

## Burgos, Alexander N

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**Subject:** FW: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

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**From:** Mazza, Denise H <[denise.mazza@nc.gov](mailto:denise.mazza@nc.gov)>  
**Sent:** Tuesday, December 17, 2024 12:11 PM  
**To:** Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

Brian\* Sorry!

**Denise H. Mazza**  
Paralegal  
Desk: 984-236-0823  
[denise.mazza@nc.gov](mailto:denise.mazza@nc.gov)



**North Carolina Office of State Human Resources**  
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**From:** Mazza, Denise H <[denise.mazza@nc.gov](mailto:denise.mazza@nc.gov)>  
**Sent:** Tuesday, December 17, 2024 12:04 PM  
**To:** Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

Attached is the final version of 25 NCAC 01I .2103 with Biran Liebman's requested changes in his 11:49 email. Per Brian, this document is ready for filing and placing on the agenda for the December 19, 2024 RRC meeting.

Denise

**Denise H. Mazza**  
Paralegal  
Desk: 984-236-0823  
[denise.mazza@nc.gov](mailto:denise.mazza@nc.gov)



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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

25 NCAC 01I .2103 is amended under temporary procedures with changes as follows:

**25 NCAC 01I .2103        SALARY RATES**

(a) New Appointments. The entrance salary rate for an employee in a non-trainee appointment shall be at the minimum of the range or at a salary rate within the salary range assigned to the class-class that is consistent with job-related education, job-related experience, and fiscal policy. The entrance salary rate for an employee ~~class unless an employee is hired~~ in a trainee appointment shall be set pursuant to Paragraph (e) of this Rule. ~~Discretion should be exercised by boards.~~ Boards of county commissioners or their designees must perform an analysis should exercise judgment, when setting on new appointments salaries above the minimum of the range, to avoid creating salary inequities within the jurisdiction. Analyzing “Salary “salary inequities,” for purposes of this Rule, means comparing the salaries of employees in the same job classification or in closely related job classifications at the same local government employer who have comparable levels of education and experience; duties and responsibilities; productivity; funding availability; and knowledge, skills, and abilities. Employees in trainee appointments are not comparable for purposes of this salary inequity analysis.

(b) Promotion. When a promotion occurs, the member of county management who has been delegated authority over personnel decisions shall increase the employee's salary ~~shall be increased,~~ if it is below the new minimum, to at least the minimum rate of the salary range assigned to the class to which the employee is promoted. If an employee's current salary is already above the new minimum salary rate, ~~his~~ the employee's salary may be adjusted upward or left unchanged at the discretion of local management, consistent with job-related education, job-related experience, and fiscal policy, provided that the adjusted salary does not exceed the maximum of the assigned salary range. If the salary falls between steps in the salary range, it may be adjusted to the next higher step in the ~~range, range, consistent with job-related education, job-related experience, and fiscal policy.~~

(c) Demotion. When an employee's current salary falls above the maximum of the range for the lower class, ~~his~~ the member of county management who has been delegated authority over personnel decisions may allow the employee's salary ~~may to~~ remain the same until general schedule adjustments or range revisions bring it back within the lower range or ~~may~~ the salary may be reduced to any step in the lower salary range, as long as the reduced salary does not fall below the minimum salary rate of that range. If the employee's current salary falls between steps in the lower range, it may be reduced to the next lower step. These decisions shall be consistent with job-related education, job-related experience, and fiscal policy.

(d) Salary Adjustments; Salary Plan Revisions. When the salary rates in the salary plan are changed or a class is moved to a higher or lower salary grade, the following adjustments shall be made in incumbents' salary rates:

- (1) When it is an upward revision and the employee's current salary is less than the minimum salary rate of the salary range for the classification, the employee's salary shall be adjusted to at least the minimum of the range. If the employee's salary is already at or above the new minimum of the range, management may elect to increase the salary to another step within the range. An employee's salary may not, however, exceed the maximum of the range.
- (2) If there is a downward revision, management may elect to reduce each employee's salary rate by a corresponding amount or allow the salary rates to remain the same.

