

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0102

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 8 states "des.tax" but line 12 states "des.ui" Please verify that the emails accounts are correct.

Line 13, what is "SCUBI"? This Rule was not pre-reviewed, so the acronym has been defined in Rule 24A .0105 and spelled out in Rule 24A .0104. Since this is the first use of "SCUBI" please consider spelling out the acronym in this Rule

Line 18, please reflect the change to the comma in accordance with [26 NCAC 02C .0108\(7\)](#). The addition of the comma runs to the full seven-digit telephone number.

Line 20, please review the cited statutory authority. Should G.S. 96-40 be included? Which portion of 20 CFR 640 applies? Please update as is necessary.

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: Thursday, July 27, 2017

1 04 NCAC 24A .0102 is amended as published in 31:21 NCR 2063 as follows:

2

3 **04 NCAC 24A .0102 ADDRESS CHANGES AND ELECTRONIC ADDRESS CHANGES**

4 (a) Each employing unit that has or had individuals in employment as defined in G.S. 96-1 shall notify DES in writing
5 of any change to its mailing address. This notice shall be transmitted by facsimile, via the internet, or by postal mail
6 within seven days after the effective date of the change. All notices shall be submitted to the Tax Administration
7 Section, ~~ATTN:~~ Attn: Address Change by mail to Post Office Box 26504, Raleigh, North Carolina, 27611, facsimile
8 to (919) 715-7194, or email to des.tax.customerservice@nccommerce.com.

9 (b) Each claimant with an active claim, or who is registered for work at a public employment office, shall notify DES
10 in writing of any change in address or electronic mail address within seven days after the effective date of the change.

11 All notices shall be submitted to the DES Customer Call Center, Attn: Address Change, by mail to Post Office Box
12 25903, Raleigh, NC 27611, facsimile to (919) 857-1296, or email to des.ui.customerservice@nccommerce.com.

13 Claimants may also make and submit address and electronic address changes from their home page in SCUBI.

14 ~~(b)(c)~~ Each claimant who is liable to DES for an overpayment of benefits, ~~or is registered for work at a public~~
15 ~~employment office,~~ shall notify DES by facsimile, via the internet, or by postal mail of any change of address within
16 seven days after the effective date of the change. All notices of overpayment address changes shall be submitted to
17 the Benefits Integrity Unit, ~~ATTN:~~ Attn: Overpayment Address Change by mail to Post Office Box 25903, Raleigh,
18 NC 27611, facsimile to (919) 733-1369, or email to des.ui.bpc@nccommerce.com.

19

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

21 *Eff. July 1, 2015;*

22 *Amended Eff. September 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0103

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 5, consider adding an apostrophe and an "s" to claimant. Since this is a change since publication, please track in accordance with [26 NCAC 02C .0405\(b\)\(2\)](#).

Line 13, define or delete "solely"

Page 2, line 10, replace "notify DES that communications should be sent" with "request DES to send communications"

Page 2, lines 14 thru 16, what is this sentence trying to convey? It seems unnecessary. Is the use of "not received" an incorrect statement? Is the agency merely trying to clarify that an error or omission outside the agency's control, but within the control of the claimant or claimant's agent does not alter the time period? If the clause is necessary, please clarify the intent of this clause.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, July 27, 2017

1 04 NCAC 24A .0103 is amended as published in 31:21 NCR 2064 as follows:

2

3 **04 NCAC 24A .0103 ADDRESSES FOR NOTICE AND ELECTRONIC NOTICE**

4

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

7 (b) Except as provided in ~~Paragraph (a) of this Rule Chapter, when~~ DES shall ~~mail~~ mail a notice of an initial claim
8 to the employer at one of the following addresses:

9

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

10

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

12

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

13

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

15

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

17

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

19

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

22

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

24

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

27

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

31

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

34

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

37

(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 by electronic
11 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 communication is not received by the claimant as a result of an error or omission on the part of the
16 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.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0104

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 17, and as used throughout the remainder of this Rule, the phrase "submitted by email" is specific to ensure that no confidential information is submitted on an unprotected email system, correct? But someone submitting the information by mail is acceptable to the agency? No changes are necessary if that is the intent of the agency. Please merely verify.

Line 18, based on the added definition and the suggested change for Rule 24A .0102, it may not be necessary to spell out the acronym of SCUBI in this Rule. The agency may leave the language as published or change it to merely "outside the SCUBI system"

Line 21, is the term "issue" necessary before "identification number"? The term is not on line 32. Please review for consistent use of terminology.

Line 29, the "(3)" should be underlined

Page 2, line 8, the "(3)" should be underlined

Page 3, line 23, please verify that the limitation to "claimant" is intentional and accurate.

Page 4, line 1, the "(4)" should be a "(5)"

Page 4, line 5, what is the purpose of the "and" between "with" and "Tax"? Please clarify.

Page 4, lines 11, 15 and 28, please correct the numbering.

Page 4, line 22, the "(3)" should be underlined

Page 5, lines 1 and 5, please correct the numbering.

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, July 27, 2017

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: Thursday, July 27, 2017

1 04 NCAC 24A .0104 is amended as published in 31:21 NCR 2064 as follows:

2
3 **04 NCAC 24A .0104 ADDRESSES FOR FILING CLAIMS, APPEALS, EXCEPTIONS, REQUESTS OR**
4 **PROTESTS**

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

6 (1) The telephone number for filing a new initial claim is ~~(877) 841-9617~~. (888) 737-0259.

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

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

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

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

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

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

15 (4) ~~Any questions regarding the contents of a Determination by Adjudicator shall be directed to the~~
16 ~~Adjudication Unit by telephone to (919) 707-1410, facsimile at (919) 733-1127, or email at~~
17 ~~des.ui.customerservice@nccommerce.com.~~ Correspondence and appeals submitted by email
18 outside the Southeast Consortium Unemployment Benefits Initiative (SCUBI) system shall not
19 include social security numbers or employer account numbers.

