REGULATIONS
GOVERNING THE COLLECTION OF CONTRIBUTIONS
AND COMPUTATION OF BENEFITS
UNDER THE EMPLOYMENT SECURITY LAW OF NORTH CAROLINA

[These Regulations are being studied and reviewed for the purpose of revisions to reflect the most current practices and procedures of the Employment Security Commission.]

STATEMENT OF POLICY

An adequate supply of the Employment Security Law, the Employment Security Commission Regulations and Legal Interpretations shall be maintained by every office of the Employment Security Commission and shall be provided to the public at no charge.

N.C.G.S. §96-4(c) Publication. – The Commission shall cause to be printed for distribution to the public the text of this Chapter, the Commission’s regulations and general rules, and any other material the Commission deems relevant and suitable, and shall furnish the same to any person upon application therefor. All publications printed shall comply with the requirements of G.S. §143-170.1.

Amended:

<table>
<thead>
<tr>
<th>Date</th>
<th>Date</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 1, 1994</td>
<td>January 26, 1995</td>
<td>March 30, 1995</td>
</tr>
<tr>
<td>May 11, 1995</td>
<td>November 30, 1995</td>
<td>October 9, 1997</td>
</tr>
<tr>
<td>March 25, 1999</td>
<td>May 4, 2000</td>
<td>August 31, 2000</td>
</tr>
<tr>
<td>November 9, 2000</td>
<td>January 11, 2001</td>
<td>March 29, 2001</td>
</tr>
<tr>
<td>November 29, 2001</td>
<td>February 25, 2002</td>
<td>September 6, 2002</td>
</tr>
<tr>
<td>June 15, 2004</td>
<td>February 15, 2005</td>
<td>November 16, 2005</td>
</tr>
</tbody>
</table>

Employment Security Commission of North Carolina
Post Office Box 25903
Raleigh, North Carolina 27611
## INDEX

<table>
<thead>
<tr>
<th>NUMBER</th>
<th>TOPIC</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation No. 1</td>
<td>General Information</td>
<td>1-1</td>
</tr>
<tr>
<td>Regulation No. 2</td>
<td>Definitions</td>
<td>2-1</td>
</tr>
<tr>
<td>Regulation No. 3</td>
<td>Unemployment Insurance Fund</td>
<td>3-1</td>
</tr>
<tr>
<td>Regulation No. 4</td>
<td>Employing Unit Records</td>
<td>4-1</td>
</tr>
<tr>
<td>Regulation No. 5</td>
<td>Employer Records</td>
<td>5-1</td>
</tr>
<tr>
<td>Regulation No. 6</td>
<td>Payment of Employer Taxes</td>
<td>6-1</td>
</tr>
<tr>
<td>Regulation No. 7</td>
<td>Experience Rating Accounts</td>
<td>7-1</td>
</tr>
<tr>
<td>Regulation No. 7A</td>
<td>Special Reimbursement by Certain Nonprofit Organizations</td>
<td>7A-1</td>
</tr>
<tr>
<td>Regulation No. 7B</td>
<td>Election of Reimbursement Method</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Through Surety Bond or Irrevocable Letter of Credit by Nonprofit Organizations</td>
<td>7B-1</td>
</tr>
<tr>
<td>Regulation No. 8</td>
<td>Seasonal Determinations</td>
<td>8-1</td>
</tr>
<tr>
<td>Regulation No. 9</td>
<td>Separation and Layoff Information</td>
<td>9-1</td>
</tr>
<tr>
<td>Regulation No. 9A</td>
<td>Supplemental Unemployment Benefit Plans</td>
<td>9A-1</td>
</tr>
<tr>
<td>Regulation No. 10</td>
<td>Benefit Claims and Payments</td>
<td>10-1</td>
</tr>
<tr>
<td>Regulation No. 11</td>
<td>Interstate Claims</td>
<td>11-1</td>
</tr>
<tr>
<td>Regulation No. 12</td>
<td>Combining Wage Credits of Multi-State Claimants</td>
<td>12-1</td>
</tr>
<tr>
<td>Regulation No. 13</td>
<td>Adjudication</td>
<td>13-1</td>
</tr>
<tr>
<td>Regulation No. 14</td>
<td>Appeals Procedure</td>
<td>14-1</td>
</tr>
<tr>
<td>Regulation No. 15</td>
<td>Appeals Referee Hearings by Telephone</td>
<td>15-1</td>
</tr>
<tr>
<td>Regulation No. 15A</td>
<td>In-Person/Telephone Hearings</td>
<td>15A-1</td>
</tr>
<tr>
<td>Regulation No. 16</td>
<td>Special Programs</td>
<td>16-1</td>
</tr>
<tr>
<td>Regulation No. 17</td>
<td>Non-Charging Hearings</td>
<td>17-1</td>
</tr>
<tr>
<td>Regulation No. 18</td>
<td>Tax Liability Hearings</td>
<td>18-1</td>
</tr>
<tr>
<td>Regulation No. 18A</td>
<td>Special Investigation by the Tax Department</td>
<td>18A-1</td>
</tr>
<tr>
<td>Regulation No. 19</td>
<td>Tax Liability Hearings upon Application for Review</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and Redetermination of Rates of Contributions</td>
<td>19-1</td>
</tr>
<tr>
<td>Regulation No. 20</td>
<td>Overpayment Hearings</td>
<td>20-1</td>
</tr>
<tr>
<td>Regulation No. 20A</td>
<td>Waiver of Overpayments</td>
<td>20A-1</td>
</tr>
<tr>
<td>Regulation No. 20B</td>
<td>Federal Supplemental Compensation Overpayments</td>
<td>20B-1</td>
</tr>
<tr>
<td>Regulation No. 20C</td>
<td>Overpayment Hearings</td>
<td>20C-1</td>
</tr>
<tr>
<td>Regulation No. 20D</td>
<td>Interstate Overpayment Recovery</td>
<td>20D-1</td>
</tr>
<tr>
<td>Regulation No. 21</td>
<td>Review By Commission</td>
<td>21-1</td>
</tr>
<tr>
<td>Regulation No. 22</td>
<td>Labor Disputes</td>
<td>22-1</td>
</tr>
<tr>
<td>Regulation No. 23</td>
<td>Confidentiality of Employment Service Division Information</td>
<td>23-1</td>
</tr>
<tr>
<td>Regulation No. 24</td>
<td>Requests for Documents and Records</td>
<td>24-1</td>
</tr>
<tr>
<td>Regulation No. 25</td>
<td>Copies of records and Fees for Services</td>
<td>25-1</td>
</tr>
<tr>
<td>Regulation No. 26</td>
<td>Setoff Debt Collection Act Hearings</td>
<td>26-1</td>
</tr>
<tr>
<td>Regulation No. 27</td>
<td>Records Retention by ESC</td>
<td>27-1</td>
</tr>
</tbody>
</table>
Regulation No. 1 - General Information

1.10 The North Carolina Employment Security Commission has jurisdiction over the administration of adjudication concerning claims for benefits, benefits, benefits rights, contributions, rates, and penalties under Chapter 96 of the North Carolina General Statutes. Said jurisdiction is exclusive and judicial review shall be permitted only after all remedies before the Commission have been exhausted.

1.11 (A) These are the Regulations of the North Carolina Employment Security Commission effective upon adoption by the Commission.

(B) All rules and regulations heretofore adopted are hereby repealed.

(C) Nothing in these regulations shall be construed to relieve any person subject to the provisions of Chapter 96 of the North Carolina General Statutes from the consequences of any act done prior to the publication of these regulations in violation of, or refusal, or neglect to act in accordance with any former procedural order, rule, or regulation of the Employment Security Commission.
Regulation No. 2 - Definitions

2.10 'Adjudicator' means any person appointed by the Employment Security Commission to make an informal investigation, including telephone calls, concerning the eligibility or disqualification of a claimant for unemployment insurance benefits or the correctness of a wage transcript or an overpayment of unemployment insurance benefits. The adjudicator shall render a determination after the informal investigation, except that an Adjudicator shall not render any determination on an issue of lack of earnings in the base period, or if the information received from the claimant and the employer establishes that the claimant's unemployment was the result of a lack of available work.

2.10A "Adjudication of a Separation from Employment Issue" under N.C.G.S. §96-14 is to occur only if the information received from the claimant or the employer indicates that a claimant has become unemployed through his/her own fault or the fault of his/her employer. No separation from employment issue is to be raised and/or adjudicated under G.S. §96-14 if the information received from the claimant and the employer establishes that the claimant's unemployment was the result of a lack of available and suitable work. Unemployment caused by "a lack of available and suitable work" shall include, among other things, a situation wherein the claimant offered to be included in his/her employer's established reduction-in-force plan that (a) was extended to employees with high-level of seniority an opportunity to be separated from employment in order for the employer to avoid separating other employees with less seniority, (b) expressly stated the employer retained the right to accept or reject the offer and (c) prevented the offering employee from revoking his/her offer after it was accepted by the employer.

2.11 'Agent State' is any state in which an individual files a claim for benefits from another state or states.

2.12 'Appeals Referee' means any attorney appointed by the Commission pursuant to the law to hear and decide issues on appeal from an adjudicator's determination in accordance with the provisions of the law.

2.13 'Business Records' are recognized as an exception to the hearsay rule provided they (A) are made in the regular course of business; (B) are made contemporaneously with the events recorded; (C) are original entries; and (D) are based upon the personal knowledge of the person making them.

2.14 'Claim' or claim for unemployment insurance benefits means filing for the money payments payable to an individual as provided in Chapter 96 of the North Carolina General Statutes with respect to his employment. A 'claimant' is one who files a claim. A new initial claim (NIC) is a claim which establishes the benefit year after becoming unemployed. An additional initial claim (AIC) is a claim which reopens an active claim after becoming unemployed within an established benefit year. No intervening employment (NIE) is a claim
which reopens an active claim within an established benefit year without any intervening employment.

2.15 'Combined-Wage Claimant' is a claimant who has covered wages under the unemployment insurance law of more than one state and who has filed a claim under the Interstate Arrangement for Combining Employment and Wages.

2.16 'Commission' means the full Employment Security Commission, the Chairman thereof, or a Deputy Commissioner.

2.17 'Commuter' is an individual who immediately before becoming unemployed customarily commuted from his residence in an agent state to his work in a liable state.

2.18 'Contributions,' as the term is used in the Employment Security Law, means 'taxes.'

2.19 'Customarily,' as the term is used in N.C.G.S. 96-16, means during at least seventy-five per cent (75%) of the calendar years of an observation internal.

2.20 'Deputy Commissioner' means an attorney appointed by the Commission to review the evidence taken by appeals referees, to hear and decide legal issues, and to conduct such other and further hearings therewith as may be ordered by the Commission.

2.21 'Electronic Transmission.' - The Employment Security Commission will permit the filing of documents required or permitted under N.C.G.S. §§96-4(m) and 96-15, and ESC Regulations 13, 14, 17, 18, 19, 20, 20A, 21, and 22 on the day a legible and readable copy is electronically transmitted and received by an office, department or unit of the Employment Security Commission, provided that, if transmitted by Internet, the copy is directed to the Internet address designated by the Employment Security Commission. The received copy if legible and readable shall be deemed filed as of the date and time printed thereon by an official receiving electronic device of the Employment Security Commission. The proponent of the electronically transmitted copy will have the burden to show that the copy received by the Employment Security Commission was legible and readable. "Electronic transmission" includes facsimile, Internet, or other similar means that the Employment Security Commission determines to constitute such transmission, and notwithstanding the requirements of other ESC Regulations, the acceptance of electronically transmitted documents shall not be dependent on an original signature being affixed thereto, provided the proponent of the electronic transmitted copy is clearly identified therein. While the Employment Security Commission takes normal precautions to keep all such information confidential and privileged pursuant to G.S. §96-4(t), the Employment Security Commission does not guarantee the confidentiality or privilege of any information transmitted to it by way of the Internet, as it is not possible, and does not accept liability for any loss of confidentiality or privilege resulting from the transmission of the information to the Employment Security Commission by way of the Internet.
'Excusable Neglect.' – When a party is required to show excusable neglect to extend the time for taking action permitted under these Regulations, the test to be applied in determining the existence of excusable neglect is whether the party has acted as a person of ordinary prudence while engaged in transacting important business.

'Good Cause' for an extension of time to appeal exists if the failure to act was a result of excusable neglect or other circumstances beyond the control of the appealing party.

'Group Temporary Layoff' is a temporary layoff involving twenty (20) or more workers.

'Hearing Officer' shall be any individual designated by and to whom the Commission has transferred a claim pending before an appeals referee or has been assigned higher authority appeals matters in which evidentiary hearings are required. The Hearing Officer shall not be an appeals referee, deputy commissioner or special deputy commissioner, but shall be bound by all procedures in these Regulations applicable to hearings and decisions by appeals referees, deputy commissioners or special deputy commissioners.

'Hearsay' is written or oral evidence not proceeding from the personal knowledge of the witness, but from the repetition of what has been heard from others not present at the hearing and offered to prove the truth of the matter asserted.

'Individual Temporary Layoff' is a temporary layoff involving one (1) or more workers but fewer than twenty (20).

'In-Person Hearing before an Appeals Referee' means a hearing at which all parties and witnesses physically appear before the Appeals Referee.

'In-Person/Telephone Hearing before an Appeals Referee' means a hearing at which at least one party or witness physically appears before the Appeals Referee and at least one party or witness appears before the Appeals Referee by conference telephone call, electronic or digital image or other similar means.

(A) 'Interested parties' to hearings are the claimant; the last employer when the issue is separation from last work under G.S. 96-14(l), (2), or (2A); the employer with whom the claimant has refused work when the issue is a failure to accept an offer of suitable work under G.S. 96-14(3)(ii); the employer with whom the claimant did not accept an offer of suitable work because of a positive drug test under G.S. 96-13(a)(3); and the last or current employer when the issue involves a question of availability for work because of unemployment due to a vacation in G.S. 96-13(a)(3) or 'between terms denial' in G.S. 96-13(b); provided, however, the base period employer of any claimant whose claim is disputed may, upon written request by said base period employer, be treated as an interested party in any adjudication.
involving the claimant's claim. The Commission shall be an interested party at all stages of the claim on its adjudication. The Commission or Appeals Referee can order any other party to be an interested party to further the interests of justice in the adjudication of any matter under Chapter 96.

(B) When the issue for hearing is either the claimant's availability for work or whether a particular job referral is suitable for the claimant, employers shall not be deemed to be interested parties except as provided above in (A).

(C) 'Interested parties' to hearing on tax liability under N.C.G.S. 96-4(m) are the employing unit, any claimant with a protested wage transcript or monetary determination, and the Employment Security Commission. Nothing herein shall prohibit the Commission from issuing a subpoena for anyone the Commission believes to be a necessary witness.

(D) 'Interested parties' to hearings involving fraud under N.C.G.S. 96-18 shall be the claimant and the Employment Security Commission. Nothing herein shall be construed to prohibit the Commission from issuing a subpoena for anyone the Commission believes to be a necessary witness.

2.31 'Interstate Benefit Payment Plan' is the plan approved by the Interstate Conference of Employment Security Agencies under which benefits are paid to unemployed individuals absent from the state or states in which benefit wage credits have been accumulated.

2.32 'Interstate Claimant' is an individual who claims benefits under the unemployment insurance law of one or more liable states. The term shall not include commuters; provided, the Employment Security Commission of North Carolina may, by arrangement with any adjoining state Employment Security Agency, treat certain commuters as interstate claimants if they reside in geographical areas from which the Employment Security Commission of North Carolina finds that requiring commuters to file their benefit claims in the state of their last employment would cause undue hardship to such claimants.

2.33 'Justifiable cause' for a claimant failing to participate in the Worker Profiling and Reemployment Services Program during a week includes, but is not limited to the following:

(1) The claimant is summoned to serve as a prospective or paneled juror;
(2) The claimant is enrolled and satisfactorily participating in a course of training approved by the Commission;
(3) The claimant is unable to participate because the claimant is employed;
(4) The claimant is unable to participate because of a job interview;
(5) The claimant has no transportation; or,
(6) The claimant is unable to participate due to circumstances which the Commission determines are beyond the claimant's control.

2.34 'Liable State' is any state against which an individual files, through another state, a claim for benefits.
2.35 'Multi-County Employer' is an employer which has a combined total of fifty (50) or more employees in counties other than the county in which the employer has its principal place of business; however, a separate reporting number will be assigned only for each county in which such employer has six (6) or more employees.

2.36 'Observation Interval' means an interval of time including the four (4) consecutive calendar years preceding the calendar year in which an application for a seasonal determination is made pursuant to N.C.G.S. 96-16; provided, that in the case of a newly subject employer in a seasonal pursuit or an employer whose activities have changed so as to place such employer in a seasonal pursuit, observational interval may mean less than four (4) calendar years.

2.37 "Paying State for Combined-Wage Claims."

(a) North Carolina is the 'Paying State for Combined-Wage Claims' if a claimant files a combined-wage claim against the State of North Carolina and if (1) the claimant has employment and wages in an applicable North Carolina's base period, and (2) the claimant qualifies for unemployment insurance benefits under the North Carolina Employment Security Law using the combined employment and wages;
(b) If the claimant has no earnings in covered employment in North Carolina, the Combined-Wage Claim must be denied; and
(c) If North Carolina denies a Combined-Wage Claim, it must inform the claimant of the option to file in another state in which the claimant has wages and employment during that state's base period(s).

2.38 'Regularly Recurring,' as the term is used in the Employment Security Law, means an active period or periods and shall be deemed 'regularly recurring' if, during at least seventy-five per cent (75%) of the calendar years of the observation interval, the beginning and ending dates of such period or periods do not vary more than four (4) weeks.

2.39 'Reporting to a local office or similar language' shall mean making contact with the Employment Security Commission in the manner and by the method specified and made known by the Employment Security Commission.

2.40 'Telephone Hearing before an Appeals Referee' means a hearing at which all parties and witnesses appear before the Appeals Referee by conference telephone call, electronic or digital image or other similar means.

2.41 'Temporary Layoff' is a period of unemployment occurring when one or more workers, because of lack of work during a payroll week established by the employer, are partially or totally unemployed but are retained on the payroll and are considered by the employer to be continuing employees.

2.42 'Vacation' is when an individual has been out of work for reasons other than having been separated from work or laid off, and must have been given reasonable advance notice of the vacation and vacation period.
2.43 'Wages' are cash or any medium other than cash paid by an employer to an employee for services rendered. Subject to Commission audit and approval, the employer shall approve the cash value of all payments in kind, and such cash value shall be used for purposes of all payments in kind, and such cash value shall be used for purposes of all tax and benefit determination. A money value for payment in kind furnished to a worker agreed upon by the worker and his employing unit shall be deemed the cash value of such payment in kind unless it is less than rates specially determined by the Commission or, in the case of board and lodging, less than the rates hereinafter prescribed. Allowance or reimbursement for traveling or other expenses incurred in the business of the employer and accounted for which does not represent directly or indirectly additional remuneration, is not wages. Where an employee must pay traveling and other expenses out of commissions or salary and these amounts are not accounted for separately, the entire amount of commissions or salary is wages, unless the employer satisfies the Commission that a certain percentage of commissions or salary is expenses. Until and unless in a given case a different rate for board or lodging is determined by the Commission, board or lodging furnished in addition to or in lieu of money wages shall be deemed to have not less than the following values:

- Full Board and room, weekly ......................... $70.00
- Meals per week .............................................. 42.00
- Meals per day .................................................. 6.00
- Meals per meal .............................................. 2.00
- Lodging per week .............................................. 28.00
- Lodging per day .............................................. 4.00

Effective on and after October 1, 1981, provided, the money value for room and board will not be included in wages if the room and board is provided to the employee for the convenience of the employer. In determining whether the room and board is provided for the convenience of the employer, if the room and board has been excluded from wages by the United States Internal Revenue Service for income tax withholdings, FICA and FUTA, it shall be deemed for the convenience of the employer and not included in wages pursuant to this regulation and the Employment Security Law. If the United States Internal Revenue Service has not made a determination, the Commission then shall make an independent determination.

