

# OSBM

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## Executive Order No. 70 Report

April 2011



*Prepared By:*

*Office of State Budget and Management*

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## PART 1. REVIEW OF EXISTING RULES

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North Carolina General Statute 150B, also referred to as the Administrative Procedure Act (APA), establishes the rulemaking and adjudicatory procedures for State agencies. The Statute defines a “rule” as:

...any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency.

Nearly 20 percent of the national economy is regulated by the states.<sup>1</sup> State rules cover a wide range of actions, from nitrogen levels in local lakes to training standards for law enforcement. Recognizing the growing importance of rules and their direct impact on business and citizens, the Governor signed Executive Order No. 70, *Rules Modification and Improvement Program*, on October 21, 2010. Executive Order No. 70, part of the Governor’s *Setting Government Straight* initiative, outlines regulatory principles intended to guide North Carolina’s rulemaking.

Executive Order No. 70 also directs the Office of State Budget and Management (OSBM) to coordinate and oversee the Rules Modification and Improvement Program (RMIP) and publish an annual report on its progress. The RMIP is intended to evaluate, reform, expand, or, where necessary, repeal existing rules and associated requirements that are unnecessary or unduly burdensome. To accomplish these goals, the RMIP was required to solicit input through two separate paths:

1. Invite comment on whether any existing rules, implementation processes and associated requirements are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order. Comments may include modifying, expanding, or rescinding existing rule programs or the rule review and publication process.
2. Direct agencies to undertake an internal review to identify existing rules and associated requirements that are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order.

The remainder of Part 1 of this report discusses the RMIP progress. The Public Comment section of this report details the progress made on Section 1 listed above, while the Internal Agency Review section of this report provides a complete update on Section 2. As required by Executive Order No. 70, Part 2 of this report also includes recommended improvements to the rule process and accompanying analysis.

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<sup>1</sup> Paul Teske, Regulation in the States 1 (2004), supra note 5, pg 8.

## PUBLIC COMMENTS

As mentioned above, the RMIP requested public comment on specific rules, implementation processes and associated requirements that are unnecessary or unduly burdensome. Through March 2011, 1,622 public comments were submitted in response to the solicitation. Consistent with the direction in Executive Order No. 70, OSBM gave highest priority to comments submitted earliest in the process. While comments received most recently did not inform this report, the vast majority (1,327 comments) were evaluated.

**Table 1. Comments with Potential Merit By Agency**

Agency	# of Rules
DENR	79
DHHS	36
Commerce	17
DOT	17
DOA	41
OSP	25

After receiving the comments, OSBM evaluated whether each comment (1) was rule-related and (2) may have potential merit. Of the 1,327 total comments evaluated, 250 comments were determined to be rule-related and have potential merit. A large majority of the comments addressed programs administered by the Department of Environment and Natural Resources (DENR), Department of Health and Human Services (DHHS), and the Department of Administration (DOA) (see Table 1). OSBM instructed agencies to review the merits of each of the 250 comments and prepare a response for OSBM by January 31. The response was to include a determination of whether further action was justified.

OSBM reviewed the comments and agency responses, collaborated with agencies and outside experts, and determined that 224 of the 250 comments justify further action. Further actions generally fall into two categories: amend programs and study issues further. Amending programs can range from changing agency rules, policies, or guidance to pursuing statutory change. Table 2 summarizes the 250 comments and recommended action. It should be noted that OSBM and agencies do not necessarily agree with all public comments or the solutions suggested by commenters.

**Table 2. Comments with Potential Merit Submitted by the Public**

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	1267, 1538a	Public, Local government	Recent rules require upgrades in pool fences and may cause some older public swimming pools to not have their license renewed. Commenters suggest a need for enforcement discretion as some affected pool fences fall short of requirements by a very small margin.	Amend	2

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	1220, 1538a, 1553, 1590, 1624, 1643, 1648, 1660, 1661, 1697b, 1797	Public, Local government, Business Alliance for a Sound Economy (BASE), NC Chamber and MCIC of NC, League of Municipalities	Several commenters were concerned about the overlap between DENR divisions. Commenters noted that the same things were inspected by both Div. of Water Quality (DWQ), which issues National Pollutant Discharge Elimination System (NPDES) permits and then monitors discharge, and Div. of Land Resources (DLR), which inspects for sediment/ erosion control measures. Commenters also cited cases where DLR issued a permit, and then DWQ issued a notice of violation for not protecting a stream on the site, which DLR did not even identify. Commenters suggested streamlining the process related to storm-water, wastewater treatment, watershed, and erosion rules to avoid having to get permits from three different divisions.	Amend	11
DENR	1646	NC Chamber and MCIC of NC	DENR issues wastewater discharge permits (NPDES) for private construction and requires them to meet certain discharge limits. In addition, DENR approves construction plans with regard to waste-water discharge (Authorization to Construct permit). Commenters argue this additional step is too burdensome and unnecessary and believe the licensed engineers who draw up the plans are more qualified than the non-licensed DENR approvers.	Amend	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	608	NC Chamber and MCIC of NC	<p>Division of Air Quality's "one-size fits all" approach in issuing Notices of Violations for any minor violation of air quality requirements hurts businesses. This approach is inconsistent with statutes, enforcement policies of other DENR programs, as well as EPA and policies in other states. Commenter suggests a 3-tier approach:</p> <ol style="list-style-type: none"> <li>1) Warning Letters for first-time or minor offenses</li> <li>2) Notice of Non-compliance for permit exceedances allowing the business to undertake corrective action before further enforcement</li> <li>3) Notice of Violation if violations other than 1 or 2</li> </ol>	Amend	1
DENR	1607	Public	<p>Osprey poles are classified as development, hence not allowed under Coastal Area Management Act (CAMA) within 75 feet of water's edge. A burdensome variance request needs to be requested to be able to install the pole. Commenter suggests exempting these structures from permitting.</p>	Amend	1
DENR	1162, 1686, 1697b	Public and the League of Municipalities	<p>Two reviews, one under State Environmental Policy Act and another under Coastal Area Management Act, require an applicant to spend thousands of dollars and add lengthy delays for duplicative reviews. Many times the regulators will raise different issues in each review rather than addressing all issues at once. Commenters suggest combining the two reviews.</p>	Amend	3



Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	1331	Public	Commenter concerned with the excessive time taken to obtain closed loop geothermal well permits. Commenter also notes the delay makes emergency replacements unworkable and deters people from switching to geothermal.	Amend	1
DENR	733	Public	Recent rules added combustion sources to NC Air Toxics, causing small pollutant emission sources (such as small engines and water heaters) to be subject to costly requirements. Federal rules already regulate these emission sources.	Amend	1
DENR	1189	Public	Commenter argues rules adopted to satisfy federal requirements, such as the federal hazardous air pollutant rules, are often unnecessary. State should focus on rules suitable for North Carolina.	Study further	1
DENR	1484, 635, 790, 809, 989, 1232, 1365	Public, Anonymous	Commenters described various issues with the Coastal Area Management Act rules, including: 1) the required letters of no objection for the single family home exemption process need to be improved or eliminated; 2) 30' buffer rule implementation needs improvement; 3) maximum pier length should be extended to preserve shallow bottom habitat; 4) rules are too far-reaching and implemented inconsistently; 5) land use plans are inefficient use of resources by local government.	Amend	7
DENR	929, 1081	Public	Commenter argues that waste treatment and stormwater permits require inefficient soil and site evaluation by state and local government. These evaluations could be performed more efficiently by the private sector.	Study further	2