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

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

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

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

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

31 (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105
32 and shall contain the docket or identification number of the determination being appealed, the
33 claimant's identification number, the names of the claimant and employer, the name of the
34 individual filing the appeal, the official position of an individual filing the appeal on behalf of the
35 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 docket or identification number of the determination being appealed, the
12 claimant's identification number, the names of the claimant and employer, the name of the
13 individual filing the appeal, the official position of an individual filing the appeal on behalf of the
14 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 docket or identification number of the determination being appealed, the
28 claimant's identification number, the names of the claimant and employer, the name of the
29 individual filing the appeal, the official position of an individual filing the appeal on behalf of the
30 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 (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- 2 (2) The facsimile number is (919) 715-3983.
- 3 (3) Correspondence submitted by email outside the SCUBI system shall not include social security
- 4 numbers or employer account numbers.
- 5 (4) Protests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105
- 6 and shall contain the docket or identification number of the determination being protested, the
- 7 claimant's identification number, the names of the claimant and employer, the name of the
- 8 individual filing the protest, the official position of an individual filing the protest on behalf of the
- 9 party, and a telephone number.
- 10 ~~(4)(5)~~ Any questions regarding the contents of a Wage Transcript and Monetary Determination shall be
- 11 directed to the Monetary Revision Unit by telephone to (919) 707-1257, facsimile at (919) 715-
- 12 3983, or email at ~~des.ui.customerservice@nccommerce.com.~~
- 13 des.monetaryrevision@nccommerce.com.

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

- 15 (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- 16 (2) The facsimile number is (919) 733-1369.
- 17 ~~(3) Any questions regarding the contents of an overpayment determination shall be directed to the~~
- 18 ~~Benefit Payment Control Unit by telephone to (919) 707-1338, facsimile at (919) 733-1369 or email~~
- 19 ~~at des.ui.bpc@nccommerce.com.~~ Correspondence submitted by email outside the SCUBI system
- 20 shall not include social security numbers or employer account numbers.
- 21 (4) Petitions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105
- 22 and shall contain the docket or identification number of the overpayment determination, the
- 23 claimant's identification number, the name of the claimant, the name of the individual filing the
- 24 petition, the official position of an individual filing the petition on behalf of the party, and a
- 25 telephone number.

26 (h) Claimant appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter shall be filed with the

27 Benefits Integrity Unit by ~~mail~~, mail or facsimile.

- 28 (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611.
- 29 (2) The facsimile number is (919) 733-1369.
- 30 (3) Correspondence regarding a claimant's NCDOR Offset Letter submitted by email outside the
- 31 SCUBI system shall not include social security numbers or employer account numbers.
- 32 (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105
- 33 and shall contain the docket or identification number of the offset letter being appealed, the
- 34 claimant's identification number, the name of the claimant, the name of the individual filing the
- 35 appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone
- 36 number.

1 ~~(3)~~ (4) 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 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) 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 docket or identification number of the offset letter, the name of the employer,
13 the name of the individual filing the appeal, the official position of an individual filing the appeal
14 on behalf of the party, and a telephone number.

15 ~~(4)~~ (6) 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 docket or identification number of the TOP notice, the claimant's identification
26 number, the name of the claimant, the name of the individual filing the request, the official position
27 of an individual filing the request on behalf of the party, and a telephone number.

28 ~~(3)~~(4) ~~Any~~ Claimant questions regarding TOP shall be directed to a Recovery Specialist by telephone to
29 (919) 707-1338, or email at des.ui.bpc@nccommerce.com.

30 (k) Employer ~~requests~~ Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with
31 ~~Employer Call Center (ECC)~~ the Tax Administration Section by ~~mail, telephone, facsimile or email.~~ mail or facsimile.

32 (1) The mailing address is Post Office Box ~~25903,~~ 26504, Raleigh, North Carolina 27611.

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

34 ~~(3)~~(2) The facsimile number is (919) ~~715-0780-~~733-1255.

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

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

1 (5) Requests shall be filed by a party or a party’s legal representative as defined in 04 NCAC 24A .0105
2 and shall contain the docket or identification number of the TOP notice, the name of the employer,
3 the name of the individual filing the request, the official position of an individual filing the request
4 on behalf of the party, and a telephone number.

5 (6) Employer questions regarding TOP shall be directed to the Tax Administration Section by telephone
6 to (919) 707-1119, facsimile at (919) 733-1255, or email at
7 des.tax.customerservice@nccommerce.com.

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

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

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

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

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

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

19 (m) ~~Requests for Post Decision Relief or Reconsideration shall be filed with the Board of Review by mail, facsimile,~~
20 ~~or email.~~ Protests or appeals of adequacy determinations shall be filed with the Claims Unit by mail or facsimile.

21 (1) The mailing address is Post Office Box ~~28263, 25903~~, Raleigh, North Carolina 27611.

22 (2) The facsimile number is (919) ~~715-7193~~, 733-1126.

23 (3) ~~The email address is BOR@nccommerce.com.~~ Correspondence submitted by email outside the
24 SCUBI system shall not include social security numbers or employer account numbers.

25 (4) Protests or appeals shall be filed by a party or a party’s legal representative as defined in 04 NCAC
26 24A .0105 and shall contain the docket or identification number of the determination being protested
27 or appealed, the name of the employer, the name of the party filing the protest or appeal, the official
28 position of an individual filing the protest or appeal on behalf of the party, and a telephone number.

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

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

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

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

34 (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not
35 include social security numbers or employer account numbers.

36 (5) Protests or appeals shall be filed by a party or a party’s legal representative as defined in 04 NCAC
37 24A .0105 and shall contain the docket or identification number of the determination being

1 appealed, the claimant's identification number, the names of the claimant and employer, the name
2 of the individual filing the protest or appeal, the official position of an individual filing the protest
3 or appeal on behalf of the party, and a telephone number.

