

## Burgos, Alexander N

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**From:** Rules, Oah  
**Subject:** FW: Request Return of Rule

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**From:** Landi, Helen E  
**Sent:** Wednesday, May 09, 2018 9:18 AM  
**To:** Rules, Oah <oah.rules@oah.nc.gov>  
**Cc:** Jernigan, Hannah <hjernigan@ncdot.gov>  
**Subject:** Request Return of Rule

Good Morning,

Per GS 150B-21.12.(d) the NCDOT Division of Motor Vehicles is requesting the return of the following rules:

19A NCAC 03 .0219 Business Records  
19A NCAC 03 .0237 Vehicles Records and Required Disclosures

Please let me know if I need to take additional steps.

Best,  
Helen Landi

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Email correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.



STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6700

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

March 19, 2018

Helen Landi, Rulemaking Coordinator  
NCDOT Division of Motor Vehicles  
**Sent via email only: hlandi@ncdot.gov**

Re: 19A NCAC 03D .0219

Dear Ms. Landi:

At its meeting this morning, the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to the rule for failure to comply with the APA, as the agency substantially changed the rule after publication in the NC Register. The Commission also objected to rule based upon lack of statutory authority, because requiring certain records to be provided "immediately" in all circumstances was not authorized by G.S. 20-297, which requires that such records be "available for inspection by the Division within a reasonable period of time after being requested by the Division."

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Jason Thomas  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

1 19A NCAC 03D .0219 is adopted with changes as published in 31:17 NCR 1754 as follows:

2  
3 **19A NCAC 03D .0219 BUSINESS RECORDS**  
4

5 (a) All motor vehicle dealers, manufacturers, factory branches, distributors, distributor ~~branches~~ branches, and  
6 wholesalers shall keep a record for ~~at least~~ four years of all vehicles manufactured, received, sold, ~~traded~~ traded, or  
7 junked. In ~~addition~~ addition, a copy of ~~any~~ all disclosure required by G.S. 20-71.4 received or given by the dealer  
8 ~~must shall~~ be retained for four years. An odometer disclosure form shall be retained for a period of five years as  
9 required by G.S. 20-347.1.

10 (b) All motor vehicle dealers, manufacturers, factory branches, distributors, distributor ~~branches~~ branches, and  
11 wholesalers shall keep for a period of four years the following additional records for each ~~vehicle~~ vehicle, and  
12 ~~mobile/modular~~ mobile home, or modular home manufactured, received, sold, ~~traded~~ traded, or junked:

- 13 (1) ~~Make~~ the make, body style, ~~[and]~~ vehicle identification number, and year ~~model~~: model;
- 14 (2) ~~Name~~ the name of the person, ~~firm~~ firm, or corporation from whom ~~acquired~~: acquired;
- 15 (3) ~~Date~~ the date the vehicle was purchased or ~~manufactured~~: manufactured;
- 16 (4) ~~Name~~ the name of person, ~~firm~~ firm, or corporation to whom the vehicle was sold or traded. If the  
17 vehicle was junked, the ~~[date]~~ date and the name and address of the person, ~~firm~~ firm, or corporation  
18 to whom the frame, ~~motor~~ the motor, and the body ~~sold~~: were sold;
- 19 (5) ~~Date~~ the date the vehicle was sold or ~~traded~~: traded;
- 20 (6) ~~Copy of bill of sale (written statement)~~: the copy of the written bill of sale; and
- 21 (7) ~~The~~ the North Carolina oversize single trip or annual permit number issued pursuant to G.S. 20-119  
22 that authorizes ~~authorizing~~ movement of the ~~mobile/modular unit~~, mobile home or modular home,  
23 serial number or vehicle identification number of the ~~mobile/modular unit~~, mobile home or modular  
24 home, the date of the move, transporter, and name and address of the purchaser.

25 (c) All records required to be maintained in Paragraphs (a) and (b) shall be kept and maintained for every vehicle  
26 purchased or sold and shall be ~~kept so as to be readily~~ available for inspection upon ~~[demand]~~ request from an  
27 authorized agent of the North Carolina Division of Motor Vehicles. ~~Vehicles in order that the ownership of any vehicle~~  
28 ~~purchased or sold can be traced~~. All records required to be maintained shall be either original or electronic records.

29 (d) For the purpose of this Rule, an "original record" is the writing or [recording] record itself or any non-electronic  
30 duplicate that is designated as an original ~~[intended to have the same effect]~~ by a person executing or issuing it. An  
31 "original" of a photograph includes the negative or any print therefrom. An "original record" may [itself] be in  
32 electronic format.

33 (e) For the purpose of this Rule, an "electronic record" is a duplicate produced by electronic re-recording or by  
34 equivalent techniques, such as imaging or image processing, that reproduce the original record. If only an electronic  
35 record is ~~[records are]~~ maintained, the following requirements shall be met:

- 36 (1) Upon ~~[demand]~~ request by the Division, the ~~[person(s)]~~ person in possession of the ~~[demanded]~~  
37 requested electronic records may produce the records in either reproduced paper or electronic

1 copies. ~~[All records shall be made available for inspection in a readable format and identified by~~  
2 ~~title.] [Record request types described as:]~~ Records shall be made available for inspection in a  
3 readable format and identified by title. Record requests shall be responded to as follows:

4 (a) ~~[immediate requests are records inspections performed by the Division in accordance with~~  
5 ~~G.S. 20-297(b), audits per G.S. 20-285 or investigations of illegal activity.]~~ Records to be  
6 inspected by the Division in accordance with G.S. 20-297(b), audits per G.S. 20-285, or  
7 investigations of illegal activity shall be provided immediately upon request.

