

G.S. 150B-21.3A Report for 25 Subchapter 01C, PERSONNEL ADMINISTRATION

Agency - State Human Resources Commission

Comment Period - April 17, 2014 through June 27, 2014

Date Submitted to APO -

Rule Section	Rule Citation		Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
SECTION .0200 - GENERAL EMPLOYMENT POLICIES	25 NCAC 01C .0201	SCOPE AND AUTHORITY	Eff. February 1, 1976	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0202	EQUAL EMPLOYMENT OPPORTUNITY	Amended Eff. October 1, 2004	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0210	POLITICAL ACTIVITIES	Eff. February 1, 1976	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0215	EMPLOYMENT CONTRACTS	Amended Eff. June 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
SECTION .0300 - PERSONNEL RECORDS AND REPORTS	25 NCAC 01C .0301	MAINTENANCE OF RECORDS	Amended Eff. October 1, 2004	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0303	PUBLIC INSPECTION	Amended Eff. November 1, 1988	Unnecessary	No		Yes	Unnecessary	One or more comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	25 NCAC 01C .0304	CONFIDENTIAL INFORMATION IN PERSONNEL FILES	Amended Eff. May 1, 2008	Unnecessary	No		Yes	Unnecessary	One or more comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	25 NCAC 01C .0307	SAFEGUARDING CONFIDENTIAL INFORMATION	Eff. February 1, 1976	Unnecessary	No		Yes	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
SECTION .0400 - APPOINTMENT	25 NCAC 01C .0401	APPOINTMENT DEFINED	Eff. February 1, 1976	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0402	PERMANENT APPOINTMENT	Amended Eff. October 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0403	TRAINEE APPOINTMENTS	Amended Eff. October 1, 2004	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0404	PROBATIONARY APPOINTMENTS	Amended Eff. August 1, 1995	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0405	TEMPORARY APPOINTMENT	Amended Eff. August 1, 1995	Unnecessary	No		Yes	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	25 NCAC 01C .0406	PERMANENT TRAINEE OR TIME-LIMITED PART-TIME	Amended Eff. August 1, 1995	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0407	TEMPORARY PART-TIME APPOINTMENT	Amended Eff. August 1, 1995	Unnecessary	No		Yes	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	25 NCAC 01C .0408	INTERMITTENT APPOINTMENT	Amended Eff. August 1, 1995	Unnecessary	No		Yes	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0409	PRE-VOCATIONAL STUDENT APPOINTMENT	Amended Eff. December 1, 1985	Unnecessary	No		Yes	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0411	TYPES OF APPOINTMENTS PROVIDING PROBATIONARY PERIOD CREDIT	Amended Eff. December 1, 1988	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
25 NCAC 01C .0412	PERSONNEL CHANGES SUBJECT TO/NOT SUBJECT TO A PROBATIONARY PERIOD	Amended Eff. March 1, 1996	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code	
SECTION .0500 - WORK SCHEDULE	25 NCAC 01C .0501	STANDARD WORKWEEK	Amended Eff. October 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note

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	25 NCAC 01C .0502	VARIABLE WORK SCHEDULE	Amended Eff. October 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0503	IMPLEMENTATION	Amended Eff. October 1, 1992	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0504	LIMITATIONS	Amended Eff. October 1, 1992	Necessary with substantive public interest	No		No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	25 NCAC 01C .0507	HOURS OF WORK DUE TO TIME CHANGE	Amended Eff. August 1, 1985	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0509	WORK OPTIONS PROGRAM	Amended Eff. November 1, 1988	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
SECTION .0700 - SECONDARY EMPLOYMENT	25 NCAC 01C .0701	POLICY	Amended Eff. October 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0702	AGENCY RESPONSIBILITY	Amended Eff. October 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0703	EMPLOYEE RESPONSIBILITY	Eff. October 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
SECTION .0800 - REQUIREMENTS FOR TELEWORKING PROGRAMS	25 NCAC 01C .0801	PURPOSE	Amended Eff. October 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0802	COVERED EMPLOYEES	Eff. April 1, 2001	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0803	DEFINITIONS OF TERMS	Eff. April 1, 2001	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0804	OFFICE OF STATE PERSONNEL RESPONSIBILITIES	Amended Eff. October 1, 2004	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0805	AGENCY DESIGNATES POSITION/EMPLOYER	Eff. April 1, 2001	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0806	CONDITIONS OF EMPLOYMENT	Eff. April 1, 2001	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0811	DESIGNATION OF TERMS OF TELEWORKING ARRANGEMENTS	Eff. July 18, 2002	Unnecessary	No		No	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	25 NCAC 01C .0813	TERMINATION OF TELEWORKING ARRANGEMENT	Eff. July 18, 2002	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
SECTION .0900 - EMPLOYEE RECOGNITION PROGRAMS	25 NCAC 01C .0901	STATE PERSONNEL RESPONSIBILITY	Recodified from 25 NCAC 01J .0401 Eff. December 29, 2003	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .0902	AGENCY RESPONSIBILITY	Recodified from 25 NCAC 01J .0404 Eff. December 29, 2003	Unnecessary	No		Yes	Unnecessary	One or more comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	25 NCAC 01C .0903	ELIGIBILITY REQUIREMENTS	Amended Eff. October 1, 2006	Unnecessary	No		Yes	Unnecessary	One or more comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
SECTION .1000 - SEPARATION	25 NCAC 01C .1001	DEFINED	Recodified from 25 NCAC 01D .0501 Eff. December 29, 2003	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .1002	RESIGNATION	Amended Eff. October 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .1003	RETIREMENT	Recodified from 25 NCAC 01D .0503 Eff. December 29, 2003	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note

