

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: All rules submitted

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

NOTE: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On every Rule:

- *In the Introductory Statement for each Rule, include the publication information. For example, "14B NCAC 01C .0401 is readopted as published in 33:01 NCR 6-7 as follows:"*
- *For any rule where you make a change to the text in response to these Requests for Technical Changes or the text differs from that published in the NC Register, state "...readopted with changes as published in..."*
- *Please insert an effective date in the History Note for every rule. As you published a proposed effective date of November 1, 2018, it cannot be any earlier than that.*

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

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 Public Safety

RULE CITATION: 14B NCAC 01C .0401

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority.

In the History Note, the agency cites to G.S. 160A-288.1 and 153A-212. G.S. 160A-288.1 states:

§ 160A-288.1. Assistance by State law-enforcement officers; rules; cost

(a) The governing body of any city or county may request the Governor to assign temporarily State law-enforcement officers with statewide authority to provide law-enforcement protection when local law-enforcement officers: (i) are engaged in a strike; (ii) are engaged in a slowdown; (iii) otherwise refuse to fulfill their law-enforcement responsibilities; or (iv) submit mass resignations. The request from the governing body of the city or county shall be in writing. The request from a county governing board shall be upon the advice of the sheriff of the county.

(b) The Governor shall formulate such rules, policies or guidelines as may be necessary to establish a plan under which temporary State law-enforcement assistance will be provided to cities and counties. The Governor may delegate the responsibility for developing appropriate rules, policies or guidelines to the head of any State department. The Governor may also delegate to a department head the authority to determine the number of officers to be assigned in a particular case, if any, and the length of time they are to be assigned.

(c) While providing assistance to a city or county, a State law-enforcement officer shall be considered an employee of the State for all purposes, including compensation and fringe benefits.

Amanda J. Reeder
Commission Counsel

(d) While providing assistance to the city or county, a State officer shall be subject to the lawful operational commands of his State superior officers. The ranking representative of each State law-enforcement agency providing assistance shall consult with the appropriate city or county officials prior to deployment of the State officers under his command.

Staff initially notes that G.S. 160A-288.1(b) gives rulemaking power to the Governor, not DPS. However, the statute allows the Governor to delegate this responsibility to “the head of any State Department,” so it is possible that the delegation has occurred, such that the Secretary of DPS has this rulemaking authority for these Rules.

However, the statute expressly states the rules shall be “necessary to establish a plan under which temporary State law-enforcement assistance will be provided to the cities and counties.” This Rule does not appear to do that; instead, it establishes agreements for the city or county to reimburse the costs after the Secretary entered into an agreement to provide the assistance. Therefore, staff is not aware that the agency has authority for this Rule.

In addition, G.S. 160A-288.1(c) states that all times, the State law-enforcement officer shall be considered an employee of the State for all purposes. However, in Items (1) through (3), the Rule states that the costs of employment, including pay, workers compensation, and fringe benefits, may be paid by the local government. Staff is not aware of any authority for the agency to offset all State employment requirements to local governments through rulemaking.

§ 160A-288.1. Assistance by State law-enforcement officers; rules; cost

(a) The governing body of any city or county may request the Governor to assign temporarily State law-enforcement officers with statewide authority to provide law-enforcement protection when local law-enforcement officers: (i) are engaged in a strike; (ii) are engaged in a slowdown; (iii) otherwise refuse to fulfill their law-enforcement responsibilities; or (iv) submit mass resignations. The request from the governing body of the city or county shall be in writing. The request from a county governing board shall be upon the advice of the sheriff of the county.

(b) The Governor shall formulate such rules, policies or guidelines as may be necessary to establish a plan under which temporary State law-enforcement assistance will be provided to cities and counties. The Governor may delegate the responsibility for developing appropriate rules, policies or guidelines to the head of any State department. The Governor may also delegate to a department head the authority to determine the number of officers to be assigned in a particular case, if any, and the length of time they are to be assigned.

(c) While providing assistance to a city or county, a State law-enforcement officer shall be considered an employee of the State for all purposes, including compensation and fringe benefits.

(d) While providing assistance to the city or county, a State officer shall be subject to the lawful operational commands of his State superior officers. The ranking representative of each State law-enforcement agency providing assistance shall consult with the appropriate city or county officials prior to deployment of the State officers under his command.

Credits

Added by Laws 1979, c. 639, § 1.

§ 153A-212. Cooperation in law-enforcement matters

A county may cooperate with the State and other local governments in law-enforcement matters, as permitted by [G.S. 160A-283](#) (joint auxiliary police), by [G.S. 160A-288](#) (emergency aid), [G.S. 160A-288.1](#) (assistance by State law-enforcement officers), and by Chapter 160A, Article 20, Part 1.

Credits

Added by Laws 1973, c. 822, § 1. Amended by Laws 1979, c. 639, § 2.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 01C .0401

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please confirm the Governor delegated rulemaking authority pursuant to G.S. 160A-288.1(b).

Line 6, capitalize "Secretary"

Throughout this Rule, whenever you are using the term "state" please capitalize the term if you mean "NC"

Line 6, what is meant by "state law enforcement agency"? Isn't it the Department? There needs to be a clear indication of who the actors are in this Rule.

Line 7, insert a comma after "assistance"

Line 7, why are you saying "the state agency"? Isn't it the Department? And is this different from Item (1) on line 10, which refers to the "state department"? If it's the same entity, please be consistent with the terminology.

Line 8, what is the purpose of the sentence "The agreement may be entered into before or after assistance is provided."?

Line 9, consider the following re-write: "The following costs ~~that~~ may be included in the agreement agreement: are:"

Also on line 9, you state that these "may" be addressed in the agreement. Who will determine this? The parties to the agreement?

In Items (1) through (3), how can you do this? G.S. 160A-288.1(c) states that at all times, the State law enforcement remains state employees. What is the agency's authority to offset their pay to the local government?

In (1), line 10, what is the "state department"?

On line 11, state "his or her"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

In (2), line 13, replace “such” with “these” or “the”

Line 14, what “state law” are you referring to?

In (3), lines 15-16, what is the “state department”?

Line 16, define or delete “actually”

Line 16, what is a “state officer”?

Line 16, state “his or her”

In (4), line 17, what is the “state department”?

Line 17, replace “which” with “that”

Line 17, insert a comma after “used”

Line 18, do you need “however”? Why not just state “The local governing body shall not be liable for ordinary...”?

Line 19, should the “for” before “loss or damage” be “or”? If not, I do not understand this sentence as written.

Line 19, who will determine this was negligence? The “state department” or the local government?

Line 20, please replace “must” with “shall”

Also on line 20, upon the demand of whom – the state department? And when is this done?

Line 21, I suggest you delete “subsequently”

Line 21, again, who is the “state department”? And what does this mean – that if insurance pays, the state department will pay it back to the local government? If so, can’t this language be simplified?

Line 21, replace “will” with “shall”

Line 22, what is meant by “rebate”?

Line 22, insert an “and” after “sources;”

In (5), line 23, define “directly”

In the History Note, put the statutory citations in numerical order.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 01C .0401 is proposed for reoption as follows:

2 **CHAPTER 01 – DEPARTMENT RULES**

3 **SUBCHAPTER 01C- STATE LAW ENFORCEMENT ASSISTANCE DURING LABOR DISPUTE**

4 **SECTION .0400 - COSTS**

5 **14B NCAC 01C .0401 AGREEMENT TO PAY COSTS**

6 The secretary, in consultation with the state law enforcement agency providing assistance, and the governing body
7 of the city or county requesting assistance may enter into an agreement to reimburse the state agency for the costs of
8 providing assistance or a portion thereof. The agreement may be entered into before or after assistance is provided.

9 The costs that may be included in the agreement are:

- 10 (1) The actual cost of compensation, including overtime pay, that the state department pays to each
11 officer during his period of assignment;
- 12 (2) Disability pay or workman's compensation pay to any officer disabled or injured while providing
13 such assistance to the local governing body. The local governing body shall be responsible for
14 such payments as long as the officer is entitled to them under state law;
- 15 (3) The costs of all fringe benefits, including retirement and health insurance, which the state
16 department actually pays to a state officer during his period of assignment;
- 17 (4) Costs of any state department property which has been lost, damaged, destroyed, stolen, used or
18 consumed during the period of assignment. The local governing body will not, however, be liable
19 for ordinary wear and tear or for loss or damage caused by the negligence of the state officer. The
20 local governing body must pay the amount of the costs of the property upon demand. If
21 subsequently the state department is reimbursed from other sources, the state department will
22 rebate to the local governing body the amount obtained from the other sources;
- 23 (5) Any other costs directly associated with providing this assistance, such as transportation and travel
24 subsistence expenses.

25

26 *History Note: Authority G.S. 160A-288.1; 153A-212;*

27 *Eff. December 1, 1979;*

28 *Transferred from 14A NCAC 01C .0401 Eff. June 1, 2013.*

29 *Readopted Eff. _____, 2017.*

30

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 Public Safety

RULE CITATION: 14B NCAC 01C .0402

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X 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 recommends objection to this Rule for lack of statutory authority and ambiguity.

One of the statutes cited in the History Note, G.S. 160A-288.1, states the rules shall be "necessary to establish a plan under which temporary State law-enforcement assistance will be provided to the cities and counties." This Rule does not do that, but instead establishes the billing method for payment of an agreement. Therefore, staff is not aware of any authority for the agency to promulgate this Rule. Further, staff is unsure why this Rule is necessary, as it seems this method would be addressed by the agreement.

In addition, the Rule is unclear as written, as it states that the Secretary shall send the notice "at such time as he determines." There is no guidance in the Rule as to when this will happen and it is left entirely within the discretion of the Secretary.

Therefore, staff recommends objection to this Rule for lack of statutory authority and ambiguity.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 01C .0402

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please confirm the Governor delegated rulemaking authority pursuant to G.S. 160A-288.1(b).

Line 5, capitalize "Secretary"

Line 5, state "he or she"

On line 6, what will this determination be based upon?

Line 6, replace "will" with "shall"

Lines 7-8, what is the "state department"?

Line 8, insert a comma after "department"

Line 8, what if they can't pay it within 30 days? Will there be collection efforts?

Line 9, known to whom?

Line 10, what are "normal departmental procedures"?

In the History Note, put the statutory citations in numerical order.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 01C .0402 is proposed for readoption as follows:

2 **CHAPTER 01 – DEPARTMENT RULES**

3 **SECTION .0400 - COSTS**

4 **14B NCAC 01C .0402 STATEMENT OF COSTS**

5 Upon agreement, the secretary shall send to the local governing body receiving assistance, at such time as he
6 determines, a statement of the costs the local governing body agreed to pay. The statement will specify the number
7 of officers assigned, the hours assigned, any costs other than compensation and fringe benefits incurred by the state
8 department and the total amount due. The local governing body shall pay the amount due within 30 days of receipt.
9 Reimbursement for disability payments or workman's compensation claims will be billed as they become known and
10 in accordance with normal departmental procedures.

11

12 *History Note: Authority G.S. 160A-288.1; 153A-212;*
13 *Eff. December 1, 1979;*
14 *Transferred from 14A NCAC 01C .0402 Eff. June 1, 2013.*
15 *Readopted Eff. _____, 2017.*

16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0104

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(1), and elsewhere the term is used, who is a "member"? Do you mean "member" as defined in Rule 07A .0103(16)?

In (a), line 6 and elsewhere the term is used, what is "main-traveled"? Who determines this and based upon what guidance? If this is a known term to your regulated public?

In (a)(1), line 7, insert a comma after "collision"

On line 8, doesn't this just repeat line 6? Why do you need it both places?

In (a)(1)(A), line 9, what do you mean by "remove"? Do you mean "move"? And is this by driving, pushing, etc.?

Delete the "or" at the end of line 9.

