

04 NCAC 24A .0102 is amended with changes as published in 31:21 NCR 2063 as follows:

04 NCAC 24A .0102 ADDRESS CHANGES AND ELECTRONIC 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. All notices shall be submitted to the Tax Administration Section, ~~ATTN:~~ Attn: Address Change by mail to Post Office Box 26504, Raleigh, North Carolina, 27611, facsimile to (919) 715-7194, or email to des.tax.customerservice@nccommerce.com.

(b) Each claimant with an active claim, or who is registered for work at a public employment office, shall notify DES in writing of any change in address or electronic mail address within seven days after the effective date of the change. All notices shall be submitted to the DES Customer Call Center, Attn: Address Change, by mail to Post Office Box 25903, Raleigh, NC 27611, facsimile to (919) 857-1296, or email to des.ui.customerservice@nccommerce.com. Claimants may also make and submit address and electronic address changes from their home page in the [SCUBI] Southeast Consortium Unemployment Benefits Integration (SCUBI) system.

~~(b)(c)~~ 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. All notices of overpayment address changes shall be submitted to the Benefits Integrity Unit, ~~ATTN:~~ Attn: Overpayment Address Change by mail to Post Office Box 25903, Raleigh, NC 27611, facsimile to ~~(919) 733-1369,~~ (919) 733-1369, or email to des.ui.bpc@nccommerce.com.

*History Note: Authority G.S. 96-4; 96-40; ~~20 C.F.R. 640;~~ 20 C.F.R. 640.1;
Eff. July 1, 2015;
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04 NCAC 24A .0103 is amended with changes as published in 31:21 NCR 2064 as follows:

04 NCAC 24A .0103 ADDRESSES FOR NOTICE AND ELECTRONIC NOTICE

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

(b) Except as provided in ~~Paragraph (a) of this Rule Chapter, when~~ DES ~~shall mails mail~~ 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.

(c) Claimants may elect to receive communications from DES solely by electronic transmission as defined in 04 NCAC 24A .0105.

(1) A claimant who consents to receive communication by electronic transmission may withdraw consent at any time by providing DES with a written withdrawal of consent.

(2) Any communication that was sent to a claimant by electronic transmission before the withdrawal of consent shall be effective as an electronic transmission.

(3) Except as provided in Paragraph (f) of this Rule, withdrawal of consent to receive communication by electronic transmission shall become effective on the date that DES receives the written withdrawal of consent.

(d) A claimant who elects to receive communications by electronic transmission shall provide DES with a valid email address.

(1) DES shall validate each email address by sending a notification containing a hyperlink to the email address provided by the claimant. The email sent by DES shall require the claimant to click on the hyperlink in the email in order to navigate to SCUBI to complete validation.

(2) After a claimant validates the email address, DES shall provide all communication by electronic transmission, including determinations, requests for information, notices, and decisions. For each action taken on an account, DES shall notify each claimant by email that an action was taken, and shall direct the claimant to log into his or her SCUBI account.

(e) A claimant who elects to receive communication from DES by electronic transmission shall not receive communication from DES by mail, unless the communication transmitted to the claimant's email address is returned to DES as undeliverable.

(1) When an electronic communication is returned to DES as undeliverable, DES shall suspend communications by electronic transmission to the claimant's email address, and shall place an alert on the claimant's SCUBI home page. The alert shall notify the claimant:

(A) that electronic transmissions to his or her email address have been suspended;

1 (B) to contact the Customer Call Center to update his or her mailing and email addresses as
2 provided in 04 NCAC 24A .0102; and

3 (C) that the claimant may elect to resume receiving communications by electronic
4 transmissions.

5 (2) Upon suspension of electronic transmissions to the claimant, DES shall send all communications to
6 the claimant by first class mail.

7 (3) A claimant who elected to receive communications by electronic transmissions from DES, and who
8 desires to continue receiving electronic communications, but instead receives postal mail, shall
9 contact the Customer Call Center by phone at (888) 737-0259 or facsimile at (919) 250-4315 to
10 provide a valid email address, and ~~notify DES that communications should be sent~~ request DES
11 to send communications by electronic transmission.

12 (f) Except as otherwise provided in this Chapter, DES shall use the date and time of the electronic transmission to the
13 email address provided by the claimant, or authorized agent, as the service date for purposes of calculating the time
14 periods for correspondence, notices, deadlines, and filings. Time periods shall be determined by the date of electronic
15 transmission ~~if the~~ when a communication is not received by the claimant as a result of an error or omission on the
16 part of the claimant, or agent of the claimant.

17
18 *History Note:* Authority G.S. 96-4; 96-9.2; 96-14.1; 96-15; 96-40;

19 *Eff. July 1, 2015;*

20 *Amended Eff. September 1, 2017.*

04 NCAC 24A .0104 is amended with changes as published in 31:21 NCR 2064 as follows:

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~~, (888) 737-0259.

(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.~~ Correspondence and appeals submitted by email outside the [Southeast Consortium Unemployment Benefits Initiative (SCUBI)] SCUBI system shall not include social security numbers or employer account numbers.

(5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.

(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) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.