2.44 'Wages Paid' are both wages actually received by the worker and wages constructively paid. Wages are constructively paid when they are credited to the account of or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made and must be made available to him so that they may be drawn upon by him at any time, and their payment brought within his own control and disposition, although not then actually reduced to possession.

2.45 'Wages Payable' are wages earned but not paid.

2.46 'Work' means any bona fide permanent employment. For purposes of this definition, 'bona fide permanent employment' is presumed to include only those employments of greater than thirty (30) consecutive calendar days duration, regardless of whether work is
actually performed on all of those days. In order for employment of less duration to be considered 'bona fide permanent employment', the Commission must find from the evidence presented that to do otherwise would work a substantial injustice in view of the intent of the Employment Security Act. The determination of the existence of 'substantial injustice' shall be based on, but not limited to, such factors as whether such employment was offered as employment having a duration of greater than thirty (30) consecutive calendar days, whether the employment was accepted as employment having a duration of greater than thirty (30) consecutive calendar days, which party was at fault and the reason(s) for the termination of this employment, and whether the parties have a recent history of accepting or offering employment of less than thirty (30) or more consecutive calendar days duration. The reason(s) for claimant's separation from his/her last employment of greater than thirty (30) consecutive calendar days, or, whether claimant would be qualified or disqualified for unemployment insurance benefits depending on which employment is his/her last 'bona fide permanent employment', shall not be factors considered in the finding of the existence or absence of 'substantial injustice.'
3-1

Regulation No. 3 - Unemployment Insurance Fund

3.10 The Unemployment Insurance Fund shall be disbursed in accordance with arrangements made by the Commission and the State Treasurer.
Regulation No. 4 - Employing Unit Records

4.10 Each employing unit shall maintain records required by the Commission for each worker in employment who is paid wages for services rendered. These records shall be maintained by the employing unit for at least five (5) years after the calendar year in which wages for such services are paid.

4.11 For each worker in employment, the employing unit shall maintain records containing the following:

(A) The worker's name.
(B) The worker's social security number. If an employing unit has a worker in employment who does not have a number, the employing unit shall request the worker to produce a receipt issued by an officer of the Social Security Administration indicating that the worker has filed an application for a number. The receipt shall be retained by the worker.
(C) The state or states in which the worker's services are performed; and, if any of the services are performed outside North Carolina and are not incidental to the services performed in North Carolina, the base of operations with respect to such services, or if there is no base of operations then the place from which the services are directed or controlled, and the worker's state of residence.
(D) The dates which the worker was hired, rehired, returned to work after temporary layoff, and separated from work.
(E) The reasons for the worker's separation from work.
(F) The wages paid for the worker's services and dates of such payments.
(G) Amounts paid to the worker as allowances or reimbursements for traveling or other business expenses, dates of such payments, and the amounts of such expenditures actually incurred and accounted for by the worker.
(H) The number of hours the worker spends in employment.

4.12 Records shall be maintained by employing units from which the following can be determined regarding each worker:

(A) Earnings by pay period weeks, if paid on a weekly basis, or if not so paid, then by calendar weeks.
(B) Whether any week was a week during which the worker worked less than the equivalent of three (3) customary scheduled full-time days for the employing unit because of lack of work.
(C) Actual number of hours worked each day and total number of hours worked each week.
(D) Time not worked for reasons other than lack of work.
4.13 Where part or all of the employing unit’s accounting records are maintained by an automatic data processing system, the following must be provided by or with the system:

   (A) Audit trails with supporting documents.
   (B) General books of account containing a general ledger with source references which coincide with financial reports for reporting periods.
   (C) A description of the automatic data processing portion of the employing unit's accounting system.
5-1

Regulation No. 5 - Employer Reports

5.10 Each employer shall make such reports as the Commission may require and shall comply with instructions printed upon any report form issued by the Commission pertaining to the preparation and return such report.

5.11 Any business, person, firm, corporation, or other organization that becomes an employer shall immediately give notice to the Commission of that fact. The notice shall contain the name and address of such business, person, firm, corporation, or other organization.

5.12 Any employer that ceases business or transfers, leases, or sells all or any part of the assets of its business to another or changes that trade name of such business or address thereof shall, within ten (10) days after such termination, transfer, lease, sale, or change of name or address, give notice to the Commission of that fact. The notice shall contain the former name and address of the business, the new name and address, and the name and address of any new owner.

5.13 Each employer shall submit quarterly reports of wages paid to each worker in employment. The reports shall contain the worker's name, social security number, wages, and any other information required by the Commission. Such reports shall be due on or before the last day of the month following the closing of the quarter to which the reports pertain. The reports shall be submitted on forms either furnished or approved by the Commission.

5.14 A tax report shall accompany any taxes paid by an employer. Such report shall be due on or before the last day of the month following the closing of the quarter to which the report pertains but a tax report shall also be required when no taxes are due in order to explain the lack of due taxes.

5.15 A multi-county employer must furnish the Commission, on forms prescribed by the Commission, a consolidated tax report under its primary registration number for its entire establishment. The employer may elect to furnish a consolidated wage report under its primary number for its entire establishment. If such an employer elects not to submit a consolidated wage report, a wage report form must be submitted for each registration number assigned and marked 'Wages Reported Separately by Branch.' In either case, a multi-county employer must report for each registration number assigned statistical information required by the Commission.

5.16 Employers desiring to submit reports on machine readable or other Commission approved media must contact the Commission for special instructions.

5.17 The Commission may assign branch office numbers at its own discretion for the purpose of reporting domestic and agricultural employment.
6-1

Regulation No. 6 - Payment of Employer Taxes

6.10 Taxes shall be due and payable at the Central office of the Commission in Raleigh. Tax payments may be made through the mail or to a duly authorized representative of the Commission in the form of a check or money order payable to the Employment Security Commission of North Carolina.

6.11 When the regular payment day for taxes falls on Saturday, Sunday, or a legal holiday, such taxes will be due and payable during the first regular business day following.

6.12 Payment of taxes shall be deemed to have been made and received by the due date if postmarked or delivered to an agent of the Commission on or before midnight of such date.

6.13 When there is a dispute between an employer and the Employment Security Commission as to the amount of tax due, and the amount in controversy is less than $25.00 dollars, the Field Tax Auditor, in consultation with his/her supervisor, is authorized to compromise with the employer to settle the matter. When the dispute involves penalties and interest and the amount in controversy is less than $25.00, the Field Tax Auditor, in consultation with his/her supervisor, is authorized to compromise with the employer.
Regulation No. 7 - Experience Rating Accounts

7.10 An employer who is not a continuing subsidiary employer covered by Commission Regulation No. 7.11 who wishes to have its experience rating account relieved from benefit charges shall comply with the following procedures:

(A) Base Period Employer Not Last Employer.

(1) The Commission shall notify, in writing, a base period employer who is not the last employer prior to an initial claim for benefits being filed that the claim has been filed. If the employer responds to such notice within the time period specified therein, the response shall be deemed a 'noncharging request'.

(2) The noncharging request must show the date with respect to which the base period employer last paid any wages to the claimant and must be based solely on the most recent separation from employment.

(3) The noncharging request must contain sufficient factual information to show clearly and conclusively that: (a) the claimant left work without good cause attributable to the employer, (b) the claimant was discharged for misconduct or substantial fault connected with work, (c) the claimant was discharged for a bona fide inability to do the work for which (s)he was hired but only where the claimant was hired pursuant to a job order placed with a local [Employment Security Commission] office for referrals to probationary employment of not longer than 100 days, which job order was placed in such circumstances and which satisfied such conditions as the Commission prescribed by regulation and only to the extent of the wages paid during such probationary employment, (d) the claimant was separated from employment for reasons made disqualifying under G.S. §96-14(2B) and (6A), or (e) the claimant left work due to a disability or health condition.

(4) If the noncharging request meets the requirements set forth in the preceding paragraphs, the request shall be allowed and the employer's experience rating account shall not be charged any benefits paid to that claimant thereafter; provided, the claimant does not return to work with this employer. Written notice of the allowance of the noncharging request shall be mailed to the employer and shall identify the claimant by name and social security number and specify the applicable initial claim date and the last day of work as entered by the employer on the noncharging request.

(5) If the noncharging request is untimely submitted to the Commission or fails to support a separation from employment as specified in paragraph (3) above, a written determination disallowing the noncharging request shall be mailed to the employer and shall state the specific reason for the disallowance. The determination must identify the claimant by name and social security number and specify the applicable initial claim date and the last day of work as entered
by the employer on the noncharging request. The appeal rights of the employer shall be set forth in the aforementioned determination.

(6) If the base period employer files an appeal from the disallowance of its noncharging request, its appeal shall be handled in accordance with G.S. §96-15 and ESC Regulation 17; provided, however, the claimant shall not be deemed an interested party.

(7) When a base period employer receives its annual list of benefits charges, it shall have the amount of time prescribed on the form from the mailing thereof to request noncharging for any individual whose separation occurred between the benefit year beginning date and the last week paid as shown for that individual on the list.

(B) **Base Period and Last Employer.**

(1) A decision regarding a claimant's eligibility or qualification for benefits based on the reasons for separation from employment rendered pursuant to G.S. §96-15 shall govern whether benefits are charged or noncharged to the account of a base period employer who is also the last employer prior to an initial claim for benefits being filed.

(2) Consistent with the adjudication and appeal procedures applicable to contested claims for benefits, the employer will be provided a reasonable opportunity to submit information or evidence to the Commission to be considered in resolving the issue of a claimant's eligibility or qualification for benefits based on his/her separation from employment.

(3) Benefits shall be noncharged to the employer's account if a decision holds the claimant disqualified for benefits because: (a) the claimant left work without good cause attributable to the employer, (b) the claimant was discharged for misconduct or substantial fault connected with work, or (c) the claimant was separated from employment for reasons made disqualifying under G.S. §§96-14(2B) and (6A).

(4) Benefits shall also be noncharged if the determination or decision concludes that the claimant left work due to a disability or health condition, or was discharged for a bona fide inability to do the work for which (s)he was hired but only where the claimant was hired pursuant to a job order placed with a local [Employment Security Commission] Office for referrals to probationary employment of not longer than 100 days, which job order was placed in such circumstances and which satisfied such conditions as the Commission prescribed by regulation and only to the extent of the wages paid during such probationary employment.

(5) If a decision is rendered that supports a noncharging of benefits to the account of the employer, the Commission will provide to the employer written notice that noncharging has been allowed. If a decision is rendered that does not support a noncharging of benefits to the account of the employer, the Commission will provide to the employer written notice that noncharging has been disallowed.
(6) A notice of noncharging of benefits disallowance shall not bear appeal rights and may not be appealed by the employer. Only the decision rendered on the claimant's eligibility or qualification for benefits may be appealed within the time period specified therein. The appeal and a hearing thereon or record review thereof shall be governed by G.S. §96-15 and ESC Regulations 13, 14, 15 or 21.

(7) If a decision as to the claimant’s eligibility or qualification for benefits based on separation from employment is reversed on appeal, the noncharging of benefits allowance or disallowance shall also be reversed, and the Commission shall provide written notice to the employer of the reversal of noncharging allowance or disallowance; provided, however, pursuant to G.S. §96-9(c)(2)b, no benefit charges shall be made to the account of the employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed.

(8) A notice of a reversal of noncharging allowance shall not bear appeal rights and may not be appealed by the employer. Only the decision rendered on the claimant's eligibility or qualification for benefits may be appealed within the time period specified therein. The appeal and a hearing thereon or record review thereof shall be governed by G.S. §96-15 and ESC Regulation 13, 14, 15 or 21.

(9) All notices of noncharging allowances or disallowances or reversal of same shall reference the docket number of the most recent decision rendered on the claimant's eligibility or qualification for benefits based on his/her separation from employment. Furthermore, said notices shall identify the claimant by name and social security number as well as specify the initial claim date and the claimant's last day of work as set forth in the aforementioned decision.

7.11 It shall be the responsibility of an employer requesting noncharging due to continuing to furnish a claimant with subsidiary work on substantially the same basis as it had been furnished during the claimant's base period to comply with the following procedure:

(A) The Commission shall furnish the employer with a notice that a claim for benefits has been filed. Such subsidiary employer shall request noncharging of benefits within the time limit prescribed on the notice. Such response by the employer shall be deemed a 'noncharging request.'

(B) The noncharging request must contain at least the following information:

(1) A statement of the claimant's usual days and hours of work per week.
(2) A certification that the legal requirements for relief from benefits charges because of subsidiary work have been met. Such certification shall be subject to verification.
(C) If the employer's request is timely and acceptable in all respects, the Commission's records shall be noted to provide that the employer's experience rating account shall not be charged for any benefits paid in the benefit year with respect to which the notice that claimant filed a claim for benefits was issued. A statement to this effect will be mailed to the employer which will identify the claimant by name and social security number and will specify the applicable benefit year beginning date. Such allowance of an employer's request for noncharging because of subsidiary work is subject to reversal or modification if the information furnished by the employer is later found to have been incorrect.

(D) If the employer's request was not timely or it will not clearly support a conclusion that the employer should be relieved from benefit charges because of subsidiary work, a written determination disallowing the request will be mailed to the employer which will identify the claimant by name and social security number and will specify the applicable benefit year beginning date. The determination will set forth the employer's right to appeal.

(E) If the employer enters a timely appeal, the case will be handled in accordance with Section 96-15 of the Employment Security Law and Commission Regulation No. 17. The claimant will not be considered an interested party in such cases because the determination will deal solely with whether the employer's experience rating account shall be relieved of benefit charges.

7.12 Whenever, through inadvertence or mistake, erroneous charges or credits are found to have been made to experience rating accounts, they shall be readjusted as of the date of discovery. The phrase 'as of the date of discovery' means the date a communication is mailed by an employer to the Commission if the discovery of the erroneous charges or credits is based on a communication from an employer or the date of actual discovery if the discovery is made by an agent of the Commission.

7.13 Any employing unit who becomes subject to the Employment Security Law as a total successor on or after August 1, 1988, under Section 96-8(5)b. of the law by sale, lease, or otherwise will acquire the predecessor's experience rating account. Any employing unit who becomes subject to the Employment Security Law as a successor under Section 96-8(5)b. of the law by total succession on or before July 31, 1988, or by partial sale, or lease, or otherwise, may, upon mutual consent of both parties, request the transfer of the predecessor's experience rating account and such transfer will be considered provided:

(A) That all taxes, penalties, and interest due by the predecessor are paid.
(B) The necessary forms to transfer the experience rating account are properly executed and submitted within the time limit outlined in the law.
(C) The predecessor has not elected to retain his employer identification number by submitting the required Commission forms prior to receipt of forms requesting the transfer.

7.14 The following information is required on a partial transfer:

(A) The total 3-year taxable payroll ending June 30 immediately preceding the last computation date for the predecessor.

(B) The total 3-year taxable payroll ending June 30 immediately preceding the last computation date for the predecessor, relating to the severable portion acquired.

Provided, an alternate 3-year payroll may be used in the event that either the severed or the retained unit was not operated by the predecessor during the 3-year period ending June 30 preceding the last computation date.

7.15 To establish a transfer percentage, the taxable wages for the 3-year period relating to the portion transferred shall be divided by the total taxable wages of the predecessor for such period. This percentage will be used in transferring to the successor the portion of the predecessor's experience rating account as of July 31 preceding the computation date, and any credits or charges occurring after July 31 relating to the predecessor's operation prior to the date of partial transfer.

7.16 A successor employer that acquires the experience rating account, either total or partial, shall be liable with respect to accrued benefits and shall acquire related rights based on the predecessor's employment prior to the acquisition. Benefit charges to the predecessor and/or successor, based on wages paid prior to the transfer, will be made in accordance with the percentage used to transfer the experience rating account.

7.17 Except as provided by Commission Regulation Nos. 7.18 and 7A, any private non-profit employer who has chosen the reimbursement method of paying unemployment insurance benefit costs shall pay contributions at the rate of 1% of his taxable wages for the calendar year in which his liability is discovered. For prior and subsequent calendar years the following formula is applicable:

(A) If: (1) liability is discovered prior to July 1, (2) liability is effective on January 1 of that same year, and (3) the employer has paid all contributions due by July 31 of that calendar year, his rate for subsequent calendar years shall be zero.

(B) If: (1) liability is discovered prior to July 1, (2) liability is effective prior to January 1 of that same calendar year, and (3) the employer pays all contributions due by July 31 of the current calendar year, his rate shall be 1% for the third and fourth quarters of the immediately preceding calendar year (in addition to the current calendar year), and zero for all other prior and subsequent periods.

7-6
(C) If any one of the three conditions numbered (1), (2) and (3) under (A) or (B) above is not met, the employer's rate for the next succeeding calendar year (in addition to the current calendar year) shall be 1%; thereafter, zero.

7.18 When a private non-profit employer has elected to change from experience rating to the reimbursement method for paying unemployment insurance benefit costs, and the election has been approved by the Commission, the employer shall pay contributions at the initially assigned reimbursement rate for his entire first calendar year as a reimbursement employer. Thereafter, his rate shall be zero.

7.19 On August 1 of a reimbursement employer's first calendar year of operations under that reimbursement, no calculation shall be made for the purpose of testing for a 1% account balance at that time. Moreover, as of that first August 1 no refund nor demand for additional contributions shall be made.

7.20 Any state or local governmental employing unit may elect to pay to the Commission for the unemployment insurance fund an amount equal to the amount its account would have been charged had it been a taxpaying employer.

7.21 Elections under this regulation must be made in writing in such form as the U.I. Director shall prescribe. The period of election shall be for four years and, unless rescinded as herein provided, shall continue thereafter from year to year. The effective date of any election shall be August 1.

7.22 Elections under this regulation must be received at the Commission Central Office on or before October 1 of any year to be effective August 1 of that year. Elections received after October 1 will be effective the following August 1; PROVIDED, elections received within thirty (30) days after the effective date of this regulation will be effective August 1, 1983.

7.23 At the end of the initial four years of an election or in any year thereafter, any electing employer may rescind its election by filing written notice at the Central Office of the Commission. Such notice must be received on or before July 31 to be effective on August 1 of that year.

7.24 No employer may again elect under this regulation for four years after it has rescinded its previous election. After such time the employer may again make an initial election for a minimum of four years.

