

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24 (All rules)

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please verify all contact information for DES set forth in these rules.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0101

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 12, replace "will" with "shall"

Line 13, delete "are, or may be"

Line 13, specify the hours. Consider the following rewrite:

"This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for approved state holidays as set forth in 25 NCAC 01E .0901."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **CHAPTER 24 - DIVISION OF EMPLOYMENT SECURITY**

2
3 **SUBCHAPTER A – GENERAL**

4
5 **SECTION .0100 – GENERAL**

6
7 04 NCAC 24A .0101 is adopted as published in 29:17 NCR 2033 as follows:

8
9 **04 NCAC 24A .0101 OFFICE LOCATION**

10 The administrative offices of the North Carolina Department of Commerce, Division of Employment Security
11 (hereinafter “DES,” or “The Division”) are located at 700 Wade Avenue, in Raleigh, North Carolina. The General
12 Mailing Address is P.O. Box 25903, Raleigh, NC 27611-5903. The same work hours will be observed by the
13 Division as are, or may be observed by the Office of State Human Resources (OSHR).

14
15 *History Note: Authority G.S. 96-4;*
16 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0102

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

For both paragraphs of this Rule, specify the facsimile number, website, or mail address to identify where the party is to send the change. Consider creating a cross-reference to 04 NCAC 24A .0104, and specify a paragraph within that rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0102 is adopted as published in 29:17 NCR 2034 as follows:

04 NCAC 24A .0102 ADDRESS CHANGES

(a) Each employing unit that has or had individuals in employment as defined in G.S. 96-1 shall notify DES in writing of any change to its mailing address. This notice shall be transmitted by facsimile, via the internet, or by postal mail within seven days after the effective date of the change.

(b) Each claimant who is liable to DES for an overpayment of benefits, or is registered for work at a public employment office, shall notify DES by facsimile, via the internet, or by postal mail of any change of address within seven days after the effective date of the change.

History Note: Authority G.S. 96-4; 20 C.F.R. 640;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0103

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, "last known address" of who? Please clarify.

Line 6, is there some specific section within DES that is making the notice?

Line 11, is the address designated as "primary" or "business"? Is that significant to distinguish?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0103 is adopted as published in 29:17 NCR 2034 as follows:

04 NCAC 24A .0103 ADDRESSES FOR NOTICE

(a) In all transactions requiring notice by G.S. 96 or these Rules, DES shall provide notice to the last known address as reflected in its official records.

(b) Except as provided in Paragraph (a) of this Rule, when DES mails a notice of an initial claim to the employer at one of the following addresses:

(1) the address of the employer for which the claimant last worked;

(2) if the employer has more than one branch or division at different locations, the address of the branch or division for which the claimant last worked; or

(3) an address designated by the employer as reflected in DES's official records.

History Note: Authority G.S. 96-4; 96-14.1;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0104

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 33 lists an email address, but line 30 does not reference email as an option. Please clarify.

Line 35, and page 2, line 2, the sentence ends with "mail." Should it be "email" with an address? Please clarify.

Page 2, line 7, 14, 22, 30, and 36; page 3, line 1 and line 24, add a comma before "or"

Page 2, line 30, is the "Employer requests" line that broad? Is it only for employers? Please clarify.

Page 3, line 24, is this contact intentionally so limited to "Exceptions to a Tax Opinion"?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0104 is adopted as published in 29:17 NCR 2034

04 NCAC 24A .0104 ADDRESSES FOR FILING CLAIMS, APPEALS, EXCEPTIONS, REQUESTS OR PROTESTS

(a) Claimants shall file a claim for unemployment insurance benefits by internet on DES's website, or by telephone.

(1) The telephone number for filing a new initial claim is (877) 841-9617.

(2) Claimants with a social security number ending in an odd number shall file weekly certifications on Monday and Wednesday through Saturday by dialing (888) 372-3453.

(3) Claimants with a social security number ending in an even number shall file weekly certifications on Tuesday through Saturday by dialing (888) 372-3453.

(b) Appeals from a Determination by Adjudicator shall be filed with the Appeals Section by mail, facsimile, or email.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 733-1228.

(3) The email address is des.public.appeals@nccommerce.com.

(4) Any questions regarding the contents of a Determination by Adjudicator shall be directed to the Adjudication Unit by telephone to (919) 707-1410, facsimile at (919) 733-1127, or email at des.ui.customerservice@nccommerce.com.

(c) Appeals of a Non-Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit by mail or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 733-1369.

(3) Any questions regarding the contents of a Non-Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email at des.ui.bpc@nccommerce.com

(d) Appeals of a Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit by mail, or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 733-1369.

(3) Any questions regarding the contents of a Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email at des.ui.bpc@nccommerce.com.

(e) Appeals of a Monetary Determination shall be filed with the Monetary Revision Unit by mail or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 715-3983.

(3) The email address is des.ui.customerservice@nccommerce.com.

(4) Any questions regarding the contents of a Monetary Determination shall be directed to the Monetary Revision Unit by telephone to (919) 707-1257, facsimile at (919) 715-3983 or mail.

(f) Appeals of a Wage Transcript and Monetary Determination shall be filed with the Monetary Revision Unit by mail or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 715-3983.

(3) Any questions regarding the contents of a Wage Transcript and Monetary Determination shall be directed to the Monetary Revision Unit by telephone to (919) 707-1257, facsimile at (919) 715-3983 or mail.

(g) Petitions for Waiver of Overpayment shall be filed with the Benefits Integrity Unit by mail or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 733-1369.

(3) Any questions regarding the contents of an overpayment determination shall be directed to the Benefit Payment Control Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369 or email at des.ui.bpc@nccommerce.com.

(h) Claimant appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter shall be filed with the Benefits Integrity Unit by mail or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 733-1369.

(3) Any questions regarding the contents of a North Carolina Department of Revenue Offset Letter shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369 or email at des.ui.bpc@nccommerce.com.

(i) Employer appeals of a North Carolina Department of Revenue Offset Letter for outstanding tax debts shall be filed with and Tax Administration Section by mail, facsimile, or email.

(1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

(2) The facsimile number is (919) 733-1255.

(3) The email address is des.tax.customerservice@nccommerce.com.

(4) Any questions regarding the contents of a NCDOR Offset letter for outstanding tax debts shall be directed to the Tax Administration Section by telephone to (919) 707-1150, facsimile at (919) 733-1255 or email at des.tax.customerservice@nccommerce.com.

(j) Claimant Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Benefit Integrity Unit of mail or facsimile.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 715-3983.

(3) Any questions regarding TOP shall be directed to a Recovery Specialist by telephone to (919) 707-1338 or email at des.ui.bpc@nccommerce.com.

(k) Employer requests shall be filed with Employer Call Center (ECC) by mail, telephone, facsimile or email.

(1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.

(2) The phone number is (919) 707-1150.

(3) The facsimile number is (919) 715-0780.

(4) The email address is des.tax.customerservice@nccommerce.com.

(l) Appeals from an Appeals Decision shall be filed with the Board of Review by mail, facsimile or email.

(1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.

(2) The facsimile number is (919) 733-0690.

(3) The email address is BOR@nccommerce.com.

1 (m) Requests for Post-Decision Relief or Reconsideration shall be filed with the Board of Review by mail, facsimile
2 or email.

3 (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.

4 (2) The facsimile number is (919) 715-7193.

5 (3) The email address is BOR@nccommerce.com.

6 (n) Protests or appeals of a Tax Liability Determination shall be filed with the Tax Administration Section by mail,
7 facsimile, or email.

8 (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

9 (2) The facsimile number is (919) 733-1255.

10 (3) The email address is des.tax.customerservice@nccommerce.com.

11 (o) Protests or appeals of a Tax Rate Assignment shall be filed with the Tax Administration Section by mail, facsimile, or
12 email.

13 (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

14 (2) The facsimile number is (919) 733-1255.

15 (3) The email address is des.tax.customerservice@nccommerce.com.

16 (p) Protests or appeals of Audit Results shall be filed with the Tax Administration Section by mail, facsimile, or email.

17 (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

18 (2) The facsimile number is (919) 733-1255.

19 (3) The email address is des.tax.customerservice@nccommerce.com.

20 (q) Protests or appeals of Tax Assessments shall be filed with the Tax Administration Section by mail, facsimile, or email.

21 (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

22 (2) The facsimile number is (919) 733-1255.

23 (3) The email address is des.tax.customerservice@nccommerce.com.

24 (r) Exceptions to a Tax Opinion shall be filed with the Board of Review by mail, facsimile or email.

25 (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611.

26 (2) The facsimile number is (919) 715-7193.

27 (3) The email address is BOR@nccommerce.com.

28 (s) Protests or appeals of benefit charges to an employer's account, or requests for non-charging shall be filed with the
29 Employer Benefit Charges/Benefit Charges Unit by mail or facsimile.

30 (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611-5903.

31 (2) The facsimile number is (919) 733-1126.

32 (3) All questions regarding non-charging shall be directed to the Employer Benefit Charges/Benefit Charges
33 Unit at (919) 707-1279.

34 (t) Protests or appeals of a Denial of Seasonal Assignment shall be filed with the Tax Administration Section by mail,
35 facsimile, or email.

36 (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.

37 (2) The facsimile number is (919) 733-1255.

38 (3) The email address is des.tax.customerservice@nccommerce.com.

1 *History Note:* *Authority G.S. 96-4; 96-14.1;*
2 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0105

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "In addition..."

Line 7, capitalize "item"

Line 27, replace the citation with 96-1(b)(3)

Line 33, add "and" between "employment to"

Line 34, clarify what the "National Labor Relations Board" is doing. Do they issue an order or some identifiable document that could be referenced?

Page 2, line 2, add a comma after "hearings"

Page 2, line 3, place the terms "Board" and "BOR" in quotation marks

Page 2, line 6, clarify the end time on Saturday, such as "at 11:59 p.m." as done in Item (9) of this Rule.

Page 2, lines 14, 30, 31, and 34 are commonly used legal terms. Please indicate the basis of these definitions, as some are defined different than Black's Law Dictionary and some are not set forth in Black's Law Dictionary. On line 14, the term is "convincing evidence" which is different from "clear and convincing," which is defined as "evidence indicating that the thing to be proved is highly probable or reasonably certain." There is no mention of persuasiveness.

Page 2, line 23, define or delete "ordinarily"

Page 2, line 33, add an "or" before "bad"

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

Page 3, lines 2 thru 3, please incorporate the referenced plan in accordance with [G.S. 150B-21.6](#).

Page 3, line 13, could the phrase “who alone could be directly” be deleted? The term “alone” seems unnecessary. And “directly” will need to be defined or deleted.

Page 3, lines 17 thru 18, please incorporate the referenced database in accordance with [G.S. 150B-21.6](#).

Page 3, lines 21 thru 22, in light of the language set forth in G.S. 96-17(b), this definition seems redundant. It is necessary?

Page 4, line 3, make the reference to the statute here similar to the other citation set forth on page 1, in Item (1):

“requirements set forth in G.S. ...”

Page 4, line 10, since the concept of “constructively paid” is being defined, place the term in quotation marks.

Page 4, line 12, replace “must” with “shall”

Page 4, lines 16 and 17, consider adding the specific time in the rule to clarify, as follows:

“beginning at 12:00 a.m. Sunday and ending on the following Saturday at 11:59 p.m..”

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0105 is adopted as published in 29:17 NCR 2035 as follows:

04 NCAC 24A .0105 DEFINITIONS

(a) In addition to the terms defined in G.S. 96, the following definitions apply whenever these terms are used in this Chapter:

- (1) "Additional claim" means the reopening of a valid initial claim for unemployment insurance benefits after a claimant, as defined in item (15), ceased filing a weekly certification as defined in G.S. 96-14.9, for one or more weeks due to intervening employment. The first week of eligibility filed after a claim has been reopened shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.
- (2) "Agent state" means any state from which, or through which a claimant files a claim for benefits from another state.
- (3) "Adjudicator" means an employee of DES appointed to conduct an informal investigation and render a determination as required by G.S. 96-15(b).
- (4) "Appeal" means a submission by a party with statutory appeal rights requesting the Appeals Section of DES or the Board of Review to review a determination or decision that is adverse to that party.
- (5) "Appeals Referee" or "Hearing Officer" means an attorney appointed to hear or decide an appeal from a determination by an adjudicator and issues involving the rights, status, and liabilities of an employer pursuant to the provisions of G.S. 96-4(q) or 96-15(c).
- (6) "Appeals Section" means the section within DES where Appeals Referees conduct quasi-judicial administrative evidentiary hearings and make decisions in contested cases for unemployment insurance benefits. The Appeals Section also consists of support staff that assists Appeals Referees.
- (7) "Authorized Representative" means an individual authorized by an employer or employing unit to act on the employer or employing unit's behalf before DES.
- (8) "Base period" means as defined in G.S. 96-1(3). Calendar quarters are January through March, April through June, July through September, and October through December.
- (9) "Benefit week" means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.
- (10) "Benefit wage credits" means wages used to determine a claimant's monetary eligibility for benefits. Benefit wage credits consist of the wages a claimant received or should have received during the claimant's base period of employment to include those wages that were awarded and paid to the claimant after the base period pursuant to a court order, the National Labor Relations Board, another adjudicative agency or by private agreement, consent, or arbitration for loss of pay because of discharge. DES shall credit the awarded wages to the quarter in which the wages should have been paid.

- (11) “Board of Review” means as defined in G.S. 96-4(b) and is the body that conducts “higher authority review” of appeals arising from the decisions of the Division, tax liability hearings and labor disputes. The Board of Review is also referred to as the Board or BOR.
- (12) “Calendar Period” means the fifty-two week period beginning with the first day of a week in which an individual first files a valid claim for benefits and registers for work. The week begins on the first Sunday preceding the initial claim filed and ends the following year on a Saturday.
- (13) “Charging cycle” means the fifty-two week period beginning August 1st and ending July 31st the year following the year in which the employer’s account is assessed and charged for erroneous payments against its account, due to establishing a pattern of untimely and inadequate responses to Requests for Separation Information (NCUI 500AB) during the preceding reporting cycle.
- (14) “Chief Appeals Referee” includes the Chief Appeals Referee’s designee, unless otherwise stated.
- (15) “Claimant” means an individual who files an unemployment insurance benefits claim for payments as provided in G.S. 96-14.1.
- (16) “Convincing evidence” is evidence that is reasonable and persuasive enough to cause the trier of fact to believe it.
- (17) “Customarily,” as the term is used in G.S. 96-16, means during at least seventy-five percent of the calendar years of an observation interval.
- (18) “Day” means a calendar day.
- (19) “Delivery service” means an authorized designated carrier pursuant to Rule 4(j) of the North Carolina Rules of Civil Procedure and 26 U.S.C. 7502(f)(2).
- (20) “DES website” means the internet address found at www.ncesc.com.
- (21) “Due diligence” means the measure of carefulness, precaution, attentiveness, and good judgment as to be expected from, and ordinarily exercised by a reasonable and prudent person under the particular circumstances.
- (22) “Effective date of a claim” means either (1) the benefit year beginning on the Sunday preceding the payroll week ending date if the claimant is payroll attached, or (2) the benefit year beginning on the Sunday of the calendar week within which a claimant filed a valid claim for benefits and registered for work if the claimant is not payroll attached.
- (23) “Electronic transmission” means transmission by facsimile or internet.
- (24) “Equity and good conscience” means fairness as applied to a given set of circumstances.
- (25) “Fault” means circumstances to which blame, responsibility, culpability, or impropriety attaches; an error or defect of judgment or of conduct; any deviation from prudence or duty; a wrong tendency, course, or act; bad faith or neglect of duty.
- (26) “Good cause” means a substantial reason amounting to a legal excuse for failing to perform an act required by law in the exercise of due diligence.
- (27) “In-person/telephone hearing” means an administrative hearing before the Appeals Section, Board of Review, or other designated Hearing Officer where at least one party or witness appears in-

- 1 person, and another party or witness appears by telephone.
- 2 (28) “Interstate benefit payment plan” means the plan approved by the Interstate Conference of
- 3 Employment Security Agencies under which benefits may be paid to unemployed claimants absent
- 4 from the state (or states) where benefit wage credits accumulated.
- 5 (29) “Interstate claimant” means a claimant who claims benefits under the unemployment insurance
- 6 law of one or more liable states through the facilities of an agent state, or directly with the liable
- 7 state. The term "interstate claimant" shall not include any claimant who customarily commutes
- 8 from a residence in an agent state to work in a liable state unless the Division finds that this
- 9 exclusion would create an undue hardship.
- 10 (30) “Labor dispute” means a dispute between an employer and its employees about wages, hours,
- 11 working conditions, or issues concerning the association or representation of persons in
- 12 negotiating, fixing, maintaining, changing, or seeking to arrange terms or condition of
- 13 employment, between those who alone could be directly concerned in the controversy.
- 14 (31) “Last known address” means the most recent address provided to DES by the claimant or taxpayer
- 15 located in its official record, except that DES shall update addresses maintained in its official
- 16 records by referring to data accumulated and maintained in the United States Postal Service
- 17 (USPS) National Change of Address database that retains change of address information (NCOA
- 18 Database). If the claimant or taxpayer’s name and last known address in DES’s official records
- 19 match the claimant or taxpayer’s name and previous mailing address contained in the NCOA
- 20 database, the new address in the NCOA database is the taxpayer’s last known address.
- 21 (32) “Legal representative” means a licensed attorney or a person supervised by a licensed attorney as
- 22 defined in G.S. 96-17(b) and G.S. 84.
- 23 (33) “Liable state” means any state against which a claimant files a claim for benefits through another
- 24 state.
- 25 (34) “Observation interval” means an interval of time including the four consecutive calendar years
- 26 preceding the calendar year in which an application for a seasonal determination is made pursuant
- 27 to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities
- 28 have changed, the observation interval may be less than four calendar years.
- 29 (35) “Party with appeal rights” means a party who has the right to appeal an unfavorable determination
- 30 or decision pursuant to G.S. 96-4(q) and G.S. 96-15.
- 31 (36) “Public employment office” means a local office managed and operated by the Division of
- 32 Workforce Solutions (DWS) of the North Carolina Department of Commerce.
- 33 (37) “Regularly recurring” means a period or periods of operational activity and shall be deemed
- 34 regularly recurring if, during at least seventy-five percent of the calendar years in the observation
- 35 interval, the beginning and ending dates of the period or periods do not vary more than four
- 36 weeks.
- 37 (38) “Reopened claim” means the resumption of a valid initial claim following a break in filing weekly

- 1 certifications during a benefit year and the break was caused by reasons other than intervening
2 employment. The first week of eligibility following the effective date of the reopened claim shall
3 constitute a waiting period week if all eligibility requirements of G.S. 96-14.9 are met.
- 4 (39) “Reporting cycle” means the fifty-two week period beginning August 1st and ending July 31st the
5 following year in which the employer’s account is examined and recorded for any inadequate
6 responses to Requests for Separation Information (NCUI 500AB).
- 7 (40) “State” means any of the 50 states in the United States and includes the District of Columbia,
8 Puerto Rico and the U.S. Virgin Islands.
- 9 (41) “Wages paid” means both wages actually received by a worker, and wages constructively paid.
10 Wages are constructively paid when they are credited to the account of, or set apart for a worker
11 without any substantial restriction as to the time or manner of payment or condition upon which
12 payment is to be made, and must be made available so that the worker may draw upon them at any
13 time, and payment brought within the worker’s control and disposition, although not then actually
14 reduced to possession.
- 15 (42) “Wages payable” means wages earned but not paid.
- 16 (43) “Weekly period” means a seven day period beginning on Sunday and ending on the following
17 Saturday.
- 18 (44) “Week of unemployment” includes any week of unemployment as defined in the law of the liable
19 state from which benefits for the week are claimed.

