

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2A - GENERAL ADMINISTRATION

SECTION .0100 – CHIEF ENGINEER

19A NCAC 02A .0101 GENERAL RESPONSIBILITIES

*History Note: Authority G.S. 136-4; 143B-10;
Eff. July 1, 1978;
Repealed Eff. December 1, 1993.*

19A NCAC 02A .0102 DUTIES OF CHIEF ENGINEER

The duties and responsibilities of the Chief Engineer conferred by law and delegated or prescribed by the Secretary or Board of Transportation include:

- (1) recommend ordinances based upon engineering studies of the Traffic Engineering Branch;
- (2) enter into agreements and contracts for the board;
- (3) carry out Board programs and functions;
- (4) powers and duties concerning highway right of way acquisitions which may be subdelegated to the right of way branch;
- (5) negotiate and execute contracts with right of way fee appraisers;
- (6) negotiate and enter into agreements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act;
- (7) make spot safety improvement funds for primary, secondary, and urban safety projects available as needed and that said authority may be delegated to the Manager of Traffic Engineering by the Chief Engineer;
- (8) execute lease or rental agreements on behalf of the State;
- (9) inspect the State roadway system annually to determine the need, priorities, and scheduling for major maintenance, retreatment or resurfacing (subject to the Board's approval) in each engineering division;
- (10) determine the need for temporary traffic control devices for special events;
- (11) review and approve median opening requests;
- (12) review and approve civic, non-profit, or charitable organization safety rest stop activities;
- (13) handle and execute bicycle trails joint use rights of way;
- (14) consider and issue or deny permits for intermittent closing of secondary roads within watershed improvement projects;
- (15) issue special overweight and over-dimension permits;
- (16) authorize crop cultivation within rights of way;
- (17) authorize garbage collection container sites on rights of way;
- (18) authorize construction within the right of way;
- (19) permit construction of railroad tracks across any portion of the roadway system;
- (20) review, investigate and allow or deny contractor settlement claims for construction;
- (21) determine existence of emergency situation justifying the waiver of the bidding requirements as described in the general statutes;
- (22) implement, subject to discretionary review by the Secretary of Transportation, those rules and ordinances pertaining to highway matters which are delegated to him by the Secretary of Transportation;
- (23) submit a priority list and consult with Board of Transportation members in each major maintenance, retreatment or resurfacing project as requested by the Board members;
- (24) hold bid withdrawal hearings;
- (25) submit applications to the Federal Emergency Management Agency and to execute the assurances and agreements and other documents on behalf of the Department of Transportation necessary for Federal Disaster Assistance, including the Designation of Applicants Agents, Assurances and Agreements, Damage Survey Reports and Requests for Payments. The Chief Engineer is further authorized to subdelegate the authority and duty for Federal Disaster Assistance on behalf of the Department of Transportation to the Chief Engineer's designee.

History Note: Authority G.S. 20-119; 133-5 thru 17; 136-18(5); 136-18(11); 136-18.3; 136-19; 136-28.1; 136-29; 136-30; 136-44.1; 136-64.1(d); 136-71.9; 136-89.51; 136-93; 143B-10(j); 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. December 1, 2012; December 1, 1993; November 1, 1991; October 1, 1991; January 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0200 - LEASE OR RENTAL OF PROPERTY

19A NCAC 02A .0201 STATE HIGHWAY ADMINISTRATOR'S AUTHORITY

History Note: Authority G.S. 146-32(2); 143B-350(f); 143B-350(g);
Authority Council of State Resolution of August 9, 1972;
Eff. July 1, 1978;
Repealed Eff. January 1, 1994 pursuant to 1991 S.L., c. 477, s. 3.

19A NCAC 02A .0202 FISCAL SECTION'S RESPONSIBILITY

History Note: Authority G.S. 146-25.1; 146-27; 146-32(2); 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

SUBCHAPTER 02B - HIGHWAY PLANNING

SECTION .0100 - RIGHT OF WAY

- 19A NCAC 02B .0101 GENERAL**
- 19A NCAC 02B .0102 DELEGATION TO MANAGER AND ASSISTANT MANAGER**
- 19A NCAC 02B .0103 DELEGATION BY MANAGER OF RIGHT OF WAY BRANCH**
- 19A NCAC 02B .0104 GENERAL PROCEDURE UNDER RIGHT OF WAY ACQUISITION**
- 19A NCAC 02B .0105 PURPOSE OF THE APPRAISAL**
- 19A NCAC 02B .0106 CONTACT WITH PROPERTY OWNERS**
- 19A NCAC 02B .0107 APPRAISAL CONTRACTS**
- 19A NCAC 02B .0108 NUMBER OF APPRAISALS**

History Note: Authority G.S. 133-5; 133-17; 136-18(2); 136-18(10); 136-18(16); 136-18(23); 136-19; 136-19.1 to 136-19.3; 136-44.11; 136-89.52; 136-103; 136-131 to 132; 136-148; 143B-350B(f),(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1991; October 1, 1991; June 1, 1985;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0109 ACQUISITION OTHER THAN UNIMPROVED STATE SECONDARY ROADS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0110 PROPERTY OWNER'S APPRAISALS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0111 NEGOTIATION BY CORRESPONDENCE

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0112 NEGOTIATION WITH OWNER (HIS AGENT OR ATTORNEY)
19A NCAC 02B .0113 NEGOTIATION FOR PROPERTY UNDER LEASE

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0114 NEGOTIATION WITH DEPARTMENT OF TRANSPORTATION EMPLOYEES

When acquiring right of way from Department of Transportation employees performing highway functions:

- (1) The appraisal of any property having damages in excess of two thousand five hundred dollars (\$2,500), owned by an employee of the Department of Transportation, shall be made by an independent fee appraiser, rather than a staff appraiser;
- (2) The Right of Way Review Board shall pass on the approval of the appraisal of any employee of the Right of Way Branch, or any other employee of the Department of Transportation performing highway functions at salary grade 73 or above;
- (3) Right of way acquisitions may be negotiated at the approved appraisal with employees below salary grade 73;
- (4) Right of way acquired from any employee of the Department of Transportation performing highway functions at salary grade 73 or above shall not be acquired by negotiation but by the filing of a complaint and declaration of taking.

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0115 NEGOTIATION WITH LOCAL GOVERNMENT UNITS
19A NCAC 02B .0116 NEGOTIATION WITH FEDERAL AGENCIES
19A NCAC 02B .0117 PROPERTY LEASED TO FEDERAL AGENCIES
19A NCAC 02B .0118 NEGOTIATION WITH THE U. S. FOREST SERVICE

History Note: Authority G.S. 136-18(2); 136-19; 143B-24; 143B-350(f),(g); 146-25.1; 146-32(2);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0119 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS

History Note: Authority G.S. 136-18(2); 136-19; 136-66.3; 143B-24; 143B-350(f),(g);
Eff. July 1, 1978;
Transferred and Recodified to 19A NCAC 2B .0315 Eff. October 1, 1993.

19A NCAC 02B .0120 AGREEMENTS FOR ENTRY
19A NCAC 02B .0121 RIGHT OF WAY DONATIONS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0122 DISPOSITION OF IMPROVEMENTS PURCHASED BY THE BOARD

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0123 SECONDARY ROAD RIGHT OF WAY

History Note: Authority G.S. 136-18(2); 136-18(26); 136-29; 136-44.7;
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0124 PERSONAL PROPERTY NOT TO BE ACQUIRED

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Transferred and Recodified to 19A NCAC 2B .0316 Eff. October 1, 1993.

19A NCAC 02B .0125 STOCK OR VEHICULAR UNDERPASSES

19A NCAC 02B .0126 PAYMENT TO PARTIES OTHER THAN THE OWNER OF RECORD TITLE

19A NCAC 02B .0127 INSTRUMENTS OF CONVEYANCE USED FOR HIGHWAY BEAUTIFICATION

19A NCAC 02B .0128 PREPARATION OF INSTRUMENTS OF CONVEYANCE

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0129 NO OBLIGATION OTHER THAN IN AGREEMENT WILL BE RECOGNIZED

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0130 CONSTRUCTION OUTSIDE THE RIGHT OF WAY

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0131 CONDITIONS PRECEDENT TO CONDEMNATION

Condemnation will not be instituted until the property owner has been made an offer of settlement and has been allowed a period of two weeks in which to consider the offer. The waiting period may be waived in those instances where, after the offer is made, the property owner emphatically states that he has no intention of settling and would prefer that the compensation be determined by the courts. In unusual instances where questions of title or ownership make it impossible to conduct or conclude negotiations, condemnation may be instituted without making an offer. However, such person, if any, who may be in charge of the property or who may claim "color of title" shall be advised of the action contemplated by the Department of Transportation.

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0132 NOTICE TO OWNER OF INTENT TO CONDEMN

The Right of Way agent shall mail to the property owner a letter advising him of Department of Transportation intent to proceed with condemnation. The letter shall specify the amount of the offer and give the property owner a time limit in which to accept the offer. The date specified in this letter shall not be later than the last working day before the filing date. If there is a lease involved, the letter will be sent to both the lessor and lessee.

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; July 2, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0133 NOTICE TO DISPLACEES TO VACATE

Written notice of when to vacate will be given to all parties owning personal property located within the taking. This notification will be given to owners, and tenants when persons are lawfully occupying real property as a home, farm, business, barn, or outbuilding.

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; July 2, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0134 SETTLEMENT OF CLAIMS AFTER INSTITUTION OF SUIT AND DEPOSIT **19A NCAC 02B .0135 OCCUPANCY OF IMPROVEMENT AFTER ACQUISITION** **19A NCAC 02B .0136 IMPROVEMENTS NOT TO BE MOVED** **19A NCAC 02B .0137 RODENT CONTROL PROCEDURES**

History Note: Authority G.S. 136-18(2); 136-19; 136-103; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0138 DISPOSITION OF IMPROVEMENTS

All improvements that are acquired in connection with the right of way are to be disposed of by one of the following methods:

- (1) resold to the property owner for the retention value placed upon the improvement by the appraisal,
- (2) sold by public sale or by a negotiated sale if no bids are received after public advertisement,
- (3) demolished by the roadway contractor or by demolition contract,
- (4) retained by the Department for other public use,
- (5) sold to a displacee for replacement housing.

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0139 PUBLIC SALE OF IMPROVEMENTS

(a) Improvements acquired by the Department of Transportation that are not resold to the property owner may be disposed of by a public sale. Sales shall be by means of sealed bids or auction sale.

(b) If no bids are received for the sale of improvements after public advertisement, the improvements will be sold by negotiation with individuals interested in purchasing them.

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0140 PUBLIC SALE OF IMPROVEMENTS WITH LAND RESIDUE

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0141 DISPOSITION OF IMPROVEMENTS BY MOVING CONTRACT

The Department of Transportation will not enter into agreements with property owners to move buildings from the right of way except where a contractual obligation exists under a previous agreement with the property owner or where on secondary road improvement projects, a property owner has donated the right of way and it has been agreed the buildings within the right of way will be moved by the Department of Transportation. Where a contractual obligation exists under a former agreement to move a building, the property owner may sell the building to the Department of Transportation rather than have it moved.

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0142 REMOVAL OF GRAVES OR CEMETERIES

(a) If it is necessary to remove a cemetery or graves from the limits of highway right of way, the preferred procedure to follow is by consent of the next of kin. Since all work pertaining to the removal of graves shall be under supervision and direction of the county board of commissioners or other appropriate official, including the local health director, the Relocation Agent shall ascertain the proper party to contact in each county in which graves will be disinterred or reinterred. A letter from the Relocation Agent to the board of county commissioners shall be written indicating that the Department of Transportation is certifying the necessity for moving the graves or cemetery from the right of way of the proposed project.

(b) The remains may be removed to a burial plot in the same cemetery, and this practice shall be encouraged wherever possible. If requested by the next of kin, however, the remains may be removed to another cemetery or location in the community. In the event the remains are being removed and relocated in a cemetery that will not permit above ground markers or headstones, a provision shall be placed in the form regarding the disposition of the markers that are located in the cemetery and the existing markers shall be buried with the remains at the new grave site. The agent must arrange for and secure the substitute burial plot with the Department of Transportation paying all expenses of disinterment, removal, and reinterment, including the actual reasonable expense that the next of kin incurred in attending the disinterment and reinterment. The expenses of the next of kin may not exceed the sum of two hundred dollars (\$200). Deeds to substitute burial plots shall be drawn in favor of the next of kin. If no next of kin can be located, the plot shall be deeded to the county, if agreeable, and to the Department of Transportation as the last resort.

(c) In the event that no next of kin can be located or the next of kin will not grant permission for the removal of the remains, the Department of Transportation shall apply the procedures in G.S. 65-13.

History Note: Authority G.S. 65-13; 136-18(2); 136-18(20); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0143 THE SALE OF SURPLUS LANDS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991; February 1, 1988; November 1, 1982;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0144 SALES OF SURPLUS LANDS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. October 1, 1991;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0145 COPIES OF FORMS

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0146 RELOCATION ASSISTANCE MANUAL

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 133-6; 133-14; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0147 OBTAINING COPIES

History Note: Authority G.S. 136-6; 150A-62;
Eff. July 1, 1978;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0148 UTILITY ENCROACHMENTS

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(1); 136-93; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0149 OBTAINING COPIES

History Note: Authority G.S. 150A-62;
Eff. July 1, 1978;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0150 RAILROAD RIGHT OF WAY DEFINITIONS

The following definitions apply to Rules .0150 through .0158 of this Subchapter.

- (1) "At-grade crossing" means an intersection where roadways and railroads join or cross at the same level.
- (2) "Closed crossing" means a location where a previous crossing no longer exists because either the railroad tracks have been removed, or each pathway or roadway approach to the crossing has been removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A grade-separated highway-rail crossing that has been removed shall be considered a closed crossing.
- (3) "Crossing Agreement" means a written agreement between the Department and a railroad through which the railroad permits the Department to build a road across the railroad's tracks.
- (4) "Facilities" means real or personal property, or any interest in that property, that is situated for the provision of a freight or passenger rail fixed guideway facility or system. The term includes all property or interests necessary or convenient for the acquiring, providing, using, or equipping of a rail fixed guideway facility or system, including rights-of-way, trackwork, train controls, stations, and maintenance facilities.
- (5) "Flange guard" means a protective edge, rib, or rim made of rubber, steel, timber, or any other composite material on any object such as the base of a rail, on the top and bottom horizontal parts of a beam, or girder.
- (6) "Grade" means the rate of ascent or descent of a roadway, expressed as a percentage and calculated by the change in roadway elevation per unit of horizontal length.

- (7) "Grade point" means the point where the new construction of a facility ties into and terminates at the existing facility.
- (8) "Grade separation" means a crossing of a highway and a railroad at different levels that allows unimpeded traffic movement.
- (9) "Railroad" means an entity that owns or maintains the track through the at-grade crossing, or an entity that operates one or more trains through an at-grade crossing or grade separated crossing on or connected to the general railroad system of transportation.
- (10) "Separated" means the travelways of two transportation facilities, such as two highways or a highway and a railroad, that are disconnected by means of a bridge so that traffic on one shall not conflict with traffic on the other.
- (11) "Separation structure" means the bridge structure that separates the travelways of the two transportation facilities.
- (12) "Track" means an assembly of rails, ties, and fastenings that cars, locomotives, and trains traverse.
- (13) "Traffic control device" means a sign, signal, marking, or other device placed on or adjacent to a street or highway by authority of a public body or official having jurisdiction to regulate, warn, or guide traffic.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 150B-2(8a)(h);
 Eff. July 1, 1978;
 Amended Eff. December 1, 2012;
 Readopted Eff. June 1, 2019.

19A NCAC 02B .0151 RAILROAD GRADE CROSSING SIGNS AND SIGNALS

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
 Eff. July 1, 1978;
 Amended Eff. November 1, 1991;
 Repealed Eff. November 1, 1993.

19A NCAC 02B .0152 SIGNALIZATION OF EXISTING GRADE CROSSING

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 150B-21.3A;
 Eff. July 1, 1978;
 Amended Eff. December 1, 1993;
 Repealed Eff. June 1, 2019.

19A NCAC 02B .0153 NEW AT-GRADE CROSSING

- (a) It shall be unlawful to construct a railroad track across any portion of the State highway system without the Secretary of Transportation or the Secretary's designee providing a written statement of approval. The Secretary or designee's determination shall consider rail crossing engineering standards for safety, location, sight lines, traffic volume, grade, horizontal alignment, curvature, cant and the number of traffic lanes.
- (b) A crossing agreement shall be required for any construction or relocation of railroad track across the State highway system, and any construction or relocation of the State highway system across already existing railroad track. The crossing agreement shall list the construction, maintenance, safety device installation, and funding responsibilities of each party.
- (c) Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing and does not involve the elimination of an existing crossing, the railroad shall not be required to bear any costs of signalization or separation, either at the time of the initial construction or within a 20-year period from the execution of the Crossing Agreement if the Department determines during that 20-year period that a signalization or a separation structure shall be required.
- (d) If a crossing in existence prior to December 3, 1966 shall be eliminated by the relocation of an existing road, Rule .0155 of this Section shall apply.
- (e) The following shall be required for the construction of a new municipal street across an already existing railroad track, or railroad tracks across the municipal street system.
 - (1) If a municipality and railroad seek to enter into an agreement for the construction of a new municipal street, meaning a street forming a part of the municipal street system consisting of those streets or highways that

are not a part of the State highway system, across a railroad track, at-grade, the municipality or public authority responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal street system shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to be less than 60 days between the negotiations and execution of the agreement, the municipality shall notify the Director upon commencement of agreement negotiations.

- (2) If a municipality and railroad seek to enter into an agreement for the construction of a new railroad track across the municipal street system, at-grade, the municipality or public authority responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal street system shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to be less than 60 days between the negotiations and execution of the agreement, the municipality shall notify the Director upon commencement of agreement negotiations.
- (3) If a private developer and a railroad seek to enter into an agreement for the construction of a railroad track across the municipal street system, at-grade, or a new municipal street across a railroad track, at-grade, the private developer shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the private developer anticipates there to be less than 60 days between the negotiations and execution of the agreement, the private developer shall notify the Director upon commencement of agreement negotiations.
- (4) Notice shall be in writing and shall be effective upon receipt by the Rail Division Director. Notice may be delivered personally, by email, sent by overnight courier with recipient's signature or other electronic acknowledgement of receipt from the recipient requested, or by certified or registered mail, postage prepaid. Please address all physical copies of the required notice to the Rail Division Director at 1553 Mail Service Center, Raleigh, NC 27699-1553. The Rail Division Director's email address may be found, free of charge, at <https://apps.ncdot.gov/dot/directory/authenticated/UnitPage.aspx?id=3393>.
- (5) Notice shall include the following information:
 - (A) the name, address, telephone number, and email address of the entity submitting the notice;
 - (B) a description of the anticipated crossing, including whether the agreement is for the construction of a railroad track across the municipal street system, or the construction of a municipal street across an already existing railroad track;
 - (C) the county, city, or political subdivision where the crossing will be located;
 - (D) the railroad milepost number, if an already existing railroad track; and
 - (E) the State maintained road number or name, if an already existing road.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 136-20.1; 136-66.1; 136-195;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0154 RAILROAD SEPARATION STRUCTURES

- (a) Whenever any highway project provides for the construction of a separation structure over or under the railroad, the Department shall construct the separation structure to provide for an additional track upon the request of the railroad and the furnishing of the justification or enter into an agreement with the railroad to provide for the additional track if such tracks are constructed and placed in use within a 20-year period from the signing of the agreement.
- (b) If a grade crossing that was in existence prior to December 3, 1966, is separated, the railroad shall pay five percent of the cost of the separation structure and approaches from grade point to grade point.
- (c) If the separation structure eliminated the crossing at-grade, the railroad shall pay five percent of the total costs of the separation structure and approaches from grade point to grade point as constructed initially and five percent of the costs of the widening of the structure within the 20-year period.
- (d) If the separation structure is an additional or new crossing and no existing crossing is closed, the Board of Transportation shall pay the entire cost of the structure including the provision for additional tracks on request by the railroad with justification, or will pay the entire cost of widening the structure within the aforementioned 20-year period.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0155 EXISTING AT-GRADE CROSSING

(a) If the construction, reconstruction, or maintenance of an existing at-grade crossing causes any road, street, or highway forming a part of the State highway system to cross or intersect any railroad, including an industrial siding, at the same level or grade, the railroad shall be responsible for the following:

- (1) construction and maintenance of the crossing and the area between the ends of the ties and the edge of the pavement of the main traveled lanes plus a maximum of 10 feet of the usable shoulders; and
- (2) construction cost of the crossing for the pavement width and maintenance for the entire area herein described at its own expense.

(b) Pursuant to G.S. 136-20(h), the railroad shall be responsible for 50 percent of annual maintenance costs of grade crossing signals.

(c) A railroad, county, city, or other political subdivision of the State may identify and propose at-grade crossings for potential closure by submitting a Crossing Closure Request to the Rail Division Director as follows:

- (1) The Crossing Closure Request shall be addressed to the Rail Division Director, 1553 Mail Service Center, Raleigh, North Carolina, 27699-1553 and contain the following information:
 - (A) name of the entity submitting the request;
 - (B) name of the county, city, or political subdivision where the crossing is located;
 - (C) Association of American Railroads (AAR) crossing number;
 - (D) railroad milepost number;
 - (E) State maintained road number or name; and
 - (F) any existing protection at the crossing.
- (2) The Rail Division shall review the Crossing Closure Request and make a final recommendation to the Board of Transportation upon the consideration of transportation impacts, including emergency access, safety, feasibility, and public convenience.
- (3) If upon the consideration of the Rail Division's final recommendation, the Board of Transportation approves the at-grade closure, the Rail Division shall give notice to the governing body within which the at-grade crossing is located, direct the Railroad to close or remove the crossing within 60 days, and coordinate with the Railroad the responsibilities for removal.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0156 PAVING OF ROADWAY SURFACE CROSSING RAILROAD TRACKS

When any road, street or highway forming a link in the State highway system is being surfaced or resurfaced, the Department of Transportation shall, pave the roadway surface across the crossing upon request by the railroad. The railroad shall provide and place at its own expense the necessary crossing flange guards on rail guards and otherwise adjust the facilities to meet the level of the finished road surface.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0157 COST OF CHANGING ELEVATION OF RAILROAD FACILITIES

When the grade of any road, street, or highway requires a change in the elevation of the railroad's tracks or facilities, except those changes required by surfacing or resurfacing, the Department shall pay for the necessary change in the railroad facilities that may be required to meet the grade of the finished road surface.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED

When any railroad changes the grades of its tracks where the tracks cross or intersect any road, street, or highway of the State highway system, the railroad shall be responsible for adjusting, at its own expense, the grade of such road, street or highway as required to meet the change in grade of the railroad's tracks or facilities. Any adjustment of the road, street or highway shall be made in accordance with Departmental engineering standards. A minimum of ten feet runoff shall be required for each inch of difference in elevation between track grade and road grade. The Department may contract with the railroad to perform the asphalt run-off work on a 100 percent reimbursement basis.

History Note: *Authority G.S. 136-18(5); 136-18(11); 136-20;*
Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0159 NOTIFICATION TO RAILROADS

19A NCAC 02B .0160 WIDTH OF RIGHT OF WAY

History Note: *Authority G.S. 136-18(2); 136-19; 136-20(f);*
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0161 BICYCLE TRAILS

History Note: *Authority G.S. 136-71.9; 136-71.10;*
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Transferred and Recodified to 19A NCAC 2E .0427 Eff. October 1, 1993.

19A NCAC 02B .0162 DELEGATION TO DIRECTOR OF PLANNING AND PROGRAMMING

History Note: *Authority G.S. 143B-350;*
Eff. March 1, 1989;
Amended Eff. October 1, 1993;
Repealed Eff. December 1, 1993.

19A NCAC 02B .0163 IMPLEMENTATION OF ROADWAY CORRIDOR OFFICIAL MAPS

History Note: *Authority G.S. 136-33.53; 136-44.50; 136-44.51; 136-44.52;*
Eff. October 1, 1991;
Transferred and Recodified to 19A NCAC 2B .0317 Eff. October 1, 1993.

19A NCAC 02B .0164 USE OF RIGHT OF WAY CONSULTANTS

(a) Introduction and purpose. The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway system. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

This Rule is established for the preparation, execution and administration of contracts for right of way acquisition services by consultant firms that are over ten thousand dollars (\$10,000.00).

Due to the diversity of contract types, some portions of this Rule may not be fully applicable to all situations. The Right of Way Branch Manager shall determine when waivers from portions of this Rule are justified. Guidelines for determining if a waiver is justified shall include:

- (1) A determination of whether an emergency situation exists that affects the health and safety of the traveling public; and
- (2) A determination of the availability of pre-qualified firms willing to perform specified work according to the Department's schedule.

(b) The following are incorporated by reference including any subsequent amendments or editions:

- (1) General Statute 136-28.1(f) and General Statute 130A-444 thru General Statute 130A-451.
- (2) 23 CFR 710-720, FHWA right of way regulations which contain some contracting requirements.
- (3) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the Right of Way Consultant Coordinator at a cost of five dollars (\$5.00) for each document.

(c) Definitions. The following definitions are for the purpose of clarifying and describing words and terms used in this Section:

- (1) Right of Way Consultant Coordinator - The individual who is assigned the responsibility of initiating, negotiating, and administering a contract for professional or specialized services.
- (2) Cost per Unit of Work - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price based on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified right of way acquisition services.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Additive - Employer paid fringe benefits including employer's portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers' compensation and other such benefits.
- (8) Proposal - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.
- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.
- (12) Right of Way Consultant Selection Committee - The Committee shall consist of the Branch Manager, Assistant Way Branch Manager, Unit Heads, and the Right of Way Consultant Coordinator or their designated representatives and shall be chaired by the Branch Right of Way Manager. When Federal funds will be used as compensation for services to be solicited, a representative of the Federal Highway Administration shall sit with the Committee but shall not be a voting member.

(d) Application. This Rule shall apply to all contracts for right of way acquisition services which cost more than ten thousand dollars (\$10,000.00) and are obtained by the Department of Transportation pursuant to G.S. 136-28(f).

(e) Pre-qualification of firms. The Department shall advertise for firms interested in performing right of way acquisition services for the North Carolina Department of Transportation when necessitated by its projected workload. The advertisement shall be published in the North Carolina Purchase Directory, a bi-monthly publication of the N.C. Department of Administration. The advertisement shall indicate that interested firms must respond by letter to the Department indicating their interest within two weeks of the date of the advertisement. The response shall include the Federal Government's Government Accounting Office Forms 254 and 255, and copies of the firms latest brochures. Additional firms may be considered for pre-qualification at any time that the Department recognizes a need based on current projected workload for additional pre-qualified firms. Evaluation of the firms expressing interest shall be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including negotiations, appraisals, and relocation assistance;
- (2) Number of staff available to perform the services required by the contract including negotiations, appraisals, and relocation assistance;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous Right of Way acquisition contracts including meeting the time schedule for the work;

- (6) Equipment necessary to perform the required services.

A number of firms sufficient to perform the anticipated workload that meet the qualifications in Paragraphs (e)(1) through (e)(6) of this Rule shall be designated as pre-qualified to perform right of way acquisition services for the North Carolina Department of Transportation.

(f) Register of pre-qualified firms. The Right of Way Consultant Coordinator shall maintain a "Register of Pre-Qualified Firms" from whom specific project proposals may be solicited to perform right of way acquisition services for the North Carolina Department of Transportation - Right of Way Branch.

(g) Request for approval to solicit specific project proposals. The Right of Way Consultant Selection Committee through the Manager of Right of Way shall determine when the need for right of way acquisition services exists. Upon determining that a need exists, the Committee shall request approval from the Branch Way Manager to solicit proposals for the work.

The request shall be in writing and shall include the type of work and specific justification for the work being performed by a consultant firm such as:

- (1) non-availability of manpower,
- (2) lack of expertise, or
- (3) other reasons.

(h) Solicitations of specific project proposals. Specific Project Proposals shall be solicited from all Pre-Qualified Firms. Solicitations shall be by direct mailing of plans and Specific Project Proposal.

The Right of Way Consultant Coordinator, upon the approval of the Manager of Right of Way, shall prepare the requests for proposals. The request shall contain plans and information describing the location of the project, types and scope of work required, and the time schedule for accomplishing the work.

The solicitation for a Specific Project Proposal shall require that all firms attend a Scoping Meeting on a specified date in order to qualify to submit a Specific Project Proposal for consideration. Any firm that does not wish to submit a Specific Project Proposal on a particular project shall advise, in writing, the Manager of Right of Way of their decision not to submit a Specific Project Proposal for that project.

(i) Selection of firm for specific project contract. The Right of Way Consultant Selection Committee shall review all responses received to the request for proposals and shall select three firms from those indicating interest (except when there are fewer than three responses). When several projects are under consideration at the same time, a firm shall be selected for each project and two alternates may be selected from the entire group, at the discretion of the Selection Committee. These firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of all responses. The Committee may elect to interview all or part of the firms responding to the request for proposal prior to establishing the order of preference. The Selection Committee's file shall be documented as to the reasons for the selection of a firm.

In the evaluation of the firms submitting Specific Project Proposals, the following factors shall be considered:

- (1) The monetary amount of the competitive proposal;
- (2) The firm personnel who are currently available to perform right of way acquisition services on the specific project and their qualifications; and
- (3) The ability of the firm to complete the work according to the Department's schedule.

Any firm selected to perform Right of Way Services for the North Carolina Department of Transportation shall be required to establish an office at the location of the project. This office shall be the location for maintaining all project records open for review by appropriate Department personnel.

After the authorization to proceed to negotiations is given by the Branch Way Manager, the Right of Way Consultant Coordinator shall notify the firm chosen by the Selection Committee.

(j) Negotiation of specific project contract. Prior to receiving a specific project proposal, the Right of Way Consultant Coordinator shall prepare an estimate of the cost of performing the work in-house. This estimate shall be used in evaluating the acceptability of the selected firm's cost proposal.

If considered necessary by the Right of Way Consultant Coordinator a meeting with the selected firm may be scheduled to discuss the scope of the proposed work. The discussions will vary depending upon the firm's familiarity with the Department's methods, policies, standards, etc. For firms unfamiliar with the Department's requirements, the discussions shall include:

- (1) Policies used by the Department for the type and scope of work involved;
- (2) A copy of a contract in draft form;
- (3) Methods of payment;
- (4) Procedures for invoicing;
- (5) Standard forms to be used;
- (6) Fiscal requirements;
- (7) Items and services to be provided by the Department.

A representative of the firm shall keep minutes of the meeting, have them typed and submit a copy to the Right of Way Consultant Coordinator. The minutes shall be reviewed for completeness, accuracy and confirmation of mutual understanding of the scope of work. The minutes shall be approved by the signature of the Right of Way Consultant Coordinator and an approved copy shall be returned to the firm.

The firm's competitive cost proposal shall be supported by a breakdown of the manhours required to perform each of the services contained in the contract and the fixed billable rate for each of the classifications of personnel to be utilized. The fixed fee must be specifically broken out on the firm's specific project cost proposal. The firm's cost proposal must also include a breakdown of all non-salary direct costs and any sub-contract or fee services.

Upon receipt of the selected firm's cost proposal, a review shall be made. The review shall include a comparison with the in-house estimate and is intended to determine both the reasonableness of the proposal and areas of substantial differences which may require further discussion and negotiation. When further negotiations are required, they shall be the responsibility of the Right of Way Consultant Coordinator.

The final negotiations shall satisfactorily conclude all remaining points of difference and shall consider any comments submitted by the External Audit Unit. The Right of Way Consultant Coordinator with the concurrence of the Manager of Right of Way shall approve the final fee.

If an acceptable contract cannot be negotiated, negotiations shall be terminated, the firm shall be notified in writing and the next listed firm shall be contacted to initiate negotiations for the work.

(k) Board of Transportation approval and execution of contract. After final negotiations are completed, the firm shall execute a minimum of two contract originals and submit them to the Consultant Coordinator.

The Consultant Coordinator shall submit the contract to the Chief Engineer who may consult with the Advisory Budget Commission pursuant to G.S. 136-28.1(f). The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way Consultant Coordinator.

The Right of Way Consultant Coordinator shall transmit one original contract to the contracting firm and shall retain one in the project file. The Consultant Coordinator shall provide each of the following with a copy of the contract: the Manager of DOT Program and Policy Branch, DOT Fiscal Section, and Federal Highway Administration when federal-aid funds are involved.

(l) Sub-contracting. A contracting firm may sublet portions of the work proposed in the contract only upon approval of the Right of Way Consultant Coordinator.

The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall submit the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

(m) Methods of compensation:

- (1) Lump Sum - This method of compensation is suitable for contracts where the amount and character of required work or services can be defined and understood by both the Department and the contracting firm.
- (2) Cost Plus Fixed Fee - This method of compensation is suitable for contracts where the general magnitude of work is known but the scope of work or period of performance cannot be defined and the Department needs more flexibility in expediting the work without excessive amendments to the contract.
- (3) Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.
- (4) Cost Plus a Percentage of Cost - This method of compensation shall not be used.

(n) Administration of contract. The administration of the contract shall be the responsibility of the Right of Way Consultant Coordinator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(o) Contract Amendments. Each contract shall contain procedures for contract modifications and define what changes can only be made by means of a contract amendment.

Any change in the amount of compensation must be accomplished by contract amendment. For contracts which use federal funds as compensation for services, the contract amendment must be approved by the Federal Highway Administration.

(p) Monitoring of work. The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the Right of Way Consultant Coordinator.

(q) Final payment. When it is determined that the work is complete, the final invoice shall be approved by the Right of Way Consultant Coordinator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed.

(r) Termination of contracts. All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

*History Note: Authority G.S. 136-28.1(f);
Eff. November 1, 1991;
Amended Eff. December 1, 2012; August 1, 1998; October 1, 1993; November 2, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0165 ASBESTOS CONTRACTS WITH PRIVATE FIRMS

(a) The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

These Rules are established for the preparation, execution and administration of contracts over ten thousand dollars (\$10,000.00) for asbestos inspections, asbestos removals, and structure clearings by consultant firms.

(b) The following are incorporated by reference including any subsequent amendments or editions:

- (1) 23 CFR 710 FHWA right of way regulations which contain some contracting requirements; and
- (2) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the contract administrator at a cost of five dollars (\$5.00) for each document.

(c) Contracts on Specific Projects.

- (1) The Department may continue to let individual contracts on specific projects for inspections, abatements or structure clearings to a responsible bidder after publicly advertising for bids.
- (2) If the Manager of the Right of Way Branch determines that the project schedule does not allow time for public advertising the Department shall solicit at least three informal bids and may award a contract to the lowest responding qualified bidder.

(d) Retainer Contracts. In order to provide a method of accomplishing the required asbestos inspections, asbestos abatements, and structure clearings when the Right of Way Branch Manager determines that the project schedule does not provide enough time for a specific project contract to be put in place by the procedure in Subparagraphs (c)(1) and (c)(2) of this Rule, the Department may also contract with private firms as specified in Paragraphs (d) through (u) of this Rule.

(e) Due to the diversity of contract types, some portions of these Rules may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining when waivers from portions of these Rules are justified. Guidelines for determining if a waiver is justified shall include:

- (1) The amount of time the Department has to secure bids for a specific project under Subparagraphs (c)(1) and (c)(2) of this Rule; and
- (2) The willingness of contractors retained under this Rule to perform work on a specific project. Any waiver from these Rules shall require approval of FHWA if Federal Funds are involved in the project.

(f) DEFINITIONS. The following definitions are for the purpose of clarifying and describing words and terms used herein:

- (1) Contract Administrator - The individual who is assigned the responsibility of initiating, negotiating, and administering the contracts for asbestos inspections, asbestos removals, and structure clearings.
- (2) Cost per Unit of Work - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified asbestos inspections, asbestos removals, and structure clearings.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Burden - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers compensation and other such benefits.
- (8) Proposal - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.

- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(g) APPLICATION. These Rules shall apply to all retainer contracts for asbestos inspections, asbestos removals, and structure clearings obtained by the Right of Way Branch of the Department of Transportation under the authority of G.S. 136-28.1(f) and in accordance with the provisions of G.S. 130A-444 through 130A-451.

(h) SELECTION COMMITTEE. The Committee shall consist of the Right of Way Branch Manager or his designated representative, the State Right of Way Agent or his designated representative, and at least one employee of the Department's Preconstruction Unit or Construction Unit professional staff designated by the Right of Way Branch Manager, and shall be chaired by the Right of Way Branch Manager or his representative.

(i) SELECTION OF FIRMS. On a yearly basis (or more often if needed), the Department shall advertise for firms interested in performing asbestos inspections, asbestos removals, and structure clearings for the North Carolina Department of Transportation. The advertisement shall be published in the North Carolina Purchase Directory. The response time will normally be two weeks after the advertising date. The response shall include copies of the numbered certifications of employees certified by NC Department of Health and Human Services, Division of Public Health Asbestos Hazard Management Program to perform asbestos inspections, copies of the firm's latest brochures, and such similar information related to the firms qualifications.

Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including inspection, abatement, and structure clearings;
- (2) Number of staff available to perform the services required by the contract including inspection, abatement, and structure clearings;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous right of way acquisition contracts including meeting the time schedule for the work; and
- (6) Equipment necessary to perform the required services.

The Selection Committee shall, on the basis of the criteria of Subparagraphs (1) - (6) of this Paragraph, select a sufficient number of firms for contract negotiations in order that those negotiations will produce a sufficient number of contracts to handle the anticipated work over the next year. The number of firms shall be determined prior to advertising.

(j) REQUEST FOR PROPOSALS. Each selected firm shall be requested by the contract administrator to submit a proposal which provides for:

- (1) Unit Cost for inspection and lab analysis, if any;
 - (A) per unit of less than 800 SF (minimum of 4 samples - to include out buildings, signs, barns, etc.);
 - (B) per unit of 800 SF to 2000 SF (maximum of 8 samples);
 - (C) per unit of 2000 SF to 5000 SF (maximum of 10 samples); or
 - (D) per unit of 5000 SF or more (subject to adjustment if approved by the Department); and
- (2) a per unit cost for Final Visual Inspection of abated improvements including air monitoring; and
- (3) a per unit abatement price - to a maximum of 200 SF or LF;
 - (A) Non-Friable Asbestos;
 - (i) per square foot of asbestos materials; or
 - (ii) per linear foot of asbestos materials
 - (B) Friable Asbestos;
 - (i) per square foot of asbestos materials; or
 - (ii) per linear foot of asbestos materials; and
- (4) a per unit cost for general clearings;
 - (A) Residential (up to 1,500 SF);
 - (i) per square foot - frame; or
 - (ii) per square foot - masonry or other;
 - (B) Commercial (up to 3,000 SF);

- (i) per square foot - frame; or
- (ii) per square foot - masonry or other.

The Proposal Request shall state that the Department intends to enter into a retainer contract for the term of one year and a maximum amount of one million dollars (\$1,000,000) each with a sufficient number of firms on a statewide basis to perform asbestos inspections, asbestos removals, and structure clearings on an as needed basis.

(k) **NEGOTIATION OF CONTRACTS.** Upon receipt of the proposals from the selected firm negotiations shall be initiated with the selected firm to produce a retainer contract with a term of one year and maximum amount of one million dollars (\$1,000,000). Should negotiations fail to reach successful execution of a contract with any selected firm, the negotiations shall be terminated and shall be initiated with an alternate firm. The object of the negotiations shall be to establish an acceptable per unit cost for any asbestos investigations needed by the Department for the term of the contract and to establish an acceptable per square foot cost and per running foot cost for abatement of any asbestos discovered upon completion of the inspections and a unit cost for clearing of improvements. When agreement is reached on the unit costs, a retainer contract shall be executed with a sufficient number of selected firm to perform the anticipated work for the term of one year and shall provide for the scope of services enumerated in this Rule.

(l) **BOARD OF TRANSPORTATION APPROVAL AND EXECUTION OF CONTRACT.** After final negotiations are completed, the firm shall execute a minimum of two contract originals and submit them to the consultant coordinator. The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way consultant coordinator. The Right of Way contract administrator shall transmit one original contract to the contracting firm and shall retain one in the Central Office. The Way contract administrator shall provide a copy of the contract to the DOT Fiscal Section.

(m) **REQUEST FOR SPECIFIC JOB ESTIMATES.** When the Department acquires structures that require inspection for asbestos, two firms who have executed the retainer contract will be contacted by the Right of Way Branch, given the location of the structure(s), and requested to submit a work assignment cost estimate. The first firm's estimate shall cover Inspections, both preliminary and final; and the second firm's estimate shall be for abatements, if any, and clearing, if required, of the structure. The Estimate of Job Costs submitted by the contractor shall be reviewed by Right of Way staff personnel to insure:

- (1) that the per unit cost is in compliance with those specified in the retainer contract, and
- (2) the quantities specified in the Estimate of Job Costs are reasonable. If the estimate is found to be reasonable, the contract administrator shall authorize the work by the firm under the retainer contract by signing the Estimate document. If the estimate is unacceptable and agreement cannot be reached by negotiations with the firm, an estimate will be requested from another firm on retainer contract and evaluated in the same manner until agreement is reached and work can be authorized. In the event that an agreement cannot be reached through negotiations with any firm on retainer contract, then the Department shall terminate negotiations and advertise for specific project bids under the provisions of Subparagraph (b)(2) of this Rule.

(n) **SUB-CONTRACTING.** A contracting firm may sublet portions of the work proposed in the contract only upon approval of the contract administrator as set out in these rules. The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall be responsible for submitting the proper supporting data to the contract administrator for all work that is proposed to be sublet.

(o) **METHODS OF COMPENSATION.** Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.

(p) **ADMINISTRATION OF CONTRACT.** The administration of the contract shall be the responsibility of the contract administrator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(q) **CONTRACT AMENDMENTS.** Each contract shall contain procedures for contract modifications and define what changes can be made only by means of a contract amendment. The Department may, with the concurrence of the Manager of Right of Way, delete any clearing item.

(r) **MONITORING OF WORK.** The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the staff personnel. An inspector may be assigned on each job by the Division Engineer who shall make periodic status reports to the Division Right of Way Office. The firm shall be required to provide a written progress report accompanying each invoice describing the work performed for the project covered by the invoice.

(s) **FINAL PAYMENT.** When it is determined that the work is complete, the final invoice shall be approved by the Way contract administrator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed. Should the firm believe that additional compensation or time should be allowed for services not covered under the contract, the firm must notify the

Department in writing within 60 days after receipt of final payment. The Department shall render a decision on the claim which will be final, subject to review in accordance with Chapter 150B of the North Carolina General Statutes. Exhaustion of the administrative procedure described herein shall be a prerequisite to the firm's right of review.

(t) **TERMINATION OF CONTRACTS.** All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

History Note: Authority G.S. 130A-444; 136-28.1(f);
Eff. November 1, 1991;
Temporary Amendment Eff. May 4, 1992 for a Period of 180 Days to Expire on October 31, 1992;
Amended Eff. December 1, 2012; August 1, 2002; November 2, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0200 - TRAFFIC ENGINEERING

19A NCAC 02B .0201 DELEGATION BY STATE HIGHWAY ADMINISTRATOR

History Note: Authority G.S. 136-18(5); 136-30; 136-44.1; 136-54; 136-89.53;
Eff. January 1, 1986;
Amended Eff. October 1, 1993; October 1, 1991;
Repealed Eff. December 29, 1993.

19A NCAC 02B .0202 DEFINITIONS

History Note: Authority G.S. 136-18; 136-20; 136-45; 136-66.1; 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1992;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0203 RESPONSIBILITY FOR TRAFFIC CONTROL DEVICES

History Note: Authority G.S. 20-158; 20-158.1; 20-169; 136-18; 136-30;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; November 1, 1991;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0204 TRAFFIC SIGNAL SPECIFICATIONS

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(1); 136-44.1; 136-45; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0205 NORTH CAROLINA SIGN SUPPLEMENT

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(5); 136-30; 150A-62; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02B .0206 NC CONSTRUCTION AND MAINTENANCE OPERATIONS SUPPLEMENT

History Note: *Legislative Objection Lodged Eff. August 19, 1980;*
 Legislative Objection Removed Eff. April 23, 1981;
 Authority G.S. 136-18(5); 136-30; 150A-62; 150A-63(c);
 Eff. July 1, 1978;
 Amended Eff. April 11, 1980;
 Repealed Eff. April 3, 1981.

19A NCAC 02B .0207 NORTH CAROLINA SIGNAL SUPPLEMENT

History Note: *Legislative Objection Lodged Eff. August 19, 1980;*
 Legislative Objection Removed April 23, 1981;
 Authority G.S. 136-18(5); 136-30; 150A-62; 150A-63(c);
 Eff. July 1, 1978;
 Amended Eff. April 11, 1980;
 Repealed Eff. April 3, 1981.

19A NCAC 02B .0208 UNIFORM TRAFFIC CONTROL DEVICES

History Note: *Authority G.S. 20-158; 20-169; 136-18(5); 136-30; 150B-21.3A;*
 Eff. July 1, 1978;
 Amended Eff. October 1, 1993; October 1, 1991; January 1, 1986; April 3, 1981;
 Repealed Eff. February 1, 2019.

19A NCAC 02B .0209 MISCELLANEOUS SIGNS

19A NCAC 02B .0210 SPECIAL MUNICIPAL SIGNS

19A NCAC 02B .0211 CONSTRUCTION AND MAINTENANCE SIGNING

History Note: *Authority G.S. 136-18(5); 136-18(19); 136-30;*
 Eff. July 1, 1978;
 Repealed Eff. October 1, 1993.

19A NCAC 02B .0212 PARKING SIGNS

(a) No Parking Signs (State Highway System). Where parking is prohibited by either Department of Transportation or municipal ordinance, the installation and maintenance of appropriate No Parking signs is the responsibility of the Department of Transportation.

(b) Parking Control Signs (State Municipal System). Where parking is permitted but the municipality desires to control its duration or type, the appropriate standard signs necessary are the responsibility of the municipality. They shall be installed and maintained at no expense to the Department of Transportation. Such signs include, but are not limited to, 15 Min. Parking, 1 Hr. Parking, No Parking 4-6 P.M., Loading Zone, Bus Stop, and Taxi Stand.

History Note: *Authority G.S. 20-162; 20-162.1; 136-18(5);*
 Eff. July 1, 1978;
 Amended Eff. October 1, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0213 TRUCK ROUTE DESIGNATION

(a) Municipal governments have the authority to establish by ordinance truck routes on the state highway system within their corporate limits. Such truck routes must have approval of the Department of Transportation.

(b) The Department of Transportation also has authority to establish truck routes within a municipality. Truck routes may traverse both state highway system streets and municipal streets; however non-system streets may be designated as a truck route only by the municipality.

(c) The Department of Transportation will be responsible for all necessary signing on the state highway system streets with the municipality being responsible for signing that portion of the truck route traversing non-system streets.

History Note: Authority G.S. 20-116(h); 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0214 BUSINESS AND BYPASS ROUTE DESIGNATIONS

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Repealed Eff. April 11, 1980.

19A NCAC 02B .0215 SHOPPING CENTER SIGNS

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. October 1, 1993; August 1, 1984;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0216 STREET NAME SIGNS

(a) Street name signs are the sole responsibility of the municipality. If such signs are installed on the state highway system rights-of-way they must be in conformance with the "Manual on Uniform Traffic Control Devices" and may not be erected in such a manner as to interfere with standard highway signing.

(b) Street Name Signs (State Rural Secondary System). The board of county commissioners or developers and property owners can request permission for the appropriate street name signs and, upon approval by the traffic engineering branch as to type, design, and location of said signs, they may be erected and will be maintained by those responsible for the placing of the signs.