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	1635, 1644, 671, 820	Local government, Public, Anonymous	Commenters believe the National Pollutant Discharge Elimination System (NPDES) permit and fee process need to be reexamined. Commenters argued the time and expense associated with meeting the engineering study requirements are overly burdensome, particularly for smaller NC towns. Also argued the recordkeeping and erosion control costs were excessive and unnecessary. Commenters also recommended an "inactive status" option for permits, allowing businesses to temporarily suspend monitoring and avoid new permitting when active again.	Study further	4
DENR	1710	Public	Commenter concerned about the financial strain placed on development projects due to coastal stormwater rule requirements on lots in older, historic communities.	Study further	1
DENR	1549	Public	Commenter requests clarification of sewer slope line definition. Commenter is particularly concerned about inconsistent guidance on this issue in areas with non-sloping topography.	Amend	1
DENR	1116	Public	Commenter concerned that classifying reclaimed water as "waste" limits the ability to use reclaimed water in more applications.	Study further	1
DENR	1424	Public	The classification of yard waste runoff as industrial wastewater exceeds statutory authority. It is also burdensome and not supported by environmental testing.	Study further	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	1243	Local government	Commenter concerned that recent court ruling will not allow a local government to regulate sludge (biosolids) in its borders. Commenter suggests additional regulatory language that would not prohibit local government from tightening sludge rules in its borders.	Study further	1
DENR	1159	Local government, Anonymous	Requirement for local government to compost leaves at central compost facility in city is expensive and does not eliminate the hazards posed by fertilizers. Commenter suggests suspending requirement.	Amend	1
DENR	1119	Local government	Commenter concerned about the costs, particularly to smaller water systems, associated with recent changes to the rules governing public water systems.	Study further	1
DENR	1208	Anonymous	Requirements for transient water systems may be too costly and should be reviewed.	Study further	1
DENR	1225	Public	Commenter expressed frustration with review and approval process for new on-site wastewater technology.	No further action necessary	1
DENR	1375	Public	Commenter argues direct purchase of cow's milk for human consumption should be allowed.	Study further	1
DENR	1532	Anonymous	Commenter believes current frequency of school inspections is ineffective. Also concerned about the grading/communication of results.	Study further	1
DENR	1621	Anonymous	Commenter concerned with rules limiting preparation of rare hamburgers.	Amend	1
DENR	1639b	Local government	Rules requiring sampling in private drinking water wells need to be reformed. North Carolina should consider less costly alternatives.	Study further	1
DENR	780	Public	Commenter believes rules should allow food waste from schools to be used by farmers.	Study further	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	808	Public	Commenter believes rules governing "Off Highway Parks" for off road vehicles should be reviewed.	Study further	1
DENR	1582	Public	Commenter suggests process to permit use of rainwater for cleaning could be improved.	Study further	1
DENR	1143, 1647	Public, NC Chamber and MCIC	Commenters expressed several concerns with the inconsistency of various groundwater and drinking water rules. Commenters also concerned with size of impact on private sector and ability to conduct recycling activities due to groundwater standards more stringent than federal drinking water standards.	Study further	2
DENR	1593	Public	Division of Water Quality policy on gravel being considered impervious has led to unintended consequence of less gravel parking areas allowed by municipalities.	Study further	1
DENR	694	Public	Commenter would like a combined fishing license for freshwater and saltwater fishing.	Study further	1
DENR	993, 1311	Public	Fishing rules are too numerous and complex. Wildlife enforcement is also too aggressive.	Study further	2
DENR	658	Public	Commenter argues that gun hunting on Sundays should not be banned.	Study further	1
DENR	1001	Public	North Carolina should have a still hunting rule for deer and bear (no dog running or chasing).	Study further	1
DENR	752	Public	Commenter argues the cost of wetland mitigation fees are excessive compared to costs associated with Ecosystem Enhancement Program.	Study further	1
DENR	1540	Public, Local government	Commenter believes chlorophyll-a rules need additional study before being implemented. Commenter believes the rules would unfairly impact local towns and rural areas of the state. Also concerned about the scientific basis for rules.	Amend	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	1464	Public	Commenter concerned about the health risks and costs associated with burning poultry litter and biomass.	Study further	1
DENR	753	Public	Commenter argues the stream buffer rules should be reduced.	Study further	1
DENR	756	Public	Commenter believes an exemption for the temporary placement of construction materials and equipment within a buffer should be allowed.	Study further	1
DENR	758	Public	Commenter argues all variances for Zones 1 and 2 should be approved by DENR staff as opposed to Environmental Management Commission.	Amend	1
DENR	1262	Public	Commenter concerned that government is taking private land and that the rules for riparian buffers in mountains make using land difficult.	Study further	1
DENR	1006, 618, 1527	Public, Anonymous	Risk-based assessment and corrective action should be applied to all petroleum releases, regardless of release source. Commenters also concerned with the lengthy review process for storage approval.	Study further	3
DENR	1651	NC Chamber and MCIC of NC	Commenter notes the North Carolina Division of Waste Management blocked adoption of an EPA definition of solid waste, resulting in substantial costs, less use of manufacturing byproducts, less recycling, inconsistency between federal and state rules, and additional landfill disposal. Commenter argues North Carolina should adopt the EPA definition of solid waste.	Study further	1
DENR	1418	Public	Commenter notes that current wastewater and stormwater discharge rules are already very stringent. Commenter argues that enacting more stringent limits would impose an undue burden on regulated entities.	Study further	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR	1422	Neuse Regional Water and Sewer Authority (NRWASA)	Interbasin transfer rules should be reformed to improve calculation of water transfers and account for regional differences in implementation.	Study further	1
DENR	1652	North Carolina Water Quality Association	Commenter noted various concerns with proposed revisions to pretreatment rules. Commenter believes the Division of Water Quality's expanded definition of significant industrial user imposes unnecessary costs and burdens. Also argues the rules continue unnecessary review and approval of all permits and permit modifications and require more frequent sampling and record-keeping than necessary. Commenter also concerned that definition of "pass through" exceeds federal definition and that the submission for program approval section of rules is unclear.	Amend	1
DENR, Dept. of Agriculture	1351	Public	Requirements for bakeries are inconsistent and unclear. Including a bread bakery in an existing business requires costly commercial equipment, while homeowners can just certify their non-commercial equipped kitchens to be able to sell bakery products.	Amend	1
DENR, DHHS	1623, 1430, 955, 943	Public, Anonymous	Comments on child care rules note that local health inspectors should not inspect for food-related issues outdoors, the process used to determine eligibility to work in child care needs improvement, and child care centers should have greater flexibility to respond to the needs of children. A comment also noted that afterschool programs must have heated water to wash hands while cold water is acceptable during normal school hours.	Study further	4

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DENR, DOT	1180	Public	Commenter suggests harvesting trees within the right of way on controlled access highways to realize financial windfall and improve safety.	Study further	1
Building Code Council	1551	Public	Plumbers should be allowed to plumb existing houses for grey water re-use in toilets and on yard surfaces for watering plants and not be restricted to sub-surface irrigation systems. Some dry western states even give homeowners tax credits for grey water re-use. Recent announcements for grey water re-use during the drought are inconsistent with plumbing code.	Amend	1
Dept. of Revenue	1281, 1202	Public	Sales tax refund process for nonprofits should be reviewed to make it more efficient and easier for nonprofits to claim reimbursements.	Study further	2
Dept. of Revenue	1110	Public	Commenter argues that different sales tax rates across North Carolina's counties leads to inefficient and costly accounting.	No further action necessary	1
Dept. of Revenue	1420	Public	Sales taxes for service agreements are difficult to understand and administer and should be reviewed. Commenter notes other states have a much simpler tax code on this issue.	Amend	1
Dept. of Revenue	1834	Anonymous	Commenter argues the Department of Revenue should implement interpretations of tax law through the rulemaking process, not through agency policies and interpretations. By following the rulemaking process, the commenter believes affected parties could better plan for impacts and also comment on the policy.	Study further	1
Dept. of Commerce	621, 1408, 1649	Public	Commenters argue sale of alcoholic beverages on Sunday before noon should not be prohibited.	No further action necessary	3

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
Dept. of Commerce	1235, 1625	Public	Commenter argues that eliminating the ABC Commission potentially could eliminate the corruption and cronyism in the present system, and provide customers with more convenient store hours, better selection and lower prices through competition.	No further action necessary	2
Dept. of Commerce	743, 969	Public	Commenters argue that restaurants and bars should be allowed to lower alcohol prices with coupons or happy hours.	Amend	2
Dept. of Commerce	1531	Anonymous	Community Development Block Grants program should meet Section 3 goals as required by the U.S. Department of Housing and Urban Development (HUD)	No further action necessary	1
Dept. of Commerce	1288	Public	Commenter believes banks should be required to pay penalties if they delay real estate closings.	Study further	1
Dept. of Commerce	1294	Public	Commenter believes banks should be more supportive of small business and current financial rules are hurting job growth and causing other problems.	No further action necessary	1
Dept. of Commerce	1548	Public	Commenter believes medical records requirements as part of worker's compensation rules are overly burdensome and expensive.	No further action necessary	1
Dept. of Commerce	747, 964 1223, 1525	Public	Commenters noted concerns with who can/cannot be permitted to receive and sell beer and alcohol. Commenters noted permit inequalities for private versus public entities, Bed and Breakfasts', and private citizens. Additionally, a comment argued the current permitting process was antiquated, time-consuming, and inefficient.	Study further	4



Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
Dept. of Commerce	1620, 952	Public	Renewable energy and energy efficiency portfolio standard in SB 3 will result in higher energy prices not offset by enough energy savings. Also concerned these higher prices will result in a competitive disadvantage for North Carolina's businesses. Also concerned with lengthy time needed for power to purchase agreements and energy portfolio requirements in SB 3.	No further action necessary	2
Dept. of Correction	1362	Public	Commenter argues that jails and prisons should stop being privatized. Also notes overcrowding in prisons and believes minimum sentencing guidelines should be revisited.	Study further	1
Dept. of Insurance	917	Public	Current regulations allow neighbor's backyard project to remain unfinished for too long.	No further action necessary	1
Dept. of Insurance	1595	Public	Commenter argues continuing education requirements should be relaxed for more experienced agents. If exempt from other continuing education courses, commenter believe he or she should be exempt from Ethics course.	No further action necessary	1
Dept. of Insurance	858	Public	Commenter believes required fire suppression upgrade for church is unnecessary.	Study further	1
Dept. of Insurance	1364	Public	Delayed implementation of Energy Code requirements is better policy choice. State should allow the market to dictate the Energy Code standards.	No further action necessary	1
Dept. of Insurance	1491	Public	Farm building structures located inside a municipality should be treated the same as structures located outside a municipality.	Study further	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DHHS	719	Public	Critical Access Behavioral Health Agency (CABHA) rules were developed without going through the proper legal process. Commenter also argues the rule is not efficient for the provider or the consumer, is not transparent or legal in its implementation, and will not save money. Commenter believes it will only result in shifting expenditures from the agency to emergency rooms and the penal system, which the State will have to pay anyway.	Study further	1
DHHS	748, 1546, 795, 797 977, 1198, 1489, 1494, 1560, 1587, 1588, 1603	Public, Anonymous	Commenters described various issues with CABHA rules. These include: 1) the performance bond requirements are burdensome and unnecessary, 2) CABHA standards, particularly "good standing" requirements, could better address the different sizes of providers, 3) endorsement and enrollment rules and policies are redundant, 4) CABHA review period should be reconsidered, 5) CABHA monitoring procedures need to be simplified, 6) CABHA rules change too often and aren't communicated clearly, 7) medical director requirements need to be changed, and 8) CABHA review takes too long and delays important services.	Study further	12
DHHS	681	Public	New family care home permit process requirements and time deadlines are not clearly communicated and need improvement.	Amend	1
DHHS	1289	Public	Skilled nursing facilities with higher ratings should be allowed a longer timeframe between recertification surveys.	No further action necessary	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DHHS	1779a	Public	Rules on the design, construction, and operation of healthcare facilities should be improved. Specifically, the commenter argues that North Carolina should adopt national standards and the international building code without amendment. Specific standards unique to North Carolina, such as medical gas outlet requirements and air changes per hour, add design and construction costs.	Study further	1
DHHS	800	Public	Commenter argues small congregate living settings should not be subject to costly licensing rules. Commenter also questions the need for additional licensing staff.	No further action necessary	1
DHHS	803, 1471, 1490	Public, Anonymous	Commenters noted that health and human services monitoring, particularly in the mental health area, is duplicative and expensive.	Amend	3
DHHS	1182, 1183, 1396	Public	Commenters noted various problems with the licensure rules for mental health facilities. Some argued the requirement for mental health facilities to separately designate beds for Alternative Family Living (AFL) services and respite services caused undue paperwork burden and delay in services. Others believe the AFL rules generally are unfair and abused. Others noted issues with the requirement to post an egress map in group homes.	Study further	3
DHHS	1459	Public	Requirement for training prior to providing services to people with disabilities is expensive, time-consuming, and limits volunteers.	No further action necessary	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DHHS	1656	Public	Commenter argues the independent assessment requirement and process under the Clinical Coverage Policy ("Policy 3C") is unduly burdensome, inefficient, inconsistent with E.O. 70, and not supported by available medical research. Commenter believes this assessment requirement and process for the personal care services program should be eliminated or reformed.	Study further	1
DHHS	1641	Public	Rules requiring all group homes to be nationally credited should be reviewed.	Study further	1
DHHS	1441	Public	Rules on compensation and work environment for therapeutic foster parents providing therapeutic foster care should be reviewed.	Study further	1
DHHS	922	Public	Additional rules should be considered to assist disabled persons secure employment.	Study further	1
DHHS	613, 796 1316, 1413 1837	Public, Anonymous	Commenters argued that certificate of need rules increase costs and lead to less competition and service availability. Others recommended additional flexibility for smaller counties or facilities accepting only private insurance. For these reasons and others, several commenters believed the certificate of need rules should be eliminated.	Study further	5
DHHS	1472, 1117	Public	Commenters argue that limiting adoption assistance after adoption to non-healthy children reduces adoptions and should be revisited.	No further action necessary	2
DOA	786, 794 992, 1033 1099, 1147 1284, 1433 1537, 1596 1627	Public	Minimal mileage requirements for leased vehicles need to be updated to encourage fuel conservation. Currently, state employees either avoid using fleet cars and get reimbursed for using their own cars, or drive around without purpose to meet the minimal mileage requirement.	Amend	11

