

1 Title 19A NCAC 02E. 1101 is adopted with changes as published in 17:20 NCR, April 15, 2003 as follows:

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3 **19A NCAC 02E.1101 TOURIST-ORIENTED DIRECTIONAL SIGN (TODS) PROGRAM**

4 (a) The Tourist-Oriented Directional Sign Program, hereinafter "Program," offered by the North Carolina  
5 Department of Transportation, hereinafter "Department," provides directional signing for eligible tourist attractions  
6 located on the state non-freeway system which is located within the right-of-way at intersections as specified in the  
7 Manual on Uniform Traffic Control Devices (MUTCD).

8 (b) Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of  
9 Transportation, 1592 Mail Service Center, Raleigh, North Carolina 27699-1592.

10 (c) ~~The Division Engineer in which the attraction is located or his designee shall accept applications~~ Applications  
11 for participation in the ~~Program.~~ program shall be accepted by the Division Engineer who is responsible for the  
12 county where the attraction is located.

13  
14 *History Note: Statutory Authority G.S. 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18;*  
15 *136-140.19; 143B-346; 143B-348; 143B-350(f);*  
16 *Filed As A Temporary Rule Eff. January 1, 2003;*  
17 *Eff. August 1, 2004.*

1 Title 19A NCAC .02E.1102 is adopted with changes as published in 17:20 NCR April 15, 2003 as follows:

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3 **19A NCAC 02E .1102 DEFINITIONS**

4 (a) For purposes of ~~these rules~~, the Rules in this Section, the following definitions shall apply:

5 (1) Panel - A TODS for the purpose of displaying the business identification of and directional information  
6 for eligible attractions.

7 (2) Trailblazer – ~~Additional~~ A TODS for the purpose of guiding tourists from the mainline intersection to  
8 the attraction.

9 (3) Attraction – Classes of businesses or facilities as described in G.S. 136-140.15(b)(2) and ~~(3). (3) which~~  
10 ~~are of significant interest to tourists. When used in this Rule, the term “attraction” means either a tourist-~~  
11 ~~oriented business or a tourist-oriented facility.~~

12 (b) In applying the definitions of “tourist-oriented business” in G.S. 136-140.15, the following additional definition  
13 of terms shall be used:

14 (1) "Substantial Portion" - as used to describe the part of a business's products or services which are of interest  
15 to tourists, shall mean at least thirty percent (30%) of the products and services are unique to tourists'  
16 interests; and

17 (2) "Significant Interest" - as used to describe the actual interest that the business may have to tourists and is  
18 defined as of such unique interest to tourists, above and beyond the interest that the business's products and  
19 services may generate among residents of the immediate area, that tourists account for at least forty percent  
20 (40%) of the total revenue of the business.

21 (c) In applying the definitions of "tourist-oriented facility" in G.S. 136-140.15, the following additional definition  
22 of terms shall be used:

23 (1) "Major Portion" - fifty-one percent (51%);

24 (2) "Immediate Area" - located within a 20 mile radius of the business or facility; and

25 (3) "Residing" - living in a particular place for at least four months of a given calendar year.

26  
27 *History Note: Statutory Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17;*  
28 *136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);*  
29 *Filed As A Temporary Rule Eff. January 1, 2003;*  
30 *Eff August 1, 2004.*

1 Title 19A NCAC 02E.1103 is adopted with changes as published in 17:20 NCR April 15, 2003 as follows:

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3 **19A NCAC 02E .1103 LOCATION OF TODS**

4 The Department shall control the erection and maintenance of official signs giving specific information of interest  
5 to the traveling public in accordance with following criteria:

- 6 (1) The Department shall limit the placement of TODS panels to highways other than fully controlled access  
7 highways that are either in rural unincorporated areas or in towns or cities with a population of less than  
8 40,000. ~~TODS panels shall not be placed on highways that are in towns or cities with a population equal to~~  
9 ~~or greater than 40,000.~~
- 10 (2) The Department ~~may~~ shall only erect panels at intersections (at-grade). An at-grade intersection is an  
11 intersection which is controlled by stop signs or traffic signals. Trailblazers ~~may~~ shall be installed when  
12 an attraction is not located on a state highway and further direction is needed to guide the tourist from the  
13 intersection to the attraction.
- 14 (3) Panels shall be ~~fabricated and located as detailed on the signing plans for the intersections and shall be~~  
15 located in a manner to take advantage of natural terrain and to have the least impact on the scenic  
16 environment.
- 17 (4) A separate sign panel shall be provided on the intersection approach for each ~~qualified~~ eligible attraction.  
18 Panels shall be allowed in each direction only when lateral spacing is available. The number of TODS  
19 panels shall not exceed a total of six per approach with only one attraction name on each TODS panel.
- 20 (5) The center of the mainline TODS intersection shall not be more than five driving miles from the ~~qualified~~  
21 eligible attraction and shall not be placed where prohibited by local ordinance.
- 22 (6) If an attraction is not directly on a State highway, it is eligible for TODS panels only if both of the  
23 following requirements are met:
- 24 (a) It is located on a street that directly connects with a state maintained road.
- 25 (b) It is located so that only one TODS Trailblazer, placed on a state maintained road, will lead the  
26 tourist to the attraction.
- 27 (7) Sign panels shall not be placed immediately in advance of the attraction if its on-premise advertising signs  
28 are readily visible from the highway.
- 29 (8) TODS panels shall be located at least 200 feet in advance of the main intersection. Signs shall be spaced at  
30 least 200 feet apart and at least 200 feet from other traffic control devices. TODS panels shall not be  
31 located more than one-half (0.5) mile from the center of the main intersection and shall not be placed in  
32 the signing sequence for any other prior intersections.
- 33 (9) Existing warning, regulatory, guide or other official highway signs shall take precedence over  
34 TODS.

35  
36 *History Note: Statutory Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17;*  
37 *136-140.18; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);*

1                    *Filed As A Temporary Rule Eff. January 1, 2003;*  
2                    *Eff August 1, 2004.*

Title 19A NCAC 02E. 1104 is adopted with changes as published in 17:20 NCR April 15, 2003 as follows:

**19A NCAC 02E.1104 ELIGIBILITY FOR PROGRAM**

(a) An attraction is eligible to participate in the Program if it meets ~~all of the following conditions:~~ the criteria in G.S. 136-140-16.

~~(1) — It meets the criteria in G.S. 136-140-16.~~

~~(2)~~ (b) The maximum distance that an attraction shall be located from the intersection containing TODS panels ~~shall not exceed~~ is five miles. Said distance shall be measured from the center of the intersection coincident with the centerline of a non-controlled access highway route or its median, along the roadways to the respective attraction. The point to be measured to for each attraction is a point on the roadway that leads to the main entrance to the attraction that is perpendicular to the corner of the nearest wall of the attraction to the intersection. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, ) whether or not attached to the main building shall not be used for the purposes of measuring. If the office (main building) of an attraction is located more than two-tenths (0.2) mile from a public road on a private road or drive, the distance to the office along the said drive or road shall be included in the overall distance measured to determine whether or not the attraction qualifies for TODS signing. The office shall be presumed to be at the place where the services are provided.

(c) Interested parties may show that they meet the definition of "tourist-oriented business" or tourist oriented facility" in either of two ways:

(1) An applicant shall certify, through the use of scientific independent surveys, business records, bank records, tax returns, or any other documents which would be admissible in a court proceeding that the applicant or facility meets each aspect of the definition of "tourist oriented business" or the definition of "tourist oriented facility." The applicant has an affirmative burden to provide documentation in support of its showing; or,

(2) An applicant may show that it is one of the following, which are presumed to be "tourist oriented businesses" or "tourist oriented facilities:"

(A) Amusement Park: a permanent area open to the general public including at least three of the following activities: roller coasters, entertainment rides, games, swimming, concerts, and exhibitions;

(B) Cultural Center: a facility for cultural events including museums, outdoor theaters, or facilities that exhibit antiques or items painted or crafted by local artists;

