

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: All Rules Submitted

DEADLINE FOR RECEIPT: Friday, June 8, 2018

PLEASE NOTE: *This request may extend to 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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please insert an Introductory Statement that includes the publication information [see Rule 26 NCAC 02C .0404]

When you are amending any rule that was last amended in September 2017, you will insert the new amended effective date before it [see Rule 26 NCAC 02C .0406(a)(3)] For example, Rule 24A .0102 will look like this:

*History Note: Authority G.S. 96-4; 96-40; 20 C.F.R. 640.1;
Eff. July 1, 2015;
Amended Eff. July 1, 2018; September 1, 2017.*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0101

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please insert an Introductory Statement that includes the publication information [see Rule 26 NCAC 02C .0404] It will look like this:

Rule 04 NCAC 24A .0101 is amended as published in 32:17 NCR 1676 with changes as follows:

On line 8, do you need the term "regular" since you go on to state the business hours?

On lines 9-10, I suggest you replace what you have with "25 NCAC 01E .0901, including subsequent amendments and editions."

Please insert a full History Note in this Rule, reflecting the initial effective date. It will look like this:

*History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

1 04 NCAC 24A .0101 is proposed for amendment as follows:

2
3 **04 NCAC 24A .0101 OFFICE LOCATION**

4 The administrative ~~offices~~ office of the North Carolina Department of Commerce, Division of Employment Security
5 (hereinafter "DES" or "The Division") ~~are~~ is located at 700 Wade Avenue, in Raleigh, North Carolina. The ~~General~~
6 ~~Mailing Address~~ general mailing address is Post Office Box 25903, Raleigh, NC 27611-5903. ~~The same work hours~~
7 ~~shall be observed by the Division as observed by the Office of State Human Resources (OSHR).~~ The office is open to
8 the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for ~~approved~~
9 State holidays as set forth in ~~25 NCAC 01E .0901.~~ 25 NCAC 01E .0901, and includes subsequent amendments and
10 editions of the referenced material in accordance with G.S. 150B-21.6.

11
12 *History Note: Authority G.S. 96-4;*

13 *Amended Eff. July 1, 2018.*

04 NCAC 24A .0102 is proposed for amendment as follows:

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

(a) Each employing unit that has or had individuals in employment as defined in G.S. 96-1 shall notify DES in writing of any change to its mailing address. This notice shall be transmitted by facsimile, via the internet on the DES website, or by postal mail within seven days after the effective date of the change. All notices shall be submitted to the Tax Administration Section, Attn: Address Change by mail to Post Office Box 26504, Raleigh, North Carolina, ~~27611~~, 27611-6504, facsimile to ~~(919) 715-7194~~, (919) 733-1255, or email to des.tax.customerservice@nccommerce.com.

(b) Each claimant with an active ~~claim~~, claim or who is registered for work at a public employment office, shall notify DES in writing of any change in address or electronic mail address within seven days after the effective date of the change. All notices shall be submitted to the DES Customer Call Center, Attn: Address Change, by mail to Post Office Box 25903, Raleigh, NC ~~27611~~, 27611-5903, facsimile to (919) 857-1296, or email to des.ui.customerservice@nccommerce.com. Claimants may also make and submit address and electronic mail address changes from their home page in the Southeast Consortium Unemployment Benefits Integration (SCUBI) system.

(c) Each claimant who is liable to DES for an overpayment of benefits, shall notify DES by facsimile, via the ~~internet~~ DES website, or by postal mail of any change of address within seven days after the effective date of the change. All notices of overpayment address changes shall be submitted to the Benefits Integrity Unit, Attn: Overpayment Address Change by mail to Post Office Box 25903, Raleigh, NC ~~27611~~, 27611-5903, facsimile ~~to~~, to (919) 733-1369, or email to des.ui.bpc@nccommerce.com.

History Note: Authority G.S. 96-4; 96-40; 20 C.F.R. 640.1;

Eff. July 1, 2015;

Amended Eff. September 1, 2017;

Amended Eff. July 1, 2018.

04 NCAC 24A .0104 is proposed for amendment as follows:

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

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

(1) The telephone number for DES's Customer Call Center for filing a new initial claim or inquiring about an existing claim is (888) 737-0259.

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

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

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

(1) The mailing address is Post Office Box ~~25903, 27967~~, Raleigh, North Carolina ~~27611, 27611-7967~~.

(2) The facsimile number is ~~(919) 733-1228, (919) 857-1296~~.

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

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

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

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

(1) The mailing address is Post Office Box ~~25903, 27967~~, Raleigh, North Carolina ~~27611, 27611-7967~~.

(2) The facsimile number is ~~(919) 733-1369, (919) 857-1296~~.

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

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

- (5) Any questions regarding the contents of a Non-Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at ~~(919) 733-1369~~, (919) 857-1296, or email at des.ui.bpc@nccommerce.com.
- (d) Appeals of a Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit in SCUBI by ~~mail~~ mail, or facsimile.
- (1) The mailing address is Post Office Box ~~25903~~, 27967, Raleigh, North Carolina ~~27611~~, 27611-7967.
- (2) The facsimile number is ~~(919) 733-1369~~, (919) 857-1296.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.
- (5) Any questions regarding the contents of a Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at ~~(919) 733-1369~~, (919) 857-1296, or email at des.ui.bpc@nccommerce.com.
- (e) Appeals of a Monetary Determination denying a protest to a Wage Transcript and Monetary Determination shall be filed with the Tax Administration Section in SCUBI, by mail, facsimile, or email.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina ~~27611~~, 27611-6504.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.
- (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.
- (6) Any questions regarding the contents of a determination denying a protest to a Wage Transcript and Monetary Determination shall be directed to the ~~Account and Wage Adjustment~~ Wage Records Unit of the Tax Administration Section by telephone to ~~(919) 707-1462~~, (919) 707-1191, facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.
- (f) Protests of a Wage Transcript and Monetary Determination shall be filed with the ~~Claims Unit~~ Tax Administration Section in SCUBI, by ~~mail~~ mail, or facsimile.
- (1) The mailing address is Post Office Box ~~25903~~, 26504, Raleigh, North Carolina ~~27611~~, 27611-6504.
- (2) The facsimile number is ~~(919) 715-3983~~, (919) 733-1255.

- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Protests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest, the docket or identification number of the determination being protested, the claimant's identification number, the names of the claimant and employer, each reason for the protest, the name of the individual filing the protest, the official position of an individual filing the protest on behalf of the party, and a telephone number.
- (5) Any questions regarding the contents of a Wage Transcript and Monetary Determination shall be directed to the ~~Monetary Revision~~ Wage Records Unit by telephone to ~~(919) 707-1257~~, (919) 707-1191, facsimile at ~~(919) 715-3983~~, (919) 733-1255, or email at ~~des.monetaryrevision@nccommerce.com~~, des.tax.customerservice@nccommerce.com.
- (g) Petitions for Waiver of Overpayment shall be filed with the Benefits Integrity Unit in SCUBI, by ~~mail~~ mail, or facsimile.
- (1) The mailing address is Post Office Box ~~25903~~, 27967, Raleigh, North Carolina ~~27611~~, 27611-7967.
- (2) The facsimile number is ~~(919) 733-1369~~, (919) 857-1296.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Petitions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the petition, docket or identification number of the overpayment determination, the claimant's identification number, the name of the claimant, each reason for the request to waive repayment of the overpayment, the name of the individual filing the petition, the official position of an individual filing the petition on behalf of the party, and a telephone number.
- (h) Claimant appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter shall be filed with the Benefits Integrity Unit in SCUBI, by ~~mail~~ mail, or facsimile.
- (1) The mailing address is Post Office Box ~~25903~~, 27967, Raleigh, North Carolina ~~27611~~, 27611-7967.
- (2) The facsimile number is ~~(919) 733-1369~~, (919) 857-1296.
- (3) Correspondence regarding a claimant's NCDOR Offset Letter submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the offset letter being appealed, the claimant's identification number, the name of the claimant, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.
- (5) Any questions regarding the contents of a claimant's NCDOR Offset Letter shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at ~~(919) 733-1369~~, (919) 857-1296, or email at des.ui.bpc@nccommerce.com.

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

(1) The mailing address is Post Office Box 26504, Raleigh, NC ~~27611~~, 27611-6504.

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

(3) Correspondence regarding an employer's NCDOR Offset Letter submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.

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

(5) Any questions regarding the contents of an employer's NCDOR Offset letter for outstanding tax debts shall be directed to the Tax Administration Section by ~~telephone to (919) 707-1119~~, facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.

(j) Claimant Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Benefits Integrity Unit in SCUBI, ~~of mail by mail~~, or facsimile.

(1) The mailing address is Post Office Box ~~25903~~, 27967, Raleigh, North Carolina ~~27611~~, 27611-7697.

(2) The facsimile number is ~~(919) 733-1369~~, (919) 857-1296.

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

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

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

(k) Employer Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Tax Administration Section by mail or facsimile.

(1) The mailing address is Post Office Box 26504, Raleigh, North Carolina ~~27611~~, 27611-6504.

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

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

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

- (5) Employer questions regarding TOP shall be directed to the Tax Administration Section by telephone to ~~(919) 707-1119~~, (919) 707-1150, facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.
- (l) Appeals from an Appeals Decision shall be filed with the Board of Review in SCUBI, by mail, facsimile, or email.
- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina ~~27611~~, 27611-8263.
- (2) The facsimile number is (919) 733-0690.
- (3) The email address is des.ha.appeals@nccommerce.com.
- (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number.
- (m) Protests or appeals of adequacy determinations shall be filed with the Claims Unit in SCUBI, by ~~mail~~ mail, or facsimile.
- (1) The mailing address is Post Office ~~Box, 25903~~, Box 27967, Raleigh, North Carolina ~~27611~~, 27611-7967.
- (2) The facsimile number is ~~(919) 733-1126~~, (919) 857-1296.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the party filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number.
- (n) Protests or appeals of a Tax Liability Determination shall be filed with the Tax Administration Section by mail, facsimile, or email.
- (1) The mailing address is Post Office Box 26504, Raleigh, NC ~~27611~~, 27611-6504.
- (2) The facsimile number is ~~(919) 733-1255~~, (919) 715-7197.
- (3) The email address is des.tax.customerservice@nccommerce.com.
- (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the protest or appeal, the name of the individual filing the protest or

- 1 appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a
2 telephone number.
- 3 (o) Protests or appeals of a Tax Rate Assignment shall be filed with the Tax Administration Section by mail, facsimile,
4 or email.
- 5 (1) The mailing address is Post Office Box 26504, Raleigh, NC ~~27611~~. 27611-6504.
6 (2) The facsimile number is (919) 733-1255.
7 (3) The email address is des.tax.customerservice@nccommerce.com.
8 (4) Correspondence and protests or ~~appeal~~ appeals submitted by email outside the SCUBI system shall
9 not include social security numbers or employer account numbers.
10 (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC
11 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of
12 the rate assignment, the name and address of the employer, the employer's account number, each
13 reason for the protest or appeal, the name of the individual filing the protest or appeal, the official
14 position of an 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
16 email.
- 17 (1) The mailing address is Post Office Box 26504, Raleigh, NC ~~27611~~. 27611-6504.
18 (2) The facsimile number is (919) 733-1255.
19 (3) The email address is des.tax.customerservice@nccommerce.com.
20 (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not
21 include social security numbers or employer account numbers.
22 (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC
23 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of
24 the result being protested or appealed, the name of the employer, each reason for the protest or
25 appeal, the name of the individual filing the protest or appeal, the official position of an individual
26 filing the protest or appeal on behalf of the party, and a telephone number.
- 27 (q) Protests or appeals of Tax Assessments shall be filed with the Tax Administration Section by mail, facsimile, or
28 email.
- 29 (1) The mailing address is Post Office Box 26504, Raleigh, NC ~~27611~~. 27611-6504.
30 (2) The facsimile number is (919) 733-1255.
31 (3) The email address is des.tax.customerservice@nccommerce.com.
32 (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not
33 include social security numbers or employer account numbers.
34 (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC
35 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of
36 the assessment being protested or appealed, the name of the employer, each reason for the protest

- 1 or appeal, the name of the individual filing the protest or appeal, the official position of the
2 individual filing the protest or appeal on behalf of the party, and a telephone number.
- 3 (r) Exceptions to a Tax Opinion shall be filed with the Board of Review by mail, facsimile, or email.
- 4 (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina ~~27611~~ 27611-8263.
- 5 (2) The facsimile number is (919) 715-7193.
- 6 (3) The email address is BOR@nccommerce.com.
- 7 (4) Correspondence and exceptions submitted by email outside the SCUBI system shall not include
8 social security numbers or employer account numbers.
- 9 (5) Exceptions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A
10 .0105 and shall contain the date of the exceptions, the docket or identification number of the tax
11 opinion, the claimant's identification number, the names of the claimant and employer, the name of
12 the individual filing the exceptions, each reason for the exceptions, the official position of an
13 individual filing the exceptions on behalf of the party, and a telephone number.
- 14 (s) Requests for non-charging of benefits to an employer's account, and protests or appeals of benefit charges to an
15 employer's account shall be filed with the Claims Unit in SCUBI, by ~~mail~~ mail, or facsimile.
- 16 (1) The mailing address is Post Office Box ~~25903~~, 27967, Raleigh, North Carolina ~~27611-5903~~, 27611-
17 7967.
- 18 (2) The facsimile number is ~~(919) 733-1126~~, (919) 857-1296.
- 19 (3) Correspondence, requests, protests, or appeals submitted by email outside the SCUBI system shall
20 not include social security numbers or employer account numbers.
- 21 (4) Requests for non-charging and protests or appeals shall be filed by a party or a party's legal
22 representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket
23 or employer's identification number, the name of the employer, each reason for the request, the name
24 and official position of the individual filing the request, protest, or appeal, on behalf of the party,
25 and a telephone number.
- 26 (t) ~~Protests~~ Requests for seasonal determinations and protests or appeals of a Denial of Seasonal Assignment shall be
27 filed with the Tax Administration Section by mail, facsimile, or email.
- 28 (1) The mailing address is Post Office Box 26504, Raleigh, NC ~~27611~~, 27611-6504.
- 29 (2) The facsimile number is ~~(919) 733-1255~~, (919) 715-7197.
- 30 (3) The email address is des.tax.customerservice@nccommerce.com.
- 31 (4) Correspondence and protests or appeal 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 date of the protest or appeal, the docket or identification number of
35 the denial being appealed, the name of the employer, each reason for the protest or appeal, the name
36 of the individual filing the protest or appeal, the official position of an individual filing the protest
37 or appeal on behalf of the party, and a telephone number.