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DOA	1965a	Local government	Community colleges have to go through laborious and complex construction review process that: 1) has too many phases with redundant material that need to be submitted, 2) has lengthy review times adding at least 150 days to the project, and 3) requires too much detail for cost estimates. Process needs to be streamlined.	Study further	1
DOA	1002	Public	Sending environmental assessments to the state environmental clearinghouse for additional review yields significant delay and questionable benefit.	Study further	1
DOA	1794	Public	Commenter argues that Domestic Violence Abuser Treatment Programs are ineffective and should be eliminated.	Study further	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DOA	663, 783 884, 914 1035, 1047, 1080, 1085, 1216, 1271, 1304, 1310, 1518, 1592, 1617, 1415, 721, 1041, 1057, 1125, 1219, 1603a, 625, 644 1063, 1207, 1411	Public, Anonymous	<p>Commenters expressed a variety of concerns about the state procurement rules. These include:</p> <ul style="list-style-type: none"> <li>-E-Procurement rules are not generating savings for NC and should be eliminated.</li> <li>-State purchasing rules are outdated, expensive, and do not allow negotiation or flexibility.</li> <li>-North Carolina companies should be allowed to match prices with out-of-state companies.</li> <li>-Authorized state vendors should provide a better selection of items at more competitive prices.</li> <li>-Waiver of competition for used equipment saves money and should not be suspended.</li> <li>-New vendors should be allowed access to state furniture contract.</li> <li>-DOA Purchase and Contract Division shouldn't be separate from ITS statewide procurement.</li> <li>-Vendor contracts should be awarded by line item as opposed to whole contracts.</li> <li>-Lack of competitive pricing for professional engineering contracts results in higher costs and lack of transparency.</li> <li>-Rules governing mailing lists are outdated in light of posting all bids over \$10,000 online (current practice).</li> </ul>	Amend - The State has recently begun a comprehensive "Procurement Transformation" initiative to develop and implement best procurement practices across government. The initiative will completely review all aspects of procurement, including related statutes, rules, and policies. These suggestions will help inform the initiative.	27
DOJ	994	Public	Commenter concerned with trend toward shooter incidents and requests regulatory clarification that company police officers must wear firearm and duty ammunition.	Study further	1
DOL	1442	Public	Commenter argues that companies should be required to ensure workers are legally eligible to work before hiring.	Study further	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
DOT	749	Public	The process to obtain a maintenance permit for area around billboards is burdensome. Billboard maintenance contractors are subject to different requirements than DOT subcontractors performing maintenance along roads. Commenter also argues that billboard maintenance contractors should be able to access the billboard from the right of way.	Amend	1
DOT	617, 851, 900, 901, 936, 1030, 1087, 1200, 1338, 1530, 1633	Public, Anonymous	Commenters argued that vehicle safety inspections are ineffective, expensive, and may be duplicative for new vehicles. Others argued for a more coordinated and simplified tax, registration, and inspection process. Commenters also recommended elimination of the driver's license test for new residents, registration stickers, and temporary licenses.	Amend	11
DOT	787	Public	Fees to access state-maintained roads should increase to match fees charged by local governments to access locally-maintained roads.	Study further	1
DOT	819	Public	Rules governing maintenance work make it unnecessarily difficult to perform work.	Study further	1
DOT	829	Public	Transportation Corridor Official Map Act program and DOT acquisition process causes excessive delay for real estate transactions.	Study further	1
DOT	1514	Public	Commenter concerned that company's physical expansion limited by future highway expansion.	No further action necessary	1
ESC	1833, 615	Public, Anonymous	Commenter argues ESC rulemaking process should be reformed. Rules are unclear, inconsistent with statutory authority, and changes are made without public comment.	Amend	2

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Multiple Boards and Commissions	1523	Public	Commenter concerned with background and fingerprinting requirements and coordination among NC agencies. Commenter was required to submit fingerprint and background checks 3 separate times when applying for 3 different licenses and permits. Commenter suggests coordination to save money.	Study further	1
NC Appraisal Board	726, 1591	Public	Commenters believe current requirement for appraisal traineeships is being implemented poorly and should be eliminated. Commenters also believe the appraisal fee structure favors larger appraisal companies and should be reconsidered.	Study further	2
NC Auctioneer Licensing Board	640	Public	The rules for the auctioneers have not been updated since 1973 and do not adequately account for online auctioneers.	Amend	1
NC Board of Examiners for Engineers and Surveyors	937	Public	Statute change is needed to allow surveying services from firms licensed in other states. NC is reportedly only 1 of 3 states with this type of restriction in place.	Study further	1
NC Board of Massage and Bodywork Therapy	761	Anonymous	Commenter believes applications licenses 1) cost too much (\$20) and 2) should be available for download.	Amend	1
NC Psychology Board	1776	Public	Master level psychologists should be able to practice independently after 2-5 years of supervision. Currently, these master level psychologists require perpetual supervision. The commenter argues this restriction is not based on empirical evidence and serves to only benefit the dominant members of the professional group.	No further action necessary	1
NC Real Estate Commission	1218	Public	Privilege tax to sell real estate should be eliminated.	No further action necessary	1



Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
NC State Board of Cosmetic Art Examiners	738	Public	Continuing education requirements for cosmetic arts licensees are too onerous. License renewal requirements should also be reevaluated.	Study further	1
NC State Board of Opticians	1664	Public	Requirement that licensed opticians must always be on premise for business operation severely restricts business and advantages internet firms.	Amend	1
NC State Licensing Board for General Contractors	1875	Anonymous	Financial requirements for contractors are problematic for a variety of reasons: 1) only considers working capital, not fixed assets; 2) bond option requires too much money; 3) tier structure allows firms with similar working capital to work on much different sized projects.	Amend	1
NC State Licensing Board for General Contractors	1158, 1248, 1458	Public	Comments raised several issues on rules related to contractors. Commenters noted that pool contractors should be subject to regulation and that the Homeowners Recovery Fund's reimbursable loss definition needs improvement. Also questioned yearly testing requirements and value added by state and local building inspections.	No further action necessary	3
NC Veterinary Medical Board	862	Public	More online courses should be accepted as continuing education credits for veterinarians.	Amend	1
NC Veterinary Medical Board	1142	Public	Allow "foreign graduated" and PAVE certified (Program for the Assessment of Veterinary Education Equivalence) veterinarians to practice in North Carolina without additional expensive test.	Study further	1
OAH	641	Public	Commenter argues that Rules Review Commission stops needed rules and should be eliminated.	Study further	1

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
OSP	629, 1095, 1312, 632, 769, 792, 896, 1227, 828, 832, 1076, 1111, 865, 878, 1008, 1009, 1012, 1026, 1062, 1104, 1195, 1214, 1227, 1380, 1580	Public, Anonymous	<p>Commenters expressed a variety of concerns about the state personnel rules. These include:</p> <ul style="list-style-type: none"> <li>-Reduction in force rules should be reviewed and allow appropriate redress for affected employees.</li> <li>-Jobs should only be posted if truly open to external candidates.</li> <li>-Hiring rules should not allow higher salaries for external candidates compared to equally qualified internal candidates.</li> <li>-Rules limit state employees' ability to receive additional compensation for instruction in addition to other standard job duties.</li> <li>-State disciplinary and termination rules go too far in restricting managers' abilities to terminate ineffective employees.</li> <li>-Rule restricting a state employee's ability to have more than one state job should be eliminated.</li> <li>-Hiring process takes too long and needs to be reformed.</li> <li>-Hiring and pay practices do not adequately protect against unfair practices.</li> <li>-Management and leadership positions should require management readiness leadership assessments to improve leadership and effectiveness.</li> <li>-Paid leave should be granted for pregnancy leave.</li> <li>-Requirement to seek approval for other outside employment should be eliminated.</li> <li>-Veterans preference in hiring process is not working and should be reformed or eliminated.</li> <li>-Hiring process should be reformed to give stronger preference for qualified and internal candidates.</li> <li>-Performance reviews are not administered fairly.</li> <li>-Top levels of management are paid too much and compensation should be more evenly distributed.</li> </ul>	Amend - Comments will help inform the Governor's current consolidation initiative to move all HR staff under OSP to standardize rules and implementation of personnel actions across the cabinet.	25

Agency	Comment ID	Proposed By:	Comment Summary	OSBM Recommendation	# of Comments
			-First written warnings should be eligible for appeal given their potential negative impact. -Community hours leave is used inconsistently across state government.		
State Board of Community Colleges	1188, 1443, 1473	Public	Commenters raised a variety of concerns with community college rules. These included concerns about rules on residency for tuition, financial aid abuse, and the minimum age requirements for community college entrance.	Study further	3
State Board of Elections	1139	Public	Commenter argues submitting ballots by email should be allowed for U.S. military. Commenter believes current process requiring two people to sign an envelope is overly burdensome.	Amend	1
<b>Total</b>					<b>250</b>

## INTERNAL AGENCY REVIEW

As part of the requirements stated in Executive Order No. 70, the Rules Modification and Improvement Program (RMIP), cabinet agencies have two major responsibilities:

1. to conduct an internal review of agency rules to identify existing rules that were unnecessary, unduly burdensome, or inconsistent with EO 70, and
2. to make a recommendation as to whether these rules should be repealed, modified or expanded.

As a result of this review, agencies identified 2,080 rules for repeal, modification, or expansion. Table 3 shows the disbursement of the 2,080 by rule type and agency grouping.

**Table 3. Break-down of Agency Rule Recommendations**

Repeals	1,064
Modifications	896
Expansions	120
<b>Total</b>	<b>2,080</b>
DHHS	926
DENR	200
Cabinet	1996

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## REPEALS

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Of the 1,064 rules identified for repeal, 895 were submitted to the NC General Assembly for repeal on February 8, 2011. An additional 164 rules identified for repeal will be submitted to the NC General Assembly shortly.

Tables 4 and 5 below provide additional information for each rule recommended for repeal including the rule title, rule citation, the number of rules associated with the rule citation, and the appropriate agency.

