

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

For any rules that exceed one page, please one print on one side in accordance with 26 NCAC 02C .0108(1)(b)

Please be sure to track any changes made from the Rule as it is currently in the Code.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02B .0150

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In Item (3), delete "formal"

In Item (4), who is to make the determination whether it is necessary or convenient?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02B .0150 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0150 RAILROAD RIGHT OF WAY DEFINITIONS ~~CONSTRUCTION OF RAILROAD~~**
4 **TRACKS ACROSS RIGHT OF WAY**

5 ~~It shall be unlawful to construct a railroad track across any portion of the State Highway System, without the written~~
6 ~~permission of the Chief Engineer or his authorized agent.~~

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

- 8 (1) “At-grade crossing” means an intersection where roadways and railroads join or cross at the same
9 level.
- 10 (2) “Closed crossing” means a location where a previous crossing no longer exists because either the
11 railroad tracks have been removed, or each pathway or roadway approach to the crossing has been
12 removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A
13 grade-separated highway-rail crossing that has been removed shall be considered a closed crossing.
- 14 (3) “Crossing Agreement” means a formal written agreement between the Department and a railroad
15 through which the railroad permits the Department to build a road across the railroad's tracks.
- 16 (4) “Facilities” means real or personal property, or any interest in that property, that is determined to be
17 necessary or convenient for the provision of a freight or passenger rail fixed guideway facility or
18 system. The term includes all property or interests necessary or convenient for the acquiring,
19 providing, using, or equipping of a rail fixed guideway facility or system, including rights-of-way,
20 trackwork, train controls, stations, and maintenance facilities.
- 21 (5) “Flange guard” means a protective edge, rib, or rim made of rubber, steel, timber, or any other
22 composite material on any object such as the base of a rail, on the top and bottom horizontal parts
23 of a beam, or girder.
- 24 (6) “Grade” means the rate of ascent or descent of a roadway, expressed as a percentage and calculated
25 by the change in roadway elevation per unit of horizontal length.
- 26 (7) “Grade point” means the point where the new construction of a facility ties into and terminates at
27 the existing facility.
- 28 (8) “Grade separation” means a crossing of a highway and a railroad at different levels that allows
29 unimpeded traffic movement.
- 30 (9) “Railroad” means an entity that owns or maintains the track through the at-grade crossing, or an
31 entity that operates one or more trains through an at-grade crossing or grade separated crossing on
32 or connected to the general railroad system of transportation.
- 33 (10) “Separated” means the travelways of two transportation facilities, such as two highways or a
34 highway and a railroad, that are disconnected by means of a bridge so that traffic on one shall not
35 conflict with traffic on the other.
- 36 (11) “Separation structure” means the bridge structure that separates the travelways of the two
37 transportation facilities.

1 (12) “Track” means an assembly of rails, ties, and fastenings that cars, locomotives, and trains traverse.

2 (13) “Traffic control device” means a sign, signal, marking, or other device placed on or adjacent to a
3 street or highway by authority of a public body or official having jurisdiction to regulate, warn, or
4 guide traffic.

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

1 19A NCAC 02B .0152 is repealed through readoption as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0152 SIGNALIZATION OF EXISTING GRADE CROSSING**

4
5 *History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 150B-21.3A;*
6 *Eff. July 1, 1978;*
7 *Amended Eff. December 1, 1993;*
8 *Repealed Eff. June 1, 2019*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02B .0153

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a), how will it be determined whether approval will be granted? Are the process for approval and the standards for approval set forth elsewhere in rule or statute?

In (b), should "lists" be "shall list"?

In (d), delete the comma after 1966.

In (e), would it make sense to group (e)(1), (2), and (3) together and make them (e)(1)(A), (B), and (C) with some sort of introduction in (e)(1)? Then make (e)(4) and (5) into (e)(2) and (3). Additional punctuation changes may be necessary with this.

In (e)(1), (2), and (3), what is meant by "immediate"? Does this mean upon execution of the agreement?

(e)(4) has a lot of "ors" in it. What is the intent here?

In (e)(4), receipt by whom?

In (e)(5)(D), change "and/or" to either "and" or "or", whichever is intended.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02B .0153 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0153 SIGNALIZATION OF NEW-GRADE AT-GRADE CROSSING**

4 ~~(a) For purposes of this Rule, the term "crossing agreement" is a formal written agreement between the N.C.~~
5 ~~Department of Transportation and a railroad company. The railroad company permits the Department of~~
6 ~~Transportation to build a road across the railroad company's tracks. The agreement also lists responsibilities of each~~
7 ~~party with regard to the construction, maintenance, and funding of the new crossing.~~

8 ~~(b) Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing~~
9 ~~and does not involve the elimination of an existing crossing, the railroad will not be required to bear any costs of~~
10 ~~signalization or separation, either at the time of the initial construction or within a 20 year period from the execution~~
11 ~~of the crossing agreement if the Department of Transportation determines during said 20 year period that a~~
12 ~~signalization or a separation structure is required. If a crossing in existence prior to December 3, 1966 is eliminated~~
13 ~~by the relocation of an existing road, the policy stated in Rule .0152 of this Section shall apply.~~

14 (a) It shall be unlawful to construct a railroad track across any portion of the State highway system without the
15 Secretary of Transportation or the Secretary's designee providing a written statement of approval.

16 (b) A crossing agreement shall be required for any construction or relocation of railroad track across the State highway
17 system, and any construction or relocation of the State highway system across already existing railroad track. The
18 crossing agreement lists the construction, maintenance, safety device installation, and funding responsibilities of each
19 party.

20 (c) Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing
21 and does not involve the elimination of an existing crossing, the railroad shall not be required to bear any costs of
22 signalization or separation, either at the time of the initial construction or within a 20-year period from the execution
23 of the Crossing Agreement if the Department determines during that 20-year period that a signalization or a separation
24 structure shall be required.

25 (d) If a crossing in existence prior to December 3, 1966, shall be eliminated by the relocation of an existing road,
26 Rule .0155 of this Section shall apply.