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	25 NCAC 01C .1004	REDUCTION IN FORCE	Amended Eff. October 1, 2009	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .1005	DISMISSAL	Recodified from 25 NCAC 01D .0505 Eff. December 29, 2003	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .1006	VOLUNTARY RESIGNATION WITHOUT NOTICE	Amended Eff. September 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .1007	UNAVAILABILITY WHEN LEAVE IS EXHAUSTED	Amended Eff. January 1, 2007	Necessary with substantive public interest	No		No	Necessary with substantive public interest	No comments with merit	Necessary with substantive public interest and must be readopted	Agency must readopt
	25 NCAC 01C .1008	APPOINTMENT ENDED	Amended Eff. October 1, 2004	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note
	25 NCAC 01C .1009	SEPARATION: PAYMENT OF VACATION LEAVE	Amended Eff. December 1, 2008	Necessary without substantive public interest	No		No	Necessary without substantive public interest	No comments with merit	Necessary without substantive public interest and should remain in effect without further action	Keep in Code - Update History Note

RRC STAFF OPINION

PERIODIC REVIEW AND EXPIRATION OF EXISTING RULES REPORT

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: State Human Resources Commission

REPORT: 25 NCAC Subchapter 01C

RECOMMENDED ACTION:

- X Note staff's comment
- X Find the comments have merit for Rules 25 NCAC 01C .0303, .0902 and .0903 and designate those Rules as "Necessary with Substantive Public Interest."

COMMENT:

In its submission, the State Human Resources Commission sent a report and three separate documents containing comments and the agency response. In order to assist the Commission in its review, staff has compiled the rules, comments, the agency response, and staff's recommendations into one document. Staff does not anticipate the need to create a Staff Opinion for future reports, but believes that given that the process is new and these comments are spread among multiple documents, this would be of assistance to the Commission.

Staff relied upon G.S. 150B-21.3A and 21.9 in making the recommendations set forth below. The relevant portions of the statutes used in the review are highlighted on the next two page of this document.

Staff's interpretation of the law is that a public comment must be an objection to the Rule or the classification. Assuming the comment rises to that level, the Commission must then determine whether the public comment has merit. G.S. 15B-21.3A(c)(2) states that the comment has merit if it addresses the specific substance of the rule and relates to any of the Commission's standards of review pursuant to G.S. 150B-21.9. Those standards are that the rule is reasonably necessary to implement a law; it is clear and unambiguous; it is within the agency's statutory authority; and the agency followed the Administrative Procedure Act.

As set forth in this Staff Opinion, staff believes that the comments for Rules 25 NCAC 01C .0303, .0902 and .0903 have merit and the Commission should designate those Rules as "Necessary with Substantive Public Interest."

§ 150B-21.3A. Periodic review and expiration of existing rules.