**Table 4. Repeals Sent to the General Assembly**

Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
DOA	Interviewing; Vacancy List	01 NCAC 01A .0303-.0304	2
DOA	Balanced Growth Policy	01 NCAC 09 .0401-.0406	6
DOA	Human Relations Council	01 NCAC 11 .2102-.2105, .2111, .2116, .2201-.2204	10
DOA	Office for Citizen Participation	01 NCAC 13 .0101-.0103, .0201-.0203, .0301-.0305	11
DOA	Election of Youth Members	01 NCAC 19A .0103	1
DOA	State Youth Involvement Office	01 NCAC 19B .0101-.0103, .0201, .0301-.0303	7
DOA	N.C. State Employee Suggestion System	01 NCAC 21F .0101-.0102, .0201-.0205, .0301-.0304, .0401-.0405, .0501-.0504	20
DOA	Energy Development Authority	01 NCAC 30C .0104, .0105, .0201	3
DOA	Public Radio: General Support Standards	01 NCAC 36 .0101	1
DOA	Documentation	01 NCAC 44A .0202(b)	1
Commerce	Name and Address	04 NCAC 01A .0101	1
Commerce	Grievance Procedures	04 NCAC 01C .0201-.0207	7
Commerce	Background and Objectives	04 NCAC 01I .0101 (a) and (d)	1
Commerce	North Carolina Jobs Tax Credit	04 NCAC 01J .0101, .0102; .0201; .0301; .0401; .0501	6
Commerce	Projects Not To Be Considered For Funding	04 NCAC 01K .0105 (a)(5)	1
Commerce	Application Procedure	04 NCAC 01K .0202, .0204	2
Commerce	Reimbursement Of Department Expense	04 NCAC 01K .0207	1
Commerce	Grants to Successful SBA Disaster Home Loan Applicants	04 NCAC 01L .0101-0106	6
Commerce	Hurricane Floyd Business Assistance Programs	04 NCAC 01M .0101-0107	7

Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
Commerce/ ABC Com.	Standards for Commission and Employees	04 NCAC 02R .0701	1
Commerce/ ABC Com.	Conflict of Interest	04 NCAC 02R .1008	1
Commerce/ ABC Com.	Use of Profanity Prohibited	04 NCAC 02S .0209	1
Commerce/ ABC Com.	Entertainers and Conduct	04 NCAC 02S .0216	1
Commerce/ ABC Com.	Visual Displays	04 NCAC 02S .0217	1
Commerce/ Banking Com.	Permissible Investments	04 NCAC 03F .0202	1
Commerce/ Banking Com.	Issuance of License	04 NCAC 03F .0302	1
Commerce/ Banking Com.	License fees	04 NCAC 03F .0303	1
Commerce/ Banking Com.	Agent location fee	04 NCAC 03F .0304	1
Commerce/ Banking Com.	Certificate of Authority	04 NCAC 03F .0401	1
Commerce/ Banking Com.	Statement of Net Worth	04 NCAC 03F .0502	1
Commerce/ Banking Com.	Annual Statement	04 NCAC 03F .0503	1
Commerce/ Banking Com.	Hearings	04 NCAC 03F .0701	1
Commerce/ Banking Com.	Cash-Out Transactions	04 NCAC 03L .0404	1
Commerce/ Banking Com.	Limitation on Delayed Deposit Check Cashing	04 NCAC 03L .0405	1
Commerce/ Banking Com.	Report of Information to Commissioner for the General Assembly	04 NCAC 03L .0604	1
Commerce/ Cemetery Com.	Cemetery Commission Members	04 NCAC 05A .0201	1
Commerce/ Cemetery Com.	Cemetery Commission Examiners	04 NCAC 05A .0203	1
Commerce/ Cemetery Com.	Clerical Staff	04 NCAC 05A .0204	1
Commerce/ Cemetery Com.	Meetings	04 NCAC 05A .0205	1
Commerce/ Industrial Com.	Waiver of Oral Argument	04 NCAC 10B .0311	1
Commerce	Organization	04 NCAC 12C .0101, .0105, .0108	3

Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
Commerce	Rulemaking and Administrative hearing	04 NCAC 12D .0101 - 0119, and .0131	20
Commerce	Energy Policy Council	04 NCAC 12E .0101 - .0102	2
Commerce	Governor's Showcase	04 NCAC 12F .0101 - .0108	8
Commerce	Purpose	04 NCAC 14A .0104	1
Commerce	Governor's Community of Excellence Award Program	04 NCAC 14B .0109-.0116, .0211-.0220	18
Commerce	Housing Development Project	04 NCAC 19L .1301, .1302, .1303	3
Commerce	Federal and State Personnel Standards for Subrecipients	04 NCAC 20B .0402, .0403	2
Commerce	Employment and Training Grant Program	04 NCAC 20B .0901, .0902, .0904, .0906, .0907, .0909, .0910, .0911	8
DOC	Donations	05 NCAC 02E .1005	1
DOC	Program Sponsors	05 NCAC 02F .0204	1
DOC	Private Correctional Service Providers	05 NCAC 06 .0101-.0102, .0201, .0301, .0401	5
DCR	Use of the Archives and History/ State Library Facilities	07 NCAC 04O .0104	1
DCR	Mobile Museum of History	07 NCAC 04O .0202	1
DCR	Stagville Center	07 NCAC 04U .0101-.0102	2
DCR	ART WORKS IN STATE BUILDINGS PROGRAM	07 NCAC 12 .0101-.0104	4
DHHS/ Aging	Introduction	10A NCAC 05A .0101, .0201, .0202	3
DHHS/ Aging	Public Information	10A NCAC 05C .0202	1
DHHS/ Aging	Area Plan Submission : Review and Approval	10A NCAC 05C .0305 (1) (B), (4) (E)	1
DHHS/ Aging	County Organization on Aging Funds	10A NCAC 05C .0401	1
DHHS/ Aging	Request for Funds	10A NCAC 05D .0201 (1), (2), (3), (4), (5), (6)	1
DHHS/ Aging	Travel	10A NCAC 05D .0302	1
DHHS/ DCD	Temporary Care Requirements	10A NCAC 09 .1501-.1504	4
DHHS/ DCD	Definition and Review Criteria for Start-Up Funds	10A NCAC 10 .0401-.0402	2
DHHS/ DCD	Appeals	10A NCAC 10 .0603	1
DHHS/ DCD	Appeals	10A NCAC 10 .0703	1
DHHS/ DHRS	State Medical Facilities Plan	10A NCAC 14B .0101-.0141, .0150, .0152-.0161, .0163-.0195, .0201-.0207, .0209-.0246, .0251-.0285, .0289, .0291-.0295	171
DHHS/ DHRS	Health Maintenance Organizations	10A NCAC 14C .0302	1
DHHS/ DHRS	Criteria and Standards for Air Ambulance Services	10A NCAC 14C .3301-.3303, .3305	4
DHHS/ DHH	Reports From Local Agencies	10A NCAC 17D .0217	1

Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
DHHS/ DMA	Availability of Manuals	10A NCAC 21A .0701	1
DHHS/ DMA	Eligibility Determination	10A NCAC 21B .0204, .0404	2
DHHS/ DMA	Pharmacy of Record	10A NCAC 21C .0103	1
DHHS/ DMA	Blue Cross Blue Shield	10A NCAC 22E .0105	1
DHHS/ DMA	Investigation	10A NCAC 22F .0202	1
DHHS/ DMA	Process	10A NCAC 22F .0403	1
DHHS/ DMA	Peer Review	10A NCAC 22F .0502-.0510	9
DHHS/ DMA	Provider Lock-out	10A NCAC 22F .0603	1
DHHS/ MHDDSAS	Surrogate Parents for Infants and Toddlers in Early Intervention Services	10A NCAC 27H .0501-.0506	6
DHHS/ MHDDSAS	Notification Procedures for Provision of Services	10A NCAC 29D .0801	1
DHHS/ DPH	Adult Health - Home Health Services	10A NCAC 39A .0201-.0211	11
DHHS/ DPH	Home and Community-Based HIV Health Services Program	10A NCAC 39A .0801-.0810	10
DHHS/ DPH	School Water Fluoridification	10A NCAC 40A .0104-.0105, .0206-.0208, .0306-.0310, .0403-.0404	12
DHHS/ DPH	Fluoride Mouthrinse: Notification	10A NCAC 40B .0208	1
DHHS/ DPH	Vaccine for Providers Other Than Local Health Departments	10A NCAC 41A .0502	1
DHHS/ DPH	Fees for Rabies, Tags, Links, and Rivets	10A NCAC 41G .0102	1
DHHS/ DPH	Maternal and Child Health Block Grant Nutrition Program	10A NCAC 43D .1201-.1207	7
DHHS/ DPH	Pediatric Primary Care Program	10A NCAC 43E .0301-.0309	9
DHHS/ DPH	Children's Specialty Health Services	10A NCAC 43F .0101-2, .0201-.0207, .0301-.0305, .0401-.0410, .0501-.0514, .0601-.0607, .0701-.0704, .0801-.0802, .0804, .0901, .1001-.1012, .1101-.1105, .1201-.1204	74
DHHS/ DPH	Migrant Worker Body Disposition	10A NCAC 44 .0301, .0303-.0310	9
DHHS/ DSB	Health Insurance	10A NCAC 63C .0301	1
DHHS/ DSB	Special Assistance for the Blind	10A NCAC 63D .0104, .0203, .0302, .0307, .0402, .0404, .0801	7
DHHS/ DSS	State Public Assistance Equalizing Fund	10A NCAC 67A .0109	1
DHHS/ DSS	Rulemaking	10A NCAC 68 .0201, .0207	2
DHHS/ Aging	Resident Evaluation Services for Adults	10A NCAC 71E .0101-.0109	9

Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
DHHS/ Aging	Recipient in Domiciliary Care with Spouse at Home; With Spouse Not Receiving Assistance	10A NCAC 71P .0303-.0304	2
DHHS/ Aging	Mixed Budgeting: When Other Budget Members are Recipients	10A NCAC 71P .0401-.0406	6
DHHS/ Aging	Visits and Re-Evaluations	10A NCAC 71P .0702, .0704	2
DHHS/ Aging	AD-SA GROUP I and II; AD-SA GROUP II	10A NCAC 71P .0802-.0804	3
DHHS/ Aging	Evaluation	10A NCAC 71P .0906	1
DHHS/ DSS	Coupon Issuance	10A NCAC 71U .0202	1
DHHS/ DSS	Medical Deductions for Medicare Prescription Drug Card Benefits	10A NCAC 71U .0216	1
DHHS/ DSS	Forms	10A NCAC 71U .0301-.0302, .0304	3
DHHS/ DSS	Low Income Energy Assistance Program: Funding	10A NCAC 71V .0101	1
DHHS/ DSS	Unemployed Parent Program	10A NCAC 71W .0102, .0201, .0301, .0401-.0402, .0406, .0409, .0411, .0501, .0701-.0703, .0705-.0711, .0801-.0803, .0901-.0904	26
DHHS/ DSS	Job Opportunities and Basic Skills Training (JOBS) Program	10A NCAC 71X .0101-.0108, .0201-.0210, .0301-.0304, .0401-.0413	35
DHHS/ DVR	Handicapped Drivers and Passengers: Parking Privileges	10A NCAC 89C .0108	1
DHHS/ DVR	Recruitment and Training Services	10A NCAC 89C .0311	1
DCCPS	Purpose and Grievance	14A NCAC 01D .0401-.0402	2
DCCPS/ ALE	Definitions to Apply to This Chapter	14A NCAC 08A .0101, .0102	2
DCCPS/ ALE	Administration: Investigation: and Enforcement	14A NCAC 08H .0101-.0102, .0201-.0207, .0301-.0303, .0401-.0405, .0501-.0502, .0504, .0601-.0606, .0701-.0703, .0801-.0803, .0901-.0902, .1001-1003, .1101-.1104, .1201-1202, .1301-.1302, .1401-.1404, .1501-.1504, .1601, .1603-.1604, .1701-.1705, .1801-.1805, .1901-1903	69
DCCPS/ Butner Public Safety	Medical Services Program	14A NCAC 10B .0201-.0202	2
DCCPS/ VCS	Assistance Program for Victims of Rape and Sex Offenses	14A NCAC 11 .0302-.0305	4
DCCPS/ VCS	Purpose and Intent	14A NCAC 11 .0401	1



Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
DENR/ DWQ	State Clean Water Revolving Loan and Grant Program	15A NCAC 01J .1401-.1402, .1501, .1601-.1602, .1701, .1801, .1901-.1902, .2001-.2003, .2101, .2201	14
DENR/ DWQ	Construction Loans	15A NCAC 02F .0101-.0104, .0201-.0202	6
DENR/ DWQ	North Carolina Pollution Control Revolving Fund	15A NCAC 02M .0101-.0103, .0201-.0202, .0301-.0303, .0401-.0403, .0501, .0601-.0605, .0701-.0702, .0801-.0802	21
DENR/ DLR	Sedimentation plan review fee	15A NCAC 04B .0126(e)	1
DENR/ DLR	Mining permit application processing fee	15A NCAC 05B .0112	1
Bd. Chiropractic Examiners	Requirements for Licensure	21 NCAC 10 .0201	1
Bd. Chiropractic Examiners	Temporary Rules	21 NCAC 10 .0405	1
Bd. Chiropractic Examiners	Right to and Notice of Hearing; Location of Hearing, Intervention	21 NCAC 10 .0602-.0603, .0607-.0608	4
Bd. Chiropractic Examiners	Decision of Board	21 NCAC 10 .0707	1
Bd. Cosmetic Art Examiners	Prerequisites	21 NCAC 14C .0202	1
Bd. Electrical Contractors Examiners	Joint Resolution and Agreements	21 NCAC 18B .0106	1
Bd. Electrical Contractors Examiners	Examinations	21 NCAC 18B .0205-.0207	3
Bd. Electrical Contractors Examiners	Specially Arranged Examinations	21 NCAC 18B .0208	1
Bd. Electrical Contractors Examiners	Reclassification of former Class I and II Licenses and Qualified Individuals	21 NCAC 18B .0601-.0602	2
Bd. Optometry Examiners	Application for Licensure by Reciprocity; Optometric Assistant and Technician	21 NCAC 42B .0104; 42D .0103-.0106, .0108	6
Bd. Plumbing, Heating, and Fire Sprinkler Contractors Examiners	Visitors	21 NCAC 50 .0303	1
Bd. Podiatry Examiners	Membership	21 NCAC 52 .0102	1

Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
Housing Finance Agency	North Carolina Appalachian Housing Program	24 NCAC 01F .0101-.0102, .0201-.0203, .0301-.0302, .0401-.0403, .0501-.0505	15
Housing Finance Agency	Multifamily Subsidized Rental Program	24 NCAC 01H .0101-.0105, .0201-.0206, .0301-.0305, .0401-.0404, .0501-.0503	23
Housing Finance Agency	Home Improvement Loan Purchase Program	24 NCAC 01J .0101-.0105, .0107, .0201-.0202	8
Housing Finance Agency	Multifamily Unsubsidized Rental Program	24 NCAC 01K .0101-.0103, .0201-.0204, .0301-.0304, .0401-.0405, .0501-.0504, .0601-.0605	25
Housing Finance Agency	Rental Rehabilitation Program	24 NCAC 01L .0101-.0102, .0201-.0202	4
Housing Finance Agency	Homelessness Prevention Demonstration Fund	24 NCAC 01O .0101-.0102, .0201-.0203	5
Housing Finance Agency	Fire Protection Fund	24 NCAC 01P .0101-.0103, .0201-.0203	6
OSP	Cross-Hiring	25NCAC 01D .0107	1
OSP	Effective Date	25NCAC 01D .0403	1
OSP	Agency Responsibility	25NCAC 01D .1205	1
OSP	Types of Leave	25NCAC 01E .0102	1
OSP	Position Analysis Forms	25NCAC 01F .0401-.0403	3
OSP	Personnel Records and Reports	25NCAC 01I .1704	1
OSP	Work Planning/Performance Review	25NCAC 01K .0612-.0613	2
OAH	Employee Insurance Committee	26 NCAC 01 .0104	1
OAH	Expedited Hearing Procedures For Complex Contested Cases	26 NCAC 03 .0304	1
OAH	Additional Information	26 NCAC 04 .0104	1
<b>Total</b>			<b>895</b>

**Table 5. Additional Rules Identified for Repeal**

Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
DENR	Clean Waster Bond Act	01 NCAC 22 .0101-.0102, .0201-.0209, .0301-.0303, .0401-.0403, .0501-.0506, .0601-.0606, .0701-.0704, .0801-.0802, .0901-.0906, .1001-.1002, .1101-.1103	46
DENR	Regional Water Supply Planning Act of 1971	01 NCAC 23 .0101-.0108	8
DENR	Regional Sewage Disposal Planning Act of 1971	01 NCAC 24 .0101-.0107	7
DENR	Low Level Radioactive Waste Management Authority	01 NCAC 37 .0101-.0103, .0201-.0208, .0301-.0307	18
DENR	General Organization	15A NCAC 01A .0101-.0103	3
DENR	Rulemaking: Model Rules	15A NCAC 01B .0101	1
DENR	Contested Cases Hearing Procedures	15A NCAC 01B .0201-.0204	4
DENR	Purchasing and Contracting	15A NCAC 01B .0301-.0303	3
DENR	Public Records	15A NCAC 01B .0401-.0402	2
DENR	Resolution of Submerged Lands Claims	15A NCAC 01G .0201-.0207, .0301-.0305	12
DENR	Groudwater Protection Loan Fund	15A NCAC 01K .0101-.0103, .0201-.0202, .0301-.0305, .0401-.0404	14
DENR/ DWQ	Department Hearing Rules	15A NCAC 02I .0106	1
DENR/ DWQ	Rulemaking Hearings: Procedures	15A NCAC 02I .0201-.0202	1
DENR/ DWQ	Administrative Hearings	15A NCAC 02I .0301-.0302	2
DENR/ DLR	Rules on Administrative Hearings	15A NCAC 04C .0108-.0111	4
DENR/ DLR	Rulemaking Procedures	15A NCAC 04E	3
DENR/ DLR	Civil Penalties	15A NCAC 05F .0108-.0112	5
DENR/ Soil Conservation Commission	Address	15A NCAC 06A .0107	1
DENR/ DCM	Contested Cases Hearing Procedures	15A NCAC 07J .0303	1

Agency	Rule Title	Rule Citation	# of Rules Associated with Rule Citation
DENR/ DCM	Contested Cases Procedures	15A NCAC 08G .0804	1
DENR/Waste Management Board	Preemption Process: Low-Level Radioactive Waste Facility	15A NCAC 14A .0400	14
DENR/ DEH	Appeals Procedure	15A NCAC 18A .1031, .1209, .1817, .2221, .2417, .3335	6
DHHS/DPH	School Health Funds	10A NCAC 43E .0101-.0107	7
<b>Total</b>			<b>164</b>

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## MODIFICATIONS

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Of the 896 recommended modifications received from agencies, OSBM has determined that 378 justify further action. Table 6 shows the breakout of the proposed rule modifications by agency. Table 7 provides additional detail on the 378, including the rule title, rule citation, number of rules associated with each citation, and the appropriate agency.

**Table 6. Rule Modifications by Agency**

Agency	# of Rules for Modification
Boards and Commissions	18
Commerce	71
CC&PS	31
DHHS	165
DJJDP	7
DOA	30
DOC	6
OAH	2
OSBM	1
OSP	37
WRC	10
<b>Total</b>	<b>378</b>

**Table 7. Rule Citations by Agency Recommended for Modification**

Agency	Rule Title	Rule Citation	# of Rules Associated with Citation
Bd. Cosmetic Art Examiners	Special Arrangements for Disabled	21 NCAC 14N .0107	1
Bd. Electrical Contractors Examiners	License Name Requirements	21 NCAC 18B .0402	1
Bd. Optometry Examiners	Location	21 NCAC 42A .0101	1
Bd. Optometry Examiners	Branch Office	21 NCAC 42B .0202	1
Bd. Optometry Examiners	Professional Responsibility	21 NCAC 42E .0102	1
Bd. Optometry Examiners	Application and Registration	21 NCAC 42M .0104	1
Bd. Plumbing, Heating, and Fire Sprinkler Contractors Examiners	Plumbing, Heating and Fire Sprinkler Contractors	21 NCAC 50 .0107, .0305	2
Bd. Plumbing, Heating, and Fire Sprinkler Contractors Examiners	Heating: Group 1 License Required	21 NCAC 50 .0507	1
Bd. Plumbing, Heating, and Fire Sprinkler Contractors Examiners	Who Shall Hear Contested Cases	23 NCAC 50 .1005	1
Bd. Plumbing, Heating, and Fire Sprinkler Contractors Examiners	Plumbing, Heating and Fire Sprinkler Contractors	21 NCAC 50 .1201, .1203, .1207, .1210, .1302	5
Bd. Podiatry Examiners	Podiatry Examiners	21 NCAC 52 .0201, .0601, .0603,	3
Commerce	Guaranteed Energy Savings Contracts	01 NCAC 41B .0104, .0507	2
Commerce	Rulemaking Hearings: Emergency Rules: and Declaratory Rules	04 NCAC 01B .0101, .0103, .0105, .0106, .0108, .0201	6
Commerce	Industrial and Pollution Control Revenue Bonds: Application Procedures	04 NCAC 01E .0204, .0208	2