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

(1) The mailing address is Post Office Box ~~25903, 27967~~, Raleigh, North Carolina ~~27611, 27611-7967~~.

(2) The facsimile number is ~~(919) 733-1370, (919) 857-1296~~.

(v) Requests for oral arguments or to reschedule oral arguments shall be filed with the Board of Review in SCUBI, by mail, facsimile, or email.

(1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611-8263.

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

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

(4) Correspondence and requests for oral arguments submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.

(4) Requests for oral arguments shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or issue identification number of the decision being appealed, the claimant's identification number, the names of the claimant and employer, the name and official position of the individual filing the request on behalf of the party, a telephone number, and a statement that a copy of the request was served on the opposing party, if one exists.

(w) Employers may file requests for compromise of tax debts with DES's Tax Administration Section by mail, facsimile, or email.

(1) The address is Post Office Box 26504, Raleigh, NC 27611-6504.

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

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

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

(5) The letter shall contain the date of the request, the name of the employer, the name and official position of the individual filing the election on behalf of the employer, and a telephone number.

(x) Employers electing to pay reimbursements for benefits, rather than contributions, shall submit written notice of their election to DES's Tax Administration Section by mail, facsimile, or email.

(1) The address is Post Office Box 26504, Raleigh, NC 27611-6504.

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

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

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

(5) The letter shall contain the date of the notice of election, the name and address of the employer, the name and official position of the individual filing the election on behalf of the employer, and a telephone number.

(y) Employers shall make payments to DES by credit card, money order, electronic check, business check with funds drawn from a U.S. financial institution, cashier's check from a U.S. financial institution, automated clearing house (ACH) credit, or cash.

(1) Payments made by money order, business check, cashier's check, or cash shall be sent by mail or delivery service to DES's Tax Administration Section, Post Office Box 26504, Raleigh, NC 27611-6504, or by delivery to an agent of DES designated to accept payments in accordance with G.S. 96-10.

(2) Payments by electronic transmission shall be made on DES's website.

(3) Payments by ACH credit shall be initiated by employers through their U.S. financial institution.

(z) Claimants shall make payments to DES by cashier's check from a U.S. financial institution, by personal check with funds drawn from a U.S. financial institution, by money order, or by credit card.

(1) Payments by mail or delivery service shall be sent to the Benefit Payment Control (BPC) Unit, Post Office Box 25903, Raleigh, NC 27611-5903.

(2) Payments by credit card shall be made on DES's website, or by calling BPC at (919) 707-1338.

History Note: Authority G.S. 75-62; 96-4; 96-9.6; 96-9.8; 96-10; 96-10.1; 96-14.1; 96-15; 96-17; 96-18; 96-40; 20 C.F.R. 603.4; Eff. July 1, 2015; Amended Eff. September 1, 2017; Amended Eff. July 1, 2018.

04 NCAC 24A .0106 is proposed for amendment as follows:

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

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

(b) When a filing deadline or due date for a form or payment falls on a Saturday, Sunday, or State holiday as set forth in 25 NCAC 01E .0901, the deadline or due date shall be extended to the first business day following the Saturday, Sunday, or State holiday.

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

- (1) the postmark date or the postal meter date, where there is only one;
- (2) the postmark date if there is both a postmark date and a postal meter date, if they conflict; or
- (3) the date the document was delivered to a delivery service, which is equivalent to a postmark date of the United States Postal Service.

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

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

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

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

History Note: Authority G.S. 1A-1, Rule 6; 96-4;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24A .0109 is proposed for amendment as follows:

04 NCAC 24A .0109 POWER OF ATTORNEY

(a) An employer may appoint an agent with ~~full or limited power and~~ authority to act on his, her, or its behalf with DES in accordance with ~~G.S. 32A-2(10)~~, G.S. 32C-2-214. An employer's appointment of an agent shall be made in writing in the manner prescribed by ~~G.S. 32A-4~~, G.S. 32C-3-301, or by using the Power of Attorney and Declaration of Representative form found on DES's ~~website at www.des.nc.gov~~, website.

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

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

*History Note: Authority G.S. ~~32A-1~~; ~~32A-2~~; 32C-2-214; 32C-3-301; 96-4; 96-9.15;
Eff. July 1, 2015;
Amended Eff. September 1, 2017;
Amended Eff. July 1, 2018.*

04 NCAC 24A .0201 is proposed for amendment as follows:

04 NCAC 24A .0201 WRITTEN REQUEST REQUIRED

Any individual or employing unit requesting to inspect or copy any record containing confidential unemployment insurance information shall make the request in writing. All requests shall be submitted to the Legal Services Section, ATTN: Legal Release by mail to Post Office Box 25903, Raleigh, North Carolina, ~~27611~~, 27611-5903, or by facsimile to ~~(919) 715-7194~~, or email to legal.release@nccommerce.com ~~(919) 715-7194~~.

History Note: Authority G.S. 96-4; ~~20 CFR 603~~; 20 CFR 603.5;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24A .0202 is proposed for amendment as follows:

04 NCAC 24A .0202 CLEAR DESCRIPTION OF RECORDS REQUIRED

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

(b) The request ~~may~~ shall specify:

- (1) the subject matter of the record;
- (2) the date or approximate date that the record was made;
- (3) the place where the record was made;
- (4) the person or office that made the record; and
- (5) any other necessary identifying details about the record, such as an account or form number.

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

History Note Authority G.S. 96-4; ~~20 CFR 603~~; 20 CFR 603.5;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24A .0203 is proposed for amendment as follows:

04 NCAC 24A .0203 DETERMINATION AS TO DISCLOSURE

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

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

History Note: Authority G.S. 96-4; ~~20 CFR 603~~; 20 CFR 603.5;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0204

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(3), line 8, insert a comma after "applicant"

In (b)(1), line 13, I suggest you delete "clearly" since you then state the individual must be identified by name.

In (b)(4), I take it the intention of discussing "other applicable federal regulation that may be promulgated" is to give notice that the Division will follow federal law as it goes into effect?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24A .0204 is proposed for amendment as follows:

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

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

- (1) the name of the third party or person;
- (2) the address of the third party or person; and
- (3) a statement that the claimant, employer, applicant or other person authorizing the disclosure of information waives confidentiality as to the information directed to be released.

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

- (1) clearly identify the third party or person by name;
- (2) provide the address of the third party or person;
- (3) contain a statement that the individual waives confidentiality as to the information authorized to be disclosed to the identified third party; and
- (4) state that the authorization and waiver is given on the basis of informed consent as mandated by 20 CFR ~~Part~~ 603.5 and any other applicable federal regulation that may be promulgated by the U.S. Department of ~~Labor~~; and Labor.
- ~~(5) contain a statement that the employing unit that provided the information to DES has been provided proper advance notice of the request for disclosure.~~

History Note: Authority G.S. 96-4; 20 CFR 603.5;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0205

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Are you relying upon G.S. 96-4(x)(4) for the authority you are relying upon to establish a minimum fee in (e)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24A .0205 is proposed for amendment as follows:

04 NCAC 24A .0205 FEES FOR COPIES AND SERVICES

(a) Search Fees:

(1) The fee for searching DES records by authorized staff shall be four dollars and forty cents (\$4.40) for each one-quarter hour or fraction thereof required to obtain the records to be searched or to search the records.

(2) If the search for requested records requires transportation of DES staff to the location of the records, or transportation of the records to DES staff at a cost of more than five dollars (\$5.00), the actual transportation costs shall be added to the search time cost.

(3) If the search for requested records requires batch processing by computer, the ~~General~~ Chief Counsel or designee shall provide an estimate of DES's cost to produce the information to the individual making the request. The amount of the estimate provided shall be based on the computer programming and other actions necessary for the batch processing. Upon consenting to the estimate provided by the ~~General~~ Chief Counsel or designee, DES shall send an invoice for the actual cost of producing the requested information to the individual making the request.

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

(1) copying: one cent (\$0.01) per page;

(2) transcription of hearing: three dollars and seventy-five cents (\$3.75) per quarter hour or fraction thereof; and

(3) recording of hearing: three dollars and seventy-five cents (\$3.75) per compact disk or recording.

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

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

(e) Any individual receiving records from DES under this Section shall be charged a minimum fee of fifteen dollars (\$15.00).

*History Note: Authority G.S. ~~96-4(x); 20 CFR 603~~; 96-4; 20 CFR 603.8;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

04 NCAC 24A .0206 is proposed for amendment as follows:

04 NCAC 24A .0206 METHOD OF PAYMENT

(a) Fees shall be paid by ~~cash, money order, or certified check.~~ personal or business check with funds drawn from a U.S. financial institution, or cashier's check from a U.S. financial institution.

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

(c) Payments shall be mailed to the North Carolina Department of Commerce, Division of Employment Security, ATTN: Finance and Budget, Post Office Box 25903, Raleigh, North Carolina ~~27611~~, 27611-5903.

History Note: Authority ~~G.S. 96-4(x);~~ G.S. 96-4; 20 CFR 603; 20 CFR 603.8;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24A .0207 is proposed for amendment as follows:

04 NCAC 24A .0207 PAYMENT REQUIRED BEFORE INFORMATION RELEASE

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

(b) If the search for requested records exceeds the minimum fee under 04 NCAC 24A .0205, the Chief Counsel or designee shall provide an estimate of DES's cost to produce the information to the individual making the request. Upon consenting to the estimate provided by the Chief Counsel or designee, DES shall send an invoice for the actual cost of producing the requested information to the individual making the request. Payment shall be due immediately, as set forth in Paragraph (a) of this Rule.

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

History Note: Authority G.S. 96-4; ~~20 CFR 603~~; 20 CFR 603.8;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24B .0101 is proposed for amendment as follows:

04 NCAC 24B .0101 FILING A CLAIM

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

(b) Prior to receiving any benefits, the claimant shall register for work with a public employment office, ~~unless exempt from this requirement under G.S. 96-14.9 or federal law.~~ office.

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

~~(d)~~(c) Information for an initial claim shall include:

- (1) the claimant's name, social security number, address, telephone number, email address, and date of birth, and gender;
- (2) immigration status;
- (3) whether the claimant worked for the federal government or in another state during the previous two years;
- (4) whether the claimant applied for or is receiving disability payments;
- (5) whether the claimant was or will be paid vacation or severance and the time frame that the payment covers;
- (6) whether there was a policy in effect regarding paid time off prior to the claimant's separation;
- ~~(6)~~(7) whether the claimant refused work since becoming unemployed;
- ~~(7)~~(8) whether the claimant filed for or is receiving benefits under any other unemployment insurance law;
- ~~(8)~~(9) whether the claimant applied for or is receiving any type of retirement pension;
- ~~(9)~~(10) the name and complete address of the claimant's last employer;
- ~~(10)~~(11) the reason for the claimant's separation from work; and
- ~~(11)~~(12) the claimant's beginning and ending dates of employment.

