

FREQUENTLY ASKED QUESTIONS FOR THE PERIODIC REVIEW AND EXPIRATION OF EXISTING RULES:

STEP 1 – REVIEW BY THE AGENCY

What is the report?

The report is an OAH created Excel worksheet that is emailed from OAH staff to the named rulemaking coordinator for the agency. If the [rulemaking coordinator changes](#), please provide notice to the Codifier of Rules

What will the report contain?

The report will contain all existing rules in the NC Administrative Code as of April 1, 2014. 26 NCAC 05 .0202(2) defines "[existing rules](#)" as rules in the Code at the time the schedule contained in Rule 26 NCAC 05 .0211 became effective on April 1, 2014; and have not been transferred, expired, or reserved. The report will contain the following information for each existing rule:

- *agency name;*
- *rule chapter/subchapter/section;*
- *rule citation;*
- *rule name; and*
- *date and last agency action on the rule.*

If an agency takes rulemaking action after April 1, 2014, how is the report affected?

If an agency amends a rule, the report column titled "Date and last agency action on the rule" should be updated by the agency.

If an agency repeals a rule, the agency should delete the row for that rule from the report.

If an agency adopts a new rule that was not in the NC Administrative Code as of April 1, 2014, no action should be taken by either the agency or OAH to add this rule to the report. Please note that [26 NCAC 05 .0202\(2\)](#) defines "existing rules" as a rule in the NC Administrative Code on April 1, 2014.

I have received a report. Now what?

First, acknowledge receipt to the email received from OAH staff.

Second, review the report for errors or missing rules. If there are errors or missing rules, notify OAH staff by email to oah.rules@oah.nc.gov within 10 business days following receipt of the report from OAH staff.

Agencies are not required to make the initial determinations within the 10 business day period, but are merely reviewing the report for errors or missing rules.

There are no errors or missing rules. Now what?

It is time for the agency to review and complete the report. At this initial stage, all that must be provided is the initial determination of (a) unnecessary; (b) necessary without substantive public interest; or (c) necessary with substantive public interest. If the rule is to conform to or implement federal law, the agency is requested to provide the citation to the federal law. See [G.S. 150B-21.3A\(e\)](#).

The rulemaking coordinator can make the determination, right?

No. The determination is an agency action and therefore must be made by the agency's rulemaking body. If you are uncertain who the rulemaking body is for your specific agency, look at the statute that created the body. There should be some specific legislative directive stating who has the rulemaking authority to adopt the rules.

Determinations are made. So will OAH staff be providing feedback at this stage?

No. OAH staff will not review the report for content until the report, with final determination, is filed by the agency with OAH on the 15th day of the month preceding the scheduled month and year of review by the RRC. See [26 NCAC 05 .0211](#).

Determinations are made. What happens to the report now?

After initial determinations are made by the agency, the report is posted for public comments. This means that the agency posts the report on the agency's website, provides notice to interested parties, and submits the report to OAH for posting on OAH's website. When the report is sent to OAH, use the following email address: oah.rules@oah.nc.gov.

When the report is sent to OAH for website posting, when should the comment period start?

The agency and OAH must both post the report with the initial determinations on their respective websites. The 60 day comment period runs from the later of the two postings. OAH has five business days after receipt of the report from the agency to post the report. See [26 NCAC 05 .0203\(b\)](#) and [.0206\(b\)\(3\)](#).

The agency may wish to add five business days onto the comment period at the time of submission to OAH. That allows OAH to post at any point within the next five business days, while ensuring that the agency has a minimum of 60 days allowed for comments.

Public comment period ends. Done, right?

No. It is now time to review all the public comments and see if any of the public comments have merit to justify changing a determination. Again, the rulemaking body of the agency must act to make the final determinations.

We received public comments. Does the agency have to respond?

Yes. [G.S. 150B-21.3A\(c\)\(1\)](#) requires agencies to review the public comments and prepare a brief response addressing the merits of each comment to accompany the report filed for RRC review. Agencies are not required to respond directly to the individual commenters.

So I just send the report in by email and I am done?

No. The agency must file the report, along with all comments and responses, in paper form with OAH and electronically to oah.rules@oah.nc.gov. See [26 NCAC 05 .0206](#).

STEP 2 – REVIEW BY THE RULES REVIEW COMMISSION (RRC)

Is there a deadline for my agency to complete the process?

Yes. Look at [26 NCAC 05 .0211](#) for the schedule indicating the month and year that RRC will be reviewing your agency's report. The report must be filed by the 15th day of the month preceding the month and year scheduled for review. In addition to the report, all comments and responses must be provided to RRC for review. See [26 NCAC 05 .0203](#) and [.0206](#).

What if we complete the process early, will RRC review the report prior to the scheduled date set forth in 26 NCAC 05 .0211?

The agency would need to file a written request with the RRC in accordance with [26 NCAC 05 .0204](#), asking for the scheduled date in 26 NCAC 05 .0211 to be waived. The current schedule is based upon an estimated workload for the RRC of approximately 350 rules per month, so movement by agencies will affect the estimated workload. The decision whether to waive the scheduled month and year of review will be at the discretion of the RRC.

Report is filed with OAH for RRC review. So will OAH staff be providing feedback at this stage?

Yes. RRC's counsel will review the reports, all comments, and the agency's responses. If RRC counsel has concerns, the agency may be contacted to resolve the questions. If RRC counsel disagrees with the classification, a staff opinion will be issued.

What happens at the RRC meeting during review of my agency's report?

RRC counsel will be reviewing the report, all comments and the agency's responses, and providing a recommendation to the RRC. If questions are asked at the meeting on the scheduled month and year of review, and a representative from the agency is not available, the RRC may table the report until a representative of the agency is available to address the RRC's concerns. See [26 NCAC 05 .0210](#).

Why do I care if the report is not reviewed on time by RRC because the agency did not complete the necessary steps?

RRC will be providing reports to the Joint Legislative Administrative Procedure Oversight Committee ("APO") at the General Assembly on the progress of the periodic review and expiration of existing rules. The reports will contain information such as number of rules reviewed, outcome of the review, and any omissions on the part of an agency to comply with the statutory requirements.

STEP 3 – CONSULTATION WITH THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE (“APO”)

The report has gone to APO, now what?

After review of the report by the RRC, the report is forwarded to APO. The RRC determination will become final following consultation with APO or on the 61st day after the report is submitted, if APO does not meet. No action will be taken on the rules by OAH until either consultation with APO or the 61st day after the reports are submitted to APO, should APO not meet.

While the report is at APO, does anything happen to my agency’s rules currently in the NC Administrative Code?

Nothing happens until the report is finalized following consultation with APO. At that time, one of three actions will occur:

- (1) for rules classified as unnecessary, the Codifier of Rules will remove the rule from the NC Administrative Code without any further action of the agency;*
- (2) for rules classified as necessary without substantive public interest, the rule will remain in the NC Administrative Code “as is” with an addition to the history note to reflect the review; or*
- (3) for rules classified as necessary with substantive public interest, the rule will remain in the NC Administrative Code “as is” and the agency will begin the process of readopting in accordance with [Article 2A of G.S. 150B](#).*

My agency has rules classified as necessary with substantive public interest. When should we start to readopt?

An agency may internally begin drafting any changes that are necessary for the readoption process and any fiscal notes at any time throughout this process. However, the RRC has been directed to set the readoption schedule. See [Sec. 2 of S.L. 2014-120](#). Please consult with OAH staff prior to taking any formal rulemaking action under Article 2A of G.S. 150B.