(a) Definitions. – For purposes of this section, the following definitions apply:

- (3) Necessary with substantive public interest. – Means any rule for which the agency has received public comments within the past two years. A rule is also "necessary with substantive public interest" if the rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.
- (4) Necessary without substantive public interest. – Means a rule for which the agency has not received a public comment concerning the rule within the past two years. A "necessary without substantive public interest" rule includes a rule that merely identifies information that is readily available to the public, such as an address or a telephone number.
- (5) Public comment. – Means written comments objecting to the rule, in whole or in part, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.
- (6) Unnecessary rule. – Means a rule that the agency determines to be obsolete, redundant, or otherwise not needed.

...

(c) Review Process. – Each agency subject to this Article shall conduct a review of the agency's existing rules at least once every 10 years in accordance with the following process:

- (1) Step 1: The agency shall conduct an analysis of each existing rule and make an initial determination as to whether the rule is (i) necessary with substantive public interest, (ii) necessary without substantive public interest, or (iii) unnecessary. The agency shall then post the results of the initial determination on its Web site and invite the public to comment on the rules and the agency's initial determination. The agency shall also submit the results of the initial determination to the Office of Administrative Hearings for posting on its Web site. The agency shall accept public comment for no less than 60 days following the posting. The agency shall review the public comments and prepare a brief response addressing the merits of each comment. After completing this process, the agency shall submit a report to the Commission. The report shall include the following items:
 - a. The agency's initial determination.
 - b. All public comments received in response to the agency's initial determination.
 - c. The agency's response to the public comments.
- (2) Step 2: The Commission shall review the reports received from the agencies pursuant to subdivision (1) of this subsection. If a public comment relates to a rule that the agency determined to be necessary and without substantive public interest or unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as necessary with substantive public interest. For purposes of this subsection, a public comment has merit if it addresses the specific substance of the rule and relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a). The Commission shall prepare a final determination report and submit the report to the Committee for consultation in accordance with subdivision (3) of this subsection. The report shall include the following items:
 - a. The agency's initial determination.
 - b. All public comments received in response to the agency's initial determination.
 - c. The agency's response to the public comments.
 - d. A summary of the Commission's determinations regarding public comments.
 - e. A determination that all rules that the agency determined to be necessary and without substantive public interest and for which no public comment was received or for which the Commission determined that the public comment was without merit be allowed to remain in effect without further action.

- f. A determination that all rules that the agency determined to be unnecessary and for which no public comment was received or for which the Commission determined that the public comment was without merit shall expire on the first day of the month following the date the report becomes effective in accordance with this section.
- g. A determination that all rules that the agency determined to be necessary with substantive public interest or that the Commission designated as necessary with public interest as provided in this subdivision shall be readopted as though the rules were new rules in accordance with this Article.

...

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. – The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

Rule 25 NCAC 01C .0303

25 NCAC 01C .0303 PUBLIC INSPECTION

The information listed in G.S. 126-23 shall be made available for inspection and examination and copies thereof made by any person during regular business hours, subject to the following provisions:

- (1) All disclosures of records shall be accounted for by keeping a written record of the following information: name of employee, information disclosed, data information requested, name and address of the person to whom the disclosure is made. The information must be retained for a period of two years. This does not apply to the processing of personnel records or credit references.
- (2) Upon request, record of disclosure shall be made available to the employee to whom it pertains.
- (3) An individual examining a personnel record may copy the information; any available photocopying facilities may be provided and the cost may be assessed to the individual.

*History Note: Authority G.S. 126-23; 126-26;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; October 1, 1977.*

Public Comment from State Employees Association of North Carolina (SEANC):

SEANC submits that the following rules designated as “unnecessary” by the SHRC review are in fact “necessary without substantive public interest” and should be retained because they provide important rights and benefits to State employees: 25 NCAC 01C .0303, .0304, .0307, .0405, .0407, .0902 and .0903.

These three rules provide the following substantive requirements that benefit State employees that would be lost if the rules were to expire under the periodic review process due to being designated “unnecessary”:

25 NCAC 01C .0303 requires State agencies to create a written record accounting for records requests for information from a State employee’s personnel file under G.S. 126-23 and to make that information available, upon request, to the employee whose personnel file information was revealed.

As best as SEANC can discern, all three sections establish important rights and procedures that benefit State employees which are not explicitly provided anywhere else by rule or statute. Thus, it is necessary to retain these rules to preserve these unique requirements.