27 (e) The following shall be required for the construction of a new municipal street across an already existing railroad
28 track, or railroad tracks across the municipal street system.

29 (1) If a municipality and railroad seek to enter into an agreement for the construction of a new municipal
30 street, meaning a street forming a part of the municipal street system consisting of those streets or
31 highways that are not a part of the State highway system, across a railroad track, at-grade, the
32 municipality or public authority responsible for the maintenance, construction, reconstruction, and
33 right-of-way acquisition for the municipal street system shall provide the Rail Division Director
34 with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to
35 be less than 60 days between the negotiations and execution of the agreement, notification shall be
36 immediate.

- 1 (2) If a municipality and railroad seek to enter into an agreement for the construction of a new railroad
2 track across the municipal street system, at-grade, the municipality or public authority responsible
3 for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal
4 street system shall provide the Rail Division Director with 60-days' notice prior to the execution of
5 the agreement. If the municipality anticipates there to be less than 60 days between the negotiations
6 and execution of the agreement, notification shall be immediate.
- 7 (3) If a private developer and a railroad seek to enter into an agreement for the construction of a railroad
8 track across the municipal street system, at-grade, or a new municipal street across a railroad track,
9 at-grade, the private developer shall provide the Rail Division Director with 60-days' notice prior
10 to the execution of the agreement. If the private developer anticipates there to be less than 60 days
11 between the negotiations and execution of the agreement, notification shall be immediate.
- 12 (4) Notice shall be in writing and shall be effective upon receipt if delivered personally or by email, or
13 sent by overnight courier if signature for the receiving party is obtained, or sent by certified or
14 registered mail, postage prepaid, to the Rail Division Director at 1553 Mail Service Center, Raleigh,
15 NC 27699-1553. The Rail Division Director's email address may be found, free of charge, at
16 <https://apps.ncdot.gov/dot/directory/authenticated/UnitPage.aspx?id=3393>.
- 17 (5) Notice shall include the following information:
- 18 (A) the name, address, telephone number, and email address of the entity submitting the notice;
19 (B) a description of the anticipated crossing, including whether the agreement is for the
20 construction of a railroad track across the municipal street system, or the construction of a
21 municipal street across an already existing railroad track;
22 (C) the county, city, or political subdivision where the crossing will be located;
23 (D) the railroad milepost number, if an already existing railroad track; and
24 (D) the State maintained road number and/or name, if an already existing road.

25
26 *History Note:* Authority G.S. 136-18(5); 136-18(11); 136-20; 136-20.1; 136-66.1; 136-195;
27 Eff. July 1, 1978;
28 Amended Eff. December 1, 1993;
29 Readopted Eff. June 1, 2019.
30

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02B .0154

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Since there is no (b), please delete (a).

Please make (a) a complete sentence. Is this intended to provide an introductory statement for the rule?

In (a)(1) and (a)(4), delete or define "proper"

In (a)(4), change "will" to "shall"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02B .0154 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0154 COST OF RAILROAD SEPARATION STRUCTURES**

4 ~~Whenever any highway project provides for the construction of a separation structure over or under the railroad, the~~
5 ~~Department of Transportation will construct the separation structure to provide for an additional track upon the request~~
6 ~~of the railroad and the furnishing of the proper justification or enter into an agreement with the railroad to provide for~~
7 ~~the additional track if such tracks are constructed and placed in use within a 20 year period from the signing of the~~
8 ~~agreement. If the separation structure eliminated the crossing at grade, the railroad will be required to pay five percent~~
9 ~~of the total costs of the separation structure and approaches from grade point to grade point as constructed initially~~
10 ~~and five percent of the costs of the widening of the structure within the aforementioned 20 year period. If the~~
11 ~~separation structure is an additional or new crossing and no existing crossing is closed, the Board of Transportation~~
12 ~~will pay the entire cost of the structure including the provision for additional tracks on request by the railroad with~~
13 ~~proper justification, or will pay the entire cost of widening the structure within the aforementioned 20 year period.~~

14 (a) Construction, elimination, costs, and maintenance of a grade separation over or under any road, street, or highway
15 forming a part of the State highway system.

16 (1) Whenever any highway project provides for the construction of a separation structure over or under
17 the railroad, the Department shall construct the separation structure to provide for an additional track
18 upon the request of the railroad and the furnishing of the proper justification or enter into an
19 agreement with the railroad to provide for the additional track if such tracks are constructed and
20 placed in use within a 20-year period from the signing of the agreement.

21 (2) If a grade crossing that was in existence prior to December 3, 1966, shall be separated, the railroad
22 shall pay five percent of the cost of the separation structure and approaches from grade point to
23 grade point.

24 (3) If the separation structure eliminated the crossing at-grade, the railroad shall pay five percent of the
25 total costs of the separation structure and approaches from grade point to grade point as constructed
26 initially and five percent of the costs of the widening of the structure within the 20-year period.

27 (4) If the separation structure is an additional or new crossing and no existing crossing is closed, the
28 Board of Transportation will pay the entire cost of the structure including the provision for additional
29 tracks on request by the railroad with proper justification, or will pay the entire cost of widening the
30 structure within the aforementioned 20 year period.

31
32 *History Note: Authority G.S.136-18(5); 136-18(11); 136-20;*
33 *Eff. July 1, 1978;*
34 *Readopted Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02B .0155

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a), delete the commas before and after "forming a part of the State highway system."

In (a), consider deleting "then" in "then the"

Please consider providing some introductory language in (c) to (c)(1) through (F)

In (c)(1)(F), change "and/or" to "and" or "or", whichever you mean.