7.25 Employers electing under this regulation may claim noncharging for any benefits paid with respect to wages paid by it if those benefits were paid pursuant to benefit years established during its period of election. Provided, employers whose elections are effective August 1, 1983 may, for separations occurring between August 1, 1983 and the date their election is approved, request noncharging after receipt of its 1985 list of charges.
7.26 An employer requesting that it be allowed to file Employer's Quarterly Tax and Wage Reports once a year pursuant to N.C.G.S. 96-9(a)(8) and (9) must submit the request so that it is received by the Commission not later than the 1st day of March following the calendar year in which the employer was not required to pay contributions (tax). The Commission will inform an employer whether or not permission has been granted by mail, said decision to be mailed on or before the 1st day of April in the year in which the request is received. Permission, once granted, will remain in effect until an employer is found to be liable for contributions (tax), until an employer refuses or fails to comply with the requirements of furnishing employment and wage information within fourteen days of the request pursuant to the statutory requirements, until the employer fails to timely file the required annual report, or until revoked by the Commission. Request for the Chair of the Commission to grant permission for annual filing shall be addressed to:

Employment Security Commission of North Carolina
ATTN: Annual Reports
Post Office Box 26504
Raleigh, NC 27611

7.27 Pursuant to N.C.G.S. 96-11(d), an employer's account is automatically terminated when it has paid no covered wages for a period of two consecutive calendar years. The Tax Department of the Unemployment Insurance Division shall notify each employer who has reported no covered wages for six consecutive calendar quarters and whose account will be terminated at the end of the calendar year that its account will automatically be terminated pursuant to this section of the law if it pays no covered wages by the end of the current calendar year. This notice shall be mailed to the employer at its last known address.
Regulation No. 7A - Special Reimbursements by Certain Nonprofit Organizations

7A.10 Any nonprofit organization meeting the qualification requirements of N.C.G.S. 96-9(h)(1) may elect to pay contributions by special reimbursement. Any such election shall be in writing and filed with the Unemployment Insurance Director before November 1 of the fourth or subsequent calendar year during which benefit charges did not exceed four tenths of one percent (0.4%) of taxable payroll. Any election shall specifically state that the nonprofit organization elects to be subject to special reimbursement for no less than four years following the year of election and understands that its election shall not entitle it to any refund of any portion of its account balance.

7A.11 Upon receipt of an election, the Unemployment Insurance Director shall determine whether the electing nonprofit organization has satisfied the provisions of N.C.G.S. 96-9(h)(1) a, b, c and d. The electing nonprofit organization shall be promptly notified of the determination. For the purpose of determining compliance with the provisions of N.C.G.S. 96-9(h)(1)a, the Unemployment Insurance Director shall calculate the percentage of benefit charges to taxable payroll as of June 30 of the election year.

7A.12 Upon determination by the Unemployment Insurance Director that the electing nonprofit organization has met the requirements of N.C.G.S. 96-9(h)(1) a, b, c and d, and has furnished to the Commission, no later than January 1 of the first year to which the election applies, a letter of credit as described in Regulation 7A.13, the election shall be approved.

7A.13 Letters of credit required by N.C.G.S. 96-9(h)(1)e may be issued by any corporation certified by the Commissioner of Banks of the State Banking Commission as being lawfully entitled to commence the business of banking and/or any Savings and Loan Association incorporated and licensed in accordance with the provisions of N.C.G.S. 54B-1 et. seq. and shall be in the following form:
IRREVOCABLE LETTER OF CREDIT

NAME & ADDRESS OF BANKING INSTITUTION

NO. ________________________ DATE__________________________

DIRECTOR, UNEMPLOYMENT INSURANCE DIVISION
EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
700 WADE AVENUE
RALEIGH, NORTH CAROLINA 27611-5903

GENTLEMEN:

WE HEREBY AUTHORIZE YOU TO DRAW ON US FOR THE ACCOUNT OF:  (Employer’s name and address) UP TO AN AGGREGATE AMOUNT OF $_________ [150% of required account balance computed pursuant to N.C.G.S. §96-9(h)(2)] AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY:

YOUR NOTARIZED AND OFFICIALLY SIGNED STATEMENT THAT (EMPLOYER’S NAME), AFTER HAVING ELECTED IN ACCORDANCE WITH THE PROVISIONS OF N.C. GEN. STAT. §96-9(h)(1) TO PAY CONTRIBUTIONS BY SPECIAL REIMBURSEMENT FOR NO LESS THAN FOUR CALENDAR YEARS BEGINNING ____________, HAS FAILED TO MAKE ITS QUARTERLY PAYMENT DUE ________, THE COMMISSION HAVING BILLED SUCH EMPLOYER AS PROVIDED IN G.S. 96-9(b)(2)b. AND, SUCH PAYMENT NOT HAVING BEEN MADE FOR NOT LESS THAN (25) DAYS AFTER THAT BILL WAS MAILED TO THE LAST KNOWN ADDRESS OF THE EMPLOYER.

DRAFTS MUST BE DRAWN AND NEGOTIATED NO LATER THAN (DATE) AT OUR COUNTERS.

EACH DRAFT MUST STATE THAT IT IS 'DRAWN UNDER LETTER OF CREDIT OF THE (Name of Banking Institution), NO. _______, DATED __________,' AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS, AND BONA FIDE HOLDERS OF ALL DRAFTS DRAWN UNDER AND WITHIN THE TERMS AND THE AMOUNT OF THIS CREDIT AND ACCOMPANIED BY THE DOCUMENTS ABOVE SPECIFIED, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

YOURS VERY TRULY,

________________________ __________________________
AUTHORIZED SIGNATURE                   AUTHORIZED SIGNATURE
7A.14 The Unemployment Insurance Director shall promptly notify any nonprofit organization in writing of an increase in its required minimum balance for failing to make a quarterly Payment when due or the rescission or denial of its election to pay contributions by special reimbursement. Any nonprofit organization whose minimum required balance has been increased for failing to make a quarterly payment when due or whose election to pay contributions by special reimbursement has been rescinded or denied may file a protest and request a hearing to determine whether any increase in the organization's minimum required balance should be reduced or whether any revocation or denial of a special reimbursement election should be rescinded. Any protest must be filed with the Commission within 10 days from the date the notice was mailed or delivered, whichever is earlier, to such nonprofit organization. Hearings shall be conducted in accordance with the provisions of Employment Security Law, Section 96-4, Subsection (m) and other applicable subsections thereof.

7A.15 For the purpose of Regulation 7A.10 an election is filed when it is received in the office of Unemployment Insurance Director. A protest, as provided in Regulation 7A.14, is filed when received in an office of the Employment Security Commission, evidence of the 'date of filing' shall be the date noted or stamped on the document by any office of the Employment Security Commission.
7B-1

Regulation No. 7B - Election of Reimbursement Method
Through Surety Bond or Irrevocable Letter of Credit
By Nonprofit Organizations

7B.10 Any nonprofit organization which makes an election in accordance with N.C.G.S. §96-9(d)(1)b must secure such election by making a payment in lieu of contributions as provided in G.S. §96-9(d)(2) by posting a surety bond from an insurance company duly licensed to conduct business in this State, or by obtaining an irrevocable letter of credit, as described in ESC Regulation 7A.13, with the Employment Security Commission to insure the payments in lieu of contributions as provided in §96-9(d)(2). The nonprofit organization's surety bond or letter of credit must be for not less than one percent (1%) of its taxable payroll. Any surety bond posted shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the Employment Security Commission.

7B.11 Beginning with an election effective August 1, 2009, if the account of any nonprofit organization securing its election as described above has a balance of less than one percent (1%) of its taxable payroll, the nonprofit organization shall not be required to bring its account to a one percent (1%) balance if the nonprofit organization posts a surety bond or irrevocable letter of credit for not less than one percent (1%) of its taxable payroll on or before December 1 of the same year; provided, however, no nonprofit organization posting a surety bond or obtaining an irrevocable letter of credit under this Section will be allowed a refund of any balance in its account.

7B.12 Upon receipt of an election, the ESC Unemployment Insurance Director shall determine whether the electing nonprofit organization has satisfied the applicable provisions of G.S. §96-9(d) and this Regulation. The electing nonprofit organization shall be promptly notified of the determination.

7B.13 For the purpose of Regulation No. 7B, an election is filed when it is received in the office of the ESC Unemployment Insurance Director.

7B.14 To retain its election under this Regulation, the nonprofit organization must pay all benefit charges when due. If the nonprofit organization fails to do so, its election may be revoked by the Employment Security Commission.
8.10 Each business pursuit desiring a seasonal determination must make an application therefor on a form prescribed or approved by the Commission. The form must be completely filled out, and the applicant shall supply such additional information as may be deemed necessary by the Commission in making its determination.

8.11 A pursuit determined to be seasonal by the Commission shall maintain payroll records in such manner that the seasonal wages paid to workers during the active periods of the seasonal pursuit may be readily distinguished from any nonseasonal wages that are paid. A pursuit shall submit quarterly wage reports on forms prescribed or approved by the Commission showing the seasonal wage paid to workers during the active periods of the pursuit and any seasonal wages that are paid.

8.12 A pursuit determined to be seasonal shall, within fifteen (15) days following the date of mailing of the notification of the Commission's approval, furnish on forms prescribed or approved by the Commission a breakdown of the wages previously reported for workers having seasonal wages in the current base period and in addition such other quarters intervening between such base period and the completed calendar quarters preceding the beginning date of the pursuit's active period.

8.13 Nothing in the laws or regulations regarding seasonal determinations shall be construed as relieving any employer from paying the taxes required by law on all wages paid for employment nor from making reports required by law or regulations connected with a worker's right to claim benefits provided by the Employment Security Law.
Regulation No. 9 - Separation and Layoff Information

9.10 Whenever a group of twenty (20) or more workers is either partially or totally separated or temporarily laid off from employment at the same time, the employer shall notify the Unemployment Insurance Director, Employment Security Commission, prior to the date of separation or layoff. The employer shall also provide any further information regarding the group separation or layoff that may be requested by the Commission. Upon receipt of this information, the Employment Security Commission may make provision for filing of claims and provide for notification to the workers involved of their potential rights to unemployment benefits and instructions for claiming benefits.

9.11 (A) Whenever an individual temporarily layoff involving partial unemployment occurs, the employing unit shall furnish to each worker involved, within seven (7) calendar days following the payroll week ending date, a Notice of Temporary Layoff, on a form prescribed or approved by the Commission properly completed and certified to show the payroll week ending date and the amount of the worker's earnings during that week. If delivery to the worker within seven (7) calendar days is impossible, the notice shall be mailed to the worker at his last known address within that time. It is not necessary to prepare such a notice for any worker for a payroll week during which he worked as much as the equivalent of three (3) customary full-time days. After an employer has been furnished with a worker's benefit year beginning date, and ineligible amount, it is not necessary within a period of fifty-two (52) weeks beginning with the benefit year beginning date to prepare a notice of Temporary Layoff for that worker for a payroll week during which he worked less than the equivalent of three (3) customary scheduled full-time days but earned wages equal to or more than the ineligible amount.

(B) Whenever an individual temporary layoff involving total unemployment occurs, the employer shall furnish to each worker involved, not later than the third business day following the payroll week ending date, a Notice of Temporary Layoff on a form prescribed or approved by the Commission properly completed and certified to show the payroll week ending date and that the worker earned no wages during that week. If delivery to the worker by the third business day following the payroll week ending date is impossible, the notice shall be mailed to the worker at his last known address within that time.

(C) Whenever an individual or group temporary layoff (as defined in ESC Regulation No. 9.10) involving partial unemployment occurs, any employer or employing unit with 100 or more employees, and every person or organization that, as agent, reports attached claims for unemployment insurance benefits on a total of 100 or more employees on behalf of one or more subject employers or employing unit, shall file a Notice of Temporary Layoff (NCUI Form 501) for each individual temporarily laid off on magnetic tapes, diskettes or other electronic means in a format prescribed by the Employment Security Commission; Provided, however, that while the Employment Security Commission takes normal precautions to keep all such information confidential and privileged pursuant to N.C.G.S. §96-4(t), the Employment
Security Commission does not guarantee the confidentiality or privilege of any information transmitted to it by way of the Internet, as it is not possible, and does not accept liability for any loss of confidentiality or privilege resulting from the transmission of the information to the Employment Security by way of the Internet.

9.12  (A) Employers which employ longshoremen or dockworkers shall be required to furnish the Commission with requested employment earnings and separation information only. Such information shall be furnished to the Commission within two (2) business days of the date each request is made. Such employers shall not, however, be relieved from the requirements in the law and these regulations for filing contributions and wage reports and the payment of contributions.

(B) A commercial fisherman is deemed to be employed during the entire time he is on the fishing boat, regardless of whether fish are caught and during the time he is assigned shore duties. To be considered partially unemployed, a commercial fisherman must be employed less than three different days during any payroll week irrespective of the number of hours employed during any day or the total hours employed during the three-day period.

9.13  (A) Any employer, when requested to do so by the Commission or its representative, shall post conspicuously any notice furnished by the Commission with respect to the rights of workers under the Employment Security Law.

(B) Any employer, when requested to do so by the Commission or its representative, shall distribute to its employees any information material furnished by the Commission concerning rights of workers under the Employment Security Law.

9.14  (A) Disqualification and/or Overpayment: Any person who has received and employer who has made a back wage or pay award pursuant to an order of any court, the NLRB, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge, and for a period during which UI benefits were received by the recipient/claimant, must notify the Commission immediately of the receipt or payment of the award. A recipient/claimant who has been paid wages for all or part of the period with respect to which he received UI benefits is disqualified in whole or in part and must reimburse the Commission for any benefit for which he was not entitled. G.S. 96-8(13)a.; 96-14(8); 96-18(g)2.

(B) Time Limitation: No back pay or wage award allocable to the same period in which UI benefits were paid shall be reportable if the award was not made within three (3) years after the last day of the year in which the last payment of benefits was paid. G.S. 96-18(g)(2).
(C) Computation: A disqualification and/or an overpayment of benefits will only exist if an amount of back wage is applicable to a week in which benefits were paid and had such amount been paid during such week the amount of unemployment insurance benefits for which the recipient/claimant was eligible or entitled would be reduced or eliminated. The following will be determinative of whether a back wage or pay award is applicable to a week in which benefits were paid and whether an overpayment of benefits exist:

1. If the back wages or pay award specifies the period and the amounts to be allocated to each week, the Commission will apply the wages in accordance with the stated terms of the award.
2. If the period is specified but not the amount to be applied to each week, that amount shall be determined by dividing the award by the number of weeks contained in the specified period. The amounts shall be first applied to the first week in the period and then to each succeeding week or part thereof, until the award is exhausted.
3. If the amount to be applied to each week is stated but the period is unspecified, the weekly amount will be applied consecutively to each week, or any part thereof, after separation from employment occurred until the amount of the award is exhausted.
4. (a) If neither the period nor the weekly amount is specified, the award shall be prorated over a period which equals the number of weeks obtained by dividing the award by the amount of the claimant's gross weekly wage (excluding overtime pay) at the time of separation as shown by documentation (check stubs, etc.) if such documentation is timely furnished by the claimant or the employer.
   (b) If the gross weekly wage is not documented by the claimant or the employer, the Commission will prorate the award on the basis of the claimant's average weekly wage during the base period upon which the claimant's entitlement for benefits is based.
   (c) The weeks over which the award is prorated shall be applied consecutively beginning with the first customary workweek, or any part thereof, after separation from employment until the weeks are exhausted.

(D) Adjudication of this issue shall be in accordance with the applicable provisions contained in Regulation No. 13 - Adjudication, and Regulation No. 20 - Overpayment Hearings.

(E) For other claims purposes, back pay awards may be allocated to base period quarters pursuant to Regulation 9.15 but are taxable only in the quarter in which they have actually paid.
9.15 Wages reported in a single quarter which represent bonuses, profits, dividends, commission, or like remuneration awarded annually for services rendered throughout the year may be prorated by the Commission to other applicable quarters for benefit claim purposes only, provided all of the following conditions are met:

(A) The individual to whom the payment was made has claimed benefits;

(B) Either the claimant or the employer has protested the monetary determination on the basis of the wages reported for at least one of the base period quarters because the wages reported in a single quarter within or without the base period were for services rendered in more than one quarter;

(C) The wages as reported have resulted in a monetary determination which is clearly inequitable and causes a distorted result when benefits are determined;

(D) The proration of the wages to the other quarters in which they were earned would result in a monetary determination which, when benefits are determined, would correct the inequity otherwise existing.
9A-1

Regulation No. 9A - Supplemental Unemployment Benefits Plans

9A.10 'Wages' shall not include the amount of any payment, including any amount paid into a fund to provide for such payment, made to, or on behalf of, an employee under a plan or system established by an employer or others which makes provision for employees generally, or for a class or group of employees, for the purpose of supplementing unemployment benefits, provided that the plan has been approved by the Commission under such reasonable regulations as it shall promulgate.

9A.11 Definition. - For purposes of this regulation, supplemental unemployment benefit plan is defined as a private plan to which an employer makes contributions for the purpose of supplementing unemployment insurance benefits of employees who qualify under the employer’s plan.

9A.12 A plan must be approved pursuant to this regulation in order for the money paid into the plan to be exempt from the wages an employer is required to report for unemployment insurance tax purposes, and in order for the money received by a claimant pursuant to the plan to be exempt from wages the claimant is required to report when filing a claim for unemployment insurance benefits.

9A.13 An employer who desires that such payments not be considered wages for unemployment insurance tax purposes must submit the plan to the Commission for approval. The request must be filed in the office of the Commission's Chief Counsel. A plan which has never been approved or for which approval has expired must be filed in the office of the Commission's Chief Counsel for approval prior to any claim for unemployment insurance benefits being filed by a claimant subject to the plan.

9A.14 The Commission shall approve or disapprove any employer's plan for supplemental unemployment benefits by means of an opinion letter issued by the Chief Counsel. The Chief Counsel, or his/her designee, shall have the authority to correspond with any employer submitting a plan for approval, in order to obtain necessary information for consideration of the plan. In order for a plan to be approved, the plan must provide for periodic payments which would supplement unemployment insurance benefits payable to an otherwise eligible claimant to the extent that the total of the claimant's weekly benefit amount and the periodic payment to the claimant through the employer's private plan (prorated on a weekly basis if the periodic payment is made on other than a weekly basis), does not exceed the claimant's former weekly straight-time wages.

9A.15 Upon approval or disapproval of a plan, the Chief Counsel will issue an opinion letter to the employer submitting the plan. The opinion letter shall be numbered and shall state an expiration date.
9A.16 Approval of a supplemental unemployment benefit plan submitted by an employer shall expire upon the earlier of five years after the issuance of the opinion letter approving the plan or the employer's adoption of a new or revised plan.

9A.17 The opinion letter issued by the Chief Counsel pursuant to this regulation will be published and maintained in the Commission’s Legal Department, Unemployment Insurance Division and in each local office.
10.10 An individual who is separated from employment, in order to claim benefits, must report to the Employment Security Commission and file a claim, which shall constitute a registration for work. The effective date of registration and the initial claim for benefits shall be:

(A) The Sunday of the calendar week during which the claimant reports to a local Employment Security Office following his last day of work; or,

(B) The Sunday of the calendar week during which the claimant would have reported if:

1. The claimant reports at the first opportunity afforded him by the Commission; and
2. The claimant would have reported during a prior calendar week during an ordinary business day following his last day of work had the Commission been able to serve him then.

10.11 If a claimant's benefit year begins on the first day of a calendar quarter, the benefit year shall extend for a total of 365 days.

10.12 In order to continue a claim for benefits, a claimant who has been separated from employment shall report weekly or at other intervals as directed by the Employment Security Commission. At the time of each reporting, the individual may claim benefits for the weeks of either total or part-total unemployment which have elapsed since the date of last reporting. The Employment Security Commission will permit a claimant to file continued claims by mail, telephone, Internet or other electronic means.