Agency Response:

This rule is not required by any Statute either in Chapter 126 or Chapter 132 and as a practical matter is not currently enforced as written because of the new human resources information system that was implemented in 2008 which changed the way public information is stored and requests were handled. This rule imposes burdens on government agencies that make the rule impossible to enforce because of the volume of public records requests and moreover, there is no longer one central distribution point for releasing public information as contemplated by this rule. Because public records requests for information may be directed to a variety of agencies (i.e., the agency which employs the employee, the Governor's office, the Office of State Human Resources, or the State Controller's Office which houses the electronic HR database), it is therefore difficult to track requests in the manner described by this rule. In addition, the majority of public records requests are mass data requests which cross multiple agencies and employees, so to maintain disclosure records at the individual employee personnel file level is very burdensome because it is impossible as a practical matter. Many news media outlets such as the News and Observer and the Charlotte Observer regularly request data "dumps" of all public information for all State employees which they regularly publish on their website. As a result, any person wanting public information, including co-workers or the general public, can go directly to the media websites and obtain the public information without the knowledge of the agency or the knowledge of the individual employee. Article 7 of G.S. 126 and G.S. 132.6 clearly outlines the rights

and responsibilities associated with the release of public records and therefore, these rules are not necessary. We have also had problems in the past with employees contacting requestors of public information to try to find out why they are asking for their public information. This practice has specifically caused employee relations problems when the requestor is a co-worker. G.S. 132-6(b) states that no person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request. Finally, Article 7 of G.S. 126 and G.S. 132.6 clearly outlines the rights and responsibilities associated with the release of public records and therefore, these rules are not necessary.

Staff Recommendation:

Staff recommends finding that the public comment has merit and moving the designation of this Rule to “Necessary with Substantive Public Interest.” The comment specifically addresses processes for reviewing information that appear to be necessary to implement the law. Staff notes G.S. 126-23, which states:

§ 126-23. Certain records to be kept by State agencies open to inspection.

(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment to State service.
- (4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.
- (5) Current position.
- (6) Title.
- (7) Current salary.
- (8) Date and amount of each increase or decrease in salary with that department, agency, institution, commission, or bureau.
- (9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that department, agency, institution, commission, or bureau.
- (10) Date and general description of the reasons for each promotion with that department, agency, institution, commission, or bureau.
- (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the department, agency, institution, commission, or bureau. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the head of the department setting forth the specific acts or omissions that are the basis of the dismissal.

- (12) The office or station to which the employee is currently assigned.
- (b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.
- (c) Subject only to rules and regulations for the safekeeping of the records, adopted by the State Human Resources Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Except as provided in subsection (d) of this section, any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.
- (d) Notwithstanding any other provision of this section, persons in the custody of, or under the supervision of, the Division of Adult Correction and persons in the custody of local confinement facilities are not entitled to access to the records made public under this section and are prohibited from obtaining those records, absent a court order authorizing access to, or custody, or possession.
- (e) An attorney investigating allegations of unlawful misconduct or abuse by a Division of Adult Correction employee may request, and shall be provided with, information sufficient to identify the full name or names of the employee alleged to be involved in the misconduct or abuse in the current position of the employee within the Division; or, the last position held by the employee and the last date of employment by the Division. The attorney may not give the offender copies of departmental records or official documents absent a court order authorizing access to, or custody, or possession. (1975, c. 257, s. 1; c. 667, s. 2; 2007-508, s. 4; 2010-169, s. 18(a); 2011-145, s. 19.1(h); 2011-324, s. 1.1(b); 2013-382, s. 9.1(c).)

It appears to staff that the comment addresses a requirement to make records for safekeeping, and that this information be made available to the individual.

Rule 25 NCAC 01C .0304

25 NCAC 01C .0304 CONFIDENTIAL INFORMATION IN PERSONNEL FILES

- (a) Except as provided in G.S. 126-23 and G.S. 126-24, personnel files of State employees are not subject to inspection and examination. .
- (b) Agencies shall maintain in personnel records only information that is relevant to accomplishing personnel administration purposes.
- (c) Information used in making a determination about employment or other personnel actions shall, to the extent practical, be obtained directly from the individual. There may be instances where it is necessary to obtain information from other sources. This may be obtained either directly from those sources or by the use of a consumer reporting agency. If the consumer reporting agency is utilized, the requirements of the Fair Credit Reporting Act, Title VI of The Consumer Credit Protection Act (Public Law 91-508) must be followed.
- (d) All information in an employee's personnel file shall be open for inspection and examination as set forth in G.S. 126-24. For this purpose, supervisor is any individual in the chain of administrative authority above a given state employee within a pertinent state agency. An official is a person who has official or authorized duties or responsibilities in behalf of an agency; it does not imply a necessary level of duty or responsibility. This right to access includes the circumstances where one state agency is considering for employment a person who is or has been employed in another state agency; the head of the latter agency may release to an official of another agency information relative to the employee's job performance.
- (e) Each individual requesting access to confidential information shall submit proof of identity.
- (f) A record shall be made of each disclosure except to the employee or the supervisor.