In (c)(2) and (c)(3), change "will" to "shall"

In (c)(2), add a comma in between "impacts" and "including"

In (c)(3), I assume that the approval standards for the Board are the same as for the Division (transportation impacts)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02B .0155 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0155 EXISTING AT-GRADE CROSSING CONSTRUCTION AND MAINTENANCE OF**
4 **RAILROAD CROSSINGS**

5 ~~Whenever any road, street or highway forming a part of the State Highway System shall cross or intersect any railroad,~~
6 ~~including an industrial siding, at the same level or grade, the railroad owner shall be responsible for the construction~~
7 ~~and maintenance of the crossing and the area between the ends of the ties and the edge of the pavement of the main~~
8 ~~traveled lanes plus a maximum of 10 feet of the usable shoulders. The railroad owner shall assume the construction~~
9 ~~cost of the crossing for the pavement width and shall maintain the entire area herein described at its own expense.~~
10 ~~The Department of Transportation shall reimburse the railroad owner for costs incurred in constructing the crossing~~
11 ~~through the shoulder widths. The Department of Transportation shall also be responsible for the construction and~~
12 ~~maintenance of the road beyond the ends of the ties.~~

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

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

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

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

24 (1) The Crossing Closure Request shall contain the following information:

- 25 (A) name of the entity submitting the request;
26 (B) name of the county, city, or political subdivision where the crossing is located;
27 (C) Association of American Railroads (AAR) crossing number;
28 (D) railroad milepost number;
29 (E) State maintained road number and/or name; and
30 (F) any existing protection at the crossing.

31 (2) The Rail Division will review the Crossing Closure Request and make a final recommendation to
32 the Board of Transportation upon the consideration of transportation impacts including emergency
33 access, safety, feasibility, and public convenience.

34 (3) If the Board of Transportation approves the at-grade closure, the Rail Division will give notice to
35 the governing body within which the at-grade crossing is located, direct the Railroad to close or
36 remove the crossing within 60 days, and coordinate with the Railroad the responsibilities for
37 removal.

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02B .0156

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Please be sure to track any changes made from the Rule as it is currently in the Code.

On line 5, what is meant by "if in such instances requested to do so by the railroad"?

For this Rule, do you mean something like: "When any road, street, or highway forming a link in the State highway system is being surfaced or resurfaced, the Department 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."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02B .0156 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0156 PAVING OF ROADWAY SURFACE CROSSING RAILROAD TRACKS**

4 When any road, street, or highway forming a link in the State highway system is being surfaced or resurfaced, the Department
5 shall, if in such instances requested to do so by the railroad, pave the roadway surface across the crossing, but the railroad
6 shall provide and place at its own expense, the necessary crossing ~~timbers~~ flange guards on rail guards and otherwise adjust
7 its facilities to meet the level of the finished road surface.

8
9 *History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;*

10 *Eff. July 1, 1978;*

11 *Amended Eff. October 1, 1993;*

12 *Readopted Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02B .0157

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Please use the version of this Rule in the Code and show any changes made (for example, the change from "will" to "shall" on line 5 and "which" to "that" on line 6.)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02B .0157 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0157 COST OF CHANGING ELEVATION OF RAILROAD FACILITIES**

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

7
8 *History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;*

9 *Eff. July 1, 1978;*

10 *Amended Eff. October 1, 1993;*

11 *Readopted Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02B .0158

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Please use the version of this Rule in the Code and show any changes made.

On line 4, change "said" to "the"

On line 7, what is meant by a "manner approved by the Department"? How is this determined? Are there rules on this elsewhere?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02B .0158 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED**

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

10
11 *History Note: Authority G.S. 136-18(5); 136-18(11); 136-20;*
12 *Eff. July 1, 1978;*
13 *Amended Eff. October 1, 1993; November 1, 1991;*
14 *Readopted Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02B .0315

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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In reviewing this Rule, the staff recommends that the following technical changes be made:

Please consider whether it would aid in the clarify of this Rule to break it up into multiple paragraphs.

On line 5, change "such" to "the"

On lines 9-10, do you mean "If a municipal agreement is necessary in accordance with this Rule, the agreement shall set forth conditions including whether the Department or municipality will acquire..."?"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02B .0315 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02B .0315 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS**

4 ~~Highway Transportation~~ projects within municipalities shall be constructed in accordance with a municipal agreement
5 ~~which that~~ is executed by the municipality and the Board when such construction includes any financial participation
6 by the municipality in project costs, or the municipality requests additional work that results in maintenance
7 responsibilities or financial participation by the municipality. ~~Board.~~ If there is no financial participation by the
8 municipality, no additional work requested by the municipality, and no maintenance requirements by the municipality,
9 then a municipal agreement shall not be required under the terms of this Rule. ~~The~~ If a municipal agreement is
10 necessary, then the agreement shall set forth such conditions as whether the ~~Department of Transportation~~ or the
11 municipality will acquire the ~~right of way,~~ right-of-way, and shall identify any financial participation by the
12 municipality. ~~municipality in regard to right of way cost and utility provisions.~~

13
14 *History Note: Authority G.S. 136-18(2); 136-19; 136-66.3; 143B-24; 143B-350(f),(g);*

15 *Eff. July 1, 1978;*

16 *Transferred and Recodified from 19A NCAC 2B .0119 Eff. October 1, 1993;*

17 *Amended Eff. December 1, 1993;*

18 *Readopted Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .0402

DEADLINE FOR RECEIPT: Friday, May 10, 2019

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In reviewing this Rule, the staff recommends that the following technical changes be made:

What is the overall intent of (a)(1)? Please review and revise for purposes of clarity.

In (a)(1), how will it be determined whether they are "justified from the State's standpoint"?

In (b), change "will" to "shall"

In (b)(3), what are the "standards as established by the Board"

In (b)(4), please delete "but" and make "in cases of conflict..." its own sentence. Please also change "will" to "shall"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02D .0402 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02D .0402 CURB AND GUTTER AND UNDERGROUND DRAINAGE ON HIGHWAYS**

4 (a) Programmed Improvement Projects (Projects Included in State Transportation Improvement Program).

