

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0105

DEADLINE FOR RECEIPT: Wednesday, February 17, 2016

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 change line 1 to reflect the current rulemaking action of this Rule:

"is amended under temporary procedures as follows:"

Line 25, define or delete "truthfully"

Line 30, replace "including," with "including"

Line 30, delete "but not limited to"

Page 2, line 22, replace "is" with "means" after the defined term in parentheses

Page 4, line 23, add a comma after "Rico"

Page 4, line 36, delete "ch" as that language is not currently in the NC Administrative Code

Page 4, line 36, please add a complete history note, as reflected here:

<http://www.ncoah.com/rules/examples/Temporary%20Amendment%20for%20Publication%20in%20the%20NCAC.pdf>. Please provide the statutory history of the rule, the initial effective date of the permanent rule, and the proposed effective date of the temporary rule. The changes to the history note as it [currently exists in the NC Administrative Code](#) would be underlined.

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, February 15, 2016



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Department of Commerce, Division of Employment Security

2. Rule citation & name: 04 NCAC 24A .0105 DEFINITIONS

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 20, 2015
- b. Proposed Temporary Rule published on the OAH website: December 1, 2015
- c. Public Hearing date: December 10, 2015
- d. Comment Period: December 1, 2015 – December 22, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 1, 2015
- f. Adoption by agency on: February 12, 2016
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

OFFICE OF ADMIN HEARINGS

2016 FEB 12 PM 3: 51

FILED

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: Session Law 2015-238 (Senate Bill 15)
Effective date: January 1, 2016
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

Recently enacted Session Law 2015-238 (Senate Bill 15) "An Act to Make Changes to the Unemployment Insurance Laws, as Recommended by the Joint Legislative Oversight Committee on Unemployment Insurance, and to Confirm Appointments to the Board of Review" makes several sweeping changes requiring temporary rules to be adopted, including repeal of Post-Decision Relief (Requests for Reconsideration) and increasing weekly job contacts for claimants. Specifically, Senate Bill 15 under Section 2.3.(a) removes the requirement from G.S. 96-14.9(e), that claimants "[seek] work on at least two different days during the week" and instead only requires that claimant's make "five" job contacts with "potential employers during the week." As such, DES must now define what constitutes a valid job search for purposes of the statute due to the increase in weekly job contacts now required by law, as well as define what is a valid job contact, in light of the statutory change no longer requiring claimants seek work on "at least two different days during the week." Specifically, 04 NCAC 24A .0105 DEFINITIONS is amended to now include and define "Application for a position" which is a previously undefined term now used throughout 04 NCAC 24B .0107 VALID JOB CONTACTS, which is necessary to properly effectuate that rule.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

If these rules are not adopted under temporary procedures, DES could potentially risk a sudden increase in claim activity resulting from public misunderstanding of what constitutes a valid job search for purposes of receiving unemployment benefits. These rules specifically clarify what qualifies as a job contact for purposes of recently amended G.S. 96-14.9(e). As such, DES has promulgated these temporary rules as a result of a recent change in legislation, and such changes are needed as soon as possible to effectively carry out the functions of the agency and prevent any disturbance in unemployment benefits to the citizens of North Carolina.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jeremy L. Ray

Phone: 919-707-1033

E-Mail: Jeremy.ray@nccommerce.com

Agency contact, if any: Jeremy L. Ray

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E-Mail: Jeremy.ray@nccommerce.com

10. Signature of Agency Head*:

W. J. B.

* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SENATE BILL 15
RATIFIED BILL**

AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS, AS
RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
UNEMPLOYMENT INSURANCE, AND TO CONFIRM APPOINTMENTS TO THE
BOARD OF REVIEW.

The General Assembly of North Carolina enacts:

PART I. ENHANCE UI PROGRAM INTEGRITY/REPORTING

SECTION 1. Chapter 96 of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Miscellaneous Provisions.

"§ 96-36. Unemployment insurance program integrity; reporting.

(a) Findings and Purpose. – The General Assembly finds that program integrity measures have been implemented by the Division to maximize the efficiency and effectiveness of the State's unemployment insurance program. The purpose of this section is to assure that these efforts shall include the rigorous and consistent use of business intelligence and data analytics for enhanced unemployment insurance program integrity.

(b) Required Activities. – To achieve the program integrity enhancements required by this section, at a minimum, the Division shall do all of the following:

- (1) Prioritize Division program integrity efforts that maximize utilization of and information sharing with or between these projects and initiatives in order to prevent, detect, and reduce unemployment insurance fraud, improper payments, overpayments, and other programmatic irregularities:
 - a. Government Data Analytics Center (GDAC);
 - b. Southeast Consortium Unemployment Insurance Benefits Initiative (SCUBI); and
 - c. Any other program integrity capabilities identified by the Division.
- (2) Coordinate efforts with the Office of Information Technology Services to ensure that the Division identifies and integrates into its operations and procedures the most effective and accurate processes and scalable tools available to prevent payment of fraudulent, suspicious, or irregular claims.
- (3) Coordinate efforts with the Department of Revenue to enhance alerts indicating circumvention of the payment of unemployment insurance taxes.
- (4) Coordinate efforts with the Department of Health and Human Services to facilitate claims cross-matching and other appropriate steps to enhance program integrity.
- (5) Coordinate efforts with the Office of State Controller to facilitate cross-matching and other appropriate steps using BEACON (Building Enterprise Access for North Carolina's Core Operation Needs).