(c) The Department of Transportation may remove all street name signs that are not properly maintained or that hamper the maintenance of the streets by the Department of Transportation.

Note: Refer also to the Code of Federal Regulations, Chapter 23, Part 655, Subpart C.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0217 ALL AMERICA CITY SIGNS

19A NCAC 02B .0218 RAILROAD NAME SIGNS ON OVERPASSES

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. January 1, 1995; November 1, 1993; October 1, 1993;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02B .0219 FIRE STATION WARNING SIGN

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0220 FIRE DISTRICT SIGN

19A NCAC 02B .0221 GENERAL MOTORIST SERVICES SIGNS

History Note: Authority G.S. 136-18(5); 136-30; 136-128; 136-140.7;
Eff. July 1, 1978;

*Amended Eff. July 1, 1995; September 1, 1994; December 1, 1993; October 1, 1993; November 1, 1987;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.*

19A NCAC 02B .0222 NATIONAL GUARD ARMORY AND AIR NATIONAL GUARD SIGNS
19A NCAC 02B .0223 PARKS: HISTORICAL AREAS: SPECIAL TOURIST ATTRACTIONS: ETC.

*History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.*

19A NCAC 02B .0224 TELEPHONE SIGNS
19A NCAC 02B .0225 BLUE STAR MEMORIAL HIGHWAY SIGNS

*History Note: Authority G.S. 136-18(5); 136-18(8); 136-30; 136-102.1;
1949 General Assembly Resolution 21;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.*

19A NCAC 02B .0226 TEMPORARY SIGNS FOR SPECIAL EVENTS

*History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.*

19A NCAC 02B .0227 COMMUNITY WATCH SIGNS

*History Note: Authority G.S. 136-32;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.*

19A NCAC 02B .0228 TRAFFIC SIGNALS - GENERAL

*History Note: Authority G.S. 20-158; 20-169; 136-18(5);
Eff. July 1, 1978;
Amended Eff. April 3, 1981;
Repealed Eff. October 1, 1993.*

19A NCAC 02B .0229 SIGNAL EQUIPMENT (STATE MUNICIPAL SYSTEM)

The Department of Transportation reserves the right to select the most economical equipment and materials to do a specific job. If the municipality desires to use different or more costly equipment and materials, the municipality shall make a request in writing to the Department of Transportation. If approved, the substitution may be made but the municipality must pay the difference in cost.

*History Note: Authority G.S. 20-169; 136-18(5);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0230 PEDESTRIAN ACTUATED SIGNALS (STATE MUNICIPAL SYSTEM)

*History Note: Authority G.S. 20-172; 136-66.1;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.*

19A NCAC 02B .0231 FIRE ZONE (STATION) SIGNALS (STATE MUNICIPAL SYSTEM)

Special signal equipment used at or adjacent to fire stations (including preemption equipment) shall be paid for by the municipality out of its own funds and must be of a design acceptable to and approved by the Department of Transportation.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0232 SCHOOL FLASHERS (STATE MUNICIPAL SYSTEM)

Standard signing and marking for school zones is the responsibility of the Department of Transportation. If a traffic and engineering investigation conducted by the Department of Transportation shows that there are hazardous conditions present adjacent to a school greater than those normally present in school areas, and that these conditions can be alleviated by the use of school flashers, then the Department of Transportation will install school flashers and maintain them.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0233 UPGRADING EXISTING SIGNALS (STATE MUNICIPAL SYSTEM)

The cost for upgrading existing traffic signals and flashers on the state highway system is the responsibility of the Department of Transportation. The existing equipment being replaced shall become the property of the Department of Transportation. In the event the municipality wishes to retain possession of the equipment, or any part thereof, to be replaced, it may do so by mutual agreement with the Department of Transportation.

History Note: Authority G.S. 20-158; 136-18(5);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0234 AUTHORITY FOR TRAFFIC ORDINANCES

History Note: Authority G.S. 20-116; 20-141; 20-158; 10-158.1; 20-161; 20-165.1; 136-18(5);
136-18(19); 136-30 to 31; 136-33.2; 136-89.50; 136-102.5; 143B-350(f),(g);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0235 CUSTODIAN AND LOCATION OF TRAFFIC ORDINANCES

History Note: Authority G.S. 136-18(5); 150A-63(c);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0236 MEDIAN OPENINGS - GENERAL

19A NCAC 02B .0237 CROSSOVERS IN CONTROLLED ACCESS HIGHWAYS

History Note: Authority G.S. 20-140.3; 136-18(5); 136-89.58;
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02B .0238 MANUAL ON DRIVEWAY ENTRANCE REGULATIONS

History Note: Legislative Objection Lodged Eff. August 19, 1980;
Legislative Objection Removed Eff. April 23, 1981;
Authority G.S. 136-18(1); 136-93; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;

Repealed Eff. April 3, 1981.

19A NCAC 02B .0239 OBTAINING COPIES

*History Note: Authority G.S. 136-18(10); 136-93; 150A-62;
Eff. July 1, 1978;
Repealed Eff. April 3, 1981.*

19A NCAC 02B .0240 CHANNELIZATION FOR ENTRANCES AND EXITS TO PROPERTY

*History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Repealed Eff. February 1, 2019.*

19A NCAC 02B .0241 PLACEMENT OF HISTORICAL MARKERS IN ROW

*History Note: Authority G.S. 136-18(10); 136-42.2; 136-42.3; 136-129;
Eff. July 1, 1978;
Amended Eff. December 1, 2012; April 11, 1980;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.*

19A NCAC 02B .0242 NC ROUTE NUMBERS

- (a) The Department of Transportation has full responsibility for establishing NC routes. Normally this relates to removing a road from the secondary road system and placing it on the primary road system.
- (b) NC numbered routes shall have numbers not to exceed 999. NC route numbers shall not be in conflict with interstate numbers or US numbers.
- (c) Requests for the addition, modification, or deletion of NC route numbers shall be submitted to the traffic engineering branch who shall make recommendations relative to the request based upon the following criteria:
- (1) The proposed NC route must be adequately designed and constructed in terms of its pavement structure such that it can carry the statutory 19,000 pound axle load.
 - (2) The proposed route must meet minimum accepted operational standards of a minimum 20-foot paved width and with adequate shoulders.
 - (3) The horizontal and vertical alignment of the route must be such that it can safely handle traffic at the statutory speed limit of 55 miles per hour for the majority of its length. In extreme mountainous areas, consideration may be given to an average operating speed of 45 miles per hour.
 - (4) NC routes shall not overlap existing NC or US routes already established unless the duplication is for a short distance and the routes then diverge, ending in different terminal points.
- (d) No additional NC route shall be added to the primary highway system or extended except where there is a definite showing of an adequately improved highway carrying an established and necessary line of intrastate traffic not otherwise provided for by existing US or NC routes.

*History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Transferred and recodified from 19A NCAC 02B .0303 Eff. March 4, 1998;
Amended Eff. August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0243 RAILROAD GRADE CROSSING SIGNS, SIGNALS, AND GATES

- (a) When the Department of Transportation directs a railroad to protect its grade crossings by the erection of electric signals or other safety devices, the railroad so directed shall erect such electric signals or other safety devices as required in the order. Upon the installation and placing into operation of the signals or other safety devices as required in the order, any existing signals or other safety devices shall be removed by the railroad unless otherwise directed by the Department of Transportation.

- (b) Where there has been a discontinuance of service but the tracks have not been paved over or removed, crossbuck signs shall be removed and sign R8-9 "TRACKS OUT OF SERVICE" shall be installed.
- (c) Where there has been a discontinuance of service and the tracks have been paved over or removed, all signs shall be removed.
- (d) Where there has been a discontinuance of service and flashing light signals or gates are present, the gate arms shall be removed and the signal heads shall be hooded, turned, or removed to clearly indicate they are not in operation.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;
Eff. August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0300 - CHIEF ENGINEER - PROGRAMS

19A NCAC 02B .0301 INTERSTATE ROUTE NUMBERS **19A NCAC 02B .0302 US ROUTE NUMBERS**

History Note: Authority G.S. 136-18(5); 136-30; 136-89.50; 23 U.S.C. 101;
Eff. July 1, 1978;
Repealed Eff. July 26, 1993.

19A NCAC 02B .0303 NC ROUTE NUMBERS

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Transferred and recodified to 19A NCAC 02B .0242 Eff. March 4, 1998.

19A NCAC 02B .0304 SECONDARY ROAD NUMBERS

- (a) All secondary roads which are a part of the Highway System will carry a number beginning at 1000.
- (b) Secondary road numbers 1000 to 1099 are developed for the principal routes within a county.
- (c) Wherever possible these numbers are continuous for two or more counties.
- (d) Secondary road numbers for the majority of the secondary roads are numbered numerically, increasing in the county. Thus, different counties will have different routes with the same number.
- (e) Numbering of secondary roads in each county will start in the southwesterly quadrant, numbering in a clockwise direction with numbers starting at 1100 and numerically increasing. A block of numbers is allotted for each section of the county with sufficient unused numbers to permit roads to be added in the future.
- (f) All requests for changing existing secondary road numbers shall be acted upon by the Department of Transportation. Requests for the addition, modification or deletion of secondary road numbers shall be submitted to the Department.

History Note: Authority G.S. 136-18(5); 136-30;
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0305 SOURCE AND PURPOSE - POWELL BILL

Annually the North Carolina Department of Transportation shall pay state street aid allocations from the State Highway Fund to eligible and qualifying municipalities for the maintenance, construction and reconstruction of local city streets. Inquiries about these allocations shall be directed to:

Manager of Program Development
North Carolina Division of Highways
Highway Building
1 S. Wilmington Street
Raleigh, N. C. 27611

History Note: Authority G.S. 136-41.1 to 41.2; 136-41.3; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. July 26, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0306 ESTABLISHING ELIGIBILITY - POWELL BILL

Annually as of July 1, each participating municipality shall establish its eligibility for an allocation. Towns incorporated prior to January 1, 1945, must submit a certified statement which provides information on the municipality's most recent election for the purpose of electing municipal officials, ad valorem taxes, or other provisions for funding the general operating expenses of the municipality; and the mileage of its legally qualified, municipality maintained streets. In addition, towns incorporated on or after January 1, 1945, must also include in their certified statement information on their:

- (1) ad valorem taxes;
- (2) budget ordinance; and
- (3) services provided.

In all cases, the statement must be certified by the mayor and city clerk with the mileage certified by a registered professional engineer or a registered land surveyor. To support the mileage claimed on the certified statement, a street map, certified by a registered land surveyor or registered professional engineer, which clearly shows the claimed local city streets is required. If there have been no changes in mileage from the previous year, only certifications by the mayor and city clerk is required. Forms and instructions are available from the Manager of Program Development, North Carolina Division of Highways, Raleigh, 27611.

History Note: Authority G.S. 136-41.1; 136-41.2; 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. July 26, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0307 PAYMENT OF ALLOCATIONS - POWELL BILL

19A NCAC 02B .0308 FINANCIAL STATEMENT - POWELL BILL

History Note: Authority G.S. 136-41.1; 136-41.3; 136-143; 143B-350 (f), (g);
Eff. July 1, 1978;
Repealed Eff. July 26, 1993.

19A NCAC 02B .0309 SOURCE AND PURPOSE - PL (METROPOLITAN PLANNING) FUNDS

The North Carolina Department of Transportation is responsible for administering the Metropolitan Planning Funds (PL) established by the 1973 Federal-Aid Highway Act. These funds are for the purpose of carrying out the provisions of 23 U.S.C. 134, relating to transportation planning in urban areas. Funds are apportioned to the state in the ratio which the population in urbanized areas bears to the total population in such urbanized areas in all the states as shown by the latest available census. Inquiries about these funds should be directed to Manager of Statewide Planning, North Carolina Division of Highways, Raleigh, 27611.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);
Eff. July 1, 1978;
Amended Eff. March 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0310 RECIPIENTS OF FUNDS - PL (METROPOLITAN PLANNING) FUNDS

Metropolitan Planning Funds appropriated to the state shall be allocated to the organization recognized by the Governor, through an official designation, as having accepted responsibility for transportation planning for the urbanized area. Urbanized areas are those areas of over 50,000 population, as identified by the U.S. Bureau of Census in the latest available decennial census or special census taken since the decennial census, and required by the United States Department of Transportation to maintain a comprehensive transportation planning process.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);

Eff. July 1, 1978;

Amended Eff. July 26, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0311 ALLOCATION OF FUNDS - PL (METROPOLITAN PLANNING) FUNDS

Metropolitan Planning Funds shall be allocated to the designated organizations by formula developed by the state and approved by the Federal Highway and Urban Mass Transportation Administrators. North Carolina's formula allocates one-half of the funds in equal shares to the designated agencies and one-half on the ratio of the urbanized area's population to the total population of all the urbanized areas. Allocation is in the form of a commitment of funds to the area for reimbursement of cost incurred in carrying out transportation planning.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);

Eff. July 1, 1978;

Amended Eff. July 26, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0312 MATCHING - PL (METROPOLITAN PLANNING) FUNDS

The federal share payable on account of work performed using PL (Metropolitan Planning) Funds shall be 80 percent. The remaining 20 percent is local money provided by the urbanized area.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);

Eff. July 1, 1978;

Amended Eff. July 26, 1993; March 1, 1993; August 1, 1986;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0313 PROGRAMMING - PL (METROPOLITAN PLANNING) FUNDS

The expenditure of PL Funds by each organization shall be supported by a planning work program setting forth the transportation planning work to be undertaken. Approval of the program by the Department of Transportation and the United States Department of Transportation is required.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-250(f),(g);

Eff. July 1, 1978;

Amended Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0314 ADMINISTRATIVE AGREEMENT - PL (METROPOLITAN PLANNING) FUNDS

Administration of PL Funds shall be pursuant to an agreement between the Department of Transportation and the planning organization. As a minimum, the agreement shall identify the parties involved; specify the purpose, statement of work, period of performance, consideration and payment, and cost principals; grant the Department of Transportation the rights of access to, and examination and audit of records; and provide for retention of records.

History Note: Authority 23 U.S.C. 104(f); 23 U.S.C. 134; G.S. 136-18(12); 143B-350(f),(g);

Eff. July 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0315 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS

Transportation projects within municipalities shall be constructed in accordance with a municipal agreement that is executed by the municipality and the Board when the construction includes any financial participation by the municipality in project costs, or the municipality requests additional work that results in maintenance responsibilities or financial participation by the municipality. If there is no financial participation by the municipality, no additional work requested by the municipality, and no maintenance requirements by the municipality, then a municipal agreement shall not be required under the terms of this Rule. If a municipal agreement is necessary in accordance with this Rule, then the agreement shall set forth conditions including whether the Department or the municipality will acquire the right-of-way, and shall identify any financial participation by the municipality.

History Note: Authority G.S. 136-18(2); 136-19; 136-66.3; 143B-24; 143B-350(f)(g);
Eff. July 1, 1978;
Transferred and Recodified from 19A NCAC 2B .0119 Eff. October 1, 1993;
Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0316 PERSONAL PROPERTY NOT TO BE ACQUIRED

History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Transferred and Recodified from 19A NCAC 2B .0124 Eff. October 1, 1993;
Repealed Eff. February 1, 2019.

19A NCAC 02B .0317 IMPLEMENTATION OF ROADWAY CORRIDOR OFFICIAL MAPS

- (a) A roadway corridor official map, hereinafter referred to as "official map," is defined as a map, drawing or written description of a planned roadway alignment, with approximations of future right of way boundaries, which is adopted by the Board of Transportation for right of way protection purposes.
- (b) The Division of Highways of the North Carolina Department of Transportation is responsible for the implementation of the procedures governing the adoption of official maps.
- (c) The Department of Transportation shall conduct environmental studies or screenings prior to the adoption of an official corridor map as follows:
- (1) If environmental studies are in the process of being conducted on a project being considered for an official map, then the adoption of the map must await the determination of the recommended alternative. In such cases, the public hearing required for a proposed official map or amendment under G.S. 136-44.50(a)(1) may be combined with the design public hearing.
 - (2) If environmental studies have not been conducted or are not underway for a project for which an official map is to be prepared, a preliminary environmental screening of the proposed alignment must be conducted to determine the environmental feasibility of the project.
- (d) An official map illustrating the proposed project must be prepared prior to the initiation of the map adoption procedure. An official map must be of sufficient detail to identify the proposed project in terms of functional design, location and preliminary right of way boundaries. The approximate property boundaries will be identified on the map and the names of the affected property owners at the time of the recording must be provided.
- (e) The Department of Transportation shall conduct a public hearing on the proposed map or an amendment to the existing adopted map prior to the adoption of an official corridor map or amendment as follows:
- (1) The Public Hearing Officer of the Division of Highways, after the project has been selected and the official map has been prepared, shall arrange the date and location of the public hearing on the proposed map or amendment as required by G.S. 136-44.50(a)(1). The date of the hearing must be determined in advance so as to allow sufficient time for the period of public notice which is required pursuant to G.S. 136-44.50(a)(1).
 - (2) In addition to the public hearing notice requirements established by G.S. 136-44.50(a)(1), the notice shall indicate that copies of the proposed official map are available for review in the office of the District Engineer in whose jurisdiction the area which is the subject of the map is located.
 - (3) The Public Hearing Officer shall conduct the public hearing. Public comment at the hearing shall be directed towards the designation of the subject project as an "official map" and any impacts created by such designation. Either a transcript of the public hearing or a summary of the comments made at the hearing shall be prepared.
- (f) The Board of Transportation, following a review of the public hearing transcript or the summary of the comments made at the hearing, may adopt an official map at a Board of Transportation meeting.
- (g) In addition to the statutory requirements for the distribution and maintenance of official maps established by G.S. 136-44.50(b)(1), a copy of an official map adopted by the Board of Transportation shall be maintained by the Program Development Branch of the Department and a copy shall be provided to the building inspectors and planning officials in the jurisdictions affected by the map.
- (h) The procedures for the Department of Transportation's consideration of petitions for variances from requirements imposed by the adoption of an official corridor map are as follows:

- (1) Any property owner affected by an official map adopted by the Board of Transportation may petition for a variance from the requirements imposed by the statute (G.S. 136-44.51). A request for a variance shall be directed to the Program Development Branch for consideration and processing. The property owner may either request that an administrative hearing be held in the county in which the affected property is located or may state the reasons for and supply any evidence supporting the variance request in writing to the Director of the Program Development Branch. In instances where a hearing is scheduled pursuant to a request for a variance, the Program Development Branch shall provide written notice of the hearing to the mayor of any affected city or the chairman of the board of commissioners of any affected county, in accordance with G.S. 136-44.52(b).
- (2) Upon consideration of the facts and circumstances pertaining to the petition for a variance as determined from evidence provided by the property owner, the Program Development Branch may grant a variance, recommend the subject property be considered for advance acquisition, or deny the request. A written record of the decision shall be provided to the petitioning property owner within 30 days of the date of the hearing or the date of the receipt of the written request for the variance.
- (3) If the petitioning property owner receives an unfavorable ruling from the Program Development Branch concerning the variance request, he or she may request a review of the case by the Chief Engineer. The Chief Engineer shall evaluate the case and provide a final administrative decision in writing within 30 days of the date of the receipt of the review request.
- (4) Any property located within a designated roadway corridor may be considered for advance acquisition prior to the expiration of the three year time period established in G.S. 136-44.51(b). All requests for such advance acquisition shall be in writing, include all supporting documentation, and be submitted to the Right of Way Branch with a copy sent to the Program Development Branch.

*History Note: Authority G.S. 136-44.50; 136-44.51; 136-44.52; 143B-350(f);
 Eff. October 1, 1991;
 Transferred and Recodified from 19A NCAC 2B .0163;
 Amended Eff. December 1, 2012; December 29, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0400 - RELOCATION ASSISTANCE PROCEDURES

Note: The Department publishes a "Relocation Assistance Brochure" which contains the information normally needed by a person being relocated. The brochure is available free from any Division of Highways Right of Way Relocation Office.

19A NCAC 02B .0401	DEFINITIONS
19A NCAC 02B .0402	PURPOSE
19A NCAC 02B .0403	ELIGIBILITY FOR STATE AND FEDERAL FUNDS
19A NCAC 02B .0404	APPLICABILITY
19A NCAC 02B .0405	ASSURANCES OF ADEQUATE RELOCATION ASSISTANCE PROGRAM
19A NCAC 02B .0406	PERSONS TO WHOM ADVISORY ASSISTANCE SHOULD BE OFFERED
19A NCAC 02B .0407	ASSISTANCE ON ADVANCE AND SPECIFIC PARCEL ACQUISITIONS
19A NCAC 02B .0408	PUBLIC NOTICE OF AVAILABILITY OF SERVICE
19A NCAC 02B .0409	INITIAL CONTACT WITH DISPLACEE
19A NCAC 02B .0410	NOTICE TO FINANCIAL INSTITUTIONS
19A NCAC 02B .0411	NINETY DAYS WRITTEN NOTICE
19A NCAC 02B .0412	REVIEW PROCEDURES
19A NCAC 02B .0413	SEVERED IMPROVEMENTS
19A NCAC 02B .0414	REQUEST FOR PROPERTY INSPECTION
19A NCAC 02B .0415	AGENCY RESPONSIBILITY
19A NCAC 02B .0416	MOVING COST
19A NCAC 02B .0417	GUIDELINES FOR HOUSEHOLD MOVES
19A NCAC 02B .0418	MOVING PAYMENTS TO BUSINESSES
19A NCAC 02B .0419	ADVERTISING SIGNS
19A NCAC 02B .0420	REPLACEMENT HOUSING PAYMENTS

19A NCAC 02B .0421	REPLACEMENT HOUSING PAYMENTS FOR OWNER-OCCUPANT
19A NCAC 02B .0422	PAYMENT TO OWNER-OCCUPANTS FOR 180 DAYS OR MORE WHO RENTS
19A NCAC 02B .0423	REPLACEMENT HOUSING PAYMENT TO OWNER (SHORT TERM OWNER)
19A NCAC 02B .0424	PAYMENT TO OWNER-OCCUPANTS FOR 90 DAYS WHO RENTS
19A NCAC 02B .0425	PAYMENT TO TENANT-OCCUPANT FOR 90 OR MORE DAYS WHO RENTS
19A NCAC 02B .0426	PAYMENT TO TENANT-OCCUPANT 90 OR MORE DAYS WHO PURCHASES
19A NCAC 02B .0427	PAYMENT TO TENANT OF A SLEEPING ROOM 90 OR MORE DAYS
19A NCAC 02B .0428	MOBILE HOMES
19A NCAC 02B .0429	SUBSEQUENT OCCUPANTS
19A NCAC 02B .0430	HOUSING AS A LAST RESORT
19A NCAC 02B .0431	COPIES OF FORMS

History Note: Authority G.S. 133-6; 133-7; 133-8; 133-9; 133-10; 133-10.1; 133-11; 133-14; 133-146; 136-18(2); 136-19; 143B-350 (a), (f);
Eff. April 3, 1981;
Repealed Eff. November 1, 1991.

19A NCAC 02B .0432 RELOCATION ASSISTANCE

The Department of Transportation incorporates by reference 49 CFR Subpart 24 and 23 CFR Subpart C, Section 710.313, including subsequent amendments and editions. Copies are available for inspection at no cost to the public, from the Right of Way Unit of the Department of Transportation. The Code of Federal Regulations may be accessed, at no cost to the public, by visiting <https://www.ecfr.gov>.

History Note: Authority G.S. 133-6; 133-14; 143B-350;
Eff. October 1, 1993;
Readopted Eff. February 1, 2019.

19A NCAC 02B .0433 APPLICABILITY

The rules in this Section shall apply to all federal and State Highway projects, except State secondary road projects.

History Note: Authority G.S. 133-6; 133-14; 143B-350;
Eff. October 1, 1993;
Readopted Eff. February 1, 2019.

19A NCAC 02B .0434	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0435	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0436	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0437	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0438	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0439	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0440	RESERVED FOR FUTURE CODIFICATION
19A NCAC 02B .0441	DEFINITIONS
19A NCAC 02B .0442	PURPOSE
19A NCAC 02B .0443	ELIGIBILITY FOR STATE AND FEDERAL FUNDS
19A NCAC 02B .0444	APPLICABILITY
19A NCAC 02B .0445	ASSURANCES OF ADEQUATE RELOCATION ASSISTANCE PROGRAM
19A NCAC 02B .0446	PERSONS TO WHOM ADVISORY ASSISTANCE SHOULD BE OFFERED
19A NCAC 02B .0447	ASSISTANCE ON ADVANCE AND SPECIFIC PARCEL ACQUISITIONS
19A NCAC 02B .0448	PUBLIC NOTICE OF AVAILABILITY OF SERVICE
19A NCAC 02B .0449	INITIAL CONTACT WITH DISPLACEE
19A NCAC 02B .0450	NOTICE TO FINANCIAL INSTITUTIONS
19A NCAC 02B .0451	NINETY DAYS WRITTEN NOTICE
19A NCAC 02B .0452	REVIEW PROCEDURES
19A NCAC 02B .0453	SEVERED IMPROVEMENTS
19A NCAC 02B .0454	REQUEST FOR PROPERTY INSPECTION

19A NCAC 02B .0455	AGENCY RESPONSIBILITY
19A NCAC 02B .0456	MOVING PAYMENTS - RESIDENTIAL
19A NCAC 02B .0457	MOVING PAYMENT - BUSINESSES, FARMS, NON-PROFIT ORGANIZATIONS
19A NCAC 02B .0458	ADVERTISING SIGNS
19A NCAC 02B .0459	REPLACEMENT HOUSING PAYMENTS
19A NCAC 02B .0460	REPLACEMENT HOUSING PAYMENTS FOR 180 DAY OWNER-OCCUPANT
19A NCAC 02B .0461	PAYMENT TO OWNER-OCCUPANTS OF 180 DAYS WHO RENT
19A NCAC 02B .0462	PAYMENT TO OWNER OR OCCUPANT - 90 DAYS
19A NCAC 02B .0463	PAYMENT TO TENANT OR OWNER - LESS THAN 90 DAYS
19A NCAC 02B .0464	MOBILE HOMES
19A NCAC 02B .0465	HOUSING OF LAST RESORT
19A NCAC 02B .0466	DISPLACEMENTS CAUSED BY DISASTERS OR EMERGENCIES

History Note: Authority G.S. 133-6; 133-7; 133-8; 133-9; 133-10; 133-10.1; 133-11; 133-14; 133-15; 133-146; 136-18(2); 136-19; 138-18(2); 143B-350(a) and (f);
Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

SECTION .0500 - UTILITY ENCROACHMENTS

19A NCAC 02B .0501 DEFINITIONS

The following definitions apply to rules contained in this Section:

- (1) "Agreement" means a properly executed document granting permission for a utility encroachment on the highway right-of-way and stipulating any and all conditions and standards that must be met.
- (2) "Applicant" means any individual, corporation, or agency requesting permission to encroach upon the right-of-way of any highway in the State Highway System whether or not permission has been granted.
- (3) "Department" means the North Carolina Department of Transportation.
- (4) "Encroachment" means use of the highway right-of-way for non-highway purposes.

History Note: Authority G.S. 136-18(5); 136-18(10); 143-350(f);
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0502 PERMISSION REQUIRED FOR ENCROACHMENT

- (a) No utility shall cross or otherwise occupy rights-of-way of any road on the State Highway System without written permission from the Department of Transportation.
- (b) No utility which has been placed on the right-of-way of any road on the State Highway System shall be changed or removed without written permission from the Department of Transportation.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0503 APPLICATION FOR UTILITY ENCROACHMENTS

The applicant for a utility encroachment agreement shall prepare four copies of the standard encroachment agreement on forms which are available from Division and District Engineers Offices or from the State Utility Agent, Highway Building, Raleigh, N.C.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0504 APPROVAL OF UTILITY ENCROACHMENT

Approval of utility encroachments shall be granted by the responsible Division Engineer.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0505 FORMS OF ENCROACHMENT AGREEMENT

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Repealed Eff. December 29, 1993.

19A NCAC 02B .0506 RESPONSIBILITY FOR EXISTING UTILITIES

- (a) The applicant shall be responsible for determining what, if any, facilities of other utilities are in existence in the encroachment area. Plans attached to encroachment agreements shall show, as nearly as possible, the location of other utilities that may be unearthed, moved, or exposed to potential damage.
- (b) The applicant shall be responsible for providing protection and safeguards during construction to prevent damage to existing utilities and insure that existing utilities will not be rendered inaccessible.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0507 EXECUTION OF UTILITY AGREEMENT

- (a) This Rule specifies the attestation requirements for utility encroachment agreements between the Department and external parties. All applicable rules regarding utility encroachment agreements may be found in this Section.
- (b) If the applicant as defined in Rule .0501 of this Section is a corporation or a municipality, the agreement shall have the corporate seal and be attested by the corporate secretary, or by the empowered city official, unless a waiver of corporate seal and attestation by the corporate secretary, or by the empowered city official, is on file in the office of the State Utilities Manager, located at 1000 Birch Ridge Drive, Raleigh, NC 27610. Within each agreement, in the space provided for execution, the name of the corporation or municipality shall be typed above the signature, and the name and title of all persons signing the agreement shall be typed directly below their signature.
- (c) If the applicant is not a corporation, the signature shall be witnessed by one other person. The address of the applicant shall be included in the agreement and the names of all witnesses and persons signing the agreement shall be typed directly below their signature.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Readopted Eff. February 1, 2019.

19A NCAC 02B .0508 BOND MAY BE REQUIRED

If deemed necessary by the Division Engineer, the applicant requesting encroachment permission shall post a performance bond (surety bond, certified or cashier's check) adequate to indemnify the Department for damages to the roadway or highway facility caused by the installation. Bond requirements will be based upon the performance experience on Department of Transportation projects and the extent of possible damage to the highway facility.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0509 AGREEMENTS DURING CONSTRUCTION

- (a) After a highway construction project has been let to contract, the applicant must make satisfactory arrangements with the highway contractor, to insure that the encroachment activity will not interfere with or delay the contractor.
- (b) A three-party agreement between the Department, the highway contractor and the applicant shall be entered into, or the Manager of Right of Way shall be furnished a letter from the highway contractor stating that the installation of the encroachment will not be the basis of a claim for delay or additional cost to the Department. This requirement does not apply to the adjustment or relocation of existing utilities necessitated by highway construction.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0510 VEGETATION IN ENCROACHMENT AGREEMENTS

When vegetation on highway right-of-way is involved with utility installations, the encroachment application shall be referred to the Area Roadside Environmental Engineer for investigation and approval before final approval of the encroachment. Encroachment agreements will not be approved until matters pertaining to the cutting or trimming of vegetation on highway right-of-way have been settled, and then permission for allowable cutting and trimming will accompany the approved encroachment agreement with the utility.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93; 136-18(9);
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0511 NOTICE REQUIRED BEFORE WORK BEGINS

- (a) The applicant shall notify the Division Engineer or his appointed representative prior to beginning work on the highway right-of-way. Notice is not required for underground utility service connections and aerial crossings installed under blanket agreements.
- (b) The Division Engineer or his representative shall notify the Bridge Maintenance Superintendent before work begins when attachments to structures are involved.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0512 NOTIFICATION REQUIRED UPON COMPLETION OF WORK

The applicant shall notify the Division Engineer in writing when all work contained in the agreement has been completed. Written notification of completion will not be required for encroachments on active highway projects, and any utility installed under a blanket agreement.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0513 FINAL INSPECTION: FINAL REPORTS

- (a) The Division Engineer or his designated representative shall make a final inspection of all authorized encroachments. Where applicable, the Bridge Maintenance Superintendent will also participate in the final inspection.
- (b) The Division Engineer or his designated representative shall notify the Manager of Right of Way in writing as to whether or not each completed encroachment is satisfactory. Written notice of acceptance is not required for encroachments authorized under blanket agreement.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02B .0514 ENCROACHMENT AGREEMENTS ON FEDERAL-AID HIGHWAYS

*History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Repealed Eff. December 29, 1993.*

19A NCAC 02B .0515 RELOCATION OF UTILITIES ENCOUNTERED IN HIGHWAY IMPROVEMENTS

(a) The Department of Transportation shall assume the financial responsibility for non-betterment costs of adjusting or relocating utilities which are in conflict with the construction of a highway project and occupy a valid utility right of way. A valid utility right of way for the purpose of this Rule is one in which the Municipality or other utility owner has a compensable interest. The Department of Transportation, upon the request of the Municipality or other utility owner, may provide the engineering and include the utility adjustment or relocation in the highway improvement contract at no cost to the Municipality or other utility owner.

(b) The Department of Transportation shall assume the financial responsibility for the non-betterment cost of adjusting or relocating those municipally-owned utilities necessitated by highway construction when said utilities are located on a non-system right of way provided that:

- (1) the highway construction does not constitute an improvement to the non-system street in which the utilities are located, and
- (2) the non-system street in which the utilities are located is not incorporated into or obliterated by the highway project. The mere crossing of a project by a street either at-grade or by separation shall not constitute "incorporation" into the project.

(c) The Municipality or other utility owner is financially responsible for the adjustment or relocation of utilities in conflict with a highway improvement when such utilities are located within the existing right of way of a State system highway, except as provided for in G.S. 136-27.1.

(d) The owner of the utility is financially responsible for the adjustment or relocation of utilities in conflict with a highway improvement when such utilities are located on a non-valid utility easement.

(e) The Department of Transportation may enter into agreements with Municipalities or other utility owners to provide that the necessary engineering and utility construction be accomplished by the Department on a reimbursement basis as follows:

- (1) Reimbursement to the Department will be due after completion of the work and within 60 days after date of invoice.
- (2) Interest shall be paid at the rate of eight percent on any unpaid balance due.

(f) Should a Municipality fail to pay the Department of Transportation in accordance with the provisions of the Utility Agreement, the Department may apply up to ten percent of each year's allocation of the Municipality's share of funds allocated under the provisions of G.S. 136-41.1 (Powell Bill) until the Municipality's obligation is paid.

(g) In those cases where no agreement can be reached, or in cases where the utility owner refuses to relocate or refuses to claim ownership, the Board shall issue an order on the authority of G.S. 136-18(10) requiring the necessary adjustments. Upon failure of the utility to comply with the order, all utility construction shall be included in the highway improvement contract. Upon completion of the work, the owner of the utility shall be invoiced for the work performed. If the invoice is not paid, the Board of Transportation shall refer the matter to the Office of the Attorney General for further action.

*History Note: Authority G.S. 136-18(10); 136-27.1; 136-93;
Eff. November 1, 1991;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0600 - DRIVEWAY ENTRANCES

19A NCAC 02B .0601 DRIVEWAYS IN HIGHWAY RIGHT OF WAY - GENERAL

(a) Any person or corporation desiring to construct a driveway or other connection within the right of way of a state system street or highway shall, before beginning any construction, secure a permit from the Department of Transportation authorizing construction on the state right of way. Driveway connections to residences are normally excluded from this requirement, but may be included at the option of the Department where access connections involve a public safety hazard or at locations involving a highway construction project or if drainage installation costs are excessive or drainage complications are obvious.

- (b) Failure to secure a permit prior to construction may result in the removal of the driveways or denial of access at that location, until an approved permit is executed.
- (c) Within local governments having local ordinances affecting driveways, the more restrictive ordinance, municipal, county or state, shall apply to driveways connecting into state system streets and roads.

*History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;
Eff. April 3, 1981;
Amended Eff. October 1, 1993; July 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0602 OBTAINING A DRIVEWAY CONSTRUCTION PERMIT

- (a) Application for a driveway construction permit will be made to the District Engineer having jurisdiction in the area.
- (b) Information that must be given with the application is listed below. Additional information will be required for special commercial property uses as shown in Rule .0603 of this Section.

- (1) The location of the property must be identified clearly enough for the proposed site to be located in the field.
 - (2) Complete names and addresses of the property owner and the applicant must be given on the application.
 - (3) The planned property use must be indicated as one of the following:
 - (A) Residential Subdivision - Low volume traffic generators (Average Daily Traffic less than 200 vehicles per day) such as small apartment complexes, mobile home parks, condominium developments, and other small residential developments.
 - (B) Regular Commercial - Low to moderate volume traffic generators (Average Daily Traffic greater than 200 but less than 1,000 vehicles per day) such as single commercial businesses, small shopping centers, light industrial and manufacturing establishments, small service businesses, service organizations and churches.
 - (C) Special Commercial - High volume traffic generators (Average Daily Traffic greater than 1,000 vehicles per day) such as large shopping centers, major recreational facilities, large office buildings or complexes containing more than 200 parking spaces, hospitals, large industrial developments, airports, large residential developments and civic centers.
- (c) Plans shall be submitted which clearly indicate the character and extent of the work proposed, including:
- (1) the location of all existing or proposed buildings;
 - (2) retaining walls, drainage, poles, and other physical features which effect the driveway location;
 - (3) pavement and right of way widths;
 - (4) roadway alignment and channelization;
 - (5) location of control of access; and
 - (6) offstreet parking locations which may affect the driveway location.

*History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;
Eff. April 3, 1981;
Amended Eff. December 29, 1993; July 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0603 DRIVEWAY PERMITS FOR SPECIAL COMMERCIAL PROPERTY

- (a) Property use designated as special commercial in Rule .0602 of this Section shall require study to a greater depth than other commercial property uses due to the possibility of greater traffic generation. As a result, a four-week review period shall be required by the Department. The permit shall be submitted sufficiently in advance of the planned construction date to allow for this review period. The different types of property uses that come under this heading are:

- (1) Shopping centers with one or more adjoining commercial or service establishments planned or constructed;
- (2) Residential developments;
- (3) Recreational facilities;
- (4) Office buildings or complexes containing more than 200 parking spaces;
- (5) Hospitals or large medical facilities;
- (6) Industrial developments;
- (7) Airports;
- (8) Civic Centers;

- (9) Other uses which can be expected to attract large amounts of traffic (Average Daily Traffic greater than 1,000 vehicles per day); and
 - (10) Any development located at high volume or high accident locations, which are locations having a history of accidents.
- (b) In addition to the items required on the permit application as specified in Rule .0602 of this Section, the following items of information, with the exceptions noted, must be shown on the site plans before the application can be considered:
- (1) a complete plot plan showing the buildings and parking space layouts (not necessary for new public streets);
 - (2) the proposed driveway locations and widths;
 - (3) the approximate distances between the following items:
 - (A) driveway centerline to centerline of nearest crossroad;
 - (B) driveway centerline to existing or proposed crossovers;
 - (C) driveway centerline to adjacent streams or bridges;
 - (D) pavement edge of road to right of way; and
 - (E) width of adjacent roads.
- (c) In the absence of local zoning or subdivision ordinances, the developer shall present four copies of the site plans to the District Engineer at least four weeks prior to the planned construction date.
- (d) Where local zoning or subdivision ordinances exist, the developer shall submit five copies of the site plans to the local planning body. The local planning body, after tentative approval of the plan, shall forward four copies of the plans to the Division Engineer. The Division Engineer shall take the necessary action and inform the developer and the local planning body of the results of the investigation conducted by the Department.

*History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;
 Eff. April 3, 1981;
 Amended Eff. January 1, 1995; December 29, 1993; July 1, 1981;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0604 APPROVAL OF APPLICATION

The approval of the application shall be subject to the following conditions:

- (1) The application shall be properly and clearly completed.
- (2) The location, design, and construction of driveways shall meet the general and geometric requirements as specified by the responsible District Engineer which will include necessary provisions for drainage, pavement types and thickness, sight distance requirements, and other details.

Note: The Department publishes a brochure entitled, "Manual on Driveway Entrance Regulations" which includes the normal design and construction criteria required for various types of driveway entrances. This manual may be obtained from the Traffic Engineering Branch, Division of Highways, Raleigh, free of charge.

- (3) The permit shall require that the applicant assume the following construction responsibilities:
 - (a) Existing open ditch - The applicant shall furnish all required pipe of size, type and quantity as specified by the engineer. The pipe will be laid and backfilled by the Department, if requested. The applicant shall bear the full cost of any stabilization and pavement placed on the driveway(s) within the right of way.
 - (b) Existing curbed streets - The applicant will bear all costs of driveway construction including the cost of replacing all joints of curb damaged during construction.
 - (c) No alteration or addition shall be made to any driveway within the right of way without first securing a new permit from the District Engineer.

The Department reserves the right of inspection, by its authorized representatives, of any driveway construction within the right of way. In the event of failure to comply with the terms of the permit, faulty workmanship, or materials, the Department shall have the right to stop the work until such time as the objectionable conditions are corrected. All costs incurred in the removal and/or correction of non-compliance with design, defective workmanship, and/or materials shall be borne by the applicant.

*History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;
 Eff. April 3, 1981;
 Amended Eff. October 1, 1993; July 1, 1981;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02B .0605 APPLICATION REVIEW PERIOD

The Department will process all permit applications as expeditiously as possible. Routine permit applications processed by the District Engineer will require approximately two weeks to process. Permit applications that are considered complex will be processed in approximately four weeks.

*History Note: Authority G.S. 136-18(5); 136-89.50; 136-89.51;
Eff. April 3, 1981;
Amended Eff. October 1, 1993; July 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SUBCHAPTER 02C - SECONDARY ROADS SECTION

SECTION .0100 - SECONDARY ROADS

Note: The Department of Transportation publishes a volume entitled "Minimum Design and Construction Criteria for Subdivision Streets" which contains design standards and subdivision street policies. A copy of this volume may be obtained from the Secondary Roads and Economic Development Office at no cost.

19A NCAC 02C .0101 GENERAL DEFINITIONS

The secondary road system within a county for the purpose of this Subchapter consists of those roads maintained by the Department of Transportation that do not carry "NC" or "US" numbers and are outside the boundary of any incorporated municipality. In the development of secondary road plans, these roads fall into several categories which are defined as follows:

- (1) Principal County Routes. These routes serve as the backbone of the rural transportation network within a county. Their major purpose is to move local traffic to community and recreational centers, shopping and industrial areas, to urban areas within the county and to connect together the other secondary roads with the primary highway system. In addition, they serve abutting residential, farming, business and industrial property.
- (2) County Roads. These roads have as their primary purpose serving abutting residential, farming, business, and industrial use. They also carry small to moderate volumes of traffic moving to the principal county routes and the primary highway system. Their dual function of serving traffic and abutting property is variable depending upon their importance as a through route or connecting link.
- (3) Subdivision Streets. A subdivision street is considered to be a street or road which has been dedicated to the public to provide ingress and egress to lots or parcels which have been laid out for the purpose of providing home sites by a person or firm hoping to profit by the sale of such parcels. These lots or parcels are of insufficient size to be used primarily for farming purposes. A subdivision street is primarily for the use and convenience of the abutting property owners and not the general traveling public.
- (4) Collector Roads. Collector roads channel traffic in subdivisions from side roads. They also provide access from other state-maintained roads.

*History Note: Authority G.S. 136-44.2; 143B-350(f) and (g);
Eff. July 1, 1978;
Amended Eff. December 29, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02C .0102 MINIMUM STANDARDS FOR SECONDARY ROADS

The minimum standards for secondary roads are as follows:

- (1) The Department of Transportation shall require a right of way width of 50 feet for secondary roads added to the system. The right-of-way width may be such as to provide for expected future improvement and maintenance needs of a particular road. A minimum of 50 feet in width for connecting roads and a minimum of 45 feet in width for dead end roads is required. Construction or maintenance easements beyond the right-of-way may be required, if necessary.

- (2) The DOT may authorize rights of way for secondary roads that are less than the minimum required width upon a determination by the Manager of Secondary Roads, and with the approval of the Board of Transportation, that the minimum required right of way width is not feasible, based upon reasonable engineering principles and costs, or creates unnecessary hardships, and safety is not sacrificed.
- (3) For unpaved roads, a minimum travelway width of at least 20 feet is required. Where feasible, road widths of 32 feet including side ditches shall be required. Where not feasible, the requirement may be reduced to a width applicable to the situation, if safety will not be sacrificed.
- (4) Unpaved roads may be stabilized based upon the level of service that the roads render for acceptable use in all except extreme weather conditions.
- (5) Any secondary road may have drainage established that is adequate to maintain the road in a manner that is justifiable based upon the service that the road renders.

*History Note: Authority G.S. 136-44.7; 143B-350(f) and (g);
 Eff. July 1, 1978;
 Amended Eff. December 29, 1993; October 1, 1982;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02C .0103 ADDITION OF ROADS TO THE SECONDARY ROAD SYSTEM

The following requirements must be met before a county road will be added to the secondary road system, provided, however, that the Board of Transportation reserves the right not to add a road to the system if it is evident that the cost of improving said road to minimum standards is excessive within the funds presently available for maintenance and construction within the county:

- (1) Addition of county roads to the system.
 - (a) Property owners must dedicate, free of charge, a right of way sufficient for maintenance and safety purposes. A minimum width of 50 feet for connecting roads and 45 feet for dead end roads is required.
 - (b) Roads one mile or less in length must have at least five occupied residences fronting the road or with direct entrance to the road. These residences must be all-year residences. If a summer resort, each residence counts as one-half a residence.
 - (c) Roads of one or more miles in length must have an average of five occupied residences per mile fronting or having direct entrance to the road.
 - (d) There must be at least two individual property owners on the road.
- (2) Addition of subdivision streets to the system.
 - (a) Developers or property owners must dedicate the following rights of way, free of charge and free of all encumbrances:
 - (i) Connecting Roads. The right of way width for roads which serve as the connecting road system between other roads within the subdivision and the thoroughfare system is 50 feet.
 - (ii) Short Connecting Roads. These roads are one block long or extend on a block-by-block basis and have no collector characteristics. The right-of-way width is 45 feet.
 - (iii) Loop Roads. These are roads which are less than one mile in length and have no collector road characteristics. The right-of-way width is 45 feet.
 - (b) Utilities requiring adjustment or relocation to conform to Department of Transportation's rules which are contained in 19A NCAC 2B .0500 shall be made at no expense to the Department of Transportation. Existing or relocated utilities may remain within the right of way of any subdivision street added to the secondary road system provided the location of same meets Department of Transportation's approval and further provided the utility owner executes an encroachment agreement on forms furnished by the Division of Highways. Utilities are defined as electric power, telephone, television, telegraph, water, sewage, gas, oil, petroleum products, steam, chemicals, drainage, irrigation and similar lines.
 - (c) At least 20 percent of the lots bordering the street must be individually owned.
 - (d) There must be at least two occupied residences for each one-tenth of a mile. Subdivision access roads must provide ingress and egress for at least five occupied residences for roads less than one mile in length and an average of five occupied residences per mile for roads over one mile in

- length. A subdivision access road is a road built through vacant property to provide access to the property being developed. This road would not have lots platted along it.
- (e) A minimum of four occupied homes is required for the addition of roads less than two-tenths of a mile in length. Cul-de-sacs less than two-tenths mile in length must serve at least four occupied homes. If four occupied homes are not served, the cul-de-sac may be treated as a private drive. Also see .0112(c) of this Subchapter.
 - (f) Connecting roads with fewer than the required occupied homes for the length involved may be reviewed as to traffic usage for addition purposes. Traffic usage equivalent to the traffic that would be generated by the correct number of occupied homes shall be acceptable.
 - (g) Any subdivision street with a right of way dedicated, recorded or that has preliminary approval from a county planning board dated after September 30, 1975, shall not be added to the state maintained system unless the street is paved to the minimum construction standards of the Department of Transportation for subdivision streets.
 - (h) The Board of Transportation shall consider the addition of streets that serve developments with large lots or parcels that are of the size that the occupied housing requirement of two homes per tenth of a mile cannot be met. The number of occupied homes needed shall be a judgment factor based upon the length and the number of lots or parcels involved. The minimum requirement shall be four occupied homes.
 - (i) Erosion and Sedimentation. All subdivision roads shall have a permanent vegetative cover established and other permanent erosion control measures installed in accordance with Division of Highways' specifications, prior to addition to the State maintained system.
 - (j) Subdivision roads shall meet the minimum design and construction criteria and be maintained prior to addition to the State Highway System when petitioned for State maintenance.
 - (k) All pipe culverts, storm sewers and appurtenances shall be free of all debris and silt build-up and shall be structurally and hydraulically sound, and functioning in a normal manner. All drainage ditches shall be of such a width and depth and with such a slope as to carry the anticipated discharges. Paved ditches or rip rap shall be required where necessary.
- (3) The DOT may accept rights of way for secondary roads that are less than the minimum required width upon a determination by the Manager of Secondary Roads, and with the approval of the Board of Transportation, that the minimum required right of way width is not feasible, based upon reasonable engineering principles and costs, or creates unnecessary hardships, and safety is not sacrificed.