(4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.

- 1 ~~(3)(5)~~ Any questions regarding the contents of a Non-Fraud Overpayment Determination shall be directed
2 to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email
3 at des.ui.bpc@nccommerce.com.
- 4 (d) Appeals of a Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit by ~~mail~~, mail or
5 facsimile.
- 6 (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- 7 (2) The facsimile number is (919) 733-1369.
- 8 (3) Correspondence submitted by email outside the SCUBI system shall not include social security
9 numbers or employer account numbers.
- 10 (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105
11 and shall contain the date of the appeal, the docket or identification number of the determination
12 being appealed, the claimant's identification number, the names of the claimant and employer, each
13 reason for the appeal, the name of the individual filing the appeal, the official position of an
14 individual filing the appeal on behalf of the party, and a telephone number.
- 15 ~~(3) (5)~~ Any questions regarding the contents of a Fraud Overpayment Determination shall be directed to
16 the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369, or email at
17 des.ui.bpc@nccommerce.com.
- 18 (e) Appeals of a Monetary Determination denying a protest to a Wage Transcript and Monetary Determination shall
19 be filed with the ~~Monetary Revision Unit~~ Tax Administration Section by mail, facsimile, or email.
- 20 (1) The mailing address is Post Office Box ~~25903~~, 26504, Raleigh, North Carolina 27611.
- 21 (2) The facsimile number is (919) ~~715-3983~~, 733-1255.
- 22 (3) The email address is ~~des.ui.customerservice@nccommerce.com~~.
23 des.tax.customerservice@nccommerce.com.
- 24 (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social
25 security numbers or employer account numbers.
- 26 (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105
27 and shall contain the date of the appeal, the docket or identification number of the determination
28 being appealed, the claimant's identification number, the names of the claimant and employer, each
29 reason for the appeal, the name of the individual filing the appeal, the official position of an
30 individual filing the appeal on behalf of the party, and a telephone number.
- 31 ~~(4)(6)~~ Any questions regarding the contents of a determination denying a protest to a Wage Transcript and
32 Monetary Determination shall be directed to the ~~Monetary Revision Account and Wage Adjustment~~
33 Unit of the Tax Administration Section by telephone to (919) ~~707-1257~~, 707-1462, facsimile at
34 (919) ~~715-3983~~, 733-1255, or email at ~~des.ui.customerservice@nccommerce.com~~.
35 des.tax.customerservice@nccommerce.com.
- 36 (f) ~~Appeals~~ Protests of a Wage Transcript and Monetary Determination shall be filed with the ~~Monetary Revision~~
37 Claims 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) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Protests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest, the docket or identification number of the determination being protested, the claimant's identification number, the names of the claimant and employer, each reason for the protest, the name of the individual filing the protest, the official position of an individual filing the protest on behalf of the party, and a telephone number.
- ~~(4)(5)~~ 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 email at ~~des.ui.customerservice@nccommerce.com.~~ des.monetaryrevision@nccommerce.com.
- (g) Petitions for Waiver of Overpayment shall be filed with the Benefits Integrity Unit by ~~mail~~, 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.~~ Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Petitions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the petition, docket or identification number of the overpayment determination, the claimant's identification number, the name of the claimant, each reason for the request to waive repayment of the overpayment, the name of the individual filing the petition, the official position of an individual filing the petition on behalf of the party, and a telephone number.
- (h) Claimant appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter shall be filed with the Benefits Integrity Unit by ~~mail~~, 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) Correspondence regarding a claimant's NCDOR Offset Letter submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the offset letter being appealed, the claimant's identification number, the name of the claimant, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.

- 1 ~~(3)~~ ~~(4)~~(5) Any questions regarding the contents of a ~~North Carolina Department of Revenue~~ claimant's
2 NCDOR Offset Letter shall be directed to the Benefits Integrity Unit by telephone to (919) 707-
3 1338, facsimile at (919) 733-1369, or email at des.ui.bpc@nccommerce.com.
- 4 (i) Employer appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter for outstanding tax debts
5 shall be filed with and the Tax Administration Section by ~~mail, facsimile, or email.~~ mail or facsimile.
- 6 (1) The mailing address is Post Office Box 26504, Raleigh, NC 27611.
7 (2) The facsimile number is (919) 733-1255.
8 (3) ~~The email address is des.tax.customerservice@nccommerce.com.~~ Correspondence regarding an
9 employer's NCDOR Offset Letter submitted by email outside the SCUBI system shall not include
10 social security numbers or employer account numbers.
- 11 ~~(5)~~(4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105
12 and shall contain the date of the appeal, the docket or identification number of the offset letter, the
13 name of the employer, each reason for the appeal, the name of the individual filing the appeal, the
14 official position of an individual filing the appeal on behalf of the party, and a telephone number.
- 15 ~~(4)~~(6)(5) Any questions regarding the contents of a an employer's NCDOR Offset letter for outstanding tax
16 debts shall be directed to the Tax Administration Section by telephone to (919) ~~707-1150,~~ 707-1119,
17 facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.
- 18 (j) Claimant Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the ~~Benefit~~
19 Benefits Integrity Unit of mail or facsimile.
- 20 (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
21 (2) The facsimile number is (919) ~~715-3983.~~ 733-1369.
- 22 (3) Correspondence submitted by email outside the SCUBI system shall not include social security
23 numbers or employer account numbers.
- 24 (4) Requests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105
25 and shall contain the date of the request, the docket or identification number of the TOP notice, the
26 claimant's identification number, the name of the claimant, each reason for the request, the name of
27 the individual filing the request, the official position of an individual filing the request on behalf of
28 the party, and a telephone number.
- 29 ~~(3)~~(4)(5) Any Claimant questions regarding TOP shall be directed to a Recovery Specialist by telephone to
30 (919) 707-1338, or email at des.ui.bpc@nccommerce.com.
- 31 (k) Employer ~~requests~~ Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with
32 ~~Employer Call Center (ECC)~~ the Tax Administration Section by ~~mail, telephone, facsimile or email.~~ mail or facsimile.
- 33 (1) The mailing address is Post Office Box ~~25903,~~ 26504, Raleigh, North Carolina 27611.
34 (2) ~~The phone number is (919) 707-1150.~~
35 ~~(3)~~(2) The facsimile number is (919) ~~715-0780.~~ 733-1255.
36 (4) ~~The email address is des.tax.customerservice@nccommerce.com.~~

- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- ~~(5)~~(4) Requests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or identification number of the TOP notice, the name of the employer, each reason for the request, the name of the individual filing the request, the official position of an individual filing the request on behalf of the party, and a telephone number.
- ~~(6)~~(5) Employer questions regarding TOP shall be directed to the Tax Administration Section by telephone to (919) 707-1119, facsimile at (919) 733-1255, or email at 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 des.ha.appeals@nccommerce.com.
- (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.
- ~~(m) Requests for Post Decision Relief or Reconsideration shall be filed with the Board of Review by mail, facsimile, or email.~~ Protests or appeals of adequacy determinations shall be filed with the Claims Unit by mail or facsimile.
- (1) ~~The mailing address is Post Office Box 28263, 25903, Raleigh, North Carolina 27611.~~
- (2) ~~The facsimile number is (919) 715-7193. 733-1126.~~
- (3) ~~The email address is BOR@nccommerce.com.~~ Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the party filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number.
- (n) Protests or appeals of a Tax Liability Determination shall be filed with the 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) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number.
- (o) Protests or appeals of a Tax Rate Assignment shall be filed with the 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) Correspondence and protests or appeal submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the rate assignment, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number.
- (p) Protests or appeals of Audit Results shall be filed with the 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) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the result being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number.
- (q) Protests or appeals of Tax Assessments shall be filed with the 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) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the assessment being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of the individual filing the protest or appeal on behalf of the party, and a telephone number.
- (r) Exceptions to a Tax Opinion 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) 715-7193.
- (3) The email address is BOR@nccommerce.com.
- (4) Correspondence and exceptions submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Exceptions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the exceptions, the docket or identification number of the tax opinion, the claimant's identification number, the names of the claimant and employer, the name of the individual filing the exceptions, each reason for the exceptions, the official position of an individual filing the exceptions on behalf of the party, and a telephone number.
- (s) Requests for non-charging of benefits to an employer's account, and ~~Protests~~ protests or appeals of benefit charges to an employer's account, or requests for non-charging account shall be filed with the Employer Benefit Charges/Benefit Charges Claims Unit by mail or facsimile.
- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611-5903.
- (2) The facsimile number is (919) 733-1126.
- (3) ~~All questions regarding non-charging shall be directed to the Employer Benefit Charges/Benefit Charges Unit at (919) 707-1279.~~ Correspondence, requests, protests, or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Requests for non-charging and protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or employer's identification number, the name of the employer, each reason for the request, the name and official position of the individual filing the request, protest, or appeal, on behalf of the party, and a telephone number.
- (t) Protests or appeals of a Denial of Seasonal Assignment shall be filed with the 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.

1 (4) Correspondence and protests or appeal submitted by email outside the SCUBI system shall not
2 include social security numbers or employer account numbers.

3 (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC
4 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of
5 the denial being appealed, the name of the employer, each reason for the protest or appeal, the name
6 of the individual filing the protest or appeal, the official position of an individual filing the protest
7 or appeal on behalf of the party, and a telephone number.

8 (u) Transmittal of interstate work search records and photo identification shall be filed with the Interstate Unit by ~~mail~~,
9 mail or facsimile.

10 (1) The ~~Mailing Address~~ mailing address is Post Office Box ~~27967~~, 25903, Raleigh, North Carolina
11 27611.

12 (2) The facsimile number is (919) 733-1370.

13 (3) ~~— All questions regarding interstate work search requirements shall be directed to the Interstate Unit~~
14 ~~at (919) 707-1237.~~

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16 *History Note:* Authority G.S. 75-62; 96-4; 96-14.1; 96-15; 96-17; 96-40; 20 C.F.R. 603.4;
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04 NCAC 24A .0105 is amended with changes as published in 31:21 NCR 2069 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 (16) 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 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 the completion of a designated form, the provision of a written resume, or verbally.
- (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.
- (9) “Base period” means as defined in ~~96-1(b)(3)~~ G.S. 96-1(b)(3). Calendar quarters are January through March, April through June, July through September, and October through December.
- (10) “Benefit week” means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.
- (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.