(c) Quarterly Reporting. – Beginning October 1, 2015, and then quarterly thereafter, the Division shall make detailed written progress reports on its efforts to carry out all of the directives in this section to the chairs of the Joint Legislative Oversight Committee on Unemployment Insurance, the chairs of the Joint Legislative Oversight Committee on Information Technology, the chairs of the House Appropriations Subcommittee on Natural and Economic Resources, the chairs of the Senate Appropriations Committee on Natural and



Economic Resources, and the Fiscal Research Division. At a minimum, the quarterly report shall include all of the following:

- (1) Metrics regarding unemployment benefits overpayments, improper payments, and fraudulent payments, in terms of both percentage and dollar amount.
- (2) Information on fraud perpetrator metrics, in terms of percent and value, by type (whether by employer or claimant), and activity subcategory, such as employee misclassification, unemployment insurance tax rate manipulation (SUTA dumping), fictitious employers, fictitious claimants, deceased claimants, incarcerated claimants, work and earn, and similar activities.
- (3) Quantified investigation activity, including the following:
 - a. Type and subcategory of investigations.
 - b. Number of alerts received during the quarter.
 - c. Number of alerts investigated during the quarter.
 - d. Number of false positives.
 - e. Number of dispositions entered.
- (d) Annual Reporting. – Beginning January 1, 2016, the Division shall make an annual report to the General Assembly on its efforts to carry out all of the directives in this section. At a minimum, each annual report shall include all of the following information:
 - (1) The methodology used by the Division to determine analytic priorities for unemployment insurance program integrity investigation.
 - (2) A report on the State's Benefit Accuracy Measurement (BAM) as required by the U.S. Department of Labor, including how North Carolina's BAM has changed over time and how its current rate compares to other states. The report shall also include an update on BAM methodology and information regarding how it might be modified.
 - (3) An explanation of the Division's unemployment insurance program integrity activities in coordination with the Office of Information Technology Services, the Department of Health and Human Services, the Department of Revenue, and the Office of State Controller as required by subsection (b) of this section.
 - (4) Division workflows, both intra-agency and interagency, to address process problems and program integrity issues, including identification of tools, resources, and plans for continued improvement of unemployment insurance program integrity efforts.
 - (5) An analysis of the information required by subsection (c) of this section, along with an explanation of how that information will be used to augment the State's business intelligence and data analytics capabilities to prevent, detect, and reduce unemployment insurance fraud, improper payments, overpayments, and other programmatic irregularities."

PART II. UNEMPLOYMENT INSURANCE LAW CHANGES

SECTION 2.1. G.S. 20-7(b2) is amended by adding a new subdivision to read:

"(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

- ...
- (7) To the Department of Commerce, Division of Employment Security, for the purpose of verifying employer and claimant identity."

SECTION 2.2.(a) G.S. 96-14.9(e) reads as rewritten:

"(e) Actively Seeking Work. – The Division's determination of whether an individual is actively seeking work is based upon the following:

- (1) The individual is registered for employment services, as required by the Division.

- (2) The individual has engaged in an active search for employment that is appropriate in light of the employment available in the labor market and the individual's skills and capabilities.
- (3) The individual has sought work on at least two different days during the week and made at least two-five job contacts with potential employers-employers during the week.
- (4) The individual has maintained a record of the individual's work search efforts. The record must include the potential employers contacted, the method of contact, and the date contacted. The individual must provide the record to the Division upon request."

SECTION 2.2.(b) This section becomes effective January 1, 2016, and applies to claims for benefits filed on or after that date.

SECTION 2.3.(a) G.S. 96-15(h) reads as rewritten:

"(h) **Judicial Review.** – ~~Any A~~ decision of the Division, in the absence of judicial review as herein provided, or in the absence of an interested party filing a request for reconsideration, shall become Board of Review becomes final 30 days after the date of notification or mailing thereof, whichever is earlier, unless a party to the decision seeks judicial review as provided in this subsection. Judicial review shall be-is permitted only after a party claiming to be aggrieved by the decision has exhausted his remedies before the Division as provided in this Chapter the remedies provided in this Chapter and has filed a petition for review in the superior court of the county in which he-the petitioner resides or has his-the county in which the petitioner's principal place of business-business is located. The petition for review shall-must explicitly state what exceptions are taken to the decision or procedure of the Division and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner shall-must serve copies of the petition by personal service or by certified mail, return receipt requested, upon the Division and upon all parties of record to the Division proceedings. The Division must furnish the petitioner the names Names-and addresses of the parties shall be furnished to the petitioner by the Division upon request. The Division shall be deemed to be-is a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. Any questions regarding the requirements of this subsection concerning the service or filing of a petition shall be determined by the superior court. Any party to the Division proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the Division shall-must transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such-the additional cost as is occasioned-incurred by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed-the court considers the changes desirable."

SECTION 2.3.(b) This section becomes effective October 1, 2015, and applies to decisions made on or after that date.

SECTION 2.4.(a) G.S. 96-3 reads as rewritten:

"§ 96-3. Division of Employment Security.

The Division of Employment Security (DES) is created within the Department of Commerce and shall administer the provisions of this Chapter under the supervision of the Assistant Secretary of Commerce through two coordinate sections: the Employment Security Section and the Employment Insurance Section. The Employment Security Section shall administer the employment services functions of the Division. The Employment Insurance Section shall administer the unemployment taxation and assessment functions of the Division-Commerce."

SECTION 2.4.(b) G.S. 96-4(j) reads as rewritten:

"(j) **Hearings.** – The Assistant Secretary shall appoint hearing officers or appeals referees to hear contested matters arising from the Employment Security Section and the Employment Insurance Section-Division of Employment Security. Appeals from the decisions of the hearing officers or appeals referees shall be heard by the Board of Review."

SECTION 2.4.(c) G.S. 96-9.15(f) reads as rewritten:

"(f) Domestic Employer Exception. – The Division may authorize an employer of domestic service employees to file an annual report and to file that report by telephone. An annual report allowed under this subsection is due on or before the last day of the month following the close of the calendar year in which the wages are paid. A domestic service employer that files a report by telephone must contact either the tax auditor assigned to the employer's account or the ~~Employment Insurance Section~~ Division of Employment Security in Raleigh and report the required information to that auditor or to that section by the date the report is due."

SECTION 2.5.(a) G.S. 1-359 reads as rewritten:

"§ 1-359. Debtors of judgment debtor may satisfy execution.

(a) After the issuing of an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the sheriff's receipt is a sufficient discharge for the amount paid.

(b) When the Division of Employment Security of the Department of Commerce (Division) prevails in a civil action against an employer to collect unpaid employment taxes under G.S. 96-10(b), the Division may attach or garnish the employer's credit card receipts or other third-party payments in payment of the unpaid taxes in the manner provided by subsection (a) of this section. Direct receipt by the Division is a sufficient discharge for the amount paid by a credit card company, clearinghouse, or third-party payment processor."

SECTION 2.5.(b) G.S. 96-10 reads as rewritten:

"§ 96-10. Collection of contributions.