1 These decisions shall be consistent with job-related education, job-related experience, and fiscal policy.

2 (e) Trainee Adjustments. During a trainee ~~appointment~~ appointment, an evaluation of the individual's performance  
3 and progress on the job is to be made by the direct supervisor at ~~frequent intervals; intervals that are at most six months~~  
4 apart. As a general guide, salary increases are provided at specified intervals. These increases are not automatic, and  
5 may be provided at any time, are not necessarily limited to the full elapse of specified intervals. Salary adjustments  
6 may be either advanced or delayed depending upon the progress of the employee. ~~In cases where salary adjustments~~  
7 ~~have been advanced, the trainee's salary will not be adjusted to the minimum of the range for the regular classification~~  
8 ~~until the employee meets all education and experience requirements for the appointment. The salary rate for a trainee~~  
9 ~~shall be no lower than 10% below the minimum of the position's salary range (for example, range. Note: as an~~  
10 ~~example, the salary rate would be \$90,000 if the salary range is \$100,000 to \$140,000); \$140,000. The salary rate for~~  
11 ~~a trainee shall be and no higher than the 25th percentile of the position's salary range-range. Note: as an example, the~~  
12 ~~salary rate would be (for example, \$110,000 if the salary range is \$100,000 to \$140,000); \$140,000.~~ Adjustments are  
13 to be given upon recommendations by the appointing authority and the supervisor that the employee has earned an  
14 ~~increase-increase, based on successful performance and completed training milestones as specified by local policy.~~  
15 Trainee salary adjustments shall not be awarded if an employee has unsatisfactory job performance as defined in 25  
16 NCAC 01I .2302(a). The trainee's salary must not exceed that of any existing non-trainee employee in the same  
17 classification at the same local government, unless the employee possesses sufficient additional education or  
18 experience exceeding the minimum requirements for the position to qualify for a higher rate. When the employee  
19 with a trainee appointment has successfully completed the training and experience requirements for the classification,  
20 ~~he the employee~~ must be given a regular permanent appointment to that classification classification, and his the  
21 employee's salary must be set pursuant to Paragraph (a) of this Rule. Pursuant to Paragraph (a) of this Rule, the  
22 former trainee's salary must be set increased at least to the minimum of the salary range.  
23 (f) An employee's salary cannot be raised by merit increases to exceed the maximum salary rate of the salary range  
24 assignment to ~~his the employee's~~ class.

25  
26 *History Note: Authority G.S. ~~126-4~~; 126-4(2), (3), (6); S.L. 2024-23, s. 7;*

27 *Eff. August 3, 1992;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*  
29 *2016-2016;*

30 *Temporary Amendment Eff. ~~December 1, 2024~~ January 1, 2025.*

## Burgos, Alexander N

---

**Subject:** FW: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Tuesday, December 17, 2024 11:49 AM

**To:** Thomas, Blake <Blake.Thomas@nc.gov>; Mazza, Denise H <denise.mazza@nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Cc:** McGhee, Dana <dana.McGhee@oah.nc.gov>; Derasmo, Dominick <dominick.derasmo@nc.gov>

**Subject:** RE: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

Hi Blake,

Thanks for sending this over. I think the rule is mostly fine, except for the sentence on 4<sup>th</sup> Circuit caselaw. I think that needs to be removed, and if so, I can recommend approval.

Also, you have a page break in the middle of page 1 of your rule, on line 31. I'm not sure why that's there, but it should be removed.

Provided that you're ok with those changes, go ahead and send the final version of the rule to oah.rules, copying me and Alex Burgos, and I'll let them know its ready for filing and placing on the agenda.

Thanks for all the hard work!  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
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## Burgos, Alexander N

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**Subject:** FW: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

**Attachments:** 12.2024 - 12.15 - Response to Liebman 12-17.docx; 25 NCAC 01I .2103 Salary Rate 12 17 2024 final.docx

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**From:** Thomas, Blake <Blake.Thomas@nc.gov>  
**Sent:** Tuesday, December 17, 2024 9:21 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; Mazza, Denise H <denise.mazza@nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Cc:** McGhee, Dana <dana.McGhee@oah.nc.gov>; Derasmo, Dominick <dominick.derasmo@nc.gov>  
**Subject:** RE: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

Brian, thanks for all your time on this. Here are our responses to your questions and the revised rule text. --  
Blake

Blake Thomas, General Counsel, N.C. Office of State Human Resources. Phone: (984) 236-0822.

## **Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

### **Note the following general instructions:**

1. You must submit the revised rule via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
  - Wrong: “~~a~~Association”
  - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
  - Wrong: “day;, and”
  - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:  
[www.ncoah.com/rules/examples.html](http://www.ncoah.com/rules/examples.html)

**If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.**

TEMPORARY RULE  
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2103

**DEADLINE FOR RECEIPT: Friday, December 13, 2024**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

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

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

*In (a), line 5, what does the phrase “shall be at the minimum of the range or at a salary rate within the salary range” actually require? I think there’s a bit of ambiguity here, because it sounds like you’re trying to say that the salary shall be at the minimum of the range unless the hiring authority determines otherwise, but the Rule does not state what factors the hiring authority will use to make that determination. If it’s merely at the hiring authority’s discretion, then the phrase “shall be at the minimum of the range” is not actually a requirement. In the enclosed proposed revised rule, we have added the factors that we understand are commonly used by the hiring authority to establish the salary within the hiring range.*

*In (a), lines 7-8, what is being required? The language “Boards of County Commissioners or their designees should exercise judgment when setting salaries above the minimum of the range, to avoid creating salary inequities within the jurisdiction” is not actually a requirement. In the enclosed proposed revised rule, we have added a requirement to perform an internal equity analysis.*

*What is an internal equity analysis? Is this term defined anywhere else in your rules?*