20

21 *History Note:* *Authority G.S. ch. 84; 96-1; 96-4; 96-9.2; 96-9.6; 96-14.1; 96-14.9; 96-15; 96-17; 96-20;*
22 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0106

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 and 5, delete the comma after "document"

Line 17, delete "even"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0106 is adopted as published in 29:17 NCR 2038 as follows:

04 NCAC 24A .0106 FILING/MAILING DATES AND USE OF FORMS

(a) Except as otherwise provided in this Chapter, a document, or form shall be filed with DES on the date the document, or form is received by DES.

(b) When determining whether a party had good cause for filing a late appeal or protest, DES shall consider the date mailed in the order listed:

(1) the postmark date or the postal meter date, where there is only one;

(2) the postmark date if there is both a postmark date and a postal meter date, if they conflict; or

(3) the date the document was delivered to a delivery service, which is equivalent to a postmark date of the United States Postal Service.

(c) A document received in an envelope bearing no legible postmark, postal meter date, or date of delivery to the delivery service shall be considered to have been sent three business days before receipt by DES, or on the date of the document, if the document date is less than three days earlier than date of receipt.

(d) If the envelope is lost after delivery to DES, the date on the document shall control. If the document is undated, DES shall deem the date the writing was sent to be three business days prior to receipt by DES, subject to sworn testimony establishing an even earlier date from the sender of the writing.

(e) Except as otherwise provided in this Chapter, the date and time that DES receives a document shall be used when the document is sent by facsimile transmission or via the internet.

(f) Except as otherwise provided in this Chapter, when a document furnishes information that is sufficient to indicate the purpose or intent of the document, but is not on a form prescribed by DES, the controlling date shall be determined as described in this Section.

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

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0107

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "A division.."

Line 4, delete the comma after "claimant"

Line 6, consider the following re-write to help clarify the sentence.

"using it. The digital signature shall have the...."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0107 is adopted as published in 29:17 NCR 2038 as follows:

04 NCAC 24A .0107 DIGITAL SIGNATURES

(a) A digital signature provided by an employing unit or claimant, shall authenticate a written electronic communication sent to DES with the same force and effect as that of a manual signature by the person or individual using it and shall have the following characteristics:

- (1) unique to the person or individual using it;
- (2) ability to be independently verified;
- (3) under the sole control of the person or individual using it; and
- (4) infeasible to change the data in the communication without invalidating the digital signature.

History Note: Authority G.S. 96-4; 96-9.15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0108

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "Where DES.."

Lines 17 thru 18, is the breakdown of North Carolina subsidiaries necessary? Is just stating the "is the State of North Carolina." not sufficient?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0108 is adopted as published in 29:17 NCR 2038 as follows:

04 NCAC 24A .0108 SIGNATURES ON REPORTS AND FORMS

(a) Where DES requires a signature on a report or form, the writing shall be signed by:

- (1) the individual, if the person required to submit the report or form is an individual;
- (2) an officer or authorized representative, if the employing unit required to submit the report or form is a corporation;
- (3) a partner or other authorized representative, if the employing unit required to submit the report or form is a partnership;
- (4) a member or other authorized representative, if the employing unit required to submit the form is an association;
- (5) an authorized member or officer having knowledge of its affairs, if the employing unit required to submit the report or form is an unincorporated organization;
- (6) the fiduciary, if the employing unit required to submit the report or form is a trust or estate; or
- (7) the head of the department, or designee having control of the services to which contributions, reimbursements, or other payments are attributable, if the employing unit required to submit the report or form is the State of North Carolina or a department, division, branch, unit, instrumentality, or political subdivision thereof.

History Note: *Authority G.S. 96-4; 96-9.15;*
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0109

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "An employer..."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0109 is adopted as published in 29:17 NCR 2038 as follows:

04 NCAC 24A .0109 POWER OF ATTORNEY

(a) An employer may appoint an agent with full or limited power and authority to act on its behalf with DES. An employer's appointment of an agent shall be made in writing in the manner prescribed by G.S. 32A-1.

*History Note: Authority G.S. 96-4; 96-9.15; 32A-1; 32A-2;
 July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0201

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "Any individual..."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

SECTION .0200 - REQUESTS FOR DOCUMENTS AND PUBLIC RECORDS UNRELATED TO
CONTESTED CLAIM

04 NCAC 24A .0201 is adopted as published in 29:17 NCR 2038 as follows:

04 NCAC 24A .0201 WRITTEN REQUEST REQUIRED

(a) Any individual or employing unit requesting to inspect or copy any record containing confidential unemployment insurance information shall make the request in writing. All requests shall be submitted to the Legal Services Section, ATTN: Legal Release by mail to Post Office Box 25903, Raleigh, North Carolina, 27611, facsimile to (919) 715-7194, or email to legal.release@nccommerce.com.

*History Note: Authority G.S. 96-4; 20 CFR 603;
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0202

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, should the "shall" be a "may"? Is the information requested always known to the requesting party and would a request be returned for failure to state the date made or by which person or office? If these are mandatory, cite the justification.

Line 13, what is the purpose of the language after "making the request"? Consider deleting. If the remainder of the clause is necessary, delete "where applicable,"

Line 16, could the CFR reference be more specific?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0202 is adopted with changes as published in 29:17 NCR 2038 as follows:

04 NCAC 24A .0202 CLEAR DESCRIPTION OF RECORDS REQUIRED

(a) Each written request for unemployment insurance information shall describe the record or records sought and provide sufficient details to permit identification and location of the records.

(b) The request shall specify:

(1) the subject matter of the record;

(2) the date or approximate date that the record was made;

(3) the place where the record was made;

(4) the person or office that made the record; and

(5) any other necessary identifying details about the record, such as an account or form number.

(c) If the description is insufficient for an employee familiar with the subject area of the request to locate the record, the ~~Chief~~ General Counsel or designee shall notify the person making the request and where applicable, indicate the additional information required to locate the record.

History Note: Authority G.S. 96-4; 20 CFR 603;

Eff. July 1, 2015.

04 NCAC 24A .0203 is adopted with changes as published in 29:17 NCR 2039 as follows:

04 NCAC 24A .0203 DETERMINATION AS TO DISCLOSURE

(a) If the ~~Chief~~ General Counsel or designee determines that the applicable law does not permit disclosure of the requested information, the ~~Chief~~ General Counsel or designee shall provide written notification to the person making the request. The notice shall state reasons for the denial, including the applicable law prohibiting disclosure.

(b) Where there is specific information in a record that is prohibited from disclosure, the specific information shall be deleted or redacted before providing the requested record.

History Note: *Authority G.S. 96-4; 20 CFR 603;*

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0204

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 9 and 15, the wording seems to indicate that the waiver of confidentiality is a blanket waiver. Is that the intent? Please clarify.

Line 18, please clarify the applicable portion of the CFR.

Line 20, define or delete "clear"

Line 20, replace "which" with "that"

Line 20 thru 21, why is notice to the employing unit required? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0204 is adopted as published in 29:17 NCR 2039 as follows:

04 NCAC 24A .0204 RELEASE OF INFORMATION TO THIRD PARTY

(a) Upon written request, a claimant, employer, applicant, or other person who authorizes information or records to be released to a third party or person shall provide:

(1) the name of the third party or person;

(2) the address of the third party or person;

(3) a statement that the claimant, employer, applicant or other person authorizing the disclosure of information waives confidentiality as to the information directed to be released.

(b) An individual requesting that DES release or disclose to a third party or person the individual's quarterly wage records, including the amount of wages, names, and addresses of each employer reporting wages for the individual shall:

(1) clearly identify the third party or person by name;

(2) provide the address of the third party or person;

(3) contain a statement that the individual waives confidentiality as to the information authorized to be disclosed;

(4) state that the authorization and waiver is given on the basis of informed consent as mandated by 20 CFR Part 603 and any other applicable federal regulation that may be promulgated by the U.S. Department of Labor; and

(5) contain a clear statement that the employing unit which provided the information to DES has been provided proper advance notice of the request for disclosure.

History Note: Authority G.S. 96-4; 20 CFR 603;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0205

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5, 24, and 25, replace "is" with "shall be"

Line 10, replace "will" with "shall"

Line 13, replace "must" with "shall"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, June 1, 2015

04 NCAC 24A .0205 is adopted with changes as published in 29:17 NCR 2039 as follows:

04 NCAC 24A .0205 FEES FOR COPIES AND SERVICES

(a) Search Fees:

- (1) The fee for searching DES records by authorized staff is four dollars and forty cents (\$4.40) for each one-quarter hour or fraction thereof required to obtain the records to be searched or to search the records.
- (2) If the search for requested records requires transportation of DES staff to the location of the records, or transportation of the records to DES staff at a cost of more than five dollars (\$5.00), the actual transportation costs will be added to the search time cost.
- (3) If the search for requested records requires batch processing by computer, the ~~Chief~~ General Counsel or designee shall provide an estimate of DES's cost to produce the information to individual making the request. The amount of the estimate provided must be based on the computer programming and other actions necessary for the batch processing. Upon consenting to the estimate provided by the ~~Chief~~ General Counsel or designee, DES shall send an invoice for the actual cost of producing the requested information to the individual making the request.

(b) Reproduction Fees: The fees for obtaining copies of records shall be computed as follows:

- (1) copying: one cent (\$0.01) per page;
- (2) transcription of hearing: three dollars and seventy-five cents (\$3.75) per quarter hour or fraction thereof;
- (3) recording of hearing: three dollars and seventy-five cents (\$3.75) per compact disk or recording.

(c) No more than 10 copies of any document shall be furnished in response to any request.

(d) Administrative and Overhead Fees: The fee required for the time required for the ~~Chief~~ General Counsel or designee to review a request and determine whether the request is authorized by G.S. 96-4 is five dollars and eighty-four cents (\$5.84) for each one-quarter hour or fraction thereof. The overhead cost for processing and invoicing is four dollars and fifty cents (\$4.50) per invoice.

History Note: Authority G.S. 96-4(x); 20 CFR 603;

Eff. July 1, 2015.

04 NCAC 24A .0206 is adopted as published in 29:17 NCR 2039 as follows:

04 NCAC 24A .0206 METHOD OF PAYMENT

(a) Fees shall be paid by cash, money order, or certified check.

(b) An agency of state or federal government, a county, or a municipality may pay fees by draft.

(c) Payments shall be mailed to the North Carolina Department of Commerce, Division of Employment Security,
ATTN: Finance and Budget, Post Office Box 25903, Raleigh, North Carolina 27611.

History Note: Authority G.S. 96-4(x); 20 CFR 603;

Eff. July 1, 2015.

04 NCAC 24A .0207 is adopted as published in 29:17 NCR 2040 as follows:

04 NCAC 24A .0207 PAYMENT REQUIRED BEFORE INFORMATION RELEASE

(a) Payment shall accompany all requests for release of information. If payment does not accompany a request, DES shall send an invoice for all fees due to the individual making the request, due immediately upon receipt.

(b) When exigent circumstances requires the immediate release of information to local, state, or federal law enforcement officials, DES shall release the information upon receipt of a written assurance demonstrating a guaranty of future payment from the law enforcement official making the request.

History Note: Authority G.S. 96-4; 20 CFR 603;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0301

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, replace "rule, amendment or repeal" with "or amended rule" to properly track the requirements of G.S. 150B-20(a).

Line 10, replace "on existing rules and practices, including costs;" with "effect of the requested rule change;" to properly track the requirements of G.S. 150B-20(a).

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0300 – PETITIONS FOR RULE-MAKING**

2
3 04 NCAC 24A .0301 is adopted as published in 29:17 NCR 2040 as follows:
4

5 **04 NCAC 24A .0301 RIGHT TO PETITION**

6 (a) The petition shall be in writing and contain the following information:

- 7 (1) the subject area to which the petition is directed;
8 (2) a draft of the proposed rule, amendment or repeal;
9 (3) the reason for the proposal;
10 (4) the effect on existing rules and practices, including cost;
11 (5) any data supporting the proposal;
12 (6) the name and address of each petitioner; and
13 (7) the date.

14 (b) Any person submitting a petition requesting the adoption, amendment, or repeal of a rule under this Chapter shall
15 address the petition to the Rules Coordinator, Attn: DES Legal Services Section, Post Office Box 25903, Raleigh,
16 North Carolina 27611-5903.

17
18 *History Note:* *Authority G.S. 96-4; 150B-20;*
19 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0302

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 10, replace "G.S. 150B." with "G.S. 150B-20(c)."

Line 14 thru 15, delete "and the date the determination was mailed."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24A .0302 is adopted as published in 29:17 NCR 2040 as follows:

04 NCAC 24A .0302 DISPOSITION OF PETITION

(a) Upon receipt of a petition, the Secretary of Commerce, or designee shall review the petition to determine whether the public interest would be served by granting the request.

(b) Within 30 days of receiving the petition, the Secretary or designee shall make a decision on the petition and inform the petitioner by mailing:

(1) a written denial of the petition and the reason for the denial; or

(2) written notice to the petitioner that the Secretary or designee will initiate a rule-making proceeding as required by G.S. 150B.

(c) Each determination granting or denying a petition shall include a statement that the Secretary or designee's decision is a final agency decision subject to judicial review.

(d) Each determination shall include instructions for filing a request for judicial review in the superior court pursuant to G.S. 150B-45 within 30 days after receiving the determination and the date the determination was mailed.

History Note: Authority G.S. 96-4; 150B-20; 150B-45;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0101

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 11, where would the exemption exist in the Chapter? Can something more specific be provided?

Line 15, add "in Paragraph (d)" between "required for"

Line 18, delete "and" before "date"

Line 19, add "and" before "gender"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

SUBCHAPTER 24B - BENEFITS

SECTION .0100 - CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS

04 NCAC 24B .0101 is adopted as published in 29:17 NCR 2040 as follows:

04 NCAC 24B .0101 FILING A CLAIM

(a) An individual shall contact DES by internet or telephone to file a valid initial claim for benefits pursuant to 04 NCAC 24A .0104.

(b) Prior to receiving any benefits, the claimant shall register for work with a public employment office, unless exempt from this requirement as enumerated under this Chapter or any state or federal law.

(c) In the event of a mass layoff by an employer, the employer may request to electronically file an initial claim for benefits for the individuals to be laid off. The request shall be made to DES through its website at www.ncesc.com. The employer shall provide DES with a list of the individuals who wish to file an initial claim for benefits. For each individual, the list shall include all information required for an initial claim. The list shall be used by DES as an initial claim for each individual on the list. Each individual shall subsequently file his or her weekly certification.

(d) Information for an initial claim shall include:

- (1) the claimant's name, social security number, address, telephone number, email address, and date of birth, gender;
- (2) immigration status;
- (3) whether the claimant worked for the federal government or in another state during the previous two years;
- (4) whether the claimant applied for or is receiving disability payments;
- (5) whether the claimant was or will be paid vacation or severance and the time frame that the payment covers;
- (6) whether the claimant refused work since becoming unemployed;
- (7) whether the claimant filed for or is receiving benefits under any other unemployment insurance law;
- (8) whether the claimant applied for or is receiving any type of retirement pension;
- (9) the name and complete address of the claimant's last employer;
- (10) the reason for the claimant's separation from work; and
- (11) the claimant's beginning and ending dates of employment.

History Note: Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 20 C.F.R. 602
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0102

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "A claimant..."

Line 6, clarify what is "when conditions exist that make it impracticable." Is that the only time that filing may be made at a Workforce Solutions office? Should there be a period after "throughout the State" and then a separate clause to address the inclement weather? Please clarify. Consider rewriting this rule to create two sentences.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0102 is adopted as published in 29:17 NCR 2041 as follows:

04 NCAC 24B .0102 ALTERNATIVE FILING METHODS

(a) A claimant shall file a valid initial claim, or a weekly certification for payment of benefits by mail, delivery service, or facsimile to DES's Central Office in Raleigh, North Carolina, or a Division of Workforce Solutions public employment office throughout the State when conditions exist that make it impracticable for a DES representative to accept the claim or weekly certification by telephone or internet due to inclement weather or declared natural disaster.

History Note: Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 20 C.F.R. 602
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0103

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, specify under what paragraph of the cross-referenced rule.

Line 16, what if the claimant does not have a social security number? Consider also including a federal identification number, as set forth in G.S. 96-18.1(c)(2).

Line 28, add a comma after "work"

Line 29, add "as required by G.S. 96-14.9(e)(4)"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0103 is adopted with changes as published in 29:17 NCR 2041 as follows:

04 NCAC 24B .0103 WEEKLY CERTIFICATIONS

(a) After a claimant files a valid initial claim and establishes a benefit year, the claimant shall file subsequent weekly certification for payment of benefits by telephone, or internet on DES's website at intervals of no less than seven and no more than fourteen consecutive days for each week claimed.

(1) Each claimant shall file weekly certifications as ~~defined~~ prescribed under 04 NCAC 24A .0104.

(2) If at any time during the benefit year, more than fourteen calendar days elapse since the claimant last filed a weekly certification, the claimant shall file an additional or reopened claim for benefits as defined in 04 NCAC 24A .0105, and shall comply with all eligibility requirements.

(b) Each claimant shall:

(1) file claims and weekly certifications in accordance with the rules of this Chapter that includes the following:

(A) information required for claims filing outlined in Rule .0101 of this Section.