(12) “Board of Review” means as defined in G.S. 96-15.3 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.”

(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.

(14) “Charging cycle” means each calendar quarter following the prior reporting cycle, during which the employer's account is assessed and charged for erroneous unemployment insurance benefit payments resulting from untimely or inadequate responses, as defined in 04 NCAC 24D .0301, from the employer to particular Requests for Separation Information during that charging cycle if the employer met or exceeded the adequacy threshold in the prior reporting cycle.

(15) “Chief Appeals Referee” includes the Chief Appeals Referee’s designee, unless otherwise stated.

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

(17) “Clear and convincing evidence” means evidence indicating that the thing to be proved is highly probable or reasonably certain.

(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.

(19) “Customary” as used in G.S. 96-15.01 means the usual and habitual number of hours worked.

~~(19)(20)~~ “Day” means a calendar day.

~~(20)(21)~~ “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).

~~(21)(22)~~ “DES website” means the internet address found at www.des.nc.gov.

~~(22)(23)~~ “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.

~~(23)(24)~~ “Effective date of a claim” means either the benefit year beginning on the Sunday preceding the payroll week ending date if the claimant is payroll attached, or 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.

~~(24)(25)~~ “Electronic transmission” means ~~transmission by facsimile or internet.~~ delivery to an electronic mail address at which an individual or employer has consented to receive notices, documents, or other communications; or posting on an electronic network or site accessible by internet through use of a

1 mobile application, computer, mobile device, tablet, or any other electronic device, and sending
2 separate notice of the posting, or using any other delivery method to which the individual or
3 employer has consented. Communication sent by DES electronic transmission shall be complete
4 on transmission.

5 ~~(25)~~(26) “Equity and good conscience” means fairness as applied to a given set of circumstances.

6 ~~(26)~~(27) “Fault” means an error or defect of judgment or of conduct; any deviation from prudence or duty
7 resulting from inattention, incapacity, perversity, bad faith, or mismanagement.

8 ~~(27)~~(28) “Good cause” means a legally sufficient reason.

9 ~~(28)~~(29) “In-person/telephone hearing” means an administrative hearing before the Appeals Section, Board
10 of Review, or other designated Hearing Officer where at least one party or witness appears in-person,
11 and another party or witness appears by telephone.

12 ~~(29)~~(30) “Interstate benefit payment plan” means the plan approved by the Interstate Conference of
13 Employment Security Agencies under which benefits may be paid to unemployed claimants absent
14 from the state (or states) where benefit wage credits accumulated. This ~~rule~~ Rule incorporates the
15 United States Department of Labor’s Interstate Benefit Payment Plan, Interstate Agreements, ET
16 Handbook No. 392 app. B (2d ed. 1997) by reference and includes subsequent amendments and
17 editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated
18 material are located at 700 Wade Avenue, in Raleigh, North Carolina, and may be obtained by
19 request at no cost to the public by contacting DES as specified allowed under 04 NCAC 24A .0201.

20 ~~(30)~~(31) “Interstate claimant” means a claimant who claims benefits under the unemployment insurance law
21 of one or more liable states through the facilities of an agent state, or directly with the liable state.
22 The term “interstate claimant” shall not include any claimant who customarily commutes from a
23 residence in an agent state to work in a liable state unless the Division finds that this exclusion would
24 create an undue hardship.

25 ~~(31)~~(32) “Labor dispute” means a dispute between an employer and its employees about wages, hours,
26 working conditions, or issues concerning the association or representation of persons in negotiating,
27 fixing, maintaining, changing, or seeking to arrange terms or condition of employment, between
28 those who could be concerned in the controversy.

29 ~~(32)~~(33) “Last known address” means the most recent address provided to DES by the claimant or taxpayer
30 located in its official record, except that DES shall update addresses maintained in its official records
31 by referring to data accumulated and maintained in the United States Postal Service (USPS) National
32 Change of Address database that retains change of address information (NCOA Database). If the
33 claimant or taxpayer’s name and last known address in DES’s official records match the claimant
34 or taxpayer’s name and previous mailing address contained in the NCOA database, the new address
35 in the NCOA database is the taxpayer’s last known address. This ~~rule~~ Rule incorporates the United
36 States Postal Service’s National Change of Address Database by reference and includes subsequent
37 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 may be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

~~(33)~~(34) “Legal representative” means a licensed attorney or a person supervised by a licensed attorney.

~~(34)~~(35) “Liable state” means any state against which a claimant files a claim for benefits through another state.

(36) “NDNH” is an acronym, and means the National Directory of New Hires. NDNH is a national database of wage and employment information established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and operated by the federal Office of Child Support Enforcement.

~~(35)~~(37) “Observation interval” means an interval of time including the four consecutive calendar years preceding the calendar year in which an application for a seasonal determination is made pursuant to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities have changed, the observation interval may be less than four calendar years.