History Note: Authority G.S. 136-44.7; 136-44.10; 136-102.6;
 Eff. July 1, 1978;
 Amended Eff. December 29, 1993; July 1, 1984; October 1, 1982;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0104 IMPROVEMENT OF ROADS ADDED TO THE HIGHWAY SYSTEM

- (a) When a county road is added to the highway system, the road shall be maintained. The addition of the road to the secondary road system does not imply that this road shall be widened, improved, stabilized or paved.
- (b) The general improvement of a road recently added to the system shall be considered in light of the service that the road renders to the general traveling public. Dead end roads for example, may not necessarily receive the same level of maintenance service as connecting roads receive.

History Note: Authority G.S. 136-44.1; 136-44.3; 136-44.7;
 Eff. July 1, 1978;
 Amended Eff. December 29, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0105 PROPERTY OWNER PARTICIPATION PAVING

- (a) Subdivision-Residential Roads. Those roads which are eligible to be paved on a property owner participating basis will be administered according to the following procedure:
 - (1) The property owners or their representative may contact the division engineer or his representative to determine whether or not the road in question is eligible for paving on a participating basis. If all property

owners agree to pay four dollars (\$4.00) per linear foot to have the road paved they are determined eligible for paving on a participating basis.

- (2) If the division engineer or his representative determines that the road in question is eligible to be paved on a participating basis, he will so inform the property owners or their representative. He will then make a survey to determine the length of the road in question and will submit to the property owners or their representative a letter stating the cost, at a rate of four dollars (\$4.00) per linear foot, for each side of the road, to the property owners for the road to be paved and the approximate date when the work can be completed.
- (3) The property owners must then present to the division engineer or his representative a certified check made payable to the Department of Transportation, Division of Highways for the entire amount as stated in Subparagraph (a)(2) of this Rule. Once this has been accomplished, work will proceed as soon as DOT staff and supplemental funds are available.

(b) Rural Roads. The Board of Transportation shall allow the paving of a rural road on a property owners' participation basis identical in cost of four dollars (\$4.00) per foot along each side as required for unpaved subdivision/residential roads. Property owner participation paving is on a first-come, first-served basis. A section of rural unpaved road to be paved under this rule will be at least 0.30 of a mile in length provided the road is more than 0.30 of a mile in length. The section to be paved can be at the beginning, middle, or end of an unpaved road and need not connect to existing pavement.

History Note: Authority G.S. 136-44.1, 136-44.2; 136-44.7; 143B-350(f) and (g);
Eff. July 1, 1978;
Amended Eff. December 29, 1993; November 1, 1991; July 1, 1984; October 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0106 PRIORITY RATINGS FOR PAVING SECONDARY ROADS

(a) The paving of unpaved roads in any county is based upon the total needs which take into account land use and public service characteristics, traffic characteristics, and general route characteristics.

(b) A priority rating sheet is developed for each unpaved secondary road in the county as a guide line and the roads are then rated by priority, and as funds are available, the Board of Transportation attempts to meet the needs of the county.

History Note: Authority G.S. 136-44.1, 136-44.4; 136-44.7; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. December 29, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0107 ABANDONMENT OF SECONDARY ROADS

History Note: Authority G.S. 136-44.1, 136-55.1; 136-63; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Repealed Eff. December 29, 1993.

19A NCAC 02C .0108 ACQUISITION OF RIGHT OF WAY FOR SECONDARY ROADS

(a) For the improvement or paving of unpaved secondary roads, the property owners shall dedicate, at no cost to the Department of Transportation, adequate right of way for construction and maintenance. As an exception, the Department of Transportation may acquire by purchase, donation or condemnation, such right of way as may be determined necessary to make safety improvements to unpaved secondary roads, or to construct, improve, or replace structures thereon, to protect the safety of the traveling public. This Section shall not be construed to limit the authority of the Department of Transportation to exercise its power of eminent domain.

(b) With respect to paved roads on the state maintained secondary road system, the Department of Transportation may acquire by purchase, donation, or condemnation, such right of way as may be determined necessary to make improvements to protect the safety of the traveling public. The terms of Paragraphs (d) and (e) of this Rule shall not apply to this Paragraph.

(c) On existing secondary roads which are part of the state highway system and have been approved for paving or general improvement, the Department of Transportation may pay for the cost of moving any existing fences or buildings within the rights of way.

(d) If one or more property owners refuse to dedicate the necessary right of way in order to pave a secondary road, the Department of Transportation may allow the remaining property owners to post a bond to cover condemnation costs incurred

by the Department of Transportation. The Department of Transportation may then condemn the right of way necessary for paving the road.

(e) The amount of the bond to be posted by the property owners that are willing to give the right of way free of cost to the Department of Transportation may be determined in the following manner: The Department of Transportation may require up to two thousand five hundred dollars (\$2,500) for each parcel to be condemned based upon costs incurred for such condemnations during the previous one-year period in the county involved. If no condemnation precedents have occurred in the previous one-year period in that county, the department shall use the latest condemnation cost for the county involved. In addition, the Department of Transportation may require that the estimated amount of funds for appraised damages, if any, be posted along with the amount to cover court costs. For example, if in a previous one-year period, cost incurred in a particular county for condemning one parcel of property is two thousand one hundred dollars (\$2,100), the amount of two thousand one hundred dollars (\$2,100) may be required per parcel. If cost incurred is three thousand dollars (\$3,000) per parcel, two thousand five hundred dollars (\$2,500) may be required for each parcel to be condemned. If the damages for a parcel are one thousand dollars (\$1,000), a total of three thousand one hundred dollars (\$3,100) may be required for that one parcel. If there are two parcels, one having one thousand dollars (\$1,000) damages and the other having two hundred dollars (\$200.00) damages, three thousand one hundred dollars (\$3,100) may be required for one parcel and two thousand three hundred dollars (\$2,300) may be required for the other.

History Note: Authority G.S. 136-18(26); 136-44.1; 136-44.8; 136-44.16; 136-182;
Eff. July 1, 1978;
Amended Eff. January 1, 2004; December 1, 1994; December 29, 1993; October 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0109 RIVER ROAD OR MOUNTAIN DEVELOPMENTS

Many areas have developments that serve seasonal residences mainly even though there may be some year-round occupancy. These type roads are to be added to the state maintained system by the Board of Transportation only if the access road to the development and the roads within the development are paved to the minimum Board of Transportation's construction standards. This is in line with the paved subdivision street or road requirement.

History Note: Authority G.S. 136-44.1, 136-44.10; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0110 IMPROVEMENTS FOR INDUSTRIAL: MANUFACTURING PROJECTS

(a) The Board of Transportation may review requests for access road improvements to industrial or manufacturing projects as a part of the statewide effort to attract new industry to North Carolina. Projects eligible for assistance from the Department of Transportation may be the construction or expansion of any industrial or manufacturing factory, mill, assembly or fabricating, or industrial research development or laboratory facility, or industrial processing facility. The Board of Transportation may individually review the economic impact of the location of distribution facilities for distributing manufactured goods. The number of employees and the amount of truck traffic shall be primary justification for assistance with road improvements. Approval of such requests shall be based primarily upon the initial number of employees as compared to the road improvement cost. The initial investment in the project and the precedent of past approvals by the Board of Transportation for similar projects will be considered. The particular county involved shall be considered as to current economic development.

(b) In the case of Paragraph (a) of this Rule, the access road alignment shall be determined by the Department of Transportation, and the right-of-way shall be dedicated at no cost to the Department of Transportation. Such access road improvements shall terminate at the property line of the project. The road improvements involved must become a part of the state maintained system as required by G.S. 136-44.2.

(c) The Board of Transportation may consider the addition of an access road constructed by others to the state maintenance system. The construction standards for such a road shall be determined by the Division Engineer based upon the intended use of the roadway.

History Note: Authority G.S. 136-44.1; 136-44.2; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. December 29, 1993; November 1, 1991; July 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0111 COUNTY LANDFILL ROADS

(a) The Department of Transportation may assist the individual counties in the construction of roads to serve county supervised landfills by either participating with the financing, by doing the construction on a 100 percent reimbursable basis or by assuming the total construction cost after it has been determined to what degree that secondary road improvement funds allocated to that county may be available. The construction cost of the road to serve the landfill must be of a reasonable nature when compared to the total needs of the county as well as available funds. The road shall become a part of the state maintained system and a right of way width to be determined by the Department of Transportation must be dedicated to the Department of Transportation at no cost and the division of highways must be allowed to utilize the landfill for dumping purposes free of charge.

(b) The initiation of such a project shall be by a resolution from the board of county commissioners recommending the use of county allocated funds to partially or totally fund the road. The resolution must also state that the Division of Highways can utilize the landfill.

History Note: Authority G.S. 136-44.1; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. December 29, 1993; July 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0112 STATEMENT OF POLICY

History Note: Authority G.S. 136-44.1, 136-44.10; 136-102.6; 143B-350(f); 143B-350(g); 153A-205;
Eff. July 1, 1978;
Amended Eff. December 29, 1993; November 1, 1991; October 1, 1982;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02C .0113 DESIGN AND CONSTRUCTION CRITERIA - SUBDIVISION STREETS

History Note: Legislative Objection [(a)] Lodged Eff. August 19, 1980;
Legislative Objection [(a)] Removed Eff. April 23, 1981;
Authority G.S. 136-18(1); 136-44.1; 136-102.6; 143B-350(f); 150A-62; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02C .0114 SCHOOL BUS DRIVES AND SCHOOL BUS PARKING AREAS

The Board of Transportation shall pave a school bus drive and stabilize a school bus parking area at public schools.

History Note: Authority G.S. 136-18(17); 143B-350(f) and (g);
Eff. November 1, 1991;
Amended Eff. December 29, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0115 RURAL VOLUNTEER FIRE AND RESCUE SQUAD FACILITIES

The Board of Transportation may finance the construction of entrance driveways to the vehicle bays of rural volunteer firehouses approved by the North Carolina Fire Insurance Rating Bureau and the vehicle bays at rural rescue squad facilities approved by the North Carolina State Association of Rescue Squads, Inc. The Board of Transportation may provide maintenance improvements to those areas previously constructed by the Department of Transportation. The cost of the maintenance improvement shall be reasonable in nature and may be subject to availability of funds from the Secondary Road Fund allocation to the counties.

History Note: Authority G.S. 136-18(24); 143B-350(f) and (g);
Eff. November 1, 1991;
Amended Eff. December 29, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0116 REIMBURSEMENT OF SCHOOLS FOR TRANSPORTATION IMPROVEMENTS COMPLETED ON THE STATE HIGHWAY SYSTEM

(a) The school shall consult with the Department by contacting the Division of Highways, Division Office, District Engineer governing the specific area in which the school is located to initiate reimbursement for transportation improvements. Reimbursement of all costs associated with the Department's required transportation improvements shall be assessed for value consistent with Department transportation improvement projects of the same type and size. Contact information for each Division Office may be accessed at <https://www.ncdot.gov/doh/divisions/>. Criteria for reimbursement are as follows:

- (1) The school shall comply with all of the notification provisions to the Department set forth in G.S. 136-18(29a);
- (2) The school shall be open for the general instruction, specialized instruction, administration, or student services and support of children in any grade or combination of grades, from kindergarten through the 12th grade;
- (3) The school shall provide paid itemized invoices from the contractor of the work completed for which the school is requesting reimbursement;
- (4) The Department shall provide to the school the option of securing the written evaluation and written recommendations from the Department within 60 days. In fulfilling this option, the Department may engage a prequalified traffic engineer to provide the written evaluation. However nothing shall preclude the school from securing its own prequalified engineer. Regardless of the option chosen, the written evaluation and recommendations shall be prepared in compliance with G.S. 136-93.1A;
- (5) The school may request the Department to contract with and fund a specific independent traffic engineer chosen by the school, but any such engagement shall be considered for approval on an individual basis and according to the Department's prequalification process. If the requested engineer is not on the prequalified list, the Department may take the time to qualify that engineer and add him or her to the prequalified list prior to the commencing of work on the evaluation. The process to qualify an engineer in this manner will occur when requested in writing by the school, acknowledging that the evaluation period will not start until the requested engineer is qualified;
- (6) If the school hires a prequalified traffic engineer in lieu of an evaluation by the Department, the Department shall only reimburse the costs of a completed independent traffic study that quantifies the extent of a transportation problem or provides an analysis of a proposed transportation solution for the selected school site where the scope of the study is set by the Department prior to commencing work on the study;
- (7) Reimbursement requests that exceed 10 percent of the estimated costs of the improvements as determined by the Department based upon the scope of the requirements for the specific project shall require written justification from the school for the increased cost;
- (8) Reimbursement requests for costs associated with the engineering design and independent traffic engineering evaluation that exceed 15 percent of the construction costs reimbursement request shall require written justification from the school for the increased cost; and
- (9) The Department shall only provide reimbursement for those transportation improvements on a State maintained roadway that are required by the Department. The requirements may include those requested by any other reviewing authority so long as the improvements are confirmed as necessary requirements by the Department. Schools may install improvements that exceed those required by the Department. However, the school shall agree to pay for the costs of those additional improvements. Nothing herein requires the school to agree to make any improvements beyond those that are required by the Department.

(b) Any independent traffic engineer who is completing this work for the Department or for a school shall be prequalified by the Department in Work Codes 205 – School and Traffic Operations Studies and 252 – Traffic Impact Studies. Information on Department Work Codes and prequalification may be accessed at <https://connect.ncdot.gov/business/Prequal/PrequalApp/Work%20Code%20Descriptions.pdf> and <https://connect.ncdot.gov/business/Prequal/Pages/default.aspx>. The independent traffic engineer must follow all written guidelines and standards for school studies and traffic impact analysis, and any deviation from such standards shall be subject to the review and written approval of the Department's State Traffic Engineer or his or her designee prior to completion of the study. The traffic study shall assess on-campus loading and unloading of both carpoolers and school buses. The study shall have recommendations to manage the school's on-campus traffic queues at the entrance(s) to the school, and locations within the selected school site that impact the State highway system. The independent traffic engineer shall have the scope of the study approved by the Department's District Engineer prior to initiating the study. Pursuant to G.S. 160A-307.1, the independent traffic engineer shall study those improvements that are eligible for reimbursement by the Department or

municipalities. The independent traffic engineer shall prepare the study in compliance with the time periods set forth in G.S. 136-93.1A. Any traffic data collection activities will be conducted by a firm who is prequalified in Work Code 309 – Traffic Data Collection. This work may be subcontracted to a qualified firm if the independent traffic engineer is not prequalified in this area.

(c) Any new, relocated, or expanded schools that opened on or after August 1, 2017, and prior to the adoption of this temporary rule, shall contact their respective District Engineer's Office to facilitate the request for reimbursement for transportation improvements to the State highway system.

(d) A "temporary classroom facility" means any facility used for the general instruction, specialized instruction, administration, or student services and support of children in any grade or combination of grades from kindergarten through 12th grade on a temporary basis while awaiting completion of a school facilities project that will permanently house students. Any school that must open a temporary classroom facility shall consult with the District Engineer governing the specific area where the school is located. The District Engineer shall provide a written evaluation and recommendation on whether the selected school site access points to the State highway system are in compliance with G.S. 136-18(29a). Prior to selecting a temporary classroom facility, the school may request and the Department may review each of the prospective temporary classroom facility sites to determine the transportation impacts to off-campus activities. Any analysis performed of the proposed temporary classroom facility sites shall not include transportation impacts associated with on-campus activities.

(e) The Department shall consider the following non-reimbursable improvement expenses pursuant to G.S. 136-18(29a):

- (1) Improvements that exceed the Department's requirements.
- (2) Any connection not on the State's right-of-way but instead on the school's property.
- (3) Any improvements that the Department would not require as part of G.S. 136-18(29) or G.S. 136-18(29a), such as sidewalks that do not connect to other networks or curb and gutter where the Department has curb and gutter, unless required by the Department on the driveway permit.
- (4) Any on-campus transportation improvements required to manage traffic flow, parking, and routing within the property limits of the school drop-off and pick-up queuing, student and teacher parking, and loading dock expansions or relocations.
- (5) New utilities required for the selected school site that are not directly associated with and impacting its access points to the State highway system. The school shall coordinate with the Department prior to the placement of any utilities in the State right-of-way. If the school chooses to place a new utility at the school site that must be moved for transportation improvements, the Department shall not reimburse for the movement of those utilities. The Department shall only provide reimbursements for existing utilities that require relocation for transportation improvements.
- (6) Any improvements to the State highway system that are part of a mixed-use development site that also include a school where such improvements would be required if a school were not part of the development. The Department shall first analyze the site without considering the school facilities and then analyze the site with the school facilities included. Any improvements that are not necessitated by traffic from the school facilities shall not be reimbursable.
- (7) Improvements made to the State highway system for developments planned for purposes other than a school. Any additional improvement to the State highway system required by the conversion of property to a school shall be eligible; however, an additional school study may be required if the Department has previously been approached and analyzed the site according to a non-school or non-educational land use.

(f) Where a new, relocated, or expanded school is located on a property that is only served by a municipal street that is not State-maintained, the school may request a review and final determination by the Department pursuant to G.S. 160A-307.1 to assess whether the improvements required by the municipality exceed those required by G.S. 136-18(29).

History Note: Authority G.S. 136-18(1); 136-18(29); 136-18(29a); 136-28.1, 136-93.1A; 160A-307.1; Temporary Adoption Eff. February 23, 2018.

SECTION .0200 - MINIMUM DESIGN AND CONSTRUCTION CRITERIA FOR SUBDIVISION STREETS

Note: The Department of Transportation publishes a volume entitled "Subdivision Roads." This volume contains illustrations of typical subdivision cross sections, street connections, intersections, driveway turnout grades and cul-de-sacs. The volume also contains names and addresses of division and district engineers. In general "Subdivision Roads" is a restatement of the information included in this Section. A copy of "Subdivision Roads" may be obtained from the Secondary Roads Department, Division of Highways in Raleigh, or from division and district highway offices across the state without charge.

19A NCAC 02C .0201 DEFINITIONS

The following definitions shall apply in this Section:

- (1) Local residential subdivision road. Either cul-de-sacs, loop roads, or roads that do not connect thoroughfares or serve major traffic generators such as schools or industrial sites.
 - (a) Subdivision dead end roads. These are roads less than 2,500 feet in length, open at one end only without special provision for turning around and have no collector characteristics.
 - (b) Subdivision connecting roads. These roads are one block long or extend on a block-by-block basis and have no collector characteristics.
 - (c) Subdivision loop roads. A road that has its beginning and ending points on the same route. It is less than one mile in length and has no collector characteristics.
 - (d) Other subdivision roads. These roads do not connect thoroughfares or serve major traffic generators and do not have "collector" characteristics.
- (2) Residential collector roads. A road which serves as the connecting road between local residential roads and the thoroughfare system.
 - (a) Collector dead end roads. These roads are more than 2,500 feet in length, open at one end only without special provisions for turning around, and have collector characteristics.
 - (b) Collector connecting roads. The roads which serve as the connecting road system between other roads within the subdivision and the thoroughfare system.
 - (c) Collector loop roads. A road that has its beginning and ending points on the same route. It is more than one mile in length and has collector characteristics.
 - (d) Other collector roads. These are other roads having a "collector" type function in the thoroughfare system.
- (3) A Subdivision road is one that serves a parcel or tract of land that is subdivided into two or more lots, building sites or other divisions for sale or building development for residential purposes where such subdivisions include a new road or change in an existing road. Subdivision roads may be designated public or private. Public designations will be built to minimum construction standards of the North Carolina Department of Transportation as required under G.S. 136-102.6. Private roads need not meet minimum construction requirements, but must meet minimum construction requirements before ever becoming a part of the State-maintained system.

*History Note: Authority G.S. 136-18(1); 136-44.1; 136-102.6;
Eff. April 3, 1981;*

Amended Eff. December 29, 1993; July 1, 1984; October 1, 1982.

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0202 APPLICATION REQUIREMENTS

Any person or corporation desiring to construct a new subdivision road which is to be dedicated as public, must submit the following information to the District Engineer for proper evaluation in order to obtain a certificate of approval as required by G.S. 136-102.6. If the new subdivision road (to be dedicated as public or private) will connect to a State System road, a permit authorizing construction on State right of way must be obtained from the Division of Highways before beginning any construction. Applications shall be made to the District Engineer having jurisdiction in the area. Applications for new subdivision roads shall include the following information:

- (1) two complete site layouts, including any future expansion anticipated;
- (2) horizontal alignment indicating general curve data on site layout plan;
- (3) vertical alignment indicated by percent grade, P. I. station which is the point of intersecting grades, and vertical curve length on site layout plan. The plotting of the ground profile for roads where special conditions or problems exist may be required;
- (4) typical section indicating the pavement design and width, and the slopes, widths and details for either the curb and gutter or the shoulder and ditch proposed;
- (5) routine drainage facilities and drainage areas;
- (6) vicinity map;
- (7) the number of platted lots on each road shall be reviewed to insure that the minimum housing requirements are served; and
- (8) four copies of the recorded plat after certification or upon application for State Maintenance.

*History Note: Authority G.S. 136-18(1); 136-44.1;
Eff. April 3, 1981;
Amended Eff. December 29, 1993; July 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02C .0203 REQUIREMENTS/ADDITION OF SUBDIVISION ROADS TO THE SYSTEM

The following conditions must be met before the Division of Highways may consider the addition of a subdivision street to the state highway system:

- (1) The minimum construction standards and other requirements in this Section must be a part of the proposal to be reviewed for approval before the subdivision map is recorded in the county Register of Deeds Office.
- (2) The developer or property owners shall submit a petition for addition (DOT Form SR1) to the Department of Transportation.
- (3) Developers or property owners must dedicate right-of-way free of charge and clear of all encumbrances.
- (4) Utilities requiring adjustment or relocation to conform to Division of Highways requirements (See Rule .0204 of this Section) shall be made at no expense to the Division of Highways. Existing or relocated utilities may remain within the right-of-way of any subdivision street added to the secondary road system provided the location of same meets Division of Highways' approval and further provided the utility owner executes an encroachment agreement on forms furnished by the Division of highways.
- (5) At least 20 percent of the lots bordering the street must be individually owned.
- (6) Subdivision access roads must provide ingress and egress for at least five occupied residences for roads less than one mile in length and an average of five occupied residences per mile for roads over one mile in length. A subdivision access road is a road built through vacant property to provide access to the property being developed. This road would not have lots platted along it.
- (7) A minimum of four occupied homes is required for the addition of roads less than two-tenths of a mile in length. Cul-de-sacs less than two-tenths mile in length must serve at least four occupied homes. If four occupied homes are not served, it shall be treated as a private drive.
- (8) Connecting streets with less than the required occupied homes for the length involved may be reviewed as to traffic usage for addition purposes. Traffic usage equivalent to the traffic that would be generated by the correct number of occupied homes may be acceptable.
- (9) Any subdivision street with a right-of-way dedicated, recorded or that has preliminary approval from a county planning board dated after September 30, 1975 shall not be added to the state maintained system unless the street is paved to the minimum construction standards of the Division of Highways for subdivision streets.
- (10) The Division of Highways may consider the addition of streets that serve developments with large lots or parcels that are of the size that the occupied housing requirement of two homes per tenth of a mile cannot be met. The number of occupied homes needed may be a judgment factor based upon the length and the number of lots or parcels involved. The minimum requirement shall be four occupied homes.
- (11) Erosion and sedimentation. All subdivision roads shall have a permanent vegetative cover established and other permanent erosion control measures installed in accordance with Division of Highways' specifications.
- (12) Prior to addition to the state system, subdivision roads shall be in an acceptable state of maintenance when petitioned for state maintenance.
- (13) All pipe culverts, storm sewers and appurtenances shall be free of all debris and silt build-up and shall be structurally and hydraulically sound, and functioning in a normal manner. All drainage ditches shall be of such a width and depth and with such a slope as to carry the anticipated discharges. Paved ditches or rip rap shall be required where necessary.

*History Note: Authority G.S. 136-18(1); 136-44.1; 136-102.6;
Eff. April 3, 1981;
Amended Eff. December 29, 1993; July 1, 1984; October 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02C .0204 UTILITY REQUIREMENTS FOR SUBDIVISION ROADS

The following conditions must be met for utilities to be added to subdivision roads.

- (1) Location.

- (a) Poles and other above-ground utilities which are to remain inside the right-of-way under an encroachment agreement shall be located at or as near as practical to the right-of-way line.
- (b) Where there are curbed sections, above-ground utilities may be located as far as practical behind sidewalks. There is no single minimum dimension for setback of poles, fire hydrants, etc., behind curbs; however, where there are curbed sections and no sidewalks, six feet shall be used as design safety concept guide.
- (2) Depth of cover for pipe lines and other utilities:
 - (a) longitudinal pipe lines and electric power primary 3'
 - (b) longitudinal electric power secondary, and trenched communication lines 2'
 - (c) crossings under roadways 3'
 - (d) crossings under ditches 2'
 - (e) plowed-in communication lines 18"
- (3) Underground Utilities. For residential subdivision roads and residential collector roads, underground utilities may cross under or run longitudinally under the pavement. For all other roads and highways, underground utilities may cross under but NOT run longitudinally under the pavement except in unusual situations approved by the Division Engineer.
- (4) Acceptable materials for utilities outside pavement shall be the same as covered in (d) of this Rule.
- (5) Any utility to be installed within the right-of-way of a state maintained road will require an encroachment agreement with the North Carolina Department of Transportation in accordance with 19A NCAC 2B .0500.

History Note: Authority G.S. 136-18(1); 136-44.1; 136-102.6;
 Eff. April 3, 1981;
 Amended Eff. December 29, 1993; July 1, 1984;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0205 DRAINAGE REQUIREMENTS FOR SUBDIVISION ROADS

- (a) The Division of Highways shall review all drainage prior to acceptance of any facility to the state system.
- (b) All storm drainage shall be adequate so that the road may be maintained without excessive cost, and not cause flooding on private property from runoff of an appropriate storm frequency. Permanent drainage easements may be required. The minimum design frequency shall be as follows:
 - (1) storm sewer collector -- 10 year frequency;
 - (2) cross drainage -- 25 year frequency.
- (c) In areas where ditch grades or quantities of flow deem it impracticable to establish and maintain vegetation, an erosive resistant lining such as paving or rock rip rap may be required.
- (d) Subsurface drainage shall be adequate to maintain a stable subgrade.
- (e) When road crossings are within areas designated as flood hazard areas under the Federal Flood Insurance Program, the design must be approved by the responsible local governing agency for its consistency with local flood zoning ordinances.

History Note: Authority G.S. 136-18(1); 136-44.1; 136-102.6;
 Eff. April 3, 1981;
 Amended Eff. December 29, 1993; July 1, 1984;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02C .0206 BRIDGE AND DAM REQUIREMENTS FOR SUBDIVISION ROADS

19A NCAC 02C .0207 CURB AND GUTTER REQUIREMENTS FOR SUBDIVISION STREETS

History Note: Authority G.S. 136-18(1); 136-44.1;
 Eff. April 3, 1981;
 Amended Eff. July 1, 1984;
 Repealed Eff. December 29, 1993.

19A NCAC 02C .0208 WHEEL CHAIR RAMPS

History Note: Authority G.S. 136-18(1); 136-44.1;
 Eff. April 3, 1981;

*Amended Eff. December 29, 1993;
Repealed Eff. December 1, 2013.*

19A NCAC 02C .0209 PAVEMENT DESIGNS FOR SUBDIVISION ROADS
19A NCAC 02C .0210 MINIMUM DESIGN CRITERIA FOR SUBDIVISION ROADS
19A NCAC 02C .0211 STREET INTERSECTIONS FOR SUBDIVISION STREETS

*History Note: Authority G.S. 136-18(1); 136-44.1; 136-102.6;
Eff. April 3, 1981;
Amended Eff. July 1, 1984; October 1, 1982;
Repealed Eff. December 29, 1993.*

19A NCAC 02C .0212 ISLANDS OR SHORT MEDIANS AT SUBDIVISION ENTRANCES

The Department of Transportation may review requests for the allowance of islands or short medians in the right of way desired for aesthetics on State Highway System Secondary Roads at the entrance to a subdivision. The division engineer may allow the island or median sections after review on an individual basis. Approval may be subject to the following conditions:

- (1) The Department of Transportation will not maintain the island or the median section.
- (2) The island or the median section will be removed if not properly maintained by someone involved with the subdivision, i.e. developer, homeowners, etc.

*History Note: Authority G.S. 136-18(1); 136-44.1; 136-102.6;
Eff. October 1, 1982;
Amended Eff. December 29, 1993; July 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02C .0213 SUBDIVISION NAME MARKERS

The Department of Transportation may review requests to erect subdivision name markers on an individual basis. The name markers may be allowed to be located within the State Highway System Secondary Road rights of way at the beginning of a subdivision road provided the location of such is outside the line of sight and the normal maintenance limits. The name markers may be approved only at locations which will not sacrifice safety to the general traveling public. Approval to erect subdivision name markers shall be subject to the following conditions:

- (1) All costs shall be the responsibility of the requestor.
- (2) The Department of Transportation will not maintain the marker or the area around the marker.
- (3) The markers may be removed if not properly maintained.

*History Note: Authority G.S. 136-18(1); 136-44.1; 136-102.6;
Eff. October 1, 1982;
Amended Eff. December 29, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0100 - STANDARDS FOR DESIGN AND CONSTRUCTION

19A NCAC 02D .0101 STANDARD SPECIFICATIONS FOR ROADS AND STRUCTURES

*History Note: Legislative Objection [(a)] Lodged Eff. August 19, 1980;
Legislative Objection [(a)] Removed Eff. April 23, 1981;
Authority G.S. 136-18(1); 143B-348; 150A-62; 150A-63(c);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. April 3, 1981.*

19A NCAC 02D .0102 MINIMUM SIZE OF SURFACE DRAINAGE PIPELINE

All installation of pipe for surface drainage purposes on the State Highway System right of way shall be a minimum diameter of 12".

History Note: Authority G.S. 136-18(1); 136-92; 136-93; 156-88;
Eff. July 1, 1978;
Amended Eff. January 1, 1984; April 3, 1981;
Readopted Eff. February 1, 2019.

19A NCAC 02D .0103 ROADWAY STANDARDS

History Note: Authority G.S. 136-18(1); 136-45; 136-44.1; 143B-350(f); 143B-350(g); 150A-62; 150A-63(c);
Eff. July 1, 1978;
Repealed Eff. April 3, 1981.

19A NCAC 02D .0104 GUIDELINES - CURB RAMPS

(a) Guidelines for the design and construction of curb ramps are available from the Division of Highways, 1 S. Wilmington Street, Raleigh, North Carolina 27601, (919) 707-2500.

(b) The party or parties cutting an existing curb or constructing a new curb shall ensure that all work is in compliance with all applicable laws.

History Note: Authority G.S. 136-44.14(c);
Legislative Objection (a) Lodged Eff. August 19, 1980;
Legislative Objection (a) Removed Eff. April 23, 1981;
Eff. July 1, 1978;
Amended Eff. December 1, 1993; April 3, 1981; April 11, 1980;
Readopted Eff. February 1, 2019.

SECTION .0200 - LANDSCAPE

19A NCAC 02D .0201 COOPERATION WITH PROPERTY OWNERS

The Department of Transportation will cooperate with owners of property abutting highway rights of way in eradicating or satisfactorily controlling the growth of kudzu, bermuda grass, johnson grass, or nutgrass, within limitations of available funds and personnel.

History Note: Authority G.S. 136-18(9); 136-93; 143B-350(f),(g);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0202 CONDITIONAL COOPERATION

(a) The extent of participation of the Department in eradication or control work shall be determined by the severity of damage to abutting property, the possibility of roadside erosion and drainage problems resulting from eradication, and the degree of responsibility for the plant infestation that is traceable to the department.

(b) The property owner, or owners, and the department shall agree in writing to the degree of eradication or control of such undesirable vegetation. The Department shall perform only the work on highway right of way and the property owner shall perform the work on his property, according to the methods and additional conditions outlined in the written agreement.

(c) There shall be a stipulation in the written agreement indemnifying the department from damage on private property to crops, grasses, trees, shrubs, etc. resulting from any herbicides which are applied on highway right of way, with all reasonable and customary precautions for the eradication or control of the undesirable vegetation.

(d) All reasonable precautions shall be taken to prevent damage to desirable vegetation on highway right of way during eradication or control operations on private property.

History Note: Authority G.S. 136-18(9); 136-93; 143B-350(f),(g);
Eff. July 1, 1978;

Amended Eff. December 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0203 PLANTING PLANS

Planting proposals of the type in Rule .0423 of this Subchapter shall be accompanied by a plan and a typical cross-section. They shall be to scale; or approximately to scale with dimensions shown so as to be adaptable to office review. Sizes preferred are a letter-size sheet, a legal-size sheet, or double the sizes of these sheets, thus permitting simple xerox reproduction.

*History Note: Authority G.S. 136-18(9); 136-89.50; 136-93; 143B-350(f),(g);
Eff. July 1, 1978;*

Amended Eff. December 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0300 - PREQUALIFICATION: ADVERTISING AND BIDDING REGULATIONS

Note: The basic rules from this section have been adopted with significant additions as Section .0800 of this Subchapter.

19A NCAC 02D .0301 PREQUALIFYING TO BID

19A NCAC 02D .0302 APPROVAL OR REJECTION

19A NCAC 02D .0303 ANNUAL REQUALIFICATION FOR BIDDING

19A NCAC 02D .0304 EXPERIENCE QUESTIONNAIRE

*History Note: Authority G.S. 136-18(1); 136-28.1; 136-44.1; 136-45; 143B-350(g);
Eff. July 1, 1978;*

Repealed Eff. April 3, 1981.

19A NCAC 02D .0305 ATTORNEY GENERAL PARTICIPATION

19A NCAC 02D .0306 WITHDRAWAL OF ERRONEOUS BIDS

*History Note: Authority G.S. 143-49(3); 143-129; 143-129.1; SL ch. 617, s. 1(1977);
Eff. July 1, 1978;*

Repealed Eff. September 1, 1978.

19A NCAC 02D .0307 ADVERTISEMENT AND INVITATIONS FOR BIDS

19A NCAC 02D .0308 BIDDING RULES AND REGULATIONS

History Note: Authority G.S. 136-28.1;

Eff. September 1, 1978;

Repealed Eff. April 3, 1981.

SECTION .0400 - FIELD OPERATIONS - MAINTENANCE AND EQUIPMENT

19A NCAC 02D .0401 HIGHWAY MAINTENANCE CONTRACT RETREATMENT PROGRAM

*History Note: Authority G.S. 136-44.3; 136-44.1; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;*

Repealed Eff. November 1, 1991.

19A NCAC 02D .0402 CURB AND GUTTER AND UNDERGROUND DRAINAGE ON HIGHWAYS

(a) The following Subparagraphs are applicable to Projects included in the State Transportation Improvement Program.

- (1) If curb and gutter or underground storm drainage facilities are not included in a State highway improvement project, such facilities may be added as part of the programmed project if the additional cost of these facilities are paid by the adjacent property owner(s) or the municipality.

- (2) The Department shall approve participation by the property owner(s) or the municipality in cases where the property owner(s) or the municipality agree to have curb and gutter and underground storm drainage, if required, on both sides of the project for a minimum distance of one block or, if no intersections are present, for a minimum distance of 1000 feet. The State shall pay the cost of widening the present or proposed pavement out to the curb and gutter so provided.
 - (3) The property owner(s) or the municipality shall submit in advance of the project construction a certified check for the additional cost of the approved curb and gutter and storm drainage facilities.
- (b) Other Existing Paved Roads. Along existing paved State highway system routes where no construction project is proposed and the adjacent property owner(s) or the municipality construct curb and gutter and underground drainage facilities as approved by the Board of Transportation, the Department of Transportation shall bear the cost of widening the existing pavement as required for the proper location and installation of such facilities. Approval of curb and gutter or underground storm drainage facilities that are located along the State highway system, where no construction projects are proposed, shall be determined according to the engineering standards of the Department, and based on:
- (1) adequacy of the facilities to handle drainage requirements;
 - (2) adequacy of the resulting roadway cross section to handle existing and anticipated traffic demands;
 - (3) conformance of the proposed street cross section with engineering standards as established by the Board of Transportation;
 - (4) a minimum distance of one block length or, if no intersections are present, for a minimum distance of 1000 feet provided this requirement is not in conflict with local municipal ordinances. In cases of conflict, the local ordinance shall prevail; and
 - (5) availability of State funds to widen the existing pavement, when applicable.
- (c) Unpaved Roads. Construction of curb and gutter along unpaved State highway system routes shall not be permitted.

History Note: Authority G.S. 136-44.1; 136-66.1; 143B-350(f); 143B-350(g);
 Eff. July 1, 1978;
 Amended Eff. November 1, 1993;
 Readopted Eff. June 1, 2019.

19A NCAC 02D .0403 USE OF DUST ALLAYING MATERIALS

- (a) Requests for calcium chloride dust treatments shall be addressed to the County Maintenance Yard having jurisdiction in the county where the work is proposed.
- (b) Calcium chloride dust treatments shall only be placed on State highway system roads and streets provided:
 - (1) prior approval is obtained from the Division Engineer or the Division Engineer's authorized designee having jurisdiction in the county where the dust treatment is proposed; and
 - (2) calcium chloride is furnished by the person requesting the dust treatment and placed by the Department or its agents.
- (c) The Division Engineer or the Division Engineer's authorized designee shall approve requests for calcium chloride dust treatments unless conditions are wet, rendering the dust treatment ineffective, and if the dust treatment would worsen road surface conditions.
- (d) The person requesting the dust treatment shall purchase and deliver the calcium chloride as directed by the Division Engineer or his or her designee.

History Note: Authority G.S. 136-18(1); 136-18(27); 143B-346;
 Eff. July 1, 1978;
 Amended Eff. November 1, 1993;
 Readopted Eff. June 1, 2019.

19A NCAC 02D .0404 MAINTENANCE WITHIN MUNICIPALITIES

- (a) The definitions set forth in this Paragraph shall apply to this Rule.
 - (1) "Board" means the Board of Transportation.
 - (2) "Cross pipe lines" means pipe lines under the roadway surface, designed to convey water from one side of a street or highway to the other.
 - (3) "Maintenance" means routine care or upkeep to keep roads, streets, or highways in the existing condition and with the existing traffic carrying capacity.
 - (4) "Municipality" means an incorporated city or town within the State of North Carolina.

- (5) "Non-State municipal street" or "Non-State system municipal highway" (municipal system) mean any street or highway accepted by the municipality that is not a part of the State highway system.
- (6) "Open drainage" means drainage systems utilizing open side ditches, tail, lateral and outfall ditches to convey surface water to outfall streams.
- (7) "Pavement" means the paved portion of streets, including paved shoulders and on-street parking areas, but not including sidewalks and driveways.
- (8) "Rural highway" or "Rural street" means a highway or street on the State highway system outside the limits of a municipality.
- (9) "Shoulder" means earthen, soil, clay, gravel or turf section of pavement support extending from outer pavement edge to the bottom of side ditch, including shoulder sections which are paved.
- (10) "Sidewalk" means paved walkway, parallel to streets or highways.
- (11) The State highway system includes those streets and highways as described in G.S. 136-45.
- (12) "State municipal system street" or "State municipal street highway" mean any street or highway on the State highway system within a municipality.
- (13) "Storm drainage" or "Storm sewers" mean a system of underground pipes, culverts, conduits, or tunnels, including drop inlets and catch basins, designed to convey water from surface areas to eventual disposal into outfall streams.

(b) Responsibilities.

- (1) The Department shall patch and resurface pavement.
- (2) The municipality shall repair pavement cuts made for utility repair or other purposes under the control of the municipality. The Division of Highways District Engineer, or the District Engineer's designated representative shall be notified in writing 48 hours in advance of any pavement cut and approval must be obtained prior to making the cut. Pavement cuts due to emergencies may proceed as necessary with the Division of Highways District Engineer, or the District Engineer's designated representative being notified as soon as possible after the emergency is discovered and the pavement cut is made or anticipated.
- (3) If the maintenance of any State highway system street is performed by the municipality, then it shall be the responsibility of the municipality, subject to the approval and direction of the Department, to install and maintain signs, barricades, and other safety devices of like nature, and to furnish flagmen when necessary; all shall be performed in accordance with G.S. 136-130.
- (4) An encroachment agreement is required for the initial installation of any utility on the State highway system right-of-way by the municipality as well as by utility companies and individuals.
- (5) Drainage.
 - (A) The maintenance of roadway ditches including median drainage, where applicable, and cross drainage pipes, outfalls, and structures shall be the responsibility of Department within the highway right-of-way or within a drainage easement area.
 - (B) The maintenance of storm drainage and storm sewer systems draining State highway system streets within the highway right-of-way or within a drainage easement area shall be the responsibility of the Department. Where systems draining State highway system streets are enlarged and expanded to accommodate drainage from municipal streets, the initial cost and the maintenance cost shall be borne jointly by agreement.
 - (C) Attachments to drainage structures shall require the written approval of the Department prior to any utility or other attachment being made to any bridge or structure on the State highway system. Approval shall be required before turning any utility under or through a bridge or drainage structure on the State highway system. Approval is obtained through an encroachment agreement and dependent upon the complexity of the attachment.
- (6) The maintenance of sidewalks is a municipal responsibility.
- (7) Roadside Maintenance.
 - (A) All planting, plant maintenance, mowing, erosion control, and litter pickup on freeways, interstate, and other controlled access highways shall be the responsibility of the Department, except as otherwise provided by this Rule.
 - (B) Non-controlled Access Surface Streets
 - (i) Erosion control, machine mowing, litter pickup, and the maintenance of trees over the entire width of right-of-way without sidewalk or pedestrian space, paved or unpaved, shall be the responsibility of the Department. Maintenance of shrubs or other planting over the entire width of right-of-way without sidewalk or pedestrian space, paved or

- unpaved, shall be the responsibility of the Department subject to the provision providing for specific planting projects as outlined in Part (7)(C) of this Paragraph.
- (ii) The Department shall be responsible for the maintenance of the area outside of the curbs or within and beyond the sidewalk or pedestrian space, paved or unpaved. These areas are used almost exclusively for pedestrians, and the maintenance of such areas shall be the responsibility of the municipality.
 - (C) Should the municipality desire more extensive planting than is provided by the Department, a plan for such proposed planting shall be submitted to the Department and considered a construction or improvement item. An individual permit and agreement on Department and municipal responsibilities for planting and plant maintenance shall be required in each instance, covering not only financial responsibility but also the furnishing of personnel, equipment and materials for performing plant maintenance and associated hand mowing operations.
 - (D) Civic organizations desiring to provide more extensive planting of trees and shrubs in the municipality on Department right-of-way than is provided by the Department shall handle negotiations through the municipality as outlined in Part (7)(C) of this Paragraph.
- (8) Snow and Ice Control.
 - (A) The responsibility for clearing State highway system streets shall be the responsibility of the Department; however, municipalities may, with the concurrence of the Division Engineer, execute an agreement with the Department providing for reimbursement by the Department to the municipality for the assumption of this responsibility.
 - (B) The removal of snow from sidewalk areas shall not be the responsibility of the Department.
 - (9) The Department shall maintain, repair, and replace guard rail on the State highway system streets and highways.
 - (10) Street Lighting.
 - (A) The Department shall maintain street lighting on freeways, interstate systems, and other controlled access highways if determined to be for public safety.
 - (B) The maintenance and the electric current for lighting systems on streets or highways other than as referred to in Part (10)(A) of this Paragraph shall be the responsibility of the municipality, unless otherwise provided for by specific agreement.
 - (C) The installation of street lighting systems by the municipality on State highway system streets within the right-of-way may be allowed by the Department by encroachment agreement only.
 - (11) The Department and the municipality shall ensure that traffic lanes are kept open. In the event that any traffic lanes are blocked for any reason, the Department and the municipality shall ensure that the blockage is signed or flagged.

History Note: Authority G.S. 136-66.1; 136-93; 143B-346;
 Eff. July 1, 1978;
 Amended Eff. November 1, 1993;
 Readopted Eff. July 1, 2019.

19A NCAC 02D .0405 EXAMPLES OF CONSTRUCTION AND MAINTENANCE ACTIVITIES

History Note: Authority G.S. 136-66.1; 143B-346; 143B-350(f); 143B-350(g); 150B-21.3A;
 Eff. July 1, 1978;
 Amended Eff. November 1, 1993;
 Repealed Eff. June 1, 2019.

19A NCAC 02D .0406 CONSTRUCTION AND MAINTENANCE OF SIDEWALKS

- (a) The Department shall replace any sidewalk torn up as a result of a highway construction project having to do with the widening of an existing street.
- (b) The Department shall evaluate the need for proposed sidewalks in the planning stage of a project. The Department shall assess information provided by the local government, Transportation Advisory Committee, and Departmental engineering studies.

(c) The execution of a pedestrian facilities maintenance agreement specifying responsibility for long term maintenance shall be required prior to construction for a proposed sidewalk.

History Note: Authority G.S. 136-66.1; 143B-346; 23 U.S.C. 133; 23 U.S.C. 217;
Eff. July 1, 1978;
Amended Eff. May 1, 1999; December 29, 1993;
Readopted Eff. July 1, 2019.

19A NCAC 02D .0407 HIGHWAY AND STREET PLANTING IN MUNICIPALITIES

History Note: Authority G.S. 136-66.1; 143B-346; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Repealed Eff. November 1, 1991.

19A NCAC 02D .0408 TEMPORARY BRIDGE WEIGHT LIMITS AND CLOSINGS

After an inspection of any bridge on the State Highway System, any Department of Transportation bridge safety inspector, or any bridge maintenance supervisory personnel, may temporarily lower the authorized weight limits on a bridge, or close the bridge as the circumstances may warrant, if, in his or her judgment, the bridge is not capable of carrying the authorized weight. Such limitation or bridge closing shall remain in effect, not to exceed 60 days, until an analysis of the bridge is made and action taken based upon the bridge analysis.

History Note: Authority G.S. 136-72; 143B-350;
Eff. July 1, 1978;
Readopted Eff. March 1, 2019.

19A NCAC 02D .0409 TEMPORARY ROAD RESTRICTIONS

History Note: Authority G.S. 20-121;
Eff. July 1, 1978;
Repealed Eff. January 1, 1994 pursuant to 1991 S.L., c. 477, s. 3.

19A NCAC 02D .0410 RENTAL OF SUPPLEMENTAL EQUIPMENT

The Department of Transportation, in accordance with its needs and the availability of state-owned equipment, may supplement its own equipment requirements by the rental of privately-owned equipment. Operators may also be furnished with equipment.

History Note: Authority G.S. 143B-346; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1993; November 1, 1991;
Readopted Eff. June 1, 2019.

19A NCAC 02D .0411 LIMITATIONS ON USAGE

History Note: Authority G.S. 143B-346; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Repealed Eff. January 1, 1994 pursuant to 1991 S.L., c. 477, s. 3.

19A NCAC 02D .0412 REST AREAS AND WELCOME CENTERS - AUTHORITY

History Note: Authority G.S. 136-89.59;
Eff. July 1, 1978.
Repealed Eff. August 1, 1986.