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

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.

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

11 (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC
12 24A .0105 and shall contain the docket or identification number of the rate assignment, the name of
13 the employer, the name of the individual filing the protest or appeal, the official position of an
14 individual filing the protest or appeal on behalf of the party, and a telephone number.

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

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

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

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

19 (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not
20 include social security numbers or employer account numbers.

21 (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC
22 24A .0105 and shall contain the docket or identification number of the result being protested or
23 appealed, the name of the employer, the name of the individual filing the protest or appeal, the
24 official position of an individual filing the protest or appeal on behalf of the party, and a telephone
25 number.

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

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

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

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

31 (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not
32 include social security numbers or employer account numbers.

33 (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC
34 24A .0105 and shall contain the docket or identification number of the assessment being protested
35 or appealed, the name of the employer, the name of the individual filing the protest or appeal, the
36 official position of the individual filing the protest or appeal on behalf of the party, and a telephone
37 number.

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

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

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

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

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

7 (5) Exceptions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A
8 .0105 and shall contain the docket or identification number of the tax opinion, the claimant's
9 identification number, the names of the claimant and employer, the name of the individual filing the
10 exceptions, the official position of an individual filing the exceptions on behalf of the party, and a
11 telephone number.

12 (s) Requests for non-charging of benefits to an employer's account, and ~~Protests~~ protests or appeals of benefit charges
13 to an employer's account, ~~or requests for non-charging account~~ shall be filed with the ~~Employer Benefit~~
14 ~~Charges/Benefit Charges~~ Claims Unit by mail or facsimile.

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

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

17 (3) ~~All questions regarding non-charging shall be directed to the Employer Benefit Charges/Benefit~~
18 ~~Charges Unit at (919) 707-1279.~~ Correspondence, requests, protests, or appeals submitted by email
19 outside the SCUBI system shall not include social security numbers or employer account numbers.

20 (4) Requests for non-charging and protests or appeals shall be filed by a party or a party's legal
21 representative as defined in 04 NCAC 24A .0105 and shall contain the docket or employer's
22 identification number, the name of the employer, the name and official position of the individual
23 filing the request, protest, or appeal, on behalf of the party, and a telephone number.

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

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

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

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

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

31 (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC
32 24A .0105 and shall contain the docket or identification number of the denial being appealed, the
33 name of the employer, the name of the individual filing the protest or appeal, the official position of
34 an individual filing the protest or appeal on behalf of the party, and a telephone number.

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0105

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 32, add "G.S." before "96-1(b)(3)"

Page 2, line 16, who is this person and how is it known? This seems very unclear.

Page 2, line 37, please correct the spacing for the remainder of the language for this Item.

Page 3, line 19 references the rule for requesting confidential information. Does it also apply for purposes of incorporation by reference documents? Please verify.

Page 4, lines 7 thru 10, is this database something that is being used by the agency or the regulated public? Is this in response to G.S. 96-40 and to comply with reporting requirements?

Page 4, line 18, incorporate the CFR in accordance with [G.S. 150B-21.6](#).

Page 5, line 9, replace both uses of "must" with "shall"

Page 5, line 17, delete "then actually"

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: Thursday, July 27, 2017

1 04 NCAC 24A .0105 is amended as published in 31:21 NCR 2069 as follows:

2

3 **04 NCAC 24A .0105 DEFINITIONS**

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

6 (1) "Additional claim" means the reopening of a valid initial claim for unemployment insurance benefits
7 after a claimant, as defined in Item (16) of this Rule, ceased filing a weekly certification as defined
8 in G.S. 96-14.9, for one or more weeks due to intervening employment. The first week of eligibility
9 filed after a claim has been reopened shall constitute a waiting period week if all eligibility
10 requirements set forth in G.S. 96-14.9 are met.

11 (2) "Agent state" means any state from which, or through which a claimant files a claim for benefits
12 from another state.

13 (3) "Adjudicator" means an employee of DES appointed to conduct an informal investigation and
14 render a determination as required by G.S. 96-15(b).

15 (4) "Appeal" means a submission by a party with statutory appeal rights requesting the Appeals Section
16 of DES or the Board of Review to review a determination or decision that is adverse to that party.

17 (5) "Appeals Referee" or "Hearing Officer" means an attorney appointed to hear or decide an appeal
18 from a determination by an adjudicator and issues involving the rights, status, and liabilities of an
19 employer pursuant to the provisions of G.S. 96-4(q) or 96-15(c).

20 (6) "Appeals Section" means the section within DES where Appeals Referees conduct quasi-judicial
21 administrative evidentiary hearings and make decisions in contested cases for unemployment
22 insurance benefits. The Appeals Section also consists of support staff that assists Appeals Referees.

23 (7) "Application for a position" means supplying the information required by an employer to place an
24 individual in a particular position or opening. Such information may include proof of the
25 qualifications or license required by the position or opening, employment history, and personal
26 information, such as full name, Social Security Number or other identification number, telephone
27 number, and current address. An application for a position may be accomplished in whatever manner
28 acceptable to an employer, including the completion of a designated form, the provision of a written
29 resume, or verbally.

30 (8) "Authorized Representative" means an individual authorized by an employer or employing unit to
31 act on the employer or employing unit's behalf before DES.

32 (9) "Base period" means as defined in 96-1(b)(3). Calendar quarters are January through March, April
33 through June, July through September, and October through December.

34 (10) "Benefit week" means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.

35 (11) "Benefit wage credits" means wages used to determine a claimant's monetary eligibility for benefits.
36 Benefit wage credits consist of the wages a claimant received or should have received during the
37 claimant's base period of employment and to include those wages that were awarded and paid to the

1 claimant after the base period pursuant to a court order; a National Labor Relations Board
2 determination; another adjudicative agency; or by private agreement, consent, or arbitration for loss
3 of pay because of discharge. DES shall credit the awarded wages to the quarter in which the wages
4 should have been paid.