Agency	Rule Title	Rule Citation	# of Rules Associated with Citation
Commerce	Guaranty Against Loss Reserves and Loans for Basic Industrial Buildings	04 NCAC 01F .0101-.0102, .0201-.0209, .0301-.0309, .0401-.0413	33
Commerce	Information and Application	04 NCAC 01H .0202	1
Commerce	Industrial Development Fund	04 NCAC 01I .0101-.0102, .0202, .0301, .0402, .0801	6
Commerce	Economic Development Activity of Community Development Block Grant Program	04 NCAC 01K .0102, .0302	2
Commerce	NC Community Development Block Grant Program	04 NCAC 19L .0401, .0403, .0407-.0408, .0501-.0502, .0706, .0901-.0902, .0910, .1202, .1703	12
Commerce/ ABC Com.	Location and Address	04 NCAC 02R .0102	1
Commerce/ ABC Com.	Storage and Distribution of Spirituous Liquors: Commercial Transportation	04 NCAC 02R .1302, .1305	2
Commerce/ ABC Com.	Storage and Disposal of Spirituous Liquor Containers	04 NCAC 02S .0512	1
Commerce/ ABC Com.	Application of Standards	04 NCAC 02T .0401	1
Commerce/ Cemetery Com.	Administrator of Cemetery Commission	04 NCAC 05A .0202	1
Commerce/ Cemetery Com.	Deposit for Multiple Burials	04 NCAC 05D .0105	1
DCCPS	General Provisions	14A NCAC 01A .0102-.0103	2
DCCPS	Rulemaking and Administrative Hearings	14A NCAC 01B .0101, .0202-.0203, .0304, .0306, .0402, .0502	7
DCCPS	Service of Request for Assistance	14A NCAC 01C .0104	1
DCCPS/ ALE	ALE Manual Adoption by Reference	14A NCAC 08B .0101	1
DCCPS/ Butner	Medical Services Program	14A NCAC 10B .0203, .0206-.207	3
DCCPS/ CAP	Purpose and Organization	14A NCAC 06 .0101, .0103	2

Agency	Rule Title	Rule Citation	# of Rules Associated with Citation
DCCPS/ EM	Location and Hours of Operation; Organization	14A NCAC 04 .0101, .0104	2
DCCPS/ EM	Where to Obtain Manuals/Forms and Assistance	14A NCAC 04 .0202	1
DCCPS/ GCC	Purpose and Organization	14A NCAC 07 .0106-.0107	2
DCCPS/ GCC	Grant Application Process and Procedures	14A NCAC 07 .0206, .0208, .0309-.0310	4
DCCPS/ SCP	Security	01 NCAC 04H .0103-.0104, .0201, .0206	4
DCCPS/ VCS	Purpose and Intent	14A NCAC 11 .0301	1
DCCPS/ VCS	Processing and Payment of Claims	14A NCAC 11 .0502	1
DHHS/ Aging	Aide Supervision and Quality Assurance Requirements	10A NCAC 06A .0307, .0310	2
DHHS/ Aging	Nutrition Services	10A NCAC 06K .0201, .0205	2
DHHS/ Aging	Adult Day Care Standards	10A NCAC 06R .0101	1
DHHS/ Aging	Enrollment-Special Care Services	10A NCAC 06R .0904	1
DHHS/ Aging	Cost Sharing	10A NCAC 06T .0204	1
DHHS/ Aging	Definitions of Services and Eligibility	10A NCAC 06U .0102-.0103	2
DHHS/ Aging	Quality Assurance Requirements	10A NCAC 06X .0213	1
DHHS/ Aging	Introductory Statement	10A NCAC 71A .0101	1
DHHS/ Aging	Adult Protective Services Register	10A NCAC 71A .0806	1
DHHS/ Aging	Adult Placement Services-Requirements	10A NCAC 71C .0101, .0104-.0105, .0107-.0108	5
DHHS/ Aging	Social Development Through Therapeutic Groups/Definitions	10A NCAC 71F .0104	1
DHHS/ Aging	Maximum Rates and Reimbursement	10A NCAC 71H .0103	1
DHHS/ Aging	Optional Resources/Component 1	10A NCAC 71J .0108	1

Agency	Rule Title	Rule Citation	# of Rules Associated with Citation
DHHS/ Aging	General Provisions and Domiciliary Care	10A NCAC 71P .0101-.0102, .0201-.0202, .0301-.0302,	6
DHHS/ Aging	Payment Procedures	10A NCAC 71P .0501-.0502, .0505	3
DHHS/ Aging	Eligibility Determination Process	10A NCAC 71P .0603	1
DHHS/ Aging	AA-SA GROUP I	10A NCAC 71P .0801	1
DHHS/ Aging	Eligibility Factors	10A NCAC 71P .0903-.0905	3
DHHS/ Aging	Purpose of Consumer Contributions	10A NCAC 71S .0101	1
DHHS/ DCD	Definitions	10A NCAC 09 .0102	1
DHHS/ DCD	Health Standards for Staff	10A NCAC 09 .0701	1
DHHS/ DCD	Staff/Child Ratios	10A NCAC 09 .0712, .0713	2
DHHS/ DCD	Nutrition Requirements	10A NCAC 09 .0901-.0903	3
DHHS/ DCD	Safety, Medication, and Sanitation Requirements	10A NCAC 09 .1720	1
DHHS/ DCD	Rulemaking and Contested Case Procedures	10A NCAC 09 .2001-.2007	7
DHHS/ DCD	Maintaining Approval	10A NCAC 10 .0805	1
DHHS/ DCD	Definition of Special Needs Child	10A NCAC 10 .0910	1
DHHS/ DHRS	Application Requirements	10A NCAC 13D .2101	1
DHHS/ DHRS	Public Access to Department Licensure Records	10A NCAC 13D .2110	1
DHHS/ DHRS	Infection Control	10A NCAC 13D .2209	1
DHHS/ DHRS	Nurse Aides	10A NCAC 13D .2304	1
DHHS/ DHRS	Adult Care Home Personnel Requirements	10A NCAC 13D .2308	1
DHHS/ DHRS	Drug Storage and Disposition; Pharmaceutical Records	10A NCAC 13D .2605-.2606	2



Agency	Rule Title	Rule Citation	# of Rules Associated with Citation
DHHS/ DHRS	Emergency Drugs	10A NCAC 13D .2607	1
DHHS/ DHRS	Provision of Nutrition and Diabetic Services	10A NCAC 13D .2701	1
DHHS/ DHRS	Criteria and Standards for Magnetic Imaging Services -- Information required of Applicant	10A NCAC 14C .2702	1
DHHS/ DMA	General Program Administration	10A NCAC 21A .0302-.0303, .0604-.0608	7
DHHS/ DMA	Eligibility Determination	10A NCAC 21B .0206, .0403	2
DHHS/ DMA	Benefits	10A NCAC 21C .0101-.0102	2
DHHS/ DMA	Manuals and Forms	10A NCAC 22B .0201-.0202	2
DHHS/ DMA	Program Integrity	10A NCAC 22F .0302, .0401, .0501	3
DHHS/ DMA	Reimbursement Plans	10A NCAC 22G .0209-.0210, .0213, .0302-.0305	7
DHHS/ DMA	Medical Assistance Provided	10A NCAC 22O .0102, .0118, .0123, .0201, .0205-.0207, .0402, .0404, .0406	10
DHHS/ DPH	General Procedures for Public Health Program	10A NCAC 45A .0101-.0102, .0201-.0204, .0301-.0305, .0401-.0403	14
DHHS/ DSS	Procedure for Obtaining Consent for Release of Information	10A NCAC 69 .0401	1
DHHS/ DSS	Assurance of Confidentiality	10A NCAC 69 .0603	1
DHHS/ DSS	Payments of Grants in Aid to Private Child-Caring Institutions	10A NCAC 70D .0101-.0107	7
DHHS/ DSS	Eligibility Requirements for Regular Monthly Cash Assistance Payment or Vendor Payments	10A NCAC 70M .0402	1
DHHS/ DSS	Nature of Scope and Elements of Service	10A NCAC 70N .0101-.0102	1
DHHS/ DSS	Income Maintenance Status	10A NCAC 71R .0502	1

Agency	Rule Title	Rule Citation	# of Rules Associated with Citation
DHHS/ DSS	Health Support Services	10A NCAC 71R .0908	1
DHHS/ DSS	Child Support Enforcement	10A NCAC 71T .0101-.0102, .0104	3
DHHS/ DSS	Food Assistance Manual and Forms	10A NCAC 71U .0101, .0203-.0207, .0209-.0214, .0303, .0401	14
DHHS/ DSS	Unemployed Parent Program	10A NCAC 71W .0101, .0302, .0304, .0403-.0405, .0407-.0408, .0410, .0412-.0413, .0601, .0604	13
DHHS/ DVR	Rates of Payment	10A NCAC 89C .0103	1
DHHS/ DVR	Community Rehabilitation Program Standards	10A NCAC 89D .0204	1
DHHS/ MHDDSAS	Scope for Rules for MHDDSAS	10A NCAC 27G .0101	1
DHHS/ MHDDSAS	Area Program Requirements	10A NCAC 27G .0501-.0503, .0505	4
DHHS/ MHDDSAS	Operations	10A NCAC 27G .6202	1
DHHS/ MHDDSAS	State Facility Environment	10A NCAC 28C .0201	1
DHHS/ MHDDSAS	Voluntary Admission and Discharge to Alcoholic Rehabilitation Centers (ARCS)	10A NCAC 28F .0901-.0903	3
DHHS/ MHDDSAS	Center Rule Violation	10A NCAC 28F .1002	1
DJJD	Forms and Contents of Petitions and Procedures	28 NCAC 02A .0111	1
DJJD	Juvenile Court Services	28 NCAC 04A .0101-.0106	6
DOA	General Provisions	01 NCAC 01B .0207-.0210, .0306, .0308, .0405-.0409, .0505-.0508, .0601-.0605, .0701	21