(B) information required for filing weekly certification, including each claimant's full name and social security number;

(2) inform DES of whether he or she worked during the previous calendar week;

(3) provide information regarding all earnings before deductions (gross) for work performed during the previous calendar week;

(4) provide information as to whether he or she received holiday, vacation, bonus, or separation pay, and the gross amount during the previous calendar week;

(5) inform DES of whether he or she began receiving or whether there was a change in any type of retirement pension during the previous calendar week;

(6) provide information regarding whether he or she applied for or received any disability payments during the previous calendar week;

(7) inform DES of whether he or she was physically able and available for work during the previous calendar week;

(8) provide information as to whether he or she looked for work, refused work or kept a record of work search during the previous calendar week; and

(9) provide information as to whether he or she has quit a job or been discharged from a job since filing a claim for unemployment benefits.

(10) sign all forms for the valid initial claim or weekly certification that are filed in person, by mail or delivery service; and

(11) submit all claims and weekly certifications as required by the Employment Security Law and this Section.

History Note: Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 96-15.01;

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0104

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "A claimant..."

Lines 5 and 7, is the term "unemployment insurance benefits" the correct term? The predominate statutory term appears to be "unemployment benefits." Please clarify.

Lines 9 thru 11, is this an accurate statement? Is it necessary to the rule? It appears to be a "re-worked" restatement of G.S. 96-14.2(d). Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0104 is adopted as published in 29:17 NCR 2041 as follows:

04 NCAC 24B .0104 INFORMATION TO BE PROVIDED TO CLAIMANTS FILING A NEW CLAIM

(a) A claimant filing a new claim for benefits shall be informed that:

(1) unemployment insurance benefits are subject to federal and state income tax;

(2) he or she may elect to have federal and state income tax deducted and withheld from the payment of unemployment insurance benefits;

(3) he or she may change a previous withholding status;

(4) all amounts deducted and withheld from unemployment insurance benefits shall remain in the unemployment fund, as defined in G.S. 96-5, until transferred to the federal or state taxing authority as a payment of income tax; and

(5) any amounts deducted and withheld for taxes shall be only after amounts are deducted and withheld under any other provisions of the Employment Security Law.

*History Note: Authority G.S. 96-4; 96-14.2;
 Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0105

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "A valid..."

Line 11, delete "of"

Line 11, could the natural disaster be anywhere? The rule does not provide any qualifying information. Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0105 is adopted as published in 29:17 NCR 2041 as follows:

04 NCAC 24B .0105 ANTEDATING

(a) A valid initial claim shall be retroactively effective to the Sunday of the calendar week during which a claimant would have filed a claim if the failure to file the claim at that time includes the following:

(1) a notice of the time and place for filing a claim for benefits that should have been posted was not posted in the claimant's employment establishment;

(2) the claimant's employer coerced the claimant not to file a claim for benefits and the claimant contacted an authorized representative of DES no later than 14 days following his or her last day of work;

(3) of natural disaster; or

(4) an invalid claim was filed in good faith in another state.

History Note: Authority G.S. 96-4; 96-14.1; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0106

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 14, add a period after "benefits"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0106 is adopted as published in 29:17 NCR 2042 as follows:

**04 NCAC 24B .0106 SUSPENSION OF BENEFITS FOR PROBATION VIOLATORS WHO AVOID
ARREST**

(a) Upon receipt of a valid court order resulting from a probation violation for absconsion or willful avoidance of arrest, DES shall suspend benefits pursuant to the terms outlined by the issuing judge in the order, effective beginning on the Sunday following the effective date of the order.

(b) Within seven days of receiving the order, DES shall provide written notice and reasons for the ineligibility for benefits to the claimant, the issuing court, and the North Carolina Department of Public Safety.

(c) The notice shall state:

(1) the claimant's name;

(2) the claimant's address as contained in DES's official records and provided with the court order;

(3) the date the order was entered; and

(4) the effective date of the claimant's ineligibility for benefits

History Note: Authority G.S. 15A-1345; 96-4; 96-14.1;

Eff. July 1, 2015.

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04 NCAC 24B .0201 REGISTRATION FOR WORK

- (1) who files through the agent state for work; or
- (2) upon notification of a claim filed directly with the liable state, as required by the law, regulations, and procedures of the agent state.

(c) Each agent state shall report each interstate claimant who fails to meet the registration or re-employment assistance reporting requirements of the agent state to the liable state.

History Note: Authority G.S. 96-4; 96-24;
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0202

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, who is the information "unavailable" from? Please clarify.

Line 9, is the "or" necessary or should it be deleted?

Lines 9 through 11, are these three independent clauses that will result in benefit wage credits being unavailable? The clauses do not read clearly.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0202 is adopted as published in 29:17 NCR 2042 as follows:

04 NCAC 24B .0202 BENEFIT RIGHTS OF INTERSTATE CLAIMANTS

(a) If a claimant files a claim against any state, and it is determined by the state that the claimant has benefit wage credits available in the state, then claims shall be filed only against the state as long as benefit wage credits are available in that state. Once benefit wage credits become unavailable in that state, the claimant shall file claims against any other state where benefit wage credits are available.

(b) For the purposes of this Section, benefit wage credits shall be deemed to be unavailable:

(1) whenever benefits have been exhausted, terminated, or postponed for an indefinite period; or

(2) for the entire period in which benefits would otherwise be payable; or

(3) whenever benefits are affected by the applications of a seasonal restriction.

History Note: Authority G.S. 96-4; 96-15; 96-16; 96-21; 96-24; 20 CFR 616;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0203

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0203 is adopted as published in 29:17 NCR 2042 as follows:

04 NCAC 24B .0203 CLAIMS FOR BENEFITS

(a) Claims for benefits or waiting-period credit filed by an interstate claimant directly with the liable state shall be filed according to the liable state's procedures. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state based on consecutive claims filed.

(b) Claims shall be filed according to the agent state's regulations for intrastate claims in the same manner as provided in Section .0100 of this Subchapter.

(1) With respect to claims for weeks of unemployment during which a claimant was not working for his regular employer, the liable state shall accept a continued claim that is filed up to one week or one reporting period late under circumstances that it considers good cause. If a claimant files more than one reporting period late, the filing shall open an additional claim, and no continued claim for a past period shall be accepted.

(2) With respect to weeks of unemployment during which a claimant is attached to his regular employer, the liable state shall accept any claim filed within the time applicable to claims under the law of the agent state.

*History Note: Authority G.S. 96-4; 20 C.F.R. 616;
Eff. July 1, 2015.*

04 NCAC 24B .0204 is adopted as published in 29:17 NCR 2042 as follows:

04 NCAC 24B .0204 DETERMINATION OF CLAIMS

(a) In connection with each claim filed by an interstate claimant, the agent state shall compile and report the facts relating to the claimant's availability for work and eligibility for benefits to the liable state.

(b) The agent state's responsibility and authority in determination of interstate claims shall be limited to investigation and reporting of relevant facts, including facts pertaining to each claimant's registration for work or reporting for re-employment assistance as required by the agent state.

History Note: Authority G.S. 96-4; 96-15; 20 C.F.R. 616;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0205

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, correct the spacing at the end of the line.

Line 8, specify the rule cross-referenced.

Line 9, delete "precedent"

Line 9, uncapitalize "Decision"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0205 is adopted with changes as published in 29:17 NCR 2042 as follows:

04 NCAC 24B .0205 APPELLATE PROCEDURE.

(a) The agent state shall cooperate in taking evidence and holding hearings in interstate benefit claims appeals.

(b) The agent state shall conduct appeal hearings in disputed cases and determine timeliness using the liable state's laws, regulations, or policies and practices. In interstate appeals where North Carolina is the liable state, timeliness of the appeal shall be determined by provisions of the Employment Security Law, 04 NCAC 24A .0100, and any DES Precedent Decisions applicable to intrastate appeals.

(c) The ~~liable~~ agent state shall conduct the hearings on appealed interstate benefit claims.

History Note: Authority G.S. 96-4; 20 CFR 616;

Eff. July 1, 2015.

1 04 NCAC 24B .0206 is adopted as published in 29:17 NCR 2042 as follows:

2

3 **04 NCAC 24B .0206 CANADIAN CLAIMS.**

4 The provisions of this Section apply to all Canadian claims.

5

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

7 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0207

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Paragraph (c) is referencing a repealed statute. Please see [G.S. 150B-21.6](#). The citation to 04 NCAC 24A .0101 appears incorrect. Specify location and cost of documents.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0207 is adopted as published in 29:17 NCR 2043 as follows:

04 NCAC 24B .0207 NOTIFICATION OF INTERSTATE CLAIM.

(a) The liable state shall notify the agent state of each initial claim, reopened claim file, claim transferred to interstate status, and each weekly claim filed from the agent state.

(b) Notice shall be provided using the Interstate Benefit Payment Plan uniform procedures and record format promulgated as written guidance by the USDOL.

(c) This rule incorporates material found in the Interstate Benefit Payment Plan by reference in accordance with G.S.150B-14(c). Copies of the incorporated material found in the Interstate Benefit Payment Plan can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0101.

History Note: Authority G.S. 96-4; 20 CFR 616;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0301

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, replace "be" with "are"

Line 7, add "will" before "accept"

Line 8, specify the paragraph within G.S. 96-14.9. It may be Paragraph (i), but it is unclear.

Lines 26 thru 35, why is that text not closer to lines 19 thru 21? The flow of this rule does not make sense. Please consider re-arranging text.

Line 26, replace "ID" with "identification"

Line 27, replace "shall include, but not limited to" with "includes"

Line 36, delete the empty line space

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0300-WORK SEARCH REQUIREMENTS**

2
3 04 NCAC 24B .0301 is adopted with changes as published in 29:17 NCR 2043 as follows:

4
5 **04 NCAC 24B .0301 REQUIREMENTS FOR CLAIMANTS**

6 (a) Every claimant shall register for work at www.NCWorks.gov or a public employment office in the state in which
7 you reside, actively seek work, be available for work, and accept suitable work unless specifically exempted by G.S.
8 96-14.9 or federal law.

9 (b) Each claimant shall make the minimum number of weekly work search contacts required by G.S. 96-14.9(e)(3).

10 (1) Each claimant shall maintain weekly work search contact records as required by G.S. 96-
11 14.9(e)(4).

12 (2) Each claimant who receives his or her first unemployment benefit payment on or after March 1,
13 2014 shall have a mandatory in-person Employability Assessment Interview (EAI) with a
14 workforce specialist at a local DWS office as a condition of continued eligibility for receipt of
15 unemployment insurance benefits. Claimants excepted from this requirement are: Reemployment
16 Eligibility Assessment (REA); those enrolled in and attending a Workforce Investment Act (WIA)
17 program; attached claims; and longshoremens.

18 (A) The EAI shall be scheduled within four weeks of the first benefit payment to a claimant.

19 (B) Each claimant reporting for EAI shall be required to present a valid form of identification
20 to DWS or their designee to establish their availability for work as required under G.S. ~~96-14.6~~.
21 96-14.9.

22 (C) DWS shall notify each claimant receiving an initial EAI of the date, time, and location by
23 mail, at least 14 days in advance of the EAI.

24 (c) Each claimant attending an EAI shall present his or her record of work search identification in order to receive
25 unemployment insurance services at a DWS office.

26 (1) A valid ID shall be identification issued at the state or federal level acceptable for Employment
27 Eligibility Verification Form (I-9) purposes, and shall include, but not be limited to the following:

28 (A) driver's license;

29 (B) military identification;

30 (C) United States Passport;

31 (D) passport card;

32 (E) trusted traveler cards such as the NEXUS SENTRI and FAST CARDS issued by the U.S.
33 Department of Homeland Security;

34 (F) Permanent Resident Card (green card); and

35 (G) Native American tribal identification card.

36
37 (d) Each claimant shall actively seek suitable work as required under G.S. 96-14.9 and 20 C.F.R. 604.5 to receive

unemployment benefits.

(1) Work registration at [www. NCWORKS.gov](http://www.NCWORKS.gov) alone shall be insufficient to establish that a claimant is actively seeking work.

(2) Each claimant shall seek work on their own behalf.

(3) Restrictions as to salary, hours, or working conditions that are inconsistent with the labor market pursuant to the factors outlined in G.S. ~~96-14.6(f)~~ 96-14.9(f) shall indicate that a claimant is not making a reasonable search for suitable work.

History Note: Authority G.S. 96-4; 96-14.9; 96-14.14; 96-15; 20 C.F.R. 604;
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0302

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 20, replace "photo-ID" with "photo identification"

Line 21, the citation appears to be incorrect. Please specify under what paragraph of 04 NCAC 24A .0104.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0302 is adopted with changes as published in 29:17 NCR 2043 as follows:

04 NCAC 24B .0302 RECORD OF WORK AND WAGES OF CLAIMANTS

(a) Each claimant who has registered for work and filed a claim for unemployment insurance benefits shall keep a record of any work performed during any day within a benefit period. Each claimant shall record all work performed, regardless of whether the work constitutes employment as defined in G.S. 96-1(12).

(b) The record of work shall include the:

- (1) name and address of each individual or entity for whom the claimant worked;
- (2) total remuneration earned; and
- (3) the number of hours worked during the benefit period.

(c) Each claimant shall submit the record of work to DES when requested. DES shall request the record of work under the following conditions:

- (1) when a claimant's availability for work is questioned by failing to meet any of the requirements under G.S. ~~96-14.6(d)~~; 96-14.9(d);
- (2) whenever an inconsistency arises between what a claimant asserts in a work search report and what an employer reports to DES;
- (3) during a claimant's eligibility for benefits review;
- (4) during an audit; or
- (5) when a claimant reports to a DWS office for an Employability Assessment Interview.

(d) Each interstate claimant shall transmit a copy of their record of work, including photo-ID, to DES via facsimile or mail as provided in 04 NCAC 24A .0103.

History Note: Authority G.S. 96-4; 96-15; 20 C.F.R. 604;

Eff. July 1, 2015.

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04 NCAC 24B .0401

- (1) each issue or question involved;
- (2) the docket number of the case;
- (3) the resolution of each issue;
- (4) the citation of the provision of law applied to reach the resolution of each issue or question;
- (5) the parties' rights to file an appeal of the determination;
- (6) the statutory time period under G.S. 96-15(b)(1) within which an appeal shall be filed;
- (7) instructions for requesting an in-person hearing;
- (8) information on filing an appeal of the determination by mail, facsimile, or email, as set forth in 04 NCAC 24A .0104; and
- (9) notice that claims filed on or after June 30, 2013 are subject to repayment of overpayments, including those resulting from any decision that is later reversed on appeal.

History Note: Authority G.S. 96-4; 96-15; 20 C.F.R. 602
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0402

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9, should it be "employer's" or "employee's"

Line 28, define or delete "reasonably"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0402 is adopted as published in 29:17 NCR 2044 as follows:

04 NCAC 24B .0402 REQUEST FOR SEPERATION INFORMATION FROM EMPLOYER

(a) In connection with a claim filed by a claimant, DES shall require the claimant's last employer to provide complete information (sufficient facts) to make a correct initial determination of the claimant's eligibility for unemployment insurance benefits without having to contact the employer to obtain additional information.

(b) Employers shall submit a Form NCUI 500AB consistent with G.S. 96-15(b)(2) that shall be provided to the employer's last known address as reflected in its official records and include the following information:

(1) last and first dates of employment;

(2) the claimant's pay rate;

(3) the gross amount of the vacation, severance, and any sick pay;

(4) the beginning and ending dates covered by the separation payments;

(5) if the claimant quit their job:

(A) a copy of the employee's resignation letter if one exists.

(B) the reason(s) for the resignation; or

(6) if the claimant was discharged:

(A) the reason(s) for the separation and supporting documentation and evidence;

(B) copies of any employee policies, warnings, handbooks, documents, or contracts signed by the employee that pertain to the employee's discharge; or

(7) if the claimant is still employed:

(A) conditions under which the employee was hired;

(B) the number of hours per week that the employee is currently working;

(C) any reduction of the employee's work hours, the date the reduction took place, reasons for the reduction, and if temporary, any date when the employee may be allowed to return to work; or

(8) if the employee was separated due to an inability to perform job duties and was employed less than 100 days, an explanation describing the inability to perform the job duties; and

(9) any separation information requested by DES, or which the employer should reasonably expect is necessary for DES to make a correct initial determination of the claimant's eligibility for unemployment benefits.

(c) Employers may respond to requests for separation information by mail or fax as provided under 04 NCAC 24A .0104, or by submitting their responses at www.ncesc.com through the employer portal.

*History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15; 20 U.S.C. 3303;
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0501

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, who is the UI Director? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

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04 NCAC 24B .0501 NOTICE TO EMPLOYER OF LABOR DISPUTE CLAIM

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015.

04 NCAC 24B .0502 is adopted as published in 29:17 NCR 2044 as follows:

04 NCAC 24B .0502 EMPLOYER RESPONSE REQUIREMENT

(a) Within five days of receiving notice that a claim was filed involving unemployment due to a labor dispute, the employer shall provide the UI Director or designee, with a list containing:

(1) the names of all affected employees;

(2) the complete mailing addresses, including zip codes of all affected employees; and

(3) the social security numbers of all affected employees.

(b) The employer shall also provide the UI Director or designee, with:

(1) notice of the first day of unemployment;

(2) the reason for the labor dispute; and

(3) the place where the labor dispute is or was in progress.

History Note: Authority G.S. 96-4; 96-14.7; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0503

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 04 NCAC 24B .0503 is adopted with changes as published in 29:17 NCR 2045 as follows:

2
3 **04 NCAC 24B .0503 DETERMINATION OF LABOR DISPUTE AND REFERRAL FOR HEARING**

4 (a) If an issue of unemployment due to a labor dispute exists, the ~~Chief~~ General Counsel shall refer the matter in
5 writing to DES's Board of Review or designee for hearing.

6 (b) Hearings involving the issue of unemployment due to a labor dispute shall be heard upon order of the Board of
7 Review or designee and conducted pursuant to 04 NCAC 24C.

8
9 *History Note: Authority G.S. 96-4; 96-14.7; 96-15;*

10 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0504

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "The issues..."

Line 8, correct the citation to remove the statute symbol.

Line 8, change the citation from "96-14.7" to "96-14.7(b)"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0504 is adopted as published in 29:17 NCR 2045 as follows:

04 NCAC 24B .0504 ISSUES

(a) The issues to be decided in labor dispute hearings may include the following:

- (1) whether a labor dispute existed, and if so, identification of the beginning and ending dates of the labor dispute, or whether the dispute is ongoing;
- (2) the reasons for the labor dispute;
- (3) whether any individual is disqualified to receive benefits as provided in G.S. §96-14.7; and
- (4) any other issue ordered by DES's Board of Review or designee, which shall be provided to each party in writing.