*History Note: Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 96-15.01; 20 CFR 602;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

04 NCAC 24B .0103 is proposed for amendment as follows:

04 NCAC 24B .0103 WEEKLY CERTIFICATIONS

(a) After a claimant files an initial claim and establishes a benefit year, the claimant shall file subsequent weekly ~~certification~~ certifications for payment of benefits by telephone, or internet on DES's website at intervals of no less than 7 and no more than 14 consecutive days for each week claimed.

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

~~(2)~~ Any claimant who reports earnings that exceed the sum of his or her weekly benefit amount plus earnings allowance for three consecutive weeks shall be unable to file a weekly certification in the fourth week, and must contact DES's Customer Call Center to continue his or her claim as set forth in 04 NCAC 24A .0104(a)(1).

~~(2)(3)~~ If at any time during the benefit year, more than 14 calendar days elapse since the claimant last filed a weekly certification, the claimant shall file an additional or reopened claim for benefits as defined in 04 NCAC 24A .0105, and shall comply with all eligibility requirements.

(b) Each claimant shall:

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

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

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

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

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

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

~~(5)~~ provide information as to whether there was a policy in effect regarding paid time off prior to the claimant's separation;

~~(5)(6)~~ inform DES of whether he or she began receiving or whether there was a change in any type of retirement pension during the previous calendar week;

~~(6)(7)~~ provide information regarding whether he or she applied for or received any disability payments during the previous calendar week;

~~(8)~~ provide information regarding whether he or she applied for or received workers' compensation payments during the previous calendar week;

~~(9)~~ inform DES of whether he or she applied for or received unemployment insurance compensation under the law of any state or federal government agency;

~~(7)(10)~~ inform DES of whether he or she was physically able and available for work, during the previous calendar week;

1 ~~(8)~~(11) provide information as to whether he or she looked for work, refused ~~work~~ work, or kept a record
2 of work search during the previous calendar week as required by G.S. 96-14.9(e)(4);
3 (12) inform DES of whether he or she attended school or training during the previous calendar week, and
4 if so, whether he or she is willing to quit school or rearrange his or her schedule to accept work;
5 ~~(9)~~(13) provide information as to whether he or she has quit a job or been discharged from a job since filing
6 a claim for unemployment benefits;
7 ~~(10)~~(14) sign all forms for the valid initial claim or weekly certification that are filed in person, by ~~mail~~ mail,
8 or delivery service; and
9 ~~(11)~~(15) submit all claims and weekly certifications as required by the Employment Security Law and this
10 Section.

11
12 *History Note:* *Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 96-15.01;*
13 *Eff. July 1, 2015;*
14 *Amended Eff. July 1, 2018.*

04 NCAC 24B .0401 is proposed for amendment as follows:

04 NCAC 24B .0401 ~~DETERMINATIONS~~ DETERMINATION BY ADJUDICATOR

Each adjudicator shall render a written determination resolving any issues related to the claim or protest under G.S. 96-15, which shall include:

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

*History Note: Authority G.S. 96-4; 96-15; 20 CFR 602;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0503

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please correct the typographical error of "on" for "of"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

1 04 NCAC 24B .0503 is proposed for amendment as follows:

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

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

6 (b) Hearings involving the issue of unemployment due to a labor dispute shall be heard upon order of the Board of
7 Review or designee and conducted pursuant to 04 NCAC 24F .0303.

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

10 *Eff. July 1, 2015;*

11 *Amended Eff. July 1, 2018.*

04 NCAC 24B .0901 is proposed for adoption as follows:

04 NCAC 24B .0901 SETOFF DEBT COLLECTION ACT NOTICE TO CLAIMANT

(a) Consistent with G.S. 105A-8, DES shall provide written notice to the debtor within 10 days after receiving the debtor's refund.

(b) The notice shall include:

- (1) the claimant's name;
- (2) the type of debt;
- (3) the amount of the refund received by DES;
- (4) the total amount of the claimant's debt owed to DES;
- (5) the total amount of fees, as applicable;
- (6) the amount of assessed penalties, as applicable;
- (7) a citation to the legal authority that permits collection of the debt through setoff;
- (8) a statement of DES's intention to apply the refund against the debt;
- (9) an explanation that the debt is the basis for the agency's claim to the debtor's refund;
- (10) a statement of the claimant's right to contest the debt by filing a written request for a hearing;
- (11) the time period and procedure for requesting a hearing pursuant to 04 NCAC 24A .0104(h);
- (12) a statement that failure to request a hearing within the required time shall result in setoff of the debt;
- (13) a statement of the claimant's right to request to enter into a written repayment agreement with DES;
- (14) instructions for paying the debt;
- (15) a mailing address where payments shall be sent;
- (16) the date that the notice was mailed to the claimant; and
- (17) a telephone number for the claimant to seek information regarding the notice.

(c) Claimants choosing to repay the debt after receiving notice shall make payment to DES in accordance with 04 NCAC 24A .0104(z).

*History Note: Authority G.S. 96-4; 105A-8;
Eff. July 1, 2018.*

04 NCAC 24B .0902 is proposed for amendment as follows:

04 NCAC 24B .0902 CLAIMANT SETOFF DEBT COLLECTION ACT HEARINGS

(a) A claimant debtor may file an appeal from a notice to claim his or her State income tax refund pursuant to a North Carolina Department of Revenue Offset Letter in accordance with 04 NCAC 24A .0104(h).

(b) Rule 04 NCAC 24A .0106 shall apply in determining timeliness of an appeal.

(c) Hearings pursuant to ~~G.S. 105A-8(B)~~ G.S. 105A-8(b) shall be conducted consistent with the procedures prescribed in 04 NCAC 24C .0209.

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

Eff. July 1, 2015;

Recodified from 04 NCAC 24B .0901 Eff February 1, 2018;

Amended Eff. July 1, 2018.

04 NCAC 24B .1001 is proposed for amendment as follows:

04 NCAC 24B .1001 NOTICE TO CLAIMANT OF REFERRAL TO TOP

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

(b) ~~Each~~ The notice shall include:

- (1) the claimant's name;
- (2) the type of debt;
- (3) the total amount of the referred debt;
- (4) the total amount of the claimant's debt owed to DES;
- ~~(4)(5)~~ the total amount of fees, as applicable;
- ~~(5)(6)~~ the amount of assessed penalties, as applicable;
- ~~(6)(7)~~ a citation to the legal authority that permits collection of the debt through TOP;
- ~~(7)(8)~~ a ~~clear~~ statement of DES's intention to collect the debt through administrative offset;
- ~~(8)(9)~~ a statement that the claimant may request a copy of DES's records that support the ~~debt pursuant to Subchapter 04 NCAC 24A;~~ debt;
- ~~(9)(10)~~ a statement of the claimant's right to request that DES reevaluate the debt;
- ~~(10)(11)~~ the time period ~~in which request and procedure for requesting a reevaluation shall be made;~~ pursuant to 04 NCAC 24A .0104(j);
- (12) a statement that failure to request a reevaluation within the required time shall result in referral of the debt;
- ~~(11)(13)~~ a statement of the claimant's right to request to enter into a written repayment agreement with DES;
- (14) instructions for paying the debt;
- ~~(12)(15)~~ a mailing address ~~to which~~ where payments shall be sent;
- ~~(13)(16)~~ a mailing address and facsimile number to request a reevaluation of the debt;
- ~~(14)(17)~~ a telephone number for the claimant to seek information regarding the notice; and
- ~~(15)(18)~~ the date that the notice was mailed to the ~~claimant;~~ and claimant.
- ~~(16)~~ instructions for paying the debt.

(c) Claimants choosing to repay the debt after receiving notice shall make payment to DES ~~payable to Division of Employment Security and mail to Benefit Payment Control (BPC) Unit, Post Office Box 25903, Raleigh, NC 27611.~~ or remit by credit card on DES's website at www.ncese.com, or by calling BPC at (919) 707-1338. in accordance with 04 NCAC 24A .0104(z).

History Note: Authority G.S. 96-4; 96-18; 31 CFR 285; ~~26 U.S.C. 6402~~; 31 U.S.C. 3716;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24B .1002 is proposed for amendment as follows:

04 NCAC 24B .1002 CLAIMANT REEVALUATION OF DEBT

(a) A claimant requesting a reevaluation of ~~their~~ his or her debt shall submit a written request to DES's Benefits Integrity Unit ~~by mail to Post Office Box 25903, Raleigh, NC 27611-5903, or facsimile to (919) 733-1369.~~ pursuant to 04 NCAC 24A .0104(j).

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

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

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

(B) the amount of the debt is inaccurate.

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

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

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

(2) reasons for the decision.

History Note: Authority G.S. 96-4; 96-18; 31 CFR 285; ~~26 U.S.C. 6402~~; 31 U.S.C. 3716;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0102

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 9, what is an "agent state representative"? Is this a representative of an "agent state" as defined in Rule 04 NCAC 24A .0105?

In Item (1), line 12, what do you mean to encompass in this cross-reference?

In (3), line 14, the party is going to do what regarding no written instructions? There is language missing here.

Depending upon what you are trying to say, you might consider stating "DES did not provide the party with any written instructions contrary to the misleading information."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

1 04 NCAC 24C .0103 is proposed for amendment as follows:

2
3 **04 NCAC 24C .0103 BASE PERIOD EMPLOYER DENIED NONCHARGING**

4 A base period employer who was not the claimant's last employer may file an appeal from a determination denying
5 noncharging of benefits to its account as provided in ~~04 NCAC 24D .0200~~. 04 NCAC 24A .0104(s). The claimant is
6 not a party with appeal rights in this appeal.

7
8 *History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;*

9 *Eff. July 1, 2015;*

10 *Amended Eff. July 1, 2018.*

04 NCAC 24C .0201 is proposed for amendment as follows:

04 NCAC 24C .0201 APPEARANCE BY PARTY

An appearance by a party to an appeals hearing includes offering testimony, questioning witnesses, and presenting oral ~~argument.~~ arguments. A submission of written documents or observation of the proceedings shall not constitute an appearance.

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

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

(3) An individual shall appear at an in-person/telephone hearing as provided in 04 NCAC 24C .0213 on the date and time of the hearing and participate in the proceedings.

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

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

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

1 04 NCAC 24C. 0202 is proposed for amendment as follows:

2
3 **04 NCAC 24C .0202 PRESENTING AND SCHEDULING APPEALED CLAIMS**

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

6
7 *History Note: Authority G.S. 96-4; 96-15;*

8 *Eff. July 1, 2015;*

9 *Amended Eff. July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0203

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In the Submission for Permanent Rule form, Box 2, the name does not match the name of the Rule. Please correct the name in either the form or the Rule so that it is the same both places.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24C .0203 is proposed for amendment as follows:

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

A party's written appeal shall contain the following:

- (1) the date of the appeal;
- (2) the ~~identity~~ docket or issue identification number of the determination being appealed;
- (3) ~~a clear statement of the party's intent to appeal; and~~ the claimant's identification number;
- (4) ~~the name of the party appealing.~~ the names of the claimant and employer;
- (5) each reason for the appeal;
- (6) the name of the individual filing the appeal;
- (7) the official position, if any, of an individual filing the appeal on behalf of the party; and
- (8) a telephone number.

*History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0208

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (d), do people know the address to send this to? Is it the address in Rule 04 NCAC 24A .0104(b)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24C .0208 is proposed for amendment as follows:

04 NCAC 24C .0208 DISQUALIFICATION OF APPEALS REFEREE

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

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

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

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

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

History Note: Authority G.S. 96-4; 96-15; 20 CFR 650.2;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24C .0211 is proposed for amendment as follows:

04 NCAC 24C .0211 CONTROLLED SUBSTANCE RESULTS

In lieu of live testimony from a laboratory representative at a contested claims hearing, an affidavit from an authorized representative of the laboratory may be presented to prove controlled substance examination results, chain of custody, or compliance with all testing or retesting required by federal or state law.

- (1) When a party desires to introduce the affidavit at the hearing, a copy of the affidavit shall be received by the party against whom the affidavit will be offered at least two days before the hearing.
- (2) If the party who desires to introduce the affidavit is unable, despite reasonable efforts, to accomplish the required service within the time specified, the Appeals Referee may adjourn or continue the hearing to allow such service to be accomplished. However, the Appeals Referee shall not continue the hearing if the party against whom the affidavit is offered has refused to accept service or has taken other steps to avoid or delay receipt of the affidavit.
- (3) At the hearing, the party shall offer an authenticated copy of the affidavit as an exhibit.
- (4) If the party against whom the affidavit is offered objects to the entry of the affidavit into the official record, the objecting party may request an adjournment or continuance of the hearing to subpoena the author of the affidavit. The affidavit's author shall be permitted to testify by telephone at the reconvened hearing.
- (5) Once the affidavit is made a part of the official record of evidence compiled by the Appeals Referee, the Appeals Referee ~~may may~~, in ~~their~~ his or her discretion, base findings of fact on the affidavit.
- (6) The results of the controlled substance examination and compliance with any applicable statutory or regulatory procedural requirements shall be deemed proven if the claimant admits or stipulates to them during the hearing or by affidavit.