*Your point is well taken. “Internal equity” was unnecessary HR technical language. To explain what is necessary to local agency HR staff (the regulated parties here), we simply needed to say that there must be an “analysis” to avoid “salary inequities.” (“Salary inequities” is a term already defined in the rule.)*

*Therefore, in the enclosed draft, we have replaced “must perform an internal equity analysis ... to avoid creating salary inequities...” with “must perform an analysis ... to avoid creating salary inequities.”*

*To answer your question, an internal equity analysis in salary administration refers to an employer comparing the salaries of employees*

Brian Liebman  
Commission Counsel

Date submitted to agency: December 10, 2024



who have comparable education and experience. Where someone is an outlier (up or down, compared to other employees who have the same education and experience) the internal equity analysis asks whether that difference is due to some nondiscriminatory difference – for example, different duties and responsibilities, different productivity, different funding availability, or different knowledge, skills, or abilities.

*In (a), line 8, delete the comma following “range”. Done.*

*In (a), lines 9-13, how are any of these metrics determined, and who makes these determinations? Whether a salary difference is an improper inequity is a legal determination. In the enclosed proposed revised rule, we have added that as a concept, as well as proposing a nonbinding rule of thumb that can be used.*

*Is there any particular case law that you want local governments to apply? Please specify if so. Also, you cannot add a non binding rule of thumb in your rule, as by definition rules are binding. I think you need to delete that language.*

We want local governments to apply Fourth Circuit U.S. Court of Appeals caselaw. North Carolina state courts, when presented with discrimination claims, have applied federal caselaw when considering grievances alleging unlawful discrimination. As stated in a recent decision by ALJ Byrne, “North Carolina takes guidance from Federal standards in discrimination cases.” *Phelps v. DHHS*, 24 OSP 154, 2024 NC OAH LEXIS 135 (Conclusions of Law ¶ 10) (Apr. 12, 2024).

**We agree on removing the nonbinding rule of thumb.**

*In (b) generally, who makes these determinations? In the enclosed proposed revised rule, we have specified the individual who makes these determinations.*

*Thanks for specifying. You’ll want to delete “shall be increased” following “the employee’s salary” on line 18.*

**Thanks.**

*In (b), lines 16-17, are there any guidelines to govern this exercise of discretion? In the enclosed proposed revised rule, we have added the same factors listed above in the rule.*

*In (b), lines 18-19, it appears it is again an exercise of discretion to adjust the salary to the higher step in the range. Are there any guidelines as to when this should or should not occur? In the enclosed proposed revised rule, we have added the same factors.*

*Please add a comma following “fiscal policy” on line 22.*

**Done.**

*In (c), line 22, I believe there's a typo. Should it read "...or the salary may be reduced..."?* **Correct.**

*In (c), generally, who makes these determinations?* **In the enclosed proposed revised rule, we have specified the individual who makes these determinations.**

*In (c), generally, are there any guidelines to govern this exercise of discretion?* **In the enclosed proposed revised rule, we have added the same factors.**

*Please add a period after "policy" on line 31.*  
**Done.**

*Speaking generally to (b) and (c), it seems to me that the only requirements are that if someone is promoted or demoted, they shall make at least the minimum of the salary range for their new position. Everything else is discretionary, but the Rule does not state who exercises this discretion or give any guidelines as to how the discretion shall be exercised. It's ultimately the decision of the member of county management who has authority over personnel decisions. This is different in different organizations; for a small government, the county or city manager will often make hiring and pay decisions themselves, but for larger governments, this authority will be delegated down to middle-level supervisors. The local government HR system does not require lock-step salaries; instead, salaries are set based on the factors of education, experience, and fiscal resources.*

*In (d), the text on the first lines of both (1) and (2) needs to be brought to the left to match up with the line below.* **Done.**

*In (d)(1), lines 29-30, are there any guidelines to govern this exercise of discretion?* **Only factors, not lock-step rules or guidelines. In the enclosed rule, we have added the same factors.**

*In (d)(2), lines 32-33, are there any guidelines to govern this exercise of discretion?* **In the enclosed rule, we have added the factors.**

*In (e), line 34, who shall make the evaluation?* **For a trainee, it is always the direct supervisor.**

*In (e), line 35, please define "frequent".* **In the enclosed rule, we have added a time frame.**

*In (e), lines 36-37, what does the phrase "...and are not necessarily limited to the full elapse of specified intervals" mean?* **We have reworded this as "may be provided at any time" in the enclosed rule.**

*In (e), p.2, lines 2-4, per the style guide explanatory parentheticals are not allowed. If you'd like to include this information, you can make a "note". See 26 NCAC 02C .0110.*  
**We have changed this to a note in the enclosed rule.**

*In (e), line 5, under what metrics is it determined that an employee has "earned an increase"?* **In the enclosed rule, we have added the two metrics that are used.**

*In (e), line 8, define "sufficient additional education or experience".* **This refers to whether the employee would have more years of experience than the minimum required in the certification and whether the employee has more education than the minimum required in the certification. We have added that in the enclosed rule.**