19A NCAC 02D .0413 APPROVAL FOR USE - REST AREAS, WELCOME CENTERS

History Note: Authority G.S. 136-89.59;
Eff. July 1, 1978.
Repealed Eff. August 1, 1986.

19A NCAC 02D .0414 LOCATION OF GARBAGE COLLECTION CONTAINERS

- (a) An encroachment agreement between the Department and non-Departmental parties shall be required for a garbage collection container site on any State highway rights-of-way.
- (b) No garbage collection container shall be located within 500 feet of an occupied dwelling unless the applicant obtains written permission from the owner of the dwelling.
- (c) Information on initiating the encroachment agreement process for the placement of garbage collection containers on any State highway rights-of-way may be obtained from the State Utilities Manager.
- (d) Guidelines for container sites are as follows:
 - (1) the county or municipality negotiating and executing the encroachment agreement shall be responsible for any work to be performed in preparation of the site, and any work performed by the Department, on the site, shall be on a reimbursable basis; and
 - (2) container sites adjacent to unpaved roads shall be prepared with materials similar to those existing on the traveled portion of the roadway.
- (e) If container sites are located adjacent to the roadway, sight distances shall be provided for any vehicle to safely enter the road from the container site.
- (f) Container sites shall be permitted adjacent to roadways only if lateral clearances can be provided from the edge of pavement to the container.
- (g) The county or municipality that holds an executed agreement for the placement of garbage collection containers, as set forth in this Rule, shall maintain a collection schedule in order to prevent container spillage or overflow, and shall keep the site free from all garbage and trash, other than that which is within the garbage collection containers. Garbage and trash collection located within the garbage collection containers shall be authorized by the encroachment agreement. The encroachment agreement shall provide that the District Engineers shall give written notice to the county or municipality of any failure to comply with this requirement. The encroachment agreement shall also provide that, if a county or municipality that is so notified and does not bring the site within compliance of the requirement within 30 days of receipt of the written notice, the encroachment agreement shall automatically terminate, and the District Engineer shall arrange for the disposal of the garbage collection containers.

History Note: Authority G.S. 136-18.3; 136-18(10);
Legislative Objection [(a)] Lodged Eff. August 19, 1980;
Legislative Objection [(a)] Removed Eff. April 23, 1981;
Eff. July 1, 1978;
Amended Eff. March 1, 2013; November 1, 1993; October 1, 1991; April 3, 1981; April 11, 1980;
Readopted Eff. June 1, 2019.

19A NCAC 02D .0415 GENERAL REGULATIONS FOR DRAWBRIDGES

History Note: Authority G.S. 136-18(5); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1996; November 1, 1993;
Repealed Eff. February 1, 2019.

19A NCAC 02D .0416 BRIDGE BETWEEN MOREHEAD CITY AND ATLANTIC BEACH

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Amended Eff. August 10, 1981;
Repealed Eff. November 1, 1991.

19A NCAC 02D .0417 BRIDGE ON US 17 OVER NEUSE RIVER AT NEW BERN

19A NCAC 02D .0418 BRIDGE ON US 70 OVER TRENT RIVER AT NEW BERN

19A NCAC 02D .0419 BRIDGE ON US 17B OVER PERQUIMANS RIVER AT HERTFORD

19A NCAC 02D .0420 DRAWBRIDGES OPEN ONLY UPON ADVANCE NOTICE

*History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Amended Eff. November 1, 1991; August 10, 1981;
Repealed Eff. November 1, 1993.*

19A NCAC 02D .0421 INSTALLATION OF DRIVEWAY PIPE

(a) The Department of Transportation shall be responsible for the installation and costs of pipe lines in the drainage ditch along State-maintained roads and within State-maintained right-of-way or easement at entrances to private residential property where the pipe is furnished and delivered to the installation site by the property owner at the property owner's expense if the following requirements are met:

- (1) the opening of the side ditch is needed to provide drainage;
- (2) the pipe to be installed shall be restricted to a minimum inside diameter of 15 inches long and maximum inside diameter of 48 inches unless otherwise directed by the Department;
- (3) the minimum length of pipe to be installed shall be 20 feet with additional length as may be necessary to accommodate earth side slopes. The pipe shall not be lengthened for the purpose of eliminating typical side ditches;
- (4) the property does not already have ingress and egress;
- (5) the proposed location for the driveway entrance does not present safety hazards such as insufficient sight distance, proximity to other intersections, increased traffic congestion, poor roadway facility operations, decreased highway capacity, driver and pedestrian confusion, or other risks associated with vehicular traffic entering, leaving, and parking adjacent to accesses for residential property; and
- (6) the property is limited to farm entrances and property owned by the individual currently living on the property or owned by the individual proposing to use the property for residential purposes. This does not include property being developed for sale.

(b) "Commercial property" includes:

- (1) any property currently being used for commercial or industrial purposes;
- (2) property that is being developed for commercial or industrial purposes; and
- (3) property that is being developed for sale.

(c) The Department shall install pipe lines in the drainage ditch along the side of State-maintained roads and within State-maintained right-of-way or easements at entrances to commercial property when the pipe is furnished and delivered to the installation site by the property owner at the property owner's expense if the following requirements are met:

- (1) prior to installation, the property owner shall submit to the Department an application for installation of a commercial driveway pipe together with a payment in the amount of ten dollars (\$10.00) per linear foot of pipe to be installed. The application shall contain the following:
 - (A) description of the property location;
 - (B) description of the property use;
 - (C) acknowledgment that the driveway or street entrance shall be constructed and maintained in absolute conformance with the current "NCDOT Policy on Street and Driveway Access to North Carolina Highways;"
 - (D) acknowledgment that no signs or objects shall be placed on or over the public right-of-way other than those approved by the Department;
 - (E) acknowledgment that the driveway(s) or street(s) shall be constructed as shown on the attached plans;
 - (F) acknowledgment that the driveway(s) or street(s) shall include any approach tapers, storage lanes, or speed change lanes as deemed necessary by the Department;
 - (G) acknowledgment that if any future improvements to the roadway become necessary, the portion of driveway(s) or street(s) located on public right-of-way shall be considered the property of the Department, and the property owner shall not be entitled to reimbursement or have any claim for present expenditures for driveway or street construction;
 - (H) acknowledgement that the permit shall become void if construction of driveway(s) or street(s) is not completed within the time specified by the NCDOT Policy on Street and Driveway Access to North Carolina Highways;

- (I) requirement that a fifty dollar (\$50.00) construction inspection fee be paid by the property owner to the Department, and reimbursed to the property owner by the Department if the application is denied;
 - (J) acknowledgment that the construction and maintenance of the driveway(s) or street(s) shall be performed in a safe manner so as not to interfere with or endanger the traveling public.
 - (K) acknowledgment that signage, signals, flaggers, and other warning devices shall be provided during construction and in conformance with the current Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD);
 - (L) acknowledgment that the Department shall be indemnified and saved harmless from all damages and claims for damage that may arise by reason of construction;
 - (M) requirement that the property owner shall provide a Performance and Indemnity Bond in the amount specified by the Division of Highways for any construction proposed on the State Highway system;
 - (N) acknowledgment that the permit shall be granted subject to the regulatory powers of the Department as provided by law and as set forth in the NCDOT Policy on Street and Driveway Access to North Carolina Highways and shall not be construed as a contract access point;
 - (O) requirement that the property owner shall notify the District Engineer when the proposed work has begun and is completed; and
 - (P) signatures of the property owner, property owner's authorized agent, and their respective witnesses, and receipt and approval signatures of the Department.
- (2) applications for commercial driveway permits shall be approved or denied in accordance with the engineering standards and guidelines provided in the NCDOT Policy on Street and Driveway Access to North Carolina Highways. This policy may be accessed at no cost to the public by visiting <https://connect.ncdot.gov/projects/Roadway/RoadwayDesignAdministrativeDocuments/Policy%20on%20Street%20and%20Driveway%20Access.pdf>; and
 - (3) prior to installation, the property owner shall have received an approved commercial driveway permit from the Department. In the event the permit application is denied, the Department shall return to the applicant the payment referenced in Subparagraph (c)(1) of this Rule.
- (d) The commercial property owner may elect to have driveway pipe installed by private contractors if the following requirements are met:
- (1) prior to installation, the property owner shall submit to the Department an application for installation of a commercial driveway pipe together with a payment of fifty dollars (\$50.00) to cover the cost of the inspection of the pipe installation by Department personnel;
 - (2) prior to installation, the property owner shall have received an approved commercial driveway permit from the Department. In the event the permit application is denied, the Department will return to the applicant the payment referenced in Subparagraph (d)(1) of this Rule;
 - (3) the workmanship, materials, and final installation shall be subject to approval by the Department's District Engineer in accordance with current Department of Transportation standards. In the event the pipe installation does not meet the approval of the District Engineer, the Department shall remove the pipe at the expense of the property owner; and
 - (4) signing, barricades, and other devices necessary to mitigate traffic at or adjacent to the installation site shall be provided by the property owner or contractor. Traffic mitigation shall meet the requirements of the Manual on Uniform Traffic Control Devices for Streets and Highways as as by the District Engineer.
- (e) Department installation of pipe shall include necessary excavation, complete pipe placement, and sufficient backfill to provide a pipe line and grade protection. The Department of Transportation is not obligated to construct a finished driveway.
- (f) The Department shall be responsible for the installation and costs of residential and commercial driveway pipe if the Department caused the need by relocating or revising the elevation of side ditches for the improvement of highway drainage.
- (g) See Rule .0102 of this Subchapter for provisions related to pipe size.

History Note: Authority G.S. 136-18(1); 136-30; 136-92; 136-93; 156-88;
 Eff. July 1, 1978;
 Amended Eff. November 1, 1993; October 1, 1983;
 Readopted Eff. June 1, 2019.

19A NCAC 02D .0422 HANDBOOK OF DESIGN FOR HIGHWAY SURFACE DRAINAGE STRUCTURES

History Note: Authority G.S. 136-18(1); 136-92; 136-93; 150A-62; 159A-63(c); 156-88;
Eff. July 1, 1978;
Repealed Eff. April 3, 1981.

19A NCAC 02D .0423 PLANTING ON CONTROLLED-ACCESS FACILITIES

Requests to plant on full or partial access highways shall be submitted to the division engineer whose jurisdiction is the county where the planting is proposed.

History Note: Authority G.S. 136-18(9); 136-89.50; 136-93;
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0424 PLANTING ON OTHER FACILITIES

(a) On highways without any control of access, planting requests will be handled by one of three methods, as determined by the Division Engineer having jurisdiction in the county where the planting is proposed:

- (1) The requesting individual or organization can furnish funds for the plant materials with the Department of Transportation doing the planting and assuming maintenance of the planting.
- (2) The Department of Transportation can assume the project entirely, bearing the cost of plant materials as well as doing the planting and plant maintenance.
- (3) The proposal of the organization can be considered for inclusion in the highway planting program at a later date.

(b) Requests for plantings shall be directed to the appropriate division engineer.

History Note: Authority G.S. 136-18(9); 136-89.50; 136-93;
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0425 FEDERAL DISASTER ASSISTANCE

History Note: Authority G.S. 136-4; 136-18; 143B-350; 150B-21.3A;
Eff. October 1, 1991;
Amended Eff. April 1, 1997; November 1, 1993;
Repealed Eff. June 1, 2019.

19A NCAC 02D .0426 BRIDGE ON US 70 OVER BEAUFORT CHANNEL AT BEAUFORT

19A NCAC 02D .0427 BRIDGE ON NC 50 OVER INTERCOASTAL WATERWAY AT SURF CITY

19A NCAC 02D .0428 BRIDGE/US 74/76 OVER/INTERCOASTAL WATERWAY/WRIGHTSVILLE BEACH

19A NCAC 02D .0429 BRIDGE SR 1172 OVER INTERCOASTAL WATERWAY AT SUNSET BEACH

History Note: Authority G.S. 136-18(5);
Eff. November 1, 1991;
Amended Eff. November 1, 1993.

SECTION .0500 - FERRY OPERATIONS

19A NCAC 02D .0501 GENERAL

The rules in this Section apply only for the transportation via the State of North Carolina ferry system of individual passengers and their hand baggage as defined in Rule .0504 of this Section, vehicles under their own power and vehicles not under their own power but under tow of a vehicle under its own power, and bicycles.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Amended Eff. December 1, 1993; November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0502 TICKET CONDITIONS

Transportation furnished on any ticket sold or honored by the carrier will be subject to the rules set forth in this Section and any additional requirements are specifically provided on such tickets.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Amended Eff. December 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0503 CARRIER

When the term "carrier" is used in in this Section, it refers to the North Carolina Department of Transportation; the Division of Highways; and the Ferry Division.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Amended Eff. December 1, 1993; November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0504 HAND BAGGAGE

The term "hand baggage" as used herein means the baggage, personal effects or other property of passengers taking passage on carrier's vessels. Such hand baggage or other property will be only in such amounts as foot passengers can individually handle on and off vessels themselves.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0505 NOTICE OF CANCELLATION

Carrier may deviate from or cancel sailing schedules without notice when in its opinion scheduled operation is impractical or unsafe because of circumstances or conditions beyond its control. In either event, carrier assumes no liability for loss, damage, or expense to patrons which may result therefrom.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Amended Eff. December 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0506 COMPLETION OF VOYAGE

If, through failure, act of God, or other misfortune, carrier's vessel fails to complete her voyage, neither the master of the vessel nor the carrier shall be under any obligation to forward passengers or vehicles to their original destination, nor to refund all or any part of any tolls paid; which shall be deemed as earned.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0507 SUBSTITUTE VESSELS

Carrier reserves the right to substitute one vessel for another over any of the routes operated without any liability to patrons.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0508 DEFINITION OF LANDING

Passengers or vehicles shall be deemed landed:

- (1) upon arrival of vessels at port of designated destination;
- (2) when landed at any other port because of failure, act of God, or other misfortune to vessel;
- (3) when voyage is abandoned for any cause and vessel returns to port of embarkation.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0509 RESPONSIBILITY OF VESSEL MASTER

When in the master's opinion safe landing cannot be made upon arrival of the vessel at a designated port of destination, it may be landed at another port at which safe landing can be made.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Amended Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0510 MEDICAL CARE

Carrier shall neither furnish nor be liable for medical care or surgical treatment of passengers or other persons while on its terminal property. Carrier shall not be liable for the quality, nature or consequence of any medical or surgical treatment which may be administered to passengers on carrier's vessels.

Note: Refer also to G.S. 20-166 (Good Samaritan Law) and to 143-291.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0511 LIABILITY LIMITATIONS

Unless it is shown that a negligent act of an officer, employee, or agent of the state while acting in the scope of his office, service agency or authority was the sole proximate cause of any injury, loss, or damage, carrier shall not be liable for any injury, loss, or damage that shall result from an act of God, public enemy, restraint of rulers, quarantine, peril of the sea or other waters, latent defect in hull, boilers, propellers, piping, shafting, or machinery; or for injury, loss or damage that shall result from collision, stranding, fire, sanitary regulation or operation, explosion, accident to or breakdown of machinery, or of any propelling appliances, or accident, or navigation; or for any personal injury to passenger; or loss or damage to passengers' baggage or other property.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0512 PERSONAL PROPERTY

Carrier will not assume any responsibility or liability for articles left on board its vessels or at its terminals by passengers; or for articles left in vehicles while in transit, or at terminals.

History Note: Authority G.S. 136-82; 143B-10(j);

Eff. July 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0513 THEFT

Under no circumstances will the carrier be liable for theft from the person or baggage of a passenger or pilferage or theft from any vehicle on carrier's vessels or terminals.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0514 BAGGAGE

The handling of baggage by carrier will be as an accommodation only to the passenger. Carrier will not be liable for damage to or loss of such baggage whether by its negligence or otherwise.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0515 LOSS CLAIMS

All claims for loss or injury to person or property must be presented in accordance with the provisions of the Tort Claims Act (Article 31 of Chapter 143 of the North Carolina General Statutes).

History Note: Authority G.S. 136-82; 143-291; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0516 INSURANCE BENEFIT

In case of any loss or damage for which the carrier shall be liable, the carrier shall, to the extent of such liability, have the full benefit of any insurance that may have been effected by the owner upon the goods lost or damaged, notwithstanding any underwriter is not obligated to make such payment.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0517 RIGHT TO REFUSE TRANSPORT; PERSONS

Carrier may refuse to transport a person who is apparently under the influence of intoxicating liquor or drugs or who is incapable of taking care of himself, or whose conduct makes him objectionable or dangerous to other passengers or liable to become so. This rule does not apply to persons who are ill and are accompanied by an attendant or nurse.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0518 COMPLIANCE WITH RULES AND REGULATIONS

Carrier also may refuse to transport a person who refuses to abide by its rules or those of the U. S. Coast Guard, pertaining to the safe and efficient operation of vessels, terminals, and traffic.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0519 RIGHT TO REFUSE TRANSPORT: CARGO

Carrier may refuse any and all articles loaded in or on vehicles or vehicles which in its opinion will jeopardize the safe operation of the vessel, or which carrier is not equipped to handle. Carrier may refuse to transport vehicles containing offensive or ill-smelling cargo and liquid or semi-liquid commodities when not in tightly enclosed containers or tanks, precluding possibility of escaping odors or leakage from such vehicles. Dangerous articles prohibited by law will not be transported including those hazardous cargos regulated by the U.S. Coast Guard.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0520 BRAKES

Drivers of all vehicles shall set emergency brakes and engage parking gear on all vehicles having same before leaving the vehicles. Drivers of all mechanically powered vehicles shall shut off engines, after being directed to their designated parking areas.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0521 OPERATION OF VEHICLE BY CARRIER EMPLOYEES

Carrier's employees are not permitted to drive power vehicles or wheeled machinery on or off vessels. When the owner or shipper, or his agent is unable to promptly drive such vehicles on and off vessels, carrier will refuse to transport same. Tracked construction equipment or other such power vehicles (except on rubber tired wheels) will not be accepted for movement except when loaded on trucks or trailers in tow of vehicles under their own power.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0522 INOPERATIVE VEHICLES

- (a) Vehicles, without drivers, or with dead motors or otherwise inoperative, with or without drivers, will not be accepted by carrier for transportation. The provisions of this paragraph do not apply to such vehicles in tow of other vehicles under their own power.
- (b) Trailers not under tow of vehicles under own power will not be accepted for transportation.
- (c) If because of dead batteries, flat tires or other physical disability, a motor vehicle cannot be discharged from vessel under its own power and it is necessary for the carrier to obtain towing service to discharge the vehicle, charge for the service will be the liability of the disabled vehicle and must be paid directly to the towing service company by the vehicle owner.
- (d) If towing service is not available and carrier undertakes to assist in the discharge of the vehicle by its employees with or without mechanical devices, the carrier will not be liable upon any claim for loss or damage to the vehicle.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0523 LIVESTOCK

Livestock will be transported only at carrier's convenience and only in adequate motor vehicle equipment. Rates to be charged are those applicable on trailers, trucks, truck and trailer combinations or truck tractor and semi-trailer combinations as specified in Rule .0532 of this Section. Carrier will assume no liability for livestock while on vessels or at terminals. Vehicles transporting livestock must be properly enclosed to prevent spillage of animal waste or otherwise creating unpleasant or offensive environment on vessels.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0524 DOGS, AND OTHER HOUSEHOLD PETS AND WILD ANIMALS

- (a) Dogs and household pets may accompany passengers and will be carried on vessels subject to the following conditions:
- (1) Dogs, cats, kittens, and small pet birds will be transported without charge when accompanied by passengers on foot or in vehicles. Such animals will be transported entirely at risk of the owner who shall take care of and safe-guard them while on vessels or at terminals.
 - (2) Such animals must be held secure by leash, crate, cage, or otherwise adequately restrained, as the case may require.
 - (3) Such animals shall not be permitted in passenger accommodations, but only on car deck under short leash and in custody of responsible person. Carrier, however, may require that they be carried in certain places as designated by the master, whenever, in his judgement, such a course is necessary for the safety and convenience of the passengers.
- (b) Wild animals must, at all times, be securely crated or caged so as to preclude contact by passengers.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0525 NO LIABILITY ASSUMED BY CARRIER

No liability will be assumed by the carrier in the transportation of household pets, or wild animals.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0526 BABY CARRIAGES

Baby carriages, strollers, and similar articles will be carried without charge, when space is available. The person accompanying the baby carriage, stroller, or similar article must place same where directed by the master. The carrier will not assume any responsibility or liability for these articles while in transit or at its terminals.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0527 CORPSES

Corpses will be transported in vehicles only.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0528 EXCESS HAND BAGGAGE

- (a) The transportation of hand baggage or other property defined in Rule .0504 of this Subchapter of foot passengers in excess of such amounts must be arranged for by the passengers via available common carrier freight or express service.
- (b) Carrier does not maintain a checked baggage service, and its employees are not available to assist foot passengers with the loading and unloading of baggage.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0529 BAGGAGE IN VEHICLES

Passengers in vehicles may carry baggage or other property in such amounts as can be loaded in or securely fastened on vehicles.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0530 RIGHT TO REFUSE

(a) Carrier may refuse any and all articles of baggage or other property which in the opinion of the carrier's agent or master of the vessel will, or may, jeopardize the vessel's safe operation or which the carrier is not equipped to handle. Dangerous articles prohibited by law will not be carried.

(b) Carrier's liability for the loss or damage to baggage, personal effects, or other property will be limited to that provided in Rules .0510 thru .0514 of this Subchapter.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0531 FREE OPERATIONS

19A NCAC 02D .0532 TOLL OPERATIONS

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. July 7, 2014; March 1, 2004; April 1, 2003; August 1, 2002; November 1, 1991; May 1, 1983;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02D .0533 TICKET LIMITS

Tickets are valid only on the date of purchase and for the trip number indicated.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0534 REDEMPTION OF TICKETS

Upon presentation by the lawful holder thereof, unused tickets will be redeemed upon the following terms provided such ticket is so presented for redemption within 30 days after the date of sale:

- (1) Unused tickets will be redeemed at the purchase price.
- (2) Altered or mutilated tickets will not be honored for passage.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0535 FERRY RESERVATIONS

(a) Reservations for space shall only be available for the Cedar Island-Ocracoke, Swan Quarter-Ocracoke, and Passenger Ferry from Hatteras-Ocracoke ferry operations. All other operations are on a "first come-first served" basis.

(b) Reservations shall be made by in person at the ferry terminal, online at <https://ferry.ncdot.gov> or by telephone as follows:

- (1) For the main reservation line, call: (800) 293-3779.
- (2) For departures from Ocracoke, call: (252) 996-6201.
- (3) For departures from Cedar Island, call: (252) 463-7046.
- (4) For departures from Swan Quarter, call: (252) 791-3302.
- (5) Office hours shall be from 6:00 am until 5:00 pm, year-round.

- (c) Reservations may be made any time within 90 days of the departure date and shall not be transferable. Name of the driver and vehicle license number shall be required. A credit or debit card shall be required for advance reservations to secure passage and space aboard a ferry vessel. It shall not be required that the credit or debit card be in the name of the driver.
- (d) Reservations shall be claimed at least 30 minutes prior to the scheduled departure. Reservations not claimed prior to this time shall be cancelled and the space reassigned.
- (e) Vehicles shall remain in the staging area once ticketed, and until boarding begins.
- (f) In case of departure cancellation due to mechanical failure, inclement weather, or other unavoidable causes, the customer may reschedule the reservation for either the earliest possible departure or for another time convenient for the customer.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Readopted Eff. June 1, 2019.

19A NCAC 02D .0536 MAIL TRUCKS

Mail trucks may be granted priority privileges for loading on all system ferries.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0537 FERRY SCHEDULES

Ferry schedules are available on the Official North Carolina Highway Map, from the Ferry Operations Office in Morehead City, (919) 726-6446, or on signs posted at strategic locations along ferry terminal approach highways or at the ferry terminal.

History Note: Authority G.S. 136-82;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0538 VEHICLE WEIGHT LIMITATIONS

(a) Maximum weights permissible for 150-foot Hatteras Class ferries are as follows:

- | | | |
|-----|---|------------------|
| (1) | 2 axles plus front steer axle with standard load and length of 35 feet: | 40,000 lbs.; |
| (2) | 3 axles plus front steer axle with standard load and length of 40 feet: | 60,000 lbs.; |
| (3) | 4 axles plus front steer axle with standard load and length of 65 feet: | 80,000 lbs.; and |
| (4) | 5 axles plus front steer axle with standard load and length of 65 feet: | 80,000 lbs. |

(b) Maximum weights permissible for 180-foot River Class, and 220-foot Sound Class ferries are as follows:

- | | | |
|-----|---|-------------------|
| (1) | 2 axles plus front steer axle with standard load and length of 35 feet: | 40,000 lbs.; |
| (2) | 3 axles plus front steer axle with standard load and length of 40 feet: | 60,000 lbs.; |
| (3) | 4 axles plus front steer axle with standard load and length of 65 feet: | 80,000 lbs.; |
| (4) | 5 axles plus front steer axle with standard load and length of 65 feet: | 92,000 lbs.; |
| (5) | 6 axles plus front steer axle with heavy load or extra-long lowboy: | 108,000 lbs.; and |
| (6) | 7 axles plus front steer axles with heavy load or extra-long lowboy: | 120,000 lbs. |

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Readopted Eff. June 1, 2019.

19A NCAC 02D .0539 VEHICLE PHYSICAL DIMENSION LIMITATIONS

(a) Maximum physical dimensions shall be 65 feet in length, 12 feet in width, and 13.5 feet in height for vehicles on each of the following ferry vessels:

- (1) Silver Lake;
- (2) Cedar Island;
- (3) Carteret;
- (4) Swan Quarter;

- (5) Sea Level;
- (6) Governor Daniel Russel;
- (7) Southport;
- (8) Neuse;
- (9) Lupton;
- (10) Fort Fisher;
- (11) W. Stanford White;
- (12) Croatoan;
- (13) Hatteras;
- (14) Kinnakeet;
- (15) Frisco;
- (16) Chicamacomico;
- (17) Cape Point;
- (18) Ocracoke;
- (19) Roanoke;
- (20) Thomas A. Baum, out-of-service effective September 2020;
- (21) Governor James Baxter Hunt, Jr.;
- (22) Rodanthe, in-service effective March 2019;
- (23) Avon, in-service effective March 2020; and
- (24) Salvo, in-service effective August 2020.

(b) Vehicles having overall dimensions requiring an Oversized/Overweight Permit, pursuant to Section .0600 of this Subchapter, shall carry that permit within the vehicle; otherwise, loading aboard a ferry vessel shall not be permitted.

*History Note: Authority G.S. 20-119; 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. December 1, 1993; November 1, 1991;
Readopted Eff. June 1, 2019.*

SECTION .0600 – OVERSIZE-OVERWEIGHT PERMITS

19A NCAC 02D .0601 PERMIT APPLICATION AND ADMINISTRATION

(a) The Chief Engineer's office shall be responsible for issuing oversize/overweight permits as provided by this Section.

(b) House move permit applications shall be submitted to the Department division and district offices. The Department's division and district offices shall approve or deny house move permit applications based on safety considerations after reviewing the route of travel and dimensions of the structure to be moved. House move permit applications shall be submitted at least two working days prior to the anticipated date of movement. House move permit applications shall contain the following information:

- (1) applicant's name and contact information;
- (2) housemover license and truck license numbers;
- (3) registered weight, serial number, and number of axles;
- (4) description of the load dimensions
- (5) extreme axle measurements, axle weights, and spacings;
- (6) house construction descriptions
- (7) requested route of travel descriptions; and
- (8) travel plan and anticipated use of escort vehicle.

(c) Superload permits shall be required for the movement of a vehicle and vehicle combination with a gross weight of 132,000 pounds or more; width of 15 feet or more; a mobile or modular unit with a width of 16 feet and a gutter edge of 3 inches; and a width of 16 feet and 11 inches, unless the permit is for house moves in accordance with Paragraph (b) of this Rule. Applicants for Superload permits shall submit a written application, the fee specified in G.S. 20-119(b), and documentation of any variance to the Central Permit Office at least 10 business days prior to the anticipated date of movement. Superload permits applications shall contain the following information:

- (1) applicant's name and contact information;
- (2) truck and trailer license information and VIN number;
- (3) gross weight, registered weight, extreme wheelbase measurements, and number of axles;
- (4) description of the load dimensions; and

- (5) description of axle spacings and weight.
- (d) Applicants shall submit a written application, the fee specified in G.S. 20-119(b), and documentation of variances to the Central Permit Office at least two business days prior to the anticipated date of movement of a vehicle or vehicle combination of a height greater than 14 feet, but not equal to or greater than 15 feet.
- (e) The issuance of any permit shall not imply nor guarantee the vertical clearance of the permitted load and the permittee shall be responsible for ensuring all vertical clearances prior to movement.
- (f) The Department shall accept certified check, money order, company check, or credit card in consideration for the fees specified in G.S. 20-119(b). No personal checks shall be accepted.

History Note: Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346; Eff. July 1, 1978; Amended Eff. November 1, 1993; October 1, 1991; Temporary Amendment Eff. January 10, 2002; October 1, 2000; Amended Eff. December 1, 2012; April 1, 2009; August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016; Amended Eff. July 1, 2019.

19A NCAC 02D .0602 PERMITS – ISSUANCE REQUIREMENTS

(a) The following are general issuance requirements for oversize/overweight permits.

- (1) Permits shall be issued by the Department. The maximum weight permitted on a designated route shall be determined by the bridge capacity of the bridges to be crossed during movement. Movements exceeding weight limits for highways or bridge structures shall be denied if considered by the Department to be unsafe or if the movement may cause damage to the highway or bridge structures. If the Department determines that the permitted movement may cause damage to the highway, bridge structures, or any other State property, the permittee shall be required to obtain a surety bond to cover the estimated cost of damages. A permit issued by the Department shall not be valid for travel over municipal streets, defined as streets or highways not maintained by the State of North Carolina.
- (2) Prior to applying for an oversize/overweight permit, the applicant shall be responsible for reducing and loading the item, commodity, or combinations thereof to the least possible dimensions and weight. Permits may be issued in accordance with this Section for movements of items or commodities that cannot be loaded, divided, dismantled, or disassembled to meet legal requirements.
- (3) One item or commodity shall qualify for overweight considerations. Multiple items or commodities shall not qualify for an overweight permit.
- (4) One item or commodity or multiple items or commodities loaded in-line shall qualify for overwidth considerations. If loaded side-by-side, multiple items or commodities shall not exceed eight feet, six inches in width.
- (5) One item or commodity of continuous length shall qualify for overlength considerations. The maximum length for a vehicle or vehicle combination shall be 105 feet. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of the geographic route of travel, consideration of local construction projects, and evaluation of the other dimensions of the load.
- (6) One item or commodity shall qualify for overheight considerations. If piled or stacked, multiple items or commodities shall not exceed 13 feet, 6 inches.

(b) Annual Trip Permits

- (1) Annual permits shall be valid for 12 months from the effective date of the permit. Annual trip permits shall require an escort for vehicle and vehicle combinations that exceed 12 feet in width.
- (2) Annual permits may be issued for unlimited movement on all North Carolina highways, as permitted by the posted road and bridge limits, and without the requirement of an escort for the following:
 - (A) vehicle and vehicle combinations transporting non-divisible commodities;
 - (B) vehicle and vehicle combinations transporting a non-divisible commodity with a minimum extreme wheelbase of 51 feet;
 - (C) self-propelled equipment with four or five axles; and
 - (D) non-property hauling vehicles with permanently attached equipment, a minimum wheel base of 30 feet, the capability of traveling at highway speeds of 45 miles per hour, the operational purpose of traveling to and from a non-highway job, and a special mobile equipment license issued by the Division of Motor Vehicles.

- (3) Dimensions for vehicle and vehicle combination permits issued pursuant to Subparagraph 2 of this Paragraph shall not exceed:
 - (A) a width of 12 feet;
 - (B) a height of 13 feet, 6 inches; and
 - (C) a length of 105 feet.
 - (D) Part (2)(A) within this Paragraph shall not exceed the length as set forth in G.S. 20-115.1(b) and G.S. 20-116(e), and gross weights and axle weights as set forth in G.S. 20-118(b)(1)(2)(3).
 - (E) Parts (2)(B), (C), and (D) within this Paragraph shall not exceed a gross weight of 90,000 pounds, and axle weights of 20,000 pounds for steer axle, 25,000 pounds for single axle, 50,000 pounds for tandem axle, 60,000 pounds for tridem axle, and 68,000 pounds for axle groupings of four or more.
 - (4) Annual permits may be issued for unlimited movement on all North Carolina highways, as permitted by the posted road and bridge limits, and with the requirement of an escort for vehicles and vehicle combinations transporting farm equipment. Dimensions for vehicle and vehicle combination permits issued pursuant to this Subparagraph shall not exceed:
 - (A) a width of 14 feet;
 - (B) a height of 13 feet, 6 inches; and
 - (C) a weight as set forth in G.S. 20-118(b)(3).
 - (5) Annual permits may be issued with the requirement of an escort for mobile or modular homes if transported from a manufacturer to a North Carolina mobile or modular home dealership, or if transported from a North Carolina licensed mobile or modular home retail dealer to the transporter for the delivery of mobile or modular homes. Permitted mobile or modular homes shall be authorized to travel on designated routes approved by the Department considering construction work zones, highway lane widths, origin and destination, and other factors to ensure safe movement. Dimensions for vehicle and vehicle combination permits issued under this subparagraph shall not exceed:
 - (A) a width of 14 feet;
 - (B) a roof overhang of 12 inches, unless the unit width shall be 16 feet, in which case the gutter edge shall not exceed 3 inches;
 - (C) a height of 13 feet, 6 inches; and
 - (D) a weight as set forth in G.S. 20-118(b)(3).
- (c) Single Trip Permits
- (1) Single trip permits shall be issued to the registered owner of the vehicle and valid for 10 calendar days for a single, one-way trip. Single trip permit applications shall include the exact origin, route, and exact destination, including applicable county and state road numbers and routes. A return trip shall only be considered for a single trip permit if the return trip is requested within the original permit application. No single trip permit shall be issued for a time period that exceeds 30 days.
 - (2) Single trip permits for vehicle and vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet and the conditions specified in this Rule.
 - (3) Single trip permits shall not be restricted by overall length limitations, except the total combination length of mobile homes shall not exceed 105 feet.
 - (4) Single trip permits shall not authorize a vehicle or vehicle combination height in excess of the vertical clearances on the authorized route.
- (d) Non-divisible Loads
- (1) The maximum single trip and annual permit weight allowed for a vehicle or vehicle combination, not including off-highway construction equipment, shall be:
 - (A) 20,000 pounds for steer axles;
 - (B) 25,000 pounds for single axles;
 - (C) 50,000 pounds for tandem axles;
 - (D) 60,000 pounds for tridem axles;
 - (E) 68,000 pounds for axle groupings of four or more; and
 - (F) an engineering study is required for axle groupings of five or more that exceed 68,000 pounds.
 - (2) The maximum single trip and annual permit gross weight allowed for a vehicle or vehicle combination, not including off-highway construction equipment, shall be:
 - (A) 70,000 pounds for a three-axle single vehicle;
 - (B) 90,000 pounds for a four-axle single vehicle;

- (C) 94,500 pounds for a five-axle single vehicle;
 - (D) 112,000 pounds for a five-axle vehicle combination;
 - (E) 108,000 pounds for a six-axle single vehicle;
 - (F) 120,000 pounds for a six-axle vehicle combination;
 - (G) 122,000 pounds for a seven-axle single vehicle;
 - (H) 132,000 pounds for a seven-axle vehicle combination; and
 - (I) determined upon the completion of an engineering study for axle-vehicle combinations of 7 or more if their gross weight exceeds 132,000 pounds.
- (3) The maximum permit weight allowed for self-propelled off-highway construction equipment with low pressure or low flotation tires shall be:
 - (A) 37,000 pounds for a single-axle vehicle; and
 - (B) 50,000 pounds for a tandem-axle vehicle;
 - (4) The maximum permit gross weight allowed for self-propelled off-highway construction equipment with low pressure or low flotation tires shall be:
 - (A) 70,000 pounds for a two-axle single vehicle;
 - (B) 80,000 pounds for a three-axle single vehicle; and
 - (C) 90,000 pounds for a four-axle single vehicle.
 - (5) An overweight permit with a specified route shall be available for a vehicle combination consisting of a power unit and trailer hauling a sealed ship container. No permit shall be issued in accordance with this Subparagraph unless the vehicle combination shall be:
 - (A) traveling to or from a designated seaport, whether in-state or out-of-state;
 - (B) transported by marine shipment;
 - (C) licensed for the maximum allowable weight for the 51-foot extreme wheelbase measurement as specified in G.S. 20-118;
 - (D) equal to or less than the maximum width, height, and length dimensions as specified in G.S. 20-116;
 - (E) a vehicle combination with at least five axles; and
 - (F) in possession of and able to furnish for inspection the documentation of the sealed commodity being transported.
- (e) Superload Permits
- (1) Superload permits shall be available for vehicle or vehicle combinations with axles or axle groupings that exceed the weight limitations provided by this Rule, a gross weight that exceeds 132,000 pounds, or a maximum width in excess of 15 feet. The Chief Engineer or the Chief Engineer's designee may authorize the issuance of a superload permit after analysis of the proposed load and evaluation of the proposed route of travel.
 - (2) Superload permits shall be issued to the registered owner of the vehicle and valid for 10 calendar days for a single, one-way trip. Superload permit applications shall include the exact origin, route, and exact destination, including applicable county and state road numbers or routes. A separate permit application shall be required for return trips.
- (f) Houses
- (1) Applications for permits to move buildings or structures in excess of 15 feet in width shall be made by a licensed housemover. Housemover license applications and supporting documentation are issued and renewed by the Central Permit Office. Please see 19A NCAC 02D .0601 for information on Housemover permits.
 - (2) An individual shall not be required to acquire a housemover license prior to applying for a permit if the power unit and building is owned by the permittee and the movement is from property individually owned by the permittee.
- (g) Mobile or Modular Homes
- (1) Mobile or modular home units shall not exceed a length of 76 feet and the total vehicle combination length shall not exceed 105 feet.
 - (2) A 14-foot-wide mobile or modular home unit may be transported with a bay window, room extension, or porch if the protrusion does not extend beyond the maximum roof overhang of 12 inches or the total width of overhang on the applicable side of the home. An extender shall be placed on the front and rear of the mobile or modular home with a length to extend horizontally equal to but not beyond the outermost edge of the mobile or modular home's extension. The extenders shall have retro-reflective sheeting, sized at a

minimum of 4 inches, that shall be Type III high intensity, encapsulated lens, or Type IV-high performance, prismatic, with alternating fluorescent yellow and black diagonal stripes that slope towards the outside of the home with a minimum area of 288 square inches. The bottom of the extenders shall be 6 feet to 8 feet above the road surface. The top of each extender shall have mounted a 5-inch, amber-colored, flashing beacon.

- (3) The North Carolina licensed mobile or modular home retail dealer shall maintain records of all mobile or modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be available for inspection and audit by any officer, employee, or contractor of the North Carolina Division of Motor Vehicles. Failure to comply with any requirement shall be grounds for denying, suspending, or revoking Manufacturer's License, Dealer's License, and any North Carolina oversize/overweight permit privileges.

History Note: Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346;
Eff. July 1, 1978;
Amended Eff. December 29, 1993; October 1, 1991; April 1, 1984; April 11, 1980;
Filed as a Temporary Rule Eff. October 1, 2000;
Amended Eff. August 1, 2002;
Readopted Eff. July 1, 2019.

19A NCAC 02D .0603 ISSUING OFFICES AND PROCEDURES
19A NCAC 02D .0604 APPLICATIONS FOR A PERMIT
19A NCAC 02D .0605 PERMITS
19A NCAC 02D .0606 LEGAL WEIGHTS AND DIMENSIONS

History Note: Authority G.S. 20-116; 20-118; 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. October 1, 1990; September 1, 1990;
April 1, 1984; April 11, 1980;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0607 PERMITS – MOVEMENT AND TRAVEL REQUIREMENTS

(a) All vehicles and vehicle combinations described in 19A NCAC 02D .0601 and .0602 shall adhere to the following movement requirements.

- (1) Unless otherwise authorized or restricted by this Rule, movement shall be made between sunrise and sunset. Movement of 16-foot wide mobile or modular home units with a maximum of 3-inch gutter edge shall be permitted Monday through Saturday from 9:00 am to 2:30 pm. Movement of 16-foot wide mobile or modular home unit with a maximum 3-inch gutter edge may occur after 2:30 pm, but not beyond sunset, if the unit is traveling on an approved route as determined by an engineering study, and exported out-of-state. Sunday travel may be authorized from sunrise to sunset after consideration of the vehicle or vehicle combination dimensions. Considerations of safety and traffic flow may require the issuing office to impose additional time restrictions or allowances.
- (2) No movement shall be permitted for a vehicle or vehicle combination after 12:00 p.m. on the weekday preceding and until 12:00 p.m. on the weekday following Independence Day, Thanksgiving Day, and Christmas Day. If Independence Day, Thanksgiving Day, or Christmas Day fall on a Saturday or Sunday, travel is restricted from 12:00 p.m. on the preceding Friday until 12:00 p.m. on the following Monday.
- (3) Continuous travel occurring 24 hours a day, each day per year, shall not be authorized for vehicle or vehicle combinations with a gross weight in excess of 112,000 pounds. Self-propelled equipment shall be authorized for continuous travel if the overhang is less than 10 feet in length and meets all other requirements of this Subparagraph. The overhang shall be marked on both sides and end with high-intensity, glass-bead, retro-reflective sheeting tape. Each side of the self-propelled equipment shall be marked 24 inches from the road surface at the nearest feasible center point, between the steer and drive axles. The sheeting tape shall be 2 inches by 12 inches. Any rear overhang shall display a mounted brake light and flashing amber light, 8 inches in diameter with a minimum candlepower of 800 watts.

- (4) Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel no less than two miles apart. Convoy travel shall not be authorized except as directed by law enforcement escort or permit office.
 - (5) Blades of construction equipment and front-end loader buckets shall not extend more than 14 feet across the roadway. A blade, bucket, or other attachment that is an original part of the manufactured equipment may be removed and hauled with the equipment without being considered a divisible load.
 - (6) Permitted vehicle or vehicle combination movements shall not travel at a speed in excess of the posted speed limit. The issuing office shall be permitted to impose speed restrictions below the posted speed limit considering safety and load. A towing unit and mobile or modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by relinquishing the traffic way when a buildup of traffic occurs.
 - (7) The object to be transported shall not be loaded or parked on the highway right of way without permission from the office that originally issued the permit and after confirmation of an emergency condition, such as mechanical problems or weather events.
 - (8) No movements shall be made when visibility is less than 500 feet. Moves shall not be made when travel conditions are considered unsafe by the Division of Highways, State Highway Patrol, or other law enforcement officers having jurisdiction. Movement of a mobile or modular unit that exceed a width of 10 feet shall be prohibited if wind speed gusts are in excess of 25 miles per hour.
 - (9) The mover shall be responsible for any expenses, arrangements, or approvals associated with removing or replacing any obstructions, including traffic signals, signs, and utility lines. Trees, shrubs, or State signs shall not be cut, trimmed, or removed without approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval for cutting or trimming trees or shrubs, the District Engineer shall consider the species, age, and appearance of the tree or shrub in question and its contribution to the aesthetics of the area.
- (b) Movement of all vehicles and vehicle combinations subject to this Section shall adhere to the following safety requirements.
- (1) A yellow banner measuring a total length of 7 feet x 18 inches high bearing the legend "Oversize Load" in 10-inch black letters 1.5-inch-wide brush stroke shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle and vehicle combination with a width greater than 10 feet. A towing unit mobile or modular home combination shall display banners of the size specified bearing the legend "Oversize ----- feet Load" identifying the actual width of the unit in transport. Escort vehicles shall display banners as specified in this Subparagraph with the exception of length to extend the entire width of the bumpers.
 - (2) Red or orange flags measuring 18 inches square shall be displayed on all sides at the widest point of load for all loads in excess of 8 feet 6 inches wide, but the flags shall be mounted so as not to increase the overall width of the load.
 - (3) All permitted vehicles and vehicle combinations shall be equipped with tires, axels and brakes in accordance with North Carolina Statutes and Motor Carrier and Housing and Urban Development (HUD) regulations.
 - (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing or hauling such vehicle or load.
 - (5) Flashing amber lights shall be used as determined by the issuing permit office.

History Note: Authority G.S. 20-116; 20-118; 20-119; 136-18(5);
 Eff. July 1, 1978;
 Amended Eff. October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990;
 Temporary Amendment Eff. January 10, 2002; December 31, 2000; October 1, 2000;
 Amended Eff. August 1, 2012; June 1, 2010; April 1, 2009; August 1, 2002;
 Readopted Eff. July 1, 2019.

19A NCAC 02D .0608 LENGTH
19A NCAC 02D .0609 HEIGHT
19A NCAC 02D .0610 WEIGHT
19A NCAC 02D .0611 TIME LIMIT

History Note: Authority G.S. 20-116; 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978;
Eff. July 1, 1978;
Amended Eff. September 1, 1990; October 1, 1987; April 1, 1984; February 1, 1983;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0612 PERMITS - HOUSE MOVES

History Note: Authority G.S. 20-119; 20-360; 136-18(5); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991; April 1, 1984; January 1, 1979;
Filed as a Temporary Rule Eff. October 1, 2000;
Amended Eff. August 1, 2002;
Repealed Eff. July 1, 2019.

19A NCAC 02D .0613 TIME AND SAFETY REQUIREMENTS - BUILDING MOVES

19A NCAC 02D .0614 SIZE AND WEIGHT - BUILDING MOVES

19A NCAC 02D .0615 ESTIMATE OF GROSS WEIGHT - BUILDINGS

History Note: Authority G.S. 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0616 DISTANCE LIMITATIONS - BUILDING MOVES - REPEALED

History Note: Authority G.S. 20-119; 136-18(5);
Eff. July 1, 1978;
Repealed Eff. January 1, 1979.

19A NCAC 02D .0617 REMOVAL OF OBSTRUCTIONS - BUILDING MOVES

History Note: Authority G.S. 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. April 11, 1980;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0618 INDEMNITY - BUILDING MOVES

History Note: Authority G.S. 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. January 1, 1979;
Repealed Eff. November 1, 1993.

19A NCAC 02D .0619 LIMITATIONS - BUILDING MOVES

19A NCAC 02D .0620 REQUIRING OF ESCORT VEHICLE

19A NCAC 02D .0621 POSITION OF ESCORT VEHICLES

19A NCAC 02D .0622 ESCORT OF VEHICLE REQUIREMENTS

19A NCAC 02D .0623 SLOW SPEED: ESCORT

19A NCAC 02D .0624 TIME OF MOVE

19A NCAC 02D .0625 SPEED LIMITS

19A NCAC 02D .0626 SIGNS: FLAGS

19A NCAC 02D .0627 STATE HIGHWAY PATROL NOTIFICATION

History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978;
Eff. July 1, 1978;
Amended Eff. October 1, 1990; September 1, 1990; January 1, 1985; July 1, 1981;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0628 SAFETY DEVICES

History Note: Authority G.S. 20-119; 136-18(5);
Eff. July 1, 1978;
Repealed Eff. September 1, 1990.