History Note: Authority G.S. 96-4; 96-14.7; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0601

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9, clarify the statutory authority to "96-18(g)(3)"

Line 11, specify under what paragraph of the cross-referenced rule.

Lines 12 thru 13, should this is a Paragraph (b)? If seems to be a separate clause form Subparagraphs (1) thru (4). Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0600 – UNEMPLOYMENT INSURANCE BENEFIT OVERPAYMENTS**

2
3 04 NCAC 24B .0601 is adopted as published in 29:17 NCR 2045 as follows:
4

5 **04 NCAC 24B .0601 NOTICE REQUIREMENT FOR OVERPAYMENT**

6 (a) A determination finding an overpayment of benefits to a claimant shall contain:

- 7 (1) the date the determination was mailed to the claimant;
8 (2) reasons for the overpayment;
9 (3) the statutory authority under G.S. 96-18 for seeking repayment of the overpayment; and
10 (4) notice that the claimant may protest the overpayment determination and instructions on how to
11 protest the overpayment determination as provided in 04 NCAC 24A .0104.
12 (5) Notice that the claimant may file a request for waiver of the overpayment in the same
13 manner as prescribed under Subparagraph (a)(4) of this Rule.
14

15 *History Note:* *Authority G.S. 96-4; 96-18;*
16 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0602

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, what is the time period to protest an overpayment determination? Is that deadline contained in a statute or rule that could be cross-referenced? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0602 is adopted as published in 29:17 NCR 2045 as follows:

04 NCAC 24B .0602 BILL FOR REPAYMENT OF OVERPAYMENT

(a) If a claimant does not protest an overpayment determination, the determination of overpayment shall become final. DES shall mail a bill to the claimant for the amount of the overpayment owed after a final determination or decision.

(b) The first bill shall contain:

(1) the total amount of the overpayment; and

(2) notice that repayment of an overpayment determined to be fraudulent shall not be waived.

History Note: Authority G.S. 96-4; 96-18;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0603

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9, replace the "(2)" with a "(3)"

Line 9, replace the semicolon at the end of the clause with a period.

Line 10, delete "or internet"

Line 12, add "internet at" before the website address

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0603 is adopted as published in 29:17 NCR 2045 as follows:

04 NCAC 24B .0603 WAGE AUDIT NOTICE FOR EMPLOYERS

(a) DES shall mail a Wage Audit Notice to an employer requesting information for investigating a potential claimant overpayment whenever a discrepancy or question to that claimant's eligibility for unemployment benefits exists. The Wage Audit Notice shall:

(1) identify the claimant whose weekly earnings information is sought;

(2) request the employer provide weekly earnings information during the specified time period; and

(2) any other information necessary to investigate the claimant's overpayment status;

(b) The employer shall respond to the Wage Audit Notice request within fifteen days by mail or internet at NC Division of Employment Security, Benefits Integrity Unit, Post Office Box 25903 Raleigh, NC 27611 or www.ncesc.com

History Note: Authority G.S. 96-4; 96-18;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0701

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, specify where in this Subchapter.

Lines 9 and 10, consider the following re-write:

“written explanation of the basis of the waiver request.”

Lines 12 thru 13, what is the purpose of (d)? Is this statutorily required? If so, please clarify.

Line 15, is the statutory authority correct? Should 96-9.15 also be referenced?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0700 – REQUEST FOR WAIVER OF OVERPAYMENT**
2

3 04 NCAC 24B .0701 is adopted as published in 29:17 NCR 2045 as follows:
4

5 **04 NCAC 24B .0701 WAIVER OF REPAYMENT OF NONFRAUDULENT OVERPAYMENT**

6 (a) Claimants may petition DES for a waiver of non-fraud unemployment insurance overpayments as provided in
7 this Subchapter.

8 (b) A request for waiver of overpayment shall be accompanied by all evidence or documents that the claimant
9 wishes DES to consider in deciding whether to grant the waiver and a written explanation of why the waiver request
10 should be granted.

11 (c) DES shall not consider any petition for waiver of overpayment while an appeal of the overpayment is pending.

12 (d) Any request to waive the overpayment shall indicate that the claimant agrees that the overpayment is owed to
13 DES and the claimant shall not be permitted to challenge the overpayment determination in the waiver petition.
14

15 *History Note: Authority G.S. 96-4; 96-15; 96-18;*
16 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0702

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5 thru 6, what is the purpose of this sentence? Would a request not be considered prior to determining the element of fraud? If there is fraud, is there no response to the request? It seems that the first sentence captures the intent of the rule, but the second sentence makes it a little unclear.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0702 is adopted as published in 29:17 NCR 2045 as follows:

04 NCAC 24B .0702 WAIVER OF REPAYMENT OF FRAUDULENT OVERPAYMENT

DES shall not waive repayment of overpayment of any State or federal unemployment insurance benefits caused by a claimant's fraud as defined under G.S. 96-18. DES shall not consider any request for waiver of fraudulent overpayments.

History Note: Authority G.S. 96-4; 96-18;

Eff. July 1, 2015.

04 NCAC 24B .0703 is adopted as published in 29:17 NCR 2046 as follows:

04 NCAC 24B .0703 DECISION AND CONSIDERATION OF WAIVER PETITIONS

(a) The Assistant Secretary or designee shall consider the degree of the claimant's fault in creating the overpayment and any other matters tending to show that collection of the overpayment would be against equity and good conscience. Except as provided in Rule .0704 of this Section, a claimant's present economic circumstances or present ability to repay is not relevant to whether a waiver request should be granted.

(b) The Assistant Secretary or designee shall render a written decision on the waiver request.

History Note: Authority G.S. 96-4; 96-18;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0704

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 7 thru 8, is this clause missing something? An affirmative finding of what between the claimant and overpayment? Please clarify.

Line 11, delete "above"

Lines 13 thru 20, appear to be separate thoughts than the list in Paragraph (a). Consider shifting the text of these lines towards the left and creating Paragraphs (b) through (d).

Line 14, replace "will" with "shall"

Line 22, is the statutory authority correct? Should 96-9.15 also be referenced?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0704 is adopted as published in 29:17 NCR 2046 as follows:

04 NCAC 24B .0704 FACTORS IN DETERMINING EQUITY AND GOOD CONSCIENCE

(a) DES shall consider the following factors:

- (1) whether the overpayment resulted from a decision on appeal and whether there was notice to the claimant that the case had been appealed;
- (2) whether there has been an affirmative finding under Subparagraph (a)(1) regarding the claimant and the overpayment; and
- (3) whether recovery of the overpayment would cause extraordinary and lasting financial hardship to the claimant resulting in the claimant's loss of or inability to obtain minimal necessities of food, medicine, and shelter; and whether the financial hardship as described above may be expected to last for the foreseeable future.
- (4) In applying this hardship test in the case of attempted recovery by repayment, a substantial period of time will be 180 days, and the foreseeable future shall be no less than 360 days.
- (5) In applying this hardship test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future is the longest potential period of benefit entitlement at the time of the request for a waiver of repayment.
- (6) In making financial hardship determinations, DES shall consider all potential income sources of the claimant, the claimant's family, and all cash resources available to the claimant and the claimant's family in the time period being considered.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0705

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 17, add "of this Rule" after "Paragraph (a)"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0705 is adopted as published in 29:17 NCR 2046 as follows:

04 NCAC 24B .0705 FACTORS IN DETERMINING FAULT

(a) In determining whether fault exists in any overpayment of state or federal compensation, the following factors shall be considered:

- (1) whether the claimant made or caused another to make a material statement or representation in connection with the application for federal compensation that resulted in the overpayment, and whether the claimant knew or should have known that the statement or representation was inaccurate;
- (2) whether the claimant failed or caused another to fail to disclose or omit a material fact in connection with an application for the compensation that resulted in the overpayment, and whether the claimant knew or should have known that the fact was material;
- (3) whether the claimant knew or could have been expected to know that he or she was not entitled to the compensation payment; and
- (4) whether there was a determination that the overpayment was the result of fraud as defined under G.S. 96-18.

(b) If any factor in Paragraph (a) is confirmed, recovery of the overpayment shall not be waived.

*History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0801

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "The requesting..."

Line 19, the use of "USDOL" may be the first use of the acronym. Please use consistent terms.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0800 - INTERSTATE OVERPAYMENT RECOVERY**

2
3 04 NCAC 24B .0801 is adopted as published in 29:17 NCR 2046 as follows:

4
5 **04 NCAC 24B .0801 DUTIES OF THE REQUESTING STATE**

6 (a) The requesting state shall:

7 (1) send the recovering state a request for overpayment recovery assistance that shall include:

8 (A) certification that the overpayment is collectible under the requesting state's law;

9 (B) certification that the determination is final and that any rights to postpone recoupment of
10 the benefits are exhausted or have expired;

11 (C) a statement of whether the state is participating in a cross-program offset by agreement
12 with the U.S. Secretary of Labor; and

13 (D) a copy of the initial overpayment determination and a statement of the outstanding
14 balance;

15 (2) send notice of the request to the claimant pursuant to Rule .0802 of this Section;

16 (3) send the recovering state a new outstanding overpayment balance whenever the requesting state
17 receives any amount of repayment from a source other than the recovering state (e.g., interception
18 of tax refund); and

19 (4) send notice of the request by a method approved by the USDOL.

20
21 *History Note: Authority G.S. 96-4; 96-18;*

22 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0802

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 15, replace the period with a semicolon at the end of the clause.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0802 is adopted as published in 29:17 NCR 2047 as follows:

04 NCAC 24B .0802 DUTIES OF RECOVERING STATE

(a) In recovering state or federal benefit overpayments, the recovering state shall:

(1) issue an overpayment recovery determination to the claimant that shall include the following:

(A) statutory authority for the offset;

(B) identity of the state requesting recoupment;

(C) date of the original overpayment determination;

(D) type of overpayment, such as fraud or non-fraud;

(E) program type;

(F) total amount of offset; and

(G) amount to be offset weekly;

(2) offset any benefits to be paid for each week claimed, in the amount permitted by that state's law;

(3) prepare and forward a check payable to the requesting state, showing the amount recovered, except as provided in Rule .0803 of this Section.

(4) retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefit period, or other extension of benefits, whichever is later; and

(5) not redetermine the original overpayment determination.

History Note: Authority G.S. 96-4; 96-18;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0803

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

For this rule, what happened to the terms "requesting" and "recovering"? Is there a distinction between that classification and "transferring" and "paying"? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0803 is adopted as published in 29:17 NCR 2047 as follows:

04 NCAC 24B .0803 DUTIES OF PAYING STATE

(a) In recovering outstanding overpayments in the transferring state, the paying state shall:

(1) offset any outstanding overpayment it receives from a transferring state prior to honoring any request from any other Interstate Reciprocal Overpayment Recovery Arrangement (IRORA) participating state; and

(2) credit deductions against the benefits paid statement, or forward a check to the transferring state as described Rule .0802 of this Section.

History Note: Authority G.S. 96-4; 96-18;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0804

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

This rule seem specific, but G.S. 96 does not reference "combined wage claim." Is there an overlaying federal standard that should be cited and possibly incorporated by reference? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .0804 is adopted as published in 29:17 NCR 2047 as follows:

04 NCAC 24B .0804 WITHDRAWALS OF COMBINED WAGE CLAIMS

(a) Withdrawal of a combined wage claim after benefits have been paid shall only be permitted where the combined wage claimant has repaid benefits overpaid, or authorizes the new liable state to offset the overpayment.

(1) The paying state shall issue an overpayment determination and forward a copy, together with an overpayment recovery request and an authorization to offset, with the initial claim to the new liable state.

(2) The recovering state, which is the new liable state, shall:

(A) offset the total amount of any overpayment resulting from withdrawal of a combined wage claim before releasing any payments to the claimant;

(B) offset the total amount of any overpayment resulting from withdrawal of a combined wage claim before honoring a request from any other participating state under IRORA;

(C) provide the claimant with written notice for the amount offset; and

(D) prepare and forward a check representing the amount recovered to the requesting state as described Rule .0802(a) of this Section.

*History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0901

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6 and 7, specify the cross-referenced rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0900 - SETOFF DEBT COLLECTION ACT**
2

3 04 NCAC 24B .0901 is adopted as published in 29:17 NCR 2047 as follows:
4

5 **04 NCAC 24B .0901 SETOFF DEBT COLLECTION ACT HEARINGS**

6 Hearings pursuant to G.S. 105A-8(B) shall be conducted consistent with the procedures prescribed in 04 NCAC
7 24C.

8
9 *History Note:* *Authority G.S. 96-4; 105A-8(b);*

10 *Eff. July1, 2015.*

1 **SECTION .1000 - TREASURY OFFSET PROGRAM**

2
3 04 NCAC 24B .1001 is adopted as published in 29:17 NCR 2047 as follows:
4

5 **04 NCAC 24B .1001 NOTICE OF REFERRAL**

6 (a) Consistent with 31 U.S.C. § 3716, DES shall notify each claimant by mail of its intent to refer the debt to the
7 Treasury Offset Program (TOP) at least 60 days before submitting the debt to TOP.

8 (b) Each notice shall include:

- 9 (1) the claimant's name;
10 (2) the type of debt;
11 (3) the total amount of the referred debt;
12 (4) the total amount of fees, as applicable;
13 (5) the amount of assessed penalties, as applicable;
14 (6) a citation to the legal authority that permits collection of the debt through TOP;
15 (7) a clear statement of DES's intention to collect the debt through administrative offset;
16 (8) a statement that the claimant may request a copy of DES's records that support the debt pursuant
17 to Subchapter 04 NCAC 24A;
18 (9) a statement of the claimant's right to request that DES reevaluate the debt;
19 (10) the time period in which request for reevaluation shall be made;
20 (11) a statement of the claimant's right to request to enter into a written repayment agreement with
21 DES;
22 (12) a mailing address to which payments shall be sent;
23 (13) a mailing address and facsimile number to request a reevaluation of the debt;
24 (14) a telephone number to seek information regarding the notice;
25 (15) the date that the notice was mailed to the claimant; and
26 (16) instructions for paying the debt.

27 (c) Claimants choosing to repay the debt after receiving notice shall make payment payable to Division of
28 Employment Security and mail to Benefit Payment Control (BPC) Unit, Post Office Box 25903, Raleigh, NC 27611.
29 or remit by credit card on DES's website at www.ncesc.com, or by calling BPC at (919) 707-1338
30

31 *History Note:* *Authority G.S. 96-4; 96-18; 31 CFR 285, 26 U.S.C. § 6402, and 31 U.S.C. § 3716.*
32 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .1002

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 14, replace "will" with "shall"

Lines 15 thru 16, add a period after "reasons for the decision" and delete the remainder of the clause.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24B .1002 is adopted as published in 29:17 NCR 2048 as follows:

04 NCAC 24B .1002 REEVALUATION OF DEBT

(a) A claimant requesting a reevaluation of their debt shall submit a written request to DES's Benefits Integrity Unit by mail to Post Office Box 25903, Raleigh, NC 27611-5903, or facsimile to (919) 733-1369.

(1) The written request shall explain why the debt should not be referred to the Treasury Offset Program (TOP) for collection.

(2) The written request shall be accompanied by documents or other convincing evidence that shows:

(A) the identity of the individual to whom the debt is assigned is incorrect; and

(B) the amount of the debt is inaccurate;

(b) The Assistant Secretary or designee shall consider the evidence submitted by the claimant.

(c) The Assistant Secretary or designee shall issue a written decision on the request for reevaluation. The written decision shall be mailed to the claimant and include the following:

(1) whether the debt will be referred to TOP; and

(2) reasons for the decision based on the reasons provided by the claimant in the written request for reevaluation.

History Note: Authority G.S. 96-4; 96-18; 31 CFR 285, 26 U.S.C. § 6402, and 31 U.S.C. § 3716.

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0101

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 13, consider adding a cross-reference to 04 NCAC 24A .0106.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0102

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "Timeliness..."

Line 6, delete "that"

Lines 7 and 8, correct the numbering, as currently this list has no "(2)"

Line 8, this clause seems extremely broad. Would any request fail because the "written instructions" could be found on the internet? Would it be more appropriate to state the following:

"no written instructions contrary to the misleading information were provided by DES to the party with service of the order being appealed."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0102 is adopted as published in 29:17 NCR 2048 as follows:

04 NCAC 24C .0102 EXCEPTION TO TIMELINESS REQUIREMENT

(a) Timeliness sanctions shall be waived when DES or an agent state representative gives misleading information on appeal rights to a party, if the party:

(1) establishes what he or she was told that was misleading and how he or she was misled;

(3) identifies, if possible, the individual who misled him or her; and

(4) establishes that no contrary written instructions were available to the party.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

04 NCAC 24C .0103 is adopted as published in 29:17 NCR 2048 as follows:

04 NCAC 24C .0103 BASE PERIOD EMPLOYER DENIED NONCHARGING

A base period employer who was not the claimant's last employer may file an appeal from a determination denying noncharging of benefits to its account as provided in 04 NCAC 24D .0200. The claimant is not a party with appeal rights in this appeal.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0104

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, replace "can" with "shall"

Line 5, is it the intent of this clause to limit the appeal parties or to limit the number of appeals? Is there not a situation where two employers may wish to appeal the same order? Please clarify.

Lines 6, 9, 14, 21, and 28, replace "is" with "shall be" Prior to making that change, please clarify if Items (1) through (5) are mandatory or permissive parties? If the parties are permissive, instead of "shall be" consider "may be"

Lines 12 and 17, should "last work" be "last employer"? Or should this clause merely be the same text as on line 23? Please clarify.

Line 18, is this clause missing text? It is not the same as lines 13 and 24.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0104 is adopted as published in 29:17 NCR 2048 as follows:

04 NCAC 24C .0104 EMPLOYER PARTY TO DETERMINATION

An employer may file an appeal from a determination that affects a claimant's entitlement to benefits if the employer is a party to the determination. Only one employer can be a party with appeal rights to a proceeding.

(1) An employer named as the last employer on an initial claim is a party to a determination ruling on the merits of the claimant's separation from employment and other specific issues raised by the employer regarding the claimant's entitlement to benefits.

(2) An employer named as the last employer on an additional or continued claim is a party to a determination ruling on the merits of that additional or continued claim regarding separation from employment or other specific issues raised by the employer if the employer:

(A) was the employer named as the last work on the claimant's initial claim; or

(B) is a base period employer whose account has been ruled subject to charging of benefits.