*I see what you're saying, but can I suggest a revision to: "...unless the employee possesses education and experience exceeding the minimum requirements for the position."*

**Done.**

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

25 NCAC 01I .2103 is amended under temporary procedures with changes as follows:

**25 NCAC 01I .2103 SALARY RATES**

(a) New Appointments. The entrance salary rate for an employee in a non-trainee appointment shall be at the minimum of the range or at a salary rate within the salary range assigned to the class-class that is consistent with job-related education, job-related experience, and fiscal policy. The entrance salary rate for an employee ~~class unless an employee is hired~~ in a trainee appointment shall be set pursuant to Paragraph (e) of this Rule. ~~Discretion should be exercised by boards.~~ Boards of county commissioners or their designees must perform an analysis should exercise judgment, when setting on new appointments salaries above the minimum of the range, to avoid creating salary inequities within the jurisdiction. Analyzing “Salary “salary inequities,” for purposes of this Rule, means comparing the salaries of employees in the same job classification or in closely related job classifications at the same local government employer who have comparable levels of education and experience; duties and responsibilities; productivity; funding availability; and knowledge, skills, and abilities. These metrics must be analyzed based on applicable Fourth Circuit Court of Appeals caselaw on equal employment opportunity. Employees in trainee appointments are not comparable for purposes of this salary inequity analysis.

(b) Promotion. When a promotion occurs, the member of county management who has been delegated authority over personnel decisions shall increase the employee's salary ~~shall be increased,~~ if it is below the new minimum, to at least the minimum rate of the salary range assigned to the class to which the employee is promoted. If an employee's current salary is already above the new minimum salary rate, ~~his~~ the employee's salary may be adjusted upward or left unchanged at the discretion of local management, consistent with job-related education, job-related experience, and fiscal policy, provided that the adjusted salary does not exceed the maximum of the assigned salary range. If the salary falls between steps in the salary range, it may be adjusted to the next higher step in the ~~range-~~ range, consistent with job-related education, job-related experience, and fiscal policy.

(c) Demotion. When an employee's current salary falls above the maximum of the range for the lower class, ~~his~~ the member of county management who has been delegated authority over personnel decisions may allow the employee's salary ~~may to~~ remain the same until general schedule adjustments or range revisions bring it back within the lower range or ~~may~~ the salary may be reduced to any step in the lower salary range, as long as the reduced salary does not fall below the minimum salary rate of that range. If the employee's current salary falls between steps in the lower range, it may be reduced to the next lower step. These decisions shall be consistent with job-related education, job-related experience, and fiscal policy.

(d) Salary Adjustments; Salary Plan Revisions. When the salary rates in the salary plan are changed or a class is moved to a higher or lower salary grade, the following adjustments shall be made in incumbents' salary rates:

(1) When it is an upward revision and the employee's current salary is less than the minimum salary rate of the salary range for the classification, the employee's salary shall be adjusted to at least the minimum of the range. If the employee's salary is already at or above the new minimum of the range, management may elect to increase the salary to another step within the range. An employee's salary may not, however, exceed the maximum of the range.

(2) If there is a downward revision, management may elect to reduce each employee's salary rate by a corresponding amount or allow the salary rates to remain the same.

These decisions shall be consistent with job-related education, job-related experience, and fiscal policy.

(e) Trainee Adjustments. During a trainee ~~appointment~~ appointment, an evaluation of the individual's performance and progress on the job is to be made by the direct supervisor at ~~frequent intervals~~ intervals that are at most six months apart. As a general guide, salary increases are provided at specified intervals. These increases are not automatic, and may be provided at any time, are not necessarily limited to the full elapse of specified intervals. Salary adjustments may be either advanced or delayed depending upon the progress of the employee. ~~In cases where salary adjustments have been advanced, the trainee's salary will not be adjusted to the minimum of the range for the regular classification until the employee meets all education and experience requirements for the appointment.~~ The salary rate for a trainee shall be no lower than 10% below the minimum of the position's salary range (for example, range. Note: as an example, the salary rate would be \$90,000 if the salary range is \$100,000 to \$140,000), \$140,000. The salary rate for a trainee shall be and no higher than the 25th percentile of the position's salary range range. Note: as an example, the salary rate would be (for example, \$110,000 if the salary range is \$100,000 to \$140,000), \$140,000. Adjustments are to be given upon recommendations by the appointing authority and the supervisor that the employee has earned an ~~increase~~ increase, based on successful performance and completed training milestones as specified by local policy. Trainee salary adjustments shall not be awarded if an employee has unsatisfactory job performance as defined in 25 NCAC 01I .2302(a). The trainee's salary must not exceed that of any existing non-trainee employee in the same classification at the same local government, unless the employee possesses sufficient additional education or experience exceeding the minimum requirements for the position to qualify for a higher rate. When the employee with a trainee appointment has successfully completed the training and experience requirements for the classification, ~~he the employee~~ he the employee must be given a regular permanent appointment to that ~~classification~~ classification, and ~~his the~~ the employee's salary must be set pursuant to Paragraph (a) of this Rule. Pursuant to Paragraph (a) of this Rule, the former trainee's salary must be set increased at least to the minimum of the salary range.