*History Note: Authority G.S. 95-230; 95-231; 95-232; 95-233; 95-234; 95-235; 96-4; 96-15; ~~96-235~~;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0213

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Why do you need Paragraph (a)? Is this setting forth the standards the Appeals Referee will use to determine whether to set it as an in-person/telephone hearing initially? Will they be considered if a request is made for such a hearing?

Assuming you need to retain it, on line 5, delete or define "efficiently"

In (c), line 16, and elsewhere where the term is used, what are "substantial rights"? Are you relying upon the term as used in G.S. 96-15(c)?

In (f), so that I'm clear – these are the standards that each Appeals Referee will use to determine whether he or she, in his or her role as a hearing officer, will deny a request? And these are only used when the request is made at the hearing?

In (f)(1), line 25, what will this belief be based upon? As determined by the Appeals Referee's professional experience?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24C .0213 is proposed for adoption as follows:

04 NCAC 24C .0213 COMBINATION TELEPHONE AND IN-PERSON HEARINGS

(a) The Appeals Referee may conduct an in-person/telephone hearing to avoid prejudice, to ensure security, to comply with standards for appeal promptness, to expedite an appeal, or to efficiently administer the unemployment insurance program.

(b) A party may obtain an in-person/telephone hearing by filing a written objection to a telephone conference call hearing notice pursuant to 04 NCAC 24C .0205, or to an in-person hearing notice pursuant to 04 NCAC 24C .0206.

(1) The objection shall state each reason that the party objects to appearing in the manner listed in the hearing notice.

(2) The objecting party shall state the manner in which it, or its witnesses, request to appear for the hearing.

(3) This request shall be directed to the Appeals Section as provided in 04 NCAC 24A .0104(b), or to the designated Appeals Referee using the contact information provided in the hearing notice.

(c) The Appeals Referee shall consider a party's request to change its witnesses' appearance from a telephone or in-person hearing, and shall make a determination of whether the substantial rights of each party would be preserved by granting the party's request.

(d) The Appeals Referee may grant a request to change an appearance by telephone or in-person for good cause as defined in 04 NCAC 24A .0105. If the request is granted, the official hearing record shall include the written request for the change, reflect the Appeals Referee's determination that the substantial rights of each party would be preserved by granting the request, and each reason for the determination.

(e) The objecting party shall appear in person or by telephone as requested by the objecting party if the Appeals Referee grants the request.

(f) The Appeals Referee may deny a request to change a party's appearance at a hearing to telephone or in-person if:

(1) the Appeals Referee believes that the requesting party's intent is to inconvenience the opposing party or delay the proceedings;

(2) the party or witnesses request to appear by telephone, and are less than 40 miles away from an in-person hearing location; or

(3) the request is made less than 24 hours before the hearing is scheduled to begin.

(g) If a party's request for a change to a telephone or in-person hearing is denied, the Appeals Referee shall state the grounds for denial on the record, include the written request in the official records, and state the reasons for the denial in the written decision.

(h) The Appeals Referee shall notify each party of the change prior to the hearing.

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

Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0214

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*What is the authority of the Division to refuse to allow someone to withdraw his or her appeal?
Is this based upon federal law?*

In (b), this is a very long sentence. I suggest you break lines 5-9 into a list. Then start a new sentence "This request shall be directed to..."

On line 10, how will this be recorded by the Appeals Referee if it is being sent in writing? Is it read into the record by the Appeals Referee?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24C .0214 is proposed for adoption as follows:

04 NCAC 24C .0214 WITHDRAWAL OF APPEAL

(a) An appealing party may withdraw its appeal with the approval of the Appeals Referee.

(b) An appealing party's request to withdraw its appeal shall be in writing and contain the reason for the request to withdraw the appeal, the date of the request, the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, the name of the individual making the request to withdraw the appeal, the official position of an individual filing the request to withdraw the appeal on behalf of the party, and a telephone number, and shall be directed to DES's Appeals Section or to the Appeals Referee designated to hear the case, or recorded by the Appeals Referee using the digital recording system used to record hearings in accordance with G.S. 96-15(c).

(c) Following receipt of a request to withdraw the appeal, the Appeals Referee shall review each reason for the request.

(d) If a request to withdraw the appeal is approved, the Appeals Referee shall issue an order granting the request to withdraw the appeal. The order shall contain no right to appeal the withdrawal of the appeal.

(e) If a request to withdraw the appeal is denied, the Appeals Referee shall issue an order denying the request to withdraw the appeal, informing the party of the information considered and the reason for the ruling. The order shall contain no right to appeal the denial of the withdrawal of the appeal.

(f) A copy of the party's request to withdraw the appeal and the Appeal Referee's order granting or denying the request shall be included in the official record of the case.

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

Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0215

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

So that I'm clear – if the individual withdraws his or her appeal pursuant to Rule 04 NCAC 24C .0214, they are not barred from re-filing the initial claim? And this Rule governs how those new appeals will be handled internally?

In (b), line 7, is the “withdrawal order” the same as the “order granting the request to withdraw the appeal” referenced in Rule .0214(d) of this Section?

In (c), is the employer allowed to raise the timeliness issue? Or is this only within the purview of the agency?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24C .0215 is proposed for adoption as follows:

04 NCAC 24C .0215 NEW FILING AFTER WITHDRAWAL OF APPEAL

(a) A party whose request to withdraw the appeal was granted who then files an appeal of the same determination or issue number shall be deemed to have filed the appeal on the date that DES receives the new filing.

(b) The record on appeal for a matter that was closed before a new appeal was received shall include the appealing party's initial request to withdraw the appeal, the withdrawal order, and the new appeal filing.

(c) DES may raise the issue of the timeliness of the appeal if the appeal is filed after the appeal rights have expired on the determination or issue being appealed.

(d) Timeliness of the appeal shall be determined in accordance with 04 NCAC 24A .0106.

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

Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0302

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In the History Note, what specific statutes in G.S. 84 are you relying upon?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24C .0302 is proposed for amendment as follows:

04 NCAC 24C .0302 ~~NOTICES AND SERVICE TO PARTY~~ NOTICES, SERVICE, AND LEGAL REPRESENTATION OR SUPERVISION BY NORTH CAROLINA ATTORNEY

(a) Notices or certification of legal representation by an attorney licensed to practice law in this State shall be in writing and presented to the Appeals Referee to become part of the official ~~record, and shall contain:~~ record.

(b) Notices or certification of legal representation by an individual who is supervised by an attorney licensed to practice law in this State shall be in writing and presented to the Appeals Referee to become part of the official record, and shall contain:

(1) ~~the name~~ name, business address, and telephone number of the supervising attorney;

(2) ~~the name of the person being supervised;~~

~~(3)~~(2) the supervising attorney's active North Carolina State Bar number; and

~~(4)~~(3) ~~the phone and address information of the supervising attorney;~~ the name, address, and telephone number of the person being supervised.

~~(b)(c)~~ When a party has a legal representative, all documents or information required to be provided to the party shall only be provided to the legal representative, unless otherwise instructed on the record during the hearing.

(d) An address provided to an Appeals Referee for mailing or electronic transmission of an Appeals Decision in a specific case ~~does~~ shall not constitute a change of address with DES as set forth in 04 NCAC 24A .0102.

History Note: Authority G.S. 84; 96-4; 96-15; 96-17;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0303

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (e), lines 14-16, this is basically reciting G.S. 84-4.1. Why do you need to repeat it here?

In (f), line 21, is the "order" the one referred to in Paragraph (c)? If so, should the term be capitalized here?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24C .0303 is proposed for adoption as follows:

04 NCAC 24C .0303 ADMISSION OF OUT-OF-STATE ATTORNEY TO APPEAR BEFORE APPEALS REFEREE

(a) Pursuant to G.S. 84-4.1, attorneys residing in and licensed to practice law in another state may seek to be admitted to practice before DES to represent a client.

(b) An out-of-state attorney seeking to practice before DES, or the North Carolina attorney with whom the out-of-state attorney associates pursuant to G.S. 84-4.1(5), shall file a motion with the Chief Appeals Referee that complies with the requirements of G.S. 84-4.1.

(c) A proposed Order Permitting Out-Of-State Attorney to Appear Pro Hac Vice, found on DES's website, shall be provided to the Chief Appeals Referee with the motion.

(d) Following review of the motion, the Chief Appeals Referee shall issue an order granting or denying the motion.

(e) Pro hac vice admission granted to practice before an Appeals Referee shall allow continued representation before the Board of Review and all administrative proceedings regarding the same matter. The Chief Appeals Referee has the discretionary authority to deny a motion for pro hac vice admission even if the motion complies with the requirements of G.S. 84-4.1.

(f) Upon receipt of an order granting a motion for pro hac vice admission to practice before an Appeals Referee, the admitted out-of-state attorney or the associated North Carolina attorney shall pay the fees required by G.S. 84-4.1 to the North Carolina State Bar and General Court of Justice, and file a statement with the Chief Appeals Referee documenting payment of the fees and the submission of any pro hac vice admission registration statement required by the North Carolina State Bar. A copy of the motion, order, registration statement, and documentation reflecting payment of the fees shall be provided to the Appeals Referee to be included in the official hearing record.

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

Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24C .0401

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (d), what authority are you relying upon to prevent the issuance of a subpoena by a legal representative unless the Appeals Referee consents? I note you do not have a similar restriction in Rule 24F .0307.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24C .0401 is proposed for amendment as follows:

04 NCAC 24C .0401 ISSUANCE OF SUBPOENAS

(a) Subpoenas to compel the attendance of witnesses and the production of records for any appeal hearing may be issued at the direction of the designated Appeals Referee.

(1) A subpoena may be issued at the request of a party or on motion of the Appeals Referee.

(2) Any documentation showing service of the subpoena shall become part of the official hearing record.

~~(b) (3) Any request for a subpoena~~ party's request for a subpoena to be issued by the Appeals Referee shall be in writing, sent to the Appeals Referee, and shall include:

~~(1)(A)~~ the name of the party requesting the subpoena;

~~(2)(B)~~ the claimant's ~~name~~; name, if applicable;

~~(3)~~ the employer's name, if applicable;

~~(4)(C)~~ the docket or issue identification number of the case;

~~(5)(D)~~ the name, address, and telephone number of each person sought for appearance at the hearing;

~~(6)(E)~~ the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;

~~(7)(F)~~ the name and address of the individual or party in possession of any item sought; and

~~(8)(G)~~ a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.

~~(c)(4)~~ The request shall be granted only to the extent that the items or testimony sought appears relevant to the issues on appeal.

~~(b)(d)~~ Legal representatives may issue subpoenas at their own expense only if prior consent is obtained ~~by~~ from the designated Appeals Referee.

~~(e)(e)~~ Subpoenas shall be issued at least five business days before the date of the scheduled hearing.

(f) Service of a subpoena shall be made by delivering a copy to the person, or by registered or certified mail, return receipt requested, unless a party or witness consents to service of the subpoena by other means, including electronic transmission.

(g) Any party or person receiving a subpoena may serve a written objection to the issuance of the subpoena.

(1) The objection shall be directed to the Appeals Referee listed in the hearing notice prior to the commencement of the hearing and provide reasons for the objection and the relief sought by the objecting party.

(2) The Appeals Referee shall rule on the objection and notify the parties before the hearing. The Appeals Referee's reasons for the ruling shall be in writing or stated on the record during the hearing.

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0102

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

So that I am clear – in Paragraph (b), these are the forms that the Division will use to send notice – the employer will not be using the forms to reply to the Division?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24D .0102 is proposed for amendment as follows:

04 NCAC 24D .0102 NOTICE TO EMPLOYER OF POTENTIAL CHARGES

(a) DES shall notify each employer in writing of potential charges to the employer's account. The notice shall contain the:

- (1) date of the notice;
- (2) claimant's name and social security number;
- (3) date the claimant's benefit year began;
- (4) claimant's weekly benefit amount and weekly earnings allowance;
- (5) employer's reporting number used to report wages for the claimant;
- (6) base period wages reported by the employer by calendar quarter and dollar amount;
- (7) employer's percentage of total base period wages reported;
- (8) maximum potential charge amount that can be applied to the employer's experience rating account if the claimant exhausts his or her benefits;
- (9) a statement containing the employer's right to protest the notice; and
- (10) the time period within which a protest shall be filed pursuant to G.S. 96-15(b)(2).