(3) A reimbursing employer named as the last employer on an additional or continued claim is a party to a determination ruling on the merits of that additional or continued claim regarding separation from employment or other specific issues raised by the employer if the employer:

(A) was the employer named as the last work on the claimant's initial claim; or

(B) is a base period employer.

(4) If an employer, during a claimant's benefits year, provides DES with information that raises specific issues, including a potential disqualification, ineligibility, allegations of fraud, or other issues that affect a claimant's entitlement to benefits, the employer is a party with appeal rights to a determination ruling on the merits of the specific issue raised by the employer if the employer is:

(A) named as the last employer on the claimant's initial claim;

(B) a base period taxed employer whose account has been ruled subject to charging of benefits, even if that employer was named as the last employer on the claimant's initial claim and did not timely respond to notice of the claimant's initial claim; or

(C) a base period reimbursing employer.

(5) An employer against whom a claimant has alleged entitlement to additional base period wages is a party with appeal rights to that issue.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0201

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, please clarify what is meant by "appearance by a party"? Is this the "legal representative" set forth in 04 NCAC 24A .0105(32)? If so, please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

SECTION .0200 – INITIAL APPEALS HEARING

04 NCAC 24C .0201 is adopted as published in 29:17 NCR 2049 as follows:

04 NCAC 24C .0201

An appearance by a party includes offering testimony, questioning witnesses, and presenting oral argument.

(1) A party shall appear by telephone when the party participates in the telephone conference call with the Appeals Referee on the date and time of the hearing and participates in the proceedings.

(2) A party shall appear in person at the location on the date and times scheduled for the in-person hearing, and participate in the proceedings.

Mere submission of written documents or observation of the proceedings does not constitute an appearance.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0202

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, specify under what paragraph of the cross-referenced rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0202 is adopted as published in 29:17 NCR 2049 as follows:

04 NCAC 24C .0202 PRESENTING AND SCHEDULING APPEALED CLAIMS

A party wishing to appeal from an adjudicator's determination shall file an appeal by mail, facsimile, or email pursuant to Rule 04 NCAC 24A .0104.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015.

04 NCAC 24C .0203 is adopted as published in 29:17 NCR 2049 as follows:

04 NCAC 24C .0203 CONTENTS OF APPEAL TO APPEALS SECTION

A party's written appeal shall contain the following:

- (1) the date of the appeal;
- (2) the identity of the determination being appealed;
- (3) a clear statement of the party's intent to appeal; and
- (4) the name of the party appealing.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0204

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 10, would this information only be available if the in-person hearing was requested at the time of appeal? Please consider the following re-write:

“if requested at the time of filing the appeal, the physical location of an in-person hearing”

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0204 is adopted as published in 29:17 NCR 2049 as follows:

04 NCAC 24C .0204 APPEALS HEARING NOTICE

(a) The Appeals Section shall mail notice of the hearing to each party at least 14 days before the hearing date.

(b) Notice of the hearing shall include:

(1) the determination appealed;

(2) the appealing party;

(3) the time of the hearing;

(4) the date of the hearing;

(5) the physical location of an in-person hearing;

(6) the telephone number of each party for telephone hearings;

(7) each issue, with statutory reference, to be heard and decided;

(8) the name and contact information of the designated Appeals Referee;

(9) the manner by which witnesses may offer evidence and participate in the hearing;

(10) each party's right to legal representation;

(11) instructions for requesting a rescheduling of the hearing;

(12) each party's right and instructions for requesting the issuance of a subpoena for the production of records or individuals to appear to testify;

(13) instructions on how to request an in-person hearing; and

(14) instructions on how to give evidence for a hearing.

(c) The determination, the written appeal, and any additional documents provided to the Appeals Section by either party, shall accompany the hearing notice.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0205

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, track the language in 04 NCAC 24D .0205, and include "is made for an in-person hearing at the time the appeal is filed" after "a request"

Line 4, add "an" before "objection"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0205 is adopted as published in 29:17 NCR 2049 as follows:

04 NCAC 24C .0205 TELEPHONE HEARINGS

(a) Hearings shall be conducted by telephone conference call, unless a request or objection is made pursuant to Rule .0206 of this Section.

(b) In cases of telephone hearings, the Appeals Section shall provide a Telephone Hearing Questionnaire for a party to use to submit each telephone number to be called by the Appeals Referee for the hearing. In the absence of the submission by a party of any telephone number to be called for the hearing, the Appeals Referee shall call a party at the telephone number listed on the hearing notice.

*History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015.*

04 NCAC 24C .0206 is adopted as published in 29:17 NCR 2049 as follows:

04 NCAC 24C .0206 IN-PERSON HEARINGS

(a) A party may request an in-person hearing:

(1) at the time the appeal is filed; or

(2) by filing a written objection to the telephone conference call to:

(A) the Appeals Section as provided for in 04 NCAC 24A .0104; or

(B) the designated Appeals Referee using the contact information provided on the hearing notice.

(b) If travel is required to conduct the in-person hearing, the objecting party shall be required to travel to a location convenient to the non-objecting party and where the Division regularly conducts in-person hearings as determined by the Appeals Referee based on each party's location.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

04 NCAC 24C .0207 is adopted as published in 29:17 NCR 2050 as follows:

04 NCAC 24C .0207 RESCHEDULING A HEARING

(a) Either before or during a hearing, an Appeals Referee, on his or her own motion, or on the motion of a party, may continue or adjourn a hearing for “good cause” in accordance with 04 NCAC 24A .0105. In addition to the reasons set forth in G.S. 96-15(d1), a continuance or an adjournment, may be granted at the request of a party due to:

- (1) illness of the party;
- (2) death in the immediate family of the requesting party;
- (3) a need to obtain an interpreter or translator;
- (4) a religious observance;
- (5) jury duty;
- (6) actively seeking legal representation;
- (7) court appearance unrelated to DES;
- (8) active military duty;
- (9) scheduling conflict created by new employment; or
- (10) to accommodate the business needs of the employer.

(b) Before a hearing, requests for a continuance of the hearing shall be made to the designated Appeals Referee orally or in writing. The request for a continuance of a hearing shall specifically state and explain the reasons for the request.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015.

04 NCAC 24C .0208 is adopted as published in 29:17 NCR 2050 as follows:

04 NCAC 24C .0208 DISQUALIFICATION OF APPEALS REFEREE

(a) An Appeals Referee shall be free of any personal interest or bias in the appeal over which he or she is presiding.

(b) An Appeals Referee shall not participate in hearing an appeal in which that Appeals Referee has a personal interest in the outcome of the appeals decision.

(c) An Appeals Referee may recuse themselves from a hearing to avoid the appearance of impropriety or partiality.

(d) A pre-hearing challenge to the impartiality of a designated Appeals Referee shall be in writing, addressed to the Chief Appeals Referee, and shall be heard and decided by the Chief Appeals Referee or designee.

(e) The Chief Appeals Referee or designee's decision on any pre-hearing challenge to the impartiality of an assigned Appeals Referee shall be in writing and mailed to the parties.

*History Note: Authority G.S. 96-4; 96-15; 20 C.F.R. 650.2;
 Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0209

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 22 references "official notice" and lines 23 and 24 reference "noticed fact." Which term is correct? Please be consistent.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0209 is adopted as published in 29:17 NCR 2050 as follows:

04 NCAC 24C .0209 CONDUCT OF HEARINGS

(a) Consistent with G.S. 96-15(f), all hearings shall be conducted in a manner to preserve the substantial rights of the parties.

(1) The parties to an appeal before an Appeals Referee have the right to present relevant and material evidence as determined by the Appeals Referee.

(2) The Appeals Referee may ask questions to develop the record as to the relevant facts, circumstances, and issues presented at the hearing.

(3) The Appeals Referee may examine parties and witnesses, and shall allow cross-examination to the extent necessary to afford the parties due process.

(4) All issues relevant to the appeal shall be considered and ruled upon.

(b) The Appeals Referee shall give each party ten minutes from the time of the scheduled hearing to appear for the hearing. If the appealing party fails to appear at the hearing and a continuance had not been previously granted the Appeals Referee shall issue an Appeals Decision dismissing the appeal.

(c) A party desiring to introduce documents or other evidence at a hearing shall provide an authenticated copy plus one copy for the Appeals Referee to include in the official record, and a copy to each party to the proceeding. Documents or other evidence shall be provided to the opposing party prior to the hearing.

(d) A party offering numerous documents into evidence shall prepare a list of documents in the order of their presentation. The list shall be provided to the Appeals Referee and opposing party before the hearing, to become part of the official hearing record.

(e) Official notice may be taken of all facts for which judicial notice may be taken and of other facts within the specialized knowledge of the DES. The noticed fact and its source shall be stated on the record and made known to the parties at the earliest practicable time. A party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence.

*History Note: Authority G.S. 96-4; 96-15; 20 C.F.R. 650.2;
Eff. July 1, 2015.*

04 NCAC 24C .0210 is adopted as published in 29:17 NCR 2050 as follows:

04 NCAC 24C .0210 HEARSAY

(a) Hearsay evidence shall be accepted as credible evidence only when it:

(1) falls within the statutory or common law exceptions to the hearsay rules; or

(2) has an equivalent indicia of trustworthiness as competent evidence; and

(3) is more probative on the point for which it is offered than any other evidence which the party
offering the hearsay could reasonably be expected to procure.

(b) The Appeals Referee may permit the parties to file an affidavit at the time of the hearing in the same manner as
applicable to other hearsay evidence.

History Note: Authority G.S. 8C, Art. 8; 96-4; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0211

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "In lieu..."

Line 18, replace "will" with "shall"

Line 26, each statutory citation should be individually listed. If all apply, please list as follows:

"95-230; 95-231; 95-232; 95-233; 95-234; 95-235;...."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0211 is adopted as published in 29:17 NCR 2051 as follows:

04 NCAC 24C .0211 CONTROLLED SUBSTANCE RESULTS

(a) In lieu of live testimony from a laboratory representative at a contested claims hearing, an affidavit from an authorized representative of the laboratory may be presented to prove controlled substance examination results, chain of custody, or compliance with all testing or retesting required by federal or state law.

(1) When a party desires to introduce the affidavit at the hearing, a copy of the affidavit shall be received by the party against whom the affidavit will be offered at least two days before the hearing.

(2) If the party who desires to introduce the affidavit is unable, despite reasonable efforts, to accomplish the required service within the time specified, the Appeals Referee may adjourn or continue the hearing to allow such service to be accomplished. However, the Appeals Referee shall not continue the hearing if the party against whom the affidavit is offered has refused to accept service or has taken other steps to avoid or delay receipt of the affidavit.

(3) At the hearing, the party shall offer an authenticated copy of the affidavit as an exhibit.

(4) If the party against whom the affidavit is offered objects to the entry of the affidavit into the official record, the objecting party may request an adjournment or continuance of the hearing to subpoena the author of the affidavit. The affidavit's author will be permitted to testify by telephone at the reconvened hearing.

(5) Once the affidavit is made a part of the official record of evidence compiled by the Appeals Referee, the Appeals Referee may in their discretion, base findings of fact on the affidavit.

(6) The results of the controlled substance examination and compliance with any applicable statutory or regulatory procedural requirements shall be deemed proven if the claimant admits or stipulates to them during the hearing or by affidavit.

*History Note: Authority G.S. 95-230 through 95- 235; 96-4; 96-15;
Eff. July 1, 2015.*

04 NCAC 24C .0212 is adopted as published in 29:17 NCR 2051 as follows:

04 NCAC 24C .0212 CONTENTS OF APPEALS DECISION

(a) The Appeals Decision shall include:

(1) the names of the individuals present for the hearing;

(2) findings of fact necessary for a resolution of the appeal;

(3) the applicable statutory provisions;

(4) conclusions of law;

(5) the name of the Appeals Referee who conducted the hearing and rendered the decision; and

(6) notice of each party's right to file an appeal of the Appeals Decision and the time period for filing an appeal.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

1 **SECTION .0300 - LEGAL REPRESENTATION FOR INITIAL APPEALS**

2
3 04 NCAC 24C .0301 is adopted as published in 29:17 NCR 2051 as follows:
4

5 **04 NCAC 24C .0301 ADMINISTRATIVE PROCEEDINGS**

6 (a) An individual who is a party to a proceeding may represent himself or herself before an Appeals Referee.

7 (b) A partnership or association may be represented by any of its members.

8 (c) A corporation may be represented by an officer.

9 (d) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.

10
11 *History Note: Authority G.S. 84; 96-4; 96-15; 96-17;*

12 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0302

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, why is this only for "attorney supervision"? Is this not applicable to all "legal representatives"? Please clarify.

Line 8, add "and" at the end of the clause

Lines 12 thru 13, two rules deal with addresses. Please clarify which rule is being referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0302 is adopted as published in 29:17 NCR 2051 as follows:

04 NCAC 24C .0302 NOTICES AND SERVICE TO PARTY

(a) Notices or certification of attorney supervision shall be in writing and presented to the Appeals Referee to become part of the official record, and shall contain:

(1) the name of the supervising attorney;

(2) the name of the person being supervised;

(3) the supervising attorney's active North Carolina State Bar number;

(4) the phone and address information of the supervising attorney.

(b) When a party has a legal representative, all documents or information required to be provided to the party shall only be provided to the legal representative, unless otherwise instructed on the record during the hearing. An address provided to an Appeals Referee for mailing of an Appeals Decision does not constitute a change of address with DES for purposes of DES's official records.

*History Note: Authority G.S. 84; 96-4; 96-15; 96-17;
 Eff. July 1, 2015.*

1 **SECTION .0400 – SUBPOENAS FOR INITIAL APPEALS**

2
3 04 NCAC 24C .0401 is adopted as published in 29:17 NCR 2051 as follows:
4

5 **04 NCAC 24C .0401 ISSUANCE OF SUBPOENAS**

6 (a) Subpoenas to compel the attendance of witnesses and the production of records for any appeal hearing may be
7 issued at the direction of the designated Appeals Referee.

8 (1) A subpoena may be issued at the request of a party or on motion of the Appeals Referee.

9 (2) Any documentation showing service of the subpoena shall become part of the official hearing
10 record.

11 (3) Any request for a subpoena shall be in writing, sent to the Appeals Referee, and shall include:

12 (A) the name of the party requesting the subpoena;

13 (B) the claimant's name;

14 (C) the docket number of the case;

15 (D) the name, address, and telephone number of each person sought for appearance at the
16 hearing;

17 (E) the specific identification of any document, recording, or item sought, including a
18 detailed description of where the item is located;

19 (F) the name and address of the individual or party in possession of any item sought; and

20 (G) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper
21 presentation of the case.

22 (4) The request shall be granted only to the extent that the items or testimony sought appears relevant
23 to the issues on appeal.

24 (b) Legal representatives may issue subpoenas at their own expense only if prior consent is obtained by the
25 designated Appeals Referee.

26 (c) Subpoenas shall be issued at least five days before the date of the scheduled hearing.
27

28 *History Note: Authority G.S. 96-4; 96-15;*

29 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0402

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5 thru 7, consider the following re-write:

“shall be addressed to the designated Appeals Referee, sent prior to the hearing, and contain the following:

- (1) the reasons for the objection; and
- (2) the relief sought by the objecting party.”

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0402 is adopted as published in 29:17 NCR 2052 as follows:

04 NCAC 24C .0402 OBJECTION TO SUBPOENA

(a) Any party or person receiving a subpoena may serve a written objection to the issuance of a subpoena. The objection shall contain the following:

(1) be addressed to the designated Appeals Referee prior to the hearing; and

(2) shall provide reasons for the objection and the relief sought by the objecting party.

(b) The Appeals Referee shall rule on the objection and notify the parties of the ruling before the hearing. The Appeals Referee's ruling shall be in writing or recorded as part of the official hearing record.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

1 **SECTION .0500 – ~~LABOR DISPUTES~~ HIGHER AUTHORITY REVIEW OF APPEALS DECISION**

2
3 04 NCAC 24C .0501 is adopted as published in 29:17 NCR 2052 as follows:
4

5 **04 NCAC 24C .0501 REQUIREMENTS FOR APPEAL STATEMENT TO BOARD OF REVIEW**

6 (a) A party shall file a written statement of appeal from an appeals decision to the Board of Review. A written statement of
7 appeal from an Appeals Decision to the Board of Review shall include the following:

- 8 (1) identify the decision being appealed by the docket number;
9 (2) contain a clear statement of the reasons or grounds for the appeal; and
10 (3) state the name of the party appealing.

11
12 *History Note: Authority G.S. 96-4; 96-15;*
13 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0502

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 11 and 13, specify the paragraph within the statutory reference.

Line 13, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0502 is adopted as published in 29:17 NCR 2052 as follows:

04 NCAC 24C .0502 ACKNOWLEDGMENT OF APPEAL

(a) The receipt of a party's appeal from an Appeals Decision shall be acknowledged in writing by the Appeals Section and sent to all parties of record.

(b) The notice acknowledging receipt of an appeal shall inform each party of the following:

(1) the right to request oral arguments;

(2) the deadline to request oral arguments;

(3) the right to submit written arguments regarding the appeal;

(4) the deadline for submitting written arguments; and

(5) that the party may submit a written request for a record of the hearing proceeding pursuant to G.S. 96-15; and the procedures for obtaining a record of the hearing, including recordings or transcripts.

(c) Records shall be provided in accordance with G.S. 96-4 and 04 NCAC 24A.

History Note: Authority G.S. 96-4; 96-15; 20 C.F.R. 603;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0503

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, add "written" before "request"

Line 6, delete the entire clause

Lines 8 and 26, specify the paragraph within the cross-referenced rule.

Line 8, replace the period after the rule citation with a semicolon

Line 27, are there any "good cause" requirements on the request to reschedule? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0503 is adopted as published in 29:17 NCR 2052 as follows:

04 NCAC 24C .0503 ORAL ARGUMENTS

(a) Oral arguments shall be granted at the discretion of the Board of Review.

(b) A request for oral arguments shall include the following:

(1) be in writing; and

(2) be directed to the Board of Review, North Carolina Department of Commerce by mail, facsimile, or email pursuant to 04 NCAC 24A .0104.

(3) be received within 15 days of the date on the notice acknowledging receipt of an appeal from an Appeals Decision; and

(4) contain a statement that a copy of the request was mailed or personally delivered to the opposing party, if one exists.

(c) If the request is granted, the Board of Review shall give written notice to each interested party to appear before the Board of Review.