...
(b) Collection. –

(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Division, under the hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars (\$50.00), the Division may not certify the amount to the clerk of court until a field tax auditor or another representative of the Division personally contacts, or unsuccessfully attempts to personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Division may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Division for a period not exceeding 180 days from the date upon which the original

certificate is certified to the clerk of superior court. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Division for service the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the contributions, penalty, interest, and costs due by the employer. Any judgment that is executable and allowed under this section shall be subject to attachment and garnishment under G.S. 1-359(b) in payment of unpaid taxes that are due from the employer and collectable under this Article.

...

(i) Except as otherwise provided in this subsection, no suit or proceedings for the collection of unpaid contributions may be begun under this Chapter after five years from the date on which the contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which the suit or proceeding is instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this Chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the ~~Assistant Secretary of the Division~~ Board of Review directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by certified mail to the last known address of the employing unit. The order shall be deemed to have been issued on the date the order is mailed by certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or collection shall, in a case under Title II of the United States Code, be suspended for the period during which the Division is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed.

...."

SECTION 2.6. G.S. 96-14.9 reads as rewritten:

"§ 96-14.9. Weekly certification.

(a) Requirements. – An individual's eligibility for a weekly benefit amount is determined on a week-to-week basis. An individual must meet all of the requirements of this section for each weekly benefit period. An individual who fails to meet one or more of the requirements is ineligible to receive benefits until the condition causing the ineligibility ceases to exist:

- (1) File a claim for benefits.
- (2) Report ~~at an employment office~~ as requested by the ~~Division~~ Division and present valid photo identification meeting the requirements of subsection (k) of this section.
- (3) Meet the work search requirements of subsection (b) of this section.

...
(k) Photo Identification. – The individual must present the Division one of the following documents bearing the individual's photograph:

- (1) A drivers license, learner's permit, provisional license, or nonoperator's identification card issued by North Carolina, another state, the District of Columbia, United States territory, or United States commonwealth.
- (2) A United States passport.
- (3) A United States military identification card.
- (4) A Veterans Identification Card issued by the United States Department of Veterans Affairs.
- (5) A tribal enrollment card issued by a federally recognized tribe.
- (6) Any other document that the Division determines adequately identifies the individual and that is issued by the United States, any state, the District of Columbia, United States territory, or United States commonwealth.
- (7) A traveler card issued by the U.S. Department of Homeland Security, such as the NEXUS SENTRI and FAST CARDS."

SECTION 2.7. Section 1.10(c) of S.L. 2011-401 reads as rewritten:

"SECTION 1.10.(c) The Department of Commerce, Division of Employment Security, shall adopt ~~all existing~~ rules and regulations in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted and filed with the Rules Review Commission by December 31, 2012, May 20, 2015, shall expire."

SECTION 2.8.(a) G.S. 96-14.4 is repealed.

SECTION 2.8.(b) G.S. 96-14.3 reads as rewritten:

"§ 96-14.3. ~~Minimum and maximum duration~~ Duration of benefits.

(a) Duration. – The ~~minimum and maximum~~ number of weeks an individual is allowed to receive unemployment benefits depends on the seasonal adjusted statewide unemployment rate that applies to the six-month base period in which the claim is filed. One six-month base period begins on January 1 and one six-month base period begins on July 1. For the base period that begins January 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of July, August, and September applies. For the base period that begins July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of January, February, and March applies. The Division must use the most recent seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and not the rate as revised in the annual benchmark. ~~The number of weeks allowed for an individual is determined in accordance with G.S. 96-14.4.~~

Seasonal Adjusted Unemployment Rate	Minimum Number of Weeks	Maximum Number of Weeks
Less than or equal to 5.5%	5	12
Greater than 5.5% up to 6%	6	13
Greater than 6% up to 6.5%	7	14
Greater than 6.5% up to 7%	8	15
Greater than 7% up to 7.5%	9	16
Greater than 7.5% up to 8%	10	17
Greater than 8% up to 8.5%	11	18
Greater than 8.5% up to 9%	12	19
Greater than 9%	13	20

(b) Total Benefits. – The total benefits paid to an individual equals the individual's weekly benefit amount allowed under G.S. 96-14.2 multiplied by the number of weeks allowed under subsection (a) of this section."

SECTION 2.8.(c) G.S. 96-14.12(b) reads as rewritten:

"(b) Duration of Benefits. – This subsection applies to an individual and the spouse of an individual who is unemployed based on services performed for a corporation in which the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation. The maximum number of weeks an individual or an individual's spouse may

receive benefits is ~~limited to the lesser of six weeks or the applicable weeks determined under G.S. 96-14.4 weeks.~~"

SECTION 2.8.(d) G.S. 96-16(f) reads as rewritten:

- "(f) (1) A seasonal worker shall be eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs within the active period or periods of the seasonal pursuit or pursuits in which he earned base period wages.
- (2) A seasonal worker shall be eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period or periods of the seasonal pursuit in which he has earned base period wages provided he has exhausted benefits based on seasonal wages. Such worker shall also be eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during the inactive period or periods of the seasonal pursuit in which he earned base period wages irrespective as to whether he has exhausted benefits based on seasonal wages.
- (3) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on seasonal wages shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in ~~G.S. 96-14.4,~~ G.S. 96-14.3, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.
- (4) The maximum amount of benefits which a seasonal worker shall be eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in ~~G.S. 96-14.4,~~ G.S. 96-14.3, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.
- (5) In no case shall a seasonal worker be eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in ~~G.S. 96-14.4.~~G.S. 96-14.3."

SECTION 2.8.(e) This section becomes effective July 1, 2015.

SECTION 2.9. G.S. 96-15 reads as rewritten:

"§ 96-15. Claims for benefits.

- ...
- (b) ...
- (2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant, or whether any disqualification should be imposed, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed 14 days from the mailing or delivery of the notice of the filing of a claim against the employer's account, whichever first occurs, to file with the Division its protest of the claim in order to have the claim referred to an adjudicator for a decision on the question or issue raised. Any protest filed must contain a basis for the protest and supporting statement of facts, and the protest may not be amended after the 14-day period from the mailing or delivery of the notice of filing of a claim has expired. ~~A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a~~

~~fax number is on file.~~ No payment of benefits shall be made by the Division to a claimant until one of the following occurs:

- a. The employer has filed a timely protest to the claim.
- b. The 14-day period for the filing of a protest by the employer has expired.
- c. A determination under this subdivision has been made.

Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant, or whether any disqualification should be imposed, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal.

...

(d1) No continuance shall be granted except upon application to the Division, the appeals referee, or other authority assigned to make the decision in the matter to be continued. A continuance may be granted only ~~for good cause shown and upon such terms and conditions as justice may require.~~ Good cause the Division by rule shall provide. Acceptable grounds for granting a continuance shall include, but not be limited to, those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State, such as service as a member of the North Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater jurisdiction.

...."

SECTION 2.10.(a) G.S. 96-14.1(b) reads as rewritten:

"(b) Valid Claim. – To obtain benefits, an individual must file a valid claim for unemployment ~~benefits and benefits, register for work, work, and have a weekly benefit amount calculated pursuant to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00).~~ benefits, register for work, work, and have a weekly benefit amount calculated pursuant to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00). An individual must serve a one-week waiting period for each claim filed. A valid claim is one that meets the employment and wage standards in this subsection for the individual's base period. A valid claim for a second benefit year is one that meets the employment and wage standards in this subsection since the beginning date of the prior benefit year and before the date the new benefit claim is filed:

- (1) Employment. – The individual has been paid wages in at least two quarters of the individual's base period.
- (2) Wages. – The individual has been paid wages totaling at least six times the average weekly insured wage during the individual's base period. If an individual lacks sufficient base period wages, then the wage standard for that individual is determined using the last four completed calendar quarters immediately preceding the first day of the individual's benefit year. This alternative base period may not be used by an individual in making a claim for benefits in the next benefit year."

SECTION 2.10.(b) This section is effective when it becomes law and applies to benefit claims filed on or after October 4, 2015.

PART III. DIVISION OF EMPLOYMENT SECURITY BOARD OF REVIEW

SECTION 3.1.(a) Notwithstanding the appointment provisions in G.S. 96-4(b) and in G.S. 96-15.3, as enacted by this act, and to achieve the staggered terms provided in G.S. 96-15.3, as enacted by this act, Jeanette Doran, appointed by the Governor in December 2013 to serve on the Board of Review as the member that represents the general public, is confirmed to serve on the Board of Review for the term beginning upon appointment and expiring on June 30, 2015. In accordance with G.S. 96-15.3, as enacted by this act, the term beginning July 1, 2015, will expire on June 30, 2019.

SECTION 3.1.(b) Notwithstanding the appointment provisions in G.S. 96-15.3, as enacted by this act, Jeanette Doran, appointed by the Governor in December 2013 to serve on

the Board of Review as the member that represents the general public, is confirmed to serve on the Board of Review for the term beginning July 1, 2015, and expiring on June 30, 2019.

SECTION 3.1.(c) Notwithstanding the appointment provisions in G.S. 96-4(b) and in G.S. 96-15.3, as enacted by this act, and to achieve the staggered terms provided in G.S. 96-15.3, as enacted by this act, Keith Holliday, appointed by the Governor in December 2013 to serve on the Board of Review as the member that represents employers, is confirmed to serve on the Board of Review for the term beginning upon appointment and expiring on June 30, 2016. In accordance with G.S. 96-15.3, as enacted by this act, the term beginning on July 1, 2016, will expire on June 30, 2020.

SECTION 3.1.(d) Notwithstanding the appointment provisions in G.S. 96-4(b) and in G.S. 96-15.3, as enacted by this act, Stanley Campbell, appointed by the Governor in December 2013 to serve on the Board of Review as the member that represents employees, is confirmed to serve on the Board of Review for the term beginning upon appointment and expiring on June 30, 2017. In accordance with G.S. 96-15.3, as enacted by this act, the term beginning on July 1, 2017, will expire on June 30, 2021.

SECTION 3.2.(a) The following decisions in an appeal by a party to a decision of an appeals referee or hearing officer under Chapter 96 of the General Statutes are hereby validated and given the same legal effect as if those decisions had been issued by the Board of Review (BOR):

- (1) Decisions issued by the Assistant Secretary of Commerce for the Division of Employment Security or by the Secretary of Commerce's designee.
- (2) Decisions issued by the three individuals appointed by the Governor in December 2013 to serve as members of the BOR.

SECTION 3.2.(b) This section is effective when it becomes law and applies to decisions rendered on or after November 1, 2011.

SECTION 3.3.(a) G.S. 96-4(b) and Section 21 of S.L. 2013-224 are repealed.

SECTION 3.3.(b) Article 2D of Chapter 96 of the General Statutes is amended by adding a new section to read:

"§ 96-15.3. Board of Review.

(a) Purpose. – The Board of Review (BOR) is created to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Division. The Department of Commerce must assign staff to the BOR. The BOR and its staff must perform their job responsibilities independent of the Governor, the General Assembly, the Department, and the Division and in accordance with any written guidance promulgated and issued by the U.S. Department of Labor.

(b) Members. – The BOR consists of three members appointed by the Governor and subject to confirmation by the General Assembly as provided in subsection (c) of this section. One member must be classified as representative of employees, one member must be classified as representative of employers, and one member must be classified as representative of the general public. The member appointed to represent the general public will serve as chair of the BOR and must be a licensed attorney in this State.

Members of the BOR serve staggered four-year terms. A term begins on July 1 of the year of appointment and ends on June 30 of the fourth year. No individual may serve more than two terms on the BOR. In calculating the number of terms served, a partial term that is less than 24 months in length will not be included. The General Assembly must set the annual salaries of the BOR in the current Operations Appropriations Act.

(c) Confirmation. – Appointments of members to serve on the BOR are subject to confirmation by the General Assembly by joint resolution. The Governor must submit the name of the individual the Governor wants to appoint to the BOR to the General Assembly for confirmation on or before May 1 of the year of the expiration of the term. If the General Assembly does not confirm the appointment by May 30, the office will be considered vacant and must be filled in accordance with subsection (d) of this section. The Governor may not resubmit the name of the nominee whom the General Assembly did not confirm for the office. If the Governor fails to timely submit a nomination, the General Assembly will appoint to fill the succeeding term as provided in subsection (e) of this section.