19A NCAC 02D .0629 TOWING UNIT

19A NCAC 02D .0630 ROUTE CHANGES

19A NCAC 02D .0631 HIGHWAY RIGHT OF WAY RESTRICTIONS

19A NCAC 02D .0632 WEATHER

History Note: Authority G.S. 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. October 1, 1990; April 11, 1980;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0633 PERMITS – DECISIONS, APPEALS, AND ENFORCEMENT

(a) A permit that is revoked or voided by the Chief Engineer's office shall be surrendered without any refund of fees. An oversize or overweight permit application may be denied for a period of up to six months upon written documentation that the applicant operated in violation of any of the rules contained in this Section, or any state or local law or any rule or ordinance regulating the operation of oversize or overweight vehicles. Repeated violations may result in a permanent denial of the right to use State highway system for transportation of oversize/overweight loads or vehicles. An oversize/overweight permit may be revoked and considered void by the Chief Engineer's office upon inspection and written documentation that the permittee:

- (1) violated either the terms and conditions of the permit, state or local laws, or ordinances regulating the operation of oversize and overweight vehicles;
- (2) misrepresented, fraudulently obtained, altered, or used in an unauthorized manner any information on the permit application; and
- (3) operated or is currently operating a vehicle or vehicle combination in violation of the General Statutes of North Carolina, these rules, the authorized route of travel, time of movement, escort requirements, axle weights, number of axles, or any other conditions of the permit.

(b) No permit application shall be denied, renewal refused, permit revoked, or considered void unless the Chief Engineer's office provides verbal or written notice to the permittee. The permittee may appeal in writing to the Chief Engineer's office within 10 business days of the permittee receiving notice. If a hearing is requested, the Chief Engineer's office shall provide the permittee with written notice, sent by certified mail, return receipt requested, no fewer than 10 business days prior to the scheduled date of the hearing. The Chief Engineer's office shall provide to the permittee a written decision, sent by certified mail, return receipt requested, within 10 business days from the date of the hearing.

(c) A permittee who has permit privileges suspended or revoked by the Chief Engineer's office may make a written appeal to the Secretary of Transportation within 15 days following the date listed on the return receipt. The Secretary of Transportation or the Secretary's designee may affirm or set aside the suspension or revocation based on a review of the written appeal, the suspension or revocation decision, as well as any available documents, exhibits or other evidence bearing on the appeal. The individual appealing shall be advised of the final disposition of the action within 21 days following receipt of the appeal.

(d) The following pertains to enforcement, inspections, and alternate routes as set out in this Rule.

- (1) Law enforcement officers may perform on-site inspections at the point of manufacture or dealer lot for mobile or modular homes ready for shipment. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.
- (2) Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route if:
 - (A) directed by a law enforcement officer with jurisdiction;
 - (B) directed to follow a specific route, for weighing purposes, by an official traffic control device; or

- (C) the specified route on the permit is detoured by an officially erected highway sign, traffic control devices, or law enforcement officer. If the specified route on the permit is detoured by an officially erected highway sign, traffic control device, or law enforcement officer, the driver of the permitted vehicle shall contact the Central Permit Office or the issuing field office for house move permits for clearance of route or revision of the permit.

History Note: Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991; April 1, 1984; April 11, 1980;
Temporary Rule Eff. October 1, 2000;
Amended Eff. December 1, 2012; April 1, 2009; August 1, 2002;
Readopted Eff. July 1, 2019.

19A NCAC 02D .0634 DELEGATION
19A NCAC 02D .0635 COORDINATION OF MOVEMENT
19A NCAC 02D .0636 SPECIAL CONDITIONS
19A NCAC 02D .0637 SPECIAL PERMIT LIMITATIONS
19A NCAC 02D .0638 UNUSUAL CIRCUMSTANCES

History Note: Authority G.S. 20-119; 136-14.1; 136-18(5);
Eff. July 1, 1978;
Amended Eff. December 1, 1990; April 1, 1984; November 1, 1978;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0639 SPECIAL PERMITS FOR PASSENGER BUSES

History Note: Authority G.S. 20-118(8);
Eff. September 1, 1978;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0640 PERMIT MANUAL OVERSIZE: OVERWEIGHT MOVEMENTS

History Note: Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5);
143B-346; 143B-350(f); 150A-62; 150A-63(c);
Eff. April 11, 1980;
Repealed Eff. April 3, 1981.

19A NCAC 02D .0641 PERMIT FEES

History Note: Authority G.S. 20-119; 136-18(5); 143B-359(f)(13); 12-3.1;
Eff. April 1, 1984;
Repealed Eff. October 1, 1991.

19A NCAC 02D .0642 TEMPORARY AUTHORIZATION FOR ISSUANCE OF PERMITS

History Note: Authority G.S. 20-118(f); 20-119; 136-18(5);
Temporary Adoption Eff. October 19, 2000;
Temporary Adoption Expired August 12, 2001.

19A NCAC 02D .0643 ESCORT VEHICLE DRIVER CERTIFICATION

When an escort vehicle is required, escort vehicle drivers shall be certified in accordance with 19A NCAC 02D .0644. Certification credentials shall be carried in the vehicle and shall be available for inspection by law enforcement officials with jurisdiction.

History Note: Authority G.S. 20-119;

*Temporary Adoption Eff. March 11, 2002;
Eff. April 1, 2003;
Readopted Eff. July 1, 2019.*

19A NCAC 02D .0644 OVERSIZE/OVERWEIGHT LOAD ESCORT VEHICLE OPERATOR CERTIFICATION PROGRAM

(a) Prior to obtaining certification as an oversize/overweight load escort vehicle operator, a person shall complete a program that provides instruction on escort skills and shall pass an examination. The escort vehicle operator certification program shall provide for reciprocity with other states having similar escort certification programs.

(b) Any person seeking to be certified as an oversize/overweight load escort vehicle operator in North Carolina shall submit an application to the Department and attach a State certified copy of their driving record. The application shall contain the applicant's name and contact information; driver's license number and state; physical and demographic identification information; school name, location, and date of class; and Social Security number if the applicant is applying with an out-of-state driver's license. Any person seeking to be certified as an oversize/overweight load escort vehicle operator shall be qualified as follows:

- (1) an escort certified by another state's approved program;
- (2) a North Carolina law enforcement officer; or
- (3) a person who:
 - (A) is at least 21 years of age or 18 years of age with a Class A commercial driver's license;
 - (B) possesses a valid driver's license without restrictions other than for the use of corrective lenses and shall not have received a citation in the previous 12 months for operating a vehicle in a reckless manner or driving while impaired;
 - (C) possesses and provides with their application documentation of their completion of a defensive driving course that has been approved by the National Safety Council; and
 - (D) has received a certification examination score of at least 75 percent after completing all eight classroom-hours of the North Carolina Department of Transportation Oversize/Overweight Load Escort Vehicle Operator Certification Program. The program is offered by the North Carolina Community College System.

(c) Upon completion of the requirements set forth in this Rule, the Department shall issue a certificate that provides recognition of completion of the escort vehicle operator certification program. The certificate shall be effective for four years from the issue date and reissued upon completion of a current escort certification program examination administered by Department training providers.

(d) An authorized operator's certification shall be revoked during its effective period upon any of the following occurrences:

- (1) failure to maintain a valid driver's license without restrictions other than for corrective lenses; or
- (2) failure to operate a motor vehicle safely as evidenced by receiving a conviction for operating a vehicle in a reckless manner, driving while impaired, or other evidence that the operator performed their escort duties in a manner likely to cause an accident, personal injury, or damage to property.

(e) If certification is revoked pursuant to this Rule, subsequent certification as an Escort Vehicle Operator shall require reapplication, satisfaction of program prerequisites, and requalification through the certification program.

(f) An individual who has had his or her certificate revoked may make written appeal within 15 days following notification of the adverse action to the Secretary of Transportation for review of the revocation. The Secretary may affirm or set aside the revocation based on a review of the written appeal, the revocation decision, as well as any available documents, exhibits, or other evidence bearing on the appeal. The individual appealing shall be advised of the final disposition within 21 days following receipt of the appeal.

(g) The Secretary of Transportation or the Secretary's designee shall only recognize certificates of other states if those programs meet State objectives as outlined in this Rule and G.S. 20-119.

*History Note: Authority G.S. 20-119;
Temporary Adoption Eff. March 11, 2002;
Eff. April 1, 2003;
Amended Eff. April 1, 2009;
Readopted Eff. July 1, 2019.*

SECTION .0700 - HIGHWAY DESIGN BRANCH

19A NCAC 02D .0701 APPLICATIONS FOR INTERMITTENT ROAD CLOSING

History Note: *Authority G.S. 136-64.1(a);*
 Eff. July 1, 1978;
 Repealed Eff. October 1, 1993.

19A NCAC 02D .0702 HIGHWAY SYSTEM LIMITATIONS

The rules in this Section apply only to secondary roads on the state highway system.

History Note: *Authority G.S. 136-64.1(a);*
 Eff. July 1, 1978;
 Amended Eff. October 1, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0703 REVIEW AND APPROVAL AUTHORITY

History Note: *Authority G.S. 136-64.1(d);*
 Eff. July 1, 1978;
 Repealed Eff. October 1, 1993.

19A NCAC 02D .0704 APPLICATION PROCEDURES

Application for intermittent road closing shall be submitted to the Chief Engineer in the form of a resolution from the requesting agency and must include the following information plus any additional supportive data the agency deems pertinent to the request:

- (1) county where the road(s) is(are) located;
- (2) secondary road(s) to be affected by flooding (number and local name);
- (3) a plan and profile sheet of the affected secondary road(s) indicating the 5, 10, 25, 50 year and maximum flood stage elevations. The duration of flooding shall also be indicated showing the total time the roadway surface will be inundated for each storm frequency;
- (4) a statement that the applicant will reimburse the North Carolina Department of Transportation for all damages by reason of the flooding of the highway right of way;
- (5) a statement that the applicant shall be responsible for all damages, by reason of the flooding, to any public utilities upon the highway right of way; and
- (6) a request that a permit be granted to the applicant agency to allow the intermittent closing of the road.

History Note: *Authority G.S. 136-64.1(a); 136-64.1(b);*
 Eff. July 1, 1978;
 Amended Eff. December 1, 2012; October 1, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0705 REVIEW PROCEDURES

(a) Upon receipt of a completed application, the Chief Engineer shall acknowledge the receipt and initiate a preliminary investigation and review.

(b) In reviewing the application, the following factors shall be taken into consideration as a basis for approval or disapproval:

- (1) traffic count;
- (2) availability of an acceptable detour;
- (3) length of an acceptable detour;
- (4) type road surface (paved or unpaved);
- (5) school bus route – number of buses;
- (6) anticipated frequency of flooding;
- (7) anticipated duration of flooding;
- (8) cost estimates to raise the roadway above flood stage;
- (9) probability of future significant changes in traffic characteristics;
- (10) comments from affected utilities; and

- (11) comments from general public.
- (c) Under no condition shall a permit be issued to allow flooding which would isolate any home, business, or other commercial establishment.

History Note: Authority G.S. 136-64.1(d);
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0706 PUBLIC NOTICE

History Note: Authority G.S. 136-64.1(c);
Eff. July 1, 1978;
Repealed Eff. October 1, 1993.

19A NCAC 02D .0707 PERMIT FORM

The permit, if issued, shall be sent in the form of a letter to the applicant from the Chief Engineer.

History Note: Authority G.S. 136-64.1(d);
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0708 WARNING SIGNS

- (a) Upon approval of an application and the issuance of a permit for flooding, the Department of Transportation will erect the warning signs required by G.S. 136-64.1(d) on the secondary road(s) to advise the general public of the intermittent closing of the road(s) involved unless the applicant has notified the Department that it will erect the signs.
- (b) The applicant must reimburse the department for all costs associated with the fabrication, erection and maintenance of the warning signs.

History Note: Authority G.S. 136-64.1(d);
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0709 APPEAL PROCEDURES

In the event an application is denied by the Chief Engineer, the applicant shall have the right to appeal the decision to the full Board of Transportation pursuant to the procedures below:

Within 30 days after receiving notice from the administrator that the application has been denied, the applicant must submit to the Secretary of Transportation, by registered mail, a written appeal setting forth with particularity the facts upon which the appeal is based. After receiving this appeal, the secretary will notify the applicant of the date when the full Board of Transportation shall consider a review of the application.

History Note: Authority G.S. 136-64.1(d);
Eff. July 1, 1978;
Amended Eff. December 1, 2012; October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0800 - PREQUALIFICATION: ADVERTISING AND BIDDING REGULATIONS

19A NCAC 02D .0801 PREQUALIFYING TO BID: REQUALIFICATION

- (a) In order to ensure that contracts let pursuant to G.S. 136-28.1(a) are awarded to responsible bidders, prospective bidders and contractors shall comply with the rules set forth in this Section except as otherwise provided by law. For highway construction, maintenance and repair contracts other than those specified in G.S. 136-28.1(a), specific project prequalification requirements to satisfy Paragraph (c) of this Rule shall be specified in the bid documents for specific project contracts.

(b) In order to be eligible to contract with the Department pursuant to G.S. 136-28.1(a), all prospective bidders and subcontractors shall be prequalified with the Department to ensure that they are responsible bidders and reputable contractors capable of effectively and efficiently performing the work awarded to them.

(c) The requirements of prequalification are as follows:

- (1) Applicants shall demonstrate the necessary experience, knowledge, and expertise to safely perform and timely complete highway construction projects in which they bid or subcontract;
- (2) Applicants shall demonstrate that they have sufficient financial resources, including available equipment and qualified personnel, to adequately perform and timely complete highway construction projects in which they bid or subcontract;
- (3) Applicants shall demonstrate that they have the necessary knowledge and expertise to comply with all state and federal environmental laws relating to highway construction, maintenance and repair contracts; and
- (4) Applicants shall certify they are independent and not affiliated with other bidders of the same project.

(d) Bidders shall comply with all applicable laws regulating the practice of general contracting as contained in G.S. 87.

(e) Prospective bidders and subcontractors shall update their prequalification status annually and shall requalify every three years.

(f) A prequalified bidder or subcontractor must maintain compliance with the rules in this section at all times in order to be eligible to contract with the Department pursuant to G.S. 136.28.1(a). If at any time a bidder or subcontractor fails to comply with these rules, the Department shall disqualify the bidder or subcontractor from any further bidding until he is able to demonstrate compliance with these requirements by requalifying.

History Note: Authority G.S. 136-18(1); 136-28.1; 136-44.1; 136-45; 143B-350(f);
Eff. April 3, 1981;
Amended Eff. February 1, 2008; October 1, 1995; December 1, 1994; December 29, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0802 INVITATION TO BID

History Note: Authority G.S. 136-18(1); 136-28.1; 143B-350(g);
Eff. April 3, 1981;
Amended Eff. December 1, 1993;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0803 ADVERTISEMENT AND INVITATIONS FOR BIDS

(a) All projects shall be advertised by the Department of Transportation in newspapers having general circulation in the State of North Carolina four weeks prior to the bid opening as set forth in G.S. 143-129(b).

(b) On the date of advertisement, an invitation to bid shall be made available on the Department's website at connect.ncdot.gov/letting.

(c) The invitation to bid shall state the contract identification number and description of the projects to be let to contract, a general summary of the items and approximate quantities of work to be performed, and the time and place for the public opening and reading of the bids received. Information concerning the cost and the availability of bid documents shall also be provided in the invitation to bid.

(d) As a prerequisite for submitting a bid, prospective bidders shall sign up for the Interested Parties List for each project they intend to submit a bid on by providing their firm name, a contact name, and contact information via the Department's website at connect.ncdot.gov/letting. Only prospective bidders that have prequalified status pursuant to Rule .0801 of this Section and who sign up for the Interested Parties List will be eligible to bid.

History Note: Authority G.S. 136-28.1; 143-129;
Eff. April 3, 1981;
Amended Eff. February 1, 2008; December 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. September 1, 2022.

19A NCAC 02D .0804 CONTENTS OF PROPOSAL FORMS

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0805 COMBINATION BIDS

The Department may issue proposals for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The Department shall make awards on combination bids or separate bids to the best advantage of the Department. No combination bids, other than those specified by the Department in the proposals, shall be considered.

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Amended Eff. February 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0806 INTERPRETATION OF QUANTITIES IN PROPOSAL FORM

(a) The quantities appearing in the proposal are approximate only and shall be used for the comparison of bids. Payment to the contractor shall be made only for the actual quantities of the various items that are completed and accepted in accordance with the terms of the contract.

(b) When quantities are shown for items to be bid on a lump sum basis, these quantities are furnished for the convenience of bidders, and the Department shall not be responsible for, nor guarantee as correct, any quantity given.

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Amended Eff. February 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0807 EXAMINATION OF PLANS: SPECS: CONTRACT: AND SITE OF WORK

A bidder shall examine the site of the work contemplated, the plans and specifications, and the proposal therefor. A bidder or contractor shall make such independent investigation and examination as he deems necessary to satisfy himself as to conditions to be encountered in the performance of the work and with respect to possible local material sources, the quality and quantity of material available from such property, and the type and extent of processing that may be required in order to produce material conforming to the requirements of the contract. Upon submission of the bid, the Department shall deem that the bidder has completed the requirements set out in the bid documents as to the conditions to be encountered, the character, quality, and scope of work to be performed, the quantities of materials to be furnished and as to the conditions and requirements of the proposal and plans under which his bid is offered.

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Temporary Amendment Eff. March 15, 1982, for a period of 47 days to expire on May 1, 1982;
Amended Eff. February 1, 2008; October 1, 1993; March 1, 1984; May 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0808 PREPARATION AND SUBMISSION OF BIDS

19A NCAC 02D .0809 BID BOND OR BID DEPOSIT

History Note: Authority G.S. 136-18(1); 136-28.1; 143-129;
Eff. April 3, 1981;
Amended Eff. October 1, 1993; November 1, 1991, July 1, 1982;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0810 DELIVERY OF BIDS

(a) All bidders shall submit bids in accordance with the bid documents to the Department.

(b) Any bid not delivered within the time or manner specified in the bid documents shall not be accepted and shall be returned to the bidder unopened or, in the case of electronic bids, not read publicly.

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Temporary Amendment Eff. March 15, 1982, for a period of 47 days to expire on May 1, 1982;
Amended Eff. February 1, 2008; November 1, 1991; July 1, 1982; May 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0811 WITHDRAWAL OR REVISION OF BIDS

History Note: Authority G.S. 136-18(1); 136-28.1; 143-29.1;
Eff. April 3, 1981;
Amended Eff. October 1, 1993; November 1, 1991;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0812 RECEIPT AND OPENING OF BIDS

- (a) The Department shall open and read bids publicly at the time and place indicated in the invitation to bid. Bidders, their authorized agents, and other interested parties may be present.
- (b) Bid evaluation, including bid rejection, waiver of irregularities, or award shall be conducted in accordance with the terms of the bid documents.
- (c) Bid revisions by the Department or bid withdrawal by the bidder shall be made in accordance with the terms of the bid documents.

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. April 3, 1981;
Amended Eff. February 1, 2008; July 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0813 WITHDRAW OF BIDS - MISTAKE

19A NCAC 02D .0814 CORRECTION OF BID ERRORS

History Note: Authority G.S. 136-18(1); 143B-350(f);
Eff. May 1, 1984;
Amended Eff.; October 1, 1993; November 1, 1991;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0815 REJECTION OF BIDS

19A NCAC 02D .0816 DISQUALIFICATION OF BIDDERS

19A NCAC 02D .0817 CONSIDERATION OF BIDS

History Note: Authority G.S. 136-18(1); 136-28.1; 143B-350(f);
Eff. April 3, 1981;
Recodified from 19A NCAC 02D .0813 (Rule .0815);
Recodified from 19A NCAC 02D .0814 (Rule .0816);
Recodified from 19A NCAC 02D .0815 (Rule .0817);
Amended Eff. April 1, 1999; December 1, 1994; October 1, 1993; November 1, 1991; May 1, 1984; March 1, 1984;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0818 NON-COLLUSION CERTIFICATIONS

- (a) Every bidder shall furnish to the Department an unsworn certification made under penalty of perjury under the laws of the United States, a non-collusion certification at the time of bid, certifying that the bidder has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with his or her bid on the project.
- (b) A Non Collusion Certification form means a form provided on the Department's website, www.ncdot.gov, for execution by the bidding prequalified contractor certifying that:

- (1) neither the individual, nor any official, agent, or employee has entered into any agreement, participated in any collusion, or otherwise taken any action that is in restraint of free competitive bidding in connection with any bid or contract;
- (2) the bidder has not been convicted of violating G.S. 133-24 within the last three years; and
- (3) the bidder intends to do the work with its own employees or subcontractors and the bid is not for the benefit of another contractor.

(c) In the Non Collusion Certification form, the prospective bidder shall certify his or her debarment status under penalty of perjury under the laws of the United States. In the event the prospective bidder cannot certify that he or she is not disbarred, the prospective bidder shall provide a written explanation, which the Department shall review and evaluate to determine if the bidder is prequalified, according to the requirements set out in Rule .0801 of this Section, for bidding, contracting, or subcontracting on Department projects.

History Note: Authority G.S. 136-18(1); 136-28.1; 133-30;
 Eff. April 3, 1981;
 Recodified from 19A NCAC 2D .0816;
 Amended Eff. February 1, 2008; October 1, 1993; November 1, 1991; October 1, 1991; July 1, 1982;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
 Amended Eff. July 1, 2017.

19A NCAC 02D .0819 AWARD OF CONTRACT

History Note: Authority G.S. 136-18(1); 136-28.1;
 Eff. April 3, 1981;
 Recodified from 19A NCAC 2D .0817;
 Amended Eff. October 1, 1993; November 1, 1991;
 Repealed Eff. February 1, 2008.

19A NCAC 02D .0820 CANCELLATION OF AWARD

The Board of Transportation may rescind the award of any contract at any time before the receipt of the properly executed contract bonds from the successful bidder.

History Note: Authority G.S. 136-18(1); 136-28.1; 143B-350(f);
 Eff. April 3, 1981;
 Recodified from 19A NCAC 2D .0818;
 Amended Eff. October 1, 1993; November 1, 1991;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0821 RETURN OF BID BOND OR BID DEPOSIT

19A NCAC 02D .0822 CONTRACT BONDS

19A NCAC 02D .0823 EXECUTION OF CONTRACT

19A NCAC 02D .0824 FAILURE TO FURNISH CONTRACT BONDS

History Note: Authority G.S. 44A-33; 136-18(1); 136-28.1;
 Eff. April 3, 1981;
 Recodified from 19A NCAC 2D .0819 (Rule .0821);
 Recodified from 19A NCAC 2D .0820 (Rule .0822);
 Recodified from 19A NCAC 2D .0821 (Rule .0823);
 Recodified from 19A NCAC 2D .0822 (Rule .0824);
 Amended Eff. December 1, 1993; December 1, 1992; November 1, 1991;
 Repealed Eff. February 1, 2008.

19A NCAC 02D .0825 CONFIDENTIALITY OF COST ESTIMATES

All cost estimates prepared by the Department for the purpose of comparing bids shall be confidential and not disclosed until after the opening of bids.

History Note: Authority G.S. 133-33;
Eff. September 1, 1981;
Amended Eff. May 1, 1983;
Recodified from 19A NCAC 2D .0823;
Amended Eff. February 1, 2008; February 1, 1995; October 1, 1993; October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0826 AWARD LIMITS ON MULTIPLE PROJECTS

History Note: Authority G.S. 136-18(1);
Eff. July 1, 1983;
Recodified from 19A NCAC 2D .0824;
Repealed Eff. November 1, 1991.

19A NCAC 02D .0827 SUBSURFACE INFORMATION

- (a) If a subsurface investigation report is available on a project, a copy may be obtained from the Department by the prospective bidders upon request.
- (b) The subsurface investigation is made for the purpose of study, planning, and design, and not for construction or pay purposes. The various field boring logs, rock cores, and soil test data available may be reviewed or inspected in Raleigh at the office of the Geotechnical Unit. Neither the subsurface investigation report nor the field boring logs, rock cores, or soil test data shall be part of the contract.
- (c) General soil and rock strata description and indicated boundaries are based on geotechnical interpretation of all available subsurface data and may not necessarily reflect the actual subsurface conditions between borings or between sample strata within the borehole. The laboratory sample and the in situ (in-place) test data can be relied on only to the degree of reliability inherent in the test. The observed water levels or soil moisture conditions indicated in the subsurface investigation are as recorded at the time of the investigation. These water levels or soil moisture conditions may vary considerably with time according to climatic conditions including temperature, precipitation and wind, as well as other nonclimatic factors.
- (d) Details shown on the subsurface investigation reports are preliminary only; the final design details may be different. For bidding and construction purposes, the contract contains the documents for final design information on this project. The Department shall not warrant or guarantee the sufficiency or accuracy of the investigation made, nor the interpretations made or opinions of the Department as to the type of materials and conditions that may be encountered. The bidder or subcontractor shall make such independent subsurface investigations as he deems necessary to satisfy himself as to conditions to be encountered on this project. The contractor shall have no claim for additional compensation or for an extension of time for any reason resulting from the actual conditions encountered at the site differing from those indicated in the subsurface information.

History Note: Authority G.S. 136-18(1); 143B-350(f)(3);
Eff. March 1, 1984;
Amended Eff. April 1, 1984;
Recodified from 19A NCAC 2D .0825;
Amended Eff. February 1, 2008; October 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .0828 COMPUTER BID PREPARATION

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. November 1, 1991;
Amended Eff. October 1, 1993;
Repealed Eff. February 1, 2008.

19A NCAC 02D .0829 CONTRACT OFFICER

History Note: Authority G.S. 136-18(1); 136-28.1;
Eff. November 1, 1991;
Repealed Eff. October 1, 1993.

19A NCAC 02D .0830 DEFINITIONS

This Section establishes the Department's rules for letting of contracts pursuant to G.S. 136-28.1(a). For purposes of this Section, the following definitions shall apply:

- (1) "Bid" means the offer of a bidder on the proposal furnished by the Department to perform work and furnish labor and materials at the prices quoted.
- (2) "Bidder" means an individual, partnership, firm, corporation, or joint venture formally submitting a bid for the work contemplated.
- (3) "Bid documents" means the package of materials, in paper or electronic form, containing all project specific contract information including the plans and proposals furnished by the Department.
- (4) "Contract" means the executed agreement between the Department of Transportation and the successful bidder, covering the performance of the work and the compensation for work.
- (5) "Department" means the North Carolina Department of Transportation.
- (6) "Debarment certification form" means a certification form provided by the Department for execution by the prospective bidder or subcontractor certifying that he is not, nor has been, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from certain transactions and has not been charged, indicted or convicted of debarment related activities and shall otherwise assume debarment certification responsibilities as part of any contract with the Department.
- (7) "Invitation to bid" means the notification that bids will be received for the construction of specific projects.

History Note: Authority G.S. 136-28.1;
Eff. October 1, 1993;
Amended Eff. February 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0900 - REGULATIONS FOR INFORMAL CONSTRUCTION AND REPAIR CONTRACTS

19A NCAC 02D .0901 DELEGATION TO SECRETARY

History Note: Authority G.S. 136-18(1); 136-28.1; 136-44.1; 136-45; 143-350(f);
Eff. February 1, 1987;
Repealed Eff. December 1, 1993.

19A NCAC 02D .0902 CONTRACT REQUIREMENTS

History Note: Authority G.S. 136-18(1); 136-28.1; 136-44.1; 136-45; 143-350(f);
Eff. February 1, 1987;
Repealed Eff. November 1, 1991.

SECTION .1000 - ADOPT-A-HIGHWAY PROGRAM

19A NCAC 02D .1001 PURPOSE

The North Carolina Department of Transportation's Adopt-A-Highway Program exists to support the Department's litter abatement efforts.

History Note: Authority G.S. 143B-350;
Eff. November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .1002 DEFINITIONS

For purposes of rules in this Section, the following definitions shall apply.

- (1) "Adoption" shall mean the agreement by an individual or group to pick up litter and trash from a specific section of highway right-of-way.

- (2) "Adopt-A-Highway Program" shall mean the public participation program of the Department designed to assist in the control and reduction of litter on state-maintained highway right-of-way.
- (3) "Adopted Section" shall mean the portion, generally two miles in length, of state-maintained highway right-of-way approved for adoption by volunteers.
- (4) "Authorized Representative" shall mean, in the case of an adoption by a group, the group members acting on behalf of the group for the purpose of adopting a section of highway.
- (5) "Department" shall mean the North Carolina Department of Transportation.
- (6) "Program" shall mean the Adopt-A-Highway Program of the North Carolina Department of Transportation.
- (7) "Program Director" shall mean the Director of Beautification Programs of the North Carolina Department of Transportation who has oversight responsibility for the Program.
- (8) "Program Participants" shall mean the individuals or groups who have adopted sections of highways. Civic and non-profit organizations, and commercial and private enterprises may be selected as groups for the purpose of adopting a section of highway.

History Note: Authority G.S. 143B-350;
 Eff. November 1, 1991;
 Amended Eff. November 1, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .1003 PARTICIPATION IN THE PROGRAM

- (a) The adoption of a section of highway is a privilege in consideration for public service that may be granted by the Department to individuals or groups who would assist the Adopt-A-Highway Program in achieving its purpose.
- (b) Only individuals or groups determined by the Department to exhibit in good faith the willingness and the capacity to perform the responsibilities of the Program will be allowed to adopt a highway. The Department may refuse to grant a request to adopt a section of highway if, in its opinion, granting the request would jeopardize the Program, be counterproductive to its purpose as set out in Rule 02D.1001 of this Section, or create a hazard to the safety of Department employees or the public. Highway safety is a principal concern in all decisions related to the Program. Program participants shall not be discriminated against on the basis of religion, race, national origin, sex or handicap (except where the handicap would affect the individual's safe participation in the Program) with respect to their participation in the Program.
- (c) The Division Engineer or his designee shall approve applications of individuals or groups applying to participate in the Program. A list of the newly approved participants, by division, shall be submitted to the Program Director for review on the first of each month. The approval of the Division Engineer is final unless the applications are disapproved by the Program Director by the first day of the next calendar month. If the Division Engineer has any uncertainty regarding the qualifications of the individual or group applying to the Program, the Division Engineer shall submit the application and all accompanying documents to the Program Director for final action.
- (d) Agreements of adoption shall be for a period of four years.
- (e) Each person participating in the Program shall execute a written release of the Department, its officials, employees and agents from any liability arising out of his or her participation in the Program. In the case of a minor, such release shall be executed by a parent or guardian.
- (f) Program participants may put recyclable plastic, cans, and glass in blue bags which are furnished by the department and may keep the proceeds received for the recycled materials.

History Note: Authority G.S. 136-140.1; 143B-350;
 Eff. November 1, 1991;
 Amended Eff. August 1, 2002; November 1, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .1004 AGREEMENT

Any individual or group desiring to participate in the Adopt-A-Highway Program shall submit an agreement to the Division Engineer of the Division in which the section of highway proposed for adoption is located. The agreement shall be in the form prescribed by the Department and shall contain at a minimum the following information:

- (1) The highway section to be adopted, as nearly as it can be described;
- (2) The dates of the requested adoption;
- (3) The approximate number of people in the group who will be participating in each cleanup;

- (4) The name, telephone number, and complete street address of the authorized representative for the group and of all members of the group who will actually participate in the Program;
- (5) An acknowledgement by the individual or group of the hazardous nature of the work involved by participating in the Program;
- (6) An acknowledgement that the members of the group agree jointly to be bound by and comply with the terms and conditions set forth in the agreement; and
- (7) The signatures of the Division Engineer, or his designee, and the Authorized Representative of the Program Participant.

*History Note: Authority G.S. 143B-350;
Eff. November 1, 1991;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02D .1005 RESPONSIBILITIES OF PROGRAM PARTICIPANTS AND DEPARTMENT

(a) Any individual or group participating in the Adopt-A-Highway Program shall be subject to the following requirements and responsibilities:

- (1) Appointing or selecting an authorized representative to act on behalf of the group;
- (2) Ensuring that each person participating in the program attend a safety meeting and sign a statement acknowledging that they have attended the safety meeting and viewed the Department's safety video before participating in the cleanup of the adopted section;
- (3) Obeying and abiding by the rules adopted by the Department;
- (4) Picking up litter a minimum of four times a year, and as often as necessary to maintain a clean right-of-way;
- (5) Ensuring that each individual participant of the group wears a Department approved safety vest or shirt during the pickup;
- (6) Ensuring that each individual participant of the group wear clothing that will not impair vision or movement during the pickup;
- (7) Ensuring that attire that might divert the attention of motorists is not worn during clean up activities;
- (8) Furnishing adequate supervision by one or more adults 21 years of age or older for groups which have participants 12 - 17 years of age;
- (9) Ensuring that no one under the age of 12 is allowed to participate in the clean up activities;
- (10) Prohibiting participants from either possessing or consuming alcoholic beverages or other drugs during clean up activities;
- (11) Ensuring that no signs, posters, or other display material that might distract motorists are brought to the adopted section by group members during or between clean ups;
- (12) Filing after actions reports as prescribed by the Department; and
- (13) Ensuring that all provisions of the agreement are fully performed.

(b) The Department's participation in the Program will include the following:

- (1) Working with the group to determine the specific section of state right-of-way to be adopted;
- (2) Providing safety vests, trash bags and safety information;
- (3) Erecting two signs, one at each end of the adopted section, with the group's name or acronym displayed. The size, shape and graphic design of the sign shall be in accordance with the Adopt-A-Highway sign policy as approved by the Secretary of Transportation. In the case of theft, vandalism or destruction of a highway sign, the Department shall provide one free replacement of the sign. Thereafter, any replacement sign shall be paid for by the Program Participant;
- (4) Removing filled trash bags;
- (5) Removing litter from the adopted section under unusual circumstances, i.e., removing large, heavy or hazardous items;
- (6) Monitoring to ensure the objectives of litter abatement are being met; and
- (7) Monitoring to evaluate the overall operation of the Program and to gauge its effectiveness.

*History Note: Authority G.S. 143B-350;
Eff. November 1, 1991;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02D .1006 GENERAL LIMITING CONDITIONS

- (a) The Department shall determine which highways are eligible for adoption.
- (b) The Department shall determine the designation of the section of right-of-way to be adopted. The Department will consider community sentiment in determining the designation of the section of right-of-way to be adopted.
- (c) State roads in residential neighborhoods will not normally be available for adoption. Exceptions include roads adopted by the neighborhood residents. Underlying fee owners' objections to a specific adoption shall be considered.
- (d) If any of the Program's actions are determined to be contrary to any statutory restrictions, or any restrictions on the use of appropriated funds for political activities, the Department may take any necessary remedial action, including, but not limited to, the removal of the erected signs displaying the Program Participant's name or acronym or the termination of the adoption agreement.
- (e) Names, titles or words placed on Adopt-A-Highway signs shall be approved by the North Carolina Department of Transportation.

History Note: Authority G.S. 143B-350;
Eff. November 1, 1991;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .1007 MODIFICATION/RENEWAL/TERMINATION OF THE AGREEMENT

- (a) The Adopt-A-Highway agreement may be modified in scope or altered in any other manner at the discretion of the Department.
- (b) Program participants shall have the option of renewing the agreement, subject to the approval of the Department and the continuation of the Program by the Department. Information concerning Program participants is to be updated at the time of renewal.
- (c) The Department may terminate the agreement or remove the Adopt-A-Highway signs bearing the Program participant's name or acronym if it finds and determines that the participant is not meeting the terms and considerations of the agreement, that the participant is acting contrary to the rules of the Program, that the adoption is proving to be counter productive to the Program's purpose, that undesirable results such as increased litter, vandalism or sign theft, are resulting from the adoption, that Program participants have engaged in irresponsible conduct at the adopted section which would bring discredit upon the State, or that other good cause exists to terminate the agreement or remove the Adopt-A-Highway sign.

History Note: Authority G.S. 143B-350;
Eff. November 1, 1991;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02D .1008 TERMINATION OF THE PROGRAM

History Note: Authority G.S. 136-18(10);
Eff. November 1, 1991;
Repealed Eff. November 1, 1993.

SECTION .1100 - DISADVANTAGED BUSINESS ENTERPRISE, MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE PROGRAMS FOR HIGHWAY AND BRIDGE CONSTRUCTION CONTRACTS

19A NCAC 02D .1101 PURPOSE AND SCOPE

- (a) The Department shall ensure that Disadvantaged Business Enterprises (DBE), have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.
- (b) The Department shall ensure that Disadvantaged Minority-owned Business Enterprises (MBE) and Disadvantaged Women-owned Business Enterprises (WBE) may have the opportunity to participate in the performance of contracts financed with non-Federal funds.
- (c) 49 C.F.R. Part 23, Participation of Disadvantaged Business Enterprise in Airport Concession, and Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, are incorporated by

reference, including all subsequent amendments and editions. 49 C.F.R. 23 and 26 are available at no cost by accessing <https://www.govinfo.gov/>.

(d) The DBE/UCP Program Manager may be contacted by phone at 919-707-2800.

(e) The Department DBE, MBE, and WBE directory may be accessed, at no cost to the public, by visiting <https://www.ebs.nc.gov/VendorDirectory/default.html>.

(f) Unified Certification Applications may be obtained at no cost by accessing <https://www.ncdot.gov>, or from the DBE/UCP Program Manager, 919-707-2800. The substantive requirements of the Unified Certification Application are detailed at 19A NCAC 02D .1103.

History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

19A NCAC 02D .1102 DEFINITIONS

In addition to the terms defined in G.S. 136-28.4, the following terms shall apply for purposes of this Section:

- (1) Disadvantaged Business Enterprise shall have the same meaning as provided in 49 C.F.R. 26.5(2).
- (2) Disadvantaged Minority-owned Business shall have the same meaning as a Disadvantaged Business Enterprise.
- (3) Disadvantaged Women-owned Business shall have the same meaning as a Disadvantaged Business Enterprise.
- (4) Minority Business Enterprise shall have the same meaning as a Disadvantaged Business Enterprise.
- (5) Women Business Enterprise shall have the same meaning as Disadvantaged Business Enterprise.
- (6) The Department's Unified Certification Program (UCP) is responsible for certification of Disadvantaged Business Enterprises in accordance with in 49 C.F.R. Part 26.

History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

19A NCAC 02D .1103 CERTIFICATION OF FIRMS

(a) In order to be certified by the Department as a Disadvantaged Business Enterprise, disadvantaged Minority-owned Business Enterprise, or disadvantaged Women-owned Business Enterprise, the business enterprise shall submit a Unified Certification Application and supporting documentation to the Department. Information on Unified Certification Applications and its requirements may be found at 49 C.F.R. Appendix F to Part 26 or by accessing https://connect.ncdot.gov/business/SmallBusiness/Disadvantaged%20Businesses%20Documents/DBE_1b.pdf. Please send applications to NCDOT DBE Certification, 1511 MAIL SERVICE CENTER, RALEIGH, NC 27699-1511.

(b) Upon Receipt of the application, the Department shall review the application in accordance with the applicable certification standards and procedures as set forth in 49 C.F.R. 23.31 and 49 C.F.R. 26.61 through 26.91.

History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

19A NCAC 02D .1104 RENEWAL OF CERTIFICATION

Each firm certified as a Disadvantaged Business Enterprise, disadvantaged Minority-owned Business Enterprise, or disadvantaged Women-owned Business Enterprise shall satisfy the annual affidavit requirements of 49 C.F.R. 26.83(i).

History Note: Authority G.S. 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

19A NCAC 02D .1105 CHANGE IN OWNERSHIP OR CONTROL

Pursuant to, and in accordance with, 49 C.F.R. 26.83(i), any time a firm certified with the Department has a change of ownership, control, business size, type of work, or other factors that affect the firm's eligibility as a Disadvantaged Business Enterprise, disadvantaged Minority-owned Business Enterprise, or disadvantaged Women-owned Business Enterprise, the firm shall inform the Department in writing within 30 days of the change.

*History Note: Authority G.S. 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.*

19A NCAC 02D .1106 DECERTIFICATION

If the Department finds a firm in non-compliance with the eligibility requirements of 49 C.F.R. 23 or 26, then that firm shall be suspended or decertified in accordance with 49 C.F.R. 23.31 through 23.39, if the firm is a Disadvantaged Business Enterprise for Airport Concessions, or 49 C.F.R. 26.87 and 26.88 for all other firms.

*History Note: Authority G.S. 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.*

19A NCAC 02D .1107 APPEALS OF DENIAL OF CERTIFICATION

(a) Any Minority Business Enterprise firm or Women Business Enterprise firm denied certification or decertified may file an appeal of that action to the Department's DBE/UCP Program Manager.

- (1) The appeal shall be received by the Department within 30 calendar days of the notice of denial or decertification. Upon receipt of the appeal, the DBE/UCP Program Manager shall schedule a hearing for the firm with the Department's Disadvantaged Business Enterprise, Minority Business Enterprise, Women Business Enterprise Appeals Committee.
- (2) If the denial of certification or decertification is upheld by the Department's appeals committee, the Minority Business Enterprise firm or Women Business Enterprise firm may file a written appeal to the Secretary of Transportation within 30 days of the committee's decision.
- (3) If the denial of certification is upheld by the Secretary of Transportation, the decision shall be final.

(b) Any Disadvantaged Business Enterprise firm denied certification or decertified may file an appeal of that action as follows:

- (1) The Disadvantaged Business Enterprise firm may file an appeal to the Department's DBE/UCP Program Manager. The appeal shall be received by the Department within 30 calendar days of the notice of denial. Upon receipt of the appeal, the DBE/UCP Program Manager shall schedule a hearing for the firm with the Department's appeals committee.
- (2) The Disadvantaged Business Enterprise firm may file a written appeal within 90 days of notice of appeal directly to the U.S. Department of Transportation, Office of Civil Rights in accordance with Parts 23 and 26 of Title 49 of the Code of Federal Regulations.
- (3) The appeals may be filed simultaneously.

*History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.*

19A NCAC 02D .1108 GOALS

(a) The Department shall perform an analysis to determine the availability of eligibility, of Disadvantaged Business Enterprise, Minority-owned Business Enterprise, and Women-owned Business Enterprise firms relative to all businesses available to participate in Department projects in accordance with 49 C.F.R. Part 26. Goals for Disadvantaged Business Enterprise, Minority-owned Business Enterprise, and Women-owned Business Enterprise firms shall be established in accordance with 49 C.F.R. 26.41 through 26.55, and G.S. 136-28.4(b1). The goal or goals shall be prescribed in the project proposal as a percent of the bidder's construction bid price.

(b) A contractor shall ensure that eligible firms participate in at least the percentage of the contract as required by the project proposal. For purposes of these Rules, "a contractor" is any party who participate in a State funded or US Department of Transportation-assisted highway, transit, or airport project through a contract or subcontract at any tier.

History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

19A NCAC 02D .1109 COUNTING PARTICIPATION TOWARD MEETING THE GOAL

Participation of Disadvantaged Business Enterprise, disadvantaged Minority-owned Business Enterprise, and Women-owned Business Enterprise firms for federally funded and non-federally funded projects shall be counted in accordance with 49 C.F.R. 26.41 through 26.55.

History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

19A NCAC 02D .1110 GOOD FAITH REQUIREMENTS FOR ESTABLISHED GOALS

A contractor who does not meet the goals established in the project shall comply with the good faith requirements as set forth in 49 C.F.R. Appendix A Part 26.

History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

19A NCAC 02D .1111 REPLACEMENT OF CERTIFIED FIRMS

If a certified firm, utilized to meet the goal established pursuant to 49 C.F.R. Part 26, is replaced, then the replacement shall comply with 49 CFR. 26.53.

History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

19A NCAC 02D .1112 REPLACEMENT OF A FIRM REMOVED BY DECERTIFICATION

If a certified firm, utilized to meet the goal established pursuant to 49 C.F.R. Part 26, is decertified, and is replaced. The replacement shall comply with 49 C.F.R. 26.53.

History Note: Authority G.S. 136-28.4; 143B-348;
Eff. April 30, 1997;
Amended Eff. February 1, 2008;
Readopted Eff. April 1, 2019.

SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS

SECTION .0100 - TORT CLAIMS

19A NCAC 02E .0101 CLAIMS INVOLVING THE DIVISION OF HIGHWAYS

(a) To assist persons in processing a claim against the State of North Carolina as a result of accidents involving division of highways' marine vessels and claims involving accidents on facilities maintained by the division of highways, Form 141-- "Statement of Claimant" is made available.

(b) Form 141-- "Statement of Claimant" is provided by the division of highways to be completed by the claimant, providing such information as the name and address of the damaged party and other information relative to the claim.

(c) Copies of Form 141-- "Statement of Claimant" may be obtained from the Chief Engineer - Operations, or any highway division engineer, highway district engineer, or ferry division headquarters office.

Note: See G.S. 143-291 through -299.1 on "Tort Claims against the State Departments and Agencies" for the procedures for complaints.

*History Note: Authority G.S. 143-291 to 299; 143-299.1; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0102 ACCIDENTS INVOLVING STATE-OWNED VEHICLES OR EQUIPMENT

(a) Division of Highways' vehicles or equipment are covered by liability insurance with the Travelers Insurance Companies. This coverage includes any type of claim that is related to an accident involving a self-propelled vehicle. In addition to accidents, involving the collision of a state-owned vehicle and privately-owned property, other examples of coverage are:

- (1) paint spraying from pavement marking machines;
- (2) paint spraying from air compressors;
- (3) asphalt spray from distributors;
- (4) sand blasting;
- (5) objects falling from vehicles;
- (6) objects thrown by mowers, etc.

(b) Claimants may contact Travelers Insurance Companies at:

The Travelers Insurance Companies
P.O. Box 220379
Charlotte, North Carolina 28222.

*History Note: Authority G.S. 143-291 to 299; 143-299.1; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0200 – OUTDOOR ADVERTISING

19A NCAC 02E .0201 DEFINITIONS FOR OUTDOOR ADVERTISING CONTROL

In addition to the definitions set forth in G.S. 136-128, of Article 11 of North Carolina General Statutes, also known as the Outdoor Advertising Act, the following definitions shall apply for purposes of the Rules of this Section:

- (1) Abandoned Sign: An outdoor advertising sign structure shall be considered abandoned if it has no lease or meets one of the following criteria for a period of 12 months:
 - (a) is not maintained in accordance with the Rules of this Section; or
 - (b) is without a message, contains out-of-date advertising matter, or is significantly damaged.
- (2) Automatic Changeable Facing Sign: A sign, display, or device that changes the message or copy on the sign facing electronically by digital means or movement or rotation of panels or slats.
- (3) Blank Sign: A sign structure that contains no message or only a telephone number advertising its availability.
- (4) Comprehensive Zoning: Zoning by local zoning authorities of each parcel of land under the jurisdiction of the local zoning authority placed in a zoning classification pursuant to a comprehensive plan, or reserved for future classification. A comprehensive plan means a development plan that guides decisions of the local zoning authority relating to zoning and the growth and development of the area. Even if comprehensively enacted, the following criteria shall determine whether a zoning is enacted to permit outdoor advertising:

- (a) the zoning classification provides for commercial or industrial activity only incidental to other primary land uses;
 - (b) the commercial or industrial activities are permitted only by variance or special exceptions; or
 - (c) the zoning constitutes spot or strip zoning. "Spot zoning" or "strip zoning" is zoning designed primarily for the purpose of permitting outdoor advertising signs in an area that would not otherwise permit outdoor advertising.
- (5) Conforming Sign: A sign legally erected in a zoned or unzoned commercial or industrial area that meets all requirements of the rules of this Section and Article 11 of Chapter 136 of NC General Statutes.
- (6) Controlled Access Highway: A highway on which entrance and exit accesses are allowed only at designated points.
- (7) Controlled Route: Any interstate or federal-aid primary highway as it existed on June 1, 1991, and any highway that is or becomes a part of the National Highway System (NHS).
- (8) Destroyed or Significantly Damaged Sign: A sign that has sustained damage by more than 50 percent as determined by the criteria set forth in Rule .0225(f) of this Section by factors other than tortious or criminal acts, including vandalism. An example of a destroyed sign includes a sign damaged by wind.
- (9) Dilapidated Sign: A sign that fails to be in the same form as originally constructed, or that fails to perform its intended function of conveying a message. Characteristics of a dilapidated sign include structural support failure, a sign not supported as originally constructed, panels or borders missing or falling off, intended messages cannot be interpreted by the motoring public, or a sign that is blocked by overgrown vegetation outside the highway right of way.
- (10) Directional Sign: A sign that contains navigational information about public places owned or operated by federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation. Directional and other official signs and notices include:
 - (a) Public Service Sign: A sign located on a school bus stop shelter that meets all the following requirements:
 - (i) identifies the donor, sponsor or contributor of a shelter;
 - (ii) is located on a school bus shelter that is authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved;
 - (iii) contains only safety slogans that shall occupy not less than 60 percent of the area of the sign;
 - (iv) does not exceed 32 square feet in area; and
 - (v) contains not more than one sign facing in any one direction.
 - (b) Public Utility Sign: A warning sign, informational sign, notice or other marker erected and maintained by publicly or privately owned utilities.
 - (c) Service Club and Religious Notices: Any sign or notice that relates to meetings of nonprofit service clubs, charitable associations, or religious services. These signs shall not exceed eight square feet in area.
- (11) Discontinued Sign: A sign no longer in existence or a sign of which any part of a sign face is missing more than 180 days. In some cases, a sign may be both discontinued and dilapidated.
- (12) Fully Controlled Access Highway: A divided highway for through traffic that persons, including the owners or occupants of abutting lands have no right of access except at the points and in the manner determined by the Department of Transportation.
- (13) Highway: A highway that is designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System. A highway shall be a part of the National Highway System on the date the location of the highway has been approved by federal authorities.
- (14) Lease: An agreement by which possession or use of land or interests therein is given for a specified purpose and period of time, and which is a contract under North Carolina laws.
- (15) Main Traveled Way or Traveled Way: Part of a highway on which through traffic is carried, exclusive of paved shoulders. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a traveled way. It does not include frontage roads, turning roadways, or parking areas.
- (16) Nonconforming Sign: A non-conforming sign means as defined in G.S. 136-128(2a).