(b) Notice of potential charges to the employer's account shall be provided using the following forms, as applicable:

- (1) Notice of Combined Wage Claim and Potential Charges to Your ~~Account (Form NCUI 551C);~~
Account;
- (2) Notice of Unemployment Claim, Wages Reported and Potential ~~Charges (Form NCUI 551L);~~
Charges;
- (3) Notice of Initial Claim and Potential Charges to Reimbursable ~~Employer (Form NCUI 551R);~~
Employer;
- (4) Notice of Initial Claim and Potential Charges for Claimants on Temporary ~~Layoff (Form NCUI 551T);~~ Layoff;
- (5) Reversal of Previously Allowed ~~Noncharging (Form NCUI 553A);~~ Noncharging;
- (6) Reversal of Previously Denied ~~Noncharging (Form NCUI 554);~~ Noncharging;
- (7) Administrative Determination Disallowing ~~Noncharging (Form NCUI 570);~~ Noncharging; or
- (8) List of Charges to Your ~~Account (Form NCUI 626);~~ Account.

*History Note: Authority G.S. 96-4; 96-11.1; 96-11.2; 96-11.3; 96-11.4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

04 NCAC 24D .0105 is proposed for amendment as follows:

04 NCAC 24D .0105 DETERMINATION ON REQUESTS FOR NONCHARGING

DES shall render a determination in writing as to each request for noncharging. The determination shall contain notice of whether the request for noncharging has been granted or denied.

(1) Where a request for noncharging is granted, the employer's account shall be protected from benefit charges for benefit payments made after the last day that the claimant worked, based on wages reported by the employer before the claimant separated from the employer.

(2) Where a request for noncharging is denied, the determination shall contain:

(a) the reason(s) for denying the request;

(b) the mailing date of the determination;

(c) the time period within which a protest of the denial must be filed; and

(d) instructions for protesting the denial to ~~the Employer Benefit Charges/Benefit Charges Unit by mail to Post Office Box 25903, Raleigh, North Carolina 27611-5903, or facsimile to (919) 733-1126.~~ DES's Claims Unit in accordance with 04 NCAC 24A .0104(s).

*History Note: Authority G.S. 96-4; 96-11.1; 96-11.3; 96-11.4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .0202 Eff. March 1, 2017;
Amended Eff. July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0106

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In the Submission for Permanent Rule form, please correct the rule name in Box 2.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24D .0106 is proposed for amendment as follows:

04 NCAC 24D .0106 APPEALING DENIAL OF REQUEST FOR NONCHARGING

(a) The employing unit may file an appeal following an unsuccessful protest of a request for noncharging.

(b) Employers shall direct all appeals from denials of a request for noncharging to the ~~Appeals Section~~ DES's Claims Unit in accordance with 04 NCAC 24A .0104(s).

~~(c) The provisions of 04 NCAC 24A .0204~~ Rule 04 NCAC 24A .0106 shall apply in determining timeliness of an appeal.

~~(e)(d)~~ Hearings on the denial of noncharging shall be conducted pursuant to the provisions of 04 NCAC 24C .0209.

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

Eff. July 1, 2015;

Recodified from 04 NCAC 24D .0203 Eff. March 1, 2017;

Amended Eff. July 1, 2018.

04 NCAC 24D .0205 is proposed for amendment as follows:

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

The DES's determination on the employer's protest to the list of benefit charges to its account by DES shall contain:

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

*History Note: Authority G.S. 96-4; 96-11.3; 96-15;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .0107 Eff. March 1, 2017;
Amended Eff. October 1, 2017;
Amended Eff. July 1, 2018.*

04 NCAC 24D .0401 is proposed for amendment as follows:

04 NCAC 24D .0401 VOLUNTARY ELECTION BY EMPLOYERS

(a) Any employer electing coverage under G.S. 96-9.8 of the Employment Security Law shall make the election by completing the Employer Status Report (Form NCUI 604), available on DES's ~~website at www.ncesc.com.~~ website.

(b) The information provided in the Employer Status Report (Form NCUI 604) shall be provided in the same manner as required under Rule .0602 of this Subchapter.

(c) Voluntary election shall not be granted if DES determines that potential benefit payments would exceed the taxes received from the employer.

~~(d) The effective date of coverage is January 1, or the first day of employment in the year in which the voluntary election is made, whichever is later.~~

~~(e)~~(d) Employers who satisfy the criteria for voluntary election of coverage ~~under this Rule,~~ pursuant to G.S. 96-9.8 shall have a contributory unemployment tax account, and shall not have a reimbursable account.

History Note: Authority G.S. 96-4; ~~96-9.6;~~ 96-9.8; ~~26 U.S.C. 3309;~~ 26 U.S.C. 3306;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24D .0402 is proposed for amendment as follows:

04 NCAC 24D .0402 ELECTION TO REIMBURSE IN LIEU OF CONTRIBUTIONS

~~(a) An employer electing to pay reimbursements for benefits, rather than contributions who meets the requirements of Rule .0401 of this Section, shall make the election by completing the Employer Status Report (Form NCUI 604) as set forth in Rule .0602 of this Subchapter, and mailing it to DES's Tax Administration at Post Office Box 26504, Raleigh, NC 27611.~~

~~(b)(a)~~ A new qualifying employer under G.S. 96-9.6 electing to pay reimbursements for benefits, rather than contributions, shall make the election by writing a letter stating their election to ~~the~~ DES's Tax Administration Section of DES at Post Office Box 26504, Raleigh, NC 27611 as provided in 04 NCAC 24A .0104(x) within 30 days after the employer receives written notification from the Division that it is eligible to make an election as defined under G.S. 96-9.6.

(b) A qualifying employer under G.S. 96-9.6 electing to pay reimbursements for benefits, rather than contributions, shall within 30 days before the January 1 effective date, make the election by sending a letter stating their election to DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(x).

History Note: Authority G.S. 96-4; 96-9.6; 96-9.8; 26 U.S.C. 3309;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0403

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In the Submission for Permanent Rule form, please correct the rule name in Box 2.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24D .0403 is proposed for amendment as follows:

04 NCAC 24D .0403 PAYMENT OF EMPLOYER TAXES

(a) Taxes shall be due and payable to the Division of Employment Security and sent to DES's administrative office in Raleigh, North Carolina, or delivered to an agent of DES designated to accept ~~payments~~ payments as provided in 04 NCAC 24A .0104(y).

~~(b) Tax payments shall be made as follows:~~

~~(1) electronic check;~~

~~(2) credit card;~~

~~(3) Automated Clearing House (ACH) credit;~~

~~(4) business check with funds drawn from a U.S. financial institution;~~

~~(5) cashier's check from a U.S. financial institution; or~~

~~(6) cash.~~

~~(c) Payments shall be made payable to the Division of Employment Security and sent by U.S. mail or delivery service to DES Tax Administration at Post Office Box 26504, Raleigh North Carolina 27611.~~

~~(d)~~(b) Timeliness of payments shall be determined pursuant to ~~the~~ 04 NCAC 24A .0106.

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

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .0602

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(15), line 27, who determines “primarily”? The employing unit?

In (a)(17), what is a “general employer”? Is it one that is not listed in (a)(18) through (21)?

In (a)(17)(B), line 35, replace “tis” with “this”

In (a)(22), Page 2, line 12, do you mean “employing unit”?

In (a)(25), line 30, consider replacing “who” with “which employees”

In (a)(26), line 32, should it read “Form NCUI 604” to be consistent with other uses of the term within the Rule?

In (b)(3), Page 3, line 6, end the phrase with a semicolon.

In (b)(5)(A), line 9, insert a comma after “address”

In (b)(5)(C), so that I’m clear – the employees are only being transferred, and the equipment and merchandise, etc. are what is contemplated as being leased or sold?

In (b)(12), line 28, delete the semicolon after “and”

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24D .0602 is proposed for amendment as follows:

04 NCAC 24D .0602 STATUS REPORTS

(a) Each employing unit shall complete and file an Employer Status Report (Form NCUI 604) with DES within 10 days of becoming subject to the Employment Security Law. The Employer Status Report ~~shall contain the following:~~ is located on DES's website, and shall include the following:

- ~~(1) the name and address of the business; the employing unit's federal identification number, if any;~~
- ~~(2) names, social security numbers, and addresses of the owners and responsible officers of the business; the employing unit's North Carolina Department of Revenue's withholding identification number, if any;~~
- ~~(3) any records pertaining to contracts for business acquisitions that indicate successorship status; and all previously assigned unemployment insurance tax identification or account numbers;~~
- ~~(4) any information about company officers in continuity of control cases. the employing unit's legal name;~~
- (5) the employing unit's trade name;
- (6) the employing unit's mailing address, telephone, and fax numbers;
- (7) the physical address and county for each of the employing unit's North Carolina locations;
- (8) if the employing unit has no locations in this State, the primary employee's home address;
- (9) the principal activity or service performed by the employing unit in North Carolina;
- (10) the name and address of each of the employing unit's owners;
- (11) the name, telephone number, and email address of an individual authorized to act on behalf of the employing unit;
- (12) the type of business ownership;
- (13) the number of employees expected within 12 months of the date that Form NCUI 604 is submitted to DES;
- (14) the date the employing unit first hired one or more workers in North Carolina;
- (15) whether the employing unit in this State is part of a larger organization and is primarily engaged in providing support services to that organization;
- (16) whether the employing unit is an employment service company as defined in G.S. 96-1(14);
- (17) for general employers:
 - (A) whether the employing unit has or expects to have a quarterly payroll of one thousand five hundred dollars (\$1,500) or more and if so, the date that this occurred or is expected to occur; and
 - (B) whether the employing unit has or expects to employ at least one worker in 20 different calendar weeks during a calendar year and if so, the date that tis occurred or is expected to occur;
- (18) for agricultural employers:

- (A) whether the employing unit has or expects to have a quarterly payroll of twenty thousand dollars (\$20,000) or more, and if so, the date that this occurred or is expected to occur; and
- (B) whether the employing unit has or will employ 10 or more workers in 20 different weeks during a calendar year, and if so, the date that this occurred or is expected to occur;
- (19) for domestic employers, whether the employing unit has or will pay one thousand dollars (\$1,000) or more in a calendar quarter for domestic services in a private home, college club, fraternity, or sorority, and if so, the date that this occurred or is expected to occur;
- (20) for non-profit organizations, whether the employing unit has or will employ 4 or more workers in 20 different weeks during a calendar year, and if so, the date that this occurred or is expected to occur;
- (21) for employing units of government, whether the entity is local, state, or federal;
- (22) whether the employing wants to voluntarily cover its workers for unemployment insurance even if it is not subject to the Employment Security Law;
- (23) whether the employing unit has ever paid taxes pursuant to the Federal Unemployment Tax Act, and if so for which years the taxes were paid;
- (24) whether the employing unit has acquired, transferred assets, or merged with another business, or made any other change in the ownership of the business, and if so:
- (A) the former entity's legal name;
- (B) the former entity's trade name;
- (C) the former entity's address;
- (D) the former entity's North Carolina Unemployment Insurance Tax Identification number;
- (E) the date on which the employing unit acquired the former entity, or changed its business;
- (F) whether the employing unit acquired all or a portion of the former entity, and if a portion, the percent acquired;
- (G) whether the former entity was operating when it was acquired by the employing unit, and if not, the date that the former entity closed;
- (H) whether the former entity was in bankruptcy when it was acquired by the employing unit; and
- (I) whether the former entity continues to have employees in North Carolina.
- (25) whether there are workers who perform services for the employing unit, and who the employing unit considers to be self-employed or independent contractors;
- (26) the name, signature, and official position of the individual filing the NCUI 604 on behalf of the employing unit; and
- (27) the date that the individual completed Form NCUI 604 and submitted it to DES.
- (b) An employing unit that ceases business, continues operations without employees, transfers, leases, or sells all or any part of the assets of its business, or changes the ~~trade name~~ business name, business entity, business location, telephone number, or mailing address of the business shall give notice to DES within 10 days by completing and filing

1 a ~~status report~~. Change in Status Report (Form NCUI 101A), which is available on DES's website. The status report
2 ~~shall contain, in addition to the requirements listed under Paragraph (a) of this Rule, the former name and address of~~
3 ~~the business.~~ Form NCUI 101A shall state:

- 4 (1) the employing unit's name;
- 5 (2) the employing unit's mailing address;
- 6 (3) the employing unit's trade name
- 7 (4) the employing unit's North Carolina Unemployment Insurance Tax Identification number;
- 8 (5) whether the employing unit sold or otherwise transferred part or all of the business, and if so:
 - 9 (A) the name, mailing address and telephone number of the entity to which the business was
10 sold or otherwise transferred;
 - 11 (B) the trade name of the entity to which the business was sold or otherwise transferred;
 - 12 (C) whether the entire business operations, including equipment, merchandise, raw materials,
13 and employees were sold, transferred, or leased to a new owner, and if so, the date of the
14 sale, transfer or lease;
- 15 (6) whether a partnership was formed or changed, including the effective date of the formation or
16 change, and an explanation of what occurred;
- 17 (7) whether the business was incorporated, including the effective date of incorporation;
- 18 (8) whether the business ceased all operations in North Carolina, including the date that all operations
19 ceased;
- 20 (9) whether the business is operating without employees, including the last date on which the business
21 had any employees;
- 22 (10) whether the business name changed, and if so, the new name of the business and a copy of the
23 corporate minutes or amended charter on file with the North Carolina Department of the Secretary
24 of State;
- 25 (11) whether there was a change in the address or telephone number, and if so, the changes to the address
26 or telephone number;
- 27 (12) whether there was a change in the employing unit's contact for tax matters, and if so, the new agent's
28 name, address, and telephone number, if applicable; and;
- 29 (13) the name and signature of the individual submitting the Change in Status Report to DES on behalf
30 of the employing unit.