(C) Facility Tour Location: a facility such as a factory, institution or a plant which conducts tours at least four times daily on a regularly scheduled year-round basis;

(D) Historic Site or District: a structure or area listed on the national or state historic register. An historic site must be open to the public at least three months out of each year. Historic districts shall provide the public with a single, central location, such as a self-serve kiosk, welcome center or history museum where motorists can obtain information regarding the district;

1       (E) Recreation area: an attraction which provides tourists with opportunities such as golfing (excluding  
2       miniature golf, driving ranges, chip and putt areas, and indoor golf) horseback riding, surfing,  
3       bicycling, boating, fishing, picnicking, hiking or rafting and where, either at the attraction or within  
4       ten miles, all necessary equipment can be rented;

5       (F) Natural Phenomenon: a naturally occurring area which is of interest to the general public, such as a  
6       waterfall or cavern;

7       (G) Zoological/Botanical Parks and Farms: a facility in which living animals or plants are kept and  
8       exhibited to the public; and,

9       (H) Agricultural Facility: a facility that provides tours, on-site samples of agricultural products, or  
10      produce stands.

11      (d) "Tourist oriented businesses" or "tourist oriented facilities" shall be businesses or facilities that are a  
12      destination for tourists and must provide products or services that meet tourists' primary needs or interests.  
13      Shopping malls, furniture stores, drug stores, movie theaters, community business districts, appliance stores,  
14      automobile or truck dealerships or garages, houses of worship, real estate offices, livestock sales facilities, sand and  
15      gravel facilities, grocery stores, gas or vehicle service stations, bars, lounges, adult establishments, adult video,  
16      book, or novelty stores, medical facilities, and restaurants are not considered either "tourist oriented businesses" or  
17      "tourist oriented facilities."

18           *History Note: Statutory Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17;*  
19           *136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);*  
20           *Filed As A Temporary Rule Eff. January 1, 2003;*  
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1 Title 19A NCAC 02E.1105 is adopted as published in 17:20 NCR April 15, 2003 as follows:

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3 **19A NCAC 02E .1105 COMPOSITION OF SIGNS**

4 (a) No TODS panel shall be displayed which would mislead or misinform the traveling public.

5 (b) Any messages that interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or  
6 similar device are prohibited.

7 (c) Each specific TODS panel shall include only information that is related to that specific attraction.

8 (d) TODS panel and trailblazer designs shall be in conformance with the standards as specified in the MUTCD  
9 and approved by the Department prior to fabrication and shipment.

10  
11 *History Note: Statutory Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17;*

12 *136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);*

13 *Filed As A Temporary Rule Eff. January 1, 2003;*

14 *Eff August 1, 2004.*

1 Title 19A NCAC 02E.1106 is adopted with changes as published in 17:20 NCR April 15, 2003 as follows:

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3 **19A NCAC 02E .1106 FEES**

4 ~~The Department shall set fees to cover the initial costs of signs, sign maintenance, and administering the program.~~

5 (a) —(1) The annual fee fees for each TODS panel or Trailblazer shall be two hundred dollars (\$200.00).  
6 participation in the program are as follows:

7 (a) ~~Non-refundable application fee of one hundred seventy five dollars (\$175.00) per contract shall be~~  
8 ~~prepaid prior to field investigation.~~

9 (b) ~~Initial construction fee of three hundred twenty five (\$325.00) per each sign.~~

10 (c) ~~Annual maintenance fee of three hundred dollars (\$300.00) for each contract shall be renewed~~  
11 ~~annually each July 1.~~

12 (d) ~~Prorated Fee is a prorated portion of the maintenance fee. This fee shall be charged for that period~~  
13 ~~of time between acceptance and placement of the TODS panel by the Department and the following~~  
14 ~~July 1. This TODS prorated fee shall be charged on the first July 1 of the contract.~~

15 (e) ~~Service Charge Fee of one hundred sixty dollars (\$160.00) per each TODS panel, each additional~~  
16 ~~masking and unmasking, shall be charged when an attraction requests replacement of a sign, or~~  
17 ~~when the Department performs replacement due to damages to the TODS panel caused by acts of~~  
18 ~~vandalism, accidents, or natural causes including natural deterioration. The attraction shall provide~~  
19 ~~a new or renovated TODS panel with the service charge fee per each TODS panel to the~~  
20 ~~Department.~~

21 (b) (f) All participating attractions businesses shall prepay pay the annual fee prior to  
22 all associated costs for the installation and maintenance of the TODS panel(s).