5 (12) “Board of Review” means as defined in G.S. 96-15.3 and is the body that conducts “higher authority
6 review” of appeals arising from the decisions of the Division, tax liability hearings, and labor
7 disputes. The Board of Review is also referred to as the “Board” or “BOR.”

8 (13) “Calendar Period” means the fifty-two week period beginning with the first day of a week in which
9 an individual first files a valid claim for benefits and registers for work. The week begins on the
10 first Sunday preceding the initial claim filed and ends the following year at 11:59 p.m. on Saturday.

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

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

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

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

21 (18) “Customarily,” as the term is used in G.S. 96-16, means during at least seventy-five percent of the
22 calendar years of an observation interval.

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

24 ~~(19)~~(20) “Day” means a calendar day.

25 ~~(20)~~(21) “Delivery service” means an authorized designated carrier pursuant to Rule 4(j) of the North
26 Carolina Rules of Civil Procedure and 26 U.S.C. 7502(f)(2).

27 ~~(21)~~(22) “DES website” means the internet address found at www.des.nc.gov.

28 ~~(22)~~(23) “Due diligence” means the measure of carefulness, precaution, attentiveness, and good judgment as
29 to be expected from, and exercised by a reasonable and prudent person under the particular
30 circumstances.

31 ~~(23)~~(24) “Effective date of a claim” means either the benefit year beginning on the Sunday preceding the
32 payroll week ending date if the claimant is payroll attached, or the benefit year beginning on the
33 Sunday of the calendar week within which a claimant filed a valid claim for benefits and registered
34 for work if the claimant is not payroll attached.

35 ~~(24)~~(25) “Electronic transmission” means ~~transmission by facsimile or internet.~~ delivery to an electronic mail
36 address at which an individual or employer has consented to receive notices, documents, or other
37 communications;

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

1 the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and may be
2 obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A
3 .0201.

4 ~~(33)~~(34) “Legal representative” means a licensed attorney or a person supervised by a licensed attorney.

5 ~~(34)~~(35) “Liable state” means any state against which a claimant files a claim for benefits through another
6 state.

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

11 ~~(35)~~(37) “Observation interval” means an interval of time including the four consecutive calendar years
12 preceding the calendar year in which an application for a seasonal determination is made pursuant
13 to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities
14 have changed, the observation interval may be less than four calendar years.

15 (38) “Official record” means information in the records of a state or state unemployment compensation
16 agency that pertains to the administration of the unemployment insurance program. Official records
17 include claim information, wage information, confidential information, and unemployment
18 compensation information as defined in 20 C.F.R. 603.2. Official records also include information
19 provided by a federal, state, or private entity, or a claimant or employer for reliance upon, or use by
20 the state in administering its unemployment insurance program.

21 ~~(36)~~(39) “Party with appeal rights” means a party who has the right to appeal an unfavorable determination
22 or decision pursuant to G.S. 96-4(q) and G.S. 96-15.

23 ~~(37)~~(40) “Public employment office” means a local office managed and operated by the Division of
24 Workforce Solutions (DWS) of the North Carolina Department of Commerce.

25 ~~(38)~~(41) “Regularly recurring” means a period or periods of operational activity and shall be deemed
26 regularly recurring if, during at least seventy-five percent of the calendar years in the observation
27 interval, the beginning and ending dates of the period or periods do not vary more than four weeks.

28 ~~(39)~~(42) “Reopened claim” means the resumption of a valid initial claim following a break in filing weekly
29 certifications during a benefit year and the break was caused by reasons other than intervening
30 employment. The first week of eligibility following the effective date of the reopened claim shall
31 constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.

32 ~~(40)~~(43) “Reporting cycle” means the fifty-two week period beginning August 1st and ending July 31st the
33 following year in which the employer’s account is examined and recorded for any inadequate
34 responses to Requests for Separation Information (NCUI 500AB).

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

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

5 ~~(41)~~(46) “State” means any of the 50 states in the United States and includes the District of Columbia, Puerto
6 Rico, and the U.S. Virgin Islands.

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

13 ~~(42)~~(48) “Wages paid” means both wages actually received by a worker, and wages “constructively paid.”
14 Wages are constructively paid when they are credited to the account of, or set apart for a worker
15 without any substantial restriction as to the time or manner of payment or condition upon which
16 payment is to be made, and shall be made available so that the worker may draw upon them at any
17 time, and payment brought within the worker’s control and disposition, although not then actually
18 reduced to possession.

19 ~~(43)~~(49) “Wages payable” means wages earned but not paid.

20 ~~(44)~~(50) “Weekly period” means a seven day period beginning at 12:00 a.m. Sunday and ending on the
21 following Saturday at 11:59 p.m.

22 ~~(45)~~(51) “Week of unemployment” includes any week of unemployment as defined in the law of the liable
23 state from which benefits for the week are claimed.

24
25 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;
26 Eff. July 1, 2015;
27 Temporary Adoption Eff. March 1, 2016;
28 Temporary Adoption Expired December 10, 2016;
29 Amended Eff. April 1, 2017;
30 Amended Eff. September 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0109

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 4, please simply underline the "(a)" to reflect how it was published in the Register

Lines 6 thru 7, the referenced form is the agency's way to clarify the actions that the POA does before the agency? And those actions are only items 1 thru 6 of the form, correct? Please review the form, as it appears the agency is giving themselves the power to revoke the POA. If this form is merely reciting the requirements of G.S. 32A-1, that is acceptable under [G.S. 150B-2\(8a\)d.](#), but any additional requirements sent forth on the form must be provided in a rule or statute. Please review and verify.