In (a)(1)(B), line 10, how is this consent given? Is oral consent sufficient?

Also on line 10, and elsewhere the term is used, what is a "legal possessor"?

Line 10, transport and store where? Is there a cost associated with this?

End line 10 with a semicolon and "or"

In (a)(1)(C), line 12, who determines if this is a hazard and how? Based upon what?

Line 13, what state law do you mean? And please capitalize the term "state" if you mean NC. And how is it "otherwise as authorized"?

In (a)(2), line 14, what is an "objecting" individual in this context? One who refuses to let the SHP member move the car?

Line 15, define "safe position" and "competent"

Amanda J. Reeder
Commission Counsel

Date submitted to agency: September 27, 2018

Line 16, replace “which” with “that”

Line 16, define “safely”

Line 17, what do you mean by “this Directive”? Do you mean “this Rule.”? If so, state that. If not, state what directive you are referring to.

In (b), doesn’t line 20 repeat line 18? Why do you need it both places?

In (b)(1), line 19, I recommend replacing “in which” with “where”

Line 20, you state the member “may” transport and store the vehicle. Is this entirely up to them? What guidance do you give to determine whether they should or should not do this? And store where? Is there a cost?

On line 21, what do you mean by “objects”?

Lines 21-22, what do you mean by “as standing”? Do you mean as the car is positioned? If so, can’t this language be clarified?

Line 22, who determines if this creates a hazard and based upon what?

In (b)(2), line 24, insert a comma after “highway”

On line 25, define “regular flow”

Line 25, how is it determined this constitutes a hazard?

In (b)(3), line 27, replace “which” with “that”

Line 27, what are the “regular flow” and “a hazard” and who determines this? Based upon what?

Line 29, what is “otherwise abandoned”?

In (c), line 30, I recommend either: 1) striking each “which are”; or 2) replacing “which” with “that” both places.

Line 30, what law are you referring to?

Lines 30 and 31, what is meant by “or which may be evidence in a criminal proceeding”? Is that determined by the member at time of seizure? Would that also be in response to some statutory authority?

On line 31, stored where? Is there a cost associated with this?

In the History Note, why are you citing to G.S. 20-185?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0104 is proposed for readoption as follows:

2 **CHAPTER 07 – STATE HIGHWAY PATROL**

3 **SUBCHAPTER 07A – ENFORCEMENT REGULATIONS**

4 **SECTION .0100 – ENFORCEMENT REGULATIONS**

5 **14B NCAC 07A .0104 VEHICLE REMOVAL PROCEDURES**

6 (a) Vehicles on the paved or main-traveled portion of the highway:

7 (1) A member who encounters a vehicle parked, disabled from a collision or otherwise left standing
8 on the paved or main-traveled portion of the highway shall:

9 (A) remove the vehicle to a position off the roadway; or

10 (B) with consent from the owner, operator, or legal possessor, transport and store the vehicle.

11 (C) without consent from the owner, operator, or legal possessor, transport and store the
12 vehicle if the vehicle presents a hazard, a potential hazard or otherwise as authorized by
13 state law.

14 (2) A member shall permit an objecting owner, operator, or legal possessor to remove a vehicle to a
15 safe position off the roadway, if the driver is competent and licensed to drive the vehicle. A
16 member may transport and store a vehicle which cannot be safely parked off the roadway as
17 authorized in this Directive.

18 (b) Vehicles off the paved or main-traveled portion of the highway:

19 (1) A member investigating an accident or collision in which a disabled vehicle is located off the
20 paved or main-traveled portion of the highway may transport and store the vehicle. If the owner,
21 operator, or legal possessor objects, a member shall not transport and store a vehicle unless, as
22 standing, the vehicle creates a hazard.

23 (2) A member who observes a vehicle unlawfully parked or disabled on the right-of-way, but not on
24 the main-traveled portion of the highway may remove and store the vehicle only if the vehicle
25 interferes with the regular flow of traffic or otherwise constitutes a hazard.

26 (3) A member shall not transport and store a vehicle unlawfully parked on the highway right-of-way
27 which does not interfere with the regular flow of traffic or otherwise constitutes a hazard until the
28 vehicle remains on the highway right-of-way for a period of 48 hours or more, has been
29 vandalized, or is otherwise abandoned.

30 (c) Vehicles subject to seizure - Vehicles which are authorized by law to be seized or which may be evidence in a
31 criminal proceeding may be towed and stored.

32

33 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*

34 *Temporary Adoption Eff. June 9, 2000;*

35 *Eff. April 1, 2001;*

36 *Transferred from 14A NCAC 09H .0309 Eff. June 1, 2013.*

37 *Readopted Eff. _____, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0105

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Line 3, insert a comma after "custody"

*Line 4 says "licensed, competent individual" and line 5 says "licensed, competent operator"
Should these clauses be the same?*

In (1), line 4, and (2), line 7, how is this consent given? Is oral consent sufficient?

In (1), line 4, define "competent"

In (2)(a), line 8, who determines if this is necessary?

On line 9, consider stating "possessor; however, when the operator..."

Line 11, replace "magistrate/jailer" with "magistrate or jailer"

Line 11, who is the "sober, responsible person"? How will this be determined, based upon what (especially the concept of "responsibility") and by whom?

In (2)(b), line 12, insert a comma after "transport"

On line 13, I do not understand the cross-reference to 14B NCAC 07A .0106. This Rule refers to storage with or without consent, and that Rule speaks to storing over objection and without consent.

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0105 is proposed for readoption as follows:

2 **14B NCAC 07A .0105 SECURING VEHICLES WHEN OPERATOR IS ARRESTED**

3 Upon arresting or placing a vehicle operator in custody a member shall:

- 4 (1) With consent of owner, operator, or legal possessor, allow another licensed, competent individual
5 to drive or move the vehicle to a position off the roadway; or
6 (2) If no licensed, competent operator is present, or if the owner, operator, or legal possessor will not
7 consent to such removal:
8 (a) Move the vehicle, if necessary, to a position off the roadway, lock the vehicle and return
9 the key to the owner, operator, or legal possessor, except that, in any case where the
10 operator of the vehicle is arrested for DWI, a member shall either turn the keys over to
11 the magistrate/jailer or to a sober, responsible person; or
12 (b) With or without consent of the owner, operator, or legal possessor, transport and store
13 vehicle in accordance with 14B NCAC 07A .0106.

14

15 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
16 *Temporary Adoption Eff. June 9, 2000;*
17 *Eff. April 1, 2001;*
18 *Amended Eff. July 18, 2008;*
19 *Transferred from 14A NCAC 09H .0310 Eff. June 1, 2013.*
20 *Readopted Eff. _____, 2017.*

21

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0106

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 3, what is the difference between "objection" and "without consent"?

In (1), line 5, what is "lawfully parked"?

Delete the "or" at the end of lines 5 and 6.

In (2), line 6, who determines if this is a hazard? Based upon what?

In (3), line 7, what do you mean by "unable"? Do you mean physically unable or inebriated? Or for the purposes of this Rule, do they mean the same thing?

In (4), line 9, what is "lawful authority"? If you mean other statutes, why not state that?

End the sentence on line 8 with a semicolon rather than a period, and insert an "or" after the semicolon.

In (5), G.S. 20-96 says the law enforcement officer may "seize and detain" the vehicle. Therefore, should the language here be similar to the language in (4)?

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0106 is proposed for readoption as follows:

2 **14B NCAC 07A .0106 VEHICLES TRANSPORTED AND STORED OVER OBJECTION OF OWNER**

3 A member may transport and store a vehicle over the objection or without consent of the owner, operator, or legal
4 possessor when:

- 5 (1) The vehicle cannot be lawfully parked off the roadway; or
- 6 (2) The vehicle is lawfully parked off the roadway but creates a hazard; or
- 7 (3) The owner, operator, or legal possessor refuses or is unable to remove the vehicle from the
8 roadway;
- 9 (4) The vehicle is subject to seizure pursuant to G.S. 20-28.3 or other lawful authority.
- 10 (5) The vehicle is being held pursuant to G.S. 20-96.

11

12 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
13 *Temporary Adoption Eff. June 9, 2000;*
14 *Eff. April 1, 2001;*
15 *Amended Eff. July 18, 2008;*
16 *Transferred from 14A NCAC 09H .0311 Eff. June 1, 2013.*
17 *Readopted Eff. _____, 2017.*

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0107

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 3, allows whom to remove the car?

In (a)(1), line 4, define "lawfully" "apparently" "safe and secure" and "main-traveled"

In (a)(2), line 6, define "no apparent hazard" and "regular flow of traffic"

In (b), line 8, define "reasonable precautions"

Line 9, how is "if possible" determined? By whom?

Line 11, replace "magistrate/jailer" with "magistrate or jailer"

Line 11, how is it determined if this is appropriate and what is a "sober, responsible person"?

Please note, Rule .0105(2)(a) has similar language to this Rule, but does not include "when appropriate" Should the language in these Rules be consistent? Also, is it necessary to duplicate the contents of that Rule here?

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0107 is proposed for readoption as follows:

2 **14B NCAC 07A .0107 PARKING VEHICLES OFF THE ROADWAY**

3 (a) A member who removes or allows a vehicle to be removed to a position off the roadway shall:

4 (1) Lawfully park the vehicle in an apparently safe and secure location off the main-traveled portion
5 of the highway; or

6 (2) Place the vehicle in a position that creates no apparent hazard or other interference with the regular
7 flow of traffic.

8 (b) A member shall take reasonable precautions to secure the vehicle and its contents against theft, vandalism, and
9 other damage by locking the vehicle (if possible) and returning the keys to the owner, operator, or legal possessor.

10 In any case where the operator of the vehicle is arrested for DWI, a member shall either turn the keys over to the
11 magistrate/jailer or, when appropriate, to a sober, responsible person.

12

13 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*

14 *Temporary Adoption Eff. June 9, 2000;*

15 *Eff. April 1, 2001;*

16 *Transferred from 14A NCAC 09H .0312 Eff. June 1, 2013.*

17 *Readopted Eff. _____, 2017.*

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0108

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

A lot of the language in this Rule seems to speak to internal management of State Highway Patrol staff. G.S. 150B-2(8a)(a) states:

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. **The term does not include the following:**

a. **Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.**

Do you believe that several paragraphs of this Rule are not internal management? Based upon what?

In (a), line 3, how will they "arrange" this?

Also on line 3, do you not mean "this Subchapter"? Or do you mean only this Rule?

On line 3, define "safe"

In (b), line 4, delete the comma after "shall"

Also on line 4, define "immediately" and "appropriate"

Lines 5 and 7, what is the "Communications Center"?

Line 6, what is this "necessary" information?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

Line 6, what is this "Signal 4 (Report of Vehicle stored or Recovered)."? Is this a form? If so, please note, G.S. 150B-2(8a)(d) states that the contents of forms need to be in rule or law. If this is a form, are the contents in a rule or law? And where can it be obtained? Alternatively, is this an agency form that only for internal management and thus, not appropriate in a Rule?

Line 7, what is the purpose of the clause "in any case"? Is it necessary?

Also on line 7, consider replacing "where a rollback should not be dispatched." with "in any case where a rollback does not need to be dispatched." or "where a rollback is not required."

In (c), line 8, please state "he or she"

On line 8, this won't include if the member arranges the transport or storage?

Line 10, what is meant by "applicable"?

Lines 10 and 11, what is the HP-305? Assuming it's a form, the contents need to be in rule or law. Or, if it's an internal form for internal management, most of this language is not appropriate to be in rule.

On lines 11 through 13, should this information be included in Rule .0106 instead?

In (d), line 14, consider rearranging this text so that the sentence begins with "When" and the clause "a member shall" it moved after "fees," It will read like this: "When notified by a magistrate... fees, a member shall..."