(A) Reporting Schedule. Every claimant filing a claim for unemployment insurance benefits, who is not on temporary layoff from employment and meets the definition of being totally unemployed, will be scheduled to report to the Employment Security Commission at regular intervals of not less than three weeks and not more than six weeks apart. The Employment Security Commission will permit the claimant to determine his/her reporting method, including but not limited to telephonic, Internet, facsimile, and in-person. The claimant's continuing eligibility for unemployment insurance benefits will be reviewed at each reporting. The Employment Security Commission will use the reporting method chosen by the claimant to conduct this review. Any issue, excluding those arising under G.S. §96-18, identified as a result of this review must be raised or presented by the Employment Security Commission within twenty (20) working days of the date that the review occurred and immediately referred for adjudication. Furthermore, the failure of the claimant to report as directed will cause an issue of late reporting to be raised and
referred for adjudication pursuant to G.S. §96-15(b)(2). Benefits shall not be paid based on any claim filed by the claimant for the week the claimant initially fails to report as directed, or for any subsequent week during which the claimant continues to fail to report to the Employment Security Commission, and such benefits will only be paid if the adjudication of the late reporting issue concludes that good cause as defined by ESC Regulation No. 10.22 has been shown. Notice of this potential interruption of the payment of benefits will be provided to the claimant. If the claimant is required to report in-person to a local office of the Employment Security Commission, written notice of this potential interruption in the payment of benefits will be furnished to the claimant with the written notice of the scheduled eligibility review date as set forth below. This provision shall not apply to a claimant who is participating in a Worker Profiling and Reemployment Service Program if the claimant is already reporting to the Employment Security Commission on a regular basis; provided, however, the claimant's continuing eligibility for benefits is reviewed as a part of this reporting for a period not more than four weeks apart.

SAMPLE NOTICE

IMPORTANT NOTICE REGARDING YOUR CLAIM FOR BENEFITS

IF YOU FILE A CLAIM FOR THE WEEK ENDING _________, YOU ARE TO REPORT TO THE EMPLOYMENT SECURITY COMMISSION DURING THE WEEK BEGINNING ___________ FOR THE PURPOSE OF A REVIEW OF YOUR CONTINUING ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS. AT LEAST TWO (2) WEEKS BEFORE YOUR REPORTING DATE, THE FOLLOWING MESSAGE TELLING YOU THE SPECIFIC DATE AND TIME TO REPORT TO THE EMPLOYMENT SECURITY COMMISSION WILL BE PLAYED WHEN YOU FILE YOUR WEEKLY CLAIM FOR BENEFITS BY TELEPHONE: [Message]. IF YOU DO NOT HEAR THIS MESSAGE, CONTACT THE EMPLOYMENT SECURITY COMMISSION IMMEDIATELY.

WARNING: IF YOU FAIL TO REPORT AS DIRECTED, AN ISSUE OF LATE REPORTING WILL BE RAISED AND REFERRED FOR ADJUDICATION. ALSO, BENEFITS SHALL NOT BE PAID TO YOU BASED ON ANY CLAIM FILED BY YOU FOR THE WEEK YOU INITIALLY FAILED TO REPORT AS DIRECTED OR FOR ANY SUBSEQUENT WEEK DURING WHICH YOU CONTINUED TO FAIL TO REPORT TO THE EMPLOYMENT SECURITY COMMISSION.

10.13 The first week of unemployment following the filing of an initial claim shall begin at 12:01 a.m. of the Sunday on which the initial claim is effective and continue for seven (7) consecutive calendar days until 12:00 midnight of the following Saturday. Subsequent continued weeks of unemployment shall consist of periods of seven consecutive calendar days, Sunday through Saturday. A week shall be deemed to be within a current benefit year if any part of such week falls within such current benefit year.

10.14 A full day with respect to unemployment is a calendar day beginning at 12:01 a.m. and continuing to 12:00 midnight of the same day.
10.15 Any worker who experiences an individual temporary layoff of one or more payroll weeks shall report to the Employment Security Commission in accordance with Commission procedures. An individual who is partially unemployed (performs some work) cannot be required to file a claim for a week earlier than two (2) weeks from the date the employer furnishes the individual with a low earnings report for that week. The filing of a claim shall constitute a registration for work. If a temporary layoff of total unemployment exceeds eight consecutive payroll weeks, the individual shall be considered to have been separated from employment, unless:

(A) The employer furnishes the Employment Security Commission with a definite date when work for the individual will again become available with the employer;

(B) The work is nonseasonal; and

(C) The Employment Security Commission accordingly extends the eight-week period for a reasonable amount of time.

10.16 Unless the employer is allowed by the Commission to file claims on machine readable or other Commission approved media, any worker who is involved in a group temporary layoff of one or more payroll weeks shall report to the Employment Security Commission or a designated point of service on a date and time specified by the Commission in a notice posted on the business premises of the worker's employer. The worker shall file an initial or continued claim for benefits on a form provided or approved by the Commission. The filing of a claim shall constitute a registration for work. If a temporary layoff of total unemployment exceeds eight consecutive payroll weeks, the individual shall be considered to have been separated from employment, unless:

(A) The employer furnished the Employment Security Commission with a definite date when work for the individual will again become available with the employer;

(B) The work is nonseasonal; and

(C) The Employment Security Commission accordingly extends the eight-week period for a reasonable amount of time.

10.17 When circumstances prevent a registration for work interview at the time a claim is filed, the filing of the claim shall constitute the individual's registration for work. When an employer files mass claims for individuals due to a total layoff pursuant to ESC Regulation 9.10, the filing of the claim shall constitute the registration for work. When a claimant files a claim electronically (telephone, internet, or any electronic means that may become available), the filing of the claim shall constitute the registration for work.
10.18 (A) Forms and/or formats prescribed and approved by the Employment Security Commission shall be used by claimants in filing initial and continued claims for unemployment insurance benefits. Initial, additional initial, and reopened claims shall be filed in accordance with the procedures established by the Employment Security Commission. Unless the claimants are otherwise instructed, continued claims for benefit may be filed by mail, Job Openings and Benefit Services (JOBS) Line, or by any other method which may be authorized by the Employment Security Commission. Continued claims must be filed with and/or received by the Employment Security Commission within ten (10) days after the last day of the calendar week for which a claim for benefits is being filed: PROVIDED that for mail-in claims, the ten (10) day period shall commence to run after the last day of the second calendar week for which a claim is being filed when a mail-in claims form is submitted for two (2) consecutive calendar weeks. A continued claim shall be deemed filed with and/or received by the Employment Security Commission on the date stamped by the JOBS Line, or any department of the Employment Security Commission. Whenever a continued claim is filed and/or received after the applicable time period, it shall constitute late reporting, and the issue of late reporting shall be raised and properly adjudicated. For any week for which late reporting occurs, the claim for benefits applicable to said week shall be disallowed unless good cause for the late reporting, as defined in ESC Regulation No. 10.22 is shown by the claimant.

(A)(1) Upon the receipt of a written report substantiating the need for such action, the Director of the Unemployment Insurance (UI) Division of the Employment Security Commission (ESC) may extend the period in which a continued claim must be filed; however, the extended period may not exceed twenty-eight (28) days after the last day of the calendar week for which a claim for benefits is being filed. Whenever a continued claim is filed and/or received after the applicable extended period, it shall constitute late reporting, and the issue of late reporting shall be raised and adjudicated in the manner prescribed by the UI Division. For any week for which late reporting occurs, the claim for benefits applicable to said week shall be disallowed unless good cause for the late reporting, as defined in ESC Regulation No. 10.22 is shown by the claimant. The ESC Chairman and Commissioners must be notified of any extension approved by the UI Director.

(B) Late Reporting shall also include the untimely filing with and/or receipt by the Employment Security Commission of completed eligibility review, work search, and other similar forms, as well as the untimely filing with and/or receipt by the Employment Security Commission of information requested by the aforementioned forms; provided that the required filing and/or receipt date shall be prominently displayed on all such forms mailed to the claimant and shall not be earlier than ten (10) working days from the mail date reflected thereon. The 'date of notice' shall be presumed to be the date the form was mailed to the claimant, which shall be a rebuttable presumption. For the purpose of establishing a new initial claim, such claim shall not be deemed to have been established until the claimant returns the initial Eligibility Review Profile form to the Employment Security Commission. If the form is not returned on or before the date specified thereon, a late reporting issue shall be raised and adjudicated, and any ineligibility imposed as a result of this adjudication shall commence as of
the effective date of the claim and shall continue until the week the form is received by the Employment Security Commission. For any week for which late reporting occurs, the claim for benefits applicable to said week shall be disallowed unless good cause for the late reporting, as defined in ESC Regulation No. 10.22 is shown by the claimant.

10.19 The effective date of initial registration or initial claim for a claimant who, for reasons found by the Commission to constitute good cause, is late in reporting to the Employment Security Commission shall be the Sunday of the calendar week during which the claimant would have reported; provided, the claimant reports at his first opportunity and no later than twenty-eight (28) days following his last day of work.

10.20 The Commission, for reasons found to constitute good cause for an individual's failure to appear on the date or at the place specified for reporting, may accept a backdated continued claim; provided, the claimant reports at his first opportunity thereafter and no later than twenty-eight (28) days following the scheduled date. If good cause is not shown for late reporting, a reopened claim may be taken as of the Sunday of the calendar week during which the claimant actually reports, and continued claims may not be accepted for any period of time intervening since he last reported.

10.21 When there has been a group temporary layoff, if an individual fails to appear on the date or at the time or place specified in a notice posted on the premises of his employer, the Commission may accept a backdated claim for the weeks involved in the temporary layoff; provided, the individual reports to the Employment Security Commission no later than twenty-eight (28) days following the original specified date.

10.22 Good cause is deemed to exist for late reporting without time restriction whenever an individual's delayed reporting is due to any of the following:

   (A) A notice of the time and place for filing his claim for benefits was not posted in the employer's establishment when it should have been posted;

   (B) His employer warned, instructed, or coerced him not to file for benefits;

   (C) A representative of the Commission made inadequate or misleading statements to him;

   (D) Due to circumstances beyond his control, it was impossible for him to report.

10.23 Benefits shall be paid by warrant from the Central Office of the Employment Security Commission in Raleigh, North Carolina. Except as otherwise provided by law, benefit warrants shall be made payable to the claimant and shall be mailed directly to him at his last known address, or to him in care of such local Employment Security Office as the
Commission may designate; provided, however, that if delivery by mail is impossible or impracticable, delivery may be made in person by a representative of the Commission.

10.24  (A) Benefits due and payable to a deceased claimant shall be paid to the executor or administrator, if one exists. Application for payment of such benefits must be made in writing within three (3) months after the death of the claimant.

(B) If it is shown to the satisfaction of the Commission that there is no executor or administrator, the Commission may, upon its own motion immediately following the death of the claimant, or upon application by a legal dependent of the claimant, pay any benefits due and payable to a deceased claimant to the Clerk of Superior Court in the county of claimant's residence for distribution.

10.25  (A) Actively Seeking Work.

(1) At the time an unemployed individual files a claim for unemployment compensation with the Employment Security Commission (ESC), he/she shall be informed that in order to be eligible to receive regular unemployment insurance benefits (UI, UCX, or UCFE), a claimant is required to seek work actively and to satisfy the Employment Security Commission that he or she is available for work during each week a claim for benefits is filed. “Actively seeking work” is defined as doing those things that an unemployed person who wants to work would normally do. A claimant shall be allowed to seek work at his/her highest vocation and most recent wage or salary for a maximum of eight (8) weeks after filing his/her initial claim, or reopened claim with intervening employment. If the claimant remains unemployed after this period, the claimant’s work search must be modified to include lower-level jobs and/or the prevailing wage or salary levels.

(2) Notwithstanding (C) below, a prima facie showing of "actively seeking work" has been established when:

During the week for which a claim for regular unemployment insurance benefits has been filed, the claimant sought work on at least two (2) different days and made a total of at least two (2) in-person job contacts with potential employers, or an agent or representative of potential employers.

(B) Systematic and Sustained Effort to Find Work.

(1) At the time an unemployed individual files a claim for Extended Benefits or Federal Supplemental Compensation, he or she shall be informed that in order to be eligible to receive benefits, a claimant is required to make a “systematic and sustained effort to find work” and to satisfy the Employment Security Commission he/she is available for work during each week for which a claim for benefits is filed. “Systematic” means conducted with thoroughness
and with a plan and method to produce results, including broadening the plan when there are few openings in the claimant's customary occupation. “Sustained” means a continual effort maintained at length throughout the week.

(2) Notwithstanding (C) below, a prima facie showing of a "systematic and sustained effort to find work" has been established when:

During the week for which a claim for Extended Benefits or Federal Supplemental Compensation has been filed, the claimant has sought work on at least three (3) different days and made a total of at least three (3) in-person job contacts with potential employers, or an agent or representative of potential employers.

(C) Work Search Means and Methods - The means and methods by which a claimant for benefits may be permitted to conduct a work search must be consistent with the means and methods of obtaining the type of employment being sought by the claimant. If a particular type of employment requires a specific type of mean or method of work search, a claimant may not be required to seek this type of employment by other means or methods. Means and methods of work search may consist of contacts with potential employers through in-person visits, resume, telephone, union agent or hiring hall, Internet or other electronic means, or employment offices if mandated by a potential employer. (If required by a potential employer, visiting an ESC or agent state employment office and submitting an application for a specific job shall be considered an in-person contact.) Except for in-person contacts, the number of weekly contacts utilizing other work search means and methods required for a claimant to be considered “actively seeking working” or “conducting a systematic and sustained effort to find work” shall be determined by the Employment Security Commission, and the number of such contacts may be increased or decreased during the duration of the claim based on the labor market conditions. Unless the claimant can establish that such employer is hiring and requires repeated contacts, repeated contacts with the same employer during consecutive weeks are not acceptable.

(D) Temporary Layoff Work Search Exemption - An individual unemployed due to a temporary lay-off and who has filed a claim in accordance with ESC Regulation Nos. 10.15 and 10.16 is exempt from work search requirements as defined by this Regulation. During the temporary layoff, however, the individual must be available for all suitable work that his or her employer has for him or her. If the individual remains unemployed at the expiration of the temporary lay-off period, this exemption will cease to apply and the individual must comply with the work search requirements in order to be eligible for benefits.

(E) Training/SEA Work Search Exemption - A claimant who is in a training program approved by ESC or in a Self Employment Assistance (SEA) Program according to provisions of state and/or federal law/regulations during any week for which a claim for regular, extended or other unemployment compensation is filed shall be exempt from the work search requirements. If ESC is officially notified in writing that a claimant is not satisfactorily participating in approved training or SEA Program, to remain eligible to receive unemployment compensation, a claimant must meet the availability for work and work search requirements of ESC Regulation No. 10.25(A) or (B), whichever is applicable, promulgated pursuant to N.C.G.S. §96-12(c)(3) and/or 96-13(a)(3).
(F) Exhausted Work Search Exemption - The work search requirements shall not be applicable to a claimant filing a claim for regular benefits if the ESC local office manager has determined in writing that this particular claimant has exhausted all potential opportunities for suitable work and can only, at reasonable intervals, follow up on applications previously submitted. The determination shall exempt the claimant for only four (4) weeks. The manager may grant an exemption for an additional four-(4) weeks only after re-evaluating the claimant's potential opportunities for suitable work.

(G) Modification of Work Search Contacts - The required number of job contacts for a particular area to establish a prima facie showing of “actively seeking work” may be modified by the full Commission or its designee upon a formal request and a showing of good cause by the Employment Services Director. Good cause is to be determined based upon changes in the economic conditions in the local job market.

(H) Worker Profiling and Reemployment Services Program - Under the Worker Profiling and Reemployment Services Program, all new claimants for regular unemployment compensation, including intrastate, interstate, and combined wage claimants, shall be profiled using a statistical model. This statistical model shall use certain job related variables to identify those claimants most likely to exhaust their regular unemployment benefits and who are therefore in need of specialized reemployment services to help them make a successful transition to new employment. Once identified, such individuals must, as a condition of eligibility, participate in the reemployment services to which they have been referred.

(1) Eligibility concerning participation in reemployment services shall be determined on a weekly basis. Claimants shall be held ineligible for unemployment insurance benefits for any week in which they fail to participate in a reemployment service to which they have been referred, except when they (a) have completed such service, (b) have completed a similar service, or (c) have justifiable cause for failing to participate in the offered reemployment service.

(2) The Employment Security Commission may find that a claimant has justifiable cause for failing to participate in reemployment services offered under the Worker Profiling and Reemployment Services Program in any week. Justifiable cause includes, but is not limited to, the following:

(a) The claimant is summoned to serve as a prospective or paneled juror;
(b) The claimant is enrolled and satisfactorily participating in a course of training approved by the Employment Security Commission;
(c) The claimant is unable to participate because the claimant is employed;
(d) The claimant is unable to participate because of a job interview;
(e) The claimant has no transportation; or,
(f) The claimant is unable to participate due to circumstances that the Employment Security Commission determines are beyond the claimant’s control.
(3) Claimants who have justifiable cause for failing to participate in reemployment services must still meet the Employment Security Commission’s able and available requirements to be eligible for unemployment benefits.

(H1) Reemployment Services Program Under the American Recovery and Reinvestment Act of 2009 (Recovery Act) - Under this Reemployment Services (RES) Program, every reasonable effort shall be taken to provide services to a claimant via a method or means that will have the least adverse impact on the claimant. Furthermore under this Program, only a claimant who has (a) accepted the invitation to attend a RES Orientation, (b) attended the RES Orientation, (c) agreed to participate in the RES Program, and (d) been provided, electronically or by mail, a written notice of (1) the date, time and place of an One-on-One Assessment and Planning Interview and (2) a potential impact on his/her eligibility to receive unemployment insurance benefits if he/she fails to attend the scheduled Interview without justifiable cause. If a claimant fails to appear for the originally scheduled Interview, a second Interview shall be scheduled and a second written notice will be sent, electronically or by mail, to the claimant setting forth (1) the date, time and place of the rescheduled Interview and (2) a potential impact on his/her eligibility to receive unemployment insurance benefits if he/she fails to attend the scheduled Interview without justifiable cause. If a claimant notifies the Employment Security Commission (ESC) in writing before his/her originally scheduled One-on-One Assessment and Planning Interview that he/she withdraws his/her agreement to participate in the RES Program, his/her name shall be removed as a Program participant and no issue regarding his/her eligibility for benefits shall be raised. If before the Interview appointment date, the claimant seeks a rescheduling of the Interview, the Interview shall be rescheduled for any reason that would fall within the definition of justifiable as set forth below. No issue regarding the claimant's eligibility to receive benefits shall be raised. If the claimant fails to attend the rescheduled Interview and has had no prior contact with ESC regarding this failure to attend, an issue of failure to report shall be raised and adjudicated in a manner as determined by the Director of the Unemployment Insurance Division.

(1) Eligibility concerning participation in this RES Program shall be determined on a weekly basis. A claimant shall be held ineligible for unemployment insurance benefits for any week in which he/she fails to attend a rescheduled One-on-One Assessment and Planning Interview of which proper written notice as set forth above was provided, except when he/she has justifiable cause for failing to participate in the offered reemployment service. Whenever an issue is raised under this Regulation, it must be resolved within three (3) business days after the issue is raised.

(2) A claimant may have justifiable cause for failure to report to an Interview under this RES Program in-any week. Justifiable cause includes, but is not limited to, the following:

(a) The claimant is summoned to serve as a prospective or paneled juror;
(b) The claimant is enrolled and satisfactorily participating in a course of training approved by the Employment Security Commission;
(c) The claimant is unable to participate because the claimant is employed;
(d) The claimant is unable to participate because of a job interview;
(e) The claimant has no transportation; or,
(f) The claimant is unable to participate due to circumstances that the ESC determines are beyond the claimant’s control.

(3) Unless funding for this RES Program is continued by the appropriate federal authorities and/or law beyond such, this Regulation shall expire July 1, 2011.

(1) Positive Controlled Substance Test and Availability for Work Issue.

(1) When an office of the Employment Security Commission (ESC) receives information that a claimant tested positive on a controlled substance test administered by or on behalf of an employer to whom the claimant has been referred for a job opening by the Employment Security Commission, the issue of availability for work shall be raised and adjudicated within the period specified in G.S. §96-15(b)(2). The issue shall also be raised and adjudicated if the information is received regarding job openings to which the claimant has not been referred by an ESC office.