(d) Vacancies. – For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the regular session, (ii) during any adjournment of the regular session for more than 10 days, and (iii) after sine die adjournment of the regular

session. A vacancy in an office of the BOR prior to the expiration of the term of office must be filled in accordance with this subsection:

- (1) During legislative session. – If a vacancy in an office arises or exists when the General Assembly is in session, the Governor must submit the name of the individual to be appointed to fill the vacancy for the remainder of the unexpired term within 30 days after the vacancy arises to the General Assembly for confirmation by the General Assembly. If the General Assembly does not confirm the appointment within 30 days after the General Assembly receives the nomination, the office will be considered vacant and must be filled in accordance with this subsection. The Governor may not resubmit the name of the nominee whom the General Assembly did not confirm for the vacancy. If the Governor fails to timely submit a nomination, the General Assembly will appoint to fill the vacancy as provided in subsection (e) of this section.
- (2) During legislative interim. – If a vacancy in an office arises or exists when the General Assembly is not in session, the Governor must appoint an individual to that office to serve on an interim basis pending confirmation by the General Assembly. The Governor must submit the name of the individual to be appointed to fill the vacancy for the remainder of the unexpired term to the General Assembly for confirmation within 14 days of the date the General Assembly convenes or reconvenes for the next regular session. If the Governor fails to timely submit a nomination, the General Assembly will appoint to fill the vacancy as provided in subsection (e) of this section.

(e) Legislative Appointments. – If the Governor fails to timely submit the name of an individual to be appointed to the BOR as provided in this section, then the General Assembly may appoint an individual to fill the vacancy in accordance with G.S. 120-121 and the provisions of this subsection. If the vacancy occurs in an odd-numbered year, the appointment is made upon the recommendation of the President Pro Tempore of the Senate. If the vacancy occurs in an even-numbered year, the appointment is made upon the recommendation of the Speaker of the House of Representatives."

SECTION 3.4. The Joint Legislative Program Evaluation Oversight Committee shall include in the 2015-2017 Work Plan for the Program Evaluation Division of the General Assembly a study of the value provided to the State by the Board of Review (BOR). The Division shall report its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee and to the Joint Legislative Oversight Committee on Unemployment Insurance by March 1, 2016. The study should include the following:

- (1) A cost-benefit analysis of the State provision of a higher level of appeal of decisions for the Division of Employment Security through the BOR:
 - a. Annual costs of the BOR.
 - b. Number of cases handled annually by the BOR.
 - c. Average time for BOR to process a case.
 - d. Cost per case.
 - e. Number and percentage of BOR decisions differing from the initial decision.
 - f. Average percentage distribution of time BOR staff members spend on BOR tasks and tasks unrelated to BOR.
 - g. Independence of BOR staff from budgetary control, direction, or override by non-BOR agency employees and officers.
- (2) A comparison to other states with BOR functions on the same factors enumerated in subdivision (1) of this section.
- (3) A determination of how the cost of BOR compares to the monetary value derived from the BOR appeals function.
- (4) A determination if BOR resources could be applied more efficiently and effectively to provide equivalent value to the State.
- (5) An identification of noneconomic or nonquantifiable justifications, if any, of a BOR function.
- (6) Any Program Evaluation Division recommendations for administrative or legislative consideration.

PART IV. TAX CHANGES

SECTION 4.1.(a) G.S. 96-9.2(c) reads as rewritten:

"(c) Contribution Rate for Experience-Rated Employer. – The contribution rate for an experience-rated employer who does not qualify as a beginning employer under subsection (b) of this section is determined in accordance with the table set out below and then rounded to the nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on ~~July 31~~ June 30 preceding the computation date. An employer's experience rating is computed as a reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate.
...."

SECTION 4.1.(b) This section is effective when it becomes law and applies to contributions payable for calendar quarters beginning on or after January 1, 2014.

SECTION 4.2.(a) G.S. 96-11.2 reads as rewritten:

"§ 96-11.2. Allocation of charges to base period employers.

Benefits paid to an individual are charged to an employer's account ~~when the individual's benefit year has expired, quarterly.~~ Benefits paid to an individual must be allocated to the account of each base period employer in the proportion that the base period wages paid to the individual in a calendar quarter by each base period employer bears to the total wages paid to the individual in the base period by all base period employers. The amount allocated to an employer that pays contributions is multiplied by one hundred twenty percent (120%) and charged to that employer's account. The amount allocated to an employer that elects to reimburse the Unemployment Insurance Fund in lieu of paying contributions is the amount of benefits charged to that employer's account."

SECTION 4.2.(b) This section becomes effective January 3, 2016, and applies to claims effective on or after that date. Claims filed prior to January 3 will be charged annually when the benefit year for that claim ends.

SECTION 4.3. Notwithstanding G.S. 96-9.7(b), the surtax imposed under G.S. 96-9.7 does not apply to the calendar year 2016 if the amount in the State's account in the Unemployment Trust Fund as of March 1, 2016, equals or exceeds one billion dollars (\$1,000,000,000).

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of August, 2015.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____, m. this _____ day of _____, 2015

04 NCAC 24A .0105 is proposed for amendment under temporary procedures 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) of this Rule, 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) “Application for a position” means truthfully supplying the information required by an employer to place an individual in a particular position or opening. Such information may include proof of the qualifications or license required by the position or opening, employment history, and personal information, such as full name, Social Security Number or other identification number, telephone number, and current address. An application for a position may be accomplished in whatever manner acceptable to an employer, including, but not limited to, the completion of a designated form, the provision of a written resume, or verbally.
- ~~(7)~~(8) “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)~~(9) “Base period” means as defined in 96-1(b)(3). Calendar quarters are January through March, April through June, July through September, and October through December.
- ~~(9)~~(10) “Benefit week” means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.

~~(10)~~(11) "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 and to include those wages that were awarded and paid to the claimant after the base period pursuant to a court order; a National Labor Relations Board determination; 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)~~(12) "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)~~(13) "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 at 11:59 p.m. on Saturday.

~~(13)~~(14) "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)~~(15) "Chief Appeals Referee" includes the Chief Appeals Referee's designee, unless otherwise stated.

~~(15)~~(16) "Claimant" means an individual who files an unemployment insurance benefits claim for payments as provided in G.S. 96-14.1.

~~(16)~~(17) "Clear and convincing evidence" is evidence indicating that the thing to be proved is highly probable or reasonably certain.