31 (c) An employing unit that acquires all or any part of the assets of another business shall complete and file an Employer
32 Status Report (Form NCUI 604) within 10 days of the acquisition.

33
34 *History Note:* Authority G.S. 96-4; 96-10; 96-11.7;
35 Eff. July 1, 2015;
36 Amended Eff. July 1, 2018.

1 04 NCAC 24D .0701 is proposed for repeal as follows:

2

3 **04 NCAC 24D .0701 TRANSFER OF EXPERIENCE**

4

5 *History Note: Authority G.S. 96-4; 96-10; 96-11.7;*

6 *Eff. July 1, 2015;*

7 *Repealed Eff. July 1, 2018.*

04 NCAC 24D .0801 is proposed for amendment as follows:

04 NCAC 24D .0801 APPLICATION FOR COMPROMISE

(a) An employing unit may file a request for compromise of its tax debt with DES.

(b) A request for compromise shall include the following:

- (1) the name and address of the employing unit;
- (2) the date the request to compromise is made;
- (3) the date the requested compromise is requested to be effective;
- (4) stated reasons for the request to compromise;
- (5) evidence to support the claim or reasons for the request;
- (6) the amount and terms offered by the employer to settle the debt; and
- (7) the signature of a duly authorized representative of the employer.

(c) The employer shall provide all information requested by the Department pursuant to Section .0500 of this ~~Section~~ Subchapter for the determination of the compromise.

(d) The request for compromise shall be filed with DES's Tax Administration Section ~~by mail, facsimile, or email.~~ pursuant to ~~04 NCAC 24A .0104(n).~~ 04 NCAC 24A .0104(w).

History Note: Authority G.S. 96-4; 96-10; 96-10.1;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24D .0901 is proposed for amendment as follows:

04 NCAC 24D .0901 SPECIAL TAX INVESTIGATIONS

(a) When it is discovered by a representative of DES that a claimant is alleging that he or she was an employee and the employer is alleging that the claimant was not an employee, the matter shall be referred to DES's Assistant Secretary in writing.

(b) The Assistant Secretary, on behalf of DES, shall refer the matter to the Tax Administration Section for an investigation. Upon receipt of the findings of the investigation, the Assistant Secretary shall issue a Result of Investigation by the Tax Administration Section upon receipt of the findings of the investigation. Section. The Result of Investigation shall be in writing and mailed to each party to the controversy pursuant to 04 NCAC 24A .0103.

(c) The Result of Investigation shall provide notice of each party's rights for filing an appeal to obtain a hearing before the Board of Review, and the time period within which an appeal shall be filed ~~by mail to the Board of Review, ATTN: Legal Services Section, Post Office Box 25903, Raleigh, 27611-5903.~~ pursuant to 04 NCAC 24A .0104(n).

(d) Appeal hearings pursuant to this Section shall be upon order of the Board of Review and conducted pursuant to 04 NCAC 24F .0303.

History Note: Authority G.S. 96-4; 96-9.2;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24D .1001 is proposed for amendment as follows:

04 NCAC 24D .1001 REQUEST FOR REDETERMINATION OF TAX RATE

(a) An employer may request a review and redetermination of its tax rate after receiving notice of the tax rate.

(b) An employer requesting a review and redetermination of its tax rate shall file its written request with DES's Tax Administration Section by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email to ~~des.tax.customerservice@nccommerce.com~~, as set forth in 04 NCAC 24A .0104(o).

~~(1) The request shall include the following:~~

~~(A) the name of the employer;~~

~~(B) the address of the employer;~~

~~(C) the account number of the employer;~~

~~(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.~~

(c) The request for a review and redetermination shall be filed ~~on or before~~ prior to May 1 following the effective date of the contribution rate pursuant to G.S. 96-9.2(d).

History Note: Authority G.S. 96-4; 96-9.2;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1002

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a)(1), line 7, since on line 6 you said "include the following:", why not just delete "notify the employing unit of whether its" and state "whether the application was granted or denied:"?

In (a)(3), line 9, delete "contain"

In (a)(5), do you mean "may" rather than "shall"? After all, an appeal is not mandatory, correct?

In (b)(2), line 15, so that I'm clear – you mean any hearing requested in Section .1000, and includes requests made pursuant to Rule .1001? And the reviews in Rule .1001 are done through a hearing? Or did you mean "Rule" here?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24D .1002 is proposed for amendment as follows:

04 NCAC 24D .1002 DIVISION'S OBLIGATIONS

(a) ~~The Division~~ DES shall review the employing unit's request to review and redetermine its tax rate and all available facts, and shall issue a written ruling. The ruling shall be mailed to the employing unit's address as set forth in 04 NCAC 24A .0103 and include the following:

- (1) notify the employing unit of whether its application was granted or denied;
- (2) the applicable legal authority, with specific citations, for the ruling;
- (3) contain the mailing date of the notice;
- (4) a statement containing the employer's right to appeal the notice; and
- (5) the time period within which an appeal shall be filed.

(b) The employing unit may file an appeal of the ruling and request a hearing.

- (1) The appeal shall be filed with DES's Tax Administration Section ~~by mail, facsimile, or email~~ pursuant to ~~Rule~~ 04 NCAC 24A .0104(o).
- (2) Hearings requested pursuant to this Section shall be conducted as set forth in 04 NCAC 24F .0303.

History Note: Authority G.S. 96-4; 96-9.2;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

1 **SECTION .1100 –TREASURY OFFSET PROGRAM AND EMPLOYER SETOFF DEBT COLLECTION**

2
3 04 NCAC 24D .1101 is proposed for adoption as follows:

4
5 **04 NCAC 24D .1101 NOTICE TO EMPLOYER OF REFERRAL TO TOP**

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

8 (b) The notice shall include:

- 9 (1) the employer's name;
10 (2) the type of debt;
11 (3) the total amount of the referred debt;
12 (4) the total amount of the employer's debt owed to DES;
13 (5) the total amount of fees, as applicable;
14 (6) the amount of assessed penalties, as applicable;
15 (7) a citation to the legal authority that permits collection of the debt through TOP;
16 (8) a statement of DES's intention to collect the debt through administrative offset;
17 (9) a statement that the employer may request a copy of DES's records that support the debt;
18 (10) a statement of the employer's right to request that DES reevaluate the debt;
19 (11) the time period and procedure for requesting a reevaluation pursuant to 04 NCAC 24A .0104(k);
20 (12) a statement that failure to request a reevaluation within the required time shall result in referral of
21 the debt;
22 (13) a statement of the employer's right to request to enter into a written repayment agreement with DES;
23 (14) instructions for paying the debt;
24 (15) a mailing address where payments shall be sent;
25 (16) a mailing address and facsimile number to request a reevaluation of the debt;
26 (17) a telephone number for the employer to seek information regarding the notice; and
27 (18) the date that the notice was mailed to the employer.

28 (c) Employers choosing to repay the debt after receiving notice shall make payment to DES in accordance with 04
29 NCAC 24A .0104(y).

30
31 History Note: Authority G.S. 96-4; 96-9.15; 18; 31 CFR 285; 31 U.S.C. 3716;

32 Eff. July 1, 2018.

04 NCAC 24D .1102 is proposed for adoption as follows:

04 NCAC 24D .1102 EMPLOYER REEVALUATION OF DEBT

(a) An employer requesting a reevaluation of its debt shall submit a written request to DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(k).

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

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

(A) the identity of the employer to whom the debt is assigned is incorrect; or

(B) the amount of the debt is inaccurate.

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

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

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

(2) reasons for the decision.

History Note: Authority G.S. 96-4; 96-18; 31 CFR 285; 31 U.S.C. 3716;

Eff. July 1, 2018.

04 NCAC 24D .1103 is proposed for adoption as follows:

04 NCAC 24D .1103 SETOFF DEBT COLLECTION ACT NOTICE TO EMPLOYER

(a) Consistent with G.S. 105A-8, DES shall provide written notice of receipt to the debtor employer within 10 days after receiving the debtor's refund.

(b) The notice shall include:

- (1) the employer's name;
- (2) the type of debt;
- (3) the amount of the refund received by DES;
- (4) the total amount of the employer's debt owed to DES;
- (5) the total amount of fees, as applicable;
- (6) the amount of assessed penalties, as applicable;
- (7) a citation to the legal authority that permits collection of the debt through setoff;
- (8) a statement of DES's intention to apply the refund against the debt;
- (9) an explanation that the debt is the basis for the agency's claim to the debtor's refund;
- (10) a statement of the employer's right to contest the debt by filing a written request for a hearing;
- (11) the time period and procedure for requesting a hearing pursuant to 04 NCAC 24A .0104(i);
- (12) a statement that failure to request a hearing within the required time shall result in setoff of the debt;
- (13) a statement of the employer's right to enter into a written repayment agreement with DES;
- (14) instructions for paying the debt;
- (15) a mailing address where payments shall be sent;
- (16) the date that the notice was mailed to the employer; and
- (17) a telephone number for the employer to seek information regarding the notice.

(c) Employers choosing to repay the debt after receiving notice shall make payment to DES in accordance with 04 NCAC 24A .0104(y).

History Note: *Authority G.S. 96-4; 105A-8;*
Eff. July 1, 2018.

04 NCAC 24D .1104 is proposed for adoption as follows:

04 NCAC 24D .1104 EMPLOYER SETOFF DEBT COLLECTION ACT HEARINGS

(a) An employer debtor may file an appeal from a notice to claim its State income tax refund pursuant to a North Carolina Department of Revenue Offset Letter in accordance with 04 NCAC 24A .0104(i).

(b) Rule 04 NCAC 24A .0106 shall apply in determining timeliness of an appeal.

(c) Hearings pursuant to G.S. 105A-8(b) shall be conducted consistent with the procedures prescribed in 04 NCAC 24F .0303.

History Note: Authority G.S. 96-4; 105A-8;

Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24D .1201

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Why do you need Paragraph (e)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24D .1201 is proposed for amendment as follows:

04 NCAC 24D .1201 REQUEST FOR SEASONAL DETERMINATION

(a) Each employer desiring a seasonal determination shall request an Application for Seasonal Determination (Form NCUI 611) from assignment of the seasonal period by DES DES's Tax Administration Section by telephone, mail, facsimile, or email as provided in 04 NCAC 24A .0104(t).

(b) Each employer shall complete and submit ~~The request shall be made in writing by completing~~ the Application for Seasonal Determination (Form NCUI 611) ~~that is available on DES's website at www.ncesc.com and addressed to the Tax Administration Section by mail, facsimile, or email as provided in 04 NCAC 24A .0104.~~ 04 NCAC 24A .0104(t).

(c) ~~Requests for Seasonal Determination using (Form NCUI 611)~~ A request submitted on Form NCUI 611 shall contain the following:

- (1) the employing unit's name and physical address;
- (2) years of operation in North Carolina;
- (3) location of each seasonal pursuit;
- (4) description of each seasonal ~~each~~ pursuit; ~~and~~
- (5) an explanation of why the seasonal pursuit being requested cannot be conducted throughout the year;
- ~~(5)(6)~~ beginning and ending dates of each seasonal pursuit for the last four ~~years.~~ years;
- (7) the name of the individual requesting the determination;
- (8) the official position of the individual requesting the determination on behalf of the employing unit;
and
- (9) a telephone number.

(d) ~~The request~~ completed Application for Seasonal Determination shall be filed at least 20 days before the beginning date of the period of production operations for which the ~~designation~~ determination is requested.

(e) Completion and ~~Submission~~ submission of Form NCUI 611 shall satisfy the requirements of this Rule.

History Note: Authority G.S. 96-4; 96-16;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

04 NCAC 24D .1202 is proposed for amendment as follows:

04 NCAC 24D .1202 WRITTEN DETERMINATION

(a) DES shall issue a written determination granting or denying the request upon making its determination pursuant to G.S. 96-16(c). The determination shall notify the employer of the following:

- (1) the specific seasonal period assigned by DES;
- (2) the effective date of the determination; and
- (3) the specific filing requirements for seasonal employers.

(b) ~~Any~~ A determination that denies the request for a seasonal designation shall state the reasons for the denial.

(c) ~~Each~~ The determination shall contain notice of each party's right to appeal the determination and request a hearing, the date the determination was mailed, and the time period within which an appeal shall be filed.