(38) “Official record” means information in the records of a state or state unemployment compensation agency that pertains to the administration of the unemployment insurance program. Official records include claim information, wage information, confidential information, and unemployment compensation information as defined in ~~20 C.F.R. 603.2.~~ 20 C.F.R. 603.2, which is incorporated by reference, and includes subsequent amendments and editions of the referenced material. This material is available, free of charge, at <http://www.ecfr.gov>. Official records also include information provided by a federal, state, or private entity, or a claimant or employer for reliance upon, or use by the state in administering its unemployment insurance program.

~~(36)~~(39) “Party with appeal rights” means a party who has the right to appeal an unfavorable determination or decision pursuant to G.S. 96-4(q) and G.S. 96-15.

~~(37)~~(40) “Public employment office” means a local office managed and operated by the Division of Workforce Solutions (DWS) of the North Carolina Department of Commerce.

~~(38)~~(41) “Regularly recurring” means a period or periods of operational activity and shall be deemed regularly recurring if, during at least seventy-five percent of the calendar years in the observation interval, the beginning and ending dates of the period or periods do not vary more than four weeks.

~~(39)~~(42) “Reopened claim” means the resumption of a valid initial claim following a break in filing weekly certifications during a benefit year and the break was caused by reasons other than intervening employment. The first week of eligibility following the effective date of the reopened claim shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.

~~(40)~~(43) “Reporting cycle” means the fifty-two week period beginning August 1st and ending July 31st the following year in which the employer’s account is examined and recorded for any inadequate responses to Requests for Separation Information (NCUI 500AB).

(44) “SCUBI” is an acronym, and means the Southeast Consortium Unemployment Benefits Initiative referenced in G.S. 96-40(b)(1). SCUBI is a multi-state consortia consisting of North Carolina, South Carolina, and Georgia.

(45) “SIDES” is an acronym, and means the State Information Data Exchange System. SIDES is a secure, nationally standardized, web based system that allows electronic transmission of information requests from DES to employers or third party administrators, as well as electronic transmission of replies containing the requested information back to DES.

~~(41)~~(46) “State” means any of the 50 states in the United States and includes the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

(47) “Valid email address” means a unique identifier for an email account that is used to send and receive messages over the internet, and is composed of three parts: the user name, the "at symbol" (@), and the domain. To be valid, an email address ~~must~~ shall be one to which DES can send emails, and ~~must~~ shall be provided to DES for use by the claimant, employer, legal representative, or other authorized representative of the claimant or employer. The most recent email address provided to DES shall be maintained in DES’s records, as the claimant’s or employer’s official email address.

~~(42)~~(48) “Wages paid” means both wages actually received by a worker, and wages “constructively paid.” Wages are constructively paid when they are credited to the account of, or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made, and shall be made available so that the worker may draw upon them at any time, and payment brought within the worker’s control and disposition, although not ~~then actually~~ reduced to possession.

~~(43)~~(49) “Wages payable” means wages earned but not paid.

~~(44)~~(50) “Weekly period” means a seven day period beginning at 12:00 a.m. Sunday and ending on the following Saturday at 11:59 p.m.

~~(45)~~(51) “Week of unemployment” includes any week of unemployment as defined in the law of the liable state from which benefits for the week are claimed.

History Note: Authority G.S. 84; 96-1; 96-4; 96-9.2; 96-9.6; 96-14.1; 96-14.9; 96-15; 96-17; 96-20; Eff. July 1, 2015; Temporary Adoption Eff. March 1, 2016; Temporary Adoption Expired December 10, 2016; Amended Eff. April 1, 2017; Amended Eff. September 1, 2017.

04 NCAC 24A .0109 is amended with changes as published in 31:21 NCR 2071 as follows:

04 NCAC 24A .0109 POWER OF ATTORNEY

(a) ~~An [A claimant or]~~ An employer may appoint an agent with full or limited power and authority to act on his, her,
or its behalf with DES in accordance with G.S. 32A-2(10). ~~An [A claimant or]~~ An employer's appointment of an
agent shall be made in writing in the manner prescribed by G.S. ~~32A-1,~~ 32A-1, or by using the Power of Attorney and
Declaration of Representative form found on DES's website at www.des.nc.gov.

(b) An agent appointed pursuant to a power of attorney may:

- (1) complete and submit documents for filing employers' tax and wage reports;
- (2) complete and submit documents regarding an employer's tax rate, contributions, and direct reimbursements;
- (3) respond to benefit claims documents, including [completion of the Request for Separation Information;] responding to requests for information about a claimant's separation or status;
- (4) engage in discussions with DES representatives regarding the actions listed above; and
- (5) accept or receive correspondence sent by DES regarding claims for benefits or an employer's contributions.

History Note: Authority G.S.-32A-1; 32A-2; 96-4; 96-9.15;
Eff. July 1, 2015;
Amended Eff. September 1, 2017.

