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: NC DEPARTMENT OF TRANSPORTATION

RULE CITATION: 19A NCAC 02E .0210

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

 Extend the period of review

COMMENT:

*The removal of the adjective “initial” in (6) line 17 now makes the term “newly erected outdoor advertising structure” unclear. It is unclear what constitutes a “newly erected” structure, i.e., how long a structure is “newly erected.”*

*Previously that term had little significance since it was the “initial” inspection that determined whether the structure was in compliance. It did not matter when the “initial” inspection was since in relation to that inspection any structure could be thought of as “newly erected.”*

*Now any inspection, not just the initial one, can make the determination, but it must be an inspection of a “newly erected structure.” So the determination of when a structure is still considered “newly erected” is critical.*