(f) An employee's salary cannot be raised by merit increases to exceed the maximum salary rate of the salary range assignment to ~~his the~~ the employee's class.

*History Note: Authority G.S. ~~126-4~~; 126-4(2), (3), (6); S.L. 2024-23, s. 7;  
Eff. August 3, 1992;*

1                    *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20,*  
2                    *2016-2016;*  
3                    *Temporary Amendment Eff. ~~December 1, 2024.~~ January 1, 2025.*

## Burgos, Alexander N

---

**Subject:** FW: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

**Attachments:** 12.2024 - SHRC 25 NCAC 01I .2103 Temp Rule Requests for Changes BL replies 12-15.docx

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Sunday, December 15, 2024 12:08 PM

**To:** Thomas, Blake <Blake.Thomas@nc.gov>; Mazza, Denise H <denise.mazza@nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Cc:** McGhee, Dana <dana.McGhee@oah.nc.gov>; Derasmo, Dominick <dominick.derasmo@nc.gov>

**Subject:** RE: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

Hi Blake,

Attached, I have a few replies to your responses. I think you can fix most of these fairly easily.

As to formatting, I'm attaching a link to our formatting templates. You're going to want "temporary amendment with changes from publication". If you have any questions about formatting, Dana is probably the best person to ask.

[Rule Format Examples | NC OAH](#)

I'd appreciate it if you could make any changes and reformat the rule by 12:00 on Tuesday, 12/17.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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TEMPORARY RULE  
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2103

**DEADLINE FOR RECEIPT: Friday, December 13, 2024**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

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

*In (a), line 5, what does the phrase “shall be at the minimum of the range or at a salary rate within the salary range” actually require? I think there’s a bit of ambiguity here, because it sounds like you’re trying to say that the salary shall be at the minimum of the range unless the hiring authority determines otherwise, but the Rule does not state what factors the hiring authority will use to make that determination. If it’s merely at the hiring authority’s discretion, then the phrase “shall be at the minimum of the range” is not actually a requirement. **In the enclosed proposed revised rule, we have added the factors that we understand are commonly used by the hiring authority to establish the salary within the hiring range.***

*In (a), lines 7-8, what is being required? The language “Boards of County Commissioners or their designees should exercise judgment when setting salaries above the minimum of the range, to avoid creating salary inequities within the jurisdiction” is not actually a requirement. **In the enclosed proposed revised rule, we have added a requirement to perform an internal equity analysis.***

*What is an internal equity analysis? Is this term defined anywhere else in your rules?*

*In (a), line 8, delete the comma following “range”. **Done.***

*In (a), lines 9-13, how are any of these metrics determined, and who makes these determinations? **Whether a salary difference is an improper inequity is a legal determination. In the enclosed proposed revised rule, we have added that as a concept, as well as proposing a nonbinding rule of thumb that can be used.***

*Is there any particular case law that you want local governments to apply? Please specify if so. Also, you cannot add a non binding rule of thumb in your rule, as by definition rules are binding. I think you need to delete that language.*

Brian Liebman  
Commission Counsel  
Date submitted to agency: December 10, 2024



*In (b) generally, who makes these determinations?* **In the enclosed proposed revised rule, we have specified the individual who makes these determinations.**

*Thanks for specifying. You'll want to delete "shall be increased" following "the employee's salary" on line 18.*

*In (b), lines 16-17, are there any guidelines to govern this exercise of discretion?* **In the enclosed proposed revised rule, we have added the same factors listed above in the rule.**

*In (b), lines 18-19, it appears it is again an exercise of discretion to adjust the salary to the higher step in the range. Are there any guidelines as to when this should or should not occur?* **In the enclosed proposed revised rule, we have added the same factors.**

*Please add a comma following "fiscal policy" on line 22.*

*In (c), line 22, I believe there's a typo. Should it read "...or the salary may be reduced..."?* **Correct.**

*In (c), generally, who makes these determinations?* **In the enclosed proposed revised rule, we have specified the individual who makes these determinations.**

*In (c), generally, are there any guidelines to govern this exercise of discretion?* **In the enclosed proposed revised rule, we have added the same factors.**

*Please add a period after "policy" on line 31.*

*Speaking generally to (b) and (c), it seems to me that the only requirements are that if someone is promoted or demoted, they shall make at least the minimum of the salary range for their new position. Everything else is discretionary, but the Rule does not state who exercises this discretion or give any guidelines as to how the discretion shall be exercised. It's ultimately the decision of the member of county management who has authority over personnel decisions. This is different in different organizations; for a small government, the county or city manager will often make hiring and pay decisions themselves, but for larger governments, this authority will be delegated down to middle-level supervisors. The local government HR system does not require lock-step salaries; instead, salaries are set based on the factors of education, experience, and fiscal resources.*