8 (b) all other requests for records ~~[may]~~ shall be filled within the same business day.

9 (2) Any ~~[person(s)]~~ person producing electronic records to the Division shall verify that the records  
10 being produced to the Division consist of all information contained in the original records.

11 ~~(d) Manufacturer's Certificates of Origin and title for all vehicles owned by a motor vehicle dealer, manufacturer,~~  
12 ~~factory branch, distributor, distributor branch or wholesaler must be immediately available to assign to the purchaser.~~

13 ~~(e) Retail installment sales must be made in accordance with G.S. 20-303. Cash sales may be made by proper~~  
14 ~~endorsement and delivery of the title to the purchaser and any other receipt that the purchaser and seller agree upon.~~

15 ~~(f) Pursuant to 16 CFR 455.2 a dealer shall not willfully remove the "Monroney Label" or sticker from a new~~  
16 ~~automobile that is displayed for sale. The "Monroney Label" must be affixed to the new automobile at the time of~~  
17 ~~sale to the ultimate purchaser. "Ultimate Purchaser" means the first person, other than a dealer purchasing in his~~  
18 ~~capacity as a dealer, who in good faith purchases a new automobile for purposes other than a resale.~~

19 ~~(g) Pursuant to 15 USC Sec. 1231 every dealer offering used cars for sale shall post buyers guides with warranty~~  
20 ~~information as required by the Federal Trade Commission and same shall be displayed at the time of sale.~~

21  
22 *History Note:* Authority G.S. 20-1; 20-52; 20-71.4; 20-75; 20-79(a) and (b); ~~20-82; 20-286(6) and (15); 20-297;~~  
23 ~~20-302; 20-303; 20-347;~~  
24 *Eff. June 1, 1988;*  
25 *Amended Eff. January 1, 1994; October 1, 1991; October 1, 1989;*  
26 *Filed as a Temporary Rule Eff. October 1, 2000;*  
27 *Amended Eff. May 1, 2018; August 1, ~~2002; 2002.~~*  
28  
29

REQUEST FOR TECHNICAL CHANGE

AGENCY: NCDOT Division of Motor Vehicles

RULE CITATION: 19A NCAC 03D .0219

**DEADLINE FOR RECEIPT: Monday, April 9, 2018**

***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:

*Line 7 – replace “any disclosure” with “all disclosures” if that is what is meant*

*Line 13 – delete the “and” before “vehicle”*

*Line 17 – delete the comma after “date”*

*Line 24 – add “the” after “of”*

*Line 29 – replace “recording” with “record” or “document” if that is what is meant.*

*Line 30 – what does “intended to have the same effect by a person executing or issuing it” mean? Is this phrase necessary?*

*Line 31 – delete “itself”*

*Line 35 – replace “person(s)” with either “person” or “persons”*

*Page 2, lines 1-5 – consider revising as follows:*

records shall be made available for inspection in a readable format and identified by title. Record requests shall be responded to as follows:

- (a) Records to be inspected by the Division in accordance with G.S. 20-297(b), audits per G.S. 20-285, or investigations of illegal activity shall be provided immediately upon request.
- (b) All other requests for records shall be filled within the same business day.

*Page 2, line 6 – replace “person(s)” with either “person” or “persons”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: Friday, March 23, 2018

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7 junked. In ~~addition~~ addition, a copy of any disclosure required by G.S. 20-71.4 received or given by the dealer ~~must~~  
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12 ~~mobile/modular~~ mobile home, or ~~modular~~ home manufactured, received, sold, ~~traded~~ traded, or junked:

- 13 (1) ~~Make~~ the make, body style, and vehicle identification number, and year ~~model~~ model;
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- 15 (3) ~~Date~~ the date the vehicle was purchased or manufactured, manufactured;
- 16 (4) ~~Name~~ the name of person, ~~firm~~ firm, or corporation to whom the vehicle was sold or traded. If the  
17 vehicle was junked, the date, and the name and address of the person, ~~firm~~ firm, or corporation to  
18 whom the frame, ~~motor~~ the motor, and the body ~~sold~~ were sold;
- 19 (5) ~~Date~~ the date the vehicle was sold or traded, traded;
- 20 (6) ~~Copy of bill of sale (written statement)~~, the copy of the written bill of sale; and
- 21 (7) ~~The~~ the North Carolina oversize single trip or annual permit number issued pursuant to G.S. 20-119  
22 that authorizes ~~authorizing~~ movement of the ~~mobile/modular unit~~, mobile home or modular home,  
23 serial number or vehicle identification number of the ~~mobile/modular unit~~, mobile home or modular  
24 home, the date of move, transporter, and name and address of purchaser.

25 (c) All records required to be maintained in Paragraphs (a) and (b) shall be kept and maintained for every vehicle  
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