*History Note: Authority G.S. 126-24; 126-26; 126-29;
Eff. February 1, 1976;
Amended Eff. May 1, 2008; October 1, 2004, November 1, 1988; December 1, 1978; October 1, 1977.*

Public Comment from SEANC:

SEANC submits that the following rules designated as “unnecessary” by the SHRC review are in fact “necessary without substantive public interest” and should be retained because they provide important rights and benefits to State employees: 25 NCAC 01C .0303, .0304, .0307, .0405, .0407, .0902 and .0903.

These three rules provide the following substantive requirements that benefit State employees that would be lost if the rules were to expire under the periodic review process due to being designated “unnecessary”:

25 NCAC 01C .0304 requires, among other things, that State agencies maintain in personnel records information that is relevant to accomplishing personnel administrative purposes.

As best as SEANC can discern, all three sections establish important rights and procedures that benefit State employees which are not explicitly provided anywhere else by rule or statute. Thus, it is necessary to retain these rules to preserve these unique requirements.

Agency Response:

G.S. 126, Article 7 and G.S. 132.6 clearly outlines the rights, responsibilities and penalties associated with the maintenance and release of public and confidential records and therefore, this rule is not necessary. *More specifically, G.S. 126-22(3) defines “personnel file” as any employment-related or personal information gathered by an employer, the Retirement System, Division of the Department of State Treasurer, or by the Office of State Human Resources. Employment related information contained in the personnel file includes information related to an individual's application, selection, promotion, demotion, transfer, leave, salary, contract for employment, benefits, suspension, performance evaluation, disciplinary actions, and termination. Personal information*

contained in a personnel file includes an individual's home address, social security number, medical history, personal financial data, marital status, dependents, and beneficiaries.

Staff Recommendation:

Staff does not believe that this comment has merit, as it does not appear to fall within the purview of the Commission's standards of review in G.S. 150B-21.9.

Rule 25 NCAC 01C .0307

25 NCAC 01C .0307 SAFEGUARDING CONFIDENTIAL INFORMATION

In order to insure that security and confidentiality of records, each agency shall establish administrative, technical and physical controls to protect confidential information from unauthorized access or disclosure.

*History Note: Authority G.S. 126-23; 126-26;
Eff. February 1, 1976.*

Public Comment from SEANC:

SEANC submits that the following rules designated as “unnecessary” by the SHRC review are in fact “necessary without substantive public interest” and should be retained because they provide important rights and benefits to State employees: 25 NCAC 01C .0303, .0304, .0307, .0405, .0407, .0902 and .0903.

These three rules provide the following substantive requirements that benefit State employees that would be lost if the rules were to expire under the periodic review process due to being designated “unnecessary”:

25 NCAC 01C .0307 requires State agencies to establish administrative, technical and physical controls to protect confidential information from unauthorized access or disclosure.

As best as SEANC can discern, all three sections establish important rights and procedures that benefit State employees which are not explicitly provided anywhere else by rule or statute. Thus, it is necessary to retain these rules to preserve these unique requirements.

Agency Response:

G.S. 126, Article 7 and G.S. 132.6 clearly outlines the rights, responsibilities and penalties associated with the maintenance and release of public and confidential records and therefore, this rule is not necessary. More specifically, G.S. 126-27 and G.S. 126-28 outlines specific penalties for permitting access to confidential personnel file information. Penalties for allowing access to confidential personnel file information includes a possible guilty verdict of a Class 3 misdemeanor and fines up to \$500. These penalties are communicated to all HR staff that has access to confidential personnel file information.

Staff Recommendation:

Staff does not believe this comment has merit. While staff notes that this rule does require safekeeping, and G.S. 126-23 speaks to the State Human Resources Commission writing rules for safekeeping of records, staff does not believe this Rule establishes any standards for agencies. Therefore, it does not appear that this Rule is necessary as written.