(d) Notice to appear before the Board of Review to present oral arguments shall contain:

(1) the Higher Authority Decision docket number;

(2) the Lower Appeals Decision docket number at issue;

(3) the identity of the party requesting oral arguments;

(4) the right of the non-requesting party to appear and present oral arguments;

(5) the date and time for oral arguments;

(6) the physical address where oral arguments are scheduled to be held; and

(7) each party's right to legal representation.

(e) The notice to appear for oral arguments shall be mailed to each party at least 14 calendar days before the date scheduled for arguments.

(f) Any request to reschedule oral arguments shall be sent by mail, fax, or email to the Board of Review pursuant to 04 NCAC 24A .0104, and to each party to the proceeding by mail, fax, or delivery service as defined under 04 NCAC 24A .0105. A request to reschedule oral arguments shall state the reason(s) for the request.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0504

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 14 and 15, replace "DES's official records" and cite the specific rule for address change.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24C .0504 is adopted as published in 29:17 NCR 2053 as follows:

04 NCAC 24C .0504 LEGAL REPRESENTATION

(a) An individual who is a party to a proceeding may represent himself or herself before the Board of Review.

(b) A partnership or association may be represented by any of its members.

(c) A corporation may be represented by an officer.

(d) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.

(e) Notices or certification of attorney supervision shall be in writing and presented to the Board of Review to become part of the official record and shall contain:

(1) the name and business address of the supervising attorney; and

(2) the supervising attorney's active North Carolina State Bar number.

(f) When a party has a legal representative, all documents or information required to be provided to the party shall be provided only to the legal representative, unless otherwise requested in writing to the Board of Review. An address provided to the Board of Review for mailing shall not constitute a change of address with DES for purposes of DES's official records.

(g) Any information provided to a party's legal representative shall have the same force and effect as if it had been sent to the party.

History Note: Authority G.S. 96-4; 96-15; 96-17;

Eff. July 1, 2015.

04 NCAC 24C .0505 is adopted with changes as published in 29:17 NCR 2053 as follows:

04 NCAC 24C .0505 INTRODUCTION OF EVIDENCE IN HIGHER AUTHORITY HEARINGS

A party desiring to introduce documents or other non-testimonial evidence at a de novo hearing shall provide an authenticated copy plus one copy for the Board of Review, or a hearing officer appointed by the Board to include in the official record at the hearing. A copy shall be provided to each party prior to the hearing. Documents or other evidence shall be provided to the opposing party prior to the hearing.

History Note: Authority G.S. 96-4; 96-15;

Eff. July 1, 2015.

04 NCAC 24C .0506 is adopted as published in 29:17 NCR 2053 as follows:

04 NCAC 24C .0506 CONTENT OF HIGHER AUTHORITY DECISION

(a) The Board of Review shall issue a written Higher Authority Decision that includes the following:

(1) the names of the members of the Board of Review who participated in the review;

(2) findings of fact, conclusions of law, and the decision of the Board of Review;

(3) instructions for filing an appeal of the Higher Authority Decision to the superior court and the date the Higher Authority Decision was mailed;

(4) instructions for requesting any post-decision relief or reconsideration if applicable under Rule .0601 of this Subchapter; and

(5) notice that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.

History Note: *Authority G.S. 96-4; 96-11.4; 96-15;*

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0601

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 15, specify the rule cross-referenced.

Line 16, verify the citation. It may be "04 NCAC 24A .0104(m)."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

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04 NCAC 24C .0601 POST-DECISION RELIEF

- (1) be in the form of a motion or petition, and shall be clearly identified as a Request for Reconsideration or a Motion or Petition for Post-Decision Relief;
- (2) identify the party seeking post-decision relief;
- (3) contain the name of each party, and the docket number of the Higher Authority Decision;
- (4) contain a statement that a copy was mailed or personally delivered to each party to the proceedings; and
- (5) explain the reasons why post-decision relief should be granted.

(c) The written request shall be filed with the Board of Review pursuant to 04 NCAC 24A .0104(n).

- (1) that a party has a right to petition for judicial review by appealing the original Higher Authority Decision to the superior court; and
- (2) that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.

History Note: Authority G.S. 96-4; 96-11.4; 96-15;
Eff. July 1, 2015.

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0102

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 16, replace the citation with 96-15(b)(2)

Line 25, should the "and" be an "or"? Please verify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0102 is adopted as published in 29:17 NCR 2054 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) Notice of potential charges to the employer's account shall be provided using the following forms, as applicable:

- (1) Notice of Combined Wage Claim and Potential Charges to Your Account (Form NCUI 551C);
- (2) Notice of Unemployment Claim, Wages Reported and Potential Charges (Form NCUI 551L);
- (3) Notice of Initial Claim and Potential Charges to Reimbursable Employer (Form NCUI 551R);
- (4) Notice of Initial Claim and Potential Charges for Claimants on Temporary Layoff (Form NCUI 551T);
- (5) Reversal of Previously Allowed Noncharging (Form NCUI 553A);
- (6) Reversal of Previously Denied Noncharging (Form NCUI 554);
- (7) Administrative Determination Disallowing Noncharging (Form NCUI 570); and
- (8) List of Charges to Your Account (Form NCUI 626).

*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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0103

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, replace "fourteen" with "14". See [26 NCAC 02C .0108\(9\)](#).

Lines 11 thru 14 reference several forms. Are the content of the forms set forth in other rules that could be cross-referenced?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0103 is adopted as published in 29:17 NCR 2054 as follows:

04 NCAC 24D .0103 REQUIREMENTS FOR FILING PROTESTS

(a) An employer who protests the benefit charges to its account shall make the protest as follows:

(1) in writing within fourteen days of the mailing date of the notice of potential charges;

(2) by mail to: DES Employer Benefit Charges/Benefit Charges Unit, Post Office Box 25903,
Raleigh, North Carolina 27611-5903; or facsimile to 919-733-1126; and

(3) list all grounds for the protest as prescribed under Rule .0105 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 Combined Wage Claim and Potential Charges to Your Account (Form NCUI 551C);

(2) Administrative Determination Disallowing Noncharging (Form NCUI 570);

(3) List of Charges to Your Account (Form NCUI 626); or

(4) Unemployment Tax Rate Assignment (Form NCUI 104).

*History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0104

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0104 is adopted as published in 29:17 NCR 2054 as follows:

04 NCAC 24D .0104 TIME FOR FILING PROTESTS

The provisions of 04 NCAC 24A .0100 shall apply in determining timeliness of a protest.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0105

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "An employer..."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0105 is adopted as published in 29:17 NCR 2054 as follows:

04 NCAC 24D .0105 GROUNDS FOR PROTEST

(a) An employer shall only file protests for the following reasons:

(1) clerical errors in the list of charges;

(2) charges resulting from individuals who were never employed by the employer;

(3) charges resulting from individuals who remain employed by the employer; or

(4) errors in adding charges to an incorrect account.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5;

Eff. July 1, 2015.

04 NCAC 24D .0106 is adopted as published in 29:17 NCR 2054 as follows:

04 NCAC 24D .0106 DES'S RESPONSIBILITIES UPON RECEIPT OF PROTEST

(a) DES shall review the employer's account charges and investigate the accuracy of the charges based on the reasons provided by the employer in the protest.

(b) Upon completion of its review, DES shall issue a written determination of its findings based on the reasons provided by the employer in the protest.

History Note: Authority G.S. 96-4; 96-11.4;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0107

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "The determination..."

Line 9, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0107 is adopted as published in 29:17 NCR 2054 as follows:

04 NCAC 24D .0107 DETERMINATION ON GROUNDS CONTAINED IN PROTEST

(a) The determination by DES shall contain:

- (1) notice of whether the relief sought by the employer in the protest was granted or denied;
- (2) any adjustments that have been made to the list of charges if the relief sought in the protest was granted, or the reasons for denial if the relief sought in the protest was denied;
- (3) the date the determination was mailed to the employer;
- (4) the employer's right to appeal the determination pursuant to 04 NCAC 24C .0200; and
- (5) the time period within which an appeal shall be filed.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0201

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, as there is no paragraph "(b)" delete the "(a)" before "An employer..."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0200 - REQUEST FOR NONCHARGING OF BENEFITS PAYMENTS**

2
3 04 NCAC 24D .0201 is adopted as published in 29:17 NCR 2055 as follows:
4

5 **04 NCAC 24D .0201 MAKING THE REQUEST FOR NONCHARGING**

6 (a) An employer who requests noncharging of benefit charges shall make the request as follows:

7 (1) by stating the reason(s) for the request in writing;

8 (2) within 15 days of the mailing date of the notice of potential charges; and

9 (3) sent by mail to: DES Employer Benefit Charges/Benefit Charges Unit, Post Office Box 25903,

10 Raleigh, North Carolina 27611-5903; or by facsimile to 919-733-1126.

11
12 *History Note:* *Authority G.S. 96-4, 96-11.3, 96-11.4;*

13 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0202

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, as there is no paragraph "(b)" delete the "(a)" before "DES shall..."

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0202 is adopted as published in 29:17 NCR 2055 as follows:

04 NCAC 24D .0202 DETERMINATION ON REQUESTS FOR NONCHARGING

(a) DES shall render a determination in writing as to each request for noncharging. The determination shall contain notice of whether the request for noncharging has been granted or denied.

(1) Where a request for noncharging is granted, the employer's account shall be protected from benefit charges for benefit payments made after the last day that the claimant worked, based on wages reported by the employer before the claimant separated from the employer.

(2) Where a request for noncharging is denied, the determination shall contain:

(A) the reason(s) for denying the request;

(B) the mailing date of the determination;

(C) the time period within which a protest of the denial must be filed; and

(D) instructions for protesting the denial to the Employer Benefit Charges/Benefit Charges

Unit by mail to Post Office Box 25903, Raleigh, North Carolina 27611-5903, or facsimile to (919) 733-1126.

History Note: Authority G.S. 96-4; 96-11.1; 96-11.3; 96-11.4;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0203

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6 and 7, specify the rules cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0203 is adopted as published in 29:17 NCR 2055 as follows:

04 NCAC 24D .0203 APPEALING DENIAL OF REQUEST FOR NONCHARGING

(a) The employing unit may file an appeal following an unsuccessful protest of a request for noncharging.

(b) Employers shall direct all appeals from denials of a request for noncharging to the Appeals Section.

The provisions of 04 NCAC 24A .0100 shall apply in determining timeliness of an appeal.

(c) Hearings on the denial of noncharging shall be conducted pursuant to the provisions of 04 NCAC 24C.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0301

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 20, why does the language of "two-percent or two" not track the language in G.S. 96-11.4(a)(2), specifically with switching "two" and "two-percent"?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

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04 NCAC 24D .0301 ADEQUACY THRESHOLD DETERMINATION

(b) In determining the timeliness of an employer response, DES shall consider the following:

(2) whether the employer had good cause for failing to respond within the 14 day period.

(1) what information was requested;

(3) whether an employer should have provided DES with copies of relevant handbooks, policies, warnings, recordings, documents, or other information related to the claim; and

(d) An employer who fails to submit timely or adequate responses to two-percent or two, whichever is greater, of the total requests for separation information (Form NCUI 500AB) under G.S. 96-11.4 during the reporting cycle, shall not be relieved of erroneous payments in the following charging cycle as defined under 04 NCAC 24A .0105.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15; 23 U.S.C. 3303;
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0302

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 11 thru 13, why is this information included here? Previously, the rules have referred back to 04 NCAC 24A .0104. Please consider replacing this language with reference to a specific paragraph within that Rule.

Line 20, replace "fifteen" with "15". See [26 NCAC 02C .0108\(9\)](#).

Line 20, please clarify where the number "15" comes from?

Line 22, specify the rule cross-referenced.

Line 24, please correct the alignment.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0302 is adopted as published in 29:17 NCR 2055 as follows:

04 NCAC 24D .0302 ADEQUACY THRESHOLD DETERMINATION

(a) The Adequacy Threshold Determination shall include:

- (1) the effect of the determination on the employer's account;
- (2) the reasons for the determination;
- (3) the date the determination was mailed to the employer;
- (4) instructions for protesting the determination; and
- (5) the time period within which a protest must be filed.

(b) An employer may protest its Adequacy Threshold Determination and shall file its written request with DES's Tax Administration Section by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email to des.tax.customerservice@nccommerce.com.

(1) The request shall include the following:

- (A) the name of the employing unit;
- (B) the address of the employing unit;
- (C) the account number of the employing unit;
- (D) a brief statement of the question involved and reasons for the request; and
- (E) the name, address, and official position of the individual making the request.

(2) The written request shall be filed within fifteen days after the date that the Adequacy Threshold Determination notice was mailed to the employer, and the timeliness requirements of 04 NCAC 24A .0100 shall apply.

(c) Following the written request, the Tax Administration Section shall review the employer's request for review and issue a written determination. The determination shall contain the following:

- (1) notify the employing unit of whether its application was granted or denied;
- (2) indicate whether additional information from the employing unit is required; and
- (3) explain the reasons for the ruling and what information was considered.

(d) No further right of appeal from an unfavorable written determination of a protest of an adequacy threshold determination shall exist unless and until an Adequacy Penalty Determination, as defined under Rule .0303 of this Section is subsequently issued at the conclusion of the employer's charging year.

History Note: *Authority G.S. 96-4; 96-11.3; 96-11.4; 23 U.S.C. 3303;*
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0303

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 10, please correct the alignment.

Lines 12 thru 14, why is this information included here? Previously, the rules have referred back to 04 NCAC 24A .0104. Please consider replacing this language with reference to a specific paragraph within that Rule.

Lines 22 thru 23, specify the rule cross-referenced.

Line 27, define or delete "alternatively"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0303 is adopted as published in 29:17 NCR 2056 as follows:

04 NCAC 24D .0303 ADEQUACY PENALTY DETERMINATION

(a) DES shall issue an Adequacy Penalty Determination at the end of each charging year cycle if the employer's account is not relieved of charges for untimely or inadequate responses for particular claims during that charging year cycle, resulting from an adequacy threshold determination in the prior charging year cycle that the employer met or exceeded the adequacy threshold.

(b) The Adequacy Penalty Determination shall include the following:

(1) a listing containing the specific claims that would have resulted in a relief from charges as a result of erroneous unemployment insurance payments that were later reversed on appeal; and

(2) instructions for protesting the Adequacy Penalty Determination;

(c) An employer may protest its adequacy penalty determination and shall file its written request with DES's Tax Administration Section by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email to des.tax.customerservice@nccommerce.com.

(1) The request shall include:

(A) the name of the employing unit;

(B) the address of the employing unit;

(C) the account number of the employing unit;

(D) a brief statement of the question involved and reasons for the request; and

(E) the name, address, and official position of the individual making the request.

(2) The written request shall be filed within 15 days after the date that the Adequacy Penalty Determination was mailed to the employer, and the timeliness requirements of 04 NCAC 24A .0100 shall apply.

(3) Following the written request, the Tax Administration Section shall review the employer's request and issue a written determination. The determination shall include the following:

(A) notify the employing unit of whether its application was granted or denied;

(B) alternatively indicate whether additional information from the employing unit is required;

(C) explain the reasons for the ruling and identify the information considered; and

(D) instructions for appealing the denial to the Board of Review.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 23 U.S.C. 3303;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0304

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 thru 5, why is this information included here? Previously, the rules have referred back to 04 NCAC 24A .0104. Please consider replacing this language with reference to a specific paragraph within that Rule.

Line 13, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0304 is adopted as published in 29:17 NCR 2056 as follows:

04 NCAC 24D .0304 APPEALING ADEQUACY PENALTY DETERMINATIONS

(a) The employing unit may file an appeal of the adequacy penalty determination and request a hearing. The appeal shall be filed by mail to DES's Tax Administration Section at Post Office Box 26504, Raleigh, North Carolina 27611, facsimile to (919) 733-1255, or email to des.tax.customerservice@nccommerce.com.

(b) The appeal shall contain the following:

(1) the date of the appeal;

(2) the identity of the determination, decision or result being appealed;

(3) a clear statement of the party's intent to appeal;

(4) reasons for the appeal; and

(5) the name of the party appealing the determination, decision, or result.

(c) The provisions of 04 NCAC 24A .0100 apply in determining the timeliness of an appeal.

(d) Appeal hearings from Adequacy Penalty Determinations shall be conducted as set forth in Section .1100 of this Subchapter.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 23 U.S.C. 3303;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0401

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, what is the content of the "Form NCUI 604"? Is the content set forth in another rule that could be cross-referenced?

Lines 8 and 9, please delete as the exact language is contained within the next rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0400 - VOLUNTARY ELECTION AND PAYMENTS**

2
3 04 NCAC 24D .0401 is adopted as published in 29:17 NCR 2057 as follows:
4

5 **04 NCAC 24D .0401 VOLUNTARY ELECTION BY EMPLOYERS**

6 (a) Any employer electing coverage under G.S. 96-9.8 of the Employment Security Law shall make the election by
7 completing the Employer Status Report (Form NCUI 604), available on DES's website at www.ncesc.com.

8 (b) The information provided in the Employer Status Report (Form NCUI 604) shall be provided in the same
9 manner as required under Rule .0602 of this Subchapter.

10 (c) Voluntary election shall not be granted if DES determines that potential benefit payments would exceed the
11 taxes received from the employer.

12 (d) The effective date of coverage is January 1, or the first day of employment in the year in which the voluntary
13 election is made, whichever is later.

14 (e) Employers who satisfy the criteria for voluntary election of coverage under this Rule, shall have a contributory
15 unemployment tax account, and shall not have a reimbursable account.

16
17 *History Note: Authority G.S. 96-4; 96-9.6; 96-9.8; 26 U.S.C. 3309;*
18 *Eff. July 1, 2015.*

04 NCAC 24D .0402 is adopted as published in 29:17 NCR 2057 as follows:

04 NCAC 24D .0402 ELECTION TO REIMBURSE IN LIEU OF CONTRIBUTIONS

(a) An employer electing to pay reimbursements for benefits, rather than contributions who meets the requirements of Rule .0401 of this Section, shall make the election by completing the Employer Status Report (Form NCUI 604) available on DES's website at www.ncesc.com; and mailing it to DES Tax Administration at Post Office Box 26504, Raleigh, NC 27611.

(b) The information provided in the Employer Status Report (Form NCUI 604) shall be provided in the same manner as described under Rule.0602 of this Subchapter.