In (d), line 15, what is the HP-305.1? Is this affidavit required by G.S. 20-28.3(c)?

In (e), line 16, and (f), line 19, what is "necessary" and who determines when it's necessary?

On line 16, consider replacing "in which" with "when"

On lines 18 and 21, when will the supervisor designate this? A supervisor of whom? The member?

In (f), line 19, replace "at which" with "the"

In (g), line 22, what do you mean by "instructions" and what will they be?

Line 22, if by "State" you mean NC, capitalize it.

What is a state or regional contractor? How is this known?

In (h), will the release approved by the investigating member? And will the basis of the release be because the civil penalties are paid? Is that the only condition that needs to be met?

Line 23, replace "towing/storage" with "towing or storage"

In the History Note, why are you citing to G.S. 20-185?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0108 is proposed for readoption as follows:

2 **14B NCAC 07A .0108 TRANSPORTING AND STORING VEHICLES**

3 (a) A member shall arrange transportation and safe storage of a vehicle pursuant to this Rule.

4 (b) A member who authorizes the transportation and storage of a vehicle shall, immediately notify the appropriate
5 Communications Center and request a wrecker service in accordance with the rules in this Chapter and furnish
6 information necessary to complete a Signal 4 (Report of Vehicle Stored or Recovered). The member shall notify the
7 Communications Center in any case where a rollback should not be dispatched.

8 (c) A member shall notify the Communications Center whenever he transports or stores a vehicle. If the vehicle is
9 towed, stored, or removed to the shoulder of the road and left at the scene at the request of or with the consent of the
10 owner, operator, or legal possessor, the member shall mark the applicable entries on the HP-305 and obtain the
11 signature of the person making the request or giving the consent. Refusal to sign the HP-305 shall be deemed a
12 withdrawal of the consent or request to tow. In such a situation, members shall be governed by Rule .0106 of this
13 Section.

14 (d) A member shall, when notified by a magistrate of a hearing regarding payment of towing or storage fees, appear
15 in person at the hearing or file HP-305.1 "Affidavit" with the magistrate prior to the hearing.

16 (e) When necessary for accident reconstruction or a criminal investigation in which multiple vehicles are involved
17 in an incident, a single storage location shall be designated. The storage facility of the first wrecker service
18 dispatched shall be used unless otherwise designated by a supervisor.

19 (f) When necessary for an accident reconstruction or a criminal investigation, a member shall designate at which
20 indoor or other storage facility a vehicle shall be stored to ensure preservation of the evidence. The storage facility
21 shall be the first wrecker service dispatched unless otherwise designated by a supervisor.

22 (g) DWI seized vehicles shall be towed and stored in accordance with instructions from the state or regional
23 contractor.

24 (h) Vehicles stored pursuant to G.S. 20-96 shall be held by the towing/storage company until all civil assessment(s)
25 have been satisfied and release is approved by the investigating member.

26

27 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*

28 *Temporary Adoption Eff. June 9, 2000;*

29 *Eff. April 1, 2001;*

30 *Amended Eff. July 18, 2008;*

31 *Transferred from 14A NCAC 09H .0313 Eff. June 1, 2013.*

32 *Readopted Eff. _____, 2017.*

33

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0109

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

It appears that most of Paragraph (a) is exclusively internal management. Consider deleting it.

Assuming you need to retain it:

In (a), line 3, by "seizure law" do you mean G.S. 20-28.3? If so, state that instead of "seizure law" If not, what do you mean?

Line 3 and everywhere the term is used – is there one or more Troop Communications Centers? On line 5, you refer to the "appropriate" one so that makes it sound like there are more than one. But on line 3, it's "the" Troop Communications Center.

And what are these centers? Does your regulated public know?

Consider placing the first sentence in (a) into Paragraph (b) and beginning the sentence in (a) with "The authorizing member shall notify the ..."

On line 4, delete or define "immediately"

Line 5, what is "appropriate"?

In (a)(1), what do you mean by "description"? How specific does this need to be? "Color/make/model" or "VIN" or both?

In (a)(3), what is this procedure? Who sets it? Where is it set forth?

Line 8, state "him or her;"

In (b), line 10, you state "member who authorized" but on line 4, it's "authorizing member" Should this be the same term?

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Date submitted to agency: September 27, 2018

On lines 10 through 11, will the authorizing member notify the Communications Center if the registered owner was there? If not, then why do you need “in the absence of the registered owner,” language here?

On line 11, define “as soon as practicable”

On line 12, replace “such” with “the”

On line 12, replace “and/or” with “or”

On line 12, how will the Center have access to this telephone number? Is that required to be reported somewhere?

On line 13, so that I’m clear - the Center will only provide location, not the procedure for reclaiming it and the probable cause hearing, which the member must provide in (a)(3) and (4)?

On lines 13 and 14, consider replacing “must” with “shall”

On lines 14-15, what happens if the telecommunicator doesn’t record this? Is this not internal management?

If you need to keep this language, why is “Telecommunicator” capitalized?

In (c), line 16, the language “Whether or not... telephone,” seems unnecessary. Why not state “The Troop Communications Center shall mail ...”?

Also on line 16, what is this HPC-305.2? It appears to be a form, and G.S. 150B-2(8a)(d) states that the contents of forms must be set forth in Rule or law.

On line 17, is the term “last” necessary? Why could it not simply be “mailed to the registered owner”?

Also on line 17, why does this Rule use the phrase “registered owner” when G.S. 20-28.3(b1) requires written notification to the “lienholder of record and to any motor vehicle owner”? Shouldn’t this be the same?

Line 18, and (d), line 21, what is the HP-305? Is it a form? What are the contents and how can one obtain a copy?

So that I’m clear – even if there is written consent, there will be a form sent? But if there’s not written consent, it must be sent within 24 hours? Is the only difference timing? And why does G.S. 20-28.3(b1) not control here?

On lines 19-20, what is this? If the intent is to state that the Center will send a copy of the form, to the “District office” then it can be stated more simply. But again, isn’t this internal management? Why do you need this in the Rule?

In (d), lines 22-23, consider stating “... the authorizing member shall attempt to determine the last known registered owner of the vehicle... Rule. Attempts shall include checking the vehicle identification number (VIN).”

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Commission Counsel
Date submitted to agency: September 27, 2018

Line 23, state “him or her”

In (e), line 25, so that I’m clear – the member is responsible for tracking this person down, not the Center?

Line 26, what is the “appropriate” form? Who determines this and how are the forms obtained?

Line 26, what is the “statewide contractor”? This is the only place this particular term is used within the Subchapter that I can find, so it likely needs to be defined here.

In the History Note, line 28, please put the citations in numerical order.

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

1 14B NCAC 07A .0109 is proposed for readoption as follows:

2 **14B NCAC 07A .0109 NOTIFICATION**

3 (a) Unless exempted by vehicle seizure law, the Troop Communications Center must notify the registered owner
4 when a vehicle is towed and stored. In order to accomplish this, the authorizing member shall immediately notify the
5 appropriate Troop Communications Center of the following:

- 6 (1) a description of the vehicle;
- 7 (2) the place where the vehicle is stored;
- 8 (3) the procedure the owner must follow to have the vehicle returned to him; and
- 9 (4) the procedure the owner must follow to request a probable cause hearing on the towing.

10 (b) Upon notification by the member who authorized the towing or storage of a vehicle in the absence of the
11 registered owner, the Troop Communications Center shall, as soon as practicable, attempt to notify the owner of
12 such towing and/or storage. The Troop Communications Center shall attempt to contact the owner by telephone and
13 provide the owner with the location of the vehicle. At least three attempts must be made for vehicles registered in
14 North Carolina and one attempt for vehicles registered out-of-state. The Telecommunicator must record the person
15 contacted or the attempts made.

16 (c) Whether or not the owner is reached by telephone, a copy of the HPC-305.2 (Vehicle Towing/Notification,
17 which is computer-generated at the Troop Communications Center) shall be mailed to the last registered owner by
18 the Troop Communications Center. In the absence of an HP-305 signed by the registered owner, Form HPC-305.2
19 shall be mailed to the owner within 24 hours. A duplicate copy of the HPC-305.2 is also computer-generated and
20 will print automatically in the District office of the member.

21 (d) Whenever a vehicle with neither a valid registration plate nor registration is towed, in the absence of an HP-305
22 signed by the registered owner, the authorizing member shall attempt, including checking the vehicle identification
23 number, to determine the last known registered owner of the vehicle and to notify him of the information listed in
24 Paragraph (a) of this Rule.

25 (e) Whenever a vehicle is seized pursuant to G.S. 20-28.3, the charging officer shall complete and forward the
26 appropriate DMV notification form to DMV and to the statewide contractor within 24 hours.

27

28 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; 20-28.3;*

29 *Temporary Adoption Eff. June 9, 2000;*

30 *Eff. April 1, 2001;*

31 *Amended Eff. July 18, 2008;*

32 *Transferred from 14A NCAC 09H .0314 Eff. June 1, 2013.*

33 *Readopted Eff. _____, 2017.*

34

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0110

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Line 3, who will determine if there is no legal justification? Any member or the authorizing member or someone else? A court?

Line 3, define "immediately"

And I take it that the release is from the storage area?

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0110 is proposed for readoption as follows:

2 **14B NCAC 07A .0110 RELEASE OF VEHICLES**

3 If no legal justification to hold the vehicle exists, a member shall immediately authorize the release of a stored
4 vehicle to the owner upon proof of ownership.

5

6 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*

7 *Temporary Adoption Eff. June 9, 2000;*

8 *Eff. April 1, 2001;*

9 *Amended Eff. July 18, 2008;*

10 *Transferred from 14A NCAC 09H .0315 Eff. June 1, 2013.*

11 *Readopted Eff. _____, 2017.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0111

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 3, I note confirms that HP-305 is indeed a form. Why don't you call it the same thing in each Rule? Either "Form HP-305" or "HP-305"? And of course, please note the earlier questions regarding the contents of this form needing to be set forth in rule or law to comply with the APA.

On line 4, what do you mean by "precautions"

What do you mean by (b)? Do you mean that the inventory required by this Rule does not apply to anything with consent? Does the HP-305 form include a consent to search?

In (c), line 8, should "towing company" with "wrecker service" to be consistent?

On line 10, what is a "Patrol facility"?

So that I a clear – in (c), are you saying that the tow truck or wrecker storage facility will conduct the inventory?

In (d), line 11, delete "which are"

Line 12, define "emergency situation" and what do you mean by "dictates otherwise"?

On line 12, replace "must" with "shall"

Line 12, define "complete"

Lines 12-13, define "toxic, explosive, flammable, or of monetary value." In specific, pretty much everything has some monetary value. What do you mean here? Should there be a threshold amount?

Lines 13 and 15, what is "securely wrapped"?

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Commission Counsel
Date submitted to agency: September 27, 2018

What do you mean by the term “containers”? I see that luggage is used in conjunction with the term, but is that all you mean? Do you mean literally anything that can hold something, including soda cans, ashtrays, bags, etc.? And then on line 15, it appears luggage is separate from containers. What is the definition of this term?

So that I'm clear - I assume this Rule is intended to reference the administrative exception for warrantless searches here?

On line 14, what is “evidence discovered to indicate”?

And if the containers aren't opened here, how will they be able to list if they are toxic, explosive, etc. as required by lines 12-13?

Line 16, what are packages? I take it they are not containers?

Line 16, what is meant by “as otherwise authorized by law”? Please clarify

On line 18, replace “are” with “shall be”

Line 19, how is “evident danger to the member or the public” determined and by whom?

Just so I understand, what do you mean by lines 19 and 20? Does the need to get a warrant supersede this administrative search?