(2) The method(s) by which this information is received and/or gathered shall be the same as for the issues arising under G.S. §96-14(3).

(3) Any ineligibility imposed as a result of the adjudication of this availability issue shall commence as of the week the test was administered, and shall continue until the claimant presents to the ESC office a medical report of a subsequent controlled substance test that states the claimant does not test positive for the controlled substance for which the original test had been administered.
Regulation No. 11 - Interstate Claims

11.10 Each unemployed interstate claimant shall be registered for work by a local Employment Security Office in the agent state according to the laws, regulations, and procedures of the agent state. The agent state shall inform the liable state as to whether the interstate claimant meets the registration requirements of the agent state.

11.11 A week of unemployment for an interstate claimant shall be determined in accordance with the laws, regulations, and procedures of the liable state except when the claimant is attached to his regular employer in which case a week of unemployment shall be determined by laws, regulations, and procedures of the agent state.

11.12 (A) If a claimant files a claim against a state and it is determined by such state that the claimant has available benefit credits in the state, then claims shall be filed against the state only as long as benefit credits are available in the state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. Benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(B) All states which have combined a claimant's wage credit for the purpose of paying his benefits under a single state law shall be treated as a single separate state.

11.13 (A) Interstate claimants shall file their claims for benefits on uniform interstate claim forms in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(B) Claims shall be filed in local Employment Security Offices or by mail in accordance with agent state laws, regulations, and procedures.

(1) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state may for a good cause accept continued claims filed up to two (2) reporting periods late. If a claimant filed more than two (2) reporting periods late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(2) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.
11.14 The agent state shall ascertain and report to the liable state pertinent facts relating to the claimant's availability for work and eligibility for benefits. The agent state shall not refuse to take interstate claims.

11.15 The agent state shall cooperate in the holding of hearings and the taking of evidence in connection with appeals from interstate benefit claims determinations. Such appeals shall be deemed to have been made and communicated to the liable state on the day when it is received by a qualified officer of the agent state.
Regulation No. 12 - Combining Wage Credits of Multi-State Claimants

12.10 (A) A claim for benefits shall be filed by a combined-wage claimant in the same manner as by a claimant who is eligible for benefits under the law of the paying state.

(B) Benefits shall be paid to a combined-wage claimant from the unemployment insurance fund of the paying state, even if the claimant has no covered wages in that state.

12.11 (A) Wages paid to a claimant during the paying state’s applicable base period and wages reported for that period by a transferring state as available for the payment of benefits shall be included by the paying state in determining the claimant's benefit rights.

(B) Wages, once they have been transferred and used in a determination which establishes monetary eligibility for benefits in the paying state, shall be unavailable for determining monetary eligibility for benefits under the law of the transferring state, except to the extent that wages are usable for redetermination purposes.

(C) A combined-wage claimant’s monetary and non-monetary benefit rights shall be determined by the paying state as provided in its law.

12.12 Each state with respect to a combined-wage claimant, in utilizing forms approved by the Interstate Benefit Payment Committee, shall promptly request all states in which the claimant has worked to furnish a report of the claimant's unused covered wages during the base period of the paying state for a combined-wage claimant, and his current eligibility under the law of such state.

(A) When acting as the transferring state, each state shall report promptly upon the request of any state the claimant's unused covered wages during the base period of the paying state without restriction for the payment of benefits under the paying state's law and the current monetary and nonmonetary eligibility of the claimant under the law of the transferring state.

(B) When acting as the paying state, each state shall:

(1) Send to each transferring state a copy of the initial determination with an explanatory statement.
(2) Send to the claimant a copy of the initial determination, noting his rights to appeal.
(3) Send to each transferring state a statement of the benefits chargeable to each state at the end each quarter in which any benefits have been paid. Each statement shall include the benefits paid during such quarter to such state as to each combined-wage claimant. Each
charge shall bear the same ratio to total benefits paid to the combined-wage claimant by the paying state as his wages report by the transferring state and used in the paying state's monetary determination bear to the total wages used in such determination. A transferring state shall, as soon as practicable after receipt of such statement, reimburse the paying state accordingly.

12.13 A claimant's wages shall not be combined if the paying state finds that based on combined wages the claimant would be ineligible for benefits. Wages reported by the transferring state shall in such event be returned to and reinstated by such state. The provisions of the Interstate Benefit Payment Arrangement shall apply to each claimant and will supersede any inconsistent provision of the Interstate Benefit Payment Plan and any regulation thereunder.

12.14 For purposes of experience rating, benefits paid or charged based on a combined-wage claim shall be charged in accordance with this State's base period.

(A) Charges for reimbursement to other states shall be the total amount of the reimbursement.

(B) Charges for benefits paid by this State shall be the total amount of benefits paid and not charged to other states.
Regulation No. 13 - Adjudication

13.10 Adjudication is required when any issue or question is raised concerning a claimant's last bona fide employment under G.S. 96-8(24) or eligibility under G.S. 96-13 or disqualification under G.S. 96-14, or regarding the timeliness of an issue presented by the employer under G.S. 96-15(b)(2), or an issue under G.S. 96-18, or when a redetermination is necessary after a claimant has been found eligible in the initial determination, or when a question is raised concerning information contained in claimant's wage transcript, PROVIDED, a determination on the issue of lack of earnings in the base period shall only be rendered by the Unemployment Insurance Director or his/her designee.

13.11 (A) When a claimant files a new initial claim for unemployment insurance benefits, the local office shall determine the claimant’s last bona fide permanent employment. If the claimant’s last employment was not greater than thirty (30) consecutive calendar days, the local office shall determine if this was the claimant’s last bona fide permanent employment by seeking answers to the following questions:

1. Whether the employment was offered by the employer and accepted by the claimant as employment that would last greater than thirty (30) consecutive calendar days;
2. Whether the claimant has a recent history of accepting employment of thirty (30) or less consecutive calendar days; and
3. What were the reasons for the ending of the employment of thirty (30) or less consecutive calendar days.

(B) The reasons why a claimant’s separation from his or her last employment of greater than thirty (30) consecutive calendar days, or whether a claimant would be qualified or disqualified for unemployment insurance benefits depending on which employment is his or her last bona fide permanent employment shall not be factors in determining whether employment of thirty (30) or less consecutive calendar days was the claimant’s last bona fide permanent employment.

(C) If a separation from employment issue exists in regards to the employment of thirty (30) or less consecutive calendar days and such employment is determined to be the claimant’s last bona fide permanent employment, the local office shall note on the fact finding report that the claimant was notified of and explained his or her right to appeal this determination on his or her last bona fide permanent employment as set forth in ESC Regulation No. 13.16(A). This notation shall be made before the fact finding report is signed by the claimant.

(D) Except as provided in Regulation No. 13.11(A), an adjudication is initiated by the local office by referral of the claim based on either the Fact-Finding Report completed by claimant or on a statement received back from the employer in response to claimant's
application, when a legal issue or question of fact is raised by the statements of the parties, or by the order of an Appeals Referee or the Commission; provided, however, no referral shall be made if the information received from the claimant and the employer establishes that the claimant's unemployment was the result of a lack of available work because such information raises no legal issue or question of fact.

13.12 Adjudication is an informal investigation in which the adjudicator contacts the claimant, the employer, and any other interested party for the purpose of obtaining from the person interviewed a statement containing information on a specific issue, or question. Contacts with the parties include written statements and telephone interviews, and face-to-face interviews in certain instances. After the conclusion of an investigative procedure, a determination is issued. Claims for adjudication are assigned for investigation and determination as follows:

(A) The 'able and available' eligibility requirement of G.S. 96-13 is adjudicated through the local office or in the central office.

(B) A disqualification issue under G.S. 96-14 is adjudicated by an adjudicator in the Central Office, after a Fact-Finding Statement is prepared by the local office.

(C) Any issue under G.S. 96-18 is investigated by a fraud investigator and determined thereafter by an adjudicator in the central office.

13.13 As soon as possible, without awaiting the 20-day notice period, after receipt of an issue of fraud or nonfraudulent overpayment or failure of a claimant to meet any procedural requirement in connection therewith, a Fraud Investigator shall make a fact finding investigation and thereafter an adjudicator shall render a determination thereon. Any determination so rendered shall be subject to appeal, as provided in Regulation No. 20.15.

13.14 After making an investigation of the issue or question, the adjudicator shall render a determination thereon. In reaching said determination, the adjudicator may consider any matter, document or statement deemed to be pertinent to the issue or question, including telephone conversations. Once a determination has been rendered at the adjudication level, an appeal may be filed therefrom. In the absence of a timely appeal therefrom, the determination of the Adjudicator shall be deemed the final decision of the Commission.

13.15 The adjudicator shall notify the claimant, the employer, and any other interested parties of the determination reached by mailing a copy of the notice of Determination to the said parties. The notice shall be in writing on a form prescribed by the Commission which shall include the following: The issue or issues, the docket number of the case, and the determination of the adjudicator. Said notice shall further state how, when and where an appeal may be filed by any interested party who is aggrieved with the Determination.
13.16  (A) A party aggrieved by the local office's determination on the issue of last bona fide employment rendered pursuant to Regulation No. 13.11(A) may appeal said determination only if an Adjudicator has issued a determination on the issue of the claimant's separation from the employment that was determined to be the claimant's last bona fide employment. The local office determination shall be deemed the final decision of the Commission unless within fifteen (15) days after the date the party receives notification or the mailing date of the Adjudicator's determination on the separation issue, whichever is earlier, a written appeal that includes the docket number of the case and the social security number of the claimant is filed by the party.

(B) An interested party who is aggrieved by any other determination by an Adjudicator may file an appeal within fifteen (15) days from the earlier of the date the determination was mailed or the party receives notification of the determination. Said appeal must be in writing and must include the docket number of the case and the social security number of the claimant.

(C) Unless otherwise specified by statute, the time for filing an appeal as to all determinations authorized by this Regulation shall be the same.

(D) As to all determinations authorized under this Regulation and mailed to the parties, three (3) days shall be added to the appeal period.

13.17  The adjudicator shall prepare an official record of each case, together with a checklist thereof which shall include:

(A) Fact Finding Reports, claims examiner's notes;
(B) Determination by Adjudicator, written appeal;
(C) Notice of Claim, (if applicable);
(D) Any other document necessary to the disposition of the case.
14-1

Regulation No. 14 - Appeals Procedures

14.10 Right To Hearing

A reasonable opportunity for a fair hearing before an impartial appeals referee shall be provided for all interested parties to an appealed determination. All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties.

14.11 Powers of Appeals Referee

(A) An Appeals Referee can:
   (1) authorize the issuance of subpoenas in the name of the Commission requiring attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence in accordance with Regulation 14.16;
   (2) continue cases on his/her own motion for the reasons set forth in Regulation 14.15;
   (3) consider and rule upon a request for continuance by an interested party or its legal representative;
   (4) set the time, place, and format for continued hearings in accordance with Regulation 14.15;
   (5) fix the time for filing memoranda of law, briefs or other legal documents;
   (6) schedule and conduct prehearing conferences in the discretion of the Appeals Referee;
   (7) conduct a hearing, regulate the course of the hearing and determine the order of proof;
   (8) administer oaths and affirmations;
   (9) request or authorize the request for an interpreter;
   (10) re-open, dismiss, and adjourn hearings and enter orders of withdrawal of appeals;
   (11) continue or adjourn a hearing as provided in Regulation 14.15 and Regulation 14.20.

(B) In addition to exercising any of the powers of an Appeals Referee, the Chief Appeals Referee can:

   (1) apply to the Clerk of Court to issue an order requiring any person refusing to comply with a subpoena to comply with said subpoena;
   (2) determine the assignment or reassignment of appeals referees and the scheduling or re-scheduling of hearings;
(3) consider and rule on motions concerning disqualification of appeals referees in accordance with Regulation 14.12(c);
(4) authorize subpoena or interpreter fees;
(5) continue cases as provided in Regulation 14.15.

14.12 **Disqualifications or Recusals of Appeals Referee**

(A) An appeals referee shall not conduct a hearing in which he/she may have a personal interest or conflict of interest or in which he/she may have a personal bias toward or against any of the parties.

(B) If an appeals referee assigned to conduct a hearing communicates with a party or his/her/its representative or witness as to issues of fact or law without notice to and opportunity of all parties to participate, that appeals referee shall recuse himself/herself from hearing the matter.

(C) Any party to a proceeding before an appeals referee seeking disqualification of that appeals referee must a written motion requesting the disqualification of the appeals referee no less than five days prior to the scheduled hearing date. Such motion is to be filed with the Chief Appeals Referee, who shall make a determination thereon, and issue a decision. The decision shall be interlocutory but may be specified as a grounds for appeal following the issuance of the decision of the Appeals Referee.

(D) When the Chief Appeals Referee determines an appeals referee shall not conduct a scheduled hearing, the Chief Appeals Referee shall assign another Appeals Referee to hear the case.

14.13 **Representation**

(A) Any individual may appear for himself/herself in any proceeding before an appeals referee. Any partnership may be represented by any of the partners. An association may be represented by any of the members of such association. A corporation may be represented by its employee, officer, or agent.

(B) The Appeals Referee, in his/her discretion, may refuse to allow any person to represent others in any proceeding before him/her, who he/she determines has engaged in unethical conduct, or who intentionally and repeatedly fails to observe the provisions of the Employment Security Law, or the Rules, Regulations, and/or instructions of either the appeals referee or the Commission.
(C) Any claimant or employer who is a party to any proceeding before the Commission may be represented by (1) an attorney who is admitted to the North Carolina State Bar; or (2) any person who is supervised by an attorney admitted to the North Carolina State Bar. The supervising attorney need not be present at any proceeding before the Commission. If an individual appears under supervision of an attorney, the name of the attorney must be included in the record of the case.

(D) Any attorney regularly admitted to practice in the courts of another state, and who is in good standing therein, may appear pro hac vice, at the discretion of the appeals referee.

(E) Any assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under the Employment Security Law shall be void, except as otherwise provided by law.

(F) Any action which may be taken by a party may be taken by his/her/its legal representative, unless otherwise stated.

(G) A legal representative may:

1. Obtain information about the case to the same extent that the party is able to do so;
2. tender evidence;
3. present opening and closing arguments; and
4. make any request or give any notice about the proceedings before the Commission.

(H) Any documents or information required to be sent or served on any party shall be sent or served upon the party's designated legal representative only, if any.

1. The Commission shall provide to the legal representative notice and a copy of any administrative action, determination, or decision.
2. A notice or request sent to the legal representative of a party will have the same force and effect as if it had been sent directly to the party.

14.14 Scheduling and Notice of Hearing

(A) As soon as possible after receipt of the appeal and file from the adjudicator, a hearing shall be promptly scheduled and held at a local office where claimant is registered for
work and has filed a claim except that if the local office is forty (40) or more miles from the employer's business, a telephone hearing may be scheduled, or a telephone hearing may be scheduled upon agreement or request of the parties, or a telephone hearing may be scheduled to meet standards for appeals promptness or efficient administration of the Employment Security Law.

(B) Due notice of a hearing shall be made to the parties, or legal representatives, if any, by mailing the notice to the last known address at least 10 days prior to the date of the hearing, or the parties may accept service thereof.

(C) The parties shall be given reasonable notice of the hearing, which notice shall include:

1. the date, hour, place and nature of the hearing, the local office number, the appeals docket number, the name and address of the employer and the claimant and other persons to whom notice of the hearing is being given, the social security number of the claimant, and the name, address and telephone number of the Appeals Referee;
2. a reference to the particular substantive statutory issues and/or regulations to be considered;
3. a statement of the nature and purpose of the hearing and of the manner and time within which evidence may be submitted to the Commission for consideration, and other information on the hearing, including the effect of failure of appellant to appear at the hearing, subpoenaing witnesses, right of representation, and continuances.

(D) Any party to whom a notice of any appeals hearing is required by these Regulations to be given may, at or prior to such hearing, waive the service of such notice and enter his/her appearance at such hearing for all purposes.

14.15 Continuances

(A) An Appeals Referee assigned to hear a case may grant a continuance only if:
1. a party, necessary witness, legal representative, or Appeals Referee cannot appear for the hearing because of personal illness or illness of immediate family member, jury duty, or death in the immediate family; or,
2. an attorney representing a party must appear in a court of superior jurisdiction; or,
3. a properly issued subpoena has not been served on a necessary witness; or,
(4) a party, necessary witness, or legal representative has a prior commitment that conflicts with the hearing date or time and which cannot reasonably be rescheduled; or,
(5) a party has not received proper notice of the hearing or the issues to be determined at the hearing; or,
(6) the Appeals Referee has a scheduling conflict; or,
(7) a party requires an interpreter; or,
(8) the Appeals Referee has a conflict of interest which requires his/her recusal; or,
(9) a party has requested and been granted a change in the type of hearing scheduled; or,
(10) a party needs additional time to obtain legal representation and has demonstrated good cause for failing to obtain legal representation prior to the commencement of the hearing.

(B) Any request for continuance for any reason other than in (A), above, may be granted only by the Chief or designee of the Chief Appeals Referee. Notice of the continuance and the specific reason therefor shall be given to all as soon as possible. A written continuance order shall be a part of the official record of the case.

14.16 Subpoenas

(A) Upon request of any party to the proceeding, including the Commission, the Appeals Referee shall authorize the issuance of a subpoena requiring the attendance of witnesses and/or the production of documents or other items material to the proceeding unless the Appeals Referee determines that:

(1) the request on its face is clearly objectionable or unreasonable;
(2) the evidence requested is not relevant to a matter in issue; or
(3) the request does not describe the evidence requested with sufficient particularity.

(B) The requesting party must include in any request for subpoena:

(1) name of the party requesting the subpoena;
(2) claimant's name and the appeals docket number of the case;
(3) the name and address at which the person may be served and telephone number of the person whose appearance is sought;
(4) specific identification of anything sought, including a detailed description and specific designation of present location, including the name and address of the person in possession; and
(5) a statement of the relevance or significance of the testimony or evidence subpoenaed.

(C) The Commission shall include in each subpoena:

(1) the name, address, and telephone number (if available) of the person being subpoenaed;
(2) claimant's name and the appeals docket number of the case;
(3) the date, hour, and location of the hearing in which the witness is commanded to appear;
(4) a particularized description of the books, papers, records, or other items the witness is directed to bring with him to the hearing, if any;
(5) the identity of the party requesting the subpoena;
(6) the date of issue of the subpoena; and
(7) the signature, official title, address and telephone number of the Appeals Referee issuing the subpoena.

(D) Subpoenas shall be served in such a manner as the Appeals Referee shall direct and as appropriate to the circumstances of the case.

(E) Any person receiving a subpoena or any party may object thereto by notifying the Appeals Referee prior to the hearing. The Appeals Referee shall promptly rule on the objection and so notify the parties prior to the commencement of the hearing. The Appeals Referee may continue the hearing if necessary to hear and rule on the objection.

(F) Witnesses subpoenaed to appear at Commission hearings may request witness fees and mileage reimbursement as provided by G.S. 7A-314.

(G) Any documentation showing service of the subpoena shall become part of the official record of the case.

14.17 Prehearing Procedures

Prehearing conferences, discovery, stipulation and other related matters may be used at the discretion of the Appeals Referee. However, Appeals Referees shall take into consideration the intent of adjudication pursuant to G.S. 96-15 as to informality and the time compliance requirements mandated by the United States Secretary of Labor.
14.18 Hearing Procedures

(A) The hearing shall be conducted by and before an Appeals Referee, who:

(1) Shall call the proceeding for hearing, give the docket number, the name of the appellant, the names of the parties and the social security number of the claimant and the issues appealed;
(2) Shall take appearances for the record and administer the required oath.