Lines 6 thru 7, the referenced form identifies an employer. What about the employee or claimant? The term "claimant" was added on lines 4 and 5 of this Rule. If there is not a form, then is the agency relying on G.S. 32A-1 for the employee or claimant to submit that information? Please review and clarify.

Lines 9 thru 16, these actions identify an employer. What about the employee or claimant? The term "claimant" was added on lines 4 and 5 of this Rule. Please review and clarify.

Line 18, please simply delete the underlined and struck through "84" as this is not currently in the history note and was not published in the Register.

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: Thursday, July 27, 2017

1 04 NCAC 24A .0109 is amended as published in 31:21 NCR 2071 as follows:

2

3 **04 NCAC 24A .0109 POWER OF ATTORNEY**

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

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

9 (1) complete and submit documents for filing employers' tax and wage reports;

10 (2) complete and submit documents regarding an employer's tax rate, contributions, and direct
11 reimbursements;

12 (3) respond to benefit claims documents, including completion of the Request for Separation
13 Information;

14 (4) engage in discussions with DES representatives regarding the actions listed above; and

15 (5) accept or receive correspondence sent by DES regarding claims for benefits or an employer's
16 contributions.

17

18 *History Note: Authority G.S.-32A-1; 32A-2; ~~84~~; 96-4; 96-9.15;*

19 *Eff. July 1, 2015;*

20 *Amended Eff. September 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0110

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 10, what does this language mean? Is this anyone within DES? This language seems to expand greatly beyond hearings. Please review and clarify.

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, July 27, 2017

1 04 NCAC 24A .0110 is adopted as published in 31:21 NCR 2072 as follows:

2

3 **04 NCAC 24A .0110 LIMITATION ON AUTHORITY GRANTED BY POWER OF ATTORNEY**

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

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

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

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

15

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

17 Eff. September 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0402

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Lines 16 thru 18, is the agency providing this information, like stated in lines 14 thru 15, or are employers receiving this information directly from SIDES? It is unclear. Please review and clarify if necessary.

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: Thursday, July 27, 2017

1 04 NCAC 24B .0402 is amended as published in 31:21 NCR 2072 as follows:

2
3 **04 NCAC 24B .0402 REQUEST FOR SEPARATION INFORMATION FROM EMPLOYER**

4 (a) ~~In connection with a claim filed by a claimant, DES shall require the claimant's last employer to provide complete~~
5 ~~information (sufficient facts) to make a correct initial determination of the claimant's eligibility for unemployment~~
6 ~~insurance benefits without having to contact the employer to obtain additional information. DES shall provide requests~~
7 ~~for information regarding a claimant's separation or status to the employer's last known mailing address or email~~
8 ~~address as reflected in DES's official records. Requests shall be provided to the employer's mailing address when~~
9 ~~responding to the request by SCUBI, and to the email address when responding to the requests by SIDES.~~

10 (b) Employers shall electronically submit separation information and information regarding a claimant's employment
11 status a Form NCUI 500AB consistent with G.S. 96-15(b)(2) that shall be provided to the employer's last known
12 address as reflected in its official records and include the following information: by SCUBI at www.des.nc.gov or by
13 SIDES.

14 (1) DES shall provide employers using SCUBI with written instructions for submitting responses by
15 SCUBI with the request for information.

16 (2) SIDES participants who elect to receive communications from SIDES shall receive written
17 instructions for submitting responses to the request for information by email or proprietary SIDES
18 interface software.

19 (c) Each employer's response in connection with a request from DES shall include the following information as
20 applicable to a claimant's claim:

21 (1) last and first dates of employment;

22 (2) the claimant's pay rate;

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

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

25 (5) if the claimant quit ~~their~~ the job or left work:

26 (A) a copy of the employee's resignation ~~letter~~ letter, if one exists; and

27 (B) ~~the reason(s) for the resignation~~ each reason provided by the claimant to the employer for
28 leaving work; or

29 (6) if the claimant was discharged:

30 (A) ~~the each reason(s) reason~~ reason for the separation discharge and with supporting documentation
31 and evidence; and

32 (B) ~~copies of any employee policies, warnings, handbooks, documents, or contracts signed by~~
33 ~~the employee that pertain to the employee's discharge~~ a copy of each policy, warning,
34 handbook, document, acknowledgment, or contract signed by the claimant that is relevant
35 to the claimant's discharge; or

1 (7) if the claimant was separated due to an inability to perform the job duties and was employed less
2 than 100 days, an explanation describing the job requirements, the claimant's inability to perform the job
3 duties, and steps taken by the employer to assist the claimant to perform the job duties prior to discharge; or

4 ~~(7)~~(8) if the claimant is still employed with the employer:

5 (A) the terms of employment and conditions under which the employee claimant was hired;

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

7 (C) the customary number of hours per week that the claimant has worked;

8 ~~(C)~~(D) with regard to any reduction of the employee's claimant's work hours, hours:

9 (i) the date the reduction took place, place;

10 (ii) reasons for the reduction, reduction; and

11 (iii) if the reduction is temporary, any date when the employee may be allowed to the
12 expected date for the claimant's return to work; or and

13 ~~(8) if the employee was separated due to an inability to perform job duties and was employed less than~~
14 ~~100 days, an explanation describing the inability to perform the job duties; and~~

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

18 ~~(e) Employers may respond to requests for separation information by mail or fax as provided under 04 NCAC 24A~~
19 ~~.0104, or by submitting their responses at www.ncese.com through the employer portal.~~

20 *History Note: Authority G.S. 96-1; 96-4; 96-11.3; 96-11.4; 96-15; 96-15.01; 20 U.S.C. 3303;*

21 *Eff. July 1, 2015;*

22 *Amended Eff. September 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0601

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Lines 13 and 17, based upon pre-review notes, the agency is using the term "disqualified" but indicates that agency's decisions say "not disqualified." Based upon the response of the agency, the term "disqualified" on line 17 with "ineligible" appears to be accurate statement. However, on line 13, should "not" be added before "disqualified"? Please review and clarify if necessary.