23 (c) (2) The annual fee shall Fees may be paid by check or money order and are is due in advance of the  
24 period of service covered by said fee. Failure to pay a charge fee when due is grounds for removal  
25 of the TODS panel and termination of the contract.

26  
27 *History Note: Statutory Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17;*  
28 *136-140.18; 136-140.19; 143B-348; 143B-350(f);*  
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1 Title 19A NCAC 02E.1107 is adopted with changes as published in 17:20 NCR April 15, 2003 as follows:

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3 **19A NCAC 02E .1107 CONTRACTS WITH THE DEPARTMENT**

4 (a) The Department shall perform all ~~required~~ installation, maintenance, removal and replacement of ~~all~~ TODS  
5 panel(s).

6 (b) Applications shall be submitted to the Division Engineer for the Division in which the attraction is located, and  
7 must include a layout of the proposed TODS. ~~TODS, and the initial application fee.~~

8 (c) Upon approval of the application for participation in the TODS program, the applicant must agree to submit the  
9 required annual fee ~~program fees~~ within 30 days of notification.

10 (d) No TODS panel shall be displayed which, in the opinion of the Department, is unsightly, badly faded, or in a  
11 state of dilapidation. The Department shall remove, replace, or mask any such TODS panel. ~~panel at the expense~~  
12 ~~of the business.~~ Ordinary maintenance services shall be performed by the Department. ~~Department at such~~  
13 ~~necessary times upon payment of the annual renewal fee, and removal shall be performed~~

14 (e) The Department shall remove the TODS panel upon failure to pay ~~any~~ the annual fee or for violation of any  
15 provision of the rules in this Section and the TODS panel shall be removed.

16 (f) ~~(e)~~ When a TODS panel is removed, it shall be taken to the Division Traffic Services Shop of the Division in  
17 which the attraction is located. The participant shall be notified in writing of such removal and given 30 days in  
18 which to retrieve his sign. After 30 days, the TODS panel shall become the property of the Department and shall be  
19 disposed of as the Department shall see fit.

20 (g) ~~(f)~~ Should the Department determine that trailblazing to an attraction is desirable as described in 19A NCAC  
21 02E.1103 (6), it shall be done in conformance with the standards for a TODS trailblazer as defined in 02E.1102 (2).  
22 The participant shall furnish trailblazing signs required ~~and deemed necessary~~ by the Department. In such  
23 trailblazer installations, only one TODS trailblazer shall be used per each TODS intersection signed.

24 (h) ~~(g)~~ Should an attraction qualify for TODS signage at two intersections, the TODS panel shall be erected at the  
25 nearest intersection. If the participant desires signing at the second intersection also, it may be so signed provided it  
26 does not prevent another attraction from being signed.

27 (i) ~~(h)~~ An attraction under construction shall not be allowed to apply for participation in the program if its  
28 participation would prevent an existing open attraction applicant from participating, unless the open attraction has  
29 turned down a previous opportunity offered by the Department to participate in the program as provided in the  
30 program. After approval of an application, an attraction under construction shall be allowed priority participation  
31 over another qualifying eligible attraction that opens for business prior to the time specified for opening in the  
32 application by the attraction under construction.

33 (j) ~~(i)~~ The closest interested eligible attractions at an intersection up to a total of six TODS panels per approach  
34 to submit signed contracts shall be allowed TODS panels at that approach. Should the number of attractions at an  
35 approach increase to more than the maximum number of TODS panels allowed at that approach and a closer  
36 interested eligible participant requests installation of its TODS panels, the farthest qualifying participant shall be  
37 removed at the renewal date. Program participants may renew their respective contracts annually provided the

1 attraction maintains program eligibility. An attraction with more than one sign displayed on any intersection  
2 approach leg shall have the additional sign(s) removed at the end of a contract period when other ~~qualifying~~ eligible  
3 attractions apply for space on that approach.