(B) All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties.

(C) The party appealing must produce some evidence in support of his/her/its case. The appellant may have his/her/its case dismissed by the Appeals Referee for failure to appear at the scheduled hearing time or to present any evidence at the hearing.

(D) The parties to the proceeding may file an agreed stipulation of facts. The Appeals Referee may require additional evidence or stipulation of facts.

(E) Unless limited by stipulation of the parties or unless otherwise limited by the Commission or an Appeals Referee under this section, every party or legal representative shall have the right to call and examine or cross-examine all witnesses.

(F) The Appeals Referee shall control the order of proof and rule upon admission of evidence, and may examine and cross-examine witnesses.

(G) The Appeals Referee shall admit all relevant and noncumulative evidence and consider all relevant issues. The Appeals Referee shall have the discretion to determine the relevance of any evidence.

(H) The Appeals Referee shall not be bound by the common law or statutory rules of evidence and procedure.

(I) The rules of evidence as applied in the general courts of justice shall not govern the admissibility of evidence in an appeals hearing. However, in determining the admissibility of evidence in a hearing in which the rules of evidence do not apply, the Appeals Referee shall consider such factors as:

(1) relevance of the evidence to the issues,
(2) undue repetitiousness,
(3) the right of the party against whom the evidence is offered to confront the witness against him/her/it.
(J) Hearsay evidence is generally admissible. However:

(1) Hearsay evidence will be accepted as competent evidence only if it falls within the statutory or common law exceptions to the hearsay rules, or has equivalent circumstantial guarantees of trustworthiness and is more probative on the point for which it is offered than any other evidence which the proponent could reasonably be expected to procure under the circumstances of the case.
(2) The hearsay proponent carries the burden of making a prima facie showing of competence before the evidence can be used to support a finding of fact.

(K) In any hearing, the Appeals Referee may examine the parties and their witnesses. Where a party is not represented by counsel, the Appeals Referee before whom the hearing is being held should advise him/her as to his/her rights, and aid him/her in examining and cross-examining witnesses, and give him/her every assistance compatible with the impartial discharge of the Appeals Referee's official duties.

(L) Business records as defined in Regulation No. 2.13 are admissible as an exception to the hearsay rule and may be used as the basis for a finding of fact if the records are reflections of an act, occurrence or event and not an opinion and if they are properly identified by the person who made them or by someone who has knowledge of their preparation and custody.

(M) When a party desires to offer into evidence numerous documents, a list of the documents in the order of their presentation shall be prepared and offered as an exhibit.

(N) The Appeals Referee shall provide all parties with reasonable opportunity to examine all documents offered into evidence.

(O) When a party desires to introduce documents, affidavits or statements at a hearing, that party must provide an authenticated copy plus one copy of each exhibit for the use of the Appeals Referee and a copy for each party to the proceeding.

(P) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the Employment Security Commission. The noticed fact and its source shall be stated and made known to affected parties at the earliest practical time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. The Appeals Referee may use his/her experience, technical competence, and specialized knowledge of Commission procedures in the evaluation of evidence presented at hearings.
Notwithstanding the foregoing, at the hearing the Appeals Referee must secure the presence of an employee of the Employment Security Commission who is competent to present labor market evidence when the issue to be resolved is a claimant’s ability to work and/or availability for suitable work, and the Appeals Referee must ensure that the labor market is described in terms of the specific claimant.

(Q) The Appeals Referee may permit a party to file an affidavit at the hearing under the same rules applicable to other forms of hearsay evidence.

(R) All testimony at any hearing before an Appeals Referee upon a disputed claim shall be recorded.

(S) In lieu of live testimony from a laboratory representative at a contested claims hearing, an affidavit from the authorized representative of the laboratory may be presented to prove controlled substance examination results, chain of custody and/or compliance with all testing and retesting required by federal or state law. When a party desires to introduce such affidavit at the hearing, a copy of the affidavit must be received by the party against whom the affidavit will be offered at least two (2) days prior to the commencement of the hearing. 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 shall adjourn/continue the hearing to allow such service to be accomplished. At the hearing, the party must offer an authenticated copy of the affidavit as an exhibit. If the party against whom the affidavit is offered objects to the entry of affidavit into the official record, said party shall have the right to request an adjournment or continuance of the hearing for the purpose of subpoenaing the author of the affidavit, who shall be permitted to testify by telephone at the reconvened hearing. Once the affidavit is made a part of the official record of evidence compiled by the Appeals Referee, findings of fact may be premised thereon. Notwithstanding the foregoing, the results of the controlled substance examination and compliance with any applicable statutory or regulatory procedural requirements may be deemed proved if the claimant admits or stipulates to such during the hearing before the Appeals Referee or by affidavit.

14.19 Official Record

(A) The Appeals Referee shall prepare an official record of a hearing which shall include:

(1) Documents designated as part of the official record in accordance with Regulation No. 13.17;
(2) All statements of parties or witnesses, including reports from telephone conversations, reports, forms and documents submitted by the parties prior to the hearing;
(3) Offers of proof;
(4) Evidence presented;
(5) Matters officially noticed, except matters so obvious that a statement of them would serve no official purpose;
(6) Any other decisions or orders previously entered in the case;
(7) Any other document necessary to the disposition of a case;
(8) The taped recording of the proceedings.

(B) Contents of the official record shall be identified for the record, marked as exhibits, and entered into the official record by the Appeals Referee.

14.20 Adjournments

An adjournment may be directed or granted by an Appeals Referee at his/her discretion and only for good cause. Good cause for an adjournment includes, but is not limited to:

1. the hearing cannot be completed in the time allotted; or,
2. a party needs additional time to obtain legal representation and the party made a reasonable effort to obtain legal representation prior to the commencement of the hearing; or,
3. a party wishes to present additional evidence or witness and the party made a reasonable effort to have the evidence or witness at the hearing, but was unable to do so; or,
4. a party, necessary witness, legal representative or Appeals Referee is unable to continue with the hearing because of personal illness; or,
5. a properly issued subpoena has not been served on a necessary witness; or,
6. new material matters develop in the course of a hearing which a party is unprepared to meet and the element of surprise is present so a party needs an opportunity to prepare.

If the hearing is adjourned prior to the close of testimony, the Appeals Referee shall explain to the parties present the reason for such adjournment. However, no case shall be delayed unreasonably.

14.21 Dismissals

If an appealing party fails to pursue an appeal or fails to appear at a hearing within fifteen (15) minutes of the time set for the hearing, after having been duly notified of the hearing, the appeal may be dismissed.
14.22 Reopening of Cases

An Appeals Referee may reopen hearings within ten (10) days of entry of an appeal dismissal upon written notice to the parties.

14.23 Withdrawals

An appellant may withdraw an appeal upon approval of the Appeals Referee.

14.24 Nonappearance of Appeals Referee

With respect to in-person hearings, in the event that an Appeals Referee fails to appear for a scheduled hearing at a local office within fifteen (15) minutes of the time set for the hearing, and has not contacted the local office concerning such delay, the local office manager shall permit the parties to leave and said hearing shall automatically be continued and rescheduled.

14.25 Decisions

(A) Following the conclusion of the hearing, the Appeals Referee shall render a decision within five (5) working days from the date of the hearing, and such decision shall be issued without undue delay. The decision shall be in writing and shall be signed by the Appeals Referee or his/her designee.

(B) The written decision of the Appeals Referee shall include findings of fact, conclusions of law, and the decision of the Appeals Referee.

(C) Findings of fact shall be made on all issues or questions presented at the hearing. Said findings shall be based on the competent evidence of record and on matters officially noticed.

(D) Copies of the decision shall be mailed to parties, legal representatives of record, and such local offices and departments of the Commission as necessary to put the decision into effect. The decision shall include an explanation of the rights of appeal.

(E) The decision of the Appeals Referee shall be deemed the final decision of the Commission unless an appeal from said decision is filed within ten (10) days from the date the decision was mailed.
14-12

(1) In computing any period of time prescribed by these Regulations, including rules respecting notice, the day of the act or notice is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a state legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a state legal holiday. A half-holiday shall be considered as other days and not as a holiday.

14.26 **Interpreters**

Whenever any deaf person is a party or necessary witness to a hearing conducted before an Appeals Referee, the Appeals Referee shall, upon request or upon the Appeals Referee's own motion, appoint a qualified interpreter of the deaf to assist such deaf person in the hearing. The Commission shall determine a reasonable fee for such interpreter services, the cost of which shall constitute expenses under Chapter 96 of the North Carolina General Statutes.

14.27 **Foreign Language Interpreters**

In the event a party or necessary witness experiences difficulty in speaking or understanding the English language, the Appeals Referee shall, upon request or upon the Appeal Referee's own motion, attempt to secure an interpreter to assist that party or necessary witness in the hearing.
15-1

Regulation No. 15 - Telephone Hearings

15.10 (A) Due notice of a telephone hearing shall be given to the parties or legal representatives by mailing the Notice of Hearing to the last known address of the parties or their legal representatives at least fourteen (14) days prior to the date of the hearing. A copy shall also be mailed to the local office where the claim was filed.

(B) In addition to information required in the Notice under Regulation No. 14.14, Notice of a Telephone Hearing shall include the last known telephone numbers, if any, of the parties and the right of the parties to object to a telephone hearing. A Questionnaire requesting correct telephone numbers and the name of the parties' representatives and/or witnesses shall accompany each Notice of Telephone Hearing. The Appeals Referee shall contact the parties at their last known telephone number, if any, unless otherwise notified.

15.11 In appeals in which one or more parties are out of state or in which the parties are at different intrastate locations or in which both parties are at a location at which it is impractical to conduct in-person hearings or in which standards for appeals promptness or efficient administration of the Employment Security Law need to be met, the appeals referee may schedule the hearing to be conducted by telephone. The regulations and procedures governing hearings in general shall govern telephone hearings except as otherwise provided in these regulations. Upon objection to a telephone hearing by a party, an in-person hearing shall be conducted; provided, however, that if any travel is required to conduct the in-person hearing, the objecting party will be required to travel to a location which is convenient to the non-objecting party.

15.12 If documents are to be offered as evidence, the party offering said documents shall provide them. The documents must be received by the other party and the appeals referee within a reasonable time prior to the hearing.

15.13 Any party may be represented by an attorney at law who is admitted to practice in the State in which that party appears for the telephone hearing. A party may also be represented as provided by Regulation No. 14.13.

15.14 All other regulations regarding appeals hearings not inconsistent with this Regulation shall apply to telephone hearings.
15A.10  (A) An Appeals Referee may conduct an In-Person/Telephone Hearing [as defined in ESC Regulation No. 2.12(C)] with the consent of all parties, or upon a written request or motion by a party and a determination by the Appeals Referee that the substantial rights of all the parties would be best served by the conduct of such hearing. The official hearing record compiled by the Appeals Referee in accordance with ESC Regulation No. 14.19 shall reflect the actual consent of each party, or the Appeals Referee's determination that the substantial rights of the parties would be best served by the conduct of such hearing by the Appeals Referee and the specific grounds therefor. If the Appeals Referee denies a party's request or motion for an In-Person/Telephone Hearing, the Appeals Referee must state for the record the grounds for such denial. In any situation wherein a cause is not initially scheduled for an In-Person/Telephone Hearing, the record must show that the Appeals Referee consulted with all parties before rendering a determination as to the appropriateness of changing the initial hearing to an In-Person/Telephone Hearing.

(B) Due notice of an In-Person/Telephone Hearing shall be given to the parties or legal representatives by mailing the Notice of In-Person/Telephone Hearing to the last known address of the parties or their legal representatives. The Notice shall be mailed at least fourteen (14) days before the date of the hearing if the cause is initially scheduled for an In-Person/Telephone Hearing. If the initial hearing in the cause is subsequently changed to an In-Person/Telephone Hearing, the Notice shall be mailed to the parties within a reasonable time before the commencement of the In-Person/Telephone Hearing. A copy shall also be mailed to the local office where the claim was filed.

(C) In addition to information required in the Notice under ESC Regulation Nos. 14.14 and 15.10(B), the Notice of In-Person/Telephone Hearing shall identify the parties and method by which they will appear before the Appeals Referee.

15A.11  The party requesting an In-Person/Telephone Hearing shall have the burden of showing that the Appeals Referee and/or the opposing party or parties had a reasonable opportunity before the hearing to receive any exhibits that the requesting party offers into evidence. If the requesting party is unable to make such showing and it is determined that the opposing party or parties, who have not received the exhibits, need an opportunity to review and respond to the exhibits, the Appeals Referee may refuse to receive the exhibits into evidence and proceed with the hearing as scheduled, or, upon a showing of good cause or excusable neglect by the requesting party, adjourn the hearing under ESC Regulation No. 14.20 to permit the opposing party or parties and opportunity to review and prepare to respond to the exhibits. If only the Appeals Referee has not received the exhibits before the hearing and the requesting party is unable to show that the Appeals Referee had a reasonable opportunity before the hearing to receive the exhibits, the Appeals Referee may adjourn the hearing and permit the requesting party to transmit the exhibits to the Appeals Referee by the quickest means possible.
15A.12 Any party may be represented by an attorney at law who is admitted to practice in the State in which that party appears for the In-Person/Telephone hearing. A party may also be represented as provided by ESC Regulation No. 14.13.

15A.13 All other regulations regarding appeals hearings not inconsistent with this Regulation shall apply to In-Person/Telephone hearings. This includes objection to a telephone hearing as authorized by G.S. §96-15(c).
16.10 Adjudication of contested matters under special programs administered by the Employment Security Commission such as NAFTA, TRA, TAA and other similar programs shall be heard by an appeals referee or any individual authorized to conduct hearings using the same procedure as is used pursuant to G.S. 96-15(c), and Regulation No. 14.

16.11 If there is an appeal from the decision rendered pursuant to Section 16.10 of this Regulation, it shall be heard by the Commission using the same procedure as is used pursuant to G.S. 96-15(e), and Regulation No. 21.

16.12 Any appeal from the decision of the Commission shall be pursuant to applicable federal regulations.
Regulation No. 17 - Non-charging Hearings

17.10 Upon the timely appeal of an administrative determination denying non-charging to a base period employer, who is not also the last employer, a hearing shall be scheduled to elicit testimony as to the circumstances surrounding the claimant's separation from employment by said employer.

17.11 Interested parties included in non-charging hearings are the base period employer and the Commission. The claimant may be subpoenaed to testify at the hearing although he/she is not an interested party.

17.12 The non-charging hearing shall be heard by an appeals referee under the regulations governing appeals referee's hearings except as otherwise provided in this section.

17.13 The issues to be determined at non-charging hearings shall be limited to either the reasons for claimant's separation from work or whether the employer provided only subsidiary work to claimant, as provided in G.S. 96-9(c)(2)(b).

17.14 An appeal from the decision of the appeals referee shall be made to the Commission in accordance with instructions contained in the [appeals] referee's decision.
18-1

Regulation No. 18 - Tax Liability Hearings

18.10 Contributions are defined to mean the same as tax or tax liability for purposes of this section.

18.11 Hearings to determine the rights, status, and/or liability of any employing unit or employer, shall be in accord with the provisions of the Employment Security Law, Section 96-4, Subsection (m) and other applicable subsections thereof.

18.12 Within thirty (30) days of a timely appeal by an employing unit of an adverse final administrative determination, the Tax Department shall assemble the file (file means the employer's master file and Employer’s Quarterly Tax and Wage Reports if such reports are material, deemed necessary, or are in and a part of the employer's master file) and mail copies to all parties and provide the original to the Chairman. A hearing shall be scheduled to determine the tax rights, status, and/or liability of said employing unit, and the amount of tax, if any, which may be owed by the employing unit to the Commission. The employing unit shall have the burden of proof in any hearing to show that it is not liable for unemployment insurance taxes, penalties, and/or interest on all or a portion of its workers once the appropriate authority on behalf of the Commission has held it to be liable. Any hearing that is scheduled as a result of an appeal by the claimant to a Determination on Appealed Wage Transcript and Monetary Determination shall be conducted under this section when the result can affect the tax status of an employer. Within thirty (30) days of the appeal, the Claims Department will assemble the file (file includes all documents in the Claims Department pertaining to the claimant and the Tax Department, as defined above, if an employer is involved) and mail copies to all parties and provide the original to the Chairman. The claimant shall have the burden of proof in any hearing on an appeal of a Determination on Appealed Wage Transcript and Monetary Determination when the appropriate authority on behalf of the Commission has issued a decision that is adverse to the claimant or any other decision where the ruling is adverse to the claimant. In all other cases, the employing unit shall have the burden of proof. The party with the burden of proof shall be the first to present evidence. If the party with the burden of proof fails to appear at the hearing, the appeal shall be dismissed.

18.13 Hearings to determine the initial liability of an employer or employing unit or a protested wage claim shall be held at a location to be determined by the Commission. Hearings on tax rights, status, and/or liability with regard to a change after the initial liability hearing, if any, shall be in the Central Office of the Commission. Nothing herein shall be construed to affect Regulation No. 17.

18.14 The issues to be determined at the tax liability hearing shall be limited to the rights, status, and/or liability of the employing unit to the Commission as provided in G.S. 96-4(M), and to any benefit rights determination in connection with tax liability issue as ordered.
18.15 The tax liability hearing shall be board upon order of the Chairman pursuant to the regulations governing the appeals referee's hearings except as otherwise provided in this section. The hearing shall be held by a Hearing Officer who shall be a member of the legal staff of the Commission, who shall have the power and authority to issue subpoenas, administer oaths, conduct hearings, and take evidence as necessary.

18.16 The Hearing officer shall allow the parties thirty (30) days from the date the hearing is concluded to submit a proposed opinion. The Commission is deemed to be an interested party. The thirty-day time limit may be shortened or enlarged at the discretion of the Hearing officer. Once the time has passed for the submission of a proposed opinion, the file shall be routed to the Chairman for the issuance of an opinion.

18.17 An appeal from a tax liability hearing decision shall be made to Superior Court under the procedure provided in G.S. 96-4(m) as follows: Before a party may file an appeal from an adverse determination, said party shall first file exceptions to the decision within ten (10) days after notice of the decision, which exceptions shall state grounds for the objection to the decision. The exceptions will be directed to the Chairman and filed pursuant to Regulation 18.18. If any of the exceptions are overruled, the party may appeal from the order overruling the exceptions, and shall give notice of appeal within ten (10) days after the decision overruling the exceptions. Any party who is adversely affected by an order allowing the exceptions may also appeal to the Superior Court. The notice of appeal to Superior Court will be served on the registered process agent of the Commission. This information will be provided on the order overruling or allowing exceptions. The appeal shall be made to the judge of the Superior Court.

18.18 An appeal shall be filed in the office of the Chief Counsel and Registered Process Agent, Employment Security Commission of North Carolina, PO Box 25903, Raleigh, NC 27611-5903. An appeal is filed when it is received in the Office of the Chief Counsel and Registered Process Agent. Timeliness of filing of the appeal will be governed by N.C.G.S. 96-15(c2).
Regulation No. 18A - Special Investigation by the Tax Department

18A.10 The following enumerated procedures shall apply in those cases where there is any question raised as to the status of a claimant as an employee of the employer. In the first instance when it is discovered by an employee of the Employment Security Commission that a claimant is alleging (s)he was an employee and the employer is alleging that the claimant was not an employee, the matter will be referred to the Chairman. Referral will be made only when there is an issue in controversy. If the claimant and the employer concur in the status, then there is no issue in controversy and the matter will not be referred. If there is an issue, the claimant worked for the employer in another state, and North Carolina would not be the state to which the employer would pay tax on wages paid to the claimant, then the matter will not be referred. In those matters where there would be no liability to North Carolina, the matter will be resolved through the appropriate state by referral to the Employer Compliance Unit of the Tax Department, Unemployment Insurance Division for that unit to obtain a determination of claimant's status from the appropriate state agency. The Chairman will examine the matter to determine if it should be referred to the Tax Department for an investigation or returned to the appropriate level with instructions. This procedure does not apply to the Tax Department in conducting its normal investigations and audits.