04 NCAC 24A .0110 is adopted as published in 31:21 NCR 2072 as follows:

04 NCAC 24A .0110 LIMITATION ON AUTHORITY GRANTED BY POWER OF ATTORNEY

(a) A representative authorized to act for a claimant or employer pursuant to a power of attorney shall not enter appeals or protests from any decisions made by an adjudicator, appeals referee, hearing officer, the Assistant Secretary, the Board of Review, or any other employee authorized to act on behalf of DES or the Board of Review, unless the representative is qualified to serve as a legal representative pursuant to G.S. 96-17(b).

(b) A representative authorized to act for a claimant or employer pursuant to a power of attorney may appear as a witness, but shall not represent the claimant or employer in any hearings conducted by DES, the Board of Review, or any employee ~~authorized~~ designated to act on behalf of DES or the Board of Review.

(c) An individual authorized to act as a legal representative in a hearing before an Appeals Referee shall submit notice in writing to the Appeals Referee in accordance with 04 NCAC 24C .0302.

(d) An individual authorized to act as a legal representative in a hearing before the Board of Review, or to enter an appeal or protest before the Board of Review, shall submit notice in writing in accordance with 04 NCAC 24C .0504.

History Note: Authority G.S. 84-2.1; 84-4; 84-4.1; 84-5; 96-4; 96-17;

Eff. September 1, 2017.

04 NCAC 24B .0601 is amended with changes as published in 31:22 NCR 2222 as follows:

04 NCAC 24B .0601 NOTICE REQUIREMENT FOR OVERPAYMENT

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

- (1) the date the determination was mailed or sent to the ~~claimant~~ claimant by electronic transmission;
- (2) reasons for the overpayment;
- (3) the statutory authority under G.S. 96-18(g)(3) for seeking repayment of the overpayment;
- (4) notice that the claimant may protest the overpayment determination and instructions on how to protest the overpayment determination as provided in 04 NCAC 24A .0104(c); and
- (5) notice that the claimant may file a request for waiver of the overpayment in the same manner as prescribed under ~~Item~~ Subparagraph (4) of this Rule.

(b) A determination notifying a claimant of an overpayment of benefits caused by the reversal of a previous decision that found the claimant eligible or **not** disqualified to receive benefits shall contain the same information contained in Subparagraphs (a)(1) through (3) of this Rule, and shall:

- (1) have no protest rights;
- (2) notify the claimant that the overpayment may only be protested by appealing the underlying decision that ruled the claimant ineligible or disqualified for benefits; and
- (3) notify the claimant that DES shall not consider a request to waive repayment of an overpayment while an appeal of the underlying decision that resulted in the overpayment is pending, or until the underlying decision that resulted in the overpayment is final.

History Note: Authority G.S. 96-4; 96-15; 96-18;

Eff. July 1, 2015;

Amended Eff. October 1, 2017.

04 NCAC 24B .1101 is adopted as published in 31:22 NCR 2222 as follows:

SECTION .1100 NATIONAL DIRECTORY OF NEW HIRES

04 NCAC 24B .1101 NDNH CLAIMANT NOTICE

(a) When DES receives NDNH information that a claimant has returned to work, DES shall send written notice to the claimant requesting employment and wage information. The notice shall inform the claimant that:

- (1) DES is conducting an audit of the claimant's claim for unemployment benefits;
- (2) DES received information that the claimant may have filed, continued to file, or received unemployment benefits during weeks when the claimant may have been employed;
- (3) DES shall request from the employer the actual wages earned for the weeks where the claimant may have been employed while claiming or receiving unemployment insurance benefits;
- (4) he or she shall respond to DES with the employment and wage information requested in the notice within 14 days of the date that the notice was mailed or sent by electronic transmission to the claimant;
- (5) he or she is required to report all wages earned when filing weekly certifications;
- (6) an overpayment of unemployment insurance benefits may exist;
- (7) the claimant may be required to repay any benefits determined to be overpaid;
- (8) working, earning wages, and failing to report employment or wages may constitute fraud under G.S. 96-18;
- (9) individuals may be criminally prosecuted for committing fraud; and
- (10) the consequences for failing to respond to DES's request for employment information include suspension of benefit payments to determine eligibility.

(b) Each notice shall request that the claimant certify that he or she did not work for the listed employer during the specified time period, or provide and certify that the following information is true and correct:

- (1) the employer's phone number;
- (2) the claimant's job title;
- (3) the month during which the claimant may have been hired;
- (4) the first date of the claimant's employment;
- (5) the last date that the claimant ~~actually worked~~ performed work for the employer;
- (6) the claimant's starting and current rate of pay;
- (7) the claimant's employment status with the employer;
- (8) the claimant's pay records for the specified time period;
- (9) the claimant's standard or customary work week;
- (10) the total number of hours worked by the claimant for the specified weeks; and
- (11) the amount and type of any other pay earned by the claimant for the specified weeks.

(c) Each notice shall provide information on how the claimant may contact DES's Benefits Integrity Unit by ~~mail,~~
mail or ~~fax,~~ ~~facsimile~~ ~~or email~~ to provide the requested employment and wage information.

History Note: Authority G.S. 96-14.1; 94-14.9; 96-17; 96-18;
Eff. October 1, 2017.