5 (1) On programmed-~~state~~ State highway improvement projects in areas where the additional cost of
6 curb and gutter and underground storm drainage facilities is not justified from the-~~state's~~ State's
7 standpoint but where the adjacent property owner(s) or the municipality may desire curb and gutter
8 and underground storm drainage facilities, such facilities may be included as part of the programmed
9 project provided the additional cost of these facilities is borne by the adjacent property owner(s) or
10 the municipality, and provided these facilities are in accordance with other criteria set forth in this
11 Rule.

12 (2) The Department-~~of Transportation will~~ shall approve participation by the property owner(s) or the
13 municipality in cases where the property owner(s) or the municipality agree to have curb and gutter
14 and underground storm drainage, if required, on both sides of the project for a minimum distance of
15 one block or, if no intersections are present, for a minimum distance of 1000 feet. ~~The state will~~
16 State shall pay the cost of widening the present or proposed pavement out to the curb and gutter so
17 provided.

18 (3) The property owner(s) or the municipality-~~must~~ shall submit in advance of the project construction
19 a certified check for the additional cost of the approved curb and gutter and storm drainage facilities.

20 (b) Other Existing Paved Roads. Along existing paved State-~~Highway System~~ highway system routes where no
21 construction project is proposed and the adjacent property owner(s) or the municipality construct curb and gutter and
22 underground drainage facilities as approved by the Board of Transportation, the Department of Transportation will
23 bear the cost of widening the existing pavement as required for the proper location and installation of such facilities.
24 Approval of-~~such curb and gutter or underground storm drainage~~ facilities that are located along the State highway
25 system, where no construction projects are proposed, shall be determined according to the engineering standards of
26 the Department, and based on:

27 (1) adequacy of the facilities to handle drainage requirements;

28 (2) adequacy of the resulting roadway cross section to handle existing and anticipated traffic demands;

29 (3) conformance of the proposed street cross section with standards as established by the Board of
30 Transportation;

31 (4) a minimum distance of one block length or, if no intersections are present, for a minimum distance
32 of 1000 feet provided this requirement is not in conflict with local municipal ordinances, but in cases
33 of conflict, the local ordinance will prevail; and ordinances (~~In case of conflict, local ordinance will~~
34 ~~prevail~~);

35 (5) availability of-~~state~~ State funds to widen the existing pavement, when applicable, pavement.

36 (c) Unpaved Roads. Construction of curb and gutter along unpaved-~~state~~ State highway system routes shall not be
37 permitted.

1

2 *History Note:* *Authority G.S. 136-44.1; 136-66.1; 143B-350(f); 143B-350(g);*

3 *Eff. July 1, 1978;*

4 *Amended Eff. November 1, 1993;*

5 *Readopted Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 06D .0403

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (d), is the intent to put the onus on the Division or the person requesting the dust treatment? If it's on the Division, please consider saying something like "The person requesting the dust treatment shall purchase and deliver the calcium chloride as directed by the Division Engineer or his or her designee." Also, how will he make this determination (I'm not certain a change is needed here, but I think it would be helpful.)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02D .0403 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02D .0403 USE OF DUST ALLAYING MATERIALS**

4 (a) Requests for calcium chloride dust treatments shall be addressed to the County Maintenance Yard having
5 jurisdiction in the county where the work is proposed.

6 (b) Placement and Materials.—Calcium chloride and bituminous dust treatments ~~may~~ shall only be placed on-state
7 State highway system roads and streets provided:

8 (1) ~~Bituminous materials are furnished and placed by the person requesting the treatment;~~

9 (2) ~~Prior~~ prior approval is obtained from the ~~division engineer~~ Division Engineer or the Division
10 Engineer's authorized designee having jurisdiction in the county where the ~~work~~ dust treatment is
11 proposed; and

12 (3)(2) ~~Calcium~~ calcium chloride is furnished by the person requesting the dust treatment and placed by the
13 Department of Transportation or its agents.

14 (c) The Division Engineer or the Division Engineer's authorized designee shall approve requests for calcium chloride
15 dust treatments unless conditions are wet, rendering the dust treatment ineffective, and if the dust treatment would
16 worsen road surface conditions.

17 (d) The Division Engineer or the Division Engineer's authorized designee will inform the person requesting the dust
18 treatment where to purchase and deliver the calcium chloride in order for the Department to perform the treatment.

19
20 *History Note: Authority G.S. 136-18(1); 136-18(27); 143B-346; ~~143B-350(f); 143B-350(g);~~*
21 *Eff. July 1, 1978;*
22 *Amended Eff. November 1, 1993;*
23 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02D .0405 is repealed through readoption as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02D .0405 EXAMPLES OF CONSTRUCTION AND MAINTENANCE ACTIVITIES**

4
5 *History Note:* *Authority G.S. 136-66.1; 143B-346; 143B-350(f); 143B-350(g); 150B-21.3A;*
6 *Eff. July 1, 1978;*
7 *Amended Eff. November 1, 1993;*
8 *Repealed Eff. June 1, 2019.*

1 19A NCAC 02D .0410 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02D .0410 RENTAL OF SUPPLEMENTAL EQUIPMENT**

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

7
8 *History Note: Authority G.S. 143B-346; 143B-350(f); 143B-350(g);*

9 *Eff. July 1, 1978;*

10 *Amended Eff. November 1, 1993; November 1, 1991;*

11 *Readopted Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .0414

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In Item (1), how will it be determined whether authorization will be granted? Are the standards to be used set forth elsewhere in rule or statute?

In Item (1), there is no need to incorporate your form. As such, please delete "at no coast to the public."

Are the contents of the form referenced in Item (1) set forth elsewhere in rule or statute? If not, please provide the required contents.

Are the forms in (1) and (3) the same? If so, please consider combining these to make it clear that these are not separate requirements.

In (4)(b) and (5), what is meant "shall be constructed in accordance with Form 16.1A"? Do the requirements in this form meet the definition of a Rule set forth in 150B-2(8a)?

In Item (6), delete or define "safely"

In Item (8), by "as provided herein", do you mean as set forth in this Rule? Do you mean as set forth in this Section"? Please change "herein" to whatever you mean.