(c) A qualifying employer under G.S. 96-9.6 electing to pay reimbursements for benefits, rather than contributions, shall make the election:

- (1) by writing a letter stating their election to the Tax Administration Section of DES at Post Office Box 26504, Raleigh, NC 27611 within 30 days after the employer receives written notification from the Division that it is eligible to make an election as defined under G.S. 96-9.6.

History Note: *Authority G.S. 96-4; 96-9.6; 96-9.8; 26 U.S.C. 3309;*
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0403

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, please clarify who is "authorized to accept payments".

Line 15, replace "is" with "shall be"

Line 15, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0403 is adopted as published in 29:17 NCR 2057 as follows:

04 NCAC 24D .0403 PAYMENT OF EMPLOYER TAXES

(a) Taxes shall be due and payable to the DES's administrative office in Raleigh, North Carolina, or to an agent of DES authorized to accept payments.

(b) Tax payments shall be made as follows:

(1) electronic check;

(2) credit card;

(3) Automated Clearing House (ACH) credit;

(4) business check with funds drawn from a U.S. financial institution;

(5) cashier's check from a U.S. financial institution; or

(6) cash.

(c) Payments shall be made payable to the Division of Employment Security and sent by U.S. mail or delivery service to DES Tax Administration at Post Office Box 26504, Raleigh North Carolina 27611.

(d) Timeliness of payments is determined pursuant to the 04 NCAC 24A .0100.

History Note: Authority G.S. 96-4; 96-9.15;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0501

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 15 thru 18, please clarify the requirement to apply for a social security number? G.S. 96-18.1(c)(2) allows a federal identification number as an alternative to a social security number. Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

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04 NCAC 24D .0501 RECORDS OF EMPLOYERS

- (1) the name and correct address of the employer;
- (2) the name and address of each division, branch, or establishment operated, owned, or maintained by the employer at different locations in North Carolina; and
- (3) the following information for each individual performing services for the employer:
 - (A) the individual's name;
 - (B) the individual's address;
 - (C) the individual's social security number;
 - (i) if an individual performing services for an employer does not have a social security number, the employer shall request that the individual produce a receipt issued by the Social Security Administration, showing that the individual has filed an application for a social security number.
 - (ii) the employer shall copy and retain a copy of the receipt, and the individual must retain the receipt.
 - (D) the dates on which the individual performed services for the employer;
 - (E) the actual number of hours worked each day and total number of hours worked each week;
 - (F) daily attendance record, including times that the individual did not work for reasons other than lack of work;
 - (G) the state or states in which the individual performed services;
 - (i) the base of operations if any of the services are performed outside North Carolina, and are not incidental to the services performed in North Carolina; or
 - (ii) if there is no base of operations, then the place from which services are directed or controlled; and
 - (iii) the individual's state of residence.
 - (H) the amount of wages paid to the individual for each separate payroll period, if paid weekly, or if not paid weekly, by calendar weeks;
 - (i) date of payment of the wages; and
 - (ii) amounts or remuneration paid to each individual for each separate payroll period other than "wages," as defined in G.S. 96-1(b)(28);
 - (I) amounts paid to individuals as allowances or reimbursements for travel or other business

1 expenses, dates of payments, and the amounts of expenditures actually incurred and
2 documented by the individual;

3 (J) whether, during any payroll period the individual worked less than full time, and if so, the
4 hours and dates worked;

5 (K) reasons for an individual's separation from work;

6 (L) any contract between the employer and the worker;

7 (M) where the employer considers the worker to be an independent contractor or otherwise
8 not an "employee" under the Employment Security Law, all records, documentation and
9 evidence which supports that classification; and

10 (N) federal and state tax returns for the periods when the worker was employed.

11 (b) In addition to the records required in Paragraph (a), each employer shall keep the following:

12 (1) the records that establish and reflect ownership and any changes of ownership of the employer;

13 (2) the address where the headquarters of the employer is located;

14 (3) the mailing address of the employer; and

15 (4) the address at which the records are available for inspection or audit by representatives of DES.

16 (c) Each employer's records shall reflect:

17 (1) the addresses of owners; or

18 (2) in the event the employer is a corporation or an unincorporated organization, the records shall
19 show the addresses of directors, officers, and any individuals on whom subpoenas, legal processes,
20 or citations may be served in North Carolina.

22 *History Note: Authority G.S. 96-4; 96-9.15; 96-10; 26 U.S.C. 3306;*

23 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0502

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Paragraph (e) is referencing a repealed statute. Please see [G.S. 150B-21.6](#). The citation to 04 NCAC 24A .0101 appears incorrect. Specify location and cost of documents.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0502 is adopted as published in 29:17 NCR 2058 as follows:

04 NCAC 24D .0502 WAGE RECORDS

(a) Wages paid for services excluded from the definition of "employment" as defined in G.S. 96-1(b)(12) shall be separately reflected in the employer's records to indicate the following:

(1) the time of service; and

(2) remuneration for services that is separate from taxable wages.

(b) Where there are pay periods in which an individual performs services excluded from the term "employment," and any service which is "employment," the employer's record shall reflect the hours spent in the excluded service and the hours spent in "employment."

(c) If any remuneration other than monetary wages is paid to or is received by an individual related to services performed by the individual, the records shall show the total amount of cash wages and the cash value of any other remuneration paid by the employer.

(d) If any part of an individual's wages is not paid in cash, the reasonable cash value of the remuneration other than cash shall be deemed for all relevant purposes as follows:

(1) the amount that is agreed upon between the employer and the individual if:

(A) the terms of the agreement are reported to DES; and

(B) DES determines that the agreed value or amount is reasonable pursuant to IRS Publication 15-B; or

(2) the amount DES determines if:

(A) the amount agreed upon is unreasonable; or

(B) the employer and the individual fail to agree upon an amount; or

(C) the employer fails to report the terms of an agreement to DES; and

(D) the employer fails to show the cash value of the noncash remuneration prior to the due date of contributions with respect to the wages.

(3) DES shall determine an amount by reviewing documents, tax values, internet sites and other available information that reflects the market value.

(e) This rule incorporates material found in the IRS Publication 15-B by reference in accordance with G.S.150B-14(c). Copies of the incorporated material found in IRS Publication 15-B can be obtained at no cost to the public by request by contacting DES as specified under 04 NCAC 24A .0101.

*History Note: Authority G.S. 96-1(b)(28); 96-4; 26 U.S.C. 3306; IRS Pub. 15-B
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0503

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 10 and 15, replace "will" with "shall"

Paragraph (c) is referencing a repealed statute. Please see [G.S. 150B-21.6](#). The citation to 04 NCAC 24A .0101 appears incorrect. Specify location and cost of documents.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0503 is adopted as published in 29:17 NCR 2058 as follows:

04 NCAC 24D .0503 ALLOWANCES AND REIMBURSEMENT ADVANCES

(a) Allowances, advances of reimbursements paid to an individual in employment for traveling, and other bona fide expenses incurred or reasonably expected to be incurred in the business of the individual's employer shall not be treated as wages, provided:

(1) a separate payment is made for the expenses; or

(2) itemized accounting records are kept indicating the separate amounts where a single payment covers both wages and expenses combined; and

(3) the amount of payments for expenses excluded from wages will not exceed the amounts allowable as deductible expenses by income tax regulations under the United States Internal Revenue Code, 26 U.S.C. §62(2) and §162(a)(2). Where the United States Internal Revenue Service (IRS) has not made a determination, DES shall make an independent determination.

(b) Where an employee must pay traveling and other expenses out of commissions or salary and these amounts are not accounted for separately, the entire amount of commissions or salary will be considered wages, unless the employer submits itemized records which show that a certain percentage of commissions or salary is expenses.

(1) The money value for room and board shall not be included in wages if the room and board is provided to the employee for the convenience of the employer.

(A) If the room and board has been excluded from wages by the IRS for income tax withholdings, FICA and FUTA, it shall be considered to be for the convenience of the employer and excluded from wages.

(c) This rule incorporates 26 U.S.C § 62(2) "Adjusted Gross Income Defined" and 26 U.S.C § 162(a)(2) "Traveling Expenses" by reference in accordance with G.S.150B-14(c). Copies of the incorporated material found in 26 U.S.C § 62(2) and 26 U.S.C § 162(a)(2) can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0101.

*History Note: Authority G.S. 96-4; 150B-21.6; 26 U.S.C. 62(2); 162(a)(2).
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0504

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, is the rule applicable to the entire section or just this Rule? Please clarify.

Line 24, is the language applicable to the entire subchapter or just this section or rule? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0504 is adopted as published in 29:17 NCR 2059 as follows:

04 NCAC 24D .0504 MANNER OF RECORDKEEPING

(a) Each employer shall maintain records as prescribed in this Section.

(b) All records shall be kept and maintained in a manner that preserves the integrity of all reports that the employing unit is required to file with DES.

(1) Records shall be accessible to authorized representatives of DES within the geographical boundaries of the State of North Carolina.

(2) When records are not maintained, or are not available within North Carolina, the employing unit shall pay to DES the expenses and costs incurred when a representative of DES is required to travel outside the State of North Carolina to inspect or audit the employing unit's records or provide for delivery of the required records for inspection or audit to DES via mail or electronic transmission.

(3) Where records are delivered via electronic transmission, the employer shall provide DES with all necessary information to access the content of the electronic transmission.

(c) Where any part of an employing unit's accounting records are maintained by an automated data processing system, the employing unit shall provide the following:

(1) audit trails with all supporting documentation;

(2) general accounting books with any ledgers containing source references that coincide with financial reports for reporting periods; and

(3) a description of the automatic data processing portion of the employing unit's accounting system.

(d) Each employing unit, when requested by DES, shall furnish a job description of duties performed by any individual or group of individuals who are performing or have performed services for the employing unit.

(e) Records prescribed by this Subchapter shall be preserved for five years after the calendar year in which wages for services are paid.

*History Note: Authority G.S. 96-4; 96-10; 26 U.S.C. 3306;
Eff. July 1, 2015.*

SECTION .0600 - REPORTS

04 NCAC 24D .0601 is adopted as published in 29:17 NCR 2059 as follows:

04 NCAC 24D .0601 GENERAL FORMAT OF REPORTS AND FORMS AND METHODS OF SUBMISSION

(a) The following shall file the portion of the required Employer's Quarterly Tax and Wage Report (NCUI 101) that contains the name, social security number, and gross wages of each employee on magnetic or electronic media using a compact disk, online remote tax filing, or upload of data file via the internet format:

(1) employers with 25 or more employees in any one calendar quarter; and

(2) other entities, including agents reporting on behalf of employers, who file reports for a client employer with a total of 25 or more employees in any one calendar quarter.

(b) Quarterly Employer's Tax and Wage Reports (Form NCUI 101) shall contain the individual employees' wages section and wage summary section.

(c) Employers, including agents, who file an Employer's Quarterly Tax and Wage Report for a client employer with less than 25 total employees in any one calendar quarter may use magnetic or electronic media reporting. Employers with less than 25 employees may also file paper returns.

(d) A magnetic or electronic media wage report from agents reporting on behalf of employers may contain information from multiple employers.

History Note: Authority G.S. 96-4; 96-9.15;
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0602

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: 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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9, replace "which" with "that"

Line 11, add a period after "cases"

Line 12, replace "business or transfers, leases or" with "business, transfers, leases, or"

Line 12, add a comma after "of its business"

Line 13, replace "ten" with "10". See [26 NCAC 02C .0108\(9\)](#).

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0602 is adopted as published in 29:17 NCR 2059 as follows:

04 NCAC 24D .0602 STATUS REPORTS

(a) Each employing unit shall file a status report with DES within 10 days of becoming subject to the Employment Security Law. The Status Report shall contain the following:

(1) the name and address of the business;

(2) names, social security numbers, and addresses of the owners and responsible officers of the business;

(3) any records pertaining to contracts for business acquisitions which indicate successorship status; and

(4) any information about company officers in continuity of control cases

(b) An employing unit that ceases business or transfers, leases or sells all or any part of the assets of its business or changes the trade name or address of the business shall give notice to DES within ten days by filing a status report. The status report shall contain, in addition to the requirements listed under Paragraph (a), the former name and address of the business.

History Note: Authority G.S. 96-4; 96-10; 96-11.7;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0603

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, replace "which" with "that"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0603 is adopted as published in 29:17 NCR 2060 as follows:

04 NCAC 24D .0603 QUARTERLY REPORTS FROM TAXED EMPLOYERS

(a) Each employer, other than a domestic employer who has elected to report and pay annually under G.S. 96-9.15(f), shall file with DES, within the month during which contributions for any period become due, an Employer's Quarterly Tax and Wage Report (Form NCUI 101) for the preceding calendar quarter which shall indicate the following:

(1) the total amount of remuneration paid for employment, or proof that no remuneration was paid during the quarter;

(2) the total amount of wages paid for employment;

(3) the amount of wages paid to each individual employee; and

(4) the name and social security number of each individual to whom the wages were paid and the federal identification number, if one exists.

History Note: *Authority G.S. 96-4; 96-9.6; 96-9.15; 96-10;*
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0604

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, add "of this Rule" after "Paragraph (a)"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0604 is adopted as published in 29:17 NCR 2060 as follows:

04 NCAC 24D .0604 ANNUAL REPORTS FROM DOMESTIC EMPLOYERS

(a) A request by a domestic employer to report wages paid, and pay contributions on an annual basis shall be made in writing and delivered to DES pursuant to 04 NCAC 24A .0104. There is no special form or format required for the written request.

(b) Each qualified domestic employer who has made an election as referenced in Paragraph (a) shall file with DES, a domestic Employer's Annual Tax and Wage Report (Form NCUI 101-C), that shall include all information specified under Rule .0603 of this Section and subtotaled for each quarter during the calendar year in which wages were paid.

History Note: Authority G.S. 96-4; 96-9.15; 96-10;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0701

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 17, replace "(i.e.," with "including"

Line 19, delete the parentheses after "operations" and add a comma

Lines 21 through 28 seem unrelated to the prior list of (1) thru (5). Should this content be shifted towards the left and create Paragraphs (b) thru (d)? Please clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

**Section .0700 - TRANSFER OF EXPERIENCE RATING TO RELATED ENTITY SUCCESSOR
ACCOUNT**

04 NCAC 24D .0701 is adopted as published in 29:17 NCR 2060 as follows:

04 NCAC 24D .0701 TRANSFER OF EXPERIENCE

(a) A new successor employer that acquires a part of an entity related to the transferring employer shall request a percentage of the transferring employer's experience rating when:

- (1) the successor employer is a distinct and severable portion of the transferring employer;
- (2) it is severed from the control of the transferring employer;
- (3) a severable and distinct portion of the successor employer would not be a disregarded entity or subsidiary of the transferring employer but an entity that is operational on its own with no support from the transferring employer;
- (4) the successor employer is comprised of shareholders or owners, or employees from the transferring employer; and
- (5) the successor employer's operations may remain similar to those of the transferring employer (i.e., proprietorships that split between family members as defined in G.S. 96-1(b)(18), spin-off corporations, partnerships that split operations between partners, or any other division in operations) that would not result in denial of a new discrete employer number to the successor employer pursuant to G.S. 96-11.7(c).
 - (A) A transferring employer shall be left operational on its own with no support from the successor employer.
 - (B) A successor employer shall request a transfer of experience under conditions described in Rule .0702 of this Section and a transferring employer shall request to retain the remaining experience pursuant to Rule .0702 of this Section.
 - (C) The percentage of the experience that is transferred to the successor employer shall be transferred as of the date of acquisition for use in determining the successor's contribution rate.

History Note: Authority G.S. 96-4; 96-10; 96-11.7;
Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0702

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, is this the "successor" or "transferring" employer?

Lines 6 and 7, and lines 8 and 9, besides the term "immediately" and the phrase "relating to the severable portion acquired", is there a distinction between these clauses? Is the distinction of a "severable portion" significant enough to justify the repetitive language? Please clarify.

Line 8, define or delete "immediately"

Line 10, replace "above" with "of this Rule"

Line 19, what is the content of the Form NCUI 603? Is the content set forth in another rule that could be cross-referenced?

Line 19, specify under what paragraph of the cross-referenced rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .0702 is adopted as published in 29:17 NCR 2060 as follows:

04 NCAC 24D .0702 REQUIREMENTS FOR TRANSFER OF EXPERIENCE

(a) An employer shall submit the following information to DES when requesting a partial transfer of experience rating:

(1) the total three-year taxable payroll ending June 30th prior to the last computation date for the transferring employer; and

(2) the total three-year taxable payroll ending June 30th immediately prior to the last computation date for the transferring employer, relating to the severable portion acquired.

(b) Notwithstanding Paragraph (a) above, an alternate three-year payroll may be used when the severed or retained unit was not operated by the transferring employer during the three-year period ending June 30th prior to the last computation date.

(c) A successor employer that acquires the experience rating account, either total or partial, shall be liable for accrued benefits and acquire related rights based on the transferring employer's employment prior to the acquisition. Benefit charges to the transferring or successor employer shall be made in accordance with the percentage used to transfer the experience rating account, based on wages paid prior to the transfer.

(d) The requirements of this Section shall apply to transfers mandated by law, and those requiring DES's approval pursuant to G.S. 96-11.7.

(e) The completion and submission of Form NCUI 603 in accordance with Rule 04 NCAC 24A .0104 shall satisfy the requirements of this Rule.

History Note: Authority G.S. 96-4; 96-10; 96-11.7;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0801

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 16, specify the rule cross-referenced.

Lines 18 thru 19, why is this information included here? Previously, the rules have referred back to 04 NCAC 24A .0104. Please consider replacing this language with reference to a specific paragraph within that Rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1
2 **SECTION .0800 - AGREEMENTS TO COMPROMISE**
3

4 04 NCAC 24D .0801 is adopted as published in 29:17 NCR 2061 as follows:
5

6 **04 NCAC 24D .0801 APPLICATION**

7 (a) An employing unit may file a request for compromise of its tax debt with DES.

8 (b) A request for compromise shall include the following:

9 (1) the name and address of the employing unit;

10 (2) the date the request to compromise is made;

11 (3) the date the requested compromise is requested to be effective;

12 (4) stated reasons for the request to compromise;

13 (5) evidence to support the claim or reasons for the request;

14 (6) the amount and terms offered by the employer to settle the debt; and

15 (7) the signature of a duly authorized representative of the employer.

16 (c) The employer shall provide all information requested by the Department pursuant to Section .0500 of this
17 Section for the determination of the compromise.

18 (d) The request for compromise shall be filed with DES's Tax Administration Section by mail to Post Office Box
19 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.
20

21 *History Note: Authority G.S. 96-4; 96-10; 96-10.1;*

22 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0901

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 14, specify under what paragraph of the cross-referenced rule.