04 NCAC 24B .1102 is adopted as published in 31:22 NCR 2223 as follows:

04 NCAC 24B .1102 NDNH EMPLOYER NOTICE

(a) When DES receives NDNH information that a claimant has returned to work, DES shall send written notice to the potential employer requesting employment and wage information. The notice shall:

- (1) inform the employer that DES is conducting an audit of the claimant's claim for unemployment benefits;
- (2) specify the weeks for which the claimant may have been employed while claiming or receiving unemployment benefits;
- (3) request that the employer respond to DES with the requested employment and wage information within ~~15~~ 14 days;
- (4) request that the employer certify that the claimant did not work for the employer during the specified time period, or provide and certify that the following information is true and correct:
 - (A) the month during which the claimant may have been hired;
 - (B) the first date of the claimant's employment;
 - (C) the last date that the claimant ~~actually worked~~ performed work for the employer;
 - (D) the claimant's starting and current rate of pay;
 - (E) the claimant's employment status with the employer;
 - (F) the claimant's original time and pay records;
 - (G) the manner in which the employer's pay periods are structured, including the pay period ending dates;
 - (H) the claimant's standard or customary work week;
 - (I) the total number of hours worked by the claimant for the specified weeks;
 - (J) the date that the claimant was paid for the specified weeks;
 - (K) the gross wages earned by the claimant for work performed in each specified week; and
 - (L) the amount and type of any other pay earned by the claimant for the specified weeks.

(b) Each notice shall provide information on how the employer may contact DES's Benefits Integrity Unit by mail or ~~fax~~ facsimile to provide the requested employment and wage information.

*History Note: Authority G.S. 96-14.1; 94-14.9; ~~96-17~~; 96-18;
Eff. October 1, 2017.*

04 NCAC 24B .1104 is adopted as published in 31:22 NCR 2223 as follows:

04 NCAC 24B .1104 EMPLOYER RESPONSE TO REQUEST FOR EMPLOYMENT AND WAGE INFORMATION

(a) If an employer fails to respond to DES's request for employment and wage information within 14 days of the date that the request was mailed or sent by electronic transmission to the employer, such failure may result in DES's finding that the employer's response was untimely or inadequate in accordance with Section .0300 of Subchapter 24D of this Chapter.

(b) An employer's response to DES's request for employment and wage information may result in credits to, or elimination of charges to the employer's account.

History Note: Authority G.S. 96-11.3, 11.4; 96-17;

Eff. October 1, 2017.

04 NCAC 24C .0205 is amended with changes as published in 31:22 NCR 2223 as follows:

04 NCAC 24C .0205 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 .0206 of this Section.

(b) In cases of telephone hearings, the Appeals Section shall provide a Telephone Hearing Questionnaire for ~~a~~ each party to use to submit each telephone number to be called by the Appeals Referee for the hearing.

(c) Each party may complete and submit the Telephone Hearing Questionnaire containing each number to be called for the hearing to the Appeals Referee listed in the hearing notice, or pursuant to 04 NCAC 24A .0104(b).

(d) [At any time after] After receiving the hearing notice, and prior to the hearing, any party may contact the Appeals Referee to provide the name of each participant and each telephone number to be called 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~~ the party at the telephone number listed on the hearing notice.

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

Eff. July 1, 2015;

Amended Eff. October 1, 2017.

04 NCAC 24D .0103 is amended as published in 31:22 NCR 2224 as follows:

**04 NCAC 24D .0103 REQUIREMENTS FOR REQUESTING NONCHARGING OF BENEFIT
PAYMENTS**

An employer who requests noncharging of benefit charges shall make the request ~~as follows:~~

- ~~(1)~~ by stating each reason ~~the reason(s)~~ for the request in ~~writing; writing~~
- ~~(2)~~ within 15 days of the mailing date of the notice of potential ~~charges; and charges~~
- ~~(3)~~ ~~sent by mail to: DES Employer Benefit Charges/Benefit Charges to DES's Claims Unit, pursuant to~~
04 NCAC 24A .0104(s). ~~Post Office Box 25903, Raleigh, North Carolina 27611 5903; or by~~
~~facsimile to 919 733 1126.~~

History Note: Authority G.S. 96-4; 96-11.3; ~~96-11.4;~~
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .0201 Eff. March 1, 2017;
Amended Eff. October 1, 2017.

04 NCAC 24D .0203 is amended as published in 31:22 NCR 2224 as follows:

04 NCAC 24D .0203 GROUNDS FOR PROTESTING LIST OF CHARGES

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; or
- (3) ~~charges resulting from individuals who remain employed by the employer; or~~ the claimant has new separation from employment occurring between the date that the claimant's benefit year began and the last week ending date for which the claimant was paid benefits, and a base period employer did not have an opportunity to request noncharging on the subsequent separation.
- (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;
Recodified from 04 NCAC 24D .0105 Eff. March 1, 2017;
Amended Eff. October 1, 2017.*

04 NCAC 24D .0302 is amended with changes as published in 31:22 NCR 2224 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 or sent by electronic transmission to the employer;
- (4) instructions for protesting the determination; and
- (5) the time period within which a protest ~~must~~ shall be filed.