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0111 is proposed for readoption as follows:

2 **14B NCAC 07A .0111 VEHICLE INVENTORY**

3 (a) A member who authorizes the transportation and storage of a vehicle in the absence of Form HP-305 signed by
4 the owner, operator, or legal possessor shall take precautions to protect all property in and on the vehicle prior to
5 removal from the scene.

6 (b) An HP-305 signed by the owner, operator, or legal possessor is documentation that the vehicle was not removed
7 from the possession of such person; therefore, the completion of a vehicle inventory is not required.

8 (c) The storage and security of the vehicle and its contents become the responsibility of the towing company when
9 the vehicle is towed from the scene and stored at the wrecker service storage facility. If the vehicle is to be stored at
10 a Patrol facility, the storing member shall conduct an inventory, itemizing all property contained in the vehicle.

11 (d) All vehicles which are inventoried pursuant to this Rule shall be inventoried at the time of storage unless an
12 emergency situation dictates otherwise. The inventory must be complete, listing all items that are toxic, explosive,
13 flammable, or of monetary value. Unless locked or securely wrapped, all containers in the vehicle, whether open or
14 closed, shall be opened to determine contents unless evidence is discovered to indicate that opening the container
15 may subject the member to exposure of toxic, flammable, or explosive substances. Locked or securely wrapped
16 luggage, packages, and containers shall not be opened except as otherwise authorized by law or by owner consent,
17 but shall be indicated on the inventory list as locked or securely wrapped items. Locked or securely wrapped
18 containers (luggage, attaché cases, etc.) are considered as units of inventory and shall not be searched without
19 obtaining consent or a search warrant unless there is evident danger to the member or public. The member shall
20 seek to obtain a search warrant when there is probable cause for a search of the vehicle or its contents when time and
21 conditions permit.

22

23 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
24 *Temporary Adoption Eff. June 9, 2000;*
25 *Eff. April 1, 2001;*
26 *Amended Eff. July 18, 2008;*
27 *Transferred from 14A NCAC 09H .0316 Eff. June 1, 2013.*
28 *Readopted Eff. _____, 2017.*

29

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0112

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

G.S. 150B-2(8a)(a) states:

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. **The term does not include the following:**

a. **Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.**

It appears that Paragraphs (a) and (b) are entirely internal management and therefore, not rules pursuant to the APA. Why do you need them here at all? I suggest you delete them.

If you do need to retain the language:

In (a), delete or define "promptly" on lines 3 and 5.

Line 6, what are the contents of this form? Where can it be obtained?

In (b), what will be the basis for making the appeal?

On line 8, I believe you mean "order" instead of "action"

Assuming you delete (a) and (b), you can state in (c):

If a court orders the release of any vehicle without payment of transportation and storage costs, the member shall obtain a statement of the transportation and

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Commission Counsel

Date submitted to agency: September 27, 2018

storage fees. The Patrol may decide to appeal this court order. If the Patrol does not appeal [insert the rest of (c) language.]

Or, alternatively:

If the magistrate orders the release of a vehicle without payment of transportation and storage costs, the Patrol may decide to appeal the court order. An order to release any vehicle without payment that is not appealed shall be reimbursed. If an order is appealed, then no payment shall be made until all appeals are exhausted.

On line 9, is the term “reasonable” used in order to be consistent with G.S. 20-188? If not, then please define the term.

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

1 14B NCAC 07A .0112 is proposed for readoption as follows:

2 **14B NCAC 07A .0112 REIMBURSEMENT OF WRECKER OPERATORS**

3 (a) A member shall promptly obtain a statement of transportation and storage fees from the wrecker operator
4 involved when the court orders the release of any vehicle without payment of transportation and storage costs. The
5 member shall promptly transmit to the Director of Field Operations, through the chain-of-command, the statement
6 and a copy of the HP-305.1 in addition to any other relevant information.

7 (b) The Director of Field Operations shall, in consultation with the Patrol Commander, determine whether to appeal
8 the action of the magistrate.

9 (c) The Patrol shall compensate the wrecker operator for reasonable transportation and storage fees in cases where
10 no appeal is taken. When an appeal is taken, the Patrol shall not compensate wrecker operators until all appeals are
11 exhausted.

12

13 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
14 *Temporary Adoption Eff. June 9, 2000;*
15 *Eff. April 1, 2001;*
16 *Amended Eff. July 18, 2008;*
17 *Transferred from 14A NCAC 09H .0317 Eff. June 1, 2013.*
18 *Readopted Eff. _____, 2017.*

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0113

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

How is this Rule anything other than internal management?

What is your authority for this Rule?

Assuming you can retain this Rule:

I suggest making this a two paragraph Rule with Paragraph (a) being lines 3-6, and Paragraph (b) being lines 6 through 8.

On line 3, why do you have "member of the Patrol"? Elsewhere in these Rules, the term is "member" I suggest you delete "of the Patrol" to be consistent?

On line 6, insert a comma after "Rule" and replace the comma after "includes" with a colon. Thus, "For the purpose of this Rule, a "relative" includes:"

Also on line 6, I suggest you insert an "a" before "spouse"

Line 7, insert a comma after "grandson"

Line 8, shouldn't the word be "relationships" (plural)?

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0113 is proposed for readoption as follows:

2 **14B NCAC 07A .0113 FINANCIAL INTEREST**

3 No member of the Patrol or any of its civilian employees shall hold any financial interest or any form of ownership
4 interest in any wrecker service. No member may be employed by a wrecker service, nor shall any member be
5 assigned to a county where any relative of the member has any financial interest in or is employed by a wrecker
6 service. For the purpose of this Rule a "relative" includes, spouse, father, mother, brother, sister, son, daughter,
7 grandmother, grandfather, grandson and granddaughter. Also included in the term "relative" are the step-, half-, and
8 in-law relationship.

9

10 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
11 *Temporary Adoption Eff. June 9, 2000;*
12 *Eff. April 1, 2001;*
13 *Transferred from 14A NCAC 09H .0318 Eff. June 1, 2013.*
14 *Readopted Eff. _____, 2017.*

15

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0114

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the point of this Rule? If the intent is to state that members shall use the rotation wrecker service set forth in Rule .0115, why not just state that? What does this Rule do that is not addressed by Rule .0115(b)? It appears that much of this language is internal management and should not be in Rule.

Assuming you need to retain this as written:

On line 3, delete "In order to perform its traffic safety functions," and begin the sentence "The Patrol..."

On line 3, replace "is required to use" with "shall use" or "uses"

Line 4, insert a comma after "wrecked"

Also, on line 4, I think you mean "or" not "and" (which implies the vehicles must be all four, not one of the four).

Line 4, what do you mean by "assure" (how?) and "impartial use"?

Line 5, define "strict"

On line 5, I note that you again refer to "Patrol member" and not just "member" Should this be changed?

Line 5, capitalize "Rules" and what rules do you mean here? Of this Section? Or specific Rules?

On line 5, I believe there should be a comma between "wrecker service" and "motor club" like there is on line 7.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

Lines 5-8, why not simplify this to “No Patrol member shall recommend any wrecker service, motor club, or automobile membership service in the performance of his or her duties, including when assisting the owner or driver of a wrecked or disable vehicle.”

If you don't do that, line 6, insert a comma after “vehicle”

On line 8, state “his or her”

On line 8, who determines this is “whenever possible and practicable”? The member?

And so that I'm clear - does this mean the member will contact AAA on my behalf or someone I ask them to contact and not use the rotation list?

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0114 is proposed for readoption as follows:

2 **14B NCAC 07A .0114 IMPARTIAL USE OF SERVICES**

3 In order to perform its traffic safety functions, the Patrol is required to use wrecker services to tow disabled, seized,
4 wrecked and abandoned vehicles. Members of the Patrol shall assure the impartial use of wrecker services through
5 strict compliance with these rules. In no event shall any Patrol member recommend any wrecker service motor club,
6 or automobile membership service to the owner or driver of a wrecked or disabled vehicle nor shall any member
7 recommend the services of a particular wrecker service, motor club, or automobile membership service in the
8 performance of his duties. Members shall, whenever possible and practicable, dispatch the wrecker service
9 requested by the motorist requiring such services.

10

11 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
12 *Temporary Adoption Eff. June 9, 2000;*
13 *Eff. April 1, 2001;*
14 *Transferred from 14A NCAC 09H .0319 Eff. June 1, 2013.*
15 *Readopted Eff. _____, 2017.*

16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0115

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 3, who is the Troop Commander?

On line 3 and elsewhere the term is used in this Rule, is "Telecommunications Center" the same as the "Troop Communications Center" in Rule .0109? If so why are they called different things?

Line 4, and elsewhere the term is used, what is a "District"? Why is it capitalized? Does your regulated public know what it means?

Line 4, replace "which" with "that"

Line 4, since you are requiring any or all of (a)(1) through (4), I suggest inserting "any of" before "the following:"

Lines 5-6, just for clarification, so are there two different lists, a computerized list and a manual list?

In (a)(1), line 6, insert a comma after "District"

In (a)(2), line 7, insert a comma after "District"

Lines 7-8, I take it takes it you need to capitalize this term because it's defined in Rule .0103(15)?

In (a)(3), line 9, add a comma after "contract"

Lines 11-14, sometimes "Patrol" is used and sometimes "Patrol members" is used. Please be consistent here.

On line 13, what do you mean by "factual information"? Can't you delete "factual"?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: September 27, 2018

Line 14, what is an emergency for this situation? Many people would think needing a tow is enough of an emergency for them, so what constitutes an emergency for the agency? Is this supposed to capture the exception in (c)? If so, state that instead of “absent an emergency.”

In (c), line 15, what are “emergency situations”?

What parts of Paragraphs (d) and (e) are anything other than internal management? Are these centers not part of SHP/DPS?

If you need to retain these Paragraphs, in (d), line 17, is the “computerized log” the same thing as the “computerized rotation wrecker service” in (e)? If so, why aren’t they called the same thing? If they are the same things, then note that on line 5, the rule refers to a “computerized large and small rotation wrecker list” Is that different?

In (e), line 20, you have “(CAD down)” but on line 24, it’s “CAD DOWN”. Shouldn’t these be the same?

Line 22, delete “that is” before “maintained”

Line 23, what is the “Communication Center”? Is it different from the Telecommunications Center?

Line 24, add “and” before “the slip log shall”

In (f), line 25, insert a “the” before “investigating”

And is the intent here that they can either request the closest available zone rotation or help from the DOT? If not, then if the members may do these, when will they be allowed to not do this?

On line 27, how will members ensure this?

Line 28, what is “delay”? Also, delete the comma after “delay”

Line 29, what is the appropriate center?

Line 30, what is “Quick Clearance”? This is the only place in this Chapter where the term is used. Is this a known term?

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0115 is proposed for readoption as follows:

2 **14B NCAC 07A .0115 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM**

3 (a) The Troop Commander shall arrange for the Telecommunications Center to maintain a rotation wrecker system
4 within each District of the Troop which shall include the following:

- 5 (1) Separate computerized large and small rotation wrecker lists and manual rotation lists for the
6 entire District whereby wrecker services are called in the order they appear on a list;
- 7 (2) A zone system within the District with a rotation wrecker list being maintained in each Rotation
8 Wrecker Zone;
- 9 (3) A zone, contract or other system operated in conjunction with one or more local agencies; or
- 10 (4) A combination of any such system.

11 (b) The Patrol shall use the wrecker service requested by the vehicle owner or person in apparent control of the
12 motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services,
13 but may answer questions and provide factual information. If no such request is made, the Patrol system in place in
14 the Rotation Wrecker Zone shall be used, absent an emergency.

15 (c) The Troop Commander may deviate from any provisions in this Rule in emergency situations if there are
16 insufficient wrecker services of the type needed within a District to meet the needs of the Patrol.

17 (d) The Telecommunicator shall enter in the computerized log the name of the wrecker service contacted and the
18 response by the service to the request. The date and time of the call is automatically recorded in the computerized
19 log as well as the identification number of the Telecommunicator making the entry.

