

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: Department of Insurance

RULE CITATION: All Rules Submitted

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
- ☒ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

On March 10, 2016, staff received an email stating that the Department of Insurance did not send notice of rulemaking for these rules to its interested party mailing list. The individual that sent the email stated that his organization wanted to participate in the rulemaking process, but was never provided with notice that the Department had published the rules for public comment, despite the fact that he was on the Department's interested persons mailing list.

G.S. 150B-21.2 governs the permanent rulemaking process. G.S. 150B-21.2(d) requires:

Mailing List. - An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

Staff asked the Department via email on March 10, 2016 to send proof that the notice was sent to the mailing list. The Department responded on that day that it had not sent the notice for this rulemaking.

Amanda J. Reeder
Commission Counsel
Issued March 10, 2016

Therefore, staff recommends that the Commission object to all ten rules for failure to comply with the APA, as the agency did not send notice to its interested parties as required by G.S. 150B-21.2(d).

Staff further notes that these Rules were readoptions of existing rules, required by G.S. 150B-21.3A(d)(2). At its February 2015 meeting, the RRC established the readoption date for these ten rules as January 31, 2016. As the agency failed to adopt the Rules in accordance with G.S. 150B, Article 2A [specifically G.S. 150B-21.2(d)], staff believes the agency did meet the deadline. Staff recommends rescheduling the date for these readoptions to allow the agency to readopt these Rules as required by G.S. 150B.