~~(17)~~(18) "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)~~(19) "Day" means a calendar day.

~~(19)~~(20) "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)~~(21) "DES website" means the internet address found at www.ncesc.com.

~~(21)~~(22) "Due diligence" means the measure of carefulness, precaution, attentiveness, and good judgment as to be expected from, and exercised by a reasonable and prudent person under the particular circumstances.

~~(22)~~(23) "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)~~(23) "Electronic transmission" means transmission by facsimile or internet.

~~(24)~~(25) “Equity and good conscience” means fairness as applied to a given set of circumstances.

~~(25)~~(26) “Fault” means an error or defect of judgment or of conduct; any deviation from prudence or duty resulting from inattention, incapacity, perversity, bad faith, or mismanagement.

~~(26)~~(27) “Good cause” means a legally sufficient reason.

~~(27)~~(28) “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-person, and another party or witness appears by telephone.

~~(28)~~(29) “Interstate benefit payment plan” means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits may be paid to unemployed claimants absent from the state (or states) where benefit wage credits accumulated. This rule incorporates the United States Department of Labor’s Interstate Benefit Payment Plan, Interstate Agreements, ET Handbook No. 392 app. B (2d ed. 1997) by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

~~(29)~~(30) “Interstate claimant” means a claimant who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any claimant who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that this exclusion would create an undue hardship.

~~(30)~~(31) “Labor dispute” means a dispute between an employer and its employees about wages, hours, working conditions, or issues concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condition of employment, between those who could be concerned in the controversy.

~~(31)~~(32) “Last known address” means the most recent address provided to DES by the claimant or taxpayer located in its official record, except that DES shall update addresses maintained in its official records by referring to data accumulated and maintained in the United States Postal Service (USPS) National Change of Address database that retains change of address information (NCOA Database). If the claimant or taxpayer’s name and last known address in DES’s official records match the claimant or taxpayer’s name and previous mailing address contained in the NCOA database, the new address in the NCOA database is the taxpayer’s last known address. This rule incorporates the United States Postal Service’s National Change of Address Database by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and can be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

~~(32)~~(33) “Legal representative” means a licensed attorney or a person supervised by a licensed attorney.

1 ~~(33)~~(34) "Liable state" means any state against which a claimant files a claim for benefits through another
2 state.

3 ~~(34)~~(35) "Observation interval" means an interval of time including the four consecutive calendar years
4 preceding the calendar year in which an application for a seasonal determination is made pursuant
5 to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities
6 have changed, the observation interval may be less than four calendar years.

7 ~~(35)~~(36) "Party with appeal rights" means a party who has the right to appeal an unfavorable determination
8 or decision pursuant to G.S. 96-4(q) and G.S. 96-15.

9 ~~(36)~~(37) "Public employment office" means a local office managed and operated by the Division of
10 Workforce Solutions (DWS) of the North Carolina Department of Commerce.

11 ~~(37)~~(38) "Regularly recurring" means a period or periods of operational activity and shall be deemed
12 regularly recurring if, during at least seventy-five percent of the calendar years in the observation
13 interval, the beginning and ending dates of the period or periods do not vary more than four
14 weeks.

15 ~~(38)~~(39) "Reopened claim" means the resumption of a valid initial claim following a break in filing weekly
16 certifications during a benefit year and the break was caused by reasons other than intervening
17 employment. The first week of eligibility following the effective date of the reopened claim shall
18 constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.

19 ~~(39)~~(40) "Reporting cycle" means the fifty-two week period beginning August 1st and ending July 31st the
20 following year in which the employer's account is examined and recorded for any inadequate
21 responses to Requests for Separation Information (NCUI 500AB).

22 ~~(40)~~(41) "State" means any of the 50 states in the United States and includes the District of Columbia,
23 Puerto Rico and the U.S. Virgin Islands.

24 ~~(41)~~(42) "Wages paid" means both wages actually received by a worker, and wages "constructively paid."
25 Wages are constructively paid when they are credited to the account of, or set apart for a worker
26 without any substantial restriction as to the time or manner of payment or condition upon which
27 payment is to be made, and shall be made available so that the worker may draw upon them at any
28 time, and payment brought within the worker's control and disposition, although not then actually
29 reduced to possession.

30 ~~(42)~~(43) "Wages payable" means wages earned but not paid.

31 ~~(43)~~(44) "Weekly period" means a seven day period beginning at 12:00 a.m. Sunday and ending on the
32 following Saturday at 11:59 p.m.

33 ~~(44)~~(45) "Week of unemployment" includes any week of unemployment as defined in the law of the liable
34 state from which benefits for the week are claimed.

35
36 *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*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0107

DEADLINE FOR RECEIPT: Wednesday, February 17, 2016

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 change line 1 to reflect the current rulemaking action of this Rule:

"is adopted under temporary procedures as follows:"

Please note that changes since publication should be underlined and struckthrough. By making changes, the remainder of the text of the adoption should no longer be underlined. Please see [this example](#).

For consistency, line 8, consider replacing "Each" with "a valid job contact is each separate..."

Line 11 states "title of the job" and line 18 states "job title of the positions" Should these clauses be the same to be consistent? Please review the remainder of this Rule to determine the predominately used clause to maintain consistency.

Lines 14, 20, and 27, uncapitalize the "A" before "valid"

Line 15, add an "and" at the end of the clause

Line 21, should the text beginning "The claimant..." actually be placed on a new line as "(2)" and the text on line 24 become "(3)"? Once moved, uncapitalize "The" to be consistent with the remainder of this Rule.

Lines 25 and 33, please add "G.S." before the statutory citation. The "G.S." was published in the notice of the temporary rulemaking. Please update.