20 (e) In the event the computerized rotation wrecker list is not in service (CAD down), the member requesting
21 wrecker service shall be notified by the Telecommunications Center and a wrecker from the manual rotation
22 wrecker list shall be utilized. The Telecommunicator shall refer to the manual list that is maintained by the
23 Telecommunicator Center Supervisor at each Communication Center. The wrecker service name shall be entered on
24 the slip log, the slip log shall indicate CAD DOWN.

25 (f) Whenever vehicles are removed pursuant to G.S. 20-161(f), investigating member(s) may request the closest
26 available zone rotation wrecker service or available Department of Transportation (DOT) resource for the purpose of
27 removing the obstruction from the roadway. Members shall ensure that the requested wrecker service is capable of
28 responding without delay, and is staffed and equipped to handle the request for service. All requests for assistance
29 from DOT shall be made through the appropriate Telecommunications Center, where a list of on-duty/recall DOT
30 personnel with the authority to concur with the decision to implement Quick Clearance shall be maintained.

31

32 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
33 *Temporary Adoption Eff. June 9, 2000;*
34 *Eff. April 1, 2001;*
35 *Amended Eff. July 18, 2008;*
36 *Transferred from 14A NCAC 09H .0320 Eff. June 1, 2013.*
37 *Readopted Eff. _____, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0116

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(1), line 8, what is meant by "appropriate"? Where is the information located to identify the "District First Sergeant"?

In (a)(2), lines 11 and 18, if "state" means "North Carolina," then please capitalize

Line 11, for "state holidays" how are these known? Consider incorporating, in accordance with G.S. 150B-21.6, the State Human Resource Commission's rule 25 NCAC 01E .0901

In (a)(3), line 24, add a comma after "equipment"

Line 25, what is meant by "independently insured"? Are there specific types of insurance that are being required elsewhere?

In (a)(4), Page 2, line 3, what is meant by "legally required"? If there is defined standard elsewhere?

In (a)(5), line 6, define "properly"

On line 8, replace "incident/collision" with "incident or collision"

Also on line 8, place the term "Hazardous materials" in quotation marks as the term is being defined

On line 9, what is meant "by law"? Can the "law" not be cited?

In (a)(7), line 14, is the Patrol still making collect calls, now that everyone has cell phones?

Line 15, consider replacing "cannot" with "is unable" to be consistent with Subparagraph (a)(16)

On line 20, replace "collision/incident" with "incident or collision"

In (a)(10), line 33, add a comma after "District"

Amanda J. Reeder
Commission Counsel

Date submitted to agency: September 27, 2018

On line 35, what is “appropriate”?

In (a)(14), Page 3, line 23, replace “or referenced herein.” with “by this Rule.”

Line 24, it appears that you are referring to passengers being taken to the site by an employee cannot have the convictions; you are not trying to leave motorists or their passengers on the side of the road. Consider clarifying this by stating “taking any passengers to the service call who have been...”

On line 26, replace “incident/collision” with “incident or collision” to be consistent with page 14

In (a)(15), line 28, what is meant by “shall ensure”? How?

On lines 29-30, what is this address and contact information? How is it known? It is set forth in another rule that could be cross-referenced?

In (a)(17), line 34, replace “owner/operator” with “owner or operator” to be consistent with the statutory phrase used in G.S. 20-188

In (a)(18), Page 4, line 1, add a comma after “city”

In (a)(20), line 9, what is meant by the clause “preserve”?

In (a)(21)(A)(i), line 13, and (B)(i), line 21, insert commas after “G.S. 2-138.2A”

In (a)(21)(A)(ii), line 16, insert a comma after “larceny”

In (a)(21)(A)(iii), line 17, and (B)(ii), line 22, consider adding a citation to G.S. 20-141.5

In (a)(21)(B)(iii), line 23, insert a comma after “H”

Line 25, insert a comma after “property”

On line 34, add a comma after “country”

Lines 35, 36, and 37, replace “which” with “that”

Line 37, what is “substantially similar”?

On Page 5, line 2, why is the clause “Wrecker Service” capitalized? It is not capitalized in the remainder of this Rule.

In (a)(22), line 16, what is the purpose of the term “Willful”? Who is making this determination of what is “willful” and what is “not willful”? How is that standard known?

Also on line 16, replace “herein” with “by this Subparagraph”

In (a)(23), line 21, delete the term “whatsoever”

What is the purpose of the Subparagraph (a)(27)?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

In (a)(28), Page 6, line 1, who is making this determination of what is “willful failure” and what is “not willful failure”?

In (a)(31), line 8, insert a comma after “location”

In the History Note, why are you citing to G.S. 20-185? How does this apply to the rotation wrecker service?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0116 is proposed for readoption as follows:

2 **14B NCAC 07A .0116 ROTATION WRECKER SERVICE REGULATIONS**

3 (a) The Troop Commander shall include on the rotation wrecker list only those wrecker services that agree in
4 writing to adhere to the following provisions:

5 (1) A wrecker service desiring to be included on the rotation wrecker list shall complete a wrecker
6 application on a form designated by the Patrol. This application and all forms referenced in this
7 Rule may be accessed at www.ncdps.gov, State Highway Patrol, Wrecker Inspections tab. All
8 applications shall be submitted to the appropriate District First Sergeant.

9 (2) In order to be listed on a rotation wrecker list within a rotation wrecker zone, a wrecker service
10 shall have a full-time business office within that rotation wrecker zone that is staffed and open
11 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays, and a storage facility.
12 The wrecker service shall have someone available to accept telephone calls from the Patrol, to
13 allow access to towed vehicles, or to retrieve towed vehicles by the registered owner, operator, or
14 legal possessor during business hours. The business office may not be the same physical address
15 as the owner's residence unless zoned for commercial purposes and advertised as a business
16 property. A representative from the wrecker service shall be available on call on a 24-hour basis
17 for emergencies. The wrecker service shall allow vehicles to be retrieved between the hours of
18 8:00 a.m. and 5:00 p.m., seven days a week, excluding state holidays. An individual (registered
19 owner, legal possessor, or operator) shall not be charged a storage fee for days that he or she could
20 not retrieve his or her vehicle as a result of an action or omission on the part of the wrecker
21 service, such as where the wrecker service was not open, did not answer the telephone, or a
22 representative was not available to release the vehicle.

23 (3) Wrecker service facilities and equipment, including vehicles, office, telephone lines, office
24 equipment and storage facilities shall not be shared with or otherwise located on the property of
25 another wrecker service and shall be independently insured. Vehicles towed at the request of the
26 Patrol shall be placed in the storage owned and operated by the wrecker service on the rotation
27 wrecker list. A storage facility for a small wrecker shall be located within the assigned zone. For
28 wrecker services with large wreckers, the storage facility for vehicles towed with the large
29 wrecker may be located anywhere within the county. To be listed on the large rotation wrecker
30 list, a wrecker service shall have at least one large wrecker located within the county and
31 designated for the sole use in that county. To be listed on the small rotation wrecker list, a wrecker
32 service shall have at least one small wrecker located within the assigned zone and designated for
33 the sole use in that assigned zone. A wrecker shall not be on more than one rotation wrecker list.
34 In any case where husband and wife or other family members are engaged in the business of
35 towing vehicles and desire to list each business separately on the wrecker rotation list, the wrecker
36 service shall establish that it is a separate legal entity for every purpose, including federal and state

1 tax purposes. Nothing in this Rule precludes a wrecker service from responding to private calls
2 outside the assigned zone or county.

3 (4) Each wrecker shall be equipped with legally required lighting and other safety equipment to
4 protect the public and the equipment must be in good working order.

5 (5) Each wrecker on the rotation wrecker list shall be equipped with the equipment required on the
6 application list and the equipment shall be operating properly at all times.

7 (6) The wrecker service operator must remove all debris, other than hazardous materials, from the
8 highway and the right-of-way prior to leaving the incident/collision scene. Hazardous materials
9 consist of those materials and amounts that are required by law to be handled by local Hazardous
10 Materials Teams. This service must be completed as part of the required rotation service and shall
11 not be charged as an extra service provided. Hazardous materials or road clean-up other than
12 debris may be billed in quarter-hour increments after the first hour on scene.

13 (7) The wrecker service shall be available to the Patrol for rotation service on a 24-hour per day basis
14 and accept collect calls (if applicable) from the Patrol. Calls for service shall not go unanswered
15 for any reason, unless the wrecker company has notified the Patrol it cannot respond as set forth in
16 Subparagraph (a)(16) of this Rule.

17 (8) The wrecker service shall respond, under normal conditions, in a timely manner. Failure to
18 respond in a timely manner shall result in a second rotation wrecker being requested. If the second
19 wrecker is requested before the arrival of the first rotation wrecker, the initial requested wrecker
20 shall forfeit the call and shall leave the collision/incident scene.

21 (9) For Patrol-involved incidents, the wrecker service shall respond only upon request from Patrol
22 authority or at the request of the person in apparent control of the vehicle to be towed.

23 (10) The wrecker service, when responding to rotation wrecker calls, shall charge reasonable fees for
24 services rendered. Towing, storage, and related fees charged for rotation services may not exceed
25 the wrecker service's charges for nonrotation service calls that provide the same service, labor, and
26 conditions. Wrecker services may secure assistance from another rotation wrecker service when
27 necessary, but only one bill shall be presented to the owner or operator of the vehicle for the work
28 performed. A price list for recovery, towing, and storage shall be established and kept on file at
29 the place of business. A price list for all small wreckers and rollbacks with a GVWR of less than
30 26,001 pounds shall be furnished in writing on a Patrol form to the District First Sergeant upon
31 request. The District First Sergeant shall approve all price lists submitted within his or her
32 respective District if they are determined to be reasonable, consistent with fees charged by other
33 Highway Patrol rotation wrecker services within the District and do not exceed the wrecker
34 service's charges for nonrotation service calls that provide the same service, labor, and conditions.
35 The District First Sergeant shall retain a copy of all approved price lists in the appropriate wrecker
36 service file located in the district office. Storage fees shall not begin to accrue until the next
37 calendar day following the initial towing of the vehicle. Wrecker service towing fees for recovery

1 and transport of vehicles after 5:00 p.m. and on weekends shall not exceed the towing fees by
2 more than 10 percent for recovery and transport of vehicles charged during regular business hours.
3 A mileage fee shall be charged only if the customer requests the vehicle to be towed to a location
4 outside of the assigned wrecker zone or county. If a mileage fee is warranted, the wrecker driver
5 shall inform the owner, operator, or legal possessor of the vehicle of any additional charge for
6 mileage prior to towing. The individual price list for each respective wrecker service shall be
7 made available to customers upon request. Copies of the approved price list shall be maintained
8 within each wrecker and shall be given to the owner, operator, or legal possessor of a vehicle
9 being towed as a result of a Highway Patrol rotation wrecker call by the wrecker driver, if the
10 owner, operator, or legal possessor of the vehicle being towed is present at the scene. Prices
11 indicated on this form shall be the maximum amount that will be charged for a particular service;
12 however, this does not prevent charges of a lesser amount for said service.