Rules 25 NCAC 01C .0405 and .0407

25 NCAC 01C .0405 TEMPORARY APPOINTMENT

(a) A temporary appointment is an appointment for a limited term, normally not to exceed three to six months, to a permanent or temporary position. Upon request, the Office of State Personnel shall approve a longer period of time; but in no case shall the temporary employment period exceed 12 consecutive months. (Exceptions for students and retired employees: Students are exempt from the 12-months maximum limit. If retired employees sign a statement that they are not available for nor seeking permanent employment, they may have temporary appointments for more than 12 months. "Retired" is defined as drawing a retirement income and social security benefits.)

(b) Employees with a temporary appointment do not earn leave, or receive total state service credit, health benefits, retirement credit, severance pay, or priority reemployment consideration.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978.*

25 NCAC 01C .0407 TEMPORARY PART-TIME APPOINTMENT

A temporary part-time appointment is an appointment of less than full-time for a limited term normally not to exceed three to six months. Upon request, the Office of State Personnel shall approve a longer period of time; but in no case shall the temporary employment period exceed 12 consecutive months. (Exception for students and retired employees: Students are exempt from the 12-months maximum limit. If retired employees sign a statement that they are not available for nor seeking permanent employment, they may have temporary appointments for more than 12 months. "Retired" is defined as drawing a retirement income and social security benefits.) Employees with temporary appointments receive no benefits.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978.*

Public Comment:

SEANC: Both of these rules create important contract rights for temporary State employees that would be lost if the rules were to expire under the periodic review process due to being designated "unnecessary":

25 NCAC 01C .0405 provides, among other things, that "in no case shall temporary employment exceed 12 consecutive months." The North Carolina Court of Appeals has ruled that this 12-month limit on temporary employment is a contract right of State temporary employees. *Sanders v. State Personnel Commission*, 197 N.C. App. 314, 67 S.E.2d 182 (2009). Litigation continues in that lawsuit over the rights of State temporary employees once the State has continued to employ someone given a temporary appointment beyond the 12-month limit.

25 NCAC 01C .0407 also provides as to State temporary part-time employees that "in no case shall temporary employment exceed 12 consecutive months."

These two rules implement an important State policy that is not embodied in any other rule or statute, which is that its long term employees should all have the same basic benefits and, thus, that the State will not employ anyone in a temporary position for more than 12 months since temporary appointments do not provide the temporary employee with any benefits.

Therefore, it is necessary to retain these rules to preserve temporary State employees' contract rights and the State's important policy embodied by the rules.

NC Justice Center: Both of these rules create important contract rights for temporary State workers that would be lost if the rules were to expire under the periodic review process due to being designated “unnecessary”:

25 NCAC 01C .0405 provides, among other things, that “in no case shall temporary employment exceed 12 consecutive months.”

25 NCAC 01C .0407 also provides as to State temporary part-time workers that “in no case shall temporary employment exceed 12 consecutive months.”

The North Carolina Court of Appeals has ruled that this 12-month limit on temporary employment is a contract right of State temporary workers. *Sanders v. State Personnel Commission*, 197 N.C. App. 314, 67 S.E.2d 182 (2009). Litigation continues in the *Sanders* lawsuit regarding State temporary workers and 25 NCAC 01C .0405 & .0407.

Importantly, the trial court’s Order in the *Sanders* case, at ¶ 5, expressly enjoined the State “from continued violations of the provisions of 25 N.C.A.C. 1C .0405(a).” See attached Trial Court Order, dated December 17, 2012.

Therefore, 25 NCAC 01C .0405 & .0407 should be kept as necessary in order to preserve temporary State employees’ contract rights, and ensure the State’s compliance with the trial court’s injunction against “continued violations of the provisions of 25 N.C.A.C. 1C .0405(a).”

Agency Response:

We agree with these public comments. Based on pending issues with the law suit and changes to health insurance benefits as a result of implementation of the Affordable Care Act, we will be reviewing our Temporary Employee policy and rules.

Staff Recommendation:

As the agency agreed with the public comments and designated these rules as “Necessary with Substantive Public Interest,” staff believes the Commission should approve the agency’s final designation.