(d) The employer may file its appeal of a denial of a request for seasonal pursuit designation with DES's Tax Administration Section ~~in the same manner as prescribed in under Rule .1201 of this Section, by submitting a Form NCUI 611 by mail to Post Office Box 26504, Raleigh, NC 27611, facsimile to (919) 733-1255, or email to des.tax.customerservice@nccommerce.com~~ 04 NCAC 24A .0104(t).

(e) Hearings shall be conducted as set forth in ~~Rule .1103 of this Subchapter.~~ 04 NCAC 24F .0303.

History Note: Authority G.S. 96-4; 96-16;

Eff. July 1, 2015;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0101

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 10, do you need the term "regular" since you go on to state the business hours?

On lines 11-12, I suggest you replace what you have with "25 NCAC 01E .0901, including subsequent amendments and editions."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

1 **SUBCHAPTER 24F – BOARD OF REVIEW**

2
3 **SECTION .0100 – GENERAL**

4
5 04 NCAC 24F .0101 is proposed for adoption as follows:

6
7 **04 NCAC 24F .0101 OFFICE LOCATION FOR BOARD OF REVIEW**

8 The administrative office of the North Carolina Department of Commerce, Board of Review is located at 700 Wade
9 Avenue, in Raleigh, North Carolina. The mailing address is Post Office Box 28263, Raleigh, NC 27611. The office is
10 open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for
11 State holidays as set forth in 25 NCAC 01E .0901, and includes subsequent amendments and editions of the referenced
12 material in accordance with G.S. 150B-21.6.

13
14 History Note: Authority G.S. 96-4; 96-15.3;
15 Eff. July 1, 2018.

1 04 NCAC 24F .0102 is proposed for adoption as follows:

2

3 **04 NCAC 24F .0102 ADDRESSES FOR NOTICE AND ELECTRONIC NOTICE**

4 Rule 04 NCAC 24A .0103 shall apply for notice sent by the Board of Review.

5

6 History Note: Authority G.S. 96-4; 96-15; 96-15.3;

7 Eff. July 1, 2018.

04 NCAC 24F .0103 is proposed for adoption as follows:

04 NCAC 24F .0103 ADDRESSES FOR FILING APPEALS, EXCEPTIONS, OR REQUESTS

Appeals, exceptions, and requests shall be filed with the Board of Review in accordance with 04 NCAC 24A .0104(l), (r), and (v).

History Note: Authority G.S. 96-4; 96-15; 96-15.3;
Eff. July 1, 2018.

1 04 NCAC 24F .0104 is proposed for adoption as follows:

2

3 **04 NCAC 24F .0104 FILING/MAILING DATES AND USE OF FORMS**

4 Rule 04 NCAC 24A .0106 shall apply in determining the timeliness of appeals, exceptions, and requests filed with the
5 Board of Review.

6

7 History Note: Authority G.S. 96-4; 96-15; 96-15.3;

8 Eff. July 1, 2018.

1 04 NCAC 24F .0105 is proposed for adoption as follows:

2

3 **04 NCAC 24F .0105 SIGNATURES**

4 (a) Rule 04 NCAC 24A .0107 shall apply in authenticating a digital signature.

5 (b) Rule 04 NCAC 24A .0108 shall apply in determining signatures on reports and forms.

6

7 *History Note:* Authority G.S. 96-4; 96-9.15; 96-15; 96-15.3;

8 *Eff. July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0106

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 5, I know that "clear and convincing evidence" is defined in Rule 04 NCAC 24A .0105. But what do you mean "in the face of"? Are you saying that if the party wishes to establish a date different from one established by clear and convincing evidence?

In (c), why are you citing to Rule 04 NCAC 24A .0106? I know that allows for the agency to determine the date. But it doesn't include a hearing, so what is the cross-reference intended to convey?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

1 04 NCAC 24F .0106 is proposed for adoption as follows:

2
3 **04 NCAC 24F .0106 APPEAL DATE**

4 (a) A party shall be allowed to establish an appeal date earlier than a postal meter date, or the date of a document, in
5 the face of clear and convincing evidence.

6 (b) When a party alleges that it filed an appeal that the Board of Review never received, the party shall present clear
7 and convincing evidence of a timely filing, which may be corroborated by testimony or physical evidence linked to
8 the appeal in question.

9 (c) The Board of Review shall allow cross-examination in de novo hearings to establish the timeliness of an appeal,
10 as set forth in 04 NCAC 24A .0106.

11
12 *History Note: Authority G.S. 96-4; 96-15; 96-15.3;*

13 *Eff. July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0107

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 5, what is an "agent state representative"? Is this a representative of an "agent state" as defined in Rule 04 NCAC 24A .0105?

In Item (1), line 7, what do you mean to encompass in this cross-reference?

In (3), line 9, the party is going to do what regarding no written instructions? There is language missing here.

Depending upon what you are trying to say, you might consider stating "DES did not provide the party with any written instructions contrary to the misleading information."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24F .0107 is proposed for adoption as follows:

04 NCAC 24F .0107 TIMELINESS EXCEPTION

Timeliness sanctions shall be waived by the Board of Review or its designee when the Board of Review, DES, or an agent state representative gives misleading information on appeal rights to a party, if the party:

- (1) establishes what he or she was told was misleading and how he or she was misled pursuant to 04 NCAC 24F .0106;
- (2) identifies, if possible, the individual who misled him or her; and
- (3) no written instructions contrary to the misleading information were provided by the Board of Review or DES to the party with service of the decision being appealed.

History Note: Authority G.S. 96-4; 96-15; 96-15.3;

Eff. July 1, 2018.

04 NCAC 24F .0201 is proposed for amendment as follows:

04 NCAC 24F .0201 REQUIREMENTS FOR APPEAL STATEMENT TO BOARD OF REVIEW

~~A party shall file a~~ A written statement of appeal from an ~~appeals decision~~ Appeals Decision to the Board of ~~Review~~.

~~A written statement of appeal from an Appeals Decision to the Board of Review shall include the following: Review~~
shall comply with 04 NCAC 24A .0104(1)(5).

- ~~(1)~~ identify the decision being appealed by the docket number;
- ~~(2)~~ contain a clear statement of the reasons or grounds for the appeal; and
- ~~(3)~~ state the name of the party appealing.

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

Eff. July 1, 2015;

Recodified from 04 NCAC 24C .0501 Eff. October 1, 2017;

Amended Eff. July 1, 2018.

04 NCAC 24F. 0202 is proposed for amendment as follows:

04 NCAC 24F .0202 ACKNOWLEDGMENT OF APPEAL

(a) The receipt of a party's appeal from an Appeals Decision shall be acknowledged in writing by the Appeals Section Board of Review or its designee and sent to all parties of record.

(b) The notice acknowledging receipt of an appeal shall inform each party of the following:

- (1) the right to request oral arguments;
- (2) the deadline to request oral arguments;
- (3) the right to submit written arguments regarding the appeal;
- (4) the deadline for submitting written arguments; and
- (5) that the party may submit a written request for a record of the hearing proceeding pursuant to G.S. 96-15(f); and
- (6) the procedures for obtaining a record of the hearing, including recordings or transcripts.

(c) Records shall be provided in accordance with G.S. 96-4(x) and Section .0200 of 04 NCAC 24A.

History Note: Authority G.S. 96-4; 96-15; 20 CFR 603;
Eff. July 1, 2015;
Recodified from 04 NCAC 24C .0502 Eff. October 1, 2017;
Amended Eff. July 1, 2018.

04 NCAC 24F .0203 is proposed for amendment as follows:

04 NCAC 24F .0203 ORAL ARGUMENTS

(a) Oral arguments before the Board of Review shall be granted at the discretion of the Board of Review.

(b) A written request for oral arguments ~~shall include the following:~~ shall:

(1) be directed to the Board of ~~Review, North Carolina Department of Commerce~~ Review ~~by mail, facsimile, or email~~ pursuant to ~~04 NCAC 24A .0104(i);~~ 04 NCAC 24A .0104(v).

(2) be received within 15 days of the date on the notice acknowledging receipt of an appeal from ~~an~~ the Appeals Decision; and

(3) contain a statement that a copy of the request was mailed or personally delivered to the opposing party, if one exists.

(c) If the request is granted, the Board of Review shall give written notice to each interested party to appear ~~before the Board of Review.~~ for oral arguments.

(d) Notice to appear before the Board of Review to present oral arguments shall contain:

(1) the Higher Authority Decision docket number;

(2) the ~~Lower~~ issue identification or Appeals Decision docket number;

(3) the identity of the party requesting oral arguments;

(4) the right of the non-requesting party to appear and present oral arguments;

(5) the date and time for oral arguments;

(6) the physical address of the location where oral arguments are scheduled to be held; and

(7) each party's right to legal representation.

(e) The notice to appear for oral arguments shall be ~~mailed~~ provided to each party by mail or electronic transmission at least 14 calendar days before the date scheduled for ~~arguments.~~ arguments in accordance with 04 NCAC 24A .0103.

(f) Any request to reschedule oral arguments shall be for good cause as defined in 04 NCAC 24A .0105, and sent ~~by mail, fax, or email~~ to the Board of Review pursuant to ~~04 NCAC 24A .0104(i);~~ 04 NCAC 24A .0104(v), and to each party to the proceeding by personal service, mail, ~~fax,~~ electronic transmission, or delivery service as defined under 04 NCAC 24A .0105. A request to reschedule oral arguments shall state ~~the reason(s)~~ each reason for the request.

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

Eff. July 1, 2015;

Recodified from 04 NCAC 24C .0503 Eff. October 1, 2017;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0204

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

What is the purpose of Paragraph (i)? I note you do not have similar language in Rule 24C .0302.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24F .0204 is proposed for amendment as follows:

**04 NCAC 24F .0204 LEGAL REPRESENTATION OR SUPERVISION BY NORTH CAROLINA
ATTORNEY BEFORE THE BOARD OF REVIEW**

(a) An individual who is a party to a proceeding may represent himself or herself before the Board of Review.

(b) A partnership or association may be represented by any of its members.

(c) A corporation may be represented by an officer.

(d) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.

(e) Notices or certification of legal representation by an attorney supervised licensed to practice law in this State shall be in writing and presented to the Board of Review to become part of the official ~~record and shall contain:~~ record.

~~(f) Notices or certification of legal representation by an individual who is supervised by an attorney licensed to practice law in this State shall be in writing and presented to the Board of Review to become part of the official record, and shall contain:~~

(1) the ~~name~~ name, ~~and business address~~ address, and telephone number of the supervising attorney;
~~and~~

(2) the supervising attorney's active North Carolina State Bar ~~number~~ number; ~~and~~

(3) the name, address, and telephone number of the person being supervised.

~~(g)~~ When a party has a legal representative, all documents or information required to be provided to the party shall be provided only to the legal representative, unless otherwise requested in writing to the Board of Review.

(h) An address provided to the Board of Review for mailing or electronic transmission in a specific case shall not constitute a change of address with DES for purposes of 04 NCAC 24A .0102.

~~(g)~~(i) Any information provided to a party's legal representative shall have the same force and effect as if it had been sent to the party.

History Note: Authority G.S. 96-4; 96-15; 96-17;

Eff. July 1, 2015;

Recodified from 04 NCAC 24C .0504 Eff. October 1, 2017;

Amended Eff. July 1, 2018.

04 NCAC 24F .0205 is proposed for amendment as follows:

04 NCAC 24F .0205 INTRODUCTION OF EVIDENCE IN HIGHER AUTHORITY HEARINGS

(a) The Board of Review shall allow each party 10 minutes from the time of the scheduled hearing to appear for the hearing.

(b) If the appealing party fails to appear for the hearing and a continuance had not been previously granted, the Board of Review shall issue a Higher Authority Decision dismissing the appeal.

(c) A party desiring to introduce documents or other non-testimonial evidence at a de novo hearing shall provide an authenticated copy plus one copy for the Board of Review, or a hearing officer appointed by the Board Review to include in the official record at of the hearing. A copy shall be provided to each party prior to the hearing. Documents of any document or other evidence provided to the Board of Review shall be provided to the opposing party prior to the hearing.

(d) A party offering 20 or more documents into evidence shall prepare a list of the documents in the order of their presentation. The list shall be provided to the Board of Review and to each party before the hearing to become part of the official hearing record.

(e) If the Board of Review takes official notice of facts, whether under judicial notice or within the Board's specialized knowledge, the official notice and its source shall be stated on the record and noticed to the parties. Each party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence.

History Note: Authority G.S. 96-4; 96-15; 96-15.3;

Eff. July 1, 2015;

Recodified from 04 NCAC 24C .0505 Eff. October 1, 2017;

Amended Eff. July 1, 2018.

04 NCAC 24F .0301 is proposed for amendment as follows:

04 NCAC 24F .0301 APPEALING A TAX MATTER

(a) A written appeal regarding monetary eligibility denying a protest to a Wage Transcript and Monetary Determination shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(e).

~~(a)(b) All appeals~~ A written appeal regarding of a Tax Liability Determination ~~tax matters, or monetary eligibility~~ shall be filed with ~~the DES~~ DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(n).