- 13 (11) All wrecker operators shall have a valid driver's license for the type of vehicles driven. A limited
14 driving privilege is not allowed.
- 15 (12) Wrecker owners, operators, and employees shall not be abusive, disrespectful, or use profane
16 language when dealing with the public or any member of the Patrol and shall cooperate at all times
17 with members of the Patrol.
- 18 (13) The wrecker service shall adhere to all Federal and State laws and local ordinances and regulations
19 related to registration and operation of wrecker service vehicles and have insurance as required by
20 G.S. 20-309(a).
- 21 (14) The wrecker service shall employ only wrecker operators who demonstrate an ability to perform
22 required services in a safe, timely, efficient, and courteous manner and who satisfy all of the
23 requirements for wrecker drivers established or referenced herein. The wrecker service shall not
24 take any passengers who have been convicted, pled guilty to, or received a prayer for judgment
25 continued (PJC) for any of the offenses listed in Subparagraph (a)(21) of this Rule, with the
26 exception of a Chapter 20 violation to the incident/collision site, when responding to calls.
- 27 (15) The wrecker service shall notify the District First Sergeant of any insurance lapse or change.
28 Wrecker services shall ensure the NC Highway Patrol is listed as "Certificate Holder" on the
29 Certificate of Liability Insurance, in c/o the District First Sergeant, complete with the current
30 mailing address for the Highway Patrol District Office tasked with the responsibility of ensuring
31 compliance with Highway Patrol policy regarding the respective wrecker service.
- 32 (16) The wrecker service shall notify the Patrol whenever the wrecker service is unable to respond to
33 calls.
- 34 (17) Notification of rotation wrecker calls shall be made to the owner/operator or employee of the
35 wrecker service. Notification shall not be made to any answering service, pager, or answering
36 machine.

- 1 (18) Wrecker service vehicles shall be marked on each side by printing the wrecker service name, city
2 and state in at least three inch letters. No magnetic or stick-on signs shall be used. Decals are
3 permissible. The wrecker service operator shall provide a business card to the investigating officer
4 or person in apparent control of the vehicle before leaving the scene.
- 5 (19) Each wrecker service vehicle shall be registered with the Division of Motor Vehicles in the name
6 of the wrecker service and insured by the wrecker service. Dealer tags shall not be displayed on
7 wreckers that respond to rotation calls.
- 8 (20) Wrecker services shall secure all personal property at the scene of a collision to the extent
9 possible, and preserve personal property in a vehicle that is about to be towed.
- 10 (21) The owner shall ensure that he or she and each wrecker driver has not been convicted of, pled
11 guilty to, or received a prayer for judgment continued (PJC):
- 12 (A) Within the last five years of:
- 13 (i) A first offense under G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-
14 138.2B;
- 15 (ii) Any misdemeanor involving an assault, an affray, disorderly conduct, being
16 drunk and disruptive, larceny or fraud;
- 17 (iii) Misdemeanor Speeding to Elude Arrest; or
18 (iv) A violation of G.S. 14-223.
- 19 (B) Within the last ten years of:
- 20 (i) Two or more offenses in violation of G.S. 20-138.1, G.S. 20-138.2, G.S. 20-
21 138.2A or G.S. 20-138.2B;
- 22 (ii) Felony speeding to elude arrest; or
23 (iii) Any Class F, G, H or I felony involving sexual assault, assault, affray, disorderly
24 conduct, being drunk and disruptive, fraud, larceny, misappropriation of
25 property or embezzlement.
- 26 (C) At any time of:
- 27 (i) Class A, B1, B2, C, D, or E felonies;
28 (ii) Any violation of G.S. 14-34.2, G.S. 14-34.5, or G.S. 14-34.7;
29 (iii) Any violation of G.S. 20-138.5; or
30 (iv) Three felony offenses in any federal or state court or combination thereof. The
31 commission of a felony is not considered to be a second or subsequent felony
32 unless it is committed after the conviction of or guilty plea to the previous
33 felony.
- 34 For convictions occurring in federal court, another state or country or for North Carolina
35 convictions for felonies which were not assigned a class at the time of conviction, the
36 North Carolina offense which is substantially similar to the federal or out of state
37 conviction or the class of felony which is substantially similar to the North Carolina

1 felony shall be used to determine whether the owner or driver is eligible. Any question
2 from the owner of a Wrecker Service concerning a criminal record shall be discussed
3 with the First Sergeant or his or her designee.

- 4 (22) Upon employment or upon the request of the District First Sergeant, the owner of the wrecker
5 service shall supply to the Patrol the full name, current address, date of birth, and photocopy of
6 drivers license, valid work VISA, or other INS documentation for all wrecker drivers and owner(s)
7 in order for the Patrol to obtain criminal history information. The owner of the wrecker service
8 shall also provide a certified copy of the driving record for the owner and each driver authorized to
9 drive on rotation upon initial application, upon the hiring of a driver hired after initial application,
10 and at the time of periodic wrecker inspections conducted by the Patrol to ensure compliance with
11 this Rule and applicable statutes. The wrecker service shall inform the District First Sergeant if
12 the owner or a driver is charged with, convicted of, enters a plea of guilty or no contest to, or
13 receives a prayer for judgment continued (PJC) for any of the crimes listed in Subparagraph (21)
14 of this Paragraph. Upon notification that a driver or owner was charged with any of the crimes
15 listed in Subparagraph (21) of this Paragraph, the Patrol shall conduct an independent
16 administrative investigation. Willful failure to notify the District First Sergeant as required herein
17 shall result in removal from the rotation wrecker service for 12 months.
- 18 (23) Upon request of the vehicle owner, the rotation wrecker shall return personal property stored in or
19 with a vehicle, whether or not the towing, repair, or storage fee on the vehicle has been or will be
20 paid. Personal property, includes any goods, wares, freight, or any other property having any value
21 whatsoever other than the functioning vehicle itself.
- 22 (24) The wrecker service shall tow disabled vehicles to any destination requested by the vehicle owner
23 or other person with apparent authority after financial obligations have been finalized.
- 24 (25) Unless notified by the Patrol that the vehicle is being preserved as evidence, the wrecker service
25 shall allow insurance adjusters access to and allow inspection of the vehicle at any time during the
26 wrecker service's normal working hours.
- 27 (26) Being called by the Patrol to tow a vehicle does not create a contract with or obligation on the part
28 of the Patrol or Patrol personnel to pay any fee or towing charge except when towing a vehicle:
- 29 (A) owned by the Patrol;
- 30 (B) that is later forfeited to the Patrol; or
- 31 (C) that a court determines that the Patrol wrongfully authorized the tow and orders the Patrol
32 to pay transportation and storage fees.
- 33 (27) Being placed on the rotation wrecker list does not guarantee a particular number or quantity of
34 calls, does not guarantee an equivalent number of calls to every wrecker service on the rotation
35 wrecker list, nor does it entitle any wrecker service to any compensation as a consequence for not
36 being called in accordance with the list or when removed from the rotation wrecker list.

- 1 (28) The willful failure to respond to a call by the Patrol shall result in the wrecker service being placed
2 at the bottom of any rotation wrecker list and the wrecker service shall then be "automatically by-
3 passed" when that wrecker service comes up for its next rotation call.
- 4 (29) The District First Sergeant or his or her designee shall subject rotation wreckers and facilities to
5 inspections during normal business hours.
- 6 (30) A rotation wrecker service, upon accepting a call for service from the Patrol, shall use its wrecker.
7 Wrecker services shall not refer a call to another wrecker company or substitute for each other.
- 8 (31) If a rotation wrecker service plans to move its business location the owner shall send written
9 notification of the new address to the District First Sergeant not less than 10 days prior to the
10 move. The wrecker service shall not receive rotation calls prior to inspection of the new facility.
- 11 (32) A wrecker service may dispatch either a wrecker or a rollback in response to a Patrol rotation
12 wrecker call, except where the wrecker service is advised that a particular type of recovery vehicle
13 is needed due to existing circumstances.
- 14 (33) A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor
15 of alcohol on his or her breath or while under the influence of alcohol, drugs, or any impairing
16 substance.
- 17 (34) A wrecker service shall have in effect a valid hook or cargo insurance policy issued by a company
18 authorized to do business in the State of North Carolina in the amount of fifty thousand dollars
19 (\$50,000) for each small wrecker and one hundred fifty thousand dollars (\$150,000) for each large
20 wrecker or as otherwise required by Federal regulation, whichever is greater. In addition, each
21 wrecker service shall have a garage keeper's insurance policy from an insurance company
22 authorized to do business in the State of North Carolina covering towed vehicles in the amount of
23 one hundred thousand dollars (\$100,000).
- 24 (b) The District First Sergeant shall conduct an investigation of each wrecker service that applied to be placed on
25 the rotation wrecker list and determine if the wrecker service meets the requirements set forth in this Rule. If the
26 District First Sergeant determines that a wrecker service fails to satisfy one or more of the requirements set forth in
27 this Rule, the First Sergeant shall notify the wrecker service owner of the reason(s) for refusing to place it on the
28 rotation wrecker list. Any wrecker service that fails to comply with the requirements of this Rule shall be removed
29 from the rotation wrecker list.
- 30 (c) The Troop Commander or designee shall ensure that a wrecker service shall be included only once on each
31 rotation wrecker list.
- 32 (d) Each Troop Commander shall designate a Troop Lieutenant to serve as a Rotation Wrecker Liaison for his or
33 her respective Troop.
- 34 (e) If the Troop Commander or designee chooses to use a contract, zone, or other system administered by a local
35 agency, the local agency rules govern the system.

1 (f) If a wrecker service responds to a call, it shall be placed at the bottom of the rotation wrecker list by the Patrol
2 Communications Center unless the wrecker service, through no fault of its own, is not used and receives no
3 compensation for the call. In that event, it shall be placed back at the top of the rotation wrecker list.
4

5 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
6 *Temporary Adoption Eff. June 9, 2000;*
7 *Eff. April 1, 2001;*
8 *Amended Eff. April 1, 2010; July 18, 2008;*
9 *Transferred from 14A NCAC 09H .0321 Eff. June 1, 2013;*
10 *Amended Eff. March 19, 2015.*
11 *Readopted Eff. _____, 2017.*
12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0118

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 3, is the "District First Sergeant" the same as the "First Sergeant"?

In (a)(1), warning to whom? The owner or the driver?

In (a)(2), line 7, please make "rules" lowercase

On line 8, how is this demonstrated and to whom? The sergeant?

In (a)(3), line 9, what is a "specific period of time"? How is this determined and communicated?

In (b), I think this language can be clarified to state that whomever is making the decision will make the determination of what sanction to impose on a case-by-case basis and state the factors that will be used in the Rule.

In (c), line 12, insert a comma after "to"

On line 14, what part of Rule .0116 sets forth a period of time? Please specify that here.

For lines 14-18, do you mean the administrative investigation performed in accordance with Rule .0116(a)(22)?

Line 16, what is meant by "designated period of time"?

Lines 17-18, what is the purpose of this sentence if you don't know the "period of time" yet?

In (d), line 19, remove the commas after "employ" and "driver"

Line 21, what period are you referring to? State here what part of Rule .0116 you are referring to.

Line 22, I take it you need to retain the phrase "a minimum of"?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

Why do you have both (e) and (f)? It appears that the only difference is that (f) refers to refusing to take a chemical analysis, but (e) doesn't even mention this. Can't these be combined?

Also, aren't (e) and (f) addressed in part by Rule .0116(a)(33)?

Lines 23 and 29, what is the role of the clause "Patrol related incident"? Why the limited application? If the phrase remains, should "Patrol related" be hyphenated? Please review

In (e), line 23, and (f), line 29, state "his or her"

In (e), line 24, and (f), line 30, define "immediately"

Lines 24 and 26, is the clause "not less than" necessary?

In (e) and (f), how will you all determine that the owner had no knowledge? And how will you know that the driver is prohibited from responding?

In (e), lines 27 and (f), 34, insert a comma after "guilty"

In (e), line 28, and (f), line 34, you have "(PJC)" after "prayer for judgment continued" but you do not in (c), line 12 and (d), line 20. Please be consistent.

In (f), line 33, consider replacing "one year" with "12 months" to be consistent with lines 22, 24, and 26

In (g), line 35, what is "material fact"?

Line 35, when does "may" apply? What are the factors consisted? Who is making the determination of when it "may" result in removal? Is this through a hearing procedure? Please clarify within this Rule.

