

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: All Rules in 19A NCAC 03

RECOMMENDED ACTION:

- ☒ Approve
- ☒ Object, based on:
- Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- ☒ Extend the period of review

COMMENT:

Staff is recommending the following:

Approve: 19A NCAC 03C .0101, .0102, .0201, .0225, .0227, .0229, .0233, .0237, .0423, .0427, and .0431

Extend the Period of Review: 19A NCAC 03C .0202, .0220, .0221, .0222, .0223, .0224, .0226, .0228, .0232, .0235, .0420, .0421, .0424, .0425, .0426, .0428, .0432, .0433, .0436, .0501, .0521, and 03E .0401

Object:

19A NCAC 03C .0230	Statutory Authority
19A NCAC 03C .0234	Statutory Authority/ Ambiguity
19A NCAC 03C .0236	Statutory Authority
19A NCAC 03C .0403	Statutory Authority
19A NCAC 03C .0404	Statutory Authority
19A NCAC 03C .0414	Ambiguity
19A NCAC 03C .0419	Statutory Authority
19A NCAC 03C .0429	Statutory Authority
19A NCAC 03C .0520	Ambiguity

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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0230

RECOMMENDED ACTION:

Approve

Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this Rule as being beyond the statutory authority of the agency. Powers of attorney are provided in Chapter 32C of the North Carolina General Statutes. The Powers of a guardian are provided by Chapter 35A of the North Carolina General Statutes.

Amber May
Commission Counsel

1 19A NCAC 03C .0230 is readopted as published in 35:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0230 POWERS OF ATTORNEY: GUARDIANS**

4 Any person holding a duly executed power of attorney or who is a legally appointed guardian ~~may~~shall act for the
5 owner in applying for the registration of a vehicle.

6
7 *History Note: Authority G.S. 20-1; 20-39; 20-77;*

8 *Eff. March 1, ~~1982~~ 1982;*

9 *Readopted Eff. May 1, 2021.*

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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0234

RECOMMENDED ACTION:

Approve

Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this Rule as the overall intent of this Rule is unclear. To the extent this Rule is intended to provide that statutes are inapplicable to rules, it is staff's opinion that this is beyond the authority of the agency.

Amber May
Commission Counsel

1 19A NCAC 03C .0234 is readopted as published in 35:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0234 MINORS MAY OWN VEHICLE**

4 The statutes governing minors, and their liability or nonliability for contracts, have no direct application to the rules
5 of the certificate of title law.

6
7 *History Note: Authority G.S. 20-1; 20-39;*
8 *Eff. March 1, 1982;*
9 *Amended Eff. December 1, ~~1993~~ 1993;*
10 *Readopted Eff. May 1, 2021.*
11

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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0236

RECOMMENDED ACTION:

Approve

Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this rule for lack of statutory authority. G.S. 20-73 provides exceptions to the requirement that an application for a certificate of title be submitted within 28 days of a transfer of a vehicle. This Rule appears to expand those exceptions.

§ 20-73. New owner must get new certificate of title.

(a) Time Limit. - A person to whom a vehicle is transferred, whether by purchase or otherwise, must apply to the Division for a new certificate of title. An application for a certificate of title must be submitted within 28 days after the vehicle is transferred. A person who must follow the procedure in G.S. 20-76 to get a certificate of title and who applies for a title within the required 20-day time limit or who transfers title to a vehicle pursuant to a sworn certificate pursuant to G.S. 20-52.1(d) is considered to have complied with this section even when the Division issues a certificate of title to the person after the time limit has elapsed.

A person may apply directly for a certificate of title or may allow another person, such as the person from whom the vehicle is transferred or a person who has a lien on the vehicle, to apply for a certificate of title on that person's behalf. A person to whom a vehicle is transferred is responsible for getting a certificate of title within the time limit regardless of whether the person allowed another to apply for a certificate of title on the person's behalf.

(b) Exceptions. - This section does not apply to any of the following:

(1) A dealer or an insurance company to whom a vehicle is transferred when the transfer meets the requirements of G.S. 20-75.

(2) A State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad.

(c) Penalties. - A person to whom a vehicle is transferred who fails to apply for a certificate of title within the required time is subject to a civil penalty of twenty dollars (\$20.00) and is guilty of a Class 2 misdemeanor. A person who undertakes to apply for a certificate of title on behalf of another person and who fails to apply for a title within the required time is subject to a civil penalty of twenty dollars (\$20.00). When a person to whom a vehicle is transferred fails

Amber May
Commission Counsel

to obtain a title within the required time because a person who undertook to apply for the certificate of title did not do so within the required time, the Division may impose a civil penalty only on the person who undertook to apply for the title. Civil penalties collected under this subsection shall be credited to the Highway Fund. (1937, c. 407, s. 37; 1939, c. 275; 1947, c. 219, s. 6; 1961, c. 360, s. 9; 1975, c. 716, s. 5; 1991, c. 689, s. 332; 1993, c. 539, s. 339; 1994, Ex. Sess., c. 24, s. 14(c); 2005-276, s. 44.1(j); 2009-81, s. 1; 2009-550, s. 2(b); 2015-241, s. 29.30(i); 2018-42, s. 2(g); 2018-145, s. 4.)