*In (d), the text on the first lines of both (1) and (2) needs to be brought to the left to match up with the line below.* **Done.**

*In (d)(1), lines 29-30, are there any guidelines to govern this exercise of discretion?* **Only factors, not lock-step rules or guidelines. In the enclosed rule, we have added the same factors.**

Brian Liebman  
Commission Counsel

Date submitted to agency: December 10, 2024

*In (d)(2), lines 32-33, are there any guidelines to govern this exercise of discretion?* **In the enclosed rule, we have added the factors.**

*In (e), line 34, who shall make the evaluation?* **For a trainee, it is always the direct supervisor.**

*In (e), line 35, please define “frequent”.* **In the enclosed rule, we have added a time frame.**

*In (e), lines 36-37, what does the phrase “...and are not necessarily limited to the full elapse of specified intervals” mean?* **We have reworded this as “may be provided at any time” in the enclosed rule.**

*In (e), p.2, lines 2-4, per the style guide explanatory parentheticals are not allowed. If you’d like to include this information, you can make a “note”. See 26 NCAC 02C .0110.* **We have changed this to a note in the enclosed rule.**

*In (e), line 5, under what metrics is it determined that an employee has “earned an increase”?* **In the enclosed rule, we have added the two metrics that are used.**

*In (e), line 8, define “sufficient additional education or experience”.* **This refers to whether the employee would have more years of experience than the minimum required in the certification and whether the employee has more education than the minimum required in the certification. We have added that in the enclosed rule.**

*I see what you’re saying, but can I suggest a revision to: “...unless the employee possesses education and experience exceeding the minimum requirements for the position.”*

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

## Burgos, Alexander N

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**Subject:** FW: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

**Attachments:** 12.2024 - SHRC 25 NCAC 01I .2103 Temp Rule Requests for Changes response 12-13.docx; 25 NCAC 01I .2103 Salary Rate - revised version 12-13.docx

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**From:** Thomas, Blake <[Blake.Thomas@nc.gov](mailto:Blake.Thomas@nc.gov)>  
**Sent:** Friday, December 13, 2024 4:57 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; Mazza, Denise H <[denise.mazza@nc.gov](mailto:denise.mazza@nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** McGhee, Dana <[dana.McGhee@oah.nc.gov](mailto:dana.McGhee@oah.nc.gov)>; Derasmo, Dominick <[dominick.derasmo@nc.gov](mailto:dominick.derasmo@nc.gov)>  
**Subject:** RE: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

Brian,

Here are our responses to your questions, along with a proposed revised rule. I'm sorry if our attempt to revise the rule in response to your changes is not drafted correctly; I am very hazy about how to properly mark changes in response to RRC comments. If (and when) I've formatted it incorrectly, please let me know, and I'll be happy to redo it.

Best wishes,

**Blake Thomas**

General Counsel

Desk: (984) 236-0822 Cell: (984) 303-8438

[Blake.Thomas@nc.gov](mailto:Blake.Thomas@nc.gov)

he/him/his



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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Tuesday, December 10, 2024 11:06 AM  
**To:** Mazza, Denise H <[denise.mazza@nc.gov](mailto:denise.mazza@nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** McGhee, Dana <[dana.McGhee@oah.nc.gov](mailto:dana.McGhee@oah.nc.gov)>; Thomas, Blake <[Blake.Thomas@nc.gov](mailto:Blake.Thomas@nc.gov)>; Derasmo, Dominick <[dominick.derasmo@nc.gov](mailto:dominick.derasmo@nc.gov)>  
**Subject:** RE: NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

Denise,

Thanks for the submission. Attached, please find my requests for changes, which are unchanged from last month. If you could, please respond no later than 5:00 p.m. on Friday, December 13, 2024.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

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**From:** Mazza, Denise H <[denise.mazza@nc.gov](mailto:denise.mazza@nc.gov)>  
**Sent:** Tuesday, December 10, 2024 11:00 AM  
**To:** Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; McGhee, Dana <[dana.McGhee@oah.nc.gov](mailto:dana.McGhee@oah.nc.gov)>; Thomas, Blake <[Blake.Thomas@nc.gov](mailto:Blake.Thomas@nc.gov)>; Derasmo, Dominick <[dominick.derasmo@nc.gov](mailto:dominick.derasmo@nc.gov)>  
**Subject:** NC OAH Resubmission for Amendment of Temporary Rule-making Findings of Need 25 NCAC 01I Salary Rate

Attached please find for re-filing the Temporary Rule-Making Findings of Need form for 25 NCAC 01I .2103 Salary Rate and the proposed amended temporary rule, in Word.

Please let me know if you need anything further for this filing.

Thanks!