- (17) Official Sign or Notice: A sign or notice erected and maintained by public officers or public agencies within their territorial or zoning jurisdictions and pursuant to and in accordance with federal, State or local law for the purpose of carrying out an official duty or responsibility. Official signs and notices include historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies.
- (18) On-premise Sign: A sign that advertises the sale or lease of property upon which it is located or that advertises an activity conducted or product for sale on the property upon which it is located. An on-premise sign may not be converted to a permitted outdoor advertising sign unless it meets all rules in effect at the time of the conversion request. An on-premise sign shall be located on property contiguous to the property on which the activity is located. Tracts not considered to be contiguous include:
 - (a) tracts of land separated by a federal, State, city, or public access maintained road;
 - (b) tracts of land not under common ownership; or
 - (c) tracts of land held in different estates or interests.
- (19) Parkland: Any publicly-owned land that is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.
- (20) Permit Holder: A permit holder is the sign owner and the entity whose name is on the approved outdoor advertising permit application as "Permit Holder or Sign Owner".
- (21) Salvageable Sign Components: Components of the original sign structure prior to the damage that can be repaired or replaced on site by the use of labor only. If any materials, other than nuts, bolts, nails or similar hardware, are required in order to repair a component, the component is not considered to be salvageable.
- (22) Scenic Area: Any area of particular beauty or historical significance as determined by the federal, State, or local official having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of beauty.
- (23) Scenic Byway: A scenic byway designated by the Board of Transportation, regardless of whether the route so designated was part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway that is or becomes a part of the National Highway System.
- (24) Sign: Any outdoor sign, sign structure, display, light, device, figure, painting, drawing, message, placard, poster, billboard, or other object which is designed, intended, or used to advertise or inform. A sign includes any of the parts or material of the structure, such as beams, poles, posts, and stringers, the only eventual purpose of which is to display a message or other information for public view. For purposes of these rules, the term "sign" and its definition shall be interchangeable with the following terms: outdoor advertising, outdoor advertising sign, outdoor advertising structure, outdoor advertising sign structure, sign structure, and structure.
- (25) Sign Not Conforming to State Standards: a sign which was legally erected but does not conform to the zoning, size, lighting, and spacing criteria established in Rule .0203 of this Section promulgated at a later date, or a sign which was legally erected but later fails to conform to the zoning, size, lighting, and spacing criteria established in Rule .0203 of this Section.
- (26) Sign Face: The part of the sign, including trim and background, that contains the message or informative contents.
- (27) Sign Location: A sign location is the latitude and longitude as determined by recreational grade global position system (GPS) equipment with imagery reference. The location shall be determined and listed on each outdoor advertising permit application by DOT personnel.
- (28) Sign Owner: A sign owner is the owner of the physical sign structure.
- (29) Unzoned Commercial or Industrial Area: An area that is not zoned by State or local law, regulation, or ordinance, and that is within 660 feet of the nearest edge of the right of way of the interstate or federal-aid primary system or NHS, in which there is at least one commercial or industrial activity that meets all requirements specified in Rule .0203(5) of this Section.
- (30) Zoned Commercial or Industrial Area: An area that is zoned for business, industry, commerce, or trade pursuant to a State or local zoning ordinance or regulation. Local zoning action shall be taken pursuant to the state's zoning enabling statute or constitutional authority. Zoning that is not part of comprehensive zoning or that is created to permit outdoor advertising structures shall not be recognized as valid zoning for purposes of the Outdoor Advertising Control Act and the rules promulgated thereunder, unless the land is developed for commercial or industrial activity as defined in Rule .0203(5) of this Section.

History Note: Authority G.S. 136-130;

Eff. July 1, 1978;

Amended Eff. August 1, 2000; December 1, 1993; March 1, 1993; December 1, 1990; January 1, 1984;

Readopted Eff. January 1, 2021.

19A NCAC 02E .0202 AGREEMENT

The Department of Transportation has entered into an agreement with the United States Department of Transportation relating to the control of outdoor advertising in areas adjacent to the interstate and federal-aid primary highway systems or NHS in accordance with Section 131 (b) of Title 23 of the United States Code and Part 750 of Title 23 of the Code of Federal Regulations. To the extent that these federal regulations and subsequent amendments and editions are more restrictive than North Carolina Department of Transportation rules, these federal regulations control and are expressly incorporated by reference as part of this section. A copy of this agreement may be obtained from the Office of the Chief Engineer free of charge. Copies of Title 23 of the United States Code of Federal Regulations are available at the following website: <https://www.ecfr.gov>.

History Note: Authority G.S. 136-138; 143B-350(f); 150B-21.6;

Eff. July 1, 1978;

Amended Eff. December 1, 2012; August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981;

Readopted Eff. January 1, 2021.

19A NCAC 02E .0203 OUTDOOR ADVERTISING ON CONTROLLED ROUTES

Except for those signs set forth in G.S. 136-129(1), (2), (2a), and (3), this Rule shall apply to the erection and maintenance of outdoor advertising signs in all zoned and unzoned commercial and industrial areas located within 660 feet of the nearest edge of the right of way of the controlled route.

- (1) Signs shall be configured and sized as follows:
 - (a) the maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and maximum length of 60 feet. All measurements shall include any border and trim, but shall exclude the base or apron, embellishments, embellished advertising space, supports, and other structural members;
 - (b) the maximum size limitations shall apply to each side of a sign structure. Signs placed back-to-back, side-to-side, or in V-type construction with no more than two displays to each facing shall be considered as one sign. The maximum size limitations shall apply to each facing of a sign structure;
 - (c) Side-by-side signs shall be structurally tied together to be considered as one sign structure;
 - (d) V-type and back-to-back signs shall not be considered as one sign if located more than 15 feet apart at their nearest points;
 - (e) the height of any portion of the sign structure, excluding cutouts or embellishments, as measured vertically from the adjacent edge of pavement of the main traveled way shall not exceed 50 feet; and
 - (f) Double-decking of sign faces so that one is on top of the other is prohibited.
- (2) Signs shall be spaced as follows:
 - (a) Signs shall not be located in a manner to obscure, or otherwise physically interfere with the effectiveness of any traffic sign, signal, or device, or to obstruct or physically interfere with a driver's view of approaching, merging, or intersecting traffic;
 - (b) Controlled Routes with Fully Controlled Access:
 - (i) No two structures shall be spaced less than 500 feet apart;
 - (ii) Outside the corporate limits of towns and cities, no structure may be located within 500 feet of an interchange, collector distributor, safety rest area or information center regardless of whether the main traveled way is within or outside the town or city limits. The 500 feet spacing shall be measured from the point at which the pavement widens for a ramp and the direction of measurement shall be along the edge of pavement away from the interchange, collector distributor, safety rest area or information center. In those interchanges where a quadrant does not have a ramp, the 500 feet for the quadrant without a ramp shall be measured along the outside edge of main traveled way for highways as follows:

- (A) Where a route is bridged over a fully controlled access highway, the 500 foot measurement shall begin on the outside edge of pavement of the fully controlled access highway at a point below the edge of the bridge. The direction of measurement shall be along the edge of pavement away from the interchange;
 - (B) Where a fully controlled access highway is bridged over another route, the 500 foot measurement shall be made from the end of the bridge in the quadrant. The direction of measurement shall be along the edge of main traveled way away from the bridge; and
 - (C) Where the routes involved are both fully controlled access highways, measurements on both routes shall be made according to (A) or (B) of this Subitem, whichever applies. Should there be a situation where there is more than one point at which the pavement widens along each road within a quadrant, the measurement shall be made from the pavement widening which is farthest from the intersecting roadways.
- (c) Controlled Routes Without Fully Controlled Access:
 - (i) outside of incorporated towns and cities no two structures shall be spaced less than 300 feet apart; and
 - (ii) within incorporated towns and cities no two structures shall be spaced less than 100 feet apart.
- (d) The rules of this Section regarding spacing between sign structures shall not apply to structures separated by buildings or other obstructions where only one sign facing located within the distances set forth in the rules of this Section is visible from the highway at any one time;
- (e) Official signs, on-premise signs, or structures that are not lawfully maintained shall not be included, nor shall measurements be made from them for purposes of determining compliance with spacing requirements; and
- (f) The minimum distance between structures shall be measured along the nearest edge of the main traveled way between points opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highways.
- (3) Signs shall meet the following lighting requirements:
 - (a) No sign shall contain, include, or be illuminated by any flashing, intermittent, or moving light or lights, including animated or scrolling advertising except as allowed by Item (4) of this Rule or it is giving public service information, such as time, date, temperature, or weather;
 - (b) No light emitted or reflected off of a sign shall be of an intensity or brilliance as to cause glare or to impair the vision of a driver, or which otherwise interfere with the operation of a motor vehicle;
 - (c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal; and
 - (d) All sign lighting shall be subject to any other provisions relating to lighting of signs applicable to all highways under the jurisdiction of the State, including G.S. 136-32.2.
- (4) Automatic changeable facing signs shall meet the following requirements:
 - (a) the sign does not contain or display flashing, intermittent, or moving lights, including animated or scrolling advertising;
 - (b) the changeable facing remains in a fixed position for at least eight seconds;
 - (c) if a message is changed electronically, it must be accomplished within an interval of two seconds or less;
 - (d) the sign is not placed within 1,000 feet of another automatic changeable facing sign on the same side of the highway;
 - (e) the 1000-foot distance is measured along the nearest edge of the pavement and between points opposite the signs along each side of the highway;
 - (f) a legally conforming structure may be modified to an automatic changeable facing structure as set forth in Rule .0225 of this Section. Signs not conforming to State standards shall not be modified to an automatic changeable facing;
 - (g) the sign must contain a default design that will freeze the sign in one position if a malfunction occurs; and
 - (h) the sign application meets all permitting requirements as set forth in Rule .0206 of this Section.

- (5) Unzoned commercial or industrial area qualification for signs shall meet the following requirements:
- (a) To qualify an area unzoned commercial or industrial for the purpose of outdoor advertising control, one or more commercial or industrial activities shall meet all of the following criteria prior to submitting an outdoor advertising permit application:
 - (i) The activity shall maintain all necessary business licenses as may be required by applicable state, county, or local law or ordinances;
 - (ii) The property used for the activity shall be listed for ad valorem taxes with the county and municipal taxing authorities as required by law;
 - (iii) The activity shall be connected to utilities, including power, telephone, water, and sewer, or septic service;
 - (iv) The activity shall have vehicular access and generate traffic;
 - (v) The activity shall have a building designed with a permanent foundation, built or modified for its current commercial or industrial use, and the building must be located within 660 feet from the nearest edge of the right of way of the controlled route. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply:
 - (A) the mobile home unit or recreational vehicle shall meet the North Carolina State Building Code criteria for commercial or business use;
 - (B) a self-propelled vehicle shall not qualify for use as a business or office for the purpose of these rules;
 - (C) all wheels, axles, and springs shall be removed;
 - (D) the unit shall be permanently secured on piers, pad, or foundation; and
 - (E) the unit shall be tied down in accordance with local, state, or county requirements.
 - (vi) The commercial or industrial activity must be in operation a minimum of six months prior to the date of submitting an application for an outdoor advertising permit;
 - (vii) The activity shall be open to the public during hours for that type of activity, but not less than 20 hours per week;
 - (viii) One or more employees shall be available to serve customers whenever the activity is open to the public; and
 - (ix) The activity shall be visible and recognizable as commercial or industrial from the main travel way in a vehicle traveling at the posted speed of the controlled route for 12 months of a year.
 - (b) Each side of the controlled route shall be considered separately. All measurements shall begin from the outer edges of buildings where business is conducted including parking lots, storage, or processing areas of the commercial or industrial activity, not from the property line of the activity, and shall be along the nearest edge of the main traveled way of the controlled route.
 - (c) The proposed sign location must be within 600 feet of the activity.
 - (d) To qualify an area as unzoned commercial or industrial for the purpose of outdoor advertising control, none of the following activities shall be recognized:
 - (i) outdoor advertising structures;
 - (ii) on-premise or on-property signs defined by Rule .0201(18) of this Section if the on-premise sign is the only part of the commercial or industrial activity that is visible from the main-traveled way;
 - (iii) agricultural, forestry, ranching, grazing, farming, and related activities, including temporary wayside fresh produce stands;
 - (iv) transient or temporary activities;
 - (v) activities more than 660 feet from the nearest edge of the right of way;
 - (vi) activities conducted in a building used as a residence;
 - (vii) railroad tracks and minor sidings;
 - (viii) any outdoor advertising activity or any other business or commercial activity carried on in connection with an outdoor advertising activity; and
 - (ix) illegal junkyards, as defined in G.S. 136-146, and nonconforming junkyards as set out in G.S. 136-147.

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; November 1, 1988;
Readopted Eff. January 1, 2021.

19A NCAC 02E .0204 LOCAL ZONING AUTHORITIES

Local zoning authorities may certify to the Board of Transportation when they have established effective control within zoned commercial and industrial areas, through regulations or ordinances with respect to size, lighting and spacing of outdoor advertising signs consistent with the intent of the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, and with customary use. Upon authorization from the Chief Engineer to the local zoning authority, the size, lighting and spacing requirements set forth in G.S. 136 Articles 11 and 11A or 19A NCAC 02E .0200, will not apply to those areas and the local zoning authority shall be authorized to issue permits for the erection and maintenance of outdoor advertising signs.

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. December 1, 2012; November 1, 1993.

19A NCAC 02E .0205 PERMITS REQUIRED

History Note: Authority G.S. 136-130; 136-133;
Eff. July 1, 1978;
Amended Eff. June 15, 1981;
Repealed Eff. November 1, 1993.

19A NCAC 02E .0206 APPLICATIONS

(a) An application for an outdoor advertising permit shall be made on NCDOT form OA-1, which may be obtained at any District Office. Upon completion, the application shall be submitted to the district office for the district where the proposed site is located. The application shall include the following attachments:

- (1) A written lease or written proof of interest in the land where a sign is proposed to be constructed. An applicant may delete information pertaining to term and amount of lease;
- (2) A right of entry form to provide the right of entry from the property owner or adjacent property owners to allow DOT personnel to enter upon property when necessary for the enforcement of the Outdoor Advertising Control Act or these rules;
- (3) If zoned, a written statement from the local zoning authority indicating the present zoning of the parcel and its effective date. Upon request of the district engineer, the applicant shall submit copies of minutes from the appropriate zoning authority pertinent to the zoning action;
- (4) If the area is an unzoned commercial or industrial area, a copy of the documentation confirming that the requirements under .19A NCAC 02E .0203(5)(a)(i) and (ii) have been met;
- (5) A sign permit or zoning permit, if required by the local government having jurisdiction over the proposed location;
- (6) A written certification from the sign owner indicating there has been no misrepresentation of any material facts regarding the permit application, or other information supplied to acquire a permit; and
- (7) The initial nonrefundable permit fee.

(b) Any omission of attachments or certification required in Items (1) through (7) in this Rule may cause the rejection of the application. If the application is incomplete, the entire application package, including application fee, shall be returned to the applicant.

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.

19A NCAC 02E .0207 FEES AND RENEWALS

(a) All applicable fees shall be paid by the permit holders for each permit requested.

- (b) An initial nonrefundable fee of one hundred twenty dollars (\$120.00) per outdoor advertising structure shall be submitted with each new permit application.
- (c) An annual non-refundable renewal fee of sixty dollars (\$60.00) per sign structure shall be paid by the permit holders on or before April 15 of each year.
- (d) The Division of Highways of the Department of Transportation shall send an invoice for the annual renewal fee to each permit holder with a permit. For a renewal to be approved, the permit holder must submit the signed invoice along with the renewal fee. If requested, the permit holder shall provide a valid lease or other proof of interest in the land where the sign is located. Failure to submit this documentation within 30 days of written request from the District Engineer's office by certified mail shall subject the permit to revocation under 19A NCAC 02E .0210(4).

History Note: Authority G.S. 136-130; 136-133;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991; December 1, 1990; July 1, 1986;
Temporary Amendment Eff. November 16, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. January 1, 2021.

19A NCAC 02E .0208 PERMIT AND PERMIT EMBLEM

- (a) Permits shall be issued for signs that are in compliance with all federal, State, or local laws pertaining to outdoor advertising structures by the Division of Highways of the Department of Transportation upon application, approval, and the payment of the initial permit fee as defined in Rule .0207 of this Section.
- (b) The erection of new outdoor advertising structures shall not commence until a permit has been approved and the emblem issued. All construction of the outdoor advertising structure, except sign faces, shall be completed within 180 days of the approval of the permit. If the outdoor advertising structure, except sign faces, is not constructed within 180 days from the date of approval of the permit and issuance of the emblem then any intervening rule change shall apply to the sign structure. During the 180 day period, the new outdoor advertising structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in Rule .0203 of this Section.
- (c) The permit holder shall notify the appropriate office as provided in the permit by certified mail, return receipt requested, within 10 days after the outdoor advertising structure is completed. Upon completion of the construction and prior to notifying the appropriate District Engineer's Office, the permit holder shall affix the following information to the outdoor advertising structure in a position as to be visible from the main-traveled way of the controlled route:
 - (1) the emblem, with a Department-issued identification number; and
 - (2) the name of the person, firm or corporation owning or maintaining the outdoor advertising structure.
- (d) Within 90 days after receiving notice that an outdoor advertising structure is complete, the appropriate District Engineer's office shall inspect the structure. If the structure fails to comply with the Outdoor Advertising Control Act or the rules in this Section, the District Engineer's office shall advise the permit holder by certified mail of the manner in which the structure fails to comply. The permit holder shall have 30 days from receipt of the notice to either bring the structure into compliance or have it removed.
- (e) Replacements for emblems that are missing or illegible may be obtained from the district engineer's office by submitting a written request accompanied by a copy of the permit application that approved the original emblem.

History Note: Authority G.S. 136-130; 136-133;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990;
Readopted Eff. January 1, 2021.

19A NCAC 02E .0209 TRANSFER OF PERMIT/CHANGE OF ADDRESS

- (a) Within 30 days after ownership of a permitted outdoor advertising sign is transferred, the previous or new owner shall submit a written notice, signed by the transferring owner and notarized, to the District Engineer's office for the county in which the sign is located.
- (b) A permit holder must provide the appropriate District Engineer's office with written notice of any change of address within 30 days of the address change.
- (c) Should a permit holder fail to provide written notice of a transfer of permit or change of address, a revocation of a permit for one of the reasons specified in Rule .0210 of this Section shall stand and shall not be affected by failure to notify the District Engineer's office of the changes.

*History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993;
Readopted Eff. January 1, 2021.*

19A NCAC 02E .0210 REVOCATION OF OUTDOOR ADVERTISING PERMIT

The appropriate District Engineer's office shall revoke a permit for a lawful outdoor advertising structure based on any of the following:

- (1) mistake of facts by the issuing District Engineer's office for which had the correct facts been known, he or she would not have issued the outdoor advertising permit;
- (2) misrepresentations of any facts made by the permit holder and on which the District Engineer's office relied in approving the outdoor advertising permit application;
- (3) misrepresentation of facts to any regulatory authority with jurisdiction over the sign by the permit holder, the permit applicant, or the owner of property on which the outdoor advertising structure is located;
- (4) failure to pay annual renewal fees or provide the documentation requested under Rule .0207 of this Section;
- (5) failure to construct the outdoor advertising structure, except all sign faces, within 180 days from the date of issuance of the outdoor advertising permit in accordance with Rule .0208 of this Section;
- (6) a determination upon inspection of an outdoor advertising structure that it fails to comply with the Outdoor Advertising Control Act or the rules in this Section;
- (7) any alteration of an outdoor advertising structure for which a permit has previously been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act or the rules of this Section;
- (8) alterations to a sign not conforming to State standards other than reasonable repair and maintenance as defined in Rule .0225(c) of this Section. For purposes of this Rule, alterations include:
 - (a) enlarging a dimension of the sign facing or raising the height of the sign;
 - (b) changing the material of the sign structure's support;
 - (c) adding a pole or poles; or
 - (d) adding illumination;
- (9) failure to affix the emblem as required by Rule .0208 of this Section or failure to maintain the emblem so that it is visible from the main-traveled way or controlled route;
- (10) failure to affix the name of the person, firm, or corporation owning or maintaining the outdoor advertising sign to the sign structure in sufficient size to be visible as required by Rule .0208 of this Section;
- (11) unlawful destruction or illegal cutting of trees, shrubs or other vegetation within the right-of-way of any State-owned or State-maintained highway as specified in G.S. 136-133.1(i);
- (12) unlawful use of a controlled access facility for purposes of repairing, maintaining, or servicing an outdoor advertising sign where the unlawful violation was conducted actually or by design by the permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents, or assigns, including independent contractors hired by any of the above and meets either of the following:
 - (a) involved the use of highway right of way for the purpose of repairing, servicing, or maintaining a sign including stopping, parking, or leaving any vehicle whether attended or unattended, on any part or portion of the right of way except as authorized by the Department of Transportation, including activities authorized by the Department for selective vegetation removal pursuant to G.S. 136-131.1, G.S. 136-131.2 and G.S. 136-133.4. Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit; or
 - (b) involved crossing the control of access fence to reach the sign structure, except as authorized by the Department, including those activities referenced in Sub-Item (a) of this Item;
- (13) maintaining a blank sign for a period of 12 consecutive months;
- (14) maintaining an abandoned, dilapidated, or discontinued sign;
- (15) a sign that has been destroyed or significantly damaged as determined by Rule .0201(8) and (29) of this Section;
- (16) moving or relocating a sign not conforming to State standards that changes the location of the sign;

- (17) failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the North Carolina Outdoor Advertising Control Act, codified in G.S. 136, Article 11, or the rules of this Section; and
- (18) failure to comply with all the requirements specified in a vegetation removal permit if such failure meets the standards of G.S. 136-133.1(i).

History Note: Authority G.S. 136-93; 136-130; 136-133; 136-133.1(i); 136-133.4(e);
Eff. July 1, 1978;
Amended Eff. August 1, 2000; May 1, 1997; November 1, 1993; March 1, 1993; October 1, 1991;
December 1, 1990;
Temporary Amendment Eff. March 1, 2012;
Amended Eff. November 1, 2012;
Readopted Eff. January 1, 2021.

19A NCAC 02E .0211 DENIAL OF PERMIT

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981;
Temporary Repeal Eff. March 1, 2012;
Repealed Eff. November 1, 2012.

19A NCAC 02E .0212 NOTICE GIVEN FOR REVOKING PERMIT

(a) Prior to the revocation of an outdoor advertising permit, the District Engineer's office shall send the permit holder a notice of violation by certified mail of the alleged violation under Rule .0210 of this Section. The permit holder shall bring the sign into compliance, if permissible by these Rules, within 30 days of receipt of the notification, or provide information concerning the alleged violation to the District Engineer's office to be considered prior to the revocation. The District Engineer's office shall consider the information provided by the permit holder prior to any revocation of a permit.

(b) If the permit holder does not bring the sign into compliance after 30 days, if permissible by these Rules, and the District Engineer determines that a violation has occurred as set forth in Rule .0210 of this Section, he or she shall send the permit holder a notice of revocation by certified mail, return receipt requested. The notification shall include the following information:

- (1) the factual and statutory or regulatory basis for the revocation;
- (2) a copy of the rules of this Section; and
- (3) a statement that is unlawful and a nuisance in accordance with G.S. 136-134.

(c) Upon receipt of the notice of revocation, the permit holder shall either remove or bring the outdoor advertising structure into compliance with the Outdoor Advertising Act and rules of this Section within 30 days. If the permit holder or site owner fails to do so, the Department shall remove the outdoor advertising structure at the expense of the permit holder.

(d) An outdoor advertising structure cannot be made to conform to the Outdoor Advertising Control Act or these Rules when the permit is revoked under 19A NCAC 02E .0210(2), (3), (11), or (12).

History Note: Authority G.S. 136-130; 136-134;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981;
Readopted Eff. January 1, 2021.

19A NCAC 02E .0213 APPEAL OF DECISION OF DISTRICT ENGINEER'S OFFICE TO SEC. OF TRANS.

(a) Should any permit applicant, permit holder, or sign owner disagree with a decision of the appropriate District Engineer's office pertaining to the denial or revocation of a permit for outdoor advertising or the determination that an outdoor advertising structure is illegal, the permit applicant, permit holder, or sign owner may appeal to the Secretary of Transportation in accordance with this Rule.

(b) Within 30 days from the time of the receipt of the decision of the District Engineer's office, the permit applicant, permit holder, or sign owner shall submit a written appeal to the Secretary of Transportation setting forth the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary by certified mail, return receipt requested, with a copy to the District Engineer's office.

- (c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the District Engineer's office's decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the final agency decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by certified mail, return receipt requested, no later than 90 days after the Secretary receives the written appeal. A copy of the final agency decision shall also be mailed to the District Engineer's office.
- (d) Judicial review of the final agency decision is governed by G.S. 136-134.1.

History Note: Authority G.S. 136-130; 136-133; 136-134;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; November 1, 1991; June 15, 1981;
Readopted Eff. January 1, 2021.

19A NCAC 02E. 0214 STANDARDS FOR DIRECTIONAL SIGNS

- (a) For the purposes of this Section, the following directional signs shall be prohibited:
- (1) signs that are erected or maintained upon trees or painted or drawn upon rocks or other natural features;
 - (2) signs that move or have any animated or moving parts;
 - (3) signs located in rest areas, parklands, or scenic areas.
- (b) For the purposes of this Section, the following size requirements shall be permissible:
- (1) No directional sign shall exceed the following limits:
 - (A) maximum area 150 square feet;
 - (B) maximum height 20 feet; and
 - (C) maximum length 20 feet.
 - (2) all dimensions include border and trim, but exclude supports.
- (c) Directional signs may be illuminated, subject to the following:
- (1) signs that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights shall be prohibited;
 - (2) signs that are not shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an interstate or primary highway or National Highway System (NHS) route or that are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or that otherwise interfere with the operation of a motor vehicle shall be prohibited; and
 - (3) no sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.
- (d) The spacing of signs shall be determined as follows:
- (1) each location of a directional sign must be approved by the District Engineer's office;
 - (2) no directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other controlled access highways (measured along the highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way);
 - (3) no directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area;
 - (4) no two directional signs facing the same direction of travel shall be spaced less than one mile apart;
 - (5) No more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;
 - (6) directional signs located adjacent to the interstate system shall be within 75 air miles of the activity; and
 - (7) directional signs located adjacent to the primary system shall be within 50 air miles of the activity.
- (e) The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route number, or exit numbers.
- (f) For directional signs for privately-owned activities, the activity shall meet both of the following criteria:
- (1) privately-owned activities or attractions eligible for directional signing are limited to the following: natural phenomena, scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas; and
 - (2) privately-owned attractions or activities must be nationally or regionally known. For purposes of this Rule, the following meanings shall apply:
 - (A) national known means the attraction has drawn attention through various forms of media within the continental United States; and

- (B) regionally known means the attraction is known in a specific region of the State such as the mountains, piedmont, or coastal region, through published articles or paid advertisements available to a regional audience.

History Note: Authority G.S. 136-129; 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993;
Readopted Eff. January 1, 2021.

19A NCAC 02E .0215 PERMITS FOR DIRECTIONAL SIGNS

- (a) A permit shall be required for the construction or maintenance of any directional sign permitted by Rule .0214 of this Section, except that no permit shall be required to erect or maintain directional signs to religious sites or for the construction and maintenance of official signs and notices, public utility signs, service club and religious notices, and public service signs, as defined by Rule .0201 (10)(a), (b), (c), and (18) of this Section.
- (b) An application for a directional sign shall be made according to Rule .0206 of this Section with the exception the initial fee shall be forty dollars (\$40.00) paid with each application for a permit.
- (c) An annual renewal of each permit shall be made according to Rule .0207 of this Section with the exception the renewal fee shall be thirty dollars (\$30.00) and shall be required to maintain such directional signs.

History Note: Authority G.S. 136-130; 136-133;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; July 1, 1986, March 1, 1983, June 15, 1981;
Temporary Amendment Eff. November 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. January 1, 2021.

19A NCAC 02E .0216 SPECIFIC SERVICE SIGNING (LOGO) PROGRAM

The Specific Service Signing Program, hereinafter "Program", provides eligible businesses with the opportunity to be listed on official signs within the right-of-way of fully controlled access highways. The Traffic Engineering and Safety Systems Branch is responsible for administering the program and receiving requests for information concerning the Program. Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of Transportation, 1561 Mail Service Center, Raleigh, NC 27699-1561. Division Engineers, for the division in which the interchange is located, are responsible for receiving and distributing applications and copies of policies and procedures, executing agreements and administering the agreements.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. April 1, 1994; October 1, 1993; October 1, 1991;
Temporary Amendment Eff. October 13, 2003;
Amended Eff. January 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .0217 SPECIFIC INFORMATION PROGRAM DEFINITIONS

19A NCAC 02E .0218 LOCATION OF PANELS

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 24 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. August 1, 1998; September 1, 1984; April 1, 1994; October 1, 1993; October 1, 1991; April 1, 1986; November 1, 1985;
Temporary Repeal Eff. October 13, 2003;
Repealed Eff. January 1, 2004.

19A NCAC 02E .0219 ELIGIBILITY FOR PROGRAM

19A NCAC 02E .0220 COMPOSITION OF BUSINESS PANELS AND LOGO SIGNS

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; October 1, 1991; November 1, 1987;
Temporary Amendment Eff. October 13, 2003;
Amended Eff. October 1, 2014; January 1, 2004;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02E .0221 LOGO PROGRAM FEES

- (a) All logo signs, to which individual Logo Signing Program business panels are attached, shall be constructed, owned, and maintained by the Department. The participating logo business shall pay an annual fee as set forth in this Rule.
- (b) The annual fee for participation in the Logo program shall be three hundred dollars (\$300.00) for each mainline, ramp, and trailblazer panel. Every participating business shall have a contract that automatically renews annually.
- (c) The participating logo business shall provide a new or renovated business panel when necessary due to damages caused by acts of vandalism, accidents, or natural causes including natural deterioration. If the Department replaces a business panel on a logo sign or removes or masks a business panel because of seasonal operation, there shall be no additional charge to the business.
- (d) The fee shall be paid by check or money order and shall be due in advance of the period of service covered by the fee. Failure to pay a fee when due shall be grounds for removal of the business panels and termination of the contract.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. July 1, 2000; August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; September 1, 1990;
Temporary Amendment Eff. October 13, 2003;
Amended Eff. February 1, 2004;
Readopted Eff. August 1, 2019.

19A NCAC 02E .0222 CONTRACTS WITH THE DEPARTMENT

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. July 1, 2000; August 1, 1998; December 1, 1994; October 1, 1993; October 1, 1992; September 1, 1990;
Temporary Repeal Eff. October 13, 2003;
Repealed Eff. January 1, 2004.

19A NCAC 02E .0223 APPEAL OF DECISION OF DIVISION ENGINEER TO SECRETARY

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f);
23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. October 1, 1993;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02E .0224 SCENIC BYWAYS

- (a) Outdoor advertising is prohibited adjacent to any highway designated as a scenic byway by the Board of Transportation after the date of the designation as scenic, regardless of the highway classification, except for outdoor advertising permitted in G.S. 136-129 (1), (2), (2a) or (3).

(b) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway that is on a controlled route for outdoor advertising shall become signs not conforming to State standards and shall be subject to all applicable outdoor advertising regulations provided in this Section. Any sign erected on a controlled route adjacent to a Scenic Byway after the date of official designation shall be an illegal sign as defined in G.S. 136-128 and G.S. 136-134.

(c) Permits shall not be required for signs adjacent to scenic byways that were not on a controlled route for outdoor advertising. The department shall maintain an inventory of signs that were in existence at the time the route was designated a Scenic byway. Any sign erected after its designation as a Scenic Byway, except for outdoor advertising permitted in G.S. 136-129(1), (2), or (3), shall be an illegal sign as defined by G.S. 136-128 and G.S. 136-134.

(d) Outdoor advertising signs adjacent to Scenic Byways that are not required to obtain permits shall comply with the rules in this section.

*History Note: Authority G.S. 136-129.2;
Eff. August 1, 2000;
Readopted Eff. January 1, 2021.*

19A NCAC 02E .0225 REPAIR/MAINTENANCE/ALTERATION OF SIGNS

(a) Signs may not be serviced from or across the right of way of freeways or from or across controlled access barriers or fences of controlled routes.

(b) Conforming signs may be altered within the limits of the rules in this Section.

(1) A conforming sign that has been destroyed or significantly damaged may be reconstructed within the limits of the rules in this Section by notifying the district engineer in writing of any substantial changes that would affect the original dimensions of the initial permit application.

(2) Conforming sign structures may be reconstructed so long as the reconstruction does not conflict with any applicable state, federal or local rules, regulations or ordinances.

(c) Alteration to a nonconforming sign or sign conforming by virtue of the grandfather clause is prohibited. Reasonable repair and maintenance are permitted including changing the advertising message or copy. The following activities are considered to be reasonable repair and maintenance:

(1) Change of advertising message or copy on the sign face;

(2) Replacement of border and trim;

(3) Repair and replacement of a structural member, including a pole, stringer, or panel, with like material;

(4) Alterations of the dimensions of painted bulletins incidental to copy change; and

(5) Any net decrease in the outside dimensions of the advertising copy portion of the sign; but if the sign face or faces are reduced they may not thereafter be increased beyond the size of the sign on the date it became nonconforming.

(d) The addition of lighting or illumination to existing nonconforming signs or signs conforming by virtue of the grandfather clause is specifically prohibited as reasonable maintenance; however, such lighting may be permanently removed from such sign structure.

(e) A nonconforming sign or sign conforming by virtue of the grandfather clause may continue as long as it is not abandoned, destroyed, discontinued, or significantly damaged.

(f) When the combined damage to the face and support poles appears to be significant, as defined in 19A NCAC 02E .0201(29), the sign owner may request the Department to review the damaged sign, including salvageable sign components, prior to repairs being made. Should the sign owner perform repairs without notification to the Department, and the Department later determines the damage is greater than 50% of the combination of the sign face and support pole(s), the permit may be revoked. To determine the percent of damage to the sign structure, the only components to be used to calculate this value are the sign face and support pole(s). The percent damage shall be calculated by dividing the unsalvageable sign components by the original sign structure component quantities, using the following criteria:

(1) Outdoor Advertising on Wooden Poles: The percentage of damage attributable to poles shall be 50% and the percentage of damage attributable to sign face shall be 50%;

(2) Outdoor Advertising on Steel Poles or Beams: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%; and

(3) Outdoor Advertising on Monopoles: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%.

*History Note: Authority G.S. 136-130; 136-89.58;
Eff. August 1, 2000;*

Amended Eff. August 1, 2000.

19A NCAC 02E .0226 ORDER TO STOP WORK ON UNPERMITTED OUTDOOR ADVERTISING

*History Note: Authority G.S. 136-130; 136-133;
Temporary Adoption Eff. November 16, 1999;
Eff. August 1, 2000;
Repealed Eff. January 1, 2021.*

SECTION .0300 - JUNKYARD CONTROL

19A NCAC 02E .0301 UNZONED INDUSTRIAL AREA

(a) For purposes of this Section and the Junkyard Control Act, "Unzoned industrial area" means the land occupied by an industrial activity, including its building, parking lot, storage or processing, and that land located within 1,000 feet thereof that is:

- (1) located on the same side of the highway as the principal part of the industrial activity;
- (2) not used for residential or commercial purposes; and
- (3) not zoned by State or local law, rule, or ordinance.

(b) For the purposes of this Section and the Junkyard Control Act, "Industrial activity" means an activity that the nearest zoning authority within the State permits in industrial zones or zones that are less restrictive. An activity is also industrial if the nearest zoning authority within the State has prohibited the activity but the activity is generally recognized as industrial by other zoning authorities within the State. None of the following shall be considered industrial activities:

- (1) outdoor advertising structures;
- (2) agricultural activities including ranching, farming, grazing, and such necessarily related activities as are generally carried on by a farmer on the farmer's own premises, including wayside fresh produce stands;
- (3) forestry activities that include the growing of timber, thinning, felling, and logging of timber or pulpwood;
- (4) transient or temporary activities;
- (5) activities not visible from the traffic lanes of the main-traveled way;
- (6) activities more than 1,000 feet from the nearest edge of the right of way;
- (7) activities conducted in a building used as a residence;
- (8) railroad tracts other than yards, minor sidings, and passenger depots; and
- (9) junkyards, as defined in Section 136, Title 23, of the United States Code.

*History Note: Authority G.S. 136-151; 23 U.S.C. 136;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.*

19A NCAC 02E .0302 PERMITS

*History Note: Authority G.S. 136-151; 136-149;
Eff. July 1, 1978;
Repealed Eff. December 1, 1993.*

19A NCAC 02E .0303 FEES

(a) The application fee for the Application for Junkyard payment shall be fifteen dollars (\$15.00).

(b) The Application for Junkyard Permit is available from the Division Engineer having jurisdiction in the county where the proposed or existing junkyard is located. The Application for Junkyard Permit allows an applicant to request a permit number for the establishment or continued maintenance of a junkyard in accordance with the provisions of the Junkyard Control Act, Article 12, Chapter 136 of the General Statutes of North Carolina (Junkyard Control Act). Applications for Junkyard Permits shall require the applicant to provide the following information:

- (1) applicant's name and address;
- (2) whether the junkyard is proposed or already existing;
- (3) if already existing, the date the junkyard was established;
- (4) the proposed or already existing location of the junkyard; and

- (5) certification by the applicant that approval for the proposed or already existing junkyard operations have been obtained from the owner of the real property, or the property owner's authorized agent, on which the junkyard is located or proposed to be located.
- (c) Permit numbers shall only be provided to an applicant upon payment of the application fee, and approval by the District Engineer that the junkyard is in compliance with the Junkyard Control Act. If the junkyard is proposed, meaning the Application for Junkyard Permit is to establish a junkyard, the Division Engineer will keep the application on file at the district office. Once the junkyard is in existence, the District Engineer shall approve the Application for Junkyard Permit if, upon inspection, the junkyard is found to conform to the provisions of the Junkyard Control Act.
- (d) An annual renewal of each permit shall be required to maintain junkyards within 1,000 feet of the right-of-way of interstate and federal-aid primary highways. In December of each year, the Department will send to the permittee a renewal invoice for payment of the junkyard permit annual renewal fee. The renewal fee shall be five dollars (\$5.00), due on December 15th of each year, and paid to the District Engineer having jurisdiction. The permit shall be renewed upon payment of the annual renewal fee.

History Note: Authority G.S. 136-149; 136-151;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.

SECTION .0400 - GENERAL ORDINANCES

19A NCAC 02E .0401 PENALTY IMPOSED FOR VIOLATION OF ORDINANCES

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Repealed Eff. November 1, 1993.

19A NCAC 02E .0402 PILING OBSTRUCTIONS ON HIGHWAYS OR WITHIN RIGHT OF WAY

It shall be unlawful to pile, place, or leave, any trash, refuse, garbage, lumber, logs, cordwood, tree-laps, scrapped automobile, scrapped truck or part thereof, or any other material upon any road, highway, or shoulders thereof, within the right-of-way, or over the ditches or drainways of any road or highway of the State highway system.

History Note: Authority G.S. 136-18(5); 136-90;
Eff. July 1, 1978;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0403 DEPOSITING MUD ON STATE HIGHWAYS

No person operating a vehicle with "dual wheels" or a vehicle equipped with four-wheel drive shall track mud onto any paved portion of any State highway so as to create a safety hazard to the traveling public.

History Note: Authority G.S. 136-18(5); 136-90;
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0404 HIGHWAY OBSTRUCTIONS INTERFERING WITH TRAFFIC/MAINTENANCE

- (a) It shall be unlawful to place any highway obstruction, including, but not limited to, a driveway headwall, fence, rural mailbox, newspaper delivery box, or other roadside obstruction, so as to interfere with the traffic or maintenance of the roads and highways of the State highway system.
- (b) If the Department determines that any highway obstruction, constitutes a roadside collision hazard, the highway obstruction shall be removed by the person or entity responsible for placing the obstruction within the right-of-way within 30 days of receipt of written notice from the Department. Only mailboxes or newspaper delivery boxes with 4" x 4" wooden or small diameter metal posts shall be permitted on road additions made to the State highway system after May 3, 1990. If determined to be a roadside collision hazard, the location of any brick column, mailboxes, or newspaper delivery boxes, on

rigid stands such as block, stone, or any other type of material, shall be prohibited within the State highway system right-of-way.

(c) If a person fails to remove the highway obstruction in accordance with Paragraph (b) of this Rule, the Division Engineer may take action to remove the obstruction and bill the responsible party for the expense.

History Note: Authority G.S. 136-18(5); 136-90;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0405 DAMAGE TO STATE HIGHWAY SYSTEM SURFACE OR SHOULDER

It shall be unlawful to move on, over, or across the surface or shoulder of any State highway system bridge, road, or highway, any object, tractor, engine, farm equipment, or vehicle of any kind that has wheels or objects attached that could cut, mutilate, or damage the surface or shoulder of any State highway system bridge, road, or highway without the written permission of the Chief Engineer's office. The Chief Engineer or the Chief Engineer's designee shall consider factors such as the ability of the road or bridge to handle the equipment without damage, planned protection of the roadway or bridge to prevent damage, planned traffic control and law enforcement assistance to safely move the equipment, and day and time of the planned move to evaluate potential disruptions to the traveling public.

History Note: Authority G.S. 20-115; 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0406 VEHICLES SERVED BY SERVICE STATION

History Note: Authority G.S. 136-18(5); 136-90;
Eff. July 1, 1978;
Repealed Eff. July 1, 2019.

19A NCAC 02E .0407 CONTROL AND REGULATION OF ROADSIDE PARKS AND REST AREAS

(a) It shall be unlawful, within any scenic service overlook, rest area, or other designated parking area on the primary and secondary roads and highways of the State, for any person, firm, or corporation to erect tents, booths, or structures of any kind for camping or any other activity; to create, cause, or allow any unreasonably loud or disturbing noise; to solicit contributions, names, support, or for any other purpose, except as permitted pursuant to Section .0800 of this Subchapter to conduct or participate in public or private auctions and other ceremonies; to distribute tracts, pamphlets, favors or any material, product or literature; to erect displays, signs, or carry on any commercial activity; to use public address such as loud speakers; to distribute or use alcoholic beverages; endanger the life, property, and welfare of the traveling public.

(b) For the purposes of this Rule, the following definitions apply.

- (1) "Unreasonably loud noise" means a noise which is incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace, order, or calm of the area, or which is obnoxious to, or unreasonably disturbing to, a person whose residence, work, or commercial enterprise is within a reasonable proximity to the point, place, or person from whom the noise is emanating, or emanated, and the noise is of such a kind, nature, duration, or extent that a reasonable person would consider the noise to be unreasonably loud or disturbing.
- (2) "Disturbing noise" means a noise which is perceived by a person of reasonable and ordinary firmness and sensibilities as interrupting the normal peace, order, and calm of such person, or persons, or tending to annoy, disturb, or frighten such persons in such proximity to the point, place, or person from whom the noise is emanating, or emanated.

History Note: Authority G.S. 136-18(9); 136-125;
Eff. July 1, 1978;
Amended Eff. October 1, 1991; August 1, 1986;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0408 FISHING FROM BRIDGES

It shall be unlawful to fish from any bridge on any interstate or other controlled access highway.

*History Note: Authority G.S. 136-18(5); 136-89.50; 153A-242; 160A-302.1;
Eff. July 1, 1978;
Readopted Eff. July 1, 2019.*

19A NCAC 02E .0409 OPERATING NONMOTORIZED VEHICLES

Unless otherwise authorized by the Board of Transportation, it shall be unlawful for any person to ride any animal, or to operate a bicycle, horse drawn wagon, or any nonmotorized vehicle or moped on any interstate or controlled access highway.

*History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Amended Eff. June 15, 1981;
Readopted Eff. July 1, 2019.*

19A NCAC 02E .0410 HITCHHIKING ON INTERSTATE OR CONTROLLED ACCESS HIGHWAYS

(a) It shall be unlawful for any person to hitchhike or to solicit rides, or for the driver of any vehicle to stop for the purpose of picking up one who is hitchhiking or soliciting a ride, on any interstate or controlled access highway.

(b) This Rule shall not prohibit an operator or passengers in a vehicle stopped on a controlled access facility by reason of any emergency, mechanical failure, or other failure of the vehicle to operate, from requesting aid or soliciting a ride, nor does it prohibit the operator of any other vehicle from stopping to render aid or assistance and giving rides in such situations.

*History Note: Authority G.S. 136-18(5); 136-89.50;
Eff. July 1, 1978;
Readopted Eff. July 1, 2019.*

19A NCAC 02E .0411 JUMPING FROM BRIDGES

*History Note: Authority G.S. 136-18(5); 150B-21.3A;
Eff. July 1, 1978;
Repealed Eff. July 1, 2019.*

19A NCAC 02E .0412 AIRCRAFT LANDING AND TAKING OFF ON HIGHWAYS

(a) It shall be unlawful for aircraft to take-off or land on any road or highway of the State Highway System, unless authorized by the Chief Engineer, in writing. The Chief Engineer may authorize take-off or landing on any road or highway of the State Highway System based upon the following:

- (1) a showing of good cause, which may include issues of national security, safety of the general public, or natural disasters; and
- (2) arrangements have been made for law enforcement officials to redirect or administer Vehicular traffic on the highway during the landing or take-off.

(b) Nothing in this Rule shall prohibit an aircraft from landing on any roads or highways in an emergency situation if the landing is necessary to prevent injury or death to the occupants of the aircraft, provided that the emergency landing can be made without danger to persons and vehicles on or near the highway. After an emergency landing, take-off by the aircraft may be permitted under the direction of a law enforcement officer if it is determined by the law enforcement officer that the take-off will not endanger persons or vehicles on the highway and there are no other practical nor feasible means of removing the aircraft.