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: Thursday, July 27, 2017

1 04 NCAC 24B .0601 is amended as published in 31:22 NCR 2222 as follows:

2
3 **04 NCAC 24B .0601 NOTICE REQUIREMENT FOR OVERPAYMENT**

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

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

12 (b) A determination notifying a claimant of an overpayment of benefits caused by the reversal of a previous decision
13 that found the claimant eligible or disqualified to receive benefits shall contain the same information contained in
14 Subparagraphs (a)(1) through (3) of this Rule, and shall:

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

21
22 *History Note: Authority G.S. 96-4; 96-15; 96-18;*
23 *Eff. July 1, 2015;*
24 *Amended Eff. October 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .1101

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 30, define or delete "actually"

Page 2, lines 1 thru 2, this Rule references "mail, fax, or email" Consider using "facsimile" to be consistent with the remainder of the rules in this Chapter. Also, this language allows the use of "email" and Rule 24B .1102 only allows "mail or fax" Please review and clarify if necessary.

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: Thursday, July 27, 2017

1 04 NCAC 24B .1101 is adopted with changes as published in 31:22 NCR 2222 as follows:

2
3 **SECTION .1100 NATIONAL DIRECTORY OF NEW HIRES**

4
5 **04 NCAC 24B .1101 NDNH CLAIMANT NOTICE**

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

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

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

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

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

3

4 History Note: Authority G.S. 96-14.1; 94-14.9; 96-17; 96-18;

5 Eff. October 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .1102

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 11, is "15 days" accurate? Should it be "14 days"? Please review and clarify if necessary

Line 16, define or delete "actually"

Lines 27 thru 28, this Rule references "mail or fax" Consider using "facsimile" to be consistent with the remainder of the rules in this Chapter. Also, this language does not allow the use of "email" and Rule 24B .1101 allows "mail, fax, or email" Please review and clarify if necessary.

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: Thursday, July 27, 2017

04 NCAC 24B .1102 is adopted **with changes** 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 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 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 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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .1103

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 8 says "within 14 days". Is this because the information is being submitted by the claimant and not the employer? Please see request for Rule 24B .1102. Please review and clarify if necessary.

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: Thursday, July 27, 2017

1 04 NCAC 24B .1103 is adopted **with changes** as published in 31:22 NCR 2223 as follows:

2

3 **04 NCAC 24B .1103 CLAIMANT RESPONSE TO REQUEST FOR EMPLOYMENT AND WAGE**
4 **INFORMATION**

5 (a) If a claimant fails to respond to DES’s request for employment and wage information within 14 days of the date
6 that the notice was mailed or sent by electronic transmission to the claimant, DES shall adjudicate an issue of eligibility
7 for failure to report in accordance with 04 NCAC 24B .0401 of this Subchapter;

8 (b) If a claimant responds to DES’s request for employment and wage information within 14 days, DES shall review
9 information received from the claimant or employer to determine if an overpayment of unemployment insurance
10 benefits exist.

11 (c) DES shall issue a determination consistent with 04 NCAC 24B .0601 of this Subchapter if an overpayment exists,

12

13 History Note: Authority G.S. 96-14.9; 96-15; **96-17**; 96-18;

14 Eff. October 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .1104

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 5 says "within 15 days". Is this because the information is being submitted by the employer and not the claimant? Please see request for Rule 24B .1102. Please review and clarify if necessary.

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: Thursday, July 27, 2017

1 04 NCAC 24B .1104 is adopted **with changes** as published in 31:22 NCR 2223 as follows:

2

3 **04 NCAC 24B .1104 EMPLOYER RESPONSE TO REQUEST FOR EMPLOYMENT AND WAGE**
4 **INFORMATION**

5 (a) If an employer fails to respond to DES's request for employment and wage information within 15 days of the date
6 that the request was mailed or sent by electronic transmission to the employer, such failure may result in DES's finding
7 that the employer's response was untimely or inadequate in accordance with Section .0300 of Subchapter 24D of this
8 Chapter.

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

11

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

13 Eff. October 1, 2017.

1 04 NCAC 24C .0204 is amended as published in 31:21 NCR 2073 as follows:

2

3 **04 NCAC 24C .0204 APPEALS HEARING NOTICE**

4 (a) The Appeals Section shall mail notice of the hearing to each party at least 14 days before the hearing ~~date~~ date,
5 unless a party elects to receive notices by electronic transmission pursuant to 04 NCAC 24A .0103.

6 (b) A party who elects to receive correspondence and notices by electronic transmission shall receive an email
7 notification that the hearing notice, documents, or other information are available for electronic retrieval, along with
8 instructions for retrieval.

9 ~~(b)~~ (c) Notice of the hearing shall include:

- 10 (1) the determination appealed;
- 11 (2) the appealing party;
- 12 (3) the time of the hearing;
- 13 (4) the date of the hearing;
- 14 (5) if requested at the time of filing the appeal, the physical location of an in-person hearing;
- 15 (6) the telephone number of each party for telephone hearings;
- 16 (7) each issue, with statutory reference, to be heard and decided;
- 17 (8) the name and contact information of the designated Appeals Referee;
- 18 (9) the manner by which witnesses may offer evidence and participate in the hearing;
- 19 (10) each party's right to legal representation;
- 20 (11) instructions for requesting a rescheduling of the hearing;
- 21 (12) each party's right and instructions for requesting the issuance of a subpoena for the production of
22 records or individuals to appear to testify;
- 23 (13) instructions on how to request an in-person hearing; and
- 24 (14) instructions on how to give evidence for a hearing.