4 ~~(k)~~ (j) An attraction which has been closed for remodeling or repair shall be granted one year to complete the  
5 construction, renovation, or restoration, provided ~~all TODS fees are the annual fee~~ is paid ~~maintained~~ and the same  
6 type of qualifying service is provided after reopening, even if under a different business name. ~~name as set out in~~  
7 ~~G.S. 136-140.18(b). The signs shall then be reinstalled upon payment of a service charge fee per each TODS as~~  
8 ~~described in 02E.1106 of these Rules. The attraction shall be granted one year to complete the construction,~~  
9 ~~renovation, or restoration, provided all TODS fees are maintained and the same type of qualifying service is~~  
10 ~~provided after reopening, even if under a different business name. The signs shall then be reinstalled upon payment~~  
11 ~~of a Service Charge fee as described in 19A NCAC 02E.1106 (1)(d) of this Section per each TODS panel.~~

12 (l) ~~(k)~~ Should a participating attraction cease to be in compliance with G.S. 136-140.16 and the rules in this  
13 Section, the Division Engineer shall notify the participant that it shall be given 30 days to bring the attraction into  
14 compliance or its TODS panel(s) shall be removed. If the attraction is removed and later applies for reinstatement,  
15 this request shall be handled in the same manner as a request from a new applicant. When a participating attraction  
16 is determined not to be in compliance with G.S. 136-140.16 and the Rules in this Section for a second time within  
17 two years of the first determination of non- compliance, its TODS panel(s) shall be permanently removed. If an  
18 attraction under construction is not open on the specified date in the agreement, the participant shall be given 30  
19 days notification to request the TODS panel installation or forfeit its panel. Future applications shall be treated in  
20 the same manner as a new applicant.

21 (m) ~~(h)~~ The transfer of ownership of an attraction for which an agreement has been lawfully executed shall not  
22 affect the validity of the agreement for the TODS agreement provided that the appropriate Division Engineer is  
23 given notice in writing of the transfer of ownership within 30 days of the actual transfer and the application is  
24 updated.

25 ~~(m) No new contracts shall be accepted by the Department during the month of June. The renewal date for all~~  
26 ~~contracts shall be on July 1.~~

27 (n) The Department shall not maintain waiting lists for the program.

28  
29 *History Note: Statutory Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17;*  
30 *136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);*  
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1 Title 19A NCAC 02E.1108 is adopted with changes as published in 17:20 NCR April 15, 2003 as follows:

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3 **19A NCAC 02E .1108 APPEAL OF DECISION**

4 (a) ~~(1)~~ Any applicant who ~~applies to participate in the program and~~ is refused, or any participating attraction  
5 ~~participating in the program- which~~ has its contract terminated and signs removed, that believes ~~that~~ the program is  
6 not being administered in accord with the Rules in this ~~Section~~ Section, may appeal the decision of the Division  
7 Engineer to the Secretary of the Department of Transportation. The decision of the Secretary is final.

8 (b) ~~(2)~~ The applicant or participant shall ~~so~~ notify the ~~appropriate~~ Division Engineer of his decision to appeal by  
9 certified mail, return receipt requested, within 10 days of the receipt of the decision.

10 (c) ~~(3)~~ Within 20 days from the time of submitting his notice of appeal, the applicant or participant shall submit  
11 to the Secretary a written appeal setting forth with particularity the facts upon which its appeal is based.

12 (d) ~~(4)~~ Within 30 days from the receipt of the ~~said~~ written appeal or within such additional time as may be agreed  
13 to between the Secretary and the appealing party, the Secretary shall make an investigation of the ~~said~~ appeal. The  
14 Secretary shall then make findings of fact and conclusions pertaining to the appeal on behalf of the Department and  
15 the findings and conclusions shall be served upon the appealing party by certified mail, return receipt requested.

16  
17 *History Note: Statutory Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17;*

18 *136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);*

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