*History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Temporary Amendment Eff. March 15, 1982, for a Period of 47 Days to Expire on May 1, 1982;
Temporary Amendment Expired Eff. May 1, 1982;
Amended Eff. December 1, 2012; October 1, 1982;
Readopted Eff. March 1, 2019.*

19A NCAC 02E .0413 PARADES ON HIGHWAY SYSTEM ROADS

It shall be unlawful for any person, firm, organization, school, or other group of persons to conduct or participate in a parade on any street or highway of the State Highway System located outside the limits of a municipality.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.

19A NCAC 02E .0414 PARKING VEHICLE FOR SALE OR DISTRIBUTION OF GOODS

It shall be unlawful to sell any fruits, vegetables, goods, wares, or merchandise of any character from a vehicle, stand, or structure, or from any place on the right-of-way of any primary or secondary highway, or road of the State Highway System.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.

19A NCAC 02E .0415 ADVERTISING SIGNS WITHIN RIGHT-OF-WAY

It shall be unlawful for any person, firm, or corporation to erect, place, or allow any advertising, or other sign, except regulation traffic and warning signs approved by the Department, on any highway or the right-of-way thereof, or so as to overhang the right-of-way, or to permit the erection or placing of any advertising or other sign, as herein prohibited, on any highway right-of-way which is situated over any land owned, rented, leased, or claimed by such person, firm, or corporation.

History Note: Authority G.S. 136-18(10); 136-30;
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.

19A NCAC 02E .0416 PRIVATE DRIVES OR ROADS INTERSECTING HIGHWAYS

- (a) It shall be unlawful to intersect the State highways with any private driveway or roadway, unless approved by the Department of Transportation, and provided by the party responsible for the private driveway or roadway.
- (b) It shall be unlawful to obstruct any drainage ditch within the right-of-way of any road or State highway.

History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.

19A NCAC 02E .0417 COMMERCIAL ENTRANCES INTERSECTING WITH RIGHT-OF-WAY

It shall be unlawful to revise or construct any commercial entrances to intersect with the right-of-way of any primary or secondary highway, or road of the State Highway System, unless a permit has first been obtained from the Department of Transportation, or its duly authorized officers and employees, in accordance with the rules contained in 19A NCAC 2B, Section .0600, titled "Driveway Entrances".

History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991;
Readopted Eff. February 1, 2019.

19A NCAC 02E .0418 FENCING WITHIN RIGHT-OF-WAY

It shall be unlawful for any person to erect a fence, of any kind, within the right-of-way limits of any highway, except upon the written permission of the Chief Engineer's Office upon a showing that the change in fencing is beneficial to the public.

History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. March 1, 2019.

*History Note: Authority G.S. 136-18(5);
Eff. August 10, 1981;
Readopted Eff. February 1, 2019.*

19A NCAC 02E .0423 REGULATION OF AIRPORT CONSTRUCTION

(a) Except as otherwise provided by this Rule, all construction or alteration of airports or aircraft landing areas on any part of land adjoining any public highway or in close proximity, shall be in conformity with the Federal Air Regulations, Title 14, Chapter I, Part 77, Subpart C, Code of Federal Regulations, which is incorporated by reference including any subsequent editions or amendments. Copies of these regulations are available at no cost to the public by visiting <https://www.govinfo.gov>. Close proximity, as referenced in this Paragraph, shall be assessed on a case-by-case basis according to the orientation of the landing area, and its respective alignment to the public highway.

(b) No construction or alteration as referenced in Paragraph (a) of this Rule shall be undertaken without having first obtained an Aircraft Landing Area Permit from the Department. An Aircraft Landing Area Permit shall be approved upon confirmation of satisfaction, by written documentation, of the clearance requirements detailed in Paragraph (a), all applicable requirements by the county or municipality, and Federal regulations. All construction or alteration shall be in accordance with the Aircraft Landing Area Permit. Except for highways on the Federal-aid highway system, the Board of Transportation shall authorize a permit at variance with the foregoing Federal Aviation Administration standards if it determines that the construction or alteration of the aircraft landing area will not result in a public road being a hazard to air navigation. The Department's determination of whether a public road is a hazard to air navigation shall be dependent on the type of aircraft, orientation of the landing area, and its respective alignment to the public highway, traffic, and utilities.

(c) Applicants seeking an Aircraft Landing Area Permit shall provide the Department with all plans, designs, estimates, and supporting data at the time the application is made. The estimates and data required may include, topographical surveys of the airport or aircraft landing area site and surrounding areas, including the proposed construction or alteration, with particular references to highways in the vicinity; hydrographic surveys, with particular reference to the effect that the proposed construction or alteration will have upon drainage patterns; and area maps, airport traffic patterns, and approach surfaces.

(d) This Rule shall not apply to publicly owned and operated airports and aircraft landing areas receiving Federal funds and subject to regulation by the Federal Aviation Administration, nor shall this Rule be construed to prohibit necessary repairs from being made to or on any airport facilities regardless of their present location.

History Note: Authority G.S. 136-18(22);
Eff. November 1, 1985;
Amended Eff. November 1, 1993;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0424 TWIN TRAILERS ACCESS ROUTES

History Note: Authority G.S. 20-115.1; Board of Transportation minutes on November 18, 1989;
Eff. September 1, 1990;
Repealed Eff. November 1, 1991.

19A NCAC 02E .0425 ACCESS ROUTES/SEMI-TRAILER TRUCKS WITH 48/53 FOOT TRAILERS

History Note: Authority G.S. 20-115.1; 20-116;
Eff. October 1, 1991;
Repealed Eff. November 1, 1991.

19A NCAC 02E .0426 ACCESS ROUTES FOR STAA DIMENSIONED VEHICLES

The definitions and requirements set forth in this Rule shall apply to access routes for Surface Transportation Assistance Act (STAA) dimensioned vehicles.

(1) Definitions.

- (a) "Twin trailer truck" means a vehicle combination consisting of a truck-tractor and two trailing units, with a width not to exceed 102 inches, as authorized by G.S. 20-115.1.
- (b) "The National Truck Network" means a network of interstate, federal-aid primary, and other highway routes within the State that have been designated by the Department for motor vehicle combination use pursuant to G.S. 20-115.1(g) or the United States Secretary of Transportation for STAA dimensioned vehicle use. State highway system roads designated by the Department pursuant to G.S. 20-115.1(g) shall herein be referred to as the "North Carolina Truck Network."
- (c) "Terminal" means any location where:

- (i) freight either originates, terminates, or is handled in the transportation process; or
 - (ii) commercial motor carriers maintain operating facilities.
- (d) "Vehicle Template" means a drawing of the radius of a twin trailer turn used to determine the route design necessary to accommodate the vehicle.
- (e) "Short-cut" means a route used for the purpose of connecting two National or North Carolina Truck Network routes.
- (2) Reasonable Access Requirements.
 - (a) No filing or authorization by the Department shall be required for access to terminals and service facilities located within three road miles of the National or North Carolina Truck Network.
 - (b) The following requirements shall apply for access to terminals located beyond three road miles from the National or North Carolina Truck Network.
 - (i) Access routes approved prior to June 1, 1991, for any one particular type of STAA dimensioned vehicle are approved for all STAA dimensioned vehicles for access purposes only.
 - (ii) Terminal officials and truck operators shall submit an application for a proposed new access route to the State Traffic Engineer of the Department for approval. The application shall be provided by the State Traffic Engineer. The contents of the application shall include the type of route designation requested, and name and contact information of the requesting party. The submittal shall also include a map, or photocopy of a portion of a map, showing the proposed access route(s) or changes to an existing approved access route(s) and the terminal location. The State Traffic Engineer may be reached at 919-814-5100 or 750 N. Greenfield Parkway, Garner, North Carolina 27529.
 - (iii) The State Traffic Engineer may seek advice from the State Highway Patrol, the Division of Motor Vehicles, or other law enforcement officials concerning the application.
 - (iv) Public notice of all applications for "reasonable access" pursuant to Sub-Item (2)(c) of this Rule shall be published by the Department of Transportation in a newspaper circulated in the area of the State where access is requested. The notice shall be published at least once a week on the same day of the week for two consecutive weeks. Governing bodies of incorporated municipalities shall be notified by the Department of all applications within their jurisdictions.
 - (v) The State Traffic Engineer shall approve or deny all applications for proposed new accessed routes based upon the application of vehicle templates, roadway plans, and photographs. If plans or photographs are not available or the use of vehicle templates is not practical, the terminal official or truck operator shall provide a STAA dimensioned test vehicle and driver for the purpose of observing the test vehicle traverse the requested access route.
 - (vi) Safety factors that shall be taken into consideration when reviewing and evaluating requested access route shall include, traffic congestion, traffic volume, route length, vehicle mix, geometric design of the highway, intersection geometrics, width of the shoulders, width of the pavement, super-elevation of the pavement, pavement conditions, at-grade railroad crossings, stopping sight distance, percentage passing sight distance, speed limits, vertical and horizontal alignments, ability of other vehicles to pass trucks, width of bridges, previous accident statistics, and location of schools.
 - (vii) Short-cut routes shall not be authorized by this Rule. Such a route shall be considered for designation as an addition to the National or North Carolina Truck Network by the Department pursuant to G.S. 20-115.1(g).
 - (viii) The State Traffic Engineer shall approve or reject any application submitted pursuant to this Sub-item within 90 days of receipt. The State Traffic Engineer shall provide notification and justification for any approval or rejection to the applicant and law enforcement officials. Automatic approval of a requested access route shall be provided if such notification is not received within the 90-day period.
 - (c) The Department shall notify State and local law enforcement officers of an approved "reasonable access" route that serves each terminal within the jurisdiction of the enforcement agency. The State Traffic Engineer shall also make available to terminal officials and commercial motor

vehicle operators information regarding reasonable access to and from the National or North Carolina Truck Network.

- (d) The Department may, at any time subsequent to approval, revoke any routes designated as a "reasonable access" route based on safety considerations. Terminal officials, truck operators, and law enforcement officials shall be notified in writing 30 days prior to any revocation.
- (e) Any STAA dimensioned vehicle traveling an access route shall have on board an cargo manifest.
- (f) A terminal official, truck operator, or an state and local law enforcement officer may appeal the rulings concerning an access route made by the State Traffic Engineer to the Secretary of Transportation. In giving notice of appeal, the documentation to support reasons for believing that the determination of the State Traffic Engineer was erroneous shall be provided. The decision of the Secretary of Transportation shall be the final agency decision.

History Note: Authority G.S. 20-115.1; 136-18; 143B-350;
Board of Transportation Minutes for November 18, 1988;
Eff. November 1, 1991;
Amended Eff. November 1, 1993;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0427 MULTI-USE PATHS

(a) Authorization for a municipality to construct and maintain multi-use paths on State highway system rights-of-way shall be provided through an encroachment agreement between the municipality and Department. The encroachment agreement shall specify the conditions of approval.

(b) The municipality shall submit multi-use path plans with a standardized encroachment agreement to the local highway Division Engineer for review and approval. Encroachment agreements shall include provisions indicating that the municipality is responsible for the following:

- (1) design, construction, signage, and maintenance of the proposed multi-use paths;
- (2) submitting design and construction plans to the local highway Division Engineer for review and approval prior to bidding for construction; and
- (3) relocating the proposed multi-use trail if the highway right-of-way is required for the purpose of road widening by the Department.

(c) A proposed encroachment agreement shall be approved by the Division Engineer upon a determination that the proposed multi-use path is safe and does not conflict with planned highway improvements that have been recommended in an adopted transportation plan.

(d) If a proposed multi-use path utilizes State highway system rights-of-way acquired through the use of federal aid highway funds, then approval shall be obtained from the Federal Highway Administration.

History Note: Authority G.S. 136-71.9; 136-71.10;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Transferred and Recodified from 19A NCAC 2B .0161 Eff. October 1, 1993.
Readopted Eff. July 1, 2019.

SECTION .0500 - MISCELLANEOUS FUNCTIONS

19A NCAC 02E .0501 WORK FOR OTHER GOVERNMENTAL AGENCIES **19A NCAC 02E .0502 AGREEMENT FOR WORK**

History Note: Authority G.S. 136-18(23); 136-27; 136-34; 136-41.3; 136-66.1; 143-64.22;
143-130; 143-134; 143D-24; 153A-291; 160A-274;
Eff. July 1, 1978;
Repealed Eff. December 1, 1993.

SECTION .0600 - SELECTIVE VEGETATION REMOVAL POLICY

19A NCAC 02E .0601 SELECTIVE VEGETATION REMOVAL PERMIT REQUIRED TO REMOVE VEGETATION FROM STATE HIGHWAY RIGHT-OF-WAY

Selective cutting, thinning, pruning, or removal of vegetation within highway rights-of-way may be permitted only for opening views to business facilities and legally erected forms of outdoor advertising that are located adjacent to State highway rights-of-way, as described in G.S. 136-93(b). For purposes of selective vegetation removal permitting, "business facilities," hereinafter referred to as "facilities," are defined as office, institutional, commercial, and industrial buildings. In accordance with G.S. 136-93.3, agritourism activities, as defined in G.S. 99E-30, are considered facilities under this Section. The following requirements apply to facilities under this Section:

- (1) all facilities, except for agritourism activities, shall include at least one permanent structural building;
- (2) the building shall have all required local and State permits, be related to the facility's function, and be open and operational on a year-round basis; and
- (3) any cutting, thinning, pruning, or removal of vegetation allowed pursuant to G.S. 136-93(b) shall be performed by the permittee or his or her agent at no cost to the Department of Transportation and shall comply with this Section.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93(b); 136-93.3;
Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Eff. June 1, 1982;
Amended Eff. January 1, 2015; November 1, 2012; June 2, 1982;
Readopted Eff. June 1, 2020.

19A NCAC 02E .0602 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR A FACILITY

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) at a facility shall be made by the owner of the facility and sent to the Division Engineer of the North Carolina Department of Transportation (NCDOT), Division of Highways. Applications shall be submitted in both printed and electronic form. Application submittal information for each county is found on the NCDOT Selective Vegetation Removal website <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>. Applications for selective vegetation removal permits shall include the following information:

- (1) the applicant contact information;
- (2) the name and location of the facility;
- (3) the indication of request for either a business facility or agritourism activity;
- (4) a municipal review indication, if applicable;
- (5) the requested use of and site access for power-driven equipment in accordance with Rule .0604(21) of this Section;
- (6) a performance bond or certified check or cashier's check pursuant to G.S. 136-93;
- (7) if using a contractor for vegetation removal work, identify the contractor and his or her qualifications if the contractor is not listed on the Department's website directory of qualified transportation firms;
- (8) a payment of non-refundable two hundred dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
- (9) a certificate of liability, and proof of worker's compensation and vehicle liability insurance coverage;
- (10) a geographic information system document and property tax identification number to verify location of the facility in relation to municipal limits;
- (11) a verification of on-site marking and tree-tagging requirements;
- (12) a sketch, or amended sketch of the requested cut zone and information about trees to be cut, thinned, pruned, or removed in accordance with Rule .0604(10) of this Section;
- (13) if applicable, certification that the applicant has permission from the adjoining landowner(s) to access their private property for the purpose of conducting selective vegetation removal permit activities;
- (14) a certification that the facility qualifies as an agritourism activity as required by G.S. 136-93.3; and
- (15) the applicant's notarized signature.

(b) Selective vegetation cutting, thinning, pruning, or removal for opening views to facilities shall be permitted only for the permittee's facilities adjacent to highway right-of-way at locations where the facilities have been constructed or where agritourism activities are carried out as set forth in G.S. 136-93.3 and Rule .0601 of this Section. Complete removal of all trees and other vegetation shall not be permitted. Dogwood trees and redbud trees shall be preserved. Other trees shall be preserved if they are not screening the facility from view, and when measured at six inches above the ground, equal four or more caliper inches in diameter. Trees, shrubs, and other vegetation less than four caliper inches in diameter may be removed. Trees, shrubs, and other vegetation that are four or more caliper inches in diameter, as measured at six inches above the

ground, and not to be preserved, may be cut, thinned, pruned, or removed if approved by the Division Engineer having jurisdiction or that Division Engineer's designee. All vegetation cutting, thinning, pruning, or removal shall be in accordance with the current edition of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133 that is hereby incorporated by reference, including subsequent amendments and editions. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollars (\$20.00) cost. The ISA may be contacted at 270 Peachtree Street NW, Suite 1900, Atlanta, GA 30303 or by accessing the website: <http://www.isa-arbor.com/store/product/122>.

(c) Applications shall be accompanied by a sketch showing the requested limits of the selective cutting, thinning, pruning, or removal of vegetation. For facilities, the limits of selective cutting, thinning, pruning, or removal shall be restricted to one area of right-of-way adjacent to frontage property of the facility, but not to exceed 1,000 contiguous linear feet. Facilities with frontage property on opposite sides of the State highway right-of-way may split the maximum vegetation removal distance between the two sides of the highway, resulting in a total of two contiguous cutting or removal distances along frontage property, with the total of the two sides not exceeding 1,000 linear feet. The permitted limits of the selective vegetation removal permit shall not be altered for subsequent applications. The applicant shall also include on the sketch the location, species, and caliper inches of all trees desired for cutting, thinning, pruning, or removal, that have a diameter of four or more caliper inches, as measured six inches above ground level, at the time of the application. .

(d) The selective vegetation removal request may be reviewed on site by Department personnel and a representative of the applicant.

(e) In accordance with G.S. 136-93(d), if the application for vegetation cutting is for a site located within the corporate limits of a municipality and the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so the municipality may be given the opportunity to review the application. Information regarding whether a municipality desires to review vegetation removal applications may be found on the Department's Selective Vegetation Removal website or by contacting the Division Engineer's office.

*History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-93.3;
Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Eff. June 1, 1982;
Amended Eff. November 16, 1991; December 1, 1990; August 1, 1985; June 2, 1982;
Temporary Amendment Eff. November 16, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. March 1, 2012;
Amended Eff. January 1, 2015; November 1, 2012;
Readopted Eff. June 1, 2020.*

19A NCAC 02E .0603 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT FOR A FACILITY

(a) Pursuant to G.S. 136-133.2, within 30 days following receipt of the application for a selective vegetation removal permit for a facility, including the fee set out in G.S. 136-18.7, the Division Engineer shall approve or deny the application. The applicant, as part of the application, shall state in writing the date that he or she has delivered a copy of the application, with required attachments, to a municipality that has previously advised the North Carolina Department of Transportation (NCDOT) in writing that it seeks to provide comments regarding such applications. The applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. The list of municipalities requesting to review applications shall be maintained and updated by the Department on the NCDOT Selective Vegetation Removal website <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, then the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

- (1) the application is for the opening of view to a facility that does not meet the requirements of Rule .0601 of this Section;
- (2) it is determined by Department personnel that the facility is not screened from view;

- (3) the application is for the opening of view to undeveloped property or to a facility that, due to obstructions off the right-of-way, is screened from view from the travel way regardless of the presence or absence of trees and other vegetation on the highway right-of-way;
- (4) it is determined by Department personnel that removal of vegetation shall diminish a planting installed for headlight screening and affect the safety of the traveling public;
- (5) the application is solely for providing visibility to on-premise signs;
- (6) the application is for the removal of vegetation planted in accordance with a local, State, or federal beautification project. However, this Subparagraph shall not apply if a mitigation replanting plan related to the site for which the vegetation permit request is made as set forth in Rule .0611 of this Section, except for the provisions in Paragraph (d) and Subparagraph (g)(11); and is agreed upon in writing by the applicant, the Department, and, if applicable, the Federal Highway Administration;
- (7) on two previous occasions, the applicant failed to meet the requirements of a selective vegetation removal permit, unless the applicant engages a landscape contractor to perform the current work;
- (8) the application is for removal of vegetation that will open views to junkyards;
- (9) the applicant fails to complete the requirements of the application as set forth in Rule .0602 of this Section;
- (10) any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right-of-way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, or due to the application at any time of State or federal rules, regulations, or statutes, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a State or federal agency with jurisdiction over the project; or
- (11) an unlawful destruction or illegal cutting of vegetation has occurred within the highway right-of-way to create, increase, or improve a view to the facility from the travel way including acceleration and deceleration ramps. The Department shall not issue a selective vegetation removal permit at the requested site for a period of five years that shall begin on the date the Department resolves the "unlawful destruction" or "illegal cutting" incident by settlement agreement with the responsible party, or the Department administratively closes the case. For the purposes of this Subparagraph, "unlawful destruction or illegal cutting" is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department.

History Note: Authority G.S. 99E-30; 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.3; 136-130; Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982; Eff. June 1, 1982; Amended Eff. August 1, 2000; November 1, 1991; December 1, 1990; August 1, 1985; June 2, 1982; Temporary Amendment Eff. March 1, 2012; Amended Eff. January 1, 2015; November 1, 2012; Readopted Eff. June 1, 2020.

19A NCAC 02E .0604 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR FACILITIES

The following apply to the conditions of selective vegetation removal permit for facilities:

- (1) Selected vegetation, within the approved limits as set forth in Rule .0602(c) of this Section may be cut, thinned, pruned, or removed by the permittee in accordance with the standards set out in G.S. 136-133.4;
- (2) The permittee shall furnish a Performance Bond, certified check, or cashier's check made payable to North Carolina Department of Transportation (NCDOT) for the sum of two thousand dollars (\$2,000). The Performance Bond, certified check, or cashier's check shall cover all restoration of the right-of-way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The Performance Bond, certified check, or cashier's check shall be paid with the application before each permit to cut vegetation is issued. The Performance Bond, certified check, or cashier's check shall run concurrently with the permit. The Performance Bond, certified check, or cashier's check shall be released after a final inspection of the work by the Department reveals that all work provided for and specified by the permit is found to be completed and, if damage is caused by the permittee or the permittee's agent, all damages to the right-of-way, including damage to fencing and other structures within the right-of-way, have been repaired or restored;

- (3) Companies that plan to apply for two or more permits may provide continuing bonds for the sum of one hundred thousand dollars (\$100,000) and that type of bond shall be kept on file by the Utilities Unit of the Department;
- (4) If the work is to be performed by any entity other than the permittee, either the permittee or the other entity shall furnish the Performance Bond, certified check, or cashier's check, as described in this Rule, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department and may be found on the NCDOT Selective Vegetation Removal website: <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>. Bonds shall be furnished with the selective vegetation removal application form, and to the official assigned to receive selective vegetation removal applications at the local North Carolina Department of Transportation, Division of Highways Office;
- (5) The permittee shall provide proof of liability insurance coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his or her contractor, or agent, shall maintain workers' compensation and vehicle liability insurance coverage. The permittee, his or her contractor, and agent shall be liable for any losses due to the negligence or willful misconduct of his or her agents, assigns, and employees. The permittee, in lieu of providing proof of liability insurance as described in this Item, may be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work if the contractor or agent's policy provides five million dollars (\$5,000,000) in coverage, and the permittee provides the Department with proof of the coverage. The permittee, contractor, or agent providing the coverage shall also name the Department as an additional insured on its general liability policy, and provide the Department with a copy of the certificate showing the Department named as an additional insured. The required limit of insurance may be obtained by a single general liability policy, the combination of a general liability and excess liability, or an umbrella policy;
- (6) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality. The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines, a corresponding key or legend indicating corporate limits and territorial jurisdiction boundaries, and indicating the precise location of the business facility. The permittee shall also provide the property tax identification number for the parcel where the facility is located. The Department may require additional information if the boundary or facility location remains in question;
- (7) Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and processing of an application for a selective vegetation removal permit;
- (8) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the permitted cutting distances according to Rule .0602(c) of this Section. The two maximum points along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. The two maximum points, corresponding to the beginning point and the ending point along the edge of the pavement of the travel way, perpendicular to the maximum points marked along the right-of-way boundary, shall be marked with spray paint. If the facility is located next to an acceleration or deceleration ramp, the two corresponding maximum points shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;
- (9) The permittee shall perform tagging of trees. The permittee shall tag with visible material or flagging any trees that screen the facility from view, have been requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zone, and have a diameter of four or more caliper inches, as measured at six inches above the ground and at the time of the application. Trees tagged for cutting, thinning, pruning, or removal shall match the trees shown on the required sketch of the requested vegetation cut or removal zone;
- (10) The Department may disapprove the requested cutting, thinning, pruning, or removal of selected trees that do not screen the facility from view from the roadway, and have a diameter of four or more caliper inches, as measured at six inches above the ground, at the time of the application. The Department shall make this determination by allowing selective thinning of tree density that opens the view to the facility or agritourism activities across the entire length of the maximum cut or removal zone, without complete removal of all trees and other vegetation. The Department shall disapprove cutting, thinning, pruning, or removal of trees that may have been tagged in error. If trees are disapproved for cutting, thinning, pruning, or removal, the Department shall specify those trees to the applicant during the site review. The applicant shall remove the tree flagging for the disapproved trees and submit to the Department, by electronic means

- (including electronic mail or facsimile), an amended version of the original sketch of the site, indicating the changes on the sketch, initialing, and dating the changes thereon;
- (11) If any cutting, thinning, pruning, or removal of vegetation from any portion of the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements, conditions, other restrictions affecting the right-of-way to which the State is subjected, written agreements, State or federal rules, regulations, statutes, or permits, the permittee shall comply with applicable easements, rules, regulations, statutes, or permits for those portions of vegetation:
 - (a) If applicable easements, rules, regulations, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with applicable easements, State or federal rules, regulations, statutes, or permits, including equipment type specifications for those portions of vegetation; and
 - (b) Portions of the maximum cutting or removal zone not within an easement, nor applicable to rules, regulations, statutes, or permits regulating vegetation removal, and other activities shall be governed by standards set out in G.S. 136-93;
 - (12) The permittee shall adhere to erosion control requirements, pursuant to G.S. 113, Article 4; entitled:
 - (13) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. If a present inspector fails to acknowledge or identify work that does not conform with the requirements, this failure shall not prevent later notification to the permittee that the work is noncompliant with the permit;
 - (14) A selective vegetation removal permit shall be secured for each applicable facility prior to performing any vegetation removal work. The permittee, its contractor, or agent shall have a copy of the selective vegetation removal permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
 - (15) If the Division Engineer or his or her representative observes unsafe operations, activities, or conditions, the Engineer shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the federal and State laws, ordinances, rules, or regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, pursuant to G.S. 95, Article 16. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;
 - (16) The permittee, its contractor, or agent shall take measures to locate and protect utilities located within the highway right-of-way and within the work area of the selective vegetation removal zone. The permittee may be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee, its contractors, or agents, and to the satisfaction of the utility owner;
 - (17) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
 - (18) The permittee shall provide to the Department a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the Department. The permittee shall notify the Department in advance of work scheduled for nights, weekends, and State holidays. The Department may modify the permittee's work schedule for nights, weekends, and State holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;
 - (19) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department, if the Department's employees are performing the work. The permittee shall provide the Division Engineer with a copy of the written permission;
 - (20) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be restricted to individual and manual-operated power equipment and hand-held tools;
 - (21) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) if the Department determines that the use of such equipment will not cause safety hazards, any erosion, or damage to the right-of-way, and may allow access from the private property side to the right-of-way. Tree removal that presents a hazard from falling tree parts shall be performed in accordance with the current edition and subsequent amendments and

editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133;

- (22) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. At the end of each workday, all vegetation that has been cut, thinned, or pruned at the site shall be removed or chipped and spread in accordance with G.S. 136-133.4; and
- (23) Upon completion of all work, the Department shall notify the permittee in writing of acceptance, terminate the permit, and return the Performance Bond, certified check, or cashier's check to the permittee. For replanting work, a different bond release schedule shall be applicable according to Rule .0611 of this Section. The permittee may terminate the permit at any time and request that the Department return the Performance Bond, certified check, or cashier's check. The termination and request for return of the Performance Bond, certified check, or cashier's check shall be made in writing and sent to the Division Engineer.

History Note: Authority 136-18(5); 136-18(7); 136-18(9); 136-30; 136-93; 136-93.3; 136-133.4;
Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Eff. June 1, 1982;
Amended Eff. January 1, 2015; November 1, 2012; August 1, 2000; November 1, 1991; August 1, 1985;
August 1, 1982; June 2, 1982;
Readopted Eff. June 1, 2020.

19A NCAC 02E .0605 APPEAL TO THE CHIEF ENGINEER

History Note: Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. June 1, 1982;
Repealed Eff. June 2, 1982.

19A NCAC 02E .0606 EXCEPTIONS TO THE POLICY

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. August 1, 1985;
Repealed Eff. December 29, 1993.

19A NCAC 02E .0607 TEMPORARY MORATORIUM

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. December 1, 1990;
Repealed Eff. December 29, 1993.

19A NCAC 02E .0608 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of an outdoor advertising sign permitted under G.S. 136-129(4) or (5), to the Division Engineer of the North Carolina Department of Transportation (NCDOT), Division of Highways. Applications shall be submitted in both printed and electronic form. Application submittal information for each county is found on the NCDOT Selective Vegetation Removal website: <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>. For sites within the corporate limits of a municipality that has previously advised the Department in writing that it seeks to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. Applications for selective vegetation removal permits shall include the following information consistent with G.S. 136-133.1:

- (1) the applicant contact information;
- (2) the outdoor advertising permit tag number and location of the sign;
- (3) if the sign is located on a ramp, the application shall indicate whether cut zone is modified or normal;
- (4) if an application is eligible for municipal review, and as a prerequisite to municipal review submittal, the application shall indicate the year the sign was erected. Upon request, the Department shall furnish the year

of sign erection to the applicant. The Department may require additional proof if the year of the sign erection remains in question;

- (5) an indication of appropriate maximum cutting distance;
 - (6) the applicant's desire to remove existing trees, if present. If existing trees are to be removed, such trees require compensation by either monetary reimbursement, removal of two nonconforming outdoor advertising signs, or a beautification and replanting plan as set out in Rule .0611 of this Section, and by submitting the Existing Tree Compensation Agreement form found on the NCDOT Selective Vegetation Removal website;
 - (7) the site plan, if existing trees are to be cut, thinned, pruned, or removed;
 - (8) if existing trees are to be cut, thinned, pruned, or removed, the additional required form includes applicant contact information, permit tag number, sign location, the number, caliper inches, and monetary value of existing trees to be cut, thinned, pruned, or removed, as determined by G.S. 136-93.2, and indication of compensatory choice;
 - (9) the additional form for existing tree removal, based on the compensatory choice made, also requires submittal of either a payment check in the amount of the tree loss monetary value, indication of the two nonconforming outdoor advertising signs to be surrendered, or agreement to submit a beautification replanting plan to the Department. Compliance with the compensatory choice shall be required before the selective vegetation removal permit can be approved;
 - (10) a municipal review indication, if applicable;
 - (11) the requested use of and site access for power-driven equipment in accordance with Rule .0610(23) of this Section;
 - (12) the performance bond or certified check or cashier's check pursuant to G.S. 136-93;
 - (13) if using a contractor for vegetation removal work, identify the contractor and his or her qualifications if the contractor is not listed on the Department's website directory of qualified transportation firms;
 - (14) a payment of the non-refundable two hundred dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
 - (15) the certificate of liability, proof of workers' compensation, and vehicle liability insurance coverage;
 - (16) the geographic information system document, property tax identification number to verify location of sign in relation to municipal limits, and territorial jurisdiction boundary;
 - (17) a verification of on-site marking and tree-tagging requirements;
 - (18) if the cutting request is for a modified cut zone along a highway ramp, a diagram of the cut zone is required unless the diagram is included on a site plan, and calculations are required comparing the modified cut zone to the normal cut zone;
 - (19) if the Department disputes the site plan, the Department may request additional information pursuant to G.S. 136-133.1(c);
 - (20) if applicable, certification that the applicant has permission from the adjoining landowner(s) to access their private property for the purpose of conducting selective vegetation removal permit activities; and
 - (21) the applicant's notarized signature.
- (b) The selective vegetation removal request may be reviewed on site by Department personnel and a representative of the applicant.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-130; 136-133.1; 136-133.2; Temporary Adoption Eff. March 1, 2012; Eff. November 1, 2012; Amended Eff. January 1, 2015; Readopted Eff. June 1, 2020.

19A NCAC 02E .0609 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT FOR OUTDOOR ADVERTISING

(a) Pursuant to G.S. 136-133.2, within 30 days following receipt of the application for a selective vegetation removal permit for outdoor advertising, including the fee set out in G.S. 136-18.7, the Division Engineer shall approve or deny the application.

(b) The application shall be denied by the Division Engineer if:

- (1) the application is for an outdoor advertising location where the outdoor advertising permit is less than two years old pursuant to G.S. 136-133.2;

- (2) the application is for the opening of a view to a sign that has been declared illegal pursuant to G.S. 136-134, whose permit has been revoked, or is currently involved in litigation with the Department;
- (3) it is determined by Department personnel that removal of vegetation shall diminish a planting installed for headlight screening and affect the safety of the traveling public;
- (4) the application is for the removal of vegetation planted in accordance with a local, State, or federal beautification project prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, unless a mitigating replanting plan related to the site for which the vegetation permit request is made, as set forth in Rule .0611 of this Section, except for the provisions in Paragraph (d) and Subparagraph (g)(11); and is agreed upon in writing by the applicant, the Department, and, if applicable, the Federal Highway Administration;
- (5) on two previous occasions, the applicant failed to meet the requirements of a selective vegetation removal permit, unless the applicant engages a landscape contractor to perform the current work;
- (6) the application is for removal of vegetation that will open views to junkyards;
- (7) the requested site is subject to a five-year moratorium for willful failure to substantially comply with all requirements specified in a prior selective vegetation removal permit pursuant to G.S. 136-133.4(e);
- (8) the applicant fails to complete the requirements of the application as set forth in Rule .0608 of this Section;
- (9) any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right-of-way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, or due to the application at any time of State statutes or rules or federal statutes or regulations, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a federal or State agency with jurisdiction over the construction project. The Department may mitigate within the right-of-way in the cut zone of a permitted outdoor advertising structure so long as trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face, and such mitigation vegetation may not be cut or removed pursuant to a selective vegetation removal permit; or
- (10) a modified vegetation removal zone application request along acceleration or deceleration ramps is not in accordance with G.S. 136-133.1(a1) or Rule .0612 of this Section.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130; 136-133.1(a1); 136-133.2; 136-133.3; 136-133.4; 136-134;
 Temporary Adoption Eff. March 1, 2012;
 Eff. February 1, 2013;
 Amended Eff. January 1, 2015;
 Readopted Eff. June 1, 2020.

19A NCAC 02E .0610 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING

The following apply to the conditions of selective vegetation removal permits for outdoor advertising:

- (1) Selected vegetation, as defined in G.S. 136-133.1(b), may be cut, thinned, pruned, or removed in accordance with the standards set out in G.S. 136-133.4;
- (2) The permittee shall furnish a Performance Bond, certified check, or cashier's check made payable to North Carolina Department of Transportation (NCDOT) for the sum of two thousand dollars (\$2,000). The Performance Bond, certified check, or cashier's check shall cover all restoration of the right-of-way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The Performance Bond, certified check, or cashier's check shall be paid with the application before each permit to cut vegetation is issued. The Performance bond, certified check, or cashier's check shall run concurrently with the permit. The Performance Bond, certified check, or cashier's check shall be released after a final inspection of the work by the Department reveals that all work provided for and specified by the permit is found to be completed and, if damage is caused by the permittee or the permittee's agent, all damages to the right-of-way, including damage to fencing and other structures within the right-of-way, have been repaired or restored;

- (3) Companies that plan to apply for two or more permits may provide continuing bonds for the sum of one hundred thousand dollars (\$100,000) and that type of bond shall be kept on file by the Utilities Unit of the Department;
- (4) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity shall furnish the Performance Bond, certified check, or cashier's check, as described in this Rule, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department, or on the NCDOT Selective Vegetation Removal website: <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>. Bonds shall be furnished with the selective vegetation removal application form to the official assigned to receive selective vegetation removal applications at the local North Carolina Department of Transportation, Division of Highways Office;
- (5) The permittee shall provide proof of liability insurance coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his or her contractor, or agent shall maintain workers' compensation and vehicle liability insurance coverage. The permittee, his or her contractor, and agent shall be liable for any losses due to the negligence or willful misconduct of his or her agents, assigns, or employees. The permittee, in lieu of providing proof of liability insurance as described in this Item, may be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work if the contractor or agent's policy provides five million dollars (\$5,000,000) in coverage, and the permittee provides the Department with proof of the coverage. The permittee, contractor, or agent providing the coverage shall also name the Department as an additional insured on its general liability policy, and provide the Department with a copy of the certificate showing the Department named as an additional insured. The required limit of insurance may be obtained by a single general liability policy, the combination of a general liability and excess liability, or an umbrella policy;
- (6) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, pursuant to G.S. 136-133.1(a)(5). The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines, a corresponding key or legend indicating corporate limits, territorial jurisdiction boundaries, and indicating the precise location of the outdoor advertising structure. The permittee shall provide the property tax identification number for the parcel where the outdoor advertising structure is located. The Department may require additional information if the boundary or sign location remains in question;
- (7) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the proper permitted cutting distances according to G.S. 136-133.1(a)(1) – (6). Points A & B along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. Points C, D, and E along the edge of the pavement of the travel way shall be marked with spray paint, including the actual distances. If the sign is located at an acceleration or deceleration ramp, points C, D, and E shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;
- (8) The permittee shall perform tagging of trees. The permittee shall tag with a visible material or flagging all trees, including existing trees and other trees that are, at the time of the selective vegetation removal application, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The applicant shall tag the existing trees (the exact same existing trees as on the site plan) that are desired to be cut, thinned, pruned, or removed with visible material or contrasting colored flagging. The permittee shall denote on the site plan or application the colors of flagging used to mark each category of trees;
- (9) If there are existing trees requested for removal, the permittee shall satisfy the following before any work may be performed:
 - (a) submit the reimbursement to the Department pursuant to G.S. 136-133.1(d) in a cashier's check or certified check;
 - (b) fully disassemble two non-conforming outdoor advertising signs, their supporting structures, and return the outdoor advertising permits tags to the Department pursuant to G.S. 136-133.1(d); or
 - (c) obtain Departmental approval for the replanting plan in accordance with G.S. 136-133.1(e) and Rule .0611 of this Section;
- (10) Should the vegetation removal permit be approved and tree removal is scheduled, the sign owner shall cut all disputed tree stumps in a level, horizontal manner, uniformly across the stump, and at a four inch height, so that tree rings may be counted, by the applicant or the Department, to determine the age of the tree;

- (11) After a tree is removed and the applicant or the Department discovers, based on the number of rings in the tree stump, an error in the tree survey report or site plan, the Department shall request an amendment to the tree survey report or site plan, a redetermination shall be made by the Department, pursuant to G.S. 136-133.1(d) and (e), and the applicant shall be subject to that redetermination;
- (12) For purposes of this Rule, the portion of the cut or removal zone means that the cut or removal zone shall be less than the entirety of the cut or removal zone. Where any portion of the cut or vegetation removal zone is restricted for the following reasons in this Item, the permittee shall comply with applicable conditions, mitigation requirements, rules, statutes, or permit requirements related to cutting, thinning, pruning, or removal of vegetation within the right-of-way:
 - (a) the State is subjected to or agrees in writing to subject itself to conditions affecting the right-of-way, including conservation agreements, prior to September 1, 2011, or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later;
 - (b) applicable State or federal statutes, rules, or regulations, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a federal or State agency with jurisdiction over the construction project prohibit vegetation removal;
 - (c) mitigation within the right-of-way in the cut zone of a permitted outdoor advertising structure prohibits vegetation removal; however, trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face; or
 - (d) If the reasons set forth in Sub-items (12)(a), (b), and (c) of this Rule allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with the conditions of this Item, including equipment type for those portions of the cutting or removal zone. Vegetation removal for portions of the maximum cutting or removal zone not affected by the reasons set forth in Sub-items (12)(a), (b) and (c) of this Rule shall be governed by standards set out in G.S. 136-93;
- (13) The permittee shall adhere to erosion control requirements, pursuant to G.S. 113A, Article 4;
- (14) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. If a present inspector fails to acknowledge or identify work that does not conform with the requirements, this failure shall not prevent later notification to the permittee that the work is noncompliant with the permit;
- (15) A selective vegetation removal permit shall be secured for each applicable outdoor advertising site prior to performing any vegetation removal work;
- (16) If the Division Engineer or his or her representative observes unsafe operations, activities, or conditions, the Engineer shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the federal and State laws, ordinances, rules, and regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, pursuant to G.S. 95, Article 16. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;
- (17) The applicant shall certify that he or she has permission from the adjoining landowner(s) to access the private property for the purpose of conducting activities related to the selective vegetation removal permit application;
- (18) The permittee, its contractor, or agent shall have a copy of the selective vegetation removal permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (19) The permittee, its contractor, or agent shall take measures to locate and protect utilities within the highway right-of-way and within the work area of the selective vegetation removal zone. The permittee may be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee, its contractors, or agents, and to the satisfaction of the utility owner;
- (20) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (21) The permittee shall provide to the Department a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the

- Department. The permittee shall notify the Department in advance of work scheduled for nights, weekends and State holidays. The Department may modify the permittee's work schedule for nights, weekends, and State holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;
- (22) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department if the Department's employees are performing the work. The permittee shall provide the Division Engineer with a copy of the written permission;
 - (23) An applicant shall be allowed to use individual and manual-operated power equipment and hand held tools at any site during initial cutting or removal of vegetation or while maintaining a site during the duration of a selected vegetation removal permit. The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) if the Department determines that the use of such equipment will not cause safety hazards, any erosion, or damage to the right-of-way, and may allow access from the private property side to the right-of-way. Tree removal that presents a hazard from falling tree parts shall be performed in accordance with the current edition of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133;
 - (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. At the end of each workday, the work site shall be left with all vegetation cut, thinned, or pruned at the site either removed or chipped and spread in accordance with G.S. 136-133.4; and
 - (25) Upon completion of all work, the Department shall notify the permittee in writing of acceptance, terminate the permit, and return the Performance Bond, certified check, or cashier's check to the permittee. For replanting work, a different bond release schedule shall be applicable according to Rule .0611 of this Section. The permittee may terminate the permit at any time and request that the Department return of the Performance Bond, certified check, or cashier's check. The termination and request for return of the Performance Bond, certified check, or cashier's check shall be made in writing and sent to the Division Engineer.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-127; 136-130; 136-133.1; 136-133.2; 136-133.3; 136-133.4;
 Temporary Adoption Eff. March 1, 2012;
 Eff. February 1, 2013;
 Amended Eff. January 1, 2015;
 Readopted Eff. June 1, 2020.

19A NCAC 02E .0611 BEAUTIFICATION AND REPLANTING REQUIREMENTS FOR SELECTIVE VEGETATION REMOVAL PERMITS

- (a) Any site with a valid selective vegetation removal permit issued pursuant to G.S. 136-93(b) qualifies for a beautification and replanting plan as set forth in G.S. 136-133.1(e).
- (b) For future selective vegetation removal applications at replanted sites, replanted materials may be removed only if partially blocking the view to a sign face. In this case, the Department shall require plant substitutions on a one-for-one basis. All requests for plant substitutions shall be approved by the Department and installed according to the rules in this Section.
- (c) Submittal of a site plan shall be in accordance with G.S. 136.133.1(c).
- (d) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in Rules .0603(b)(6) and .0609(b)(4) of this Section. The caliper inches of existing trees to be removed, according to the applicant's site plan, shall equal the caliper inches to be replanted, by the applicant at the outdoor advertising site, and from which existing trees are requested to be removed. If the caliper inches of existing trees from the site plan exceed the density of the Department's replanting site design, the excess caliper inches of trees shall be delivered by the applicant to the Department according to the schedule described in Subparagraph (g)(6) of this Rule. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches.
- (e) For sites that qualify according to the replanting criteria described in this Rule, the Department shall consult with the applicant and any local government that has requested to review and provide comments on selective vegetation removal applications pursuant to G.S. 136-93(d), or has notified the Department of its desire to review and provide comments on beautification and replanting plans. The local government shall be given 15 days to review and provide comments on beautification and replanting plans. If the local government provides comments on a beautification and replanting plan, the Department shall take the comments into consideration. If the local government does not make a request for a review, the criteria stated in the rules in this Section shall be followed for replanting determination.

(f) In consideration of differences in outdoor advertising sign structure heights, business facilities, or agritourism activities, the Department shall maintain on file regionalized landscape design plans and plant lists as a guide for applicants. The applicant may submit one of the Department's plans or a proposed beautification and replanting plan prepared and sealed by a North Carolina licensed landscape architect. The Department's written approval shall be based upon the current edition of the American Standard for Nursery Stock ANSI Z60.1 for a minimum of a 1.5 caliper inch replanted tree, of the beautification, replanting, and maintenance plan shall allow the applicant to proceed with requested vegetation cutting, thinning, pruning, or removal at the site. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches. The American Standard for Nursery Stock ANSI Z60.1, approved by the American National Standards Institute and published by the American Horticulture Association is hereby incorporated by reference, including subsequent amendments and editions. The document may be accessed at no cost at americanhort.org/page/standards. The mailing address for AmericanHort is 2130 Stella Ct, Columbus, OH 43215.