18A.11 If the Chairman determines that the matter should be referred to the Tax Department, the Chairman shall enter an order removing the matter from the division or department from which it was received and refer the matter to the Tax Department.

18A.12 If the Chairman orders the matter referred to the Tax Department, an investigation will be conducted. Once the Tax Department has completed the investigation, the Chairman will be notified of the result. Nothing herein should be construed as changing the normal investigatory procedures of the Tax Auditor or the normal notification of results and attendant actions by the Tax Department.

18A.13 Once the Chairman is notified of the result of the investigation by the Tax Department, the Chairman shall issue Result of Investigation by Tax Department. In the event of an appeal of the Result, the Chairman shall order a hearing before a Hearing Officer. The hearing shall be conducted pursuant to Regulation No. 18. The appeal will be referred to a Hearing Officer if the Tax Department holds the employer to be a liable employer and/or an employer of the claimant and the employer enters a protest to the result or if an aggrieved party enters an appeal within ten (10) days of the mailing of the Result of Investigation by Tax Department. If the investigation causes the issuance of an Unemployment Insurance Tax Assessment and Demand for Payment to the employer, the employer may appeal either or both pursuant to the appeal and/or protest rights set forth on each document. In the absence of a protest by a claimant and/or employer, the matter will be remanded to the appropriate level of the Employment Security Commission.
An appeal from the Result of Investigation by Tax Department shall be filed with the Registered Process Agent, c/o Office of the Chief Counsel, Employment Security Commission of North Carolina, Post Office Box 25903, Raleigh, NC 27611-5903. If mailed, an appeal is filed when it is received in the Office of the Chief Counsel. If the appeal is electronically transmitted, the date the appeal is received shall be determined as specified in ESC Regulation No. 2.20A. The email address of the Chief Counsel is: chief.counsel@esc.state.nc.us. Timeliness of the appeal will be governed by N.C.G.S. §96-15(c2).
Regulation No. 19 - Tax Liability Hearings Upon Application 
For Review and Redetermination of Tax Rates

19.10 (A) An employer applying for review and redetermination of his tax rate pursuant to N.C.G.S. 96-9(c)(3) shall file with the Assistant Director for Tax, Unemployment Insurance Division, Employment Security Commission, at its Central Office in Raleigh, North Carolina, an application setting forth:

(1) Same, address, and official position of person filing the application;
(2) Name, address, and registration of employer;
(3) Brief statement of question involved and reasons for the application for review and redetermination of rate of contribution.

(B) An employer who has applied for review and redetermination of his tax rate may withdraw such application by filing with the Assistant Director for Tax, Unemployment Insurance Division, Employment Security Commission a written notice of withdrawal.

(C) Unless an application is withdrawn, the Assistant Director for Tax, Unemployment Insurance Division, Employment Security Commission shall, within thirty days from the date of the filing of such application, pass upon it and notify the employer of its own ruling by mailing a copy of such ruling to his last known address.

(D) If the Assistant Director for Tax, Unemployment Insurance Division, Employment Security Commission ruling is adverse to the employer, the employer may, within ten days from the date of the mailing of such ruling to the last known address of the employer, file a protest to such ruling and request a hearing. A protest may be filed in person or by mail.

(E) Hearings so requested shall be conducted pursuant to the regulations governing appeals referee's hearings except as otherwise provided in this regulation, except that such hearings shall be held at the Central Office of the Commission in Raleigh unless the employer objects.

(F) In case of an application for a review and redetermination of the rate as hereinafter set forth and pending any hearing or hearings thereon, and until finally adjudicated, the employer shall continue to pay contributions at the rate assigned. If such rate is changed by a ruling of the Commission or the courts, the employer shall either be entitled to a refund or be liable for additional contributions as determined.
19.11  
(A) Hearings shall be heard upon order of the Chairman.

(B) The Tax Department shall assemble the file (file means the employer's master file and Employer’s Quarterly Tax and Wage Reports if such reports are material, deemed necessary, or are in and a part of the employer's master file), shall mail copies to all parties and provide the original to the Chairman.

(C) A Hearing officer, who is a member of the legal staff, shall preside over and conduct the hearing.

(D) All hearings shall be conducted informally and in such a manner as to elicit the facts relevant to the determination of the application. All testimony at the hearing shall be by oath or affirmation and shall be recorded, but need not be transcribed unless an appeal to the Superior Court is entered as provided by statute. The employer may make a written submission of the facts involved and shall be permitted a reasonable opportunity to present oral argument, supplemented by written briefs, upon the question of law involved. The Commission may decide the question on the basis of such stipulation and arguments, or may, in its discretion, set the question for hearing and take such further evidence as it deems necessary.

(E) The employer shall have the burden of proof and will be the first to present evidence. If the employer fails to appear at the hearing, the appeal shall be dismissed.

19.12  
The Commission shall use its discretion as to when adjournment of a hearing shall be granted in order to secure all the evidence that is necessary for a determination of the issues.

19.13  
(A) The Commission and the employer shall be given thirty days to submit a proposed opinion which shall contain findings of fact, the applicable law, and a determination. The time limit may be shortened or enlarged at the discretion of the hearing officer. Once the time has expired to submit a proposed opinion, the file shall be routed to the Chairman for a decision.

(B) A copy of the opinion shall be mailed to the employer at his last known address.

(C) The employer may appeal an adverse ruling to the Superior Court pursuant to N.C.G.S. 96-4(m) and Regulation 18.
Regulation No. 20 - Overpayment Hearings

20.10 Any interested party who feels that the adjudicator's determination of fraudulent or nonfraudulent overpayment of claims benefits is not in accordance with the law may appeal within ten (10) days from the date the determination was mailed.

20.11 An appeal from an adjudicator's determination of fraudulent or nonfraudulent overpayment of benefits shall be heard by any individual authorized to hold hearings pursuant to the regulations governing appeals referee's hearings except as otherwise provided in this regulation, but shall be classified as a higher authority appeal. The individual assigned to hold the hearing shall notify all interested parties of the date, time and place of the hearing; shall have the power and authority to issue subpoenas, conduct hearings, administer oaths, take evidence as necessary; and make findings of fact and conclusions of law on all questions and issues that are raised at the hearing, which shall be published and mailed to all interested parties.

20.12 The issues to be considered at the hearing shall be limited to the following determinations:

(A) whether the party received benefits to which he/she was not entitled and;
(B) whether the party made a false statement or knowingly failed to disclose a material fact for the purpose of obtaining benefits or increasing the amount thereof, as provided in G.S. 96-18.

20.13 Interested parties to the hearing are the claimant, and any other parties necessary to a determination of the issues.

20.14 Any party who knowingly makes a false statement or knowingly fails to disclose a material fact in connection with the payment of benefits is subject to criminal prosecution for a misdemeanor as well as penalties imposed by the Commission. Any person receiving benefits to which they were not entitled:

(A) shall be liable to have such sum deducted from future benefits payable to him/her or to repay the Commission a sum equal to the amount received by him/her;
(B) shall not be entitled to receive benefits for one (1) year if the overpayment is found to have been made because of fraud.

20.15 Appeals of the decision on fraudulent and non-fraudulent overpayment of benefits shall be pursuant to the regulations governing appeals from decisions of the Appeals Referees. The appeal will be forwarded to the Commission, which may affirm, modify, or reverse the decision. Appeals from the decision of the Commission shall be according to N.C.G.S. 96-15(h) and (i).
Regulation No. 20A - Waiver of Overpayments

20A.10 The Commission is without power to waive repayment of overpayments caused by fraud of the claimant and request for waiver of such overpayments will not be considered.

20A.11 As to all other overpayments, claimants may petition the Commission for waiver as provided below. The petition shall be filed with the Assistant Unemployment Insurance Director for Benefits and shall state specifically and concisely the claimant’s grounds for a waiver. The Chairman or his designee shall render a decision upon the petition. The decision shall constitute the final decision of the Commission.

20A.12 (A) Whenever an initial overpayment determination is made, that determination shall contain notice of the Commission's power to waive overpayments and the claimant's right to petition the Commission for waiver and have a hearing upon that petition.

(B) The claimant's petition for waiver must be filed in the same manner as is required for appeals from decisions of Appeals Referees under Regulation No. 14.25(E) no later than ten (10) days after the date the determination provided in (A) above or any subsequent decision on appeal becomes final.

(C) If a claimant is appealing the determination of overpayment as provided in Regulation 20, no petition for waiver will be considered during the pendancy of the appeal and any such Petition received shall be returned to the claimant with notice that his petition may be resubmitted after decision on appeal has become final.

20A.13 Upon the claimant's request, the Chairman or his designee shall afford the claimant an opportunity for a hearing upon the petition. The scope of the hearing shall be limited to the matters set forth in the petition that are reasonably calculated to show good cause for granting the petition. No collateral attack on the decision resulting in the overpayment will be considered. Ten days’ notice of the time and place of the hearing shall be sent to all interested parties. Any regulation to the contrary notwithstanding, the interested parties to a waiver hearing are the claimant and the Commission.

20A.14 In ruling on petitions for waiver, the Chairman or his designee shall consider the degree of the claimant's fault in creating the overpayment and any other matters which, in the opinion of the Chairman or his designee, tend to show that collection of the overpayment would be against equity and good conscience. Except as provided in Regulation 20B, neither the claimant's present economic circumstances nor his present ability to repay is material to the question of whether to waive an overpayment.

20A.15 The relief granted by the Chairman or his designee, if any, may be an unconditional waiver (in whole or in part); or may be on such reasonable conditions as the Chairman or his designee may impose.
20B.10 As to any overpayments of Federal Supplemental Compensation (FSC), the procedure contained in Regulations 20A shall be followed except the Chief Deputy Commissioner or his designee shall waive repayment if he determines that:

(A) the payment of such FSC benefits was made without fault on the part of the individual, and
(B) requiring such recovery would be contrary to equity and good conscience.

20B.11 In determining whether fault exists under 20B.10(A), the following factors shall be considered:

(A) Whether a statement or representation of a material nature was made by the individual in connection with the application for FSC that resulted in the overpayment, and whether the individual knew or should have known that the statement of representation was inaccurate.
(B) Whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for FSC that resulted in the overpayment, and whether the individual knew or should have known that the fact was material.
(C) Whether the individual knew or could have been expected to know that the individual was not entitled to the FSC payment.
(D) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any other action of omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong.
(E) Whether there has been a determination that the overpayment was the result of fraud.

In the event of an affirmative finding on any of the foregoing factors, recovery of the overpayment shall not be waived.

20B.12 In determining whether equity and good conscience exists the following factors shall be considered:

(A) Whether the overpayment was the result of a decision on appeal, and whether there was notice to the individual that the case had been appealed further and that the individual would be required to repay the overpayment in the event of a reversal of the appeal decision.
Whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the individual, and there has been no affirmative finding under Regulation 20B.10(A) above with respect to such individual and such overpayment.

In the event of an affirmative finding on either of the foregoing factors, recovery of the overpayment shall not be waived. For this purpose, an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the individual’s loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time; and extraordinary and lasting financial hardship shall be extraordinary as described above and may be expected to endure for the foreseeable future.

In applying this hardship test in the case of attempted recovery by repayment, a substantial period of time shall be 30 days, and the foreseeable future shall be at least three months. In applying this hardship test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future shall be the longest potential period of benefit entitlement as seen at the time of the request for a waiver determination. In making financial hardship determinations, the agency shall take into account all potential income of the individual and the individual’s family and all cash resources available to the individual and the individual’s family in the time period being considered.
20C.10 (A) Appeals of overpayments pursuant to Regulations 20A and 20B shall be heard by any individual authorized to hold hearings to which ESC Regulation No. 20 is applicable.

(B) The hearing shall be conducted in Raleigh either in person or by telephone and may be conducted outside of Raleigh in the discretion of the individual assigned to hold such hearing.

(C) The individual assigned to hold the hearing shall have the power and the authority to issue subpoenas, administer oaths, conduct hearings, and take evidence as necessary; and shall make findings of fact and conclusions of law on all questions and issues that are raised at the hearing. The hearing shall be in accordance with the regulations governing the Appeals Referee hearings except as otherwise provided in this Section or Regulation 20A and 20B.
20D.10 Terms used in the Interstate Reciprocal Overpayment Recovery Arrangement shall be defined as follows, unless the context clearly requires otherwise:

(A) 'State' includes the District of Columbia, Puerto Rico, and the Virgin islands.

(B) 'Offset' means the withholding of an amount against benefits which would otherwise be payable for a compensable week of unemployment.

(C) 'Overpayment' means an improper payment of benefits, from a state or federal unemployment compensation fund, that has been determined recoverable under the Requesting State's law.

(D) 'Participating State' means a State which has subscribed to the Interstate Reciprocal Overpayment Recovery Arrangement.

(E) 'Paying State' means the State under whose law a claim for unemployment benefits has been established on the basis of combining wages and employment covered in more than one State.

(F) 'Recovering State' means the State that has received a request for assistance from a 'Requesting State.'

(G) 'Requesting State' means the State that has issued a final determination of overpayment and is requesting another State to assist it in recovering the outstanding balance from the overpaid individual.

(H) 'Transferring State' means a State in which a Combined Wage claimant had covered employment and wages in the base period of a paying State, and which transfers such employment and wages to the paying State for its use in determining the benefit rights of such claimant under its law.

(I) 'Liable State' means any state against which an individual files, through another state, a claim for benefits.

20D.11 (A) In the recovery of State or Federal benefit overpayments, the requesting State shall:
(1) Send the recovering State a written request for overpayment recovery assistance which includes:

   (a) Certification that the overpayment is legally collectible under the requesting State's law;
   (b) Certification that the determination is final and that any rights to postponement of recoupment have been exhausted or have expired;
   (c) A statement as to whether the State is participating in a cross-program offset by agreement with the U.S. Secretary of Labor; and,
   (d) A copy of the initial overpayment determination and a statement of the outstanding balance.

(2) Send notice of this request to the claimant; and,

(3) Send to the recovering State a new outstanding overpayment balance whenever the requesting State receives any amount of repayment from a source other than the recovering State (e.g., interception of tax refund, etc.).

(B) In recovering of State or Federal benefit overpayments, the recovering State shall:

(1) Issue an overpayment recovery determination to the claimant which includes at a minimum:

   (a) The statutory authority for the offset;
   (b) The name of the State requesting recoupment;
   (c) The date of the original overpayment determination;
   (d) Type of overpayment (fraud or nonfraud);
   (e) Program type (UI, UCFE, UCX, TRA, etc.);
   (f) Total amount of offset;
   (g) The amount to be offset weekly;
   (h) The right to request redetermination and appeal of the determination to recover the overpayment by offset.

(2) Offset benefits payable for each week claimed in the amount determined under State law.

(3) Provide the claimant with a notice of the amount offset.
(4) Prepare and forward, no less than once a month a check representing the amount recovered made payable to the requesting State, except as provided in Section 20D.12 below.

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

(6) The recovering State shall not redetermine the original overpayment determination.

20D.12 (A) In the recovery of outstanding overpayments in the transferring State, the paying State shall:

(1) Offset any outstanding overpayment it a transferring State(s) prior to honoring a request from any other 'participating State' under this arrangement.

(2) Credit the deductions against the Statement of Benefits Paid to Combined Wage Claimants, Form IB-6 or forward a check to the transferring State as described in 20D.11(B)(4).

(B) Withdrawal of a combined wage claim after benefits have been paid shall be honored only if the combined wage claimant has repaid any benefits paid or authorizes the new liable State to offset the overpayment.

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

(2) The Recovering State (which is the new liable State) shall:

(a) Offset the total amount of any overpayment resulting from the withdrawal of a Combined Wage Claim, prior to the release of any payments to the claimant;
(b) Offset the total amount of any overpayment resulting from the withdrawal of a Combined Wage Claim prior to honoring a request from any other participating State under this arrangement;
(c) Provide the claimant with a notice for the amount offset; and,
(d) Prepare and forward a check representing the amount recovered to the requesting State as described in 20D.II(B)(4).

20D.13 The Recovering State shall offset benefits payable under a State unemployment compensation program to recover any benefits overpaid under a Federal unemployment compensation program (as described in the Recovering State's Agreement with the Secretary of Labor) and vice versa, in the same manner as required under Section 20D-20(B) and (C), as appropriate, if the Recovering State and Requesting State have entered into an agreement with the U.S. Secretary of Labor to implement Section 303(g)(2) of the Social Security Act.
21.10 Any interested party who is aggrieved by the decision by an appeals referee may file an appeal within ten (10) days from the date the decision was mailed. The appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal. Said appeal shall identify the decision of the appeals referee from which appeal is taken by reference to the appeals docket number on said decision; and said appeal shall be signed and dated by the appealing party. Failure to include a timely statement of the grounds of appeal will result in an automatic dismissal of the appeal.

21.11 (A) The Commission shall be deemed an interested party at all stages of the appeal process.

(B) At any time within one (1) year from the date of making a monetary determination, the Commission, on its own initiative, may reconsider such determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit was made as a result of a nondisclosure or misrepresentation of a material fact.

(C) The Commission may remove to itself or transfer to another appeals referee the proceedings on any claim pending before an appeals referee.

(C1) When a proceeding has been removed from an appeals referee to the Commission, the Commission may order that a hearing be conducted by a hearing officer. The hearing officer shall conduct a hearing in accordance with ESC Regulation Nos. 14, 15 and 15A. Following the conclusion of the hearing, the hearing officer shall render a decision in accordance with ESC Regulation No. 14.25. Any appeal of the hearing officer’s decision will be reviewed by the Commission in the same manner that an appeal of an appeal referee’s decision is reviewed pursuant to ESC Regulation No. 21.

(D) The Commission may on its own motion, affirm, modify, or set aside any decision of an appeals referee on the basis of evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it, or may provide for group hearings in such cases as the Commission or Deputy Commissioner may deem proper.

(E) When by these regulations or by a notice given thereunder or an act is required or allowed to be done at or within a specified time, the Commission, for good cause shown may at any time in its discretion with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order. After expiration of the specified period the Commission may permit the act to be done where the failure to act was a result of excusable neglect.
21.12 Any time a Commission member or Deputy Commissioner holds any hearing or conducts any review the rules in Regulation No. 14.12 shall apply. Any communications as to issues of fact or law, either before or after the entry of an order, recommendation or decision, shall be referred to a member of the Commission’s legal staff. A Commission member or Deputy Commissioner may be disqualified on the filing in good faith by a party of a timely and sufficient affidavit of personal bias. Any petition seeking removal or disqualification of a Commission member or Deputy Commissioner shall be filed with the Chairman of the Employment Security Commission.

21.13 (A) The Commission may provide for group hearings for cases involving a common issue affecting all of said claimants.

(B) Whenever it appears that other parties should be joined in order to dispose of all issues, the Commission shall so order and shall grant such continuance and hold such additional hearings as may be necessary.

21.14 Hearings before the Commission shall be heard after due notice to all interested parties, attorneys and legally qualified representatives which notice shall state the purpose of the hearing.

(A) Deputy Commissioner Hearings:

(1) Except as provided in Regulation Nos. 18, 18(A), 19, and 22, the Deputy Commissioner may decide any case appealed to the Commission under any provision in G.S. Chapter 96 on the basis of the record and of evidence previously submitted in such case, or he/she may at his/her discretion hear legal argument or remand the case to an appeals referee or direct the taking of additional evidence.