Agency	Rule Title	Rule Citation	# of Rules Associated with Citation
DOA	Lease Not Exceeding \$12,000/Term 3 Years and More Than \$12,000 or More Than Three Years	01 NCAC 06B .0207-.0208	2
DOA	Council on Status of Women	01 NCAC 17	1
DOA	Motor Fleet Management	01 NCAC 38 .0102, .0104-.0105, .0205	4
DOA	Application and Required Documents	01 NCAA 44A .0201, .0301	2
DOC	Approval of Contracts	05 NCAC 02D .0706	1
DOC	Procedures: Notification: Completed Restitution/Reparation	05 NCAC 02E .1104	1
DOC	Review Where Organization Barred	05 NCAC 02F .0207	1
DOC	Other Requirements	05 NCAC 02F .2205	1
DOC	Access to Private Counsel	05 NCAC 02G .0205	1
DOC	Grant Award Contracts	05 NCAC 05 .0101	1
OAH	Investigation	26 NCAC 04 .0105	1
OAH	Contested Case Hearing	26 NCAC 04 .0108	1
OSBM	Organization	09 NCAC 03A .0101	1
OSP	Definitions	25 NCAC 01A .0103	1
OSP	Appeals to Commission	25 NCAC 01B .0436-.0438	3
OSP	Promotion	25 NCAC 01D .0303, .0308	2
OSP	Reallocation	25 NCAC 01D .0605, .0611	2
OSP	Salary Rate	25 NCAC 01D .0808	1
OSP	Severance Salary Continuation	25 NCAC 01D .2701	1
OSP	Total State Service Defined	25 NCAC 01E .0204	1
OSP	General Provisions	25 NCAC 01I .1804-.1806	3
OSP	Selection	25 NCAC 01I .1905	1
OSP	Separation	25 NCAC 01I .2005	1
OSP	Compensation	25 NCAC 01I .2101-.2103, .2105, .2107	5

Agency	Rule Title	Rule Citation	# of Rules Associated with Citation
OSP	Disciplinary Action: Suspension, Dismissal, and Appeals	25 NCAC 01I .2303-.2304. .2307, .2309-.2310	5
OSP	Just Cause for Disciplinary A	25 NCAC 01J .0604	1
OSP	Employee Grievances	25 NCAC 01J .1201, .1207	2
OSP	Employee Mediation and Grievance Process	25 NCAC 01J .1401-.1402, .1405, .1407, .1411	5
OSP	State Personnel Development Center	25 NCAC 01K .0209-.0210, .0212	3
WRC	Forms and Contents of Petitions and Procedures	15A NCAC 10A .0401	1
WRC	Procedure	15A NCAC 10A .0503	1
WRC	Importation of Gray Foxes	15A NCAC 10B .0102, .0117	2
WRC	Motorboats and Water Safety	15A NCAC 10F .0301-.0302, .0320, .0326, .0336, .0369	6
<b>Total</b>			<b>378</b>

## PART 2. REGULATORY REVIEW PROCESS

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When an agency proposes a new rule it usually goes through a review process by three different organizations. First, the Office of State Budget and Management (OSBM) reviews the estimates of costs and benefits provided by the agency. And, if it is a cabinet agency, OSBM reviews the rule for principles articulated by the Governor. After public comment, the Rules Review Commission reviews the rule for statutory authority and clarity. Finally, if ten members of the public object to the rule, the rule is formally reviewed by the legislature. The process is outlined in the North Carolina Administrative Procedures Act (APA) and Executive Order No. 70.

Recently, the Institute for Policy Integrity (IPI) released a report grading state level regulatory review processes.<sup>2</sup> The average grade given to states was a D+, with the highest grade, a B+, given to the state of Iowa. North Carolina received a C+. North Carolina scored higher than average for the balance and rigor of the state's economic analysis of rules and received praise as a national best practice in this area.<sup>3</sup> However, the report cited issues with not having a process to review existing rules, delay and burden in rulemaking, and lack of transparency.<sup>4</sup> Executive Order No. 70, issued after the IPI report was published, and recent actions by the NC General Assembly, largely address the concern regarding the review of existing rules. The executive order outlines a clear process for an annual review of existing rules. However, the delay and burden in rulemaking and lack of transparency issues still exist. The remainder of this report discusses these other two identified issues, delay and burden in rulemaking and lack of transparency. It also provides information and analysis on related concerns and makes recommendations on improvements to the rulemaking process in North Carolina.

### DELAY AND BURDEN IN RULEMAKING

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The APA process is often considered cumbersome, certainly from the perspective of the public.<sup>5</sup> It is also difficult on agencies (see chart 1 on the timeline for review of rules with fiscal notes). This has led to unfortunate effects which are discussed in more detail below.

The IPI Report cites a number of best practice-based principles to inform state regulatory review. They include not spending more resources reviewing a rule than necessary given the rule's relative importance, and not delaying a rule unnecessarily through a review process. Besides simply creating inefficiencies, delays can undermine the entire review process. According to the report,

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<sup>2</sup> Jason A. Schwartz, *52 Experiments with Regulatory Review: The Political and Economic Inputs into State Rulemaking*, Institute for Policy Integrity, Report No. 6 (November 2010).

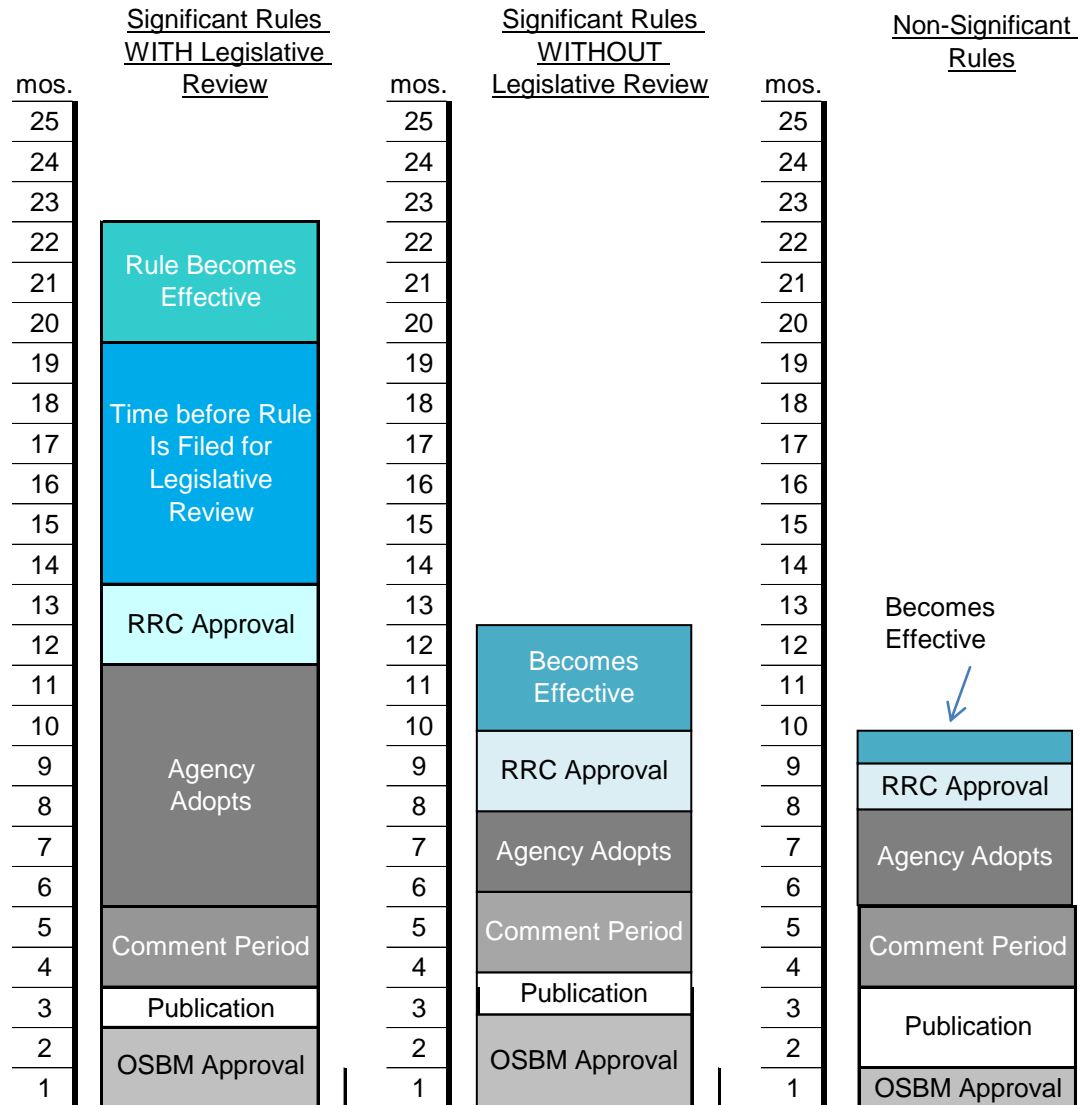
<sup>3</sup> Schwartz, pg 419.

<sup>4</sup> Schwartz, pgs 317-320.

<sup>5</sup> Gareth Marsh, *One of the Towns that Lobbied Hard* . . ., Star-News, (November 23, 2008) and Mike Marsh, *Obscure NCWRC Process Delays Many Hunting Rules*, Star-News, (August 8, 2009).

unnecessary delays can lead agencies to “less transparent, less reviewable means of rulemaking such as . . . guidance documents.”<sup>6</sup> If the rule review process is not proportional and appropriate, it can lead agencies to find alternative methods to make “rules.”

Chart 1. Timeline of Rule Process for Rules with Fiscal Notes



<sup>6</sup> Schwartz, 67.

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## EXEMPTIONS AS EVIDENCE OF DELAY AND BURDEN

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The APA statute provides for both full and partial exemptions from the rulemaking process in some cases. In addition, the statute specifies certain statements, policies, plans, procedures, etc. that are excluded from the definition of a “rule.” Table 8 lists 24 exemptions that relate to particular agencies and are authorized under the North Carolina statute. The table also compares the North Carolina exemptions to those specified in Iowa (four exemptions), which, as noted above, was rated by the IPI Report as having a reasonable balance in the review process. Follow-up interviews with rulemaking officials in Iowa confirm relatively uniform satisfaction with the process. Reviews have found that a “significant minority of North Carolina administrative agencies” have sought exemptions from the rulemaking process because it is too burdensome.<sup>7</sup> Thus, in North Carolina, the higher prevalence of exemptions is evidence of the difficulty of the current rule review process.

Unfortunately, the exemptions listed below do not illustrate the full picture because they only represent the exemptions explicitly included in the APA. Often the particular statutory authorization will grant an exemption to the rulemaking process.<sup>8</sup>

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<sup>7</sup> Richard B. Whisnant, *Rulemaking in North Carolina*, UNC School of Government (2005), pgs 1-2.

<sup>8</sup> Whisnant, pg 3.