(g) The approved beautification and replanting plan becomes a part of the selective vegetation removal permit pursuant to G.S. 136-93(b) and 136-133.1(e). All permit requirements shall continue to apply until all replanting and establishment requirements are satisfied and accepted in writing by the Department. The Department shall approve the replanting portion of the selective vegetation removal permit in writing and detail the requirements of the beautification and replanting plan. The following shall be required:

- (1) The work for initial plantings and all future replacements by the permittee or any of their employees, agents, or assigns shall be in accordance with the current edition of the American National Standard for Tree Care Operations-Transplanting ANSI A300 (Part 6), Planting and Transplanting except as stipulated in this Rule. The American National Standard for Tree Care Operations-Transplanting ANSI A300 (Part 6), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc. is hereby incorporated by reference, including subsequent amendments and editions. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a twenty dollar (\$20.00) cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 670 North Commercial Street, Suite #201, Manchester, NH 03101 or at this website: www.tcia.org/TCIA/SHOP. Initial and replacement planting may be considered acceptable if the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one species that are shown on the plans to be planted within a bed, shall be planted concurrently and the entire group shall be completed before any plant therein is considered acceptable. Replacement planting consists of replacing those plants that are not in a living and healthy condition as defined in Subparagraph (7) of this Paragraph;
- (2) The permittee shall adhere to erosion control requirements, according to G.S. 113A, Article 4;
- (3) All plant materials shall be approved in writing by the Department prior to arrival at the site or prior to excess trees being furnished and delivered to the Department. The approval shall be based on the current edition and subsequent amendments and editions of the American Standard for Nursery Stock ANSI Z60.1;
- (4) All work is subject to Division of Highways inspection, scheduled with the Department. A minimum 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way for any beautification and replanting plan requirements;
- (5) Grinding or other mechanical removal of all cut stumps (to a minimum depth of four inches below ground level) shall be completed in the area of replanting during the preparation of the site, prior to initial planting;
- (6) All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) shall apply when the permittee provides the Department with excess plant material at a site where existing caliper inches exceeds the site design capacity;
- (7) The permittee shall contact the Department to schedule a final replanting acceptance inspection upon completion of any plant material installation. For one year from the date of the initial planting acceptance for the entire replanting plan, the permittee shall establish all plant materials according to these provisions. Establishment for all initial or replacement plants shall begin after they are planted. The permittee shall be responsible for the area around plantings for a distance of six feet beyond the outside edges of the mulch. Establishment shall include: cutting of grass and weeds; watering; replacement of mulch; repair or replacement of guy stakes, guy wires, and water rings; and other work to encourage the survival and growth of plant material. The permittee shall remove and dispose of dead plants from the replanting plan site during the establishment period. Prior to the end of the one-year establishment period, the permittee is responsible for contacting the Department to schedule a site meeting with Departmental officials to identify plants to be replaced that are not in a living and healthy condition. Plants do not meet the living and healthy

condition requirement and need replacement if 25 percent or more of the crown is dead, if the main leader is dead, or if an area of the plant has died leaving the character of its form compromised, lopsided, or disfigured. The permittee shall replace, during the planting period, plant material needed to restore the planting to the original quantity, size, and species of plant material. Any desired changes in plant material proposed by the permittee shall be requested in writing to the Department. The Department shall notify the permittee in writing of the approved changes to the replacement plantings;

- (8) At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee's work and release the bond. Then a one-year observation period shall begin during which the permittee shall maintain stability of the original and replacement plantings to promote their continued livability and healthy growth. The permittee is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation period. Replacement shall occur in accordance with the dates of planting as stated in Subparagraph (6) of this Paragraph;
- (9) After the one-year observation period concludes, the Department shall notify the permittee if the permit requirement conditions have been met successfully;
- (10) Replanted materials may be pruned according to the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Pruning ANSI A300 (Part 1) – Planting and Transplanting; however, topping of trees or other vegetation is not allowed;
- (11) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in Rules .0603(b)(6) and .0609(b)(4) of this Section. Excess plants or trees furnished and delivered to the Department shall receive care and handling in accordance with digging, loading, transporting, unloading, planting, or otherwise handling plants. The permittee shall exercise care to prevent: windburn; injury to or drying out of the trunk, branches, or roots; or freezing of the plant roots. The solidity of the plant ball shall be preserved. Delivery of excess plant material shall be scheduled with the Department, allowing a minimum three days notification for each delivery. The permittee's responsibility for the furnished excess plants or trees ends at the time the plant material is delivered to, inspected by, and accepted by the Department;
- (12) For mitigating replanting plans according to Rule .0609(b)(4) of this Section, trees and other plant material for a proposed beautification and replanting plan taken from the Department's landscape design plans and plant lists or prepared and sealed by a North Carolina licensed landscape architect, may be of a projected mature height to reduce visibility limitations to outdoor advertising sign faces. As an alternative to replanting, mitigation by pruning for vegetative crown reduction at an existing beautification project may be allowed, if mutually agreed upon in writing by the Department and permittee. All pruning shall be performed by removing the fewest number of branches necessary to accomplish the desired objective but in consideration of normal seasonal regrowth for the type of vegetation. All pruning for purposes of mitigation shall be in accordance with the current edition and subsequent amendments and editions of the American National Standards for Tree Care Operations-Pruning ANSI A300 (Part 1) – Planting and Transplanting. In the case of vegetation mortality caused by pruning, replacement plantings shall be required according to this Rule;
- (13) Should the outdoor advertising structure related to the selective vegetation permit be sold or transferred, the new owner or permit holder is subject to the requirements in the General Statutes and rules in this Section, including those regarding planting, establishment, replacement or renovation plantings, minimum living and healthy condition, and observation; and
- (14) Willful failure to substantially comply with the requirements of this Rule for the beautification and replanting plan shall subject the permittee to penalties prescribed in G.S. 136-133.4.

History Note: Authority G.S. 99E-30; 136-93; 136-93.3; 136-130; 136-133.1; 136-133.4;
Temporary Adoption Eff. March 1, 2012;
Eff. November 1, 2012;
Amended Eff. January 1, 2015;
Readopted Eff. June 1, 2020.

19A NCAC 02E .0612 MODIFIED VEGETATION CUT OR REMOVAL ZONE FOR OUTDOOR ADVERTISING

(a) In accordance with G.S. 136-133.1(a1), at the request of a selective vegetation removal permit applicant, the Department may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone along

acceleration and deceleration ramps. Upon approval of this modified cut zone, the conditions of the initial permit as set forth in Rule .0604 and Rule .0610 of this Section, in addition to the following requirements shall apply:

- (1) the request for a modified vegetation cut or removal zone along acceleration or deceleration ramps shall be noted on the selective vegetation removal application at the time the application is submitted. The same application requirements as set forth in Rule .0608 of this Section shall apply to a modified vegetation cut or removal zone request.
- (2) the application shall include a diagram of the modified cut zone request to indicate the relocated point A to point D line and the relocated point B to point E line. If the request includes removal of existing trees as defined in G.S. 136-133.1(b)-(e), the applicant may indicate the relocated points on the required site plan in lieu of a separate diagram. The applicant shall provide calculations showing that the total aggregate area of cutting or removal equals the maximum allowed in G.S. 136-133.1(a). The applicant shall mark the modified points A, B, D, and E, as applicable, at the site for review by the Department. Modified points A and B along the right-of-way boundary (or fence if there is a control of access fence) are to be marked with visible flagging tape. Modified points C, D, & E along the edge of the pavement of the ramp are to be marked with spray paint, including the actual distances. Such markings for a modified vegetation cut or removal zone under G.S. 136-133.1(a1) shall represent and equal the maximum cut or removal area along the surface of the ground allowed in G.S. 136-133.1(a).
- (3) the Department may authorize a one-time modification of the maximum vegetation cut or removal zone for each requested sign face when the view to the outdoor advertising sign face will be improved. The modified area of vegetation cutting or removal shall cause the point A to point D line and the point B to point E line as set forth in G.S. 136-133.1(a) to be relocated as long as the total aggregate area of cutting or removal does not exceed the maximum allowed for the defined cut or removal zone in G.S. 136-133.1(a). Points A and B shall always remain on the right-of-way line and points D and E shall always remain on the edge of the pavement of the ramp. G.S. 136-133.1(g) regarding cutting vegetation from the private property side along a controlled access fence shall remain applicable from relocated point A of the modified cut zone to relocated point B of the modified cut zone.
- (4) the Department shall establish and document the modified cut or removal zone as the permanent view that shall not be altered for future selective vegetation removal permits.
- (5) If an outdoor advertising site has previously been cut under a valid selective vegetation removal permit, in accordance with G.S. 136-93(b), to the extent that the requirement of not exceeding the total aggregate area of cutting or removal allowed in G.S. 136-133.1(a) cannot be met, the applicant may apply for a modified cut or removal zone no sooner than one year after the most recent cutting activity at the site. Within the one year period, the applicant may, to the extent that the maximum cut or removal zone defined in G.S. 136-133.1(a) was not previously cut, apply that uncut area towards determining the limits of the one-time modified cut request as defined in G.S. 136-133.1(a1) and the rules of this Subchapter.
- (6) Should the outdoor advertising structure subject to a modified cut or removal zone for a selective vegetation removal permit be sold or transferred, the new owner or outdoor advertising permit holder shall be subject to G.S. 136-133.1(a1), and the rules of this Subchapter and shall not alter the modified cut zone as established and documented for a previous sign owner or permit holder.
- (7) Upon denial or conditioning by the Department of Transportation of a modified vegetative cut or removal zone under G.S. 136-133.1(a1), the applicant may file an appeal pursuant to G.S. 136-133.3.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-130; 136-133.1; 136-133.1(a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5; 136-127;
Eff. January 1, 2015.

SECTION .0700 - PROFESSIONAL OR SPECIALIZED SERVICES

19A NCAC 02E .0701 EMPLOYMENT OF PROFESSIONAL/SPECIALIZED FIRM: AUTHORIZATION

(a) Except as set out Paragraph (b) of this Rule the employment by contract of any agency, firm or individual may be authorized and executed by any of the business unit managers listed under any of the following conditions:

- (1) The required work necessitates engineering or professional expertise and services not available on the staff of the department;
- (2) The required work can be accomplished more effectively, more efficiently, and more economically than by staff of the department;

- (3) The required work cannot be undertaken and accomplished by the staff of the department in time to meet the established schedule for development of the project; or
 - (4) An emergency situation exists which requires expedient action to alleviate or minimize a condition representing a danger or economic loss to the public.
- (b) Such employment shall not be considered when other agencies of the state which have staff with the necessary expertise are available to accomplish the required work in a satisfactory manner on a schedule and at a cost suitable to meet the department's requirements.

*History Note: Authority G.S. 136-28.1(f); 143B-350(f)(13) and (g);
Temporary Rule Eff. June 11, 1982 for a Period of 51 Days to Expire on August 1, 1982;
Eff. August 1, 1982;
Amended Eff. August 1, 2012; December 1, 1993; October 1, 1991; April 1, 1986; February 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0702 SOLICITATION AND AWARD OF CONTRACT

- (a) The Department shall maintain a "Directory of Transportation Firms" that have the necessary expertise and experience, and have expressed a desire to perform in professional engineering or other kinds of professional or specialized services for the Department in connection with transportation construction or repair. Prequalification pursuant to Rule .0703 of this Section shall be required for inclusion on the Directory or award of a contract under this Section.
- (b) Upon authorization by the Secretary of Transportation for the DOT staff to use a professional or specialized firm, a Selection Committee shall be established by the branch manager consisting of at least three members from the DOT staff who are experienced in the type of services to be contracted. For contracts anticipated to exceed fifty thousand dollars \$50,000, solicitation for proposals shall be by published advertisement. In addition, solicitation for interest may be by direct mail to all firms prequalified for the type of services to be contracted and selected from the Directory.
- (c) The firm(s) to be employed shall be selected for each project by the Selection Committee.
- (d) For contracts having a total cost over fifty thousand dollars (\$50,000) and for supplemental agreements award shall be made by the Secretary of Transportation.
- (e) Supplemental agreements that increase a cost of a project to more than fifty thousand dollars (\$50,000) shall be approved by the Secretary.
- (f) In an emergency situation, these Rules may be waived by the Secretary of Transportation or the Secretary's designee pursuant to G.S. 136-28.1(e). A qualified firm may be selected, negotiations conducted, and a contract executed by the Secretary of Transportation or the Secretary's designee as required to resolve the emergency conditions.

*History Note: Authority G.S. 136-28.1(e) and (f); 143B-350(f) and (g);
Temporary Rule Eff. June 11, 1982 for a Period of 51 Days to Expire on August 1, 1982;
Eff. August 1, 1982;
Amended Eff. October 1, 2014; December 1, 2012; December 29, 1993; October 1, 1991; April 1, 1986;
February 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0703 PREQUALIFYING TO AWARD – PROFESSIONAL SERVICES FIRMS

- (a) In order to ensure that contracts awarded pursuant to G.S. 136-28.1(f) and G.S. 143-64.31 are awarded to responsible firms, prospective professional services firms shall comply with the rules set forth in this Section except as otherwise provided by law.
- (b) In order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31, all prospective professional services firms shall be prequalified with the Department to ensure that the firm is capable of performing the proposed contract.
- (c) The requirements of prequalification are as follows:
 - (1) Applicants shall demonstrate the necessary experience, knowledge, and expertise to perform complete professional services contracts in which they submit or subcontract;
 - (2) Applicants shall demonstrate that they have sufficient financial resources, including available equipment and qualified personnel, and a financial statement (first time applicants and reinstatements only), to perform and complete professional services contracts in which they submit or subcontract;
 - (3) Applicants shall demonstrate that they have the necessary knowledge and expertise to comply with all state and federal laws relating to professional services contracts.

- (d) Prospective professional services firms shall update their prequalification status annually to show changes in the staff and updated information regarding necessary company business licenses.
- (e) Firms shall re-qualify every three years to show changes in the staff, updated information regarding necessary company business licenses, and updated project experience to ensure that prequalification remains based on recent experience of the staff that is not out of date.
- (f) A requalified professional services firm shall maintain compliance with the rules in this section at all times in order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31. If at any time a professional services firm fails to comply with these rules, the Department shall disqualify the professional services firm from any further contracts until the firm is able to demonstrate compliance with these requirements by re-qualifying.

*History Note: Authority G.S. 136-28.1(e) and (f); 143-64.31; 143-B-350(f) and (g);
Eff. October 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0800 - SOLICITATION OF CONTRIBUTIONS FOR RELIGIOUS PURPOSES AT REST AREAS

19A NCAC 02E .0801 PERMIT TO SOLICIT CONTRIBUTIONS

In recognition of the State of North Carolina's legitimate concern for the safety and well-being of the traveling public as well as the right of citizens to the free exercise of religion, all religious organizations and those non-profit charitable or educational organizations with a history of concern for the health and safety of the traveling public are hereby authorized to solicit contributions at North Carolina Highway rest areas, wayside parks, and visitor welcome centers in accordance with these Rules. All other forms of solicitation by any other individuals or organizations are prohibited.

*History Note: Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. December 1, 1993; October 1, 1991; August 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0802 PERMITS REQUIRED

- (a) All organizations desiring to solicit under the provisions of this Section must first obtain a permit from the Department of Transportation for the stated purpose of allowing their members to solicit at designated areas on the state highway system.
- (b) Written requests for permits for solicitation shall be sent to the appropriate Division Engineer of the Division of Highways in which the rest area or welcome center is located.
- (c) Written requests must include all of the following:
- (1) copy of certificate showing that the applicant is exempt from federal income tax as a religious, educational or charitable organization as provided in 26 USC 501(c)(3) together with the applicant's tax exemption number;
 - (2) a statement indicating the locations where the organization intends to solicit contributions;
 - (3) the name and address of each individual authorized to solicit for the applicant;
 - (4) the name of an officer of the applicant, together with an address, to whom the permit is to be sent and complaints are to be directed; and
 - (5) if the request for a permit is from a non-religious educational or charitable organization, a written description of the organization's past efforts serving and promoting the safety of the traveling public.
- (d) When all the appropriate information required in Paragraph (c) of this Rule has been provided by the applicant, a permit shall be issued by the Chief Engineer, or his duly authorized representative, and said permit shall be effective for a period of 30 days from the date of issuance.
- (e) Each permit issued shall describe the activity authorized, the area in which it may be conducted, and the period of time for which the permit is issued.

*History Note: Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. December 1, 2012; October 1, 1991; September 1, 1986; August 1, 1986; September 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0803 SOLICITATION RESTRICTIONS AND REQUIREMENTS

(a) Any member of an organization duly permitted under these Rules actually engaged in soliciting for contributions must provide and prominently display an identification tag or badge containing all of the following information:

- (1) a photograph;
- (2) name;
- (3) organization; and
- (4) DOT permit number.

(b) While engaged in the solicitation of contributions, individual solicitors shall orally identify themselves and state which organization they represent.

(c) Individual solicitors operating under a permit from the department shall be permitted to engage in their solicitation activities only between the hours of 9:00 a.m. and 5:00 p.m. each calendar day except during holidays, when a different time is authorized in the permit.

(d) Individual solicitors are prohibited from soliciting on any portion of a highway not designated as a rest area or welcome center.

(e) The area of the rest area which may be used shall be specified in the permit, and shall not impede visitors' access to rest facilities. At the same time, it shall provide visibility of the soliciting group when feasible.

(f) Individual solicitors may use incidental water and electric utility services at highway rest areas or visitor centers with connections at locations approved by the Division of Highways.

(g) A permittee shall be limited to one individual solicitor engaged in solicitation activities at each site, and this individual may have the assistance of no more than two other members of the permittee's organization.

(h) Individual solicitors shall not persist in soliciting after solicitation has been declined, and solicitors shall not solicit State employees who are identifiable as such.

(i) Individual solicitors shall not harass persons by demanding, threatening or intimidating conduct.

(j) While individual solicitors may solicit from the general public donations for printed matter, refreshments or religious paraphernalia, the individual solicitors must inform the person solicited if a minimum donation is required.

(k) All distribution of refreshments, pamphlets and other materials and transfers of money or funds solicited from a person acting pursuant to a permit issued by the Chief Engineer or his duly authorized representative, shall take place in or at the location specifically identified in the permit.

(l) Individual solicitors may not engage in dancing, chanting, the use of music or other noise producing instruments, megaphones, microphones or any other similar devices.

(m) Individual solicitors shall cease activities in the event of emergency situations involving dangers to the general public.

(n) Individual solicitors shall not interfere with pedestrian or vehicular traffic.

(o) No more than two organizations, one religious and one non-religious charitable or educational, may solicit at highway rest areas, wayside parks or visitor welcome centers at the same time.

History Note: Authority G.S. 20-175; 136-18;

Eff. November 1, 1984;

Amended Eff. December 1, 2012; December 1, 1993; October 1, 1991; August 1, 1986; September 1, 1985;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .0804 REVOCATION OF PERMIT

(a) Any of the following shall be grounds for revoking a permit issued under the provisions of these Rules:

- (1) failure to renew the permit issued to the organization;
- (2) loss of federal income tax exemptions;
- (3) violations of the restrictions on solicitations contained in Rule .0803 of this Section;
- (4) substantiated complaints of harassment of travelers by individual solicitors;
- (5) any action which adversely affects the health or safety of the traveling public;
- (6) fraud or misrepresentation in application on the part of the permittee.

(b) Any organization which applies for a permit for solicitation and is refused such a permit, or any organization which has its permit revoked, may make a written appeal within 30 days of the department's decisions to the Secretary of Transportation whose decisions shall be final.

History Note: Authority G.S. 20-175; 136-18;

Eff. November 1, 1984;

*Amended Eff. December 1, 1993; August 1, 1986; September 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0900 - DISTRIBUTION OF NEWSPAPERS FROM DISPENSERS AT REST AREAS AND WELCOME CENTERS

19A NCAC 02E .0901 NEWSPAPER DISTRIBUTION POLICY

The Department of Transportation, in recognition of the First Amendment right of freedom of speech which includes the right to distribute newspapers in certain public areas, and in recognition of the State of North Carolina's legitimate concern for the safety and well-being of the traveling public and the commercial vending authority of the Division of Services to the Blind, Department of Human Resources, has determined that all distribution of newspapers at rest areas and welcome centers on all of North Carolina's highways shall be in accordance with the following Rules. All other forms of newspaper distribution at rest areas and welcome centers are prohibited.

*History Note: Authority G.S. 111-41 et seq.; 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0902 PERMITS REQUIRED

- (a) A permit must be obtained from the Department of Transportation to distribute newspapers from newspaper dispensers at rest areas and welcome centers.
- (b) All permit requests must be in writing and must include the owner's name, address, telephone number and location of the newspaper dispenser, a plot plan showing the proposed location of the newspaper dispenser and a certification that such location is in conformity with this Section. The filing of a completed permit application will be considered a temporary permit pending the 30 day Department of Transportation review in Paragraph (c) of this Rule.
- (c) Within 30 days of receipt of the permit application, the Department of Transportation will review the proposed location and, if it meets all requirements, issue a permit. If the application does not meet all requirements, the Department shall issue a notice of nonconformance and list the reasons the application does not conform to the Department Rules.
- (d) The permit shall be valid until terminated or revoked for noncompliance with these Rules.

*History Note: Authority G.S. 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0903 INDEMNIFICATION

- (a) The owner of the news dispenser, upon the placement of a newspaper dispenser at a rest area or welcome center, assumes the unconditional obligation and thereby agrees to defend, indemnify and save harmless the State, its agents, servants and employees from all suits, actions or claims of any character brought because of death or any injury received or sustained by negligence of State employees or agents, arising out of the installation, use or maintenance of any newspaper dispenser located on State highway rest areas or welcome centers, or where such suit, action or claims arise out of such installation, use or maintenance of any newspaper dispenser being a contributing omission, neglect or misconduct by the permittee, or its employees, agents, distributors or servants relating to the installation, use or maintenance of any newspaper dispenser within the State highway rest areas or welcome centers.
- (b) The aforesaid indemnification provision shall be contained in each permit issued by the Department pursuant to this Section.

*History Note: Authority G.S. 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0904 LOCATION, INSTALLATION AND MAINTENANCE/NEWSPAPER DISPENSERS

Any newspaper dispenser which in whole or in part rests upon, in or over rest areas or welcome centers shall comply with the following standard:

- (1) Newspaper dispensers shall not exceed five feet in height, 36 inches in width, or 30 inches in depth;

- (2) Newspaper dispensers may be chained or otherwise attached to one another; however, no more than three newspaper dispensers may be joined together in this manner, and a space of no less than 18 inches shall separate each group of three newspaper dispensers so attached.
- (3) No newspaper dispenser shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of a newspaper or periodical sold therein.
- (4) Every newspaper dispenser placed at a rest area or welcome center shall have affixed thereto in a place where such information may be easily seen, the name, address, and telephone number of the owner and person (if different from the owner) responsible for maintaining the news dispenser.
- (5) No newspaper dispenser shall be chained, bolted or otherwise attached to any public fixture located within the State highway right of way, including, but not limited to, official signs, sign supports, guide rails, traffic signal supports, highway lighting supports, controller boxes, fire hydrants or bus shelters.
- (6) Newspaper dispensers shall be securely place so as to reasonably prevent personal injury or property damage due to tilting, tipping or overturning.
- (7) Every newspaper dispenser shall be maintained so that:
 - (a) It is reasonably free of dirt and grease.
 - (b) It is reasonably free of chipped, faded, peeling and cracked paint;
 - (c) It is reasonably free of rust and corrosion; and
 - (d) The structural parts thereof are intact.
- (8) No newspaper dispenser shall be within five feet of a fire hydrant, fire call box, police call box or any other emergency facility.
- (9) No newspaper dispenser shall be placed in lobbies of rest areas or welcome centers or along the sidewalk on the approach to the rest area or welcome center building. Newspaper dispensers also are not allowed under the roof overhangs of these buildings.
- (10) No newspaper dispenser shall be placed in such a way that it impedes vehicular, pedestrian or handicapped person movements on drive and walkways, at telephones, trash receptacles, water fountains, to and from picnic areas or to and from rest area and welcome centers service buildings.
- (11) No newspaper dispenser shall be placed along the curbs adjacent to parking areas. When a news dispenser is placed along a sidewalk it shall be placed parallel to and no more than six inches from the sidewalk edge farthest from the traffic curb.
- (12) Where vending facilities are in existence at rest areas or welcome centers, the newspaper dispensers shall be placed in close proximity to those buildings.
- (13) Where vending facilities are planned at a rest area or welcome center, the newspaper dispensers shall be placed near the planned location of the vending facility.

*History Note: Authority G.S. 136-18(9);
 Eff. October 1, 1991;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0905 CONDITIONS, NOTICE OF VIOLATIONS AND APPEALS

- (a) The continued placement, use and maintenance of newspaper dispensers is conditioned upon compliance with all the provisions of this Section. If any of the provisions of this Section are alleged to have been violated or if the location, installation, or condition of the newspaper dispenser no longer meets with the specifications of this Section the permittee shall be notified of the non-compliance by registered mail, return receipt requested.
- (b) The notice shall state the specific provision(s) of this Section which are alleged to have been violated.
- (c) The notice shall further state that, upon request by the permittee within 15 days of the receipt of said notice, the official issuing the notice of violation shall meet with the permittee to discuss the basis for the determination that a violation exists and any proposed means of eliminating any violations. That meeting shall take place within 30 days of said request. A request for such a meeting shall stay the further enforcement of this Section, except in emergency situations. Following any such meeting, the official issuing the notice of violation may rescind the notice if it is determined that there was no violation or in the event the alleged violation is otherwise eliminated. The official may also grant time for the correction of any violation upon request.
- (d) If, within 30 days after mailing the notice of non-compliance, or within 30 days after the meeting referred to in Paragraph (c) of this Rule, in the event a meeting is requested and does not resolve the dispute in a mutually acceptable manner, or the permittee has failed to remove the newspaper dispenser or otherwise correct the violation or reason for non-compliance, the permit shall be revoked and the permittee shall be notified by registered mail that the permit has been revoked.

- (e) The decision as provided for in Paragraph (d) of this Rule shall be the final agency decision.
- (f) If the permittee (or applicant where no permit has been issued) fails to appeal from the revocation of a permit or a decision not to grant a permit, and does not remove or have removed the newspaper dispenser in question within 30 days from the receipt of a revocation notice, the newspaper dispenser shall be removed by the Department of Transportation maintenance personnel and stored at a Department of Transportation maintenance yard. The permittee shall be notified by registered mail of the location of the newspaper dispenser and the hours when it may be obtained. The Department of Transportation shall not be liable for any damage to the newspaper dispenser, to any material contained therein, or for any lost sales caused by the removal, transportation or storage of the newspaper dispenser.

History Note: Authority G.S. 136-18(9);
Eff. October 1, 1991;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .0906 COMPLIANCE WITH DIV OF SERVICES FOR THE BLIND REQUIREMENTS

Permittees must comply with the requirements of the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act [20 USC 107a(a)(5)].

History Note: Authority G.S. 111-41 et seq.; 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .1000 - SCENIC BYWAYS

19A NCAC 02E .1001 DEFINITIONS

This Section establishes the Department's rules for the administration, designation and removal of the North Carolina Scenic Byways Program. For purposes of this Section, the following definitions shall apply:

- (1) "Board" means North Carolina Board of Transportation.
- (2) "Byway" means a scenic highway.
- (3) "Designate" means a process for approving a road or a system of roads to the state system of Scenic Byways.
- (4) "D.O.H." means Division of Highways of the Department of Transportation.
- (5) "Interested Party" means any proponent or opponent of the proposal for the designation or removal of the Byway.
- (6) "Intrinsic Qualities/Resources" means unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural, or ethnic features.
- (7) "Merit" means applications with all facts substantiated and considered suitable for further consideration.
- (8) "N.C.D.O.T./Department" means North Carolina Department of Transportation.
- (9) "Program" means the Scenic Byways Program and its associated administrative tasks.
- (10) "Promote" means to foster and encourage the advancement of the Scenic Byways Program.
- (11) "Removal" means the process of removing a Byway or a section of a byway from the state system of Scenic Byways.
- (12) "Report" means a summary of information prepared by the Roadside Environmental Unit.
- (13) "Roadside Environmental Unit" means a unit of the Department of Transportation.
- (14) "Scenic Byway/Highway" means a defined road or system of roads, designated by the Board of Transportation, having distinct natural, cultural, historical, and aesthetic qualities.
- (15) "Scenic Byway/Highway Management Plan" means strategic goals specifically outlined to preserve or enhance the scenic integrity along a state highway or state byway.
- (16) "Scenic Value" means a measurement of the aesthetic quality of an area determined through a visual inventory conducted by the Roadside Environmental Unit.
- (17) "T.I.P." means the Transportation Improvement Program.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1002 PURPOSE

- (a) The Scenic Byway/Highway system shall be established to provide the public with the opportunity to travel on a system of roads featuring the intrinsic qualities of the State within the existing highway system.
- (b) The Scenic Byway/Highway program is intended to identify not create scenic byways/highways.
- (c) The program and rules prescribed to sustain the integrity and safety of the scenic byway/highway system shall be incorporated into N.C.D.O.T. planning and maintenance operations.
- (d) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway/Highway designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System shall become nonconforming signs and shall be allowed to remain until such time as funds become available for purchase.
- (e) The implementation of the system provides an alternative for safe travel, encourages tourism and economic growth, and promotes intrinsic qualities/resources along the highway system.

*History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .1003 ADMINISTRATION OF PROGRAM

- (a) The responsibilities and execution of duties of implementing and carrying out the goals of the Scenic Byway/Highway program are vested in the Division of Highways (DOH) of the NCDOT. The DOH is authorized:
 - (1) to plan, design, and develop the Scenic Byway/Highway System and Program;
 - (2) to develop and make recommendations, including routes to be designated or removed, to the Board of Transportation on the organization and operation of the Scenic Byway/Highway Program;
 - (3) to support the protection of historical, cultural, natural and aesthetic resources in areas adjacent to the highway.
- (b) Other administrative duties which shall be conducted by the Department are:
 - (1) to compose and provide application forms for proposed Scenic Byway/Highway locations and for removal of Scenic Byway/Highway locations from the system;
 - (2) to coordinate and manage Scenic Byway/Highway system signing;
 - (3) to annually review and file a report by February 1 each year with the Secretary of Transportation on the existing Scenic Byways/Highways in the system and those highways offered for both designation and removal in the system;
 - (4) to oversee interaction between the Department of Transportation and public/private entities interested in the development or management of the State Byway/Highway system;
 - (5) to develop and make available to the public interpretive information about the Scenic Byways and Highways.

*History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .1004 DESIGNATION CRITERIA

- (a) The following criteria shall be required for a route to be included in the Scenic Byway/Highway system:
 - (1) highway design which preserves and protects the natural beauty or scenery of the area;
 - (2) location on an existing highway or roadway having legal public access;
 - (3) minimum consecutive length of one mile;
 - (4) adequate land area to accommodate safe enjoyment of scenic attractions;
 - (5) evidence of strong local support for the designation established by the proponent of the designation, which includes but is not limited to petitions, letters, and newspaper articles;
 - (6) significant natural or aesthetic features visible from and adjacent to the roadway. Such features include but are not limited to agricultural lands, vistas of marshes, shorelines, forests, and other areas of dense vegetation or notable geographic characteristics;
 - (7) intrinsic qualities such as but not limited to historical, cultural, or recreational resources in the area.

- (b) The NCDOT shall determine that development of the designated area shall not detract from the scenic natural character and visual quality of the route. The Department shall ensure the route is compatible with recreational, aesthetic, and environmental management needs of the area.
- (c) Designation of a highway as a Scenic Byway/Highway shall not significantly interfere with the operation or maintenance of existing public utility lines and facilities.
- (d) Designation of a highway as a Scenic Byway/Highway shall not be construed to require any modification in local land use regulations or restrictions, require any change in commercial or agricultural activities, or affect future highway rehabilitation, development, or the need to maintain or improve the roads.
- (e) Preference shall be given to a Scenic Byway/Highway with existing protected areas such as national forests or federal or state park land near or adjacent to the proposed route.

*History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .1005 DESIGNATION PROCESS

The process for designation as a Scenic Byway shall be as follows:

- (1) A non-profit organization, which includes but shall not be limited to a county commission or the governing body of any municipality, may submit an application to the Roadside Environmental Unit of the Department of Transportation with proper Scenic Byway/Highway identification on the envelope;
- (2) Roadside Environmental Unit shall review the application and prepare a written report, which includes findings on the designation criteria set in 19A NCAC 02E .1004 and a recommendation on whether the proposal should be adopted or rejected;
- (3) Proposed routes deemed to have merit based on criteria in 19A NCAC 02E .1004 shall be submitted by the DOH staff to the Board of Transportation for approval or denial;
- (4) At the request of any interested party, the Citizens Participation Unit of the N.C.D.O.T. shall hold a public hearing to consider any proposal recommended for approval;
- (5) If a hearing is requested the proponents of the Byway shall place a legal notice in at least one newspaper in the municipality nearest the proposed Scenic Byway/Highway and in three successive issues. The notice shall contain the date, time, and location of the hearing and a summary of the proposed designation. Proponents of the Byway/Highway shall be responsible for the cost of the legal notice. In addition to the hearing, written comments shall be accepted by the Roadside Environmental Unit for 30 days from the publication of the hearing notice. If no hearing is requested, written comments may be submitted and shall be accepted for 90 days from the date of application. A request for public hearing shall be made within 60 days from the receipt of the application. The hearing shall be held no sooner than 14 days following the last day of the legal notice and no later than 30 days following the last day of the legal notice;
- (6) The Department shall notify the proponent in writing of the Board of Transportation's approval or denial of the proposal;
- (7) The Board may designate any route or section of a route at anytime so long as the Board meets the criteria in 19A NCAC 02E .1004.

*History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .1006 APPLICATION FOR DESIGNATION

(a) The following items shall be included for a Scenic Byway application:

- (1) the proponent's name, address, telephone number, and email address, and the name, address, email address, and telephone number of the organization, if applicable;
- (2) a written description of the section of highway to be designated, including a description of the section's unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features;
- (3) photographic files of the area that demonstrate the section's qualities of significance;
- (4) county maps with the proposed route marked;

- (5) copies of zoning ordinances applicable to the route or a written list of existing land-use areas for unzoned areas;
 - (6) documentation of notice given to local governments adjacent to proposed route;
 - (7) for unzoned areas, a written list of commercial or industrial activities adjacent to or within 800 feet of the pavement of the proposed route; and
 - (8) an optional Scenic Byway Management Plan may be submitted with an application.
- (b) Completed applications shall be sent to the Roadside Environmental Unit, 1557 Mail Service Center, Raleigh, NC 27699-1557, no later than August 31 of each year. Incomplete applications shall not be accepted and will be returned to the proponent.
- (c) The application and all application materials are public records pursuant to Chapter 132 of the North Carolina General Statutes.

*History Note: Authority G.S. 136-18(5); 136-18(31); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Readopted Eff. March 1, 2019.*

19A NCAC 02E .1007 REMOVAL PROCESS

- (a) A route or section of a route may be removed if its character has changed such that it meets the criteria for removal as specified in G.S. 136-18(31) and taking into consideration that it no longer meets the criteria as set out in 19A NCAC 02E .1004.
- (b) The process of removal shall be as follows:
- (1) A non-profit organization, which includes but shall not be limited to a county commission or the governing body of any municipality, may submit an application for removal to the Roadside Environmental Unit of the Department of Transportation with proper Scenic Byway/Highway identification label on the envelope;
 - (2) The Roadside Environmental Unit shall review application, prepare a report incorporating a study of the scenic value of the submitted route or section of route and submit proposals deemed to have merit as specified in 19A NCAC 02E .1004 to the Board of Transportation;
 - (3) At the request of any interested party, the Citizens Participation Unit of the N.C.D.O.T. shall hold a public hearing to consider any proposal recommended for removal;
 - (4) If a hearing is requested the proponent of the Byway removal shall place a legal notice in at least one newspaper in the municipality nearest the route or section of a route proposed for removal and in three successive issues. The notice shall contain the date, time, and location of the hearing and a summary of the removal proposal. Proponents of the removal shall be responsible for the cost of the legal notice. In addition to the hearing, written comments shall be accepted by the Roadside Environmental Unit for 30 days from the publication of the hearing notice. If no hearing is requested, written comments may be submitted and shall be accepted for 90 days from the date of application. A request for public hearing shall be made within 60 days from the receipt of the application. The hearing shall be held no sooner than 14 days following the last day of the legal notice and no later than 30 days following the last day of the legal notice;
 - (5) The Board of Transportation shall approve or deny application; and
 - (6) The Department shall notify the applicant of approval or denial.
- (c) The Board may remove any route or section of a route from the Scenic Byway System at anytime so long as the Board meets the criteria for removal outlined in these Rules and in G.S. 136-18.

*History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .1008 REMOVAL APPLICATION

- (a) The following shall be included in a Scenic Byway removal application, but is not limited to such items, to be considered.
- (1) Characteristic which has changed such that it no longer meets criteria for designation;
 - (2) Documentation of current zoning, ordinances, and other land-use controls;
 - (3) Documentation of public notification of removal to relative parties and legal notice of public notification;
 - (4) Written route or section of route description, including elements supporting the proposal to remove;
 - (5) Written applicant information including name, address, and telephone number;

- (6) Photographic slides of characteristics supporting proposal to remove;
 - (7) County maps with route or section of route marked.
- (b) Application must be received by the Roadside Environmental Unit, N.C.D.O.T., P.O. Box 25201, Raleigh, NC 27611 at least six months prior to the annual Board meeting set aside for Scenic Byway review. Incomplete applications shall not be accepted and will be returned to the proponent.
- (c) All applications and application materials shall become property of the North Carolina Department of Transportation.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
 Eff. March 1, 1995;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1009 BOARD OF TRANSPORTATION EVALUATION

- (a) The Board of Transportation shall annually evaluate the Scenic Byway/Highway Program at its March meeting.
- (b) The review and evaluation shall include, but not be limited to, the following:
- (1) An examination of funding for the program;
 - (2) A determination of suitability of those proposed routes for designation and removal. A request for further information on the proposed route may be made by the Board. The suitability of the route shall be decided at a later date.
- (c) The annual meeting date, place, and time shall be determined by the Board of Transportation and shall be consistent within each calendar year and with the annual Transportation Improvement Program (TIP) public hearings.
- (d) The Board of Transportation retains the authority to designate or remove a route or a section of a route from the Scenic Byway/Highway system at any time. Prior to making its decision, the DOH shall prepare a recommendation to the Board.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
 Eff. March 1, 1995;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .1100 – TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM

19A NCAC 02E .1101 TOURIST-ORIENTED DIRECTIONAL SIGN (TODS) PROGRAM

- (a) The Tourist-Oriented Directional Sign Program, hereinafter "Program," offered by the North Carolina Department of Transportation, hereinafter "Department," provides directional signing for eligible tourist attractions located on the state non-freeway system which is located within the right-of-way at intersections as specified in the Manual on Uniform Traffic Control Devices (MUTCD).
- (b) Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of Transportation, 1592 Mail Service Center, Raleigh, North Carolina 27699-1592.
- (c) Applications for participation in the program shall be accepted by the Division Engineer who is responsible for the county where the attraction is located.

History Note: Authority G.S. 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);
 Temporary Adoption Eff. January 1, 2003;
 Eff. August 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1102 DEFINITIONS

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);
 Temporary Adoption Eff. January 1, 2003;
 Eff. August 1, 2004;
 Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02E .1103 LOCATION OF TODS

The Department shall administer the erection and maintenance of official signs giving specific information of interest to the traveling public in accordance with this Rule.

- (1) The Department shall only erect panels at at-grade intersections. An at-grade intersection is an intersection that is controlled by stop signs or traffic signals. A TODS Trailblazer shall be installed if further direction is needed to guide the tourist from the intersection to the attraction.
- (2) Panel placement shall be determined by the Department according to the natural terrain and shall not block scenic vistas.
- (3) A separate sign panel shall be provided on the intersection approach for each eligible attraction in accordance with G.S. 136-140.16. Panels shall be allowed in each direction only when lateral spacing is available.
- (4) TODS panels shall be located at least 200 feet in advance of the main intersection. Signs shall be spaced at least 200 feet apart and at least 200 feet from other traffic control devices. TODS panels shall not be located more than one-half (0.5) mile from the center of the main intersection and shall not be placed in the signing sequence for any other prior intersections.
- (5) Warning, regulatory, guide, or other official highway signs shall take precedence over TODS.

History Note: Authority G.S. 136-89.56; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19;
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Readopted Eff. August 1, 2019.

19A NCAC 02E .1104 ELIGIBILITY FOR PROGRAM

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19;
143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02E .1105 COMPOSITION OF SIGNS

- (a) No TODS panel shall be displayed in a manner that would mislead or misinform the traveling public.
- (b) No message shall interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal, or similar device.
- (c) Each TODS panel shall include only information related to that attraction.
- (d) TODS panel and trailblazer designs shall be in conformance with the standards as specified in the MUTCD, as defined in G.S. 136-130, and approved by the Department, prior to fabrication and shipment.

History Note: Authority G.S. 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19;
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Readopted Eff. August 1, 2019.

19A NCAC 02E .1106 TODS PROGRAM FEES

- (a) The annual fee for each TODS panel or TODS Trailblazer shall be two hundred dollars (\$200.00).
- (b) All participating businesses shall pay the annual fee prior to installation of the TODS panel(s).
- (c) The annual fee shall be paid by check or money order and due in advance of the period of service requested. Failure to pay a fee when due shall be grounds for removal of the TODS panel.

History Note: Authority G.S. 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19;
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Readopted Eff. August 1, 2019.

19A NCAC 02E .1107 CONTRACTS WITH THE DEPARTMENT

19A NCAC 02E .1108 APPEAL OF DECISION

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .1200 – PRIVATE PROPERTY OWNERS

19A NCAC 02E .1201 PURPOSE

The North Carolina Department of Transportation's Public Vehicular Area designation exists to allow private property to be designated as a public vehicular area by the private property owner.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1202 DEFINITIONS

For the purposes of the rules in this Section, the following definitions shall apply:

- (1) "Department" shall mean the North Carolina Department of Transportation.
- (2) "Participants" shall mean the private property owners who have registered property as a Public Vehicular Area.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1203 PARTICIPATION

- (a) The Division Engineer or his designee shall acknowledge receipt and registration of applications from participants applying to participate in designating a Public Vehicular Area.
- (b) By certified check or money order, each participant shall pay a one time non-refundable fee of two hundred dollars (\$200.00) for each registration. If the property is sold, the PVA registration shall transfer to the new owner unless the new owner chooses to amend or modify the agreement. This registration fee shall cover the cost of one certified copy of the registration of the Public Vehicular Area. Requests for additional certified copies shall be submitted to the Division Engineer in writing along with a check or money order for five dollars (\$5.00) per copy.
- (c) All applications shall be submitted on a form furnished by the Department.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1204 RESPONSIBILITIES OF PARTICIPANTS AND DEPARTMENT

- (a) The Department shall provide a copy of the official design of the signs that shall state "Public Vehicular Area G.S. 20-219.4."
- (b) Any participant shall:
 - (1) Locate signs in a manner that does not inhibit sight distance or create a safety hazard;
 - (2) Fabricate, install, and maintain signs in accordance with the Manual on Uniform Traffic Control Devices;
 - (3) Erect signs so as to provide reasonable notice to the motorist. Signs indicating Public Vehicular Area shall be placed at the driveway entrances to the area and within the limits of the Public Vehicular Area. The signs shall not be placed in the public right of way.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f);

*Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .1205 TERMINATION OF THE AGREEMENT

- (a) Any participant may choose to cancel the agreement by notifying the Department. No prorated refund shall be given to the participant due to cancellation of agreement.
- (b) A participant may choose to modify the agreement by resubmitting an application and two hundred dollars (\$200.00) fee for each registration.

*History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SUBCHAPTER 02F - DEPARTMENT OF TRANSPORTATION'S MINIMUM CRITERIA

SECTION .0100 - MINIMUM CRITERIA

19A NCAC 02F .0101 PURPOSE

This Section establishes minimum criteria to be used in determining when the preparation of environmental documents pursuant to the North Carolina Environmental Policy Act (NCEPA) is not required.

*History Note: Authority G.S. 113A-11; 143B-10;
Temporary Adoption Eff. January 11, 2002;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02F .0102 MINIMUM CRITERIA

The following are established as an indicator of the types and classes of thresholds of activities at and below which environmental documentation under the NCEPA is not required:

- (1) Approval of:
 - (a) installation of utilities along or across a transportation facility;
 - (b) grade separated crossings of highways by railroads or highway; or
 - (c) grading, commercial driveways, and other encroachments on the highway right-of-way;
- (2) Construction of bicycle and pedestrian lanes, paths, and facilities;
- (3) Construction of safety projects such as guardrails, grooving, glare screen, safety barriers, and energy attenuators;
- (4) Installation of noise barriers or alterations to existing public buildings to provide for noise reduction;
- (5) Landscaping of highway, railroad, and rest area projects;
- (6) Installation of fencing, signs, pavement markings, small passenger shelters, lighting, traffic signals, and railroad signal systems and warning devices;
- (7) Repair, rehabilitation, or replacement of a highway or railway facility in general conformance with the original design and alignment, which is commenced immediately after the occurrence of a natural disaster or catastrophic failure, to restore the highway for the health, welfare, or safety of the public;
- (8) Highway or railway modernization by means of the following activities, which involve less than a total of 10 cumulative acres of ground surface previously undisturbed by highway or railway construction, limited to a single project, noncontiguous to any other project making use of this provision:
 - (a) resurfacing, restoration, or reconstruction;
 - (b) adding lanes for travel, parking, weaving, turning, or climbing;
 - (c) correcting substandard curves and intersections;
 - (d) adding shoulders or minor widening;
 - (e) adding or extending passing sidings;
 - (f) lengthening of railway spirals; or

- (g) flattening of railway curves;
- (9) Reconstruction of existing crossroad or railroad separations and existing stream crossings, including, but not limited to, pipes, culverts, and bridges;
- (10) Approval of oversized and overweight permits;
- (11) Approval of outdoor advertising permits;
- (12) Maintenance or repair of the state highway or railway system to include work such as:
 - (a) Grading and stabilizing unpaved roads;
 - (b) Maintaining unpaved shoulders;
 - (c) Cleaning ditches and culverts;
 - (d) Patching paved surfaces;
 - (e) Maintaining bridges;
 - (f) Removing snow and ice;
 - (g) Controlling erosion and vegetation growth;
 - (h) Manufacturing and stockpiling material;
 - (i) Paving secondary roads; and
 - (j) Timber and surfacing of rail lines;
- (13) Assumption of maintenance of roads constructed by others;
- (14) Making capital improvements constructed at an existing DOT facility that: exceed the threshold planning limits of Title 3 of the Superfund Amendments and Reauthorization
 - (a) Require less than one acre of exposed, erodible ground surface; and
 - (b) Require the use of structures which do not involve handling or storing hazardous materials which Act of 1986;
- (15) Construction of a new two-lane highway in accordance with accepted design practices and DOT standards and specifications involving less than a total of 25 cumulative acres of ground surface limited to a single project, noncontiguous to any other project making use of this provision;
- (16) Reconstructing, rehabilitating, resurfacing, or maintaining existing runways, taxiways, aircraft aprons, access roads, and automobile parking lots;
- (17) Constructing, reconstructing, rehabilitating, or upgrading of lighting associated with runways, taxiways, and apron edges; visual approach aids; instrument approach aids; wind indicators; rotating beacons; obstruction lights; area lights; security lights; and the electrical distribution systems and control systems for such facilities;
- (18) Construction of terminal buildings, railway stations, maintenance buildings, and hangars involving less than five acres of previously undisturbed ground;
- (19) Acquiring property to meet Federal or State standards, requirements, or recommendations directly relating to aviation safety;
- (20) Acquiring 10 acres or less of property for future airport development or future railroad development;
- (21) Construction on existing airport property which has previously been disturbed by clearing, grubbing, or grading on land involving less than 10 acres of exposed, erodible ground surface;
- (22) Planning airport projects to include master plans, noise and compatibility plans, preliminary construction project plans, and special planning studies such as economic impact studies;
- (23) Rehabilitating, maintaining, and improving airport drainage systems on airport property to include landscaping and erosion control facilities involving less than five acres of previously undisturbed ground;
- (24) Purchasing vehicles for mass transportation purposes;
- (25) Maintaining and improving railroad track and bed in the existing right of way;
- (26) Implementation of any project which qualifies as a "categorical exclusion" under the National Environmental Policy Act by one of the Agencies of the U.S. Department of Transportation;
- (27) Acquisition and construction of wetland, stream, and endangered species mitigation sites;
- (28) Remedial activities involving the removal, treatment or monitoring of soil or groundwater contamination pursuant to state or federal remediation guidelines; and.
- (29) Other activities, not specifically described above, involving maintenance or repair needed to maintain the original function of an existing project or facility without expansion or change in use; sampling, monitoring, and related data-gathering activities; and construction or land-disturbing activities that impact less than five acres.

History Note: Authority G.S. 113A-9; 113A-11; 143B-10(j);

Temporary Adoption Eff. January 11, 2002;

Eff. April 1, 2003;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02F .0103 EXCEPTIONS TO MINIMUM CRITERIA

Any activity falling within the parameters of the minimum criteria set out in Rule .0102 of this Section shall not routinely be required to have environmental documentation under the NCEPA. However, the Secretary of Transportation or his designee shall determine if environmental documents are required in any case where a Division Director or Branch Manager makes one of the following findings as to a proposed activity:

- (1) The proposed activity may have significant adverse effects on wetlands; surface waters such as rivers, streams, and estuaries; parklands, prime or unique agricultural lands; areas of recognized scenic, recreational, archaeological, or historical value; or would endanger the existence of a species identified on the Department of Interior's threatened and endangered species list.
- (2) The proposed activity could cause changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create significant adverse water quality, air quality, or ground water impacts; or have a significant adverse effect on long-term recreational benefits or shellfish, finfish, wildlife, or their natural habitats.
- (3) The secondary or cumulative impacts of the proposed activity, which are not generally covered in the approval process, may result in a significant adverse impact to human health or the environment.
- (4) The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the agency.

History Note: Authority G.S. 113A-9; 113A-11; 143B-10(j);

Temporary Adoption Eff. January 11, 2002;

Eff. April 1, 2003;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.