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

27

28 *History Note: Authority G.S. 96-4; 96-15;*
29 *Eff. July 1, 2015;*
30 *Amended Eff. September 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0205

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

*Lines 8 thru 9, what is the purpose of this language? Does it not merely restate line 7?
Please review and consider deleting.*

Line 10, delete "At any time" and capitalize "after"

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: Thursday, July 27, 2017

1 04 NCAC 24C .0205 is amended as published in 31:22 NCR 2223 as follows:

2

3 **04 NCAC 24C .0205 TELEPHONE HEARINGS**

4 (a) Hearings shall be conducted by telephone conference call, unless a request is made for an in-person hearing at the
5 time the appeal is filed or an objection is made pursuant to Rule .0206 of this Section.

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

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

10 (d) At any time after receiving the hearing notice, and prior to the hearing, any party may contact the Appeals Referee
11 to provide the name of each participant and each telephone number to be called for the hearing. In the absence of the
12 submission by a party of any telephone number to be called for the hearing, the Appeals Referee shall call a the party
13 at the telephone number listed on the hearing notice.

14

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

16 *Eff. July 1, 2015;*

17 *Amended Eff. October 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0103

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

PLEASE NOTE: 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.

For the text of this Rule, please review the language as published in the 31:22 Register. Please submit the text as published in the Register. As published, there are no technical changes requested.

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: Thursday, July 27, 2017

1 04 NCAC 24D .0103 is amended as published in 31:22 NCR 2224 as follows:

2

3 **04 NCAC 24D .0103 REQUIREMENTS FOR REQUESTING NONCHARGING OF BENEFIT**
4 **PAYMENTS**

5 ~~(a)~~An employer who ~~protests the~~ requests noncharging of benefit charges payments to its account shall make the
6 ~~protest request as follows:~~ by stating each reason for the request

7 (1) in writing within ~~14~~ 15 days of the mailing date of the notice of potential ~~charges;~~ charges

8 (2) ~~by mail to: to DES DES's Employer Benefit Charges/Benefit Charges Claims Unit, pursuant to 04~~
9 NCAC 24A .0104(s). Post Office Box 25903, Raleigh, North Carolina 27611-5903; or facsimile to
10 919-733-1126; and

11 (3) ~~list all grounds for the protest as prescribed under Rule .0105 of this Section.~~

12

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

14 *Eff. July 1, 2015;*

15 *Recodified from 04 NCAC 24D .0201 Eff. March 1, 2017;*

16 *Amended Eff. October 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0202

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 12, is the use of "and" correct? Should the "and" be an "or"? Please review and clarify if necessary.

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: Thursday, July 27, 2017

1 04 NCAC 24D .0202 is amended as published in 31:22 NCR 2224 as follows:

2

3 **04 NCAC 24D .0202 REQUIREMENTS FOR FILING PROTESTS TO LIST OF CHARGES**

4 (a) An employer who protests the benefit charges to its account shall make the protest ~~as follows:~~

5 ~~(1)~~ in writing within ~~14~~ 15 days of the mailing date of the notice of potential ~~charges;~~ charges

6 ~~(2)~~ ~~by mail to: DES Employer Benefit Charges/Benefit Charges to DES's Claims Unit, Post Office Box~~
7 ~~25903, Raleigh, North Carolina 27611-5903; or facsimile to 919-733-1126; Unit in accordance with~~
8 ~~04 NCAC 24A .0104(s), and shall~~

9 ~~(3)~~ list all grounds for the protest as prescribed under Rule .0203 of this Section.

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

12 (1) Notice of Initial Claim and Potential Charges to Your Account; and

13 ~~(1)(2)~~ Notice of Combined Wage Claim and Potential Charges to Your Account (Form NCUI 551C);
14 Account.

15 ~~(2)~~ Administrative Determination Disallowing Noncharging (Form NCUI 570);

16 ~~(3)~~ List of Charges to Your Account (Form NCUI 626); or

17 ~~(4)~~ Unemployment Tax Rate Assignment (Form NCUI 104).

18

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

20 *Eff. July 1, 2015;*

21 *Recodified from 04 NCAC 24D .0103 Eff. March 1, 2017;*

22 *Amended Eff. October 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0203

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

PLEASE NOTE: 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.

For the text of this Rule, please review the language as published in the 31:22 Register. Please submit the text as published in the Register. As published, there are no technical changes requested.

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: Thursday, July 27, 2017

1 04 NCAC 24D .0203 is amended as published in 31:22 NCR 2224 as follows:

2

3 **04 NCAC 24D .0203 GROUNDS FOR PROTESTING LIST OF CHARGES**

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

5 (1) clerical errors in the list of charges;

6 (2) charges resulting from individuals who were never employed by the employer; or

7 (3) ~~charges resulting from individuals who remain employed by the employer~~ the claimant has new
8 separation from employment occurring between the date that the claimant's benefit year began and
9 the last week ending date for which the claimant was paid benefits, and a base period employer did
10 not have an opportunity to request noncharging on the subsequent separation. ~~;~~ ~~or~~

11 ~~(4) errors in adding charges to an incorrect account.~~

12

13 *History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5;*

14 *Eff. July 1, 2015;*

15 *Recodified from 04 NCAC 24D .0105 Eff. March 1, 2017;*

16 *Amended Eff. October 1, 2017.*

1 04 NCAC 24D .0205 is amended as published in 31:22 NCR 2224 as follows:

2

3 **04 NCAC 24D .0205 DETERMINATION ON GROUNDS CONTAINED IN PROTEST**

4 The determination by DES shall contain:

- 5 (1) notice of whether the relief sought by the employer in the protest was granted or denied;
- 6 (2) any adjustments that have been made to the list of charges if the relief sought in the protest was
- 7 granted, or the reasons for denial if the relief sought in the protest was denied;
- 8 (3) the date the determination was mailed or sent to the employer by electronic transmission; ~~to the~~
- 9 ~~employer;~~
- 10 (4) the employer's right to appeal the determination consistent with 04 NCAC 24C .0203; ~~and~~
- 11 (5) the time period within which an appeal shall be ~~filed.~~ filed; and
- 12 (6) instructions for filing an appeal with DES's Appeals Section pursuant to 04 NCAC 24A .0104(b).