Rules 25 NCAC 01C .0408 and .0409

25 NCAC 01C .0408 INTERMITTENT APPOINTMENT

An intermittent appointment may be made to positions needed only for intermittent periods of time. The intermittent service of an individual shall not exceed a total of nine months during any continuous 12-month period except during extreme emergencies when such periods of time shall be extended for the duration of the emergency. Employees with intermittent appointments receive no benefits.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. August 1, 1995; December 1, 1985.*

25 NCAC 01C .0409 PRE-VOCATIONAL STUDENT APPOINTMENT

This appointment is to be used to enable students to gain practical knowledge of and further prepare for the particular occupational area. A suitable plan for training under close supervision must be developed for the individual; in the case of a co-operative, work study, internship or similar appointment, the time schedule for work must be determined. A copy of the plan must be submitted for approval by the State Personnel Director who is responsible for determining appropriate salary. Upon successful completion of their training, individuals may be considered for any vacant position for which qualified. Work time spent in a pre-vocational student appointment may be counted toward the required probationary period.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. December 1, 1985; August 1, 1980.*

Public Comment from SEANC:

SEANC also questions why the following rules are listed as “unnecessary”: 25 NCAC 01C .0408 and .0409, and 02 .0100 and .0201, but has insufficient information to determine whether they should also be designated as “necessary without substantive public interest.”

Agency Response:

25 NCAC 01C.0408: The intermittent appointment type is no longer used. In the past, the intermittent appointment was used to differentiate seasonal workers from other temporary workers. The Intermittent employees and temporary employees have the exact same benefits. There is no reason to differentiate between intermittent temporary workers and other temporary workers.

25 NCAC 01C.0409: This pre-vocational student program is no longer in existence.

Staff Recommendation:

Staff does not believe the comments have merit. Staff recommends approving the designation given by the agency.

Rules 25 NCAC 01C .0902 and .0903

25 NCAC 01C .0902 AGENCY RESPONSIBILITY

Agencies shall administer their programs which shall, as a minimum, recognize employee's service beginning with five years of service and in increments of five years thereafter.

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. December 1, 1995;
Recodified from 25 NCAC 01J .0404 Eff. December 29, 2003.*

25 NCAC 01C .0903 ELIGIBILITY REQUIREMENTS

Employees with full-time or part-time (20 hours or more) permanent appointments shall be eligible for awards based on the employees' total state service. The calculation shall be based on the definition in 25 NCAC 01D .0112 for total state service.

*History Note: Authority G.S. 126-4(10);
Eff. February 1, 1976;
Amended Eff. July 1, 1983;
Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire on June 29, 1989;
Amended Eff. December 1, 1995; May 1, 1989; March 1, 1989;
Recodified from 25 NCAC 01J .0406 Eff. December 29, 2003;
Amended Eff. October 1, 2006.*

Public Comment from SEANC:

While the proposed retention of 25 NCAC 01C .0901, which directs OSHR to establish "Employee Recognition Programs" might appear to render 25 NCAC 01C .0902 & .0903 unnecessary, in fact those two latter sections establish five-year service awards as a required specific reward program and the eligibility of both full-time and part-time for such rewards. Current State employees rely on these rewards, and it would be a mistake to allow the rules that require them to expire.

Agency Response:

Rule 25 NCAC 01C.0901 renders 25 NCAC 01C.0902 and .0903 as unnecessary. Rule 01C.0901 gives OSHR the responsibility for establishing Employee Recognition Programs as authorized by G.S. 126-4.8. These programs will be established by OSHR with consultation from the Office of State Budget and Management (OSBM) for program funding approval and approval of the State Human Resources Commission, the policy making body established by the General Assembly to implement the employee recognitions program. Agencies shall administer their employee recognition programs within the guidelines established by the SHRC and approved by OSBM for funding. As a result, there is no need for additional rules to set an agency specific requirement for minimums and eligibility criteria. The SHRC will set the requirements when establishing the program guidelines in order to ensure consistency throughout State.

Staff Recommendation:

Staff recommends finding both comments have merit and moving the designation for both rules to "Necessary with Substantive Public Interest." Staff notes that in its response, the agency states it will continue to set the criteria for the program. G.S. 126-4 requires this to be done through rulemaking. Staff believes that these rules are necessary to set the criteria and any changes must be done through rulemaking. Failure to do so does not comply with G.S. 150B as currently written.

§ 126-4. Powers and duties of State Human Resources Commission.

Subject to the approval of the Governor, the State Human Resources Commission shall establish policies and rules governing each of the following:

...

- (8) A program of meritorious service awards.

...