Denise

**Denise H. Mazza**  
Paralegal  
Desk: 984-236-0823  
[denise.mazza@nc.gov](mailto:denise.mazza@nc.gov)



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## **Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

### **Note the following general instructions:**

1. You must submit the revised rule via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
  - Wrong: “~~a~~Association”
  - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
  - Wrong: “day;, and”
  - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:  
[www.ncoah.com/rules/examples.html](http://www.ncoah.com/rules/examples.html)

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

TEMPORARY RULE  
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Human Resources Commission

RULE CITATION: 25 NCAC 01I .2103

**DEADLINE FOR RECEIPT: Friday, December 13, 2024**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

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

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

*In (a), line 5, what does the phrase “shall be at the minimum of the range or at a salary rate within the salary range” actually require? I think there’s a bit of ambiguity here, because it sounds like you’re trying to say that the salary shall be at the minimum of the range unless the hiring authority determines otherwise, but the Rule does not state what factors the hiring authority will use to make that determination. If it’s merely at the hiring authority’s discretion, then the phrase “shall be at the minimum of the range” is not actually a requirement. In the enclosed proposed revised rule, we have added the factors that we understand are commonly used by the hiring authority to establish the salary within the hiring range.*

*In (a), lines 7-8, what is being required? The language “Boards of County Commissioners or their designees should exercise judgment when setting salaries above the minimum of the range, to avoid creating salary inequities within the jurisdiction” is not actually a requirement. In the enclosed proposed revised rule, we have added a requirement to perform an internal equity analysis.*

*In (a), line 8, delete the comma following “range”. Done.*

*In (a), lines 9-13, how are any of these metrics determined, and who makes these determinations? Whether a salary difference is an improper inequity is a legal determination. In the enclosed proposed revised rule, we have added that as a concept, as well as proposing a nonbinding rule of thumb that can be used.*

*In (b) generally, who makes these determinations? In the enclosed proposed revised rule, we have specified the individual who makes these determinations.*

*In (b), lines 16-17, are there any guidelines to govern this exercise of discretion?* **In the enclosed proposed revised rule, we have added the same factors listed above in the rule.**

*In (b), lines 18-19, it appears it is again an exercise of discretion to adjust the salary to the higher step in the range. Are there any guidelines as to when this should or should not occur?* **In the enclosed proposed revised rule, we have added the same factors.**

*In (c), line 22, I believe there's a typo. Should it read "...or the salary may be reduced..."?* **Correct.**

*In (c), generally, who makes these determinations?* **In the enclosed proposed revised rule, we have specified the individual who makes these determinations.**

*In (c), generally, are there any guidelines to govern this exercise of discretion?* **In the enclosed proposed revised rule, we have added the same factors.**

*Speaking generally to (b) and (c), it seems to me that the only requirements are that if someone is promoted or demoted, they shall make at least the minimum of the salary range for their new position. Everything else is discretionary, but the Rule does not state who exercises this discretion or give any guidelines as to how the discretion shall be exercised. It's ultimately the decision of the member of county management who has authority over personnel decisions. This is different in different organizations; for a small government, the county or city manager will often make hiring and pay decisions themselves, but for larger governments, this authority will be delegated down to middle-level supervisors. The local government HR system does not require lock-step salaries; instead, salaries are set based on the factors of education, experience, and fiscal resources.*

*In (d), the text on the first lines of both (1) and (2) needs to be brought to the left to match up with the line below.* **Done.**

*In (d)(1), lines 29-30, are there any guidelines to govern this exercise of discretion?* **Only factors, not lock-step rules or guidelines. In the enclosed rule, we have added the same factors.**

*In (d)(2), lines 32-33, are there any guidelines to govern this exercise of discretion?* **In the enclosed rule, we have added the factors.**

*In (e), line 34, who shall make the evaluation?* **For a trainee, it is always the direct supervisor.**

*In (e), line 35, please define "frequent".* **In the enclosed rule, we have added a time frame.**

*In (e), lines 36-37, what does the phrase “...and are not necessarily limited to the full elapse of specified intervals” mean?* **We have reworded this as “may be provided at any time” in the enclosed rule.**

*In (e), p.2, lines 2-4, per the style guide explanatory parentheticals are not allowed. If you’d like to include this information, you can make a “note”. See 26 NCAC 02C .0110.* **We have changed this to a note in the enclosed rule.**

*In (e), line 5, under what metrics is it determined that an employee has “earned an increase”?* **In the enclosed rule, we have added the two metrics that are used.**

*In (e), line 8, define “sufficient additional education or experience”.* **This refers to whether the employee would have more years of experience than the minimum required in the certification and whether the employee has more education than the minimum required in the certification. We have added that in the enclosed rule.**

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



25 NCAC 01I .2103 is amended under temporary procedures with changes as follows:

### **25 NCAC 01I .2103        SALARY RATES**

(a) New Appointments. The entrance salary rate for an employee in a non-trainee appointment shall be at the minimum of the range or at a salary rate within the salary range assigned to the class **that is consistent with job-related education, job-related experience, and fiscal policy.** The entrance salary rate for an employee ~~class unless an employee is hired~~ in a trainee appointment shall be set pursuant to Paragraph (c) of this Rule. ~~Discretion should be exercised by boards.~~ Boards of county commissioners or their designees **must perform an internal equity analysis** should exercise judgment, when setting ~~on new appointments~~ salaries above the minimum of the range, to avoid creating salary inequities within the jurisdiction. “Salary inequities,” for purposes of this Rule, means comparing the salaries of employees in the same job classification or in closely related job classifications at the same local government employer who have comparable levels of education and experience; duties and responsibilities; productivity; funding availability; and knowledge, skills, and abilities. **These metrics must be analyzed based on applicable caselaw on equal employment opportunity; a nonbinding rule of thumb is that a disparity of less than ten percent is unlikely to be considered discriminatory.** Employees in trainee appointments are not comparable for purposes of this salary inequity analysis.