Page 2, line 4, the term "information" is missing after "additional" The term was published in the notice of the temporary rulemaking. Please update.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, February 15, 2016

Page 2, line 4, please add a period after the addition of “information” to the sentence

Page 2, lines 5 thru 6, please make the following revisions:

A job—job that a claimant would be unable to accept if ~~offered~~ offered ~~is one~~
means a job position

Page 2, line 18, add a period after “contact” and replace “and” with “Longshoremen”

Page 2, line 20, delete the “same” after “advertisement”

Page 2, line 26, please add a complete history note, as reflected here:

<http://www.ncoah.com/rules/examples/Temporary%20Adoption%20for%20Publication%20in%20the%20NCAC.pdf>. Please provide the statutory history of the rule and the proposed effective date of the temporary 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: Monday, February 15, 2016



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Department of Commerce, Division of Employment Security

2. Rule citation & name: 04 NCAC 24B .0107 VALID JOB CONTACTS

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 20, 2015
- b. Proposed Temporary Rule published on the OAH website: December 1, 2015
- c. Public Hearing date: December 10, 2015
- d. Comment Period: December 1, 2015 – December 22, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 1, 2015
- f. Adoption by agency on: February 12, 2016
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

FILED
2016 FEB 12 PM 3:49
OFFICE OF ADMIN HEARINGS

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: Session Law 2015-238 (Senate Bill 15)
Effective date: January 1, 2016
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

Recently enacted Session Law 2015-238 (Senate Bill 15) "An Act to Make Changes to the Unemployment Insurance Laws, as Recommended by the Joint Legislative Oversight Committee on Unemployment Insurance, and to Confirm Appointments to the Board of Review" makes several sweeping changes requiring temporary rules to be adopted, including repeal of Post-Decision Relief (Requests for Reconsideration) and increasing weekly job contacts for claimants. Specifically, Senate Bill 15 under Section 2.3.(a) removes the requirement from G.S. 96-14.9(e), that claimants "[seek] work on at least two different days during the week" and instead only requires that claimant's make "five" job contacts with "potential employers during the week." As such, DES must now define what constitutes a valid job search for purposes of the statute due to the increase in weekly job contacts now required by law, as well as define what is a valid job contact, in light of the statutory change no longer requiring claimants seek work on "at least two different days during the week."

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

If these rules are not adopted under temporary procedures, DES could potentially risk a sudden increase in claim activity resulting from public misunderstanding of what constitutes a valid job search for purposes of receiving unemployment benefits. These rules specifically clarify what qualifies as a job contact for purposes of recently amended G.S. 96-14.9(e). As such, DES has promulgated these temporary rules as a result of a recent change in legislation, and such changes are needed as soon as possible to effectively carry out the functions of the agency and prevent any disturbance in unemployment benefits to the citizens of North Carolina.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐

Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒

No

9. Rule-making Coordinator: Jeremy L. Ray

Phone: 919-707-1033

E-Mail: Jeremy.ray@nccommerce.com

Agency contact, if any: Jeremy L. Ray

Phone: 919-707-1033

E-Mail: Jeremy.ray@nccommerce.com

10. Signature of Agency Head*:

W. Z. B. J.

* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐

Date returned to agency:

04 NCAC 24B .0107 is proposed for adoption under temporary procedures as follows:

04 NCAC 24B .0107 VALID JOB CONTACTS

(a) Each claimant who has registered for work and filed a claim for unemployment insurance benefits shall actively seek work and make the minimum valid job contacts per week as required under G.S. 96-14.9(e). A valid job contact for purposes of this Section is a submitted application for a position.

(b) For job contacts conducted on an employer's or employment website:

(1) Each separate and distinct position requiring a separate application, even if with the same employer, shall count as a separate job contact; and

(2) each claimant shall record, and provide to DES upon request, the name of the employer, the URL or address of the website, the title of the job for which the claimant applied, the date of submission, and the confirmation number or email.

(c) For job contacts conducted by electronic mail (e-mail) or facsimile:

(1) A valid job contact is a message sent to a valid e-mail address or facsimile number of an employer, or their designee, for the sole purpose of obtaining employment with that employer;

(2) the claimant shall record, and provide to DES upon request, the name of the employer, the e-mail address or facsimile number used for the contact, the name and job title of the person contacted, the date of the contact, and the job title of the position for which the claimant applied.

(d) For job contacts conducted by telephone:

(1) A valid job contact is a verbal conversation with an employer, or their designee, for the sole purpose of obtaining employment with that employer. The claimant shall record, and provide to DES upon request, the name of the employer, the telephone number used for the contact, the name and job title of the person contacted, and the date of the contact; and

(2) a message left on an answering service or a voice-mailbox shall not be a valid job contact for purposes of 96-14.9(e)(3).

(e) For job contacts conducted in person:

(1) A valid job contact is a meeting with an employer, or their designee, for the sole purpose of obtaining employment with that employer;

(2) the claimant shall record, and provide to DES upon request, the name of the employer, the location at which the contact occurred, the name and job title of the person with whom the claimant met, the date of the contact, and the job title of the position for which the claimant applied; and

(3) an in-person contact with an employer on a single day shall be considered a single contact for purposes of 96-14.9(e)(3), unless multiple applications are submitted that day for separate and distinct positions.

(f) The following shall be considered invalid job contacts:

(1) Duplicative job contacts. A contact is duplicative when a claimant contacts the same employer regarding the same position or opening more than once during the same week with no change in

1 the result of the contact. The following are examples of a change in the result of contact:

2 (A) a contact to or from an employer that occurs after an initial contact, involves scheduling
3 an interview, and an interview is in fact scheduled; or

4 (B) a contact to an employer in response to a request for additional

5 (2) Contact with an employer for a job that the claimant would be unable to accept if offered. A job
6 that a claimant would be unable to accept if offered is one for which the claimant lacks the
7 necessary knowledge, ability, or skill required for that job, as stated in the job posting or as
8 required by applicable licensing authority.

9 (g) Initial registration via NCWorks shall be considered a valid job contact for the week during which the
10 registration was completed.

11 (h) If a claimant customarily obtains employment through a union agent or hiring hall, then contact with the same
12 shall be considered a valid job contact for the week in which it occurred. The claimant shall record, and provide to
13 DES upon request, the name of the union agent or applicable union, the address of the hiring hall or where contact
14 was made, the name of the person with whom the claimant spoke, and the date of the contact. Contact with a union
15 agent or hiring hall shall be considered a single valid job contact for the week in which it occurred.

16 (i) Longshoremen registered with their union satisfy the requirements of G.S. 96-14.9(e) by submitting on a weekly
17 basis their union number, the address where they made contact as required by their union's reporting requirements,
18 the name and job title of the person with whom they spoke, and the dates on which they made contact, and shall
19 provide information about their union's reporting requirements to DES upon request.