In Item (8), delete "then" in "shall then revoke"

In Item (8), what is meant by "accordingly"? Please delete or define.

What is the intent of the Note? Are these guidelines required? If so, do they meet the definition of a rule as set forth in 150B-2(8a)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02D .0414 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02D .0414 LOCATION OF GARBAGE COLLECTION CONTAINERS**

4 Permits for the placement of garbage collection containers shall only be issued ~~only~~ under the following circumstances.
5 circumstances:

- 6 (1) No garbage collection container site shall be located on any State highway rights-of-way except by
7 written authorization of the Department of Transportation upon submission of Form 16.1A – Two
8 Party, Non-Utility, Not Related to Road Construction. Form 16.1A may be accessed, at no cost to
9 the public, by visiting [- 17 \(a\) ~~The the~~ county or municipality requesting the permit shall be responsible for any work to
18 be performed in preparation of the site, and any work performed by the Department, on the
19 site, shall be on a reimbursable basis; site. Any work performed on the site by the
20 Department of Transportation shall be on a reimbursable basis in accordance with rules
21 19A NCAC 02E .0501 and 19A NCAC 02E .0502;
 - 22 \(b\) ~~Container~~ container sites adjacent to paved roadways shall be constructed in accordance
23 with Form 16.1A; FORM R/W 16.1A; and
 - 24 \(c\) ~~Container~~ container sites adjacent to unpaved roads shall be prepared with materials similar
25 to those existing on the traveled portion of the roadway.](https://connect.ncdot.gov/municipalities/Utilities/pages/encroachment-</u>
10 <u>agreements.aspx, a Right of Way Encroachment Agreement For Non-Utility Encroachments on</u>
11 <u>Primary and Secondary Highways (FORM R/W 16.1A (January, 1981)).</u>12 (2) No garbage collection container shall be located within 500 feet of an occupied dwelling unless the
13 applicant obtains written permission from the owner of the dwelling.14 (3) An application for a site permit may be obtained from and shall be submitted to the District Engineer
15 for the county in which the garbage container is proposed to be located.16 (4) Guidelines for container sites are as follows:<ol style=)
- 26 (5) ~~When~~ If container sites are located in areas requiring drainage, drainage shall be in accordance with
27 Form 16.1A. FORM R/W 16.1A.
- 28 (6) ~~Whenever~~ If container sites are located adjacent to the roadway, sight distances shall be provided
29 for any vehicle to safely enter the road from the container site.
- 30 (7) Container sites shall be permitted adjacent to roadways only ~~when~~ if lateral clearances can be
31 provided from the edge of pavement to the container.
- 32 (8) The county or municipality ~~which that~~ holds a permit for the placement of garbage collection
33 containers, as provided herein, shall maintain a collection schedule in order to prevent container
34 spillage or overflow, overflow from said containers and shall keep the site free from all garbage and
35 trash, trash other than that which is within the garbage collection containers. Garbage and trash
36 collection located within the garbage collection containers shall be authorized by the permit.
37 containers which are authorized by the permit. The District Engineers shall give written notice to

1 the county or municipality of any failure to comply with this requirement. If a county or municipality
2 ~~which~~ that is so notified and does not bring the site within compliance of the requirement within 30
3 days of receipt of the written notice, the District Engineer shall then revoke the permit and dispose
4 of the garbage collection containers accordingly.

5 Note: Guidelines for Placement of Garbage Collection Containers on State Highway System Right of Way shall be
6 accessible at no cost to the public by contacting the Division of Highways Records and Documents Management Unit
7 at (919) 707-6925.

8 ~~A booklet describing the guidelines used by the Department of Transportation in granting permits is available from~~
9 ~~the local division office free of charge.~~

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .0421

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Please revise the formatting of (a) as follows:

- *Change the period at the end of "are met" to a colon.*
- *End (a)(1) through (a)(5) with lower case letters.*
- *Add an "and" at the end of (a)(5).*

In (a)(1) through (5), I think that your "is" and "does" makes more sense, as opposed to "shall"

In (a)(1), delete or define "proper"

In (a)(2), how will the Department determined what is sufficient?

In (a)(3), delete "such" in "such additional"

In (a)(3), change "will" to "shall" in "will not"

In (a)(4), delete or define "adequate"

In (a)(5), delete "undue" and "as determined by the Department: and instead provide some examples of safety hazards (it would look something like "does not present safety hazards, such as...."

In (c) and (d), please see my formatting notes for (a).

In (c)(1) and (2), since both of these are "prior to installation", would it be appropriate to move this language to the end of (c)?

In (c)(1) and (d)(1), are the contents of the application set forth elsewhere in rule or statute? Please note that we only need the contents once, but we need them somewhere.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

In (c)(1), what is your specific authority to charge \$10/ linear foot? Is this pursuant to 156-88 (otherwise, I'm not sure how this applies.) If so, that statute references "actual cost." Please review.

In (c)(2) and (d)(2), are standards for approval of a commercial driveway permit set forth elsewhere in rule or statute? Again, we only need this once.

In (d)(1), what is your specific authority to charge the fifty dollar fee.

In (d)(3), are the approval standards set forth elsewhere in rule or statute? Here, do you simply mean that the installation has to meet a certain set of standards (like your rules?) If so, please say that.

In (d)(4), what is MUTCD? Is this set forth elsewhere? Does this need to be incorporated in accordance with 150B-21.6?