(b) An employer may protest its Adequacy Threshold Determination and shall file its written request with DES's ~~Tax Administration Section Claims Unit~~ by mail, facsimile, or email pursuant to ~~04 NCAC 24A .0104(n)~~ 04 NCAC 24A .0104(m).

(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 15 days after the date that the Adequacy Threshold Determination notice was ~~mailed~~ sent to the employer, and the timeliness requirements of 04 NCAC 24A .0106 shall apply.

(c) Following receipt of the written request, the ~~Tax Administration Section~~ Claims Unit shall review the employer's request for review and issue a written determination. The determination shall ~~contain the following~~:

- ~~(1)~~ (1) — notify the employing unit of whether its application was granted or ~~denied; denied, and~~
- ~~(2)~~ (2) — ~~indicate whether additional information from the employing unit is required; and~~
- ~~(3)~~ (2) 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~~ 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~~ each corresponding charging ~~year~~ cycle.

*History Note: Authority G.S. ~~96-4~~; 96-11.3; 96-11.4; 96-15; ~~23~~ 26 U.S.C. 3303;
Eff. July 1, 2015;
Amended Eff. October 1, 2017.*

04 NCAC 24D .0303 is amended with changes as published in 31:22 NCR 2225 as follows:

04 NCAC 24D .0303 ADEQUACY PENALTY DETERMINATION

(a) DES shall issue ~~an a written~~ Adequacy Penalty Determination at the end of each charging year cycle to notify the employer if the employer's of charges to its account for erroneous unemployment benefit payments identified during the charging cycle if the payments resulted from is not relieved of charges for untimely or inadequate responses as set forth in 04 NCAC 24D .0301 ~~for particular~~ to requests for information regarding a claimant's separation from employment or status, claims during that charging year cycle, resulting from if the employer met or exceeded the an adequacy threshold ~~determination~~ in the prior ~~charging year reporting cycle 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; and
- (3) the date that the Adequacy Penalty Determination is mailed or sent to the employer by electronic transmission.

(c) An employer may protest its Adequacy Penalty Determination and shall file its written request with DES's ~~Tax Administration Section Claims Unit~~ by mail, facsimile, or email pursuant to ~~04 NCAC 24A .0104(n).~~ 04 NCAC 24A .0104(m).

(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 or provided to the employer by electronic transmission, and the timeliness requirements of 04 NCAC 24A .0106 shall apply.

(3) Following receipt of the written request, the ~~Tax Administration Section Claims Unit~~ shall review the employer's request and issue a written determination. The determination shall include the following:

- ~~(A)~~ (A) notify the employing unit of whether its application was granted or ~~denied; denied~~.
- ~~(B)~~ (B) ~~indicate whether additional information from the employing unit is required;~~
- ~~(C)~~ (B) explain the reasons for the ruling and identify the information ~~considered;~~ considered, and
- ~~(D)~~ (C) contain instructions for appealing ~~the a~~ denial to ~~the Board of Review.~~ DES's Appeals Section pursuant to [04 NCAC 24A .0104(b);] 04 NCAC 24A .0104(m).

History Note: Authority G.S. ~~96-4~~; 96-11.3; 96-11.4; 96-15; ~~23~~ 26 U.S.C. 3303;

- 1 *Eff. July 1, 2015;*
- 2 *Amended Eff. October 1, 2017.*

04 NCAC 2D .0304 is amended with changes as published in 31:22 NCR 2226 as follows:

04 NCAC 24D .0304 APPEALING ADEQUACY PENALTY DETERMINATIONS

(a) An employer may file an appeal of its Adequacy Penalty Determination and request a hearing. The appeal shall be filed with DES's ~~Tax Administration Section~~ Claims Unit by mail, facsimile, or email pursuant to 04 NCAC 24A .0104(n) 04 NCAC 24A .0104(m).

~~(b) The appeal shall contain the following:~~

~~(1) the date of the appeal;~~

~~(2) the identity [docket or identification number] of the determination, decision or result [determination] being appealed;~~

~~[(3) the name of the employer;]~~

~~(3)(4) a clear statement of the party's intent to appeal;~~

~~(4)(5) reasons for the appeal; and~~

~~(5)(6) the name of the party appealing the determination, decision, or result. [the name, address, and official position of the individual filing the appeal on behalf of the employer; and~~

~~(7) a telephone number.]~~

~~(e)(b)~~ The provisions of 04 NCAC 24A .0106 apply in determining the timeliness of an appeal. The appeal shall be filed within 15 days after the date that the Adequacy Penalty Protest Determination was sent to the employer, and the timeliness requirements of 04 NCAC 24A .0106 shall apply.

~~(d)(c)~~ Appeal hearings from Adequacy Penalty Determinations shall be conducted as set forth in Section ~~4100~~ .0200 of this Subchapter. Subchapter 24C.

History Note: Authority G.S. ~~96-4~~; 96-11.3; 96-11.4; 96-15; 2326 U.S.C. 3303;

Eff. July 1, 2015;

Amended Eff. October 1, 2017.