13

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

15 *Eff. July 1, 2015;*

16 *Recodified from 04 NCAC 24D .0107 Eff. March 1, 2017;*

17 *Amended Eff. October 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0302

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 22, merely states "Following the written request" and Rule 24D .0303, line 29 says "Following receipt of the written request" Please review and update accordingly for consistency.

Line 23, the punctuation is incorrect. Why was the clause "contain the following:" deleted in this Rule, but remains in Rule 24D .0303, lines 30 thru 31? Please review and update accordingly for consistency. Depending on language used by the agency, the use of a colon should be on line 23 to indicate the upcoming list

Line 29, replace "is" with "shall be"

Line 29, delete "subsequently"

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: Thursday, July 27, 2017

1 04 NCAC 24D .0302 is amended as published in 31:22 NCR 2224 as follows:

2

3 **04 NCAC 24D .0302 ADEQUACY THRESHOLD DETERMINATION**

4 (a) The Adequacy Threshold Determination shall include:

- 5 (1) the effect of the determination on the employer's account;
- 6 (2) the reasons for the determination;
- 7 (3) the date the determination was mailed or sent by electronic transmission to the employer;
- 8 (4) instructions for protesting the determination; and
- 9 (5) the time period within which a protest ~~must~~ shall be filed.

10 (b) An employer may protest its Adequacy Threshold Determination and shall file its written request with DES's ~~Tax~~
11 ~~Administration Section Claims Unit~~ by mail, facsimile, or email pursuant to ~~04 NCAC 24A .0104(n)~~ 04 NCAC 24A
12 .0104(m).

- 13 (1) The request shall include the following:
 - 14 (A) the name of the employing unit;
 - 15 (B) the address of the employing unit;
 - 16 (C) the account number of the employing unit;
 - 17 (D) a ~~brief~~ statement of the question involved and reasons for the request; and
 - 18 (E) the name, address, and official position of the individual making the request.
- 19 (2) The written request shall be filed within 15 days after the date that the Adequacy Threshold
20 Determination notice was ~~mailed~~ sent to the employer, and the timeliness requirements of 04 NCAC
21 24A .0106 shall apply.

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

- 24 (1) notify the employing unit of whether its application was granted or denied; and
- 25 ~~(2) indicate whether additional information from the employing unit is required; and~~
- 26 ~~(3)~~ (2) explain the reasons for the ruling and what information was considered.

27 (d) No further right of appeal from an unfavorable written determination of a protest of an ~~adequacy threshold~~
28 ~~determination~~ Adequacy Threshold Determination shall exist unless and until an Adequacy Penalty Determination, as
29 defined under Rule .0303 of this Section is subsequently issued at the conclusion of ~~the employer's~~ each corresponding
30 charging year cycle.

31

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

33 *Eff. July 1, 2015;*

34 *Amended Eff. October 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0303

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 29, states "Following receipt of the written request" and Rule 24D .0302, line 22 says "Following the written request" Please review and update accordingly for consistency.

Lines 30 thru 31, the clause "include the following:" remains, but the clause "contain the following:" was deleted in Rule 24D .0302, line 23? Please review and update accordingly for consistency.

Line 36, this Rule references Rule 24A .0104(b), but Rule 24D .0304, line 6 references Rule 24A .0104(m). Is the citation to different Paragraphs in Rule 24A .0104 accurate? Please review and clarify if necessary.

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: Thursday, July 27, 2017

04 NCAC 24D .0303 is amended 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) notify the employing unit of whether its application was granted or denied;
 - ~~(B) indicate whether additional information from the employing unit is required;~~
 - ~~(C)(B)~~ explain the reasons for the ruling and identify the information considered; and
 - ~~(D)(C)~~ instructions for appealing the a denial to the Board of Review. DES's Appeals Section pursuant to 04 NCAC 24A .0104(b).

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.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0304

DEADLINE FOR RECEIPT: Thursday, August 10, 2017

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

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

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

Line 6, this Rule references Rule 24A .0104(m), but Rule 24D .0303, line 36 references Rule 24A .0104(b). Is the citation to different Paragraphs in Rule 24A .0104 accurate? Please review and clarify if necessary.

Lines 7 thru 16 appears to duplicate the content of Rule 24A .0104, page 5, lines 25 thru 28. Since it duplicates the content of the Rule identified on line 6, this language appears to be unnecessary. Please review and consider deleting.

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: Thursday, July 27, 2017

1 04 NCAC 2D .0304 is amended as published in 31:22 NCR 2226 as follows:

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3 **04 NCAC 24D .0304 APPEALING ADEQUACY PENALTY DETERMINATIONS**

4 (a) An employer may file an appeal of its Adequacy Penalty Determination and request a hearing. The appeal shall
5 be filed with DES's ~~Tax Administration Section~~ Claims Unit by mail, facsimile, or email pursuant to 04 NCAC 24A
6 ~~.0104(n)~~ 04 NCAC 24A .0104(m).

7 (b) The appeal shall contain the following:

8 (1) the date of the appeal;

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

11 (3) the name of the employer;

12 ~~(3)(4)~~ a clear statement of the party's intent to appeal;

13 ~~(4)(5)~~ reasons for the appeal; and

14 ~~(5)(6)~~ the name of the party appealing the determination, decision, or result; the name, address, and official
15 position of the individual filing the appeal on behalf of the employer; and

16 (7) a telephone number.

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

20 (d) Appeal hearings from Adequacy Penalty Determinations shall be conducted as set forth in Section ~~1100~~ .0200 of
21 ~~this Subchapter.~~ Subchapter 24C.

22

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

24 *Eff. July 1, 2015;*

25 *Amended Eff. October 1, 2017.*