In (d)(4), what are the approval standards? Will it be approved if it meets MUTCD? If so, say that.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 19A NCAC 02D .0421 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02D .0421 INSTALLATION OF DRIVEWAY PIPE**

4 (a) ~~Residential Property.~~ The Department of Transportation ~~road maintenance forces shall at state expense install be~~
5 ~~responsible for the installation and costs of pipe lines in the drainage ditch along the side of state maintained roads~~
6 ~~State-maintained roads and within state maintained right of way State-maintained right-of-way~~ or easement at
7 entrances to private residential property where the pipe is furnished and delivered to the installation site by the property
8 owner at the property owner's expense if the following requirements are met, provided:

- 9 (1) The opening of the side ditch ~~is~~ shall be needed to provide proper drainage.
- 10 (2) The pipe to be installed ~~has~~ shall have sufficient opening as determined by the Department.
11 ~~Department of Transportation.~~
- 12 (3) The minimum length of pipe to be installed shall be 20 feet with such additional length as may be
13 necessary to accommodate earth side slopes. The pipe will not be lengthened for the purpose of
14 eliminating typical side ditches.
- 15 (4) The property ~~does~~ shall not already have adequate ingress and egress.
- 16 (5) The proposed location for the driveway entrance ~~does~~ shall not present undue safety hazards to the
17 traveling public as determined by the Department. ~~Department of Transportation.~~
- 18 (6) The property ~~is~~ shall be limited to farm entrances and property owned by the individual currently
19 living on the property or owned by the individual proposing to use the property for residential
20 purposes. This does not include property being developed for sale.

21 (b) ~~Commercial Property.~~ "Commercial property" includes:

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

25 (c) ~~Commercial Driveway Pipe Installed by the Department of Transportation.~~ The Department of Transportation
26 ~~road maintenance forces may~~ shall install pipe lines in the drainage ditch along the side of ~~state maintained~~ State-
27 maintained roads and within ~~state maintained right of way~~ State-maintained right-of-way or easements at entrances to
28 commercial property when the pipe is furnished and delivered to the installation site by the property owner at the
29 property owner's expense if the following requirements are met, provided:

- 30 (1) Prior to installation, the property owner ~~submits~~ shall submit to the ~~Department of Transportation~~
31 an application for installation of a commercial driveway pipe together with a payment in the amount
32 of ten dollars (\$10.00) per linear foot of pipe to be installed. ~~Said amount is to cover the cost of~~
33 ~~pipe installation by state forces.~~
- 34 (2) Prior to installation, the property owner ~~has~~ shall have received an approved commercial driveway
35 permit from the Department. ~~Department of Transportation.~~ In the event the permit application is
36 denied, the ~~Department of Transportation will~~ shall return to the applicant the payment referenced
37 in Subparagraph (c)(1) of this Rule. ~~Rule to the applicant.~~

1 ~~(d) Commercial Driveway Pipe Installed by Other than State Forces.~~ The commercial property owner may elect to
2 have driveway pipe installed by private contractors if the following requirements are met, provided:

3 (1) Prior to installation, the property owner ~~submits~~ shall submit to the Department of Transportation
4 an application for installation of a commercial driveway pipe together with a payment of fifty dollars
5 (\$50.00) to cover the cost of the inspection of the pipe installation by Department of Transportation
6 personnel.

7 (2) Prior to installation, the property owner ~~has~~ shall have received an approved commercial driveway
8 permit from the ~~Department~~ Department of Transportation. In the event the permit application is
9 denied, the ~~Department of Transportation~~ will return to the applicant the payment referenced in
10 Subparagraph (d)(1) of this ~~Rule~~ Rule to the applicant.

11 (3) The workmanship, ~~materials~~ materials, and final installation ~~are~~ shall be subject to approval by the
12 ~~Department of Transportation's~~ Department's District Engineer. ~~Engineer in accordance with~~
13 ~~current Department of Transportation standards.~~ In the event the pipe installation does not meet the
14 approval of the District Engineer, the ~~Department of Transportation~~ shall remove the pipe at the
15 expense of the property owner.

16 (4) Signing, ~~barricades~~ barricades, and other devices ~~for handling of~~ necessary to mitigate traffic at or
17 adjacent to the installation site ~~is~~ shall be provided ~~during the installation~~ by the property owner or
18 contractor. ~~Said devices must~~ Traffic mitigation devices shall meet the requirements of the MUTCD
19 and be approved by the District Engineer.

20 (e) ~~Installation~~ Department installation of pipe by state forces includes shall include necessary excavation, ~~placement~~
21 ~~of pipe complete in place~~ complete pipe placement, and sufficient backfill ~~of the pipe with local material~~ to provide a
22 pipe line and grade protection. ~~cover sufficient to maintain the pipe line and grade.~~ The Department of Transportation
23 is not obligated to construct a finished driveway.

24 (f) The ~~Department of Transportation~~ shall ~~furnish and install~~ be responsible for the installation and costs of residential
25 and commercial driveway pipe ~~at state expense at entrances to residential property and commercial property if~~
26 ~~necessary as a result of the department's~~ if the Department caused the need by relocating or revising the elevation of
27 side ditches for the improvement of highway drainage.

28 (g) ~~Note:~~ See also Rule .0102 of this Subchapter for provisions related to pipe size.

29
30 *History Note: Authority G.S. 136-18(1); 136-92; 136-93; 156-88;*
31 *Eff. July 1, 1978;*
32 *Amended Eff. November 1, 1993; October 1, 1983;*
33 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02D .0425 is repealed through readoption as published in 33:16 NCR 1717-1720 with changes as follows:

2
3 **19A NCAC 02D .0425 FEDERAL DISASTER ASSISTANCE**

4
5 *History Note: Authority G.S. 136-4; 136-18; 143B-350; 150B-21.3A;*

6 *Eff. October 1, 1991;*

7 *Amended Eff. April 1, 1997; November 1, ~~1993~~. [~~1993~~] 1993;*

8 *Repealed Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .0535

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In order to provide a clear introduction to (b)(1) through (5), please consider revising (b) to say "Reservations shall be made in person at the ferry terminal, online at <https://ferry.ncdot.gov>, or by telephone as follows:"

In (d), what is the "earlier departure"? Is this the departure immediately before the one scheduled?