1 19A NCAC 03C .0236 is readopted as published in 35:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0236 PENALTY FOR FAILURE ~~TO MAKE~~ TO MAKE TRANSFER WITHIN 28 DAYS**

4 The following are exempted from the requirement to make application for a title within 28 days of acquiring a vehicle
5 (G.S. 20-73):

- 6 (1) a licensed ~~dealers~~ dealer;
- 7 (2) the transfer upon inheritance;
- 8 (3) a transfer by operation of law where confirmation of the sale is required;
- 9 (4) a transfer by the court, such court (such as bankruptcy and ~~confiscation~~); confiscation;
- 10 (5) a dealer ~~dealers~~ or reposseors-repossessor when applying for title in their name; and
- 11 (6) an out-of-state dealer ~~out of state dealers~~ reassigning North Carolina titles to North Carolina
12 purchasers.

13
14 *History Note: Authority G.S. 20-1; 20-39; 20-73; 20-77;*

15 *Eff. March 1, 1982;*

16 *Amended Eff. December 1, 1993; November 1, ~~1994~~ 1991;*

17 *Readopted Eff. May 1, 2021.*
18

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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0403

RECOMMENDED ACTION:

Approve

Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this Rule for lack of statutory authority. Staff does not see any reference to van pools or van pool license plates in the cited authority.

1 19A NCAC 03C .0403 is readopted as published in 5:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0403 VAN POOL LICENSE PLATE**

4 Residents of North Carolina engaged in van pooling where the costs of operation are shared by the passengers ~~may~~
5 shall apply for a special van pool license plate. If the vehicle ceases to ~~be operated~~ operate in a van pool, the plate
6 ~~must~~ shall be exchanged for one of the proper classification. The application form required for this plate is available
7 from the Vehicle Registration Section of the Division of Motor Vehicles.

8
9 *History Note: Authority G.S. 20-39; 20-87; 20-88.1;*

10 *Eff. July 1, 1978;*

11 *Amended Eff. October 1, 1984; February 1, ~~1982~~ 1982;*

12 *Readopted Eff. May 1, 2021.*
13

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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0404

RECOMMENDED ACTION:

Approve

Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this Rule for lack of statutory authority. The reference in G.S. 20-66 to “staggered registration” was repealed by S.L. 1993-761.

1 19A NCAC 03C .0404 readopted as published in 35:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0404 ORIGINAL REGISTRATION: STAGGERED REGISTRATION SYSTEM**

4 (a) Owners of vehicles in the staggered registration system, at the time of original registration of a newly acquired
5 vehicle for which there is no plate to transfer, ~~may shall~~ register ~~their a~~ vehicle to expire in the same month as other
6 vehicles registered in their ~~name~~ name, as long as the registration expires within the same year. The owner ~~must shall~~
7 furnish a statement, upon request, showing the expiration month of his or her other registered ~~vehicle(s)~~ vehicle.

8 (b) Registrants with no vehicles currently in the staggered system ~~will shall~~ be registered to expire at the discretion
9 of the Division.

10
11 *History Note: Authority G.S. 20-39; 20-50; 20-66;*

12 *Eff. July 1, 1978;*

13 *Amended Eff. February 1, ~~1982~~ 1982;*

14 *Readopted Eff. May 1, 2021.*
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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0414

RECOMMENDED ACTION:

Approve

Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this Rule as being unclear and beyond the authority of the agency. Specifically, as it pertains to lines 6-8, it is unclear what is meant by “short periods.” Further, it is unclear as to when and how the Division will determine whether it will “license vehicles owned by nonresidents.” Finally, it is unclear what it means to “license” a vehicle. Elsewhere in these Rules and the cited authority, vehicles are “registered.”

1 19A NCAC 03C .0414 is readopted as published in 35:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0414 APPLICATION FOR LICENSE**

4 The application for a North Carolina title is a joint application for title and license. License fees are collected at the
5 time of first registration. North Carolina residents ~~may~~ shall not obtain a license plate in North Carolina without first
6 ~~making application-applying~~ for a North Carolina Certificate of Title. The Division, at its discretion, may license
7 vehicles owned by nonresidents (and operated interstate or within the state for short periods) without issuing a
8 Certificate of Title.

9
10 *History Note: Authority G.S. 20-39; 20-50; 20-66; 20-79; 20-81.7; 20-83; 20-86.1;*
11 *Eff. March 1, ~~1982~~.1982;*
12 *Readopted Eff. May 1, 2021.*
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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0419

RECOMMENDED ACTION:

Approve

Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this Rule for lack of statutory authority. This Rule requires the registration of golf carts as “low-speed vehicles.” G.S. 20-54 specifically says that the “Division shall refuse registration or issuance of a Certificate of Title [for]... a golf cart.” Further, G.S. 20-4.01 defines a “golf cart” as a vehicle that is incapable of exceeding 20 miles per hour. G.S. 20-4.01(27)g. defines a “low-speed vehicle” as one capable of traveling between 20 and 25 miles per hour. As such, this Rule directly conflicts with statute.