20 (j) An application to a blind job advertisement same shall be considered a valid job contact for each separate and
21 distinct position sought or employer contacted. In addition to the requirements set forth above in this Section, the
22 claimant shall also retain, and provide to DES upon request, a copy of the blind advertisement. A copy of the blind
23 advertisement shall be accepted by DES in lieu of the employer name, the name of the person contacted, and the job
24 title of the person contacted if these are unavailable.

25
26 *Authority G.S. 96-4; 96-14.9;*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0506

DEADLINE FOR RECEIPT: Wednesday, February 17, 2016

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 change line 1 to reflect the current rulemaking action of this Rule:

"is amended under temporary procedures as follows:"

Line 14, please add a complete history note, as reflected here:

<http://www.ncoah.com/rules/examples/Temporary%20Amendment%20for%20Publication%20in%20the%20NCAC.pdf>. Please provide the statutory history of the rule, the initial effective date of the permanent rule, and the proposed effective date of the temporary rule. The changes to the history note as it [currently exists in the NC Administrative Code](#) would be underlined.

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, February 15, 2016



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Department of Commerce, Division of Employment Security

2. Rule citation & name: 04 NCAC 24C .0506 CONTENT OF HIGHER AUTHORITY DECISION

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 20, 2015
- b. Proposed Temporary Rule published on the OAH website: December 1, 2015
- c. Public Hearing date: December 10, 2015
- d. Comment Period: December 1, 2015 – December 22, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 1, 2015
- f. Adoption by agency on: February 12, 2016
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: Session Law 2015-238 (Senate Bill 15)
Effective date: January 1, 2016
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

Recently enacted Session Law 2015-238 (Senate Bill 15) "An Act to Make Changes to the Unemployment Insurance Laws, as Recommended by the Joint Legislative Oversight Committee on Unemployment Insurance, and to Confirm Appointments to the Board of Review" makes several sweeping changes requiring temporary rules to be adopted, including repeal of Post-Decision Relief (Requests for Reconsideration) and increasing weekly job contacts for claimants. Specifically, Senate Bill 15 under Section 2.3.(a) indicates that all decisions from the Board of Review will become final within 30 days, eliminating requests for post-decision relief or reconsideration. As such, all references to post-decision relief and/or reconsideration must be removed from all DES rules. 04 NCAC 24C .0506 indicates instructions for seeking post-decision relief and/or reconsideration which is no longer valid under Senate Bill 15 and should be removed.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

If these rules are not adopted under temporary procedures, DES could risk unnecessary and improper appeals from its Board of Review decisions, subjecting both the agency and the public seeking immediate review of their higher authority Board of Review decisions unnecessary delay and cost.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jeremy L. Ray

Phone: 919-707-1033

E-Mail: Jeremy.ray@nccommerce.com

Agency contact, if any: Jeremy L. Ray

Phone: 919-707-1033

E-Mail: Jeremy.ray@nccommerce.com

10. Signature of Agency Head*:

W. Z. B.

* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

04 NCAC 24C .0506 is proposed for amendment under temporary procedures 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)~~(4) 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.

Authority G.S. 96-4; 96-11.4; 96-15

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0601

DEADLINE FOR RECEIPT: Wednesday, February 17, 2016

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 change line 1 to reflect the current rulemaking action of this Rule:

"is repealed under temporary procedures as follows:"

Line 23, please add a complete history note, as reflected here:

<http://www.ncoah.com/rules/examples/Temporary%20Repeal%20for%20Publication%20in%20the%20NCAC.pdf>. Please provide the statutory history of the rule, the initial effective date of the permanent rule, and the proposed repeal effective date of the temporary rule. The changes to the history note as it [currently exists in the NC Administrative Code](#) would be underlined.

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, February 15, 2016



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Department of Commerce, Division of Employment Security

2. Rule citation & name: 04 NCAC 24C .0601 POST-DECISION RELIEF

3. Action: ☐ Adoption ☐ Amendment ☒ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 20, 2015
- b. Proposed Temporary Rule published on the OAH website: December 1, 2015
- c. Public Hearing date: December 10, 2015
- d. Comment Period: December 1, 2015 – December 22, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 1, 2015
- f. Adoption by agency on: February 12, 2016
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: Session Law 2015-238 (Senate Bill 15)
Effective date: January 1, 2016
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

Recently enacted Session Law 2015-238 (Senate Bill 15) "An Act to Make Changes to the Unemployment Insurance Laws, as Recommended by the Joint Legislative Oversight Committee on Unemployment Insurance, and to Confirm Appointments to the Board of Review" makes several sweeping changes requiring temporary rules to be adopted, including repeal of Post-Decision Relief (Requests for Reconsideration) and increasing weekly job contacts for claimants. Specifically, Senate Bill 15 under Section 2.3.(a) indicates that all decisions from the Board of Review will become final within 30 days, eliminating requests for post-decision relief or reconsideration. As such, all references to post-decision relief and/or reconsideration must be removed from all DES rules. 04 NCAC 24C .0601 describes the procedures for requesting post-decision relief and/or reconsideration which is no longer valid under Senate Bill 15 and should be removed.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

If these rules are not adopted under temporary procedures, DES could risk unnecessary and improper appeals from its Board of Review decisions, subjecting both the agency and the public seeking immediate review of their higher authority Board of Review decisions unnecessary delay and cost.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jeremy L. Ray

Phone: 919-707-1033

E-Mail: Jeremy.ray@nccommerce.com

Agency contact, if any: Jeremy L. Ray

Phone: 919-707-1033

E-Mail: Jeremy.ray@nccommerce.com

10. Signature of Agency Head*:

W. Z. B. J.

* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

SECTION .0600 - POST-DECISION RELIEF

04 NCAC 24C .0601 is proposed for repeal under temporary procedures as follows:

04 NCAC 24C .0601 POST-DECISION RELIEF

~~(a) A written request for reconsideration or post decision relief shall:~~

- (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.

~~(b) The written request shall be filed no later than 30 days after the Higher Authority Decision was mailed to each party, and the timeliness requirements of 04 NCAC 24A.0100 apply.~~

~~(c) The written request shall be filed with the Board of Review pursuant to 04 NCAC 24A .0104(n).~~

~~(d) Any order granting or denying a party's request for post decision relief shall contain the following notices:~~

- (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.

Authority G.S. 96-4; 96-11.4; 96-15