In (f), change "shall be able to" to "may"

In (f), please revise to say "... the customer may reschedule the reservation for either the earliest possible departure or for an other time convenience to the customer."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02D .0535 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02D .0535 FERRY RESERVATIONS**

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

7 (b) Reservations ~~may~~ shall only be made only by ~~telephone or in person, telephone, in person at the terminal, or by~~
8 visiting <https://ferry.ncdot.gov>, by applying to the terminal from which departure is to be made:

9 (1) For the main reservation line, call: (800) 293-3779.

10 (2) For departures from Ocracoke, call: (252) 996-6201.

11 (3) For departures from Cedar Island, call: (252) 463-7046.

12 (4) For departures from Swan Quarter, call: (252) 791-3302.

13 (5) Office hours shall be from 6:00 am until 5:00 pm, year-round.

14 ~~For departure from Ocracoke call: (919) 928-3841~~

15 ~~For departure from Cedar Island call: (919) 225-3551~~

16 ~~For departure from Swan Quarter call: (919) 926-1111~~

17 ~~Office hours: 6:00 A.M. to 6:00 P.M.~~

18 (c) Reservations may be made any time within ~~30~~ 90 days of the departure date and ~~are~~ shall not be transferable.
19 Name of the driver and vehicle license number ~~is~~ shall be required. A credit or debit card shall be required for advance
20 reservations to secure passage and space aboard a ferry vessel. It shall not be required that the credit or debit card be
21 in the name of the driver.

22 (d) Reservations ~~must~~ shall be claimed after the earlier departure and at least 30 minutes prior to the scheduled
23 departure. Reservations not claimed prior to this time ~~will~~ shall be cancelled and the space reassigned.

24 (e) Vehicles shall remain in the staging area once ticketed, and until boarding begins.

25 ~~(e)(f)~~ In case of departure cancellation ~~because of~~ due to mechanical failure, inclement weather, or other unavoidable
26 causes, the customer shall be able to reschedule the reservation for the earliest possible departure, or reschedule the
27 reservation for a time that is convenient for the customer. reservations will be rescheduled for the earliest possible
28 departure.

29
30 *History Note: Authority G.S. 136-82; 143B-10(j);*

31 *Eff. July 1, 1978;*

32 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02D .0538 is readopted as published in 33:16 NCR 1717-1720 as follows:

3 **19A NCAC 02D .0538 VEHICLE WEIGHT LIMITATIONS**

4 ~~Maximum weights permissible for each ferry vessel is as follows:~~

5 **Gross Load Limit**

6 ~~Any Axle _____ 13,000 lbs.~~

7 ~~2 Axles (Single Vehicle) _____ 24,000 lbs.~~

8 ~~3 or More Axles (Single or Combination Vehicles) _____ 36,000 lbs.~~

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

10 (1) 2 axles plus front steer axle with standard load and length of 35 feet: 40,000 lbs.;

11 (2) 3 axles plus front steer axle with standard load and length of 40 feet: 60,000 lbs.;

12 (3) 4 axles plus front steer axle with standard load and length of 65 feet: 80,000 lbs.; and

13 (4) 5 axles plus front steer axle with standard load and length of 65 feet: 80,000 lbs.

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

15 (1) 2 axles plus front steer axle with standard load and length of 35 feet: 40,000 lbs.;

16 (2) 3 axles plus front steer axle with standard load and length of 40 feet: 60,000 lbs.;

17 (3) 4 axles plus front steer axle with standard load and length of 65 feet: 80,000 lbs.;

18 (4) 5 axles plus front steer axle with standard load and length of 65 feet: 92,000 lbs.;

19 (5) 6 axles plus front steer axle with heavy load or extra-long lowboy: 108,000 lbs.; and

20 (6) 7 axles plus front steer axles with heavy load or extra-long lowboy: 120,000 lbs.

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

23 *Eff. July 1, 1978;*

24 *Amended Eff. November 1, 1991;*

25 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02D .0539 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02D .0539 VEHICLE PHYSICAL DIMENSION LIMITATIONS**

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

6 (1) Silver Lake; Cedar Island; Carteret; Swan Quarter; Sea Level; Governor Daniel Russel; Southport;
7 Neuse; Lupton; Fort Fisher; W. Stanford White; Croatoan; Hatteras; Kinnakeet; Frisco;
8 Chicamacomico; Cape Point; Ocracoke; Roanoke; Thomas A. Baum, out-of-service effective
9 September 2020; Governor James Baxter Hunt, Jr.; Rodanthe, in-service effective March 2019;
10 Avon, in-service effective March 2020; and Salvo, in-service effective August 2020.

Vessel	Length	Width	Height
Lindsay Warren	65'	144"	13'6"
Conrad Wirth	65'	144"	13'6"
Roanoke	65'	144"	13'6"
R. B. Etheridge	65'	144"	13'6"
A. W. Drinkwater	65'	144"	13'6"
H. C. Bonner	65'	144"	13'6"
Silver Lake	65'	120"	13'6"
Pamlico	65'	120"	13'6"
Sea Level	65'	96"	13'6"
Gov. Edward Hyde	65'	96"	13'6" *
	50' (Side)	120"	13'6" **
Beaufort	50'	96"	12'4"
Sandy Graham	55'	96"	13'6"
Emmett Winslow	50'	96"	13'6"
Ocracoke	65'	144"	13'6"
Cape Point	65'	144"	13'6"
Chicamacomico	65'	144"	13'6"
Kinnakeet	65'	144"	13'6"
Frisco	65'	144"	13'6"
Governor Russell	65'	144"	13'6"
Governor James			
— Baxter Hunt, Jr.	65'	144"	13'6"
Carteret	55'	120"	13'6"
Floyd J. Lupton	65'	144"	13'6"

37 * 13'6" Height refers to capacity along center line of ferry.

1 ~~** 13'6" Height refers to capacity on either side of centerline.~~

2 (b) Vehicles having overall dimensions requiring an Oversized/Overweight Permit, pursuant to Section .0600 of this
3 Subchapter, in excess of following dimensions (Length: single two axle vehicle, 35 feet; single three axle vehicle, 40
4 feet; vehicle combination, 60 feet Width: 96 inches Height: 13 feet 6 inches) shall carry a special that permit within
5 the vehicle; issued by the division of highways; otherwise, loading aboard a ferry vessel ~~will~~ shall not be permitted.