Line 16, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .0900 - SPECIAL TAX INVESTIGATIONS**
2

3 04 NCAC 24D .0901 is adopted as published in 29:17 NCR 2061 as follows:
4

5 **04 NCAC 24D .0901 SPECIAL TAX INVESTIGATIONS**

6 (a) When it is discovered by a representative of DES that a claimant is alleging that he or she was an employee and
7 the employer is alleging that the claimant was not an employee, the matter shall be referred to DES's Assistant
8 Secretary in writing.

9 (b) The Assistant Secretary, on behalf of DES, shall issue a Result of Investigation by the Tax Administration
10 Section upon receipt of the findings of the investigation. The Result of Investigation shall be in writing and mailed
11 to each party to the controversy pursuant to 04 NCAC 24A .0103.

12 (d) The Result of Investigation shall provide notice of each party's rights for filing an appeal to obtain a hearing
13 before the Board of Review, and the time period within which an appeal shall be filed with DES's Tax
14 Administration Section by mail, facsimile, or email pursuant to 04 NCAC 24A .0104.

15 (e) Appeal hearings pursuant to this Section shall be upon order of the Board of Review and conducted pursuant to
16 Section .1100 of this Subchapter.

17
18 *History Note:* *Authority G.S. 96-4; 96-9.2;*
19 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1001

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 16 thru 17, this sentence seems unrelated to the prior list. Should this content be shifted towards the left and create Paragraph (c)? Please clarify.

Line 16, add "for a review and determination" between "request shall"

Line 16, replace "on or before" with "prior to"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .1000 - REQUESTS AND HEARINGS TO REVIEW AND REDETERMINE TAX RATE**

2
3 04 NCAC 24D .1001 is adopted as published in 29:17 NCR 2061 as follows:
4

5 **04 NCAC 24D .1001 REQUEST FOR REDETERMINATION OF TAX RATE**

6 (a) An employer may request a review and redetermination of its tax rate after receiving notice of the tax rate.

7 (b) An employer requesting a review and redetermination of its tax rate shall file its written request with DES's Tax
8 Administration Section by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email
9 to des.tax.customerservice@nccommerce.com.

10 (1) The request shall include the following:

11 (A) the name of the employer;

12 (B) the address of the employer;

13 (C) the account number of the employer;

14 (D) a brief statement of the question involved and reasons for the request; and

15 (E) the name, address, and official position of the individual making the request.

16 (2) The request shall be filed on or before May 1 following the effective date of the contribution rate
17 pursuant to G.S. 96-9.2(d).

18
19 *History Note:* *Authority G.S. 96-4; 96-9.2;*

20 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1002

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, place the text from line 8, so that the clause reads as follows:

"ruling shall be mailed to the employer unit's address as set forth in 04 NCAC 24A .0103, and include the following:"

Line 8, reflect the deleted text

Line 12, please clarify the purpose of the text "If DES's ruling is adverse to the employing unit,". Is there a threshold determination to appeal? Are appeal requests reviewed and denied? Consider deleting the beginning clause of this sentence.

Lines 14 thru 16, why is this information included here? Previously, the rules have referred back to 04 NCAC 24A .0104. Please consider replacing this language with reference to a specific paragraph within that Rule.

Line 17, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .1002 is adopted as published in 29:17 NCR 2061 as follows:

04 NCAC 24D .1002 DIVISION'S OBLIGATIONS

(a) The Division shall review the employing unit's request to review and redetermine its tax rate and all available facts, and shall issue a written ruling. The ruling shall include the following:

- (1) notify the employing unit of whether its application was granted or denied;
- (2) the applicable legal authority, with specific citations, for the ruling;
- (3) be mailed to the employing unit's address as reflected in DES's official records;
- (4) contain the mailing date of the notice;
- (5) a statement containing the employer's right to appeal the notice; and
- (6) the time period within which an appeal shall be filed.

(b) If DES's ruling is adverse to the employing unit, the employing unit may file an appeal of the ruling and request a hearing.

- (1) The appeal shall be filed by mail to DES's Tax Administration Section at Post Office Box 26504, Raleigh, North Carolina 27611, facsimile to (919) 733-1255, or email to des.tax.customerservice@nccommerce.com.
- (2) Hearings requested pursuant to this Section shall be conducted as set forth in Section .1100 of this Subchapter.

History Note: *Authority G.S. 96-4; 96-9.2;*
Eff. July 1, 2015.

04 NCAC 24D .1003 is adopted as published in 29:17 NCR 2062 as follows:

04 NCAC 24D .1003 CONTINUED PAYMENTS REQUIRED

The employer shall continue to pay contributions at the rate assigned pending any hearing on an application for review and redetermination of tax rate until finally adjudicated. If the rate assigned is subsequently changed by a ruling of the Board of Review or the courts, the employer shall be entitled to a refund, or be liable for additional contributions.

History Note: Authority G.S. 96-4; 96-9.2; 96-10;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1101

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, consider the following re-write:

"All appeals regarding tax matters, or monetary eligibility shall be filed with the..."

Line 7, specify the rule cross-referenced.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .1100 - TAX LIABILITY HEARINGS**

2

3 04 NCAC 24D .1101 is adopted as published in 29:17 NCR 2062 as follows:

4

5 **04 NCAC 24D .1101 APPEALING A TAX MATTER**

6 (a) Employers shall direct all appeals regarding tax matters, or monetary eligibility to the DES Tax Administration
7 Section pursuant to 04 NCAC 24A .0104.

8 (b) A written appeal under this rule shall contain the following:

9 (1) the date of the appeal;

10 (2) the identity of the determination, decision, or result being appealed;

11 (3) a clear statement of the party's intent to appeal;

12 (4) reasons for the appeal; and

13 (5) the name of the party appealing the determination, decision, or result.

14

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

16 *Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1102

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9, would this information only be available if the in-person hearing was requested at the time of appeal? Please consider the following re-write:

“if requested at the time of filing the appeal, the physical location of an in-person hearing”

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .1102 is adopted as published in 29:17 NCR 2062 as follows:

04 NCAC 24D .1102 SCHEDULING TAX HEARINGS

(a) A notice of the hearing shall be mailed to each party at least fourteen days before the hearing date.

(b) The hearing notice shall include the following:

- (1) identify the determination, decision, or result being appealed or protested;
- (2) the name of the appealing or protesting party;
- (3) the date and time of the hearing;
- (4) the physical location of an in-person hearing;
- (5) the telephone number at which each party will be called for a telephone hearing;
- (6) each issue, with statutory reference, to be heard and decided;
- (7) the name and contact information for the Board of Review or designated Hearing Official;
- (8) the manner in which witnesses may offer evidence and participate in the hearing;
- (9) each party's right to obtain a legal representative as defined in 04 NCAC 24A .0105;
- (10) instructions for requesting a rescheduling of the hearing;
- (11) notice that a party may object to a telephone hearing and request an in-person hearing;
- (12) a statement of each party's right to request the issuance of a subpoena for the production of records or individuals to appear to testify, and instructions for how to do so.

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

Eff. July 1, 2015.

04 NCAC 24D .1103 is adopted as published in 29:17 NCR 2062 as follows:

04 NCAC 24D .1103 TELEPHONE HEARINGS

(a) Hearings shall be conducted by telephone conference call, unless a request is made for an in-person hearing at the time the appeal is filed, or an objection is made pursuant to Rule .1104 of this Section.

(b) In cases of telephone hearings, the Board of Review shall provide a Telephone Hearing Questionnaire for each party to submit each telephone number to be called by the Board of Review or its designated Hearing Official for the hearing. If a party fails to submit a telephone number to be called for the hearing, the Board of Review shall call each party at the telephone number listed on the hearing notice.

*History Note: Authority G.S. 96-4;
 Eff. July 1, 2015.*

04 NCAC 24D .1104 is adopted as published in 29:17 NCR 2062 as follows:

04 NCAC 24D .1104 IN-PERSON HEARINGS

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

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

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

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1105

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Are there no requirements for continuances before the Board of Review? Please clarify why the content of this Rule is not similar to 04 NCAC 24C .0207.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .1105 is adopted as published in 29:17 NCR 2062 as follows:

04 NCAC 24D .1105 RESCHEDULING A TAX HEARING

(a) The Board of Review may continue or adjourn a hearing at any time.

(b) A request for a continuance of a hearing made prior to the hearing date shall be in writing and shall specify the reasons for the request.

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

Eff. July 1, 2015.

04 NCAC 24D .1106 is adopted as published in 29:17 NCR 2062 as follows:

04 NCAC 24D .1106 SUBPOENAS

(a) Any party's request for a subpoena to be issued by the Board of Review shall be in writing, sent to the Board of Review, and shall include:

- (1) the name of the party requesting the subpoena;
- (2) the claimant's name, if applicable;
- (3) the employer's name, if applicable;
- (4) the docket number of the case;
- (5) the name, address, and telephone number of each person sought for appearance at the hearing;
- (6) the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;
- (7) the name and address of the individual or party in possession of any item sought; and
- (8) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.

(b) Legal representatives shall issue subpoenas at their own expense and discretion.

(c) Any party or person receiving a subpoena may serve a written objection to the issuance of the subpoena.

- (1) The objection shall be directed to the Board of Review prior to the commencement of the hearing and provide reasons for the objection and the relief sought by the objecting party.
- (2) The Board of Review shall rule on the objection and notify the parties before the hearing. The Board of Review's reasons for its ruling shall be in writing or stated on the record during the hearing.

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

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1107

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

This Rule addresses the Board of Review and appears to limit the appeal to tax issues. Please clarify that this is only for this specific process, in light of 04 NCAC 24C .0501.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .1107 is adopted as published in 29:17 NCR 2063 as follows:

04 NCAC 24D .1107 THE TAX OPINION

(a) Following the conclusion of a tax hearing, the Board of Review shall issue a tax opinion with respect to the appeal filed.

(b) The tax opinion shall set forth:

(1) a statement of the case;

(2) any findings of fact;

(3) conclusions of law;

(4) the final order with regard to the opinion rendered;

(5) the date the opinion was mailed;

(6) instructions for filing an appeal; and

(7) the time period within which an appeal shall be filed.

(c) The Board of Review shall mail a copy of the tax opinion to each party to the appeal.

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

Eff. July 1, 2015.

SECTION .1200 - SEASONAL PURSUITS

04 NCAC 24D .1201 is adopted as published in 29:17 NCR 2063 as follows:

04 NCAC 24D .1201 REQUEST FOR SEASONAL DETERMINATION

(a) Each employer desiring a seasonal determination shall request assignment of the seasonal period by DES.

(b) The request shall be made in writing by completing the Application for Seasonal Determination (Form NCUI 611) that is available on DES's website at www.ncesc.com and addressed to the Tax Administration Section by mail, facsimile, or email as provided in 04 NCAC 24A .0104.

(c) Requests for Seasonal Determination using (Form NCUI 611) shall contain the following:

- (1) the employing unit's name and physical address;
- (2) years of operation in North Carolina;
- (3) location of each seasonal pursuit;
- (4) description of seasonal each pursuit; and
- (5) beginning and ending dates of each seasonal pursuit for the last four years.

(d) The request shall be filed at least 20 days before the beginning date of the period of production operations for which the designation is requested.

(e) Completion and Submission of Form NCUI 611 shall satisfy the requirements of this Rule.

History Note: Authority G.S. 96-4; 96-16;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1202

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

NOTE WELL: *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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8, replace the semicolon at the end of the clause with a period.

Line 16, specify the cross-referenced rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .1202 is adopted as published in 29:17 NCR 2063 as follows:

04 NCAC 24D .1202 WRITTEN DETERMINATION

(a) DES shall issue a written determination granting or denying the request upon making its determination pursuant to G.S. 96-16(c). The determination shall notify the employer of the following:

(1) the specific seasonal period assigned by DES;

(2) the effective date of the determination; and

(3) the specific filing requirements for seasonal employers;

(b) Any determination that denies the request for a seasonal designation shall state the reasons for the denial.

(c) Each determination shall contain notice of each party's right to appeal the determination and request a hearing, the date the determination was mailed, and the time period within which an appeal shall be filed.

(d) The employer may file its appeal of a denial of a request for seasonal pursuit designation with DES's Tax Administration Section in the same manner as prescribed under Rule .1201 of this Section, by submitting a Form NCUI 611 by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email to des.tax.customerservice@nccommerce.com

(e) Hearings shall be conducted as set forth in Section .1100 of the Subchapter.

History Note: Authority G.S. 96-4; 96-16;

Eff. July 1, 2015.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1203

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, what is the content of the "Form NCUI 543"? Is the content set forth in another rule that could be cross-referenced?

Line 5, replace "will" with "shall"

Line 11, define or delete "frequent or regularly"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .1203 is adopted as published in 29:17 NCR 2063 as follows:

04 NCAC 24D .1203 DISPLAY REQUIRED

(a) Each employer shall display no less than two Notice to Workers of a Seasonal Determination forms in separate locations (Form NCUI 543) on its premises. Form NCUI 543 will be sent to employers when approved for Seasonal Pursuit status by mail.

(b) The Notice to Workers of a Seasonal Determination (Form NCUI 543) shall be provided by DES and shall be displayed on the employer's premises in such places as:

- (1) entry ways used by workers to enter and exit the employer's premises;
- (2) in or near an area where a record of time worked is required to be used or frequented by workers;
- (3) a bulletin board in places where workers frequent or regularly gather; or
- (4) other locations within the place of employment visible to employees.

History Note: Authority G.S. 96-4; 96-16;
Eff. July 1, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1204

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, specify the cross-referenced rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

04 NCAC 24D .1204 is adopted as published in 29:17 NCR 2063 as follows:

04 NCAC 24D .1204 WAGE RECORDS AND REPORTS REQUIREMENT

(a) Any pursuit that DES determines to be seasonal shall maintain payroll records such that the seasonal wages paid to workers during the active periods of the seasonal pursuit may be distinguished from any non-seasonal wages that are paid to those workers.

(b) Any employer engaged in a seasonal pursuit shall submit quarterly wage reports pursuant to Section .0600 of this Subchapter, showing the seasonal wages paid to workers during the active periods assigned by DES.

(c) Within 15 days of the date that DES mails notice of a seasonal period, the employer shall complete and submit to DES a Breakdown of Wages Previously Reported for Workers to Show Seasonal and Non-Seasonal Wages (Form NCUI 542) with seasonal wages in the current base period and in intervening quarters between the base period and completed calendar quarters preceding the first day of the active period, which shall include the following:

(1) each worker's social security number, and name; and

(2) each worker's seasonal wages, non-seasonal wages and total wages for each calendar quarter.

(d) Any wages earned by seasonal workers outside the seasonal period assigned by DES shall be reported as non-seasonal wages, even though they may have been earned for seasonal work.

History Note: Authority G.S. 96-4; 96-16;

Eff. July 1, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1301

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7, add a comma after "interest"

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .01300 – COLLECTION METHODS OF EMPLOYER DEBT**

2
3 04 NCAC 24D .1301 is adopted as published in 29:17 NCR 2064 as follows:

4
5 **04 NCAC 24D .1301 NOTICE TO EMPLOYER**

6 (a) DES shall serve notice and execution of levy on employer to collect past due unemployment insurance taxes,
7 penalties, interest and costs.

8 (b) Notice shall be written and provided to the employer by U.S. mail.

9 (c) The notice shall state the following:

10 (1) that DES is in possession of judgments and executions that were properly docketed and indexed
11 by the clerks of the superior court;

12 (2) the county of the superior court where the judgments and executions are docketed;

13 (3) that DES mailed previous notice of the debt and the date DES mailed notice to the employer;

14 (4) the amount owed by the employer;

15 (5) the name of any other individual or entity that will receive notice of the debt;

16 (6) the statutory authority for service of execution of levy by DES;

17 (7) the relief sought by DES; and

18 (8) the name, address and telephone number of an authorized representative of DES who may be
19 contacted regarding the debt.

20
21 *History Note: Authority G.S. 1-359; 96-4; 96-10; 96-18;*

22 *Eff. July 1, 2015.*

04 NCAC 24D .1302 is adopted as published in 29:17 NCR 2064 as follows:

04 NCAC 24D .1302 NOTICE TO GARNISHEE

(a) DES shall serve notice and execution of levy on third parties in order to collect past due unemployment insurance taxes, penalties, interest, and costs.

(b) Notice shall be written and provided to the garnishee by U.S. mail.

(c) The notice shall state the following:

(1) the name of the indebted employer;

(2) that DES is in possession of judgments and executions that were properly docketed and indexed by the clerks of the superior court;

(3) the county of the superior court where the judgments and executions are docketed;

(4) that the employer has received previous notice of the debt;

(5) the amount owed by the employer;

(6) statutory authority for service of execution of levy;

(7) relief sought and how to remit payment; and

(8) the name, address and telephone number of an authorized representative of DES who may be contacted regarding the debt.

*History Note: Authority G.S. 1-359; 96-4; 96-10;
Eff. July 1, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1401

DEADLINE FOR RECEIPT: Wednesday, June 10, 2015

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, is the intent of this Rule to apply for any DES forms? If so, replace "this section" with "the Rules of this Chapter" Please clarify applicability of this Rule.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, May 29, 2015

1 **SECTION .1400 - RECORDS**

2
3 04 NCAC 24D .1401 is adopted as published in 29:17 NCR 2064 as follows:
4

5 **04 NCAC 24D .1401 OFFICIAL FORMS**

6 Unless otherwise provided, all forms referenced under this section are available by contacting the Employer Call
7 Center (ECC) as follows:

8 (1) mailing address is Post Office Box 26504, Raleigh, North Carolina 27611;

9 (2) phone number is (919) 707-1150;

10 (3) facsimile number is (919) 715-0780; or

11 (4) email address is des.tax.customerservice@nccommerce.com.
12

13 *History Note: Authority G.S. 96-4; 96-16;*

14 *Eff. July 1, 2015.*

04 NCAC 24E .0101 - .0104 are repealed as published in 29:17 NCR 2064 – 2066 as follows:

04 NCAC 24E .0101 CONFIDENTIALITY OF UNEMPLOYMENT INSURANCE INFORMATION

04 NCAC 24E .0102 REQUEST FOR DOCUMENTS AND RECORDS

04 NCAC 24E .0103 FEES FOR COPIES AND SERVICES

04 NCAC 24E .0104 PAYMENT OF FEES

History Note: Authority G.S. 96-4(d); 96-4(x); 20 CFR 603;

Eff. May 1, 2013

Repealed Eff. July 1, 2015.