(c) A written appeal of a Tax Rate Assignment shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(o).

(d) A written appeal of an Audit Result shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(p).

(e) A written appeal of a Tax Assessment shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(q).

(f) Written Exceptions to a Tax Opinion shall be filed with the Board of Review pursuant to 04 NCAC 24A .0104(r).

~~(b) A written appeal under this rule shall contain the following:~~

- ~~(1) the date of the appeal;~~
- ~~(2) the identity of the determination, decision, or result being appealed;~~
- ~~(3) a clear statement of the party's intent to appeal;~~
- ~~(4) reasons for the appeal; and~~
- ~~(5) the name of the party appealing the determination, decision, or result.~~

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1101 Eff. October 1, 2017;
Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0302

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 4, please replace "fourteen" with "14" [See Rule 26 NCAC 02C .0108(9)(b)]

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24F .0302 is proposed for amendment as follows:

04 NCAC 24F .0302 SCHEDULING TAX HEARINGS

(a) A notice of the hearing shall be mailed to each party at least fourteen days before the hearing date.

(b) The hearing notice shall include the following:

- (1) identify the determination, decision, or result being ~~appealed or protested~~; appealed;
- (2) the name of the appealing ~~or protesting~~ party;
- (3) the date and time of the hearing;
- (4) if requested at the time of the filing of the appeal, the physical location of an in-person hearing;
- (5) the telephone number at which each party will be called for a telephone hearing;
- (6) each issue, with statutory reference, to be heard and decided;
- (7) the name and contact information for the Board of Review or designated Hearing ~~Official~~; Officer;
- (8) the manner in which witnesses may offer evidence and participate in the hearing;
- (9) each party's right to obtain a legal representative as defined in 04 NCAC 24A .0105;
- (10) instructions for requesting a rescheduling of the hearing;
- (11) notice that a party may object to a telephone hearing and request an in-person hearing; and
- (12) a statement of each party's right to request the issuance of a subpoena for the production of records or individuals to appear to testify, and instructions for how to do so.

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

Eff. July 1, 2015;

Recodified from 04 NCAC 24D .1102 Eff. October 1, 2017;

Amended Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0303

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Just so I'm clear – G.S. 96-4(q) requires that the hearings of the Board of Review be open to the public. How is that done in a telephone hearing?

In (c), line 10, do you mean "shall" instead of "may"? Or is it that if the individual does not fill out the questionnaire, Paragraph (d), lines 13-15, will apply?

In (c), line 11, you state that there will be a Hearing Officer listed in the hearing notice. But Rule .0302(7) states there may be a hearing officer or the Board. And Paragraph (b) of this Rule says the Board of Review or its designated Hearing Officer. Will there always be a Hearing Officer pursuant to G.S. 96-4(q)? Should Rule .0302(7) be changed to replace "or" with "and" on line 12?

In the History Note, simply change the period after "July 1, 2015" to a semicolon. Don't show it as a change – simply do it.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

1 04 NCAC 24F .0303 is proposed for amendment as follows:

2
3 **04 NCAC 24F .0303 TELEPHONE HEARINGS BEFORE THE BOARD OF REVIEW**

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 ~~1104~~ .0304 of this Section.

6 (b) In cases of telephone hearings, the Board of Review shall provide a Telephone Hearing Questionnaire for each
7 party to submit each telephone number to be called by the Board of Review or its designated Hearing ~~Official~~ Officer
8 for the hearing. ~~If a party fails to submit a telephone number to be called for the hearing, the Board of Review shall~~
9 ~~call each party at the telephone number listed on the hearing notice.~~

10 (c) Each party may complete and submit the Telephone Hearing Questionnaire containing each number to be called
11 for the hearing to the Hearing Officer listed in the hearing notice.

12 (d) After receiving the hearing notice, and prior to the hearing, any party may contact the Hearing Officer to provide
13 the name of each participant and each telephone number to be called for the hearing. In the absence of the submission
14 by a party of any telephone number to be called for the hearing, the Hearing Officer shall call the party at the telephone
15 number listed on the hearing notice.

16
17 *History Note: Authority G.S. 96-4;*

18 *Eff. July 1, 2015.*

19 *Recodified from 04 NCAC 24D .1103 Eff. October 1, 2017;*

20 *Amended Eff. July 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0305

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Why do you need Paragraph (a)? Is this setting forth the standards the Board of Review or designated Hearing Officer will use to determine whether to set it as an in-person/telephone hearing initially? Will they be considered if a request is made for such a hearing?

Assuming you need to retain it, on line 6, delete or define "efficiently"

In (b)(3), line 14, again, Rule .0302(7) says there may be a designated hearing officer. But this Rule says there will be. Which is correct?

In (c), line 16, and elsewhere where the term is used, what are "substantial rights"? Are you relying upon the term as used in G.S. 96-15(c)?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24F .0305 is proposed for adoption as follows:

04 NCAC 24F .0305 COMBINATION TELEPHONE AND IN-PERSON HEARINGS BEFORE THE BOARD OF REVIEW

(a) The Board of Review or designated Hearing Officer may conduct an in-person/telephone hearing to avoid prejudice, to ensure security, to comply with standards for appeal promptness, to expedite an appeal, or to efficiently administer the unemployment insurance program.

(b) A party may obtain an in-person/telephone hearing by filing a written objection to a telephone conference call hearing notice pursuant to 04 NCAC 24F .0303, or to an in-person hearing notice pursuant to 04 NCAC 24F .0304.

(1) The objection shall state each reason that the party objects to appearing in the manner listed in the hearing notice.

(2) The objecting party shall state the manner in which it, or its witnesses, request to appear for the hearing.

(3) This request shall be directed to the Hearing Officer designated in the hearing notice.

(c) The Board of Review or Hearing Officer shall consider a party's request to change its witnesses' appearance from a telephone or in-person hearing, and shall make a determination of whether the substantial rights of each party would be preserved by granting the party's request.

(d) The Board of Review or Hearing Officer may grant a request to change an appearance by telephone or in-person for good cause as defined in 04 NCAC 24A .0105. If the request is granted, the official hearing record shall include the written request for the change, reflect the Board of Review's or Hearing Officer's determination that the substantial rights of each party would be preserved by granting the request, and each reason for the determination.

(e) The objecting party shall appear in-person or by telephone as requested by the objecting party if the Board of Review or Hearing Officer grants the request.

(f) The Board of Review or Hearing Officer may deny a request to change a party's appearance at a telephone or in-person hearing if:

(1) the Board of Review or Hearing Officer believes that the requesting party's intent is to inconvenience the opposing party or delay the proceedings;

(2) the party or witnesses request to appear by telephone, and are less than 40 miles away from an in-person hearing location; or

(3) the request is made less than 24 hours before the hearing is scheduled to begin.

(g) If a party's request for a change to a telephone or in-person hearing is denied, the Board of Review or Hearing Officer shall state the grounds for denial on the record, include the written request in the official records, and state the reasons for the denial in the written decision.

(h) The Board of Review or Hearing Officer shall notify each party of the change prior to the hearing.

History Note: Authority G.S. 96-4; 96-15.3;
Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0307

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Just so I'm clear – the Board of Review will issue subpoenas, and never the designated hearing officer?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24F .0307 is proposed for amendment as follows:

04 NCAC 24F .0307 SUBPOENAS

(a) Subpoenas to compel the attendance of witnesses and the production of records for any tax hearing may be issued by the Board of Review.

(1) A subpoena may be issued at the request of a party or on the Board of Review's own motion.

(2) Any documentation showing service of the subpoena shall become part of the official hearing record.

~~(a)~~(b) Any party's request for a subpoena to be issued by the Board of Review shall be in writing, sent to the Board of Review, and shall include:

(1) the name of the party requesting the subpoena;

(2) the claimant's name, if applicable;

(3) the employer's name, if applicable;

(4) the docket number of the case;

(5) the name, address, and telephone number of each person sought for appearance at the hearing;

(6) the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;

(7) the name and address of the individual or party in possession of any item sought; and

(8) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.

(c) The request shall be granted only to the extent that the items or testimony sought appears relevant to the issues on appeal.

~~(b)~~(d) Legal representatives shall issue subpoenas at their own expense and discretion.

(e) Subpoenas shall be issued at least five business days before the date of the scheduled hearing.

(f) Service of a subpoena shall be made by delivering a copy to the person, or by registered or certified mail, return receipt requested, unless a party or witness consents to service of the subpoena by other means, including electronic transmission.

~~(e)~~(g) Any party or person receiving a subpoena may serve a written objection to the issuance of the subpoena.

(1) The objection shall be directed to the Board of Review prior to the commencement of the hearing and provide reasons for the objection and the relief sought by the objecting party.

(2) The Board of Review shall rule on the objection and notify the parties before the hearing. The Board of Review's reasons for its ruling shall be in writing or stated on the record during the hearing.

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

Eff. July 1, 2015;

Recodified from 04 NCAC 24D .1106 Eff. October 1, 2017;

Amended Eff. July 1, 2018.

04 NCAC 24F .0309 is proposed for adoption as follows:

04 NCAC 24F .0309 CONDUCT OF TAX HEARINGS BY THE BOARD OF REVIEW

(a) The Board of Review shall allow each party 10 minutes from the time of the scheduled hearing to appear for the hearing.

(b) If the appealing party fails to appear for the hearing and a continuance had not been previously granted, the Board of Review shall issue a Tax Opinion dismissing the appeal.

(c) A party desiring to introduce documents or other non-testimonial evidence at a de novo hearing shall provide an authenticated copy plus one copy for the Board of Review to include in the official record of the hearing. A copy of any document or other evidence provided to the Board of Review shall be provided to the opposing party prior to the hearing.

(d) A party offering 30 or more documents into evidence shall prepare a list of documents in the order of their presentation. The list shall be provided to the Board of Review and to each party before the hearing to become part of the official hearing record.

(e) If the Board of Review takes official notice of facts, whether under judicial notice or within the Board's specialized knowledge, the official notice and its source shall be stated on the record and noticed to the parties. Each party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence.

*History Note: Authority G.S. 96-4; 96-15.3;
Eff. July 1, 2018.*

04 NCAC 24F .0310 is proposed for adoption as follows:

04 NCAC 24F .0310 BURDEN OF PROOF IN HEARINGS BEFORE THE BOARD OF REVIEW

The burden of proof shall rest with the appealing party in any hearing on an appeal set forth in 04 NCAC 24F .0301.

History Note: Authority G.S. 96-4; 96-15.3;
Eff. July 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24F .0311

DEADLINE FOR RECEIPT: Friday, June 8, 2018

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 our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (c), line 11, where is the order found? In Rule 24C .0303, you state that it can be located on the DE website.

In (e), lines 15-17, this is basically reciting G.S. 84-4.1. Why do you need to repeat it here?

In (f), line 21, delete the comma after "statement"

On line 22, insert a comma after "registration statement"

Also on line 22, is the "order" the one referred to in Paragraph (c)? If so, should it be capitalized?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 25, 2018

04 NCAC 24F .0311 is proposed for adoption as follows:

04 NCAC 24F .0311 ADMISSION OF OUT-OF-STATE ATTORNEY TO APPEAR BEFORE BOARD OF REVIEW

(a) Pursuant to G.S. 84-4.1, attorneys residing in and licensed to practice law in another state may seek to be admitted to practice before the Board of Review to represent a client. Attorneys admitted pursuant to 04 NCAC 24C .0303 for the same matter are not required to seek admission pursuant to this Rule.

(b) An out-of-state attorney seeking to practice before the Board of Review, or the North Carolina attorney with whom the out-of-state attorney associates pursuant to G.S. 84-4.1(5), shall file a motion with the Board of Review that complies with the requirements of G.S. 84-4.1.

(c) A proposed Order Permitting Out-Of-State Attorney to Appear Pro Hac Vice shall be provided to the Board of Review with the motion.

(d) Following review of the motion, the Board of Review shall issue an order granting or denying the motion.

(e) Pro hac vice admission granted to practice before the Board of Review shall allow continued representation before the Board of Review in all administrative proceedings regarding the same matter. The Board of Review has the discretionary authority to deny a motion for pro hac vice admission even if the motion complies with the requirements of G.S. 84-4.1.

(f) Upon receipt of an order granting a motion for pro hac vice admission to practice before the Board of Review, the admitted out-of-state attorney or the associated North Carolina attorney shall pay the fees required by G.S. 84-4.1 to the North Carolina State Bar and General Court of Justice, and file a statement with the Board of Review documenting payment of the fees and the submission of any pro hac vice admission registration statement, required by the North Carolina State Bar. A copy of the motion, order, registration statement and documentation reflecting payment of the fees shall be provided to the Board of Review to be included in the official hearing record.

History Note: *Authority G.S. 84-4.1; 96-4; 96-17;*
Eff. July 1, 2018.