In (h), line 36, please capitalize "Rules"

On line 37, you state "at a minimum" but what is the maximum?

Line 37, how will the agency know if the violation is corrected?

In (i), Page 2, what if it's transferred to someone who is not a family member?

In (j), line 3, replace "which" with "that"

And demonstrate how? To whom?

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0118 is proposed for readoption as follows:

2 **14B NCAC 07A .0118 SANCTIONS FOR VIOLATIONS**

3 (a) If a District First Sergeant determines that a violation of the rules in this Section has occurred, the First Sergeant
4 may:

- 5 (1) Issue a written warning and request for compliance;
- 6 (2) Remove the wrecker service from the rotation wrecker list until corrective measures have been
7 taken to bring the wrecker service into compliance with the Rules in this Section and verification
8 of such compliance has been demonstrated; or
- 9 (3) Remove the wrecker service from the rotation wrecker list for a specific period of time.

10 (b) The severity of the sanction imposed shall be commensurate with the nature of the violation and prior record of
11 the wrecker service.

12 (c) If a wrecker service owner commits, is convicted of, pleads guilty to or receives a prayer for judgment continued
13 for any of the offenses specified in 14B NCAC 07A .0116(a)(21), the wrecker service shall be removed from the
14 rotation wrecker list for the designated period of time as set out in that Rule. If a wrecker service owner is charged
15 with any of the offenses specified in 14B NCAC 07A .0116(a)(21), the wrecker service may be removed from the
16 rotation wrecker list for the designated period of time prior to conviction only if an administrative investigation by
17 the Patrol corroborates the commission of the offense. In such cases, the period of ineligibility shall commence on
18 the date of removal.

19 (d) A wrecker service shall not employ or continue to employ, as a driver, any person who commits, is convicted of,
20 pleads guilty to or receives a prayer for judgment continued for any of the offenses specified in 14B NCAC 07A
21 .0116(a)(21). This prohibition is for the designated period of time as set out in that Rule. A wrecker service that
22 willfully violates this provision shall be removed from the rotation wrecker list for a minimum of 12 months.

23 (e) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her
24 breath shall immediately be removed from the rotation wrecker list for not less than 12 months. If the owner was not
25 the driver and had no knowledge that the driver had been drinking, the wrecker service shall not be removed if the
26 driver is prohibited from responding to Patrol calls for not less than 12 months. This period of removal is in
27 addition to any removal that may result as a consequence of a conviction, plea of guilty or prayer for judgment
28 continued (PJC) pursuant to 14B NCAC 07A .0116(a)(21).

29 (f) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her
30 breath, and who refuses to submit to any requested chemical analysis, shall immediately be removed from the
31 rotation wrecker list for a period of five years. If the owner was not the driver and had no knowledge that the driver
32 had been drinking, the wrecker service shall not be removed if the driver is prohibited from responding to Patrol
33 calls for one year. This period of removal is in addition to any removal that may result as a consequence of a
34 conviction, plea of guilty or prayer for judgment continued (PJC) pursuant to 14B NCAC 07A .0116(a)(21).

35 (g) A willful misrepresentation of any material fact may result in removal from the rotation wrecker list.

36 (h) For any violation of these rules for which no specific period of removal or disqualification is established, a
37 wrecker service shall be removed, at a minimum, until the violation is corrected.

1 (i) A wrecker service that is removed from the rotation wrecker list remains ineligible for reinstatement even if
2 ownership has been transferred to a family member.

3 (j) A wrecker service which is removed from the rotation list must demonstrate compliance with all rules in this
4 Section in order to be reinstated.

5

6 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*

7 *Temporary Adoption Eff. June 9, 2000;*

8 *Eff. April 1, 2001;*

9 *Amended Eff. July 18, 2008;*

10 *Transferred from 14A NCAC 09H .0323 Eff. June 1, 2013.*

11 *Readopted Eff. _____, 2017.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07A .0119

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What authority are you relying upon to establish these hearing procedures? Are you relying upon G.S. 150B-22? If so, put that in your History Note. If not, please insert the authority you are relying upon.

In (a), line 3, delete the comma after "If"

Line 4, state "may make a written appeal to the Troop Commander"

Line 5, and wherever the term is used, what is the "designee"? Will the "designee" be known to the individuals making these appeals?

On line 5, are you saying there will be either a hearing or a record review? If it is an either or situation, then should the "may" be a "shall"?

Also on line 5, delete the comma after "may"

Line 5, consider combining the sentences. "...or review the record and shall render a written decision within 10 days of receipt of the appeal."

On line 7, what do you mean by "unfavorable"? To whom? Please note the same question in (c), line 25.

In (a), line 8, and (c), line 26, delete the comma after "(OAH)"

Line 8, what provisions of G.S. 150B do you mean? Article 3? If so, state that.

In (b), line 11, insert a comma after "explanation" both places.

Lines 13-13, under what circumstances will the First Sergeant do this? What guidance is the Rule providing here?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

In (c), lines 15-16, state "... the District First Sergeant shall send written notice to the wrecker service of this ..."

In (c), it looks like you are scheduling the hearing without having a request. This entire Paragraph seems to run together and be out of order. Consider writing this in the order that everything occurs.

On line 21, delete the comma after "designee"

Line 22, state "he or she"

Line 23, state "The Troop Commander... shall issue a written decision within 10 days..."

Line 24, you refer to a "hearing" but on line 22, you say it can be a review of the record, as well. How does this work?

In (d), what is your authority to bar representation?

Line 29, I suggest you delete "subsequently" and replace it with "later"

Line 30, add a comma after "listing"

Paragraph (f), line 30, define "Ordinarily" and what do you mean here?

On line 33, what is the authority for a summary removal? It does not appear to G.S. 150B-3, as being on a list is not the same as license.

Line 34, what do you mean by "reasonable grounds"? And who will determine if this exists, or "believe" the grounds exist?

On line 33, please review the cross-references to Rule .0116 and determine if they are still the correct-cross references, as that Rule was amended more recently than this one.

Line 35, insert a comma after "requirements"

Also on line 35, define "safe and proper"

Line 36, replace "which" with "that"

Line 36, who determines this will jeopardize the health, safety, or welfare?

On line 36, please insert a comma after "safety"

In the History Note, why are you citing to G.S. 20-185?

Also in the History Note, as you are citing to G.S. 20-187 and 20-188, please confirm that you received approval from the Governor for this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07A .0119 is proposed for readoption as follows:

2 **14B NCAC 07A .0119 HEARING PROCEDURES**

3 (a) If, the District First Sergeant refuses to include a wrecker service on the rotation wrecker list, the wrecker
4 service may appeal the First Sergeant's decision, in writing, to the Troop Commander or designee within 20 calendar
5 days of receipt of the decision. The Troop Commander or designee may, conduct a hearing or review the record. In
6 either event, the Troop Commander or designee shall render a decision, in writing, within 10 calendar days of
7 receipt of the appeal. The Troop Commander or designee's decision, if unfavorable, may be appealed to the Office
8 of Administrative Hearings (OAH), within 60 calendar days of receipt of the decision, pursuant to the provisions of
9 G.S. 150B.

10 (b) If a District First Sergeant issues a written warning to a wrecker service for a violation of any of the rules in this
11 Section, the wrecker service may, within 20 days of receipt of the warning, submit a written response to the First
12 Sergeant in mitigation, explanation or rebuttal. After considering the mitigation, explanation or rebuttal, the First
13 Sergeant may reconsider, and remove the written warning.

14 (c) If a District First Sergeant determines that a violation of the rules in this Section has occurred, and determines
15 that removal from the rotation wrecker list may be warranted, the District First Sergeant shall notify the affected
16 wrecker service, in writing, of this determination and afford the wrecker service an opportunity to be heard. The
17 hearing shall take place within 10 calendar days of actual notice or, if notice is by first class mail, within 13 days of
18 the date the notice is placed in the mail. The hearing shall take place within 10 calendar days of the request for
19 hearing and not less than three days written notice. If a District First Sergeant removes a wrecker service from the
20 rotation wrecker list, the wrecker service may appeal the removal to the Troop Commander or designee, in writing,
21 within 20 calendar days of receipt of the notice. The Troop Commander or designee, may conduct a hearing or
22 review the record. If the Troop Commander or designee decides to conduct a hearing, he shall give the wrecker
23 service not less than 10 calendar days notice. The Troop Commander or designee shall render a decision, in writing,
24 within 10 calendar days of receipt of the appeal or date of the hearing, whichever occurs last. The Troop
25 Commander or designee's decision, if unfavorable, may be appealed to the Office of Administrative Hearings
26 (OAH), within 60 calendar days, pursuant to the provisions of G.S. 150B.

27 (d) Hearings conducted by District First Sergeants or Troop Commanders or their designees shall be informal and
28 no party shall be represented by legal counsel.

29 (e) A wrecker service that is removed from the rotation wrecker list and subsequently placed back on the list, for
30 any reason, shall not be entitled to additional calls, priority listing or any other form of compensation.

31 (f) Ordinarily, a wrecker service may remain on the rotation wrecker list pending a final decision of the Troop
32 Commander or designee. A District First Sergeant, with the concurrence of the Troop Commander or designee,
33 may, however, summarily remove a wrecker service from the rotation wrecker list in those cases where there exists
34 reasonable grounds to believe a violation enumerated in 14B NCAC 07A .0116(a)(12), (a)(20), or (a)(31) or any
35 other violation relating to licensing, registration, insurance requirements or the safe and proper operation of the
36 business or which may jeopardize the public health, safety or welfare.

37

1 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
2 *Temporary Adoption Eff. June 9, 2000;*
3 *Eff. April 1, 2001;*
4 *Amended Eff. July 18, 2008;*
5 *Transferred from 14A NCAC 09H .0324 Eff. June 1, 2013.*
6 *Readopted Eff. _____, 2017.*
7

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07C .0101

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Throughout this Rule, wherever you are citing to federal regulations or other outside material to set a standard, you must properly incorporate the material by reference, pursuant to G.S. 150B-21.6. This includes stating how a copy of the standard can be obtained, at what cost, and whether you are including future amendments and editions of the referenced material.

So that I'm clear - is the only distinction between Paragraphs (a) and (b) the location of the commerce, with Paragraph (a) being "interstate" and Paragraph (b) being "intrastate"? Is there a reason they can't simply be combined?

In (a), line 5, and (b), line 10, and (d), Page 2, line 1, delete "rules and"

Why is Paragraph (a) defining "commercial motor vehicle" rather than "interstate motor carrier" as G.S. 20-376(3a) defines "interstate motor carrier" as "[a]ny person, firm, or corporation that operates or controls a commercial motor vehicle as defined in 49 C.F.R. § 390.5 in interstate commerce."?

On line 8, and elsewhere the full term "State of North Carolina" is used, consider simply saying "State"

In (b), line 11, do not reincorporate this material here.

What is the purpose of Subparagraphs (b)(1) through (3), as they simply recite G.S. 20-376(5)? I suggest you delete this and simply state "all intrastate motor carriers, as defined in G.S. 20-376(5)."

If you need to retain it, on line 13, end the clause "vehicle(s):" Then begin (b)(1) with "have a gross..." and being (b)(2) and (3) with "is"

In (c), line 20, delete "In addition" and capitalize "the"

In (c)(1), consider breaking this down into a list for ease of reading.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

On line 21, is this 12 consecutive hours?

On line 24, add “or her” after “his”

Lines 24-25, what do you mean by “shall be determined”? By whom?

In (b)(2), what is your authority for this Subparagraph? It appears you are setting forth a process that is set forth by the Commissioner of Motor Vehicles. Is this simply a recitation of that process, provided as a service for your regulated public? Otherwise, what authority do you have to regulate this process that is done by another agency?