(b) Promotion. When a promotion occurs, **the member of county management who has been delegated authority over personnel decisions shall increase** the employee's salary shall be increased, if it is below the new minimum, to at least the minimum rate of the salary range assigned to the class to which the employee is promoted. If an employee's current salary is already above the new minimum salary rate, ~~his~~ the employee's salary may be adjusted upward or left unchanged at the discretion of local management, **consistent with job-related education, job-related experience, and fiscal policy** provided that the adjusted salary does not exceed the maximum of the assigned salary range. If the salary falls between steps in the salary range, it may be adjusted to the next higher step in the range, **consistent with job-related education, job-related experience, and fiscal policy.**

(c) Demotion. When an employee's current salary falls above the maximum of the range for the lower class, ~~his~~ the member of county management who has been delegated authority over personnel decisions may allow the employee's salary ~~may-to~~ remain the same until general schedule adjustments or range revisions bring it back within the lower range or ~~may~~ the salary may be reduced to any step in the lower salary range, as long as the reduced salary does not fall below the minimum salary rate of that range. If the employee's current salary falls between steps in the lower range, it may be reduced to the next lower step. **These decisions shall be consistent with job-related education, job-related experience, and fiscal policy**

(d) Salary Adjustments; Salary Plan Revisions. When the salary rates in the salary plan are changed or a class is moved to a higher or lower salary grade, the following adjustments shall be made in incumbents' salary rates:

- (1) —When it is an upward revision and the employee's current salary is less than the minimum salary rate of the salary range for the classification, the employee's salary shall be adjusted to at least the minimum of the range. If the employee's salary is already at or above the new minimum of the range, management may elect to increase the salary to another step within the range. An employee's salary may not, however, exceed the maximum of the range.

(2) If there is a downward revision, management may elect to reduce each employee's salary rate by a corresponding amount or allow the salary rates to remain the same.

**These decisions shall be consistent with job-related education, job-related experience, and fiscal policy.**

(e) Trainee Adjustments. During a trainee ~~appointment~~ appointment, an evaluation of the individual's performance and progress on the job is to be made **by the direct supervisor** at ~~frequent~~ intervals **that are at most six months apart**. As a general guide, salary increases are provided at specified intervals. These increases are not automatic, and **may be provided at any time.** ~~are not necessarily limited to the full elapse of specified intervals.~~ Salary adjustments may be either advanced or delayed depending upon the progress of the employee. ~~In cases where salary adjustments have been advanced, the trainee's salary will not be adjusted to the minimum of the range for the regular classification until the employee meets all education and experience requirements for the appointment.~~ The salary rate for a trainee shall be no lower than 10% below the minimum of the position's salary range. **Note: as an example, the salary rate would be (for example, \$90,000 if the salary range is \$100,000 to \$140,000.) The salary rate for a trainee shall be ,and no higher than the 25th percentile of the position's salary range . Note: as an example, the salary rate would be (for example, \$110,000 if the salary range is \$100,000 to \$140,000).** Adjustments are to be given upon recommendations by the appointing authority and the supervisor that the employee has earned an increase, **based on successful performance and completed training milestones as specified by local policy.** Trainee salary adjustments shall not be awarded if an employee has unsatisfactory job performance as defined in 25 NCAC 011 .2302(a). The trainee's salary must not exceed that of any existing non-trainee employee in the same classification at the same local government, unless the employee possesses sufficient additional education or experience to qualify for a higher rate, **above and beyond what may be minimally required in order to qualify for a position.** When the employee with a trainee appointment has successfully completed the training and experience requirements for the classification, ~~he~~ the employee must be given a ~~regular~~ permanent appointment to that ~~classification~~ classification, and ~~his~~ the employee's salary must be set pursuant to Paragraph (a) of this Rule. Pursuant to Paragraph (a) of this Rule, the former trainee's salary must be ~~set~~ increased at least to the minimum of the salary range.

(f) An employee's salary cannot be raised by merit increases to exceed the maximum salary rate of the salary range assignment to ~~his~~ the employee's class.

*History Note: Authority G.S. ~~126-4~~; 126-4(2), (3), (6); S.L. 2024-23, s. 7;*

*Eff. August 3, 1992;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016-2016;*

*Temporary Amendment Eff. ~~December 1, 2024~~ January 1, 2025.*