§ 20-54. Authority for refusing registration or certificate of title.

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:...

- (8) The vehicle is a golf cart or utility vehicle.

1 19A NCAC 03C .0419 is readopted as published in 35:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0419 GOLF CARTS**

4 A golf cart ~~is not classified as a motorcycle. It must~~ shall be ~~licensed,~~ licensed when used on the ~~highway,~~ highway
5 as a regular passenger-carrying vehicle. A golf cart shall be registered as a low-speed vehicle. The fee for registration
6 is the same as ~~that for~~ an automobile.

7
8 *History Note: Authority G.S. 20-4.01; 20-39; 20-87; 20-88.1;*

9 *Eff. March 1, ~~1982.~~ 1982;*

10 *Readopted Eff. May 1, 2021.*

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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0429

RECOMMENDED ACTION:

Approve

Object, based on:

X Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this Rule for lack of statutory authority. Specifically, portions of this Rule appear to be addressed by or conflict with G.S. 20-64.

1 19A NCAC 03C .0429 is readopted as published in 35:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0429 LICENSE PLATE TRANSFER**

4 (a) The procedure for transferring a plate when disposition of the vehicle is other than by sale or transfer of interest
5 is as follows:

6 (1) When the vehicle is dismantled and the title is marked junked (~~title marked junked~~), the owner may,
7 if insurance is in effect, make application to transfer the plate to another vehicle. The plate may be
8 used, on a vehicle of the same category, for 20 days while in the process of having the transfer
9 recorded.

10 (2) When the vehicle is parked, to be sold or for later use, or to be changed from a private to a for hire
11 operation, the plate may be transferred to another vehicle of like category provided the owner gets
12 a new registration certificate before operating the vehicle. The 20-day transfer period is not allowed
13 in this case.

14 (b) Corporate, partnership or proprietorship name changes do not constitute a change in ownership for purposes of
15 registration with the Division. G.S. 20-64 defines the law in this area. Conditions that do affect the transfer of license
16 plates are:

17 (1) The plate does not remain with the vehicle when ownership passes from a subsidiary corporation to
18 the parent corporation.

19 (2) A plate may not be transferred from one existing corporation to another existing corporation.

20 (3) A plate issued to a corporation may pass to a stockholder if the corporation is dissolved.

21 (4) A plate issued in the trade name of a proprietor may not be transferred to a vehicle registered in the
22 proprietor's personal name. Registration may be made, however, ~~made however~~ in the personal
23 name and trade name, i.e., John Thomas Jones (T/A) Thomas Car Works.

24 (5) If an unincorporated proprietor or unincorporated partnership transfers his interest in a vehicle to a
25 corporation on which he is a stockholder, the plate may not be transferred.

26 (6) When the registered owner dies, transfer of interest in the vehicle to anyone other than the surviving
27 spouse requires the issuance of a new plate.

28 (c) Transfer of plates, annual or semi-permanent, is not allowed during the grace period following the expiration date
29 of the plate. If a plate has expired, it may be validated and then assigned to another vehicle.

30 (d) Division automobile inspectors and weigh station personnel may accept applications and render receipts for
31 transfer of common carrier license plates in addition to other classifications of plates.

32 (e) Intrastate common carriers operating under the authority of the North Carolina Utilities Commission, must present
33 a copy of their equipment list, as filed with the commissioner, to the officer accepting the application for transfer of
34 plates.

35
36 *History Note: Authority G.S. 20-39; 20-42; 20-64; 20-65; ~~20-64 through 20-66;~~*

37 *Eff. March 1, 1982;*

38 *Amended Eff. December 1, ~~1993~~ 1993;*

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AGENCY: Department of Transportation – Division of Motor Vehicles

RULE CITATION: 19A NCAC 03C .0520

RECOMMENDED ACTION:

Approve

Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

Staff is recommending objection to this Rule as being unclear or ambiguous. The term “for hire operations” does not appear to be used elsewhere in the agency’s rules or authorizing statutes; therefore, it is unclear to staff what the overall intent of this Rule is. To the extent “for-hire” is necessary to implement or interpret Chapter 20 of the North Carolina General Statutes, this term is addressed by G.S. 20-4.01 in the definitions of “for-hire motor carrier” and “for-hire passenger vehicle.”

1 19A NCAC 03C .0520 is readopted as published in 35:14 NCR 1569-1572 without changes as follows:

2
3 **19A NCAC 03C .0520 FOR HIRE OPERATIONS DEFINED**

4 A for hire operation is defined as:

- 5 (1) The use of motor vehicles to transport passengers, or the property of another, for which the owner
6 receives compensation or the equivalent either directly or ~~indirectly~~indirectly; or
7 (2) The rental of passenger vehicles to be operated by the lessee for which the owner receives
8 compensation or the equivalent either directly or ~~indirectly~~indirectly.
9 ~~(3) The transportation of house trailers for compensation.~~

10
11 *History Note: Authority G.S. 20-4.01; 20-39; 62-3; 62-276;*

12 *Eff. March 1, 1982;*

13 *Amended Eff. December 1, ~~1993~~ 1993;*

14 *Readopted Eff. May 1, 2021.*
15