6
7 *History Note: Authority G.S. 20-119; 136-82; 143B-10(j);*

8 *Eff. July 1, 1978;*

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

10 *Readopted Eff. June 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02E .0301

DEADLINE FOR RECEIPT: Friday, May 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

*In (a)(3), what is meant by regulation? Do you mean federal regulations or your rules?
If it's the latter, please change regulations to rules.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, April 26, 2019

1 19A NCAC 02E .0301 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02E .0301 UNZONED INDUSTRIAL AREA**

4 (a) For purposes of ~~this Section and the Junkyard Control Act, unzoned industrial area shall mean~~ “Unzoned industrial
5 ~~area” means~~ the land occupied by ~~the regularly used~~ an industrial activity, including its building, parking lot, storage
6 ~~or processing, processing area of an industrial activity,~~ and that land located within 1,000 feet thereof ~~which that is:~~

- 7 (1) located on the same side of the highway as the principal part of ~~said the industrial activity; and~~
8 (2) not ~~predominantly~~ used for residential or commercial purposes; and
9 (3) not zoned by ~~state~~ State or local law, ~~regulation~~ regulation, or ordinance.

10 (b) ~~For the purposes of this section and the Junkyard Control Act, "Industrial activity" activities," for purposes of this~~
11 ~~definition, shall mean those permitted only in industrial zones, or in less restrictive zones by~~ means an activity that
12 the nearest zoning authority within the state, or State permits in industrial zones or zones that are less restrictive. An
13 activity is also industrial if the nearest zoning authority within the State has prohibited the activity by said authority
14 but the activity is generally recognized as industrial by other zoning authorities within the State, state, except that none
15 None of the following shall be considered industrial activities:

- 16 (1) outdoor advertising structures;
17 (2) agricultural activities including ranching, farming, ~~grazing~~ grazing, and such necessarily related
18 activities as are generally carried on by a farmer on ~~his~~ the farmer's own premises, including, ~~but~~
19 ~~not limited to,~~ wayside fresh produce stands;
20 (3) forestry activities ~~which that~~ include the growing of timber, thinning, ~~felling~~ felling, and logging of
21 timber or pulpwood;
22 (4) transient or temporary activities;
23 (5) activities not visible from the traffic lanes of the main-traveled way;
24 (6) activities more than 1,000 feet from the nearest edge of the right of way;
25 (7) activities conducted in a building ~~principally~~ used as a residence;
26 (8) railroad tracts other than yards, minor sidings, and passenger depots; and
27 (9) junkyards, as defined in Section 136, Title 23, of the United States Code.

28
29 *History Note: Authority G.S. 136-151; 23 U.S.C. § 136;*

30 *Eff. July 1, 1978;*

31 *Amended Eff. December 1, 1993;*

32 *Readopted Eff. June 1, 2019.*

1 19A NCAC 02E .0303 is readopted as published in 33:16 NCR 1717-1720 as follows:

2
3 **19A NCAC 02E .0303 FEES**

4 (a) ~~The application fee for the Application for Junkyard payment shall be fifteen dollars (\$15.00). An initial fee of~~
5 ~~fifteen dollars (\$15.00) shall be paid upon each application for a junkyard permit to cover the administrative and~~
6 ~~inspection costs.~~

7 (b) The Application for Junkyard Permit is available from the Division Engineer having jurisdiction in the county
8 where the proposed or existing junkyard is located. The Application for Junkyard Permit allows an applicant to request
9 a permit number for the establishment or continued maintenance of a junkyard in accordance with the provisions of
10 the Junkyard Control Act, Article 12, Chapter 136 of the General Statutes of North Carolina (Junkyard Control Act).
11 Applications for Junkyard Permits shall require the applicant to provide the following information:

12 (1) applicant's name and address;

13 (2) whether the junkyard is proposed or already existing;

14 (3) if already existing, the date the junkyard was established;

15 (4) the proposed or already existing location of the junkyard; and

16 (5) certification by the applicant that approval for the proposed or already existing junkyard operations
17 have been obtained from the owner of the real property, or the property owner's authorized agent,
18 on which the junkyard is located or proposed to be located.

19 (c) Permit numbers shall only be provided to an applicant upon payment of the application fee, and approval by the
20 District Engineer that the junkyard is in compliance with the Junkyard Control Act. If the junkyard is proposed,
21 meaning the Application for Junkyard Permit is to establish a junkyard, the Division Engineer will keep the application
22 on file at the district office. Once the junkyard is in existence, the District Engineer shall approve the Application for
23 Junkyard Permit if, upon inspection, the junkyard is found to conform to the provisions of the Junkyard Control Act.

24 (d) An annual renewal of each permit shall be required to maintain junkyards within 1,000 feet of the right-of-way
25 right-of-way of interstate and federal-aid primary highways. In December of each year, the Department will send to
26 the permittee a renewal invoice for payment of the junkyard permit annual renewal fee. The renewal fee shall be five
27 dollars (\$5.00), due on December 15th of each year, and paid to the District Engineer having jurisdiction. The permit
28 shall be renewed upon payment of the annual renewal fee. A renewal fee of five dollars (\$5.00) shall be paid for each
29 application for an annual renewal of the permit.

30 (e) ~~The annual renewal fee shall be paid by the junkyard owner on December 15th of each year to the appropriate~~
31 ~~district engineer. The Division of Highways of the Department of Transportation shall, without request, send a~~
32 ~~statement, to each owner of a junkyard with a valid permit, for the annual renewal fee unless the appropriate district~~
33 ~~engineer is notified in writing by the owner of the junkyard of his desire not to renew a specific valid junkyard permit.~~

34
35 *History Note: Authority G.S. ~~136-151~~; 136-149; 136-151;*

36 *Eff. July 1, 1978;*

37 *Amended Eff. December 1, 1993;*

