and it is expected to continue. Since the Rules were initially adopted, the Division modernized its tax system but also its claims system. There have been amendments to the Rules since 2014 but it is anticipated with all Rules requiring readoption that there will be comments by one if not both of these entities. Additionally, with all the Tax Section's Rules up for readoption, the North Carolina Chamber of Commerce may also submit comments. These are just a few of the entities expected to have comments. Additionally, if there are any objections to the proposed Rules from the Commission Counsel, this should allow for time to work with the Commission to resolve issues.

Overall:

In conclusion, the Division requests that the readoption schedule begin on February 1, 2025 and end on January 31, 2030.

Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

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From: McGhee, Dana <dana.McGhee@oah.nc.gov>

Sent: Thursday, November 7, 2024 12:25 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>

Subject: FW: Existing Rule Review 04 NCAC 24

I forgot to add you to the email.

Dana McGhee

Publications Coordinator

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From: McGhee, Dana
Sent: Thursday, November 7, 2024 12:22 PM
To: Martin, Sharon J <sharon.martin@commerce.nc.gov>
Subject: Existing Rule Review 04 NCAC 24

Good afternoon, Sharon,

The determinations in the attached periodic review report for 04 NCAC 24 were effective August 29, 2024. Commission Counsel Seth Ascher will reach out to you to discuss setting the readoption date for the rules in the reports.

Let me know if you have any questions.

Dana McGhee

Publications Coordinator

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