Table 8.				
Executive Agency	North Carolina		Iowa	
	Full Exemption	Rulemaking Exemption	Full Exemption	Rulemaking Exemption
National Guard - court-martial jurisdiction	x			
DHHS's authority over Camp Butner	x			
Utilities Commission	x			
Industrial Commission	x			
Employment Security Commission	x			
State Board of Elections - HAVA Compliant	x			
North Carolina State Lottery	x			
University of North Carolina *	x			
Rules Commission		x		
Department of Revenue - notice & hearing requirements regarding temporary rules		x		
Global Transpark Authority - cargo airport complex		x		
Department of Correction - persons under custody or supervision		x	x**	
State Health Plan - records confidentiality		x		
NC Federal Tax Reform Allocation Committee - annual qualified allocation plan		x		
DHHS - Medical coverage policies under State Medicaid Program		x		
Department of Commerce and Economic Investment Committee - various programs		x		
State Ports Authority		x		
Governor's Office - One North Carolina Fund		x		
Community Colleges System Office - Facilities and Equipment Fund & Customized Training Program		x		
State Ethics Commission		x		
Office of State Budget and Management, Departments, Licensing Boards, Board of Elections - Budget policies and procedures		x		
Office of State Personnel - job classifications, qualifications, salaries		x		
Dept of Revenue - interest rates, motor fuel tax		x		
DHHS - Medical Facilities Plan		x		
Governor			x	
(DHHS)*** - Patients in state hospital			x	
(DPI)*** - Students enrolled in state school			x	
<p>*UNC utilizes APA for judicial review</p> <p>**A section on Iowa's website, "How Do Rules Work?", indicates this exclusion only applies if the statement does not affect family, visitors, or other members of the public</p> <p>*** Agencies in parentheses are stated broadly as "agency" under Iowa statute but are stated here to show the comparable agency in NC</p>				



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## EXAMPLES OF IMPLEMENTING GUIDANCE AND POLICY DOCUMENTS

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It is unknown how many guidance and policy documents are in use by agencies. Since they do not go through a central review process it would be difficult to find, organize, and analyze such documents. As a result, it is also unknown how often guidance and policy documents are implemented properly and how often they are used by agencies to circumvent the rule review process. As examples, OSBM analysts reviewed the guidance and policy documents for three agencies that do not have an APA-based exemption, specifically, the Office of the State Controller (OSC), the Office of Information Technology Services (ITS) and the Department of Administration State Surplus Property (SSP).

ITS appears to only have rules for Information Technology Procurement. However, they have statutory authority over IT security and IT project implementation, amongst other areas. These areas are covered by guidance and policy documents (<https://www.scio.nc.gov/mission/default.aspx>) that are difficult to find, are not well organized, and have a varying level of clarity. OSBM could not find any statutory exemption that would allow ITS to enforce its authority through guidance and policy documents.

OSC does not appear to have any rules. They do have a large number of guidance and policy documents ([http://www.osc.nc.gov/forms\\_policies/index.html](http://www.osc.nc.gov/forms_policies/index.html)) that appear well organized, clear, and easily accessible. This is certainly a better situation than the guidance and policy documents at ITS. However, there is no connection between the OSC policies and APA rules, making it difficult to search or analyze related policies and rules across agencies.<sup>9</sup> The state of Iowa has identified the relevant policies on the legislative rule website and includes a link from the APA to the accounting rules website. This informs the public which rules affect them and allows the state to provide the information in a cost-effective manner. OSBM could not find any statutory exemption that would allow OSC to enforce its authority through guidance and policy documents.

SSP seems to create rules on a regular basis. In addition, it also creates guidance and policy documents related to the rules. Whether the guidance and policy documents are properly implemented is difficult to determine. OSBM identified at least 15 policies on the SSP website which may be considered “rules.” In evaluating SSP policies, OSBM categorized each as either: 1) augmenting, 2) being different than, or 3) following the rules (with more specificity). Table 9 shows this breakdown.

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<sup>9</sup> A search for “controller” across the administrative code found 49 references. These references are across agencies other than OSC and imply that being able to search OSC policies and APA rules together could be useful.

Table 9

North Carolina State Property Surplus rules vs. policies located on its website				
	NCAC	Topic	Additional guidance on website	Comparison
1	01 NCAC 43A .0101	Scope		
2	01 NCAC 43A .0102	Definitions		
3	01 NCAC 43A .0201	Sensitive and confidential data		
4	01 NCAC 43A .0202	Compressed Gases, flammable, nuclear, chemical, biological, radioactive, and other hazardous materials		
5	01 NCAC 43A .0301	Transfer or Sale		
6	01 NCAC 43A .0302	Notification of surplus		
7	01 NCAC 43A .0303	Trade-in		
8	01 NCAC 43A .0304	Order of priority in disposition		
9	01 NCAC 43A .0305	Disposal by executive order		
10	01 NCAC 43A .0306	Bidding and purchases prohibited by employees and immediate family members		
11	01 NCAC 43A .0307	Public Sale	1. Other media sources may be used to advertise sales	Augment
			2. Notice of sale at least 30 days prior	Specific
			3. Specific sales information at least 14 days prior	Specific
			4. Public auctions are used for some DOT equipment	Specific
			5. e-Bay is used for high dollar or unusual items	Specific
			6. Occasionally, items are sold on term contract generally for a period of one year	Specific
			7. Surplus school buses are sold by DPI	Different
			8. DPI sets the price on school buses	Different
			9. Buses typically reside in the county in which they are retired	Different
			10. Must contact Surplus for procedure	Specific
			11. Sports Memorabilia available through university auction sites approved by NC State Surplus Property	Specific
			12. SSP operates a retail store	Different
12	01 NCAC 43A .0308	First-come first-served		
13	01 NCAC 43A .0309	Rejection of bids	13. Default property offered to second highest bidder	Specific
			14. Seized property will not be available for second highest bidder.	Specific
14	01 NCAC 43A .0310	Receipt of bids		
15	01 NCAC 43A .0311	Inspection of property		
16	01 NCAC 43A .0312	State does not guarantee		
17	01 NCAC 43A .0313	Refunds		
18	01 NCAC 43A .0314	Extension to pay or remove property		
19	01 NCAC 43A .0315	Failure to pay or remove property		
20	01 NCAC 43A .0316	Bond		
21	01 NCAC 43A .0317	Demolition of state buildings		
22	01 NCAC 43A .0318	Timber sales, pinestraw, and forest commodities sales		
23	01 NCAC 43A .0319	Surplus weapons and firearms		
24	01 NCAC 43A .0320	Payment	15. Must pay by cashier's check, certified check or money order	Specific

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## PROBLEMS WITH EXEMPTIONS AND GUIDANCE DOCUMENTS

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A glut of exemptions and guidance documents is problematic for a variety of reasons. First, bypassing the rule process generates less effective policy, as public comment and economic and legal reviews are inconsistently implemented. Second, it creates arbitrary government. When rules are put in place separate from the APA rulemaking process, they are not subject to notice and comment and may be inconsistently communicated or hidden on agency websites or bookshelves. Such hidden rules are often inappropriately enforced as law. When rules are not clearly available in a single location, economic and democratic principles can be undermined, as it creates uncertainty for businesses, inhibiting job growth, and creating the appearance of favoritism when hidden rules are inconsistently applied.

These issues were specifically identified by the public during the review of existing rules (Part 1 of this report). Chiefly, public commenters registered complaints regarding the lack of clear APA rules at ITS. Attorneys who represent clients before the Department of Revenue and the Employment Security Commission (ESC) also commented about rules and guidance documents in those agencies that bypassed the APA process, never received public comment, and seemed arbitrary.

One tangible impact of using guidance documents and policies instead of rules is the lack of legal enforceability. OSBM reviewed a sample of lawsuits against the state that were based on questions of policy authority. These lawsuits could have been entirely or partially eliminated if state agency policies had been adopted into law through the rulemaking process.

In *McCrann v. DHHS*, filed in the Court of Appeals on January 18, 2011, the Court affirmed the Wake County Superior Court's decision finding DHHS's denial of benefits to be "arbitrary and capricious." It cited an earlier case (*Dillingham v. NC Dept of Human Resources*) which found the State Adult Medicaid Manual was invalid because it had not been adopted in accordance with Article II of the APA. The *McGrann vs. DHHS* legal dispute lasted for almost 5 years, costing the state an estimated \$190,000 in expenses due to additional staff time and the \$23,000 settlement awarded by the court. This estimate excludes private attorney fees.

In *Dillingham v. NC Dept of Human Resources* (DHR), filed April 6, 1999, the Court of Appeals stated that a requirement in the North Carolina "Aged, Blind and Disabled Medicaid Manual" to provide clear and convincing written evidence was invalid because the requirement was not implemented through the rule review process. Medicaid coverage had been denied by the DHR in November, 1996.

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## TRANSPARENCY AND TECHNOLOGY

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As briefly mentioned earlier, transparency in the rulemaking process is very important for several reasons. A transparent process often involves a consistent evaluation of the costs and benefits of rule changes, and communicating important regulatory information to impacted and interested parties. It also likely follows the APA rulemaking process, resulting in more consistent rules that are easily accessible in a central location. Given these clear benefits of transparency, many other

states and the federal government are leveraging technology to improve transparency in the rulemaking process.

While technology cannot transform a poor or confusing process into a streamlined and efficient process, it can smooth out a number of rough edges. In particular, it can take information from separate organizations (like OSBM, the Rules Review Commission, and the General Assembly) and make it appear as part of one process to the public. A 2008 Duke Master's Project on e-rulemaking in North Carolina corroborated these benefits of technology in the rulemaking area.<sup>10</sup> The study found the current rule process was inefficient, required duplicative paperwork, and relied far too much on individual agencies disclosing where rules are in the process.<sup>11</sup> It recommended a process for developing an e-rulemaking system to solve some of these problems and focused on the federal system ([www.regulations.gov](http://www.regulations.gov)) and the Virginia Town Hall system ([townhall.virginia.gov](http://townhall.virginia.gov)) as possible examples. The more recently issued IPI Report points to Utah's Division of Administrative Rules website as a model of transparency.<sup>12</sup>

## RECOMMENDATIONS

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1. Reduce the number of exemptions – Exemptions allow agencies to shift important rules away from an APA rule process intended to provide the public a meaningful opportunity to participate in the process. The APA rule process also ensures rules are informed with rigorous and accurate analysis.
2. Streamline the rulemaking process – Of the thousands of rules implemented every year, very few have a significant economic impact and trigger review by the NC General Assembly. Requirements should be proportional to the size and importance of the rule.
3. Improve oversight of guidance and policy statements from the agencies – Inappropriate use of guidance and policy statements as rules adds legal risk to agencies, frustrates public involvement in the rule process, and creates inconsistencies in application of legal and economic reviews.
4. Implement a technology solution – Leveraging technology in the rulemaking process could improve the transparency of the process, organization of regulatory information, and citizen participation.

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<sup>10</sup> Matthew W. Wolfe, *E-Rulemaking in North Carolina*, Master's Project, Terry Sanford School of Public Policy at Duke University (April 16, 2008).

<sup>11</sup> Wolfe, pg 32.

<sup>12</sup> Whisnant, pg 418.