On line 26, what is the purpose of the term “otherwise”?

Line 26, what do you mean by “qualify medically”? Where are these medical requirements set forth?

Line 28, what is meant by “where applicable”?

On lines 29-30, how is this exemption sought? Is there some statute or rule of the Commission of Motor Vehicles that could be cross-referenced to help clarify the process and provide notice?

On line 30, who does this medical examination? A private doctor or the Exemption Review Officer?

On line 31, what is “indicating”? Don’t you mean “stating”?

On lines 33-34, consider deleting the clause “a period of”

On line 36, state “49 CFR 350.341” to be consistent with your other citations.

In (d), Page 2, line 1, add a comma after “repair”

On lines 2-3, you will not need to reincorporate 49 CFR 396.17 through 396.23 here. This is because you will have already incorporated all of 49 CFR 390 – 397 in (a). I suggest you add Appendix G to the language in (a).

In (e), line 7, I suggest you replace “must” with “shall”

Also on line 7, what do you mean by “current” and “approved”?

On line 8, add a comma after “vehicles”

On line 9, consider replacing “exclusive of” with “but not on”

On lines 10 -11, who determines “as near as possible”?

On line 11, why do you need the clause “at least”? I suggest deleting it.

On line 12, what is “legible”? Who determines this? Please state in the Rule to whom it is supposed to be legible.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

Why do you need (e)(1) through (4), as it seems to merely repeat 49 CFR 396.17(c)(2)?

If you need to retain this language, begin (e)(2), line 14 with an article, like “The”

On line 16, what is “uniquely”?

In (f), line 18, what is the purpose of this first sentence? The cited statute provides this authority. Why not simply state “In accordance with G.S. 20-17.7, the Commercial”

On lines 18 through 21, what is the Secretary’s authority to create this schedule outside of rulemaking? And assuming such authority exists, is this document something that should be incorporated by reference pursuant to G.S. 150B-21.6?

Also, why is this “updated annually”? The statute specifies that it is the fine “in effect on the date of the violation” How does this work considering the statute?

On line 19, maintained how?

On line 20, available where? How?

On lines 20, please review and verify that this is the correct name of the agency.

On line 22, place the clause “education contact” in its second use in quotation marks to clarify that it is being defined

On line 22, what is meant by “code”? Does it mean “this Rule” or “this Section” or “this Subchapter”? Please state what you mean here.

On line 22, pre-planned by whom?

In (g), line 24, what are the “North American Standard out-of-service criteria”? It appears these should be incorporated by reference pursuant to G.S. 150B-21.6

In (h), on line 27, should “Crime Control and” be deleted?

On line 27, consider replacing “must” with “shall”

On line 28, what is meant by “this time limit”? Does it mean the 30 days? Please specify or help to clarify this language

On lines 28-30, the Rule discusses requesting a review, but what is the process? The Rule should outline how to request a review, or cross-reference the rule or law containing this process.

Assuming you properly incorporate the CFRs by reference in (a), you can delete Paragraph (i).

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07C .0101 is proposed for readoption as follows:

2 **SUBCHAPTER 07C – MOTOR CARRIER SAFETY REGULATIONS**

3 **SECTION .0100 – SAFETY RULES AND REGULATIONS**

4 **14B NCAC 07C .0101 SAFETY OF OPERATION AND EQUIPMENT**

5 (a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and
6 equipment (49 CFR Parts 390 through 397 and amendments thereto) apply to all for-hire motor carriers and all for-
7 hire motor carrier vehicles, and all private motor carriers and all private motor carrier vehicles engaged in interstate
8 commerce over the highways of the State of North Carolina if such vehicles are commercial motor vehicle(s) as
9 defined in 49 CFR Part 390.5.

10 (b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and
11 equipment (49 CFR Parts 390 through 397 and amendments thereto) apply to all for-hire motor carriers and all for-
12 hire motor carrier vehicles, and all private motor carriers and all private motor carrier vehicles engaged in intrastate
13 commerce over the highways of the State of North Carolina if such vehicle(s) is,

14 (1) a vehicle having a gross vehicle weight rating (GVWR), gross combination weight rating
15 (GCWR), gross vehicle weight (GVW), gross combination weight (GCW) of 26,001 pounds or
16 more, whichever is greater;

17 (2) designed or used to transport 16 or more passengers, including the driver; or

18 (3) used in transporting a hazardous material in a quantity requiring placarding pursuant to 49 C.F.R.
19 Parts 170 through 185.

20 (c) In addition, the following exceptions also apply to all intrastate motor carriers:

21 (1) An intrastate motor carrier driver shall not drive more than 12 hours following eight consecutive
22 hours off duty; for any period after having been on duty 16 hours following eight consecutive
23 hours off duty; after having been on duty 70 hours in seven consecutive days; or more than 80
24 hours in eight consecutive days. An intrastate driver shall be determined by his previous seven
25 days of operation.

26 (2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State
27 of North Carolina are exempt from the provisions of Part 391.11(b)(1) and may be exempt from
28 provisions of Part 391.41(b)(1) through (11) where applicable and therefore are authorized for
29 intrastate operation if approved by an Exemption Review Officer appointed by the Commissioner
30 of Motor Vehicles. These drivers shall continue to be exempt upon completion of a medical
31 examination indicating the condition has not worsened or no new disqualifying conditions have
32 been diagnosed and upon continued approval of an Exemption Review Officer. After a medical
33 review by the Exemption Review Officer, a driver may be granted a waiver not to exceed a period
34 of two years based on the type and severity of the condition. The Exemption Review Officer shall
35 follow the guidelines established for variances from the Federal Motor Carrier Safety Regulations
36 for intrastate commerce found in 49 CFR, Part 350.341.

1 (d) The rules and regulations adopted by the U. S. Department of Transportation relating to inspection, repair and
2 maintenance of motor vehicles (49 CFR Part 396.17 through 396.23 and including Appendix G, and amendments
3 thereto) apply to all for-hire motor carrier vehicles, and all private motor carrier vehicles engaged in intrastate
4 commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 10,000
5 pounds.

6 (e) Every motor vehicle registered or required to be registered in North Carolina and subject to the inspection
7 requirements of the Federal Motor Carrier Safety Regulations (49 CFR Part 396), must display a current approved
8 federal inspection certificate when operated on the streets and highways of this State. On self-propelled vehicles the
9 federal inspection certificate shall be displayed on the driver's side of the vehicle, exclusive of the window or rear
10 view mirror. On trailers and semitrailers, the federal inspection certificate shall be located on the left side as near as
11 possible to the outside lower front of the vehicle. The inspection certificate shall contain at least the following
12 legible information:

13 (1) The date of inspection;

14 (2) Name and address of the motor carrier or other entity where the inspection report required by 49
15 CFR 396.21(a) is maintained;

16 (3) Information uniquely identifying the vehicle-inspected; and

17 (4) A certification that the vehicle has passed an inspection in accordance with 49 CFR 396.17.

18 (f) The Secretary shall fine violators for out-of-service criteria as allowed by G.S. 20-17.7. The Commercial
19 Vehicle Safety Alliance (CVSA) out-of-service maximum civil fine schedule shall be maintained in the Office of the
20 Secretary of Crime Control and Public Safety, be available for public inspection, and be updated annually by the
21 Secretary on the first day of April. The out-of-service maximum civil fine schedule does not apply to violations
22 discovered during educational contacts. An educational contact for the purpose of this code means a pre-planned,
23 public safety inspection activity, focusing on commercial motor vehicle safety awareness and compliance.

24 (g) Any fines assessed for a violation listed in the North American Standard out-of-service criteria shall be assessed
25 against the motor carrier of the commercial motor vehicle.

26 (h) Whenever a motor carrier of a vehicle has a defense to the enforcement of a fine or fines for violation(s) of the
27 out-of-service criteria by the Department of Crime Control and Public Safety, it must pay the penalty within 30
28 calendar days after the date the penalty was assessed or make a written request within this time limit to the
29 Department for a Departmental review of the penalty. A person who does not submit a request for review within the
30 required time waives the right to a review and hearing on the penalty.

31 (i) All Code of Federal Regulations (CFR) are available online without cost at <http://www.fmcsa.dot.gov/>.

32
33 *History Note: Authority G.S. 20-17.7; 20-381;*

34 *Eff. December 1, 1983;*

35 *Amended Eff. November 1, 1991; October 1, 1991;*

36 *Temporary Amendment Eff. February 1, 1992 for a Period of 180 Days to Expire on July 30,*
37 *1992;*

1 *Temporary Amendment Eff. March 30, 1992 for a Period of 180 Days to Expire on September 26,*
2 *1992;*
3 *Amended Eff. August 3, 1992; July 1, 1992;*
4 *Temporary Amendment Eff. December 1, 1999;*
5 *Amended Eff. August 1, 2002; April 1, 2001;*
6 *Temporary Amendment Eff. August 6, 2002;*
7 *Amended Eff. August 1, 2004;*
8 *Transferred and recodified from 19A NCAC 03D .0801 Eff. March 23, 2009;*
9 *Amended Eff. June 1, 2011;*
10 *Transferred from 14A NCAC 09J .0101 Eff. June 1, 2013.*
11 *Readopted Eff. _____, 2017.*
12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety

RULE CITATION: 14B NCAC 07C .0102

DEADLINE FOR RECEIPT: Thursday, October 11, 2018

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the difference between Paragraphs (a) and (b)? They appear to be written slightly differently but they say the same thing. Is (a) for "motor vehicle carriers" and (b) for "motor carriers"? Why can't these Paragraphs be combined? Or state "The regulations adopted... shall apply to interstate and intrastate commerce all for-hire and private:

- (1) motor carrier vehicles; and*
- (2) motor carriers.*

If you must retain this as two separate paragraphs:

In (a), line 3, and (b), line 7, delete "rules and"

Write these Paragraphs using the same language for both. However, in (b), you do not need to reincorporate the CFR, so delete the language on line 8.

In (c), line 11, what do you mean by "Section"? Is this an intent to incorporate all CFRs cited in Rule .0101? If so, why are you providing the mailing address and not the mailing address, which is what is provided in Rule 07C .0101(i)?

On line 12, please provide the url, such as gpo.gov, where a member of the public can obtain copies of CFR and state that they are available at no cost.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: September 27, 2018

1 14B NCAC 07C .0102 is proposed for re adoption as follows:

2 **14B NCAC 07C .0102 HAZARDOUS MATERIALS**

3 (a) The rules and regulations adopted by the U.S. Department of Transportation and the rules and regulations
4 adopted by the U.S. Department of Transportation relating to hazardous materials (49 CFR Parts 170-185 and
5 amendments thereto) shall apply to all for-hire and all private motor carrier vehicles engaged in interstate commerce
6 or intrastate commerce over the highways of the State of North Carolina.

7 (b) The rules and regulations adopted by the U.S. Department of Transportation and the transportation of hazardous
8 materials (49 CFR 170-185 and amendments thereto) shall also apply to all for-hire motor carriers and all private
9 motor carriers engaged in the transportation of hazardous materials in interstate or intrastate commerce over the
10 highways of the State of North Carolina.

11 (c) All Code of Federal Regulations (CFR) Parts cited in this Section are incorporated herein by reference including
12 any subsequent amendments. A copy of the CFR is available from the Office of Superintendent of Documents, U.S.
13 Government Printing Office, Washington, D.C. 20402 at a cost set by that office.

14

15 *History Note: Authority G.S. 20-2; 20-381;*

16 *Eff. December 1, 1983;*

17 *Amended Eff. April 1, 2001; January 1, 1994;*

18 *Transferred and recodified from 19A NCAC 03D .0802 Eff. March 23, 2009;*

19 *Transferred from 14A NCAC 09J .0102 Eff. June 1, 2013.*

20 *Readopted Eff. _____, 2017.*

21