(2) The Deputy Commissioner’s decision issued pursuant to authority granted in G.S. §96-15 shall be the final decision of the Commission.

(B) Commission Hearings:

All proceedings removed to the Commission under G.S. 96-15(e) shall be heard by a quorum thereof after due notice to all interested parties. Aggrieved parties may appeal a final decision of a Deputy Commissioner or the Commission to the Superior Court.

21.15 In cases where the appellant has appealed a decision by an appeals referee favorable to the appellee, and said appellant fails to pursue the appeal or fails to appear at the Commission hearing within fifteen (15) minutes of the time set for hearing, after having been duly notified of the hearing, the appeal may be dismissed and the appealed decision finalized, subject however, to reopening for good cause as provided in Regulation No. 14.22.
21.16  (A) Copies of the Commission decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the records of the Commission. Said notice of decision shall be in writing and shall state the Commission Decision Number, the names of the parties, the Findings of Fact including the reasons for said findings and a Memorandum of Law, the Decision of the Commission and the appeal rights of the parties. The notice shall be signed by the Deputy rendering the decision for the Commission.

(B) Within ten (10) days from the date the decision was mailed, an interested party who failed to appear at the hearing before the Commission may, by petition, move that the hearing be reopened by the Commission. Upon a showing of good cause by such interested party for failing to appear, the Commission may reopen the hearing and proceed in accordance with this regulation.

(C) All final determinations and decisions shall be conclusive upon all parties in interest including the Commission. The Commission shall reopen a determination or decision or revoke permission for withdrawal of an appeal if (1) it finds that a worker or employer has been defrauded or coerced in connection with the determination, decision or withdrawal of the appeal, and (2) the defrauded or coerced person informs the Commission of the fraud or coercion within sixty (60) days after the coercion has been removed.

(D) Any decision of a Deputy Commissioner or of the Commission shall become final in the absence of a timely appeal therefrom thirty (30) days from the date of mailing of the decision to the parties.

(1) Any motion, petition or request for rehearing or reconsideration of a decision of a Deputy Commissioner, Chief Deputy Commissioner or the full Commission shall be filed with the Chief Counsel. Such motion, petition or request must be filed with the Chief Counsel no later than ten (10) days after the decision was mailed, and a copy must be served on any other party to the proceeding.

(2) Grounds. Post-decision relief may be granted for:

(a) Clerical mistakes in decisions, orders or other parts of the record and errors therein arising from oversight or omission, provided that such corrections may be on the initiative of the Commission or motion of any party;
(b) Mistake, inadvertence, surprise, or excusable neglect;
(c) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new hearing prior to the issuance of the Commission decision in the matter;
(d) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
(e) The decision is void; or,
(f) Any other reason justifying relief from the operation of the decision.

21.17 The Commission may designate certain of the Commission decisions as precedents. The Commission shall be controlled by such precedents except as modified by judicial review. All precedents shall be published and distributed to the adjudicators, appeals referees and other employees of the Commission as is deemed necessary to ensure consistency in proceedings before the Commission. One copy of each precedent decision shall be distributed to each local office of the Employment Security Commission for use by the general public.

21.18 Adjudication and Appeals for Former Commission Employees

(A) The Assistant UI Director for Benefits and Claims or designee is hereby designated as the Adjudicator in cases involving claimants whose last employer was the Employment Security Commission. The authority and duties of the Adjudicator shall be as defined in Regulation No. 2.10 and shall be exercised in accordance with Regulation No. 13.10 - 13.15. All information gathered concerning an issue involving a claimant whose last employer was the Employment Security Commission shall be forwarded by the Claims Supervisor in the local office in which the claim is taken to the Central Office to the attention of the Assistant UI Director for Benefits and Claims. Relevant documents which must be forwarded include, but are not limited to, the claim for benefits, fact finding report and any employer's response to the claim.

(B) An appeal from the determination of the Assistant UI Director and the preparation of the official record shall be in accordance with Regulation No. 13.16 and 13.17.

(C) The official record will be forwarded to the Chairman who shall provide for the taking of evidence by a hearing officer as provided in N.C.G.S. §96-4(m). The conduct of the hearing shall be governed by ESC Regulation Nos. 14 and 15, except that no findings or decision shall be issued by the hearing officer.

(D) After the hearing is concluded, the hearing officer shall forward the official record of the hearing which must include any offer of proposed findings of fact and a proposed decision to the Commission for a review and decision. The final decision of the Commission may be appealed as provided in N.C.G.S. §96-15.
21.19 (A) All testimony at any hearing before an Appeals Referee upon a disputed claim shall be recorded unless the recording is waived by all interested parties, but need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects to being provided a copy of the tape recording of the hearing. Any other provisions of the Employment Security Commission Regulations notwithstanding, any parties receiving the transcript shall pay to the Commission a reasonable fee for the transcript.

(B) A request for a record of hearing by an Appeals Referee shall be filed in the Office of the Chief Appeals Referee and must be received in that office no later than ten (10) days after the mailing date of the acknowledgment of appeal from the Appeals Referee's decision.

(C) The Chief Appeals Referee shall immediately mail to all interested parties a written acknowledgment of the request for the record and a copy of the tape recording of the appeals hearing. The acknowledgment letter shall set forth a schedule for the submission of briefs, memoranda or other written arguments on appeal. Any party objecting to being provided with a tape recording of a hearing must object in writing and the written objection must be received in the Office of the Chief Appeals Referee no later than seven (7) days after the mailing date of the acknowledgment of the request for the hearing record. The written objection must contain an assurance that the objecting party will pay the fee for the transcript as provided in this regulation. If a party is proceeding in forma pauperis, that party must provide the necessary proofs and affidavit as requested by this regulation as part of its written objection to receiving a tape recording. A written acknowledgment of the objection so filed shall be mailed to all interested parties.

(D) As soon as possible following receipt of a party's objection to being provided a tape, the objecting party shall be provided with a transcript and an invoice for the fees charged for the transcript pursuant to this regulation and G.S. 96-15(f).

(E) In any proceeding where a party has filed a written objection to being provided with a tape recording and a written acknowledgment has been issued, any other interested party to the proceeding may request in writing that it be provided with a transcript. Such request must contain an assurance that the requesting party will pay the fees for the transcript as provided in this regulation or must provide the necessary proofs and affidavit the party is proceeding in forma pauperis. Such request must be received in the Office of the Chief Appeals Referee within ten (10) days of the mailing date of the acknowledgment that a party has objected to receiving a tape recording. A transcript and invoice for the cost of providing the transcript fee will be mailed as soon as possible.

(F) The charge for a transcript provided pursuant to G.S. 96-15(f) and this regulation shall not exceed the lesser of sixty-five cents per page or $65.00 per transcript to each party receiving a transcript.
(G) The Commission may waive the fee for a transcript in such circumstances as it in its sole discretion deems appropriate.

(H) The Commission shall waive the fee in the case of an appeal in forma pauperis, supported by such proofs as are required in G.S. 1-110, that is, when a person proves, by one or more witnesses, that he has a good cause of action and makes affidavit that he is unable to comply with the provisions of this regulation for payment.

(I) Payment of the fees prescribed herein shall be by cash, money order, or certified check, except that an agency of state or federal government, a county or municipality may pay by its customary draft.

(J) When any individual or entity, not an interested party in a proceeding, requests a copy of a tape recording or transcript of a hearing, said request shall be evaluated pursuant to N.C.G.S. §96-4(t). If, in light of all provisions governing disclosure, it is determined that said record can be furnished, it will be provided in the form of a duplicate tape recording, unless a transcript has been prepared for use in proceedings pursuant to Chapter 96. Regulation No. 25 shall govern fees associated with such a request.
Regulation No. 22 - Labor Disputes

22.10 A labor dispute is a dispute between an employer and its employees about wages, hours, working conditions, or who shall speak for the employees, between those who alone could be directly concerned in such controversy. A labor dispute in the State of North Carolina exists whenever one or more employees become totally or partially unemployed (work less than the equivalent of three (3) customary scheduled full time days of the employer) because of any of the following conditions:

(A) Wages, hours, working conditions or who shall speak for employees are actually being challenged at the factory, establishment or other premises at which they are currently or were last employed.

(B) Wages, hours, working conditions or who shall speak for employees are actually being challenged at another factory, establishment or other premises within the State of North Carolina, owned or operated by the same employing unit which owns or operates the factory, establishment or other premises at which they are currently or were last employed, and which supplies materials or services necessary to the continued and usual operation of the premises at which they are or were last employed.

22.11 Upon the filing by an individual of a claim for benefits allegedly involving unemployment due to a labor dispute, the local office shall immediately notify the employer of the claim filed. Claims involving labor dispute issues shall not be referred to an adjudicator by the local office.

22.12 Within five (5) days of receipt of the notice of a claim filed involving unemployment due to a labor dispute, the employer shall provide to the local office a list containing the names, complete mailing addresses (including zip codes) and social security numbers of all employees affected. The employer also shall provide to the local office a notification which includes a statement as to the first day of unemployment, the reason for the labor dispute, the place where the labor dispute is or was in progress and any other relevant information.

22.13 Upon receipt of the list of employees, the local office shall send said list to the office of the Chief Counsel. The Chief Counsel or designee shall review the matter and determine whether an issue of unemployment due to a labor dispute exists and whether the list complies with ESC Regulation No. 22.12. If an issue of unemployment due to a labor dispute exists, the Chief Counsel or designee shall refer the matter in writing to the Chairman or designee for hearing pursuant to ESC Regulation No. 22.14. If no issue of unemployment due to a labor dispute exists, the Chief Counsel or designee shall refer the matter in writing for adjudication pursuant to ESC Regulation No. 13.
22.14  (A) Upon determining that an issue of unemployment due to a labor dispute exists, the Chief Counsel or designee shall advise and consult with the local office(s) regarding the setting of dates to take claims and to provide to each individual on the list of employees notification of potential rights to unemployment insurance benefits.

(B) Hearings involving an issue of unemployment due to a labor dispute shall be heard upon order of the Chairman by an Appeals Referee designated as a Special Deputy Commissioner who, after consulting with the local office(s), shall set date(s) for the hearing(s). The hearing(s) shall be conducted pursuant to ESC Regulation Nos. 14 and 15. After the conclusion of the hearing(s), the Special Deputy Commission shall render a decision in accordance with ESC Regulation No. 14.25.

(C) The decision of the Special Deputy Commissioner shall become final within ten (10) days from the date the decision was mailed unless an appeal is filed. The appeal is filed when it is received in an office of the Employment Security Commission, or an agent state. Evidence of the date of filing shall be the date noted or stamped on the document by any office of the Employment Security Commission. The appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal. Said appeal shall identify the decision from which appeal is taken by reference to the docket number on said decision; and said appeal shall be signed and dated by the appealing party. The office of the Employment Security Commission receiving the appeal shall immediately transmit the appeal to the office of the Chairman or designee.

(D) Any appeal shall be heard and decided by the Chairman, designee of the Chairman, or the full Commission upon referral by the Chairman. Failure to include a timely statement of the grounds of appeal will result in dismissal of the appeal.

22.15 The issues to be determined in cases involving labor dispute hearings shall be limited to:

(A) Whether or not a labor dispute existed, and if so, a determination of the beginning and ending dates of the labor dispute.

(B) The reasons for the labor dispute.

(C) Whether any individual is disqualified to receive benefits because that individual’s total or partial unemployment is caused either by a labor dispute in active progress at the factory or other business where that individual is or was last employed or by a labor dispute at another place owned and operated by the same employing unit which supplies materials or services necessary to the continued operation of the business place where that individual is or was last employed, as provided in G.S. §96-14(5).

(D) As otherwise ordered by the Chairman or designee.
22.16 Interested parties to the hearing are the employer and any of its current or past employees who have filed claims pursuant to this Regulation or other necessary parties affected by an alleged labor dispute as ordered by the Special Deputy Commissioner assigned to hold and decide the matter.

22.17 An individual disqualified to receive benefits because of a labor dispute shall continue to be disqualified after the dispute has ceased to be in active progress for such period of time as is necessary for the business to physically resume operations.

22.18 Nothing herein shall be construed to be contrary to federal or state constitutional, statutory or case law. If any final decision by a court of competent jurisdiction holds any part of this regulation invalid, that part is ipso jure repealed.
Regulation No. 23 - Confidentiality of Employment Service Division Information

23.10 Information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons, or groups of persons in the course of administering the State Public Employment Service Program shall be disclosed only pursuant to law, including by confidentiality waiver as provided in Commission Regulation 24.10(F).
Regulation No. 24 - Requests for Documents and Records

24.10 Requests for inspection or copying of information from records in the custody of the Employment Security Commission shall be made and acted upon as provided in the following sections:

(A) Any person who desires to inspect or copy any record shall submit a written request to that effect to the Legal Department of the Employment Security Commission or the division of the Employment Security Commission which has custody of the record.

(B) Each request should reasonably describe the record or records sought; i.e. in sufficient detail to permit identification and location thereof with a reasonable amount of effort. The request should specify, when possible, the subject matter of the record, the date or approximate date when made, the place where made, the person or office that made it, and any other pertinent identifying details such as a form number.

(C) If the description is insufficient so that a professional employee who is familiar with the subject area of the request cannot locate the record with a reasonable amount of effort, the individual processing the request shall notify the applicant and, to the extent possible, indicate the additional information required.

(D) The request will be evaluated in light of all federal regulatory and state statutory provisions which govern disclosure of the items requested. The individual responsible for determining whether a request for agency records will be complied with in whole or in part will initiate a search for the records within a reasonable time after the request is made. If it is determined that the request will be denied, a reply denying the request will be made in writing to the requester with a brief statement of the reasons for the denial.

(E) To the extent required to prevent a clearly unwarranted invasion of personal privacy or to comply with applicable law prohibiting disclosure of specific information, the individual authorized to disclose information from a record may delete identifying details when the requested record is made available. Justification for the deletion shall be explained in writing upon request.

(F) Nothing in these Regulations shall be construed to prevent the Commission, upon written request and on a reimbursement basis which complies with the requirement of Regulation No. 25, from disclosing any information or records obtained from and releasable to a claimant, employer, applicant, or other persons, to a third party or person clearly identified by name and address in said request and said request shall contain a statement that the claimant, employer, applicant, or other person, waives confidentiality as to the information requested.
(G) When the Employment Security Commission requests an individual or employing entity to supply information about that individual or employing entity, the Employment Security Commission shall notify the individual or employing entity of the use that will be made of the information, which persons outside of the Employment Security Commission might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. Furthermore, the individual or employing entity shall be notified that, while the Employment Security Commission takes normal precautions to keep all such information confidential and privileged pursuant to N.C.G.S. §96-4(t), the Employment Security Commission does not guarantee the confidentiality or privilege of any information transmitted to it by way of the Internet, as it is not possible, and does not accept liability for any loss of confidentiality or privilege resulting from the transmission of the information to the Employment Security by way of the Internet. This notice may be given by providing a copy of this Regulation, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, or in manuals.

(H) Nothing in these Regulations shall be construed to prevent the Employment Security Commission, upon written request and on a reimbursement basis that complies with the requirements of ESC Regulations No. 25, from releasing or disclosing to a third party or person information as to an individual's quarterly wage records, including the amount of such wages and names and addresses of the employer(s) reporting wages for said individual; provided that the third party or person is clearly identified by name and address in said request and the request contains a statement that the individual waives confidentiality as to the information requested, and the employing entity from whom such information was collected has been properly provided notice in accordance with ESC Regulation No. 24.10(G).

24.11 Procedure when served with a subpoena - Any officer or employee of the Commission, upon being served with a subpoena or other compulsory process, shall immediately bring the matter to the attention of his/her superior who shall immediately telephone the Legal Department of the Commission and supply the following information:

(A) The caption of the case, the names of the parties, and other general information;
(B) The nature of the case, if known;
(C) The name of the employee served with the subpoena;
(D) The time and place where the employee is directed to appear;
(E) What records, if any, the employee is directed to produce.
Regulation No. 25 - Copies of Records and Fees for Services

(A) (1) Search of the records of the Employment Security Commission by custodial or clerical personnel $4.40 for each one-quarter hour or fraction thereof of employee worktime required to reach or obtain the records to be searched or make the necessary search.

(2) If the search for the requested record requires transportation of the searcher to the location of the records or transportation of the records to the searcher, at a cost in excess of $5.00, actual transportation costs will be added to the search time cost.

(3) If the search for requested records requires batch processing by computer, an estimate will be provided to the requesting party as to the Employment Security Commission's cost of producing the information to the requesting party. The requesting party will be billed for the actual cost of producing the requested information.

(4) Any other provisions of this Regulation notwithstanding, an individual receiving records or transcripts or documents under whatever name shall be charged a minimum fee of no less than $15.00.

(B) The fees payable pursuant to this subpart for obtaining requested copies of records which have been made available for inspection pursuant to applicable law will be computed on the following basis subject to the following conditions:

(1) Standard Copying Fee: $0.01 per page (This fee may be waived at the discretion of the Employment Security Commission.)

(2) Standard Transcript Fee: $3.75 per quarter hour or fraction thereof except for copies provided under G.S. §96-15(f).

(3) Not more than 10 copies of any document will be furnished.

(4) Standard Duplicate Tape Recording Fee: $3.75 per tape except for copies provided under G.S. §96-15(f).

(5) Overhead Processing Costs and Invoicing: $4.50 per invoice.

(C) Payment of Fees -

(1) Payment of fees as set forth in paragraphs (A) and (B) of Regulation No. 25 shall be made in cash, money order or certified check, except that an agency of state or federal government, a county or municipality may pay by its customary draft.

(2) Payment of the known and officially estimated searching and copying fees shall be made or assured to the satisfaction of the individual retrieving the information prior to the performance of substantial searching or copying services.

(3) No fees shall be charged for those records or documents customarily furnished to the parties in connection with a contested claim for unemployment insurance benefits or tax (contributions) liability matters except as provided by statute.
(4) No fees shall be charged to the North Carolina State Bureau of Investigation for searching and copying records pursuant to provisions (A)(1) through (A)(3) above when requested by the Bureau as part of an official investigation.

(5) The individual transmitting any records, transcript or document under whatever name subject to a fee charge under this Regulation shall notify the applicant to remit the fee to the Employment Security Commission, ATTN: Finance and Budget, Post Office Box 25903, Raleigh, North Carolina 27611.
Regulation No. 26 - Setoff Debt Collection Act Hearings

26.10 Hearings pursuant to G.S. 105A-B(a) shall be conducted by an Appeals Referee in accordance with Regulation Nos. 14 and 15.

26.11 Appeals from the Appeals Referee shall be pursuant to G.S. 96-15(c) and (e) and Regulation 21.

26.12 Appeals from the final decision of the Commission shall be pursuant to G.S. 96-15(h) and (i).
27.10 Copies of all records maintained by any unit responsible for initial or first-level adjudication of an issue regarding a claim shall be kept on file for a minimum of 90 days after the expiration of any appeals period; thereafter, only copies of final determinations will be retained, and the Employment Security Commission may destroy any records which it determines no longer serve any legal, administrative, or other useful purposes.

27.11 Copies of all records from Appeals Referee hearings shall be kept on file for a minimum of 90 days after the expiration of any appeals period; thereafter, only copies of final decisions will be retained, and the Employment Security Commission may destroy any records which it determines no longer serve any legal, administrative, or other useful purposes.

27.12 Copies of all records from Commission and Deputy Commissioner hearings shall be kept on file for one (1) year after the expiration of any appeals period at the office of the Employment Security Commission in Raleigh, North Carolina. Thereafter, the Employment Security Commission may destroy any records which it determines no longer serve any legal, administrative, or other useful purposes.