

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/ State Highway Patrol

RULE CITATION: 14B NCAC 07A .0116

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:

*In the initial review of the Rule, staff asked for several technical changes. Many of these were to address issues of grammar or to ensure clarity. However, several were requested in order to allow the agency to address staff's concerns regarding ambiguity and statutory authority. Several of the changes relating to ambiguity and statutory authority were not made. When the Department submitted the rewritten Rule, it also submitted a letter explaining that it was not comfortable making multiple changes to the Rule at this time, given the intense interest in the regulated public over any changes to this Rule. Staff understands that substantive changes should not be made at this time and certainly does not want to burden the agency or create confusion among the regulated public. However, given that staff's concerns related to statutory authority and ambiguity that were not addressed in the rewritten Rule, staff is recommending objection to this Rule based upon the following:*

*In Subparagraphs (a)(1), (5) and (10), forms are referenced that govern an applicant's ability to join the rotation wrecker list and supply information to the Highway Patrol regarding prices. The Rule*

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Commission Counsel

does not tell what is in the forms, where they can be obtained or give any reference to a rule or statute that sets forth those requirements. G.S. 150B-2(8a) defines the term “rule” as:

“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:

- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

*Without setting out the information about the forms in the text, or giving a reference to other rules or statutes that contain this information, staff believes the Rule is ambiguous as written.*

*In addition, staff believes there are several terms that are ambiguous within the Rule. Those terms are:*

1. *In Subparagraph (a)(8), “timely” [line 17]. Staff notes that failure to respond in a “timely” manner results in a loss of funds for the service. What is timely to a service could be very different from what is timely to the Department, and staff believes a clear standard is needed in the Rule.*
2. *In Subparagraph (a)(10), “reasonable” [line 32] as it relates to a determination by the District First Sergeant that the prices submitted are in fact “reasonable.” It is possible that the Department is using the term to mirror the statutory language in G.S. 20-188, which speaks to “reasonable charges.” However, the Department did not respond to staff’s requests to verify this; therefore, at this time, staff is not satisfied the term is clear and unambiguous.*
3. *In Subparagraph (a)(14), “timely,” “efficient,” [line 24] and “unauthorized” [line 26]. Staff has particular concerns about the prohibition against “unauthorized” passengers on the calls, as staff cannot determine who that may be. One might presume “unauthorized passengers” means anyone who is not an employee of the service, but that is not clear in this Rule as written. Therefore, is one friend of the driver authorized, but another friend is not? Are all employees of the service authorized? (Staff notes that only the owner and drivers are subject to criminal record checks, so what if an employee who is not a driver that has a criminal history rides along. Is that allowed?) Further, who will authorize these individuals – the Department or the wrecker service?*
4. *In Subparagraph (a)(22), “willful failure” [line 22]. Staff notes that “willful” failure to report, rather than just “failure” results in removal of a wrecker service from the rotation wrecker list.*

*Staff also believes this Rule’s organization is confusing and recommended moving or separating multiple subparagraphs within the Rule to make it easier to read. The Department has indicated that it is unwilling to make these changes to the Rule at this time, citing concerns that its regulated public will be confused and upset with the changes. Staff understands the Department’s concern. However, staff remains concerned about specific portions of the language and organization of certain subparagraphs and believes there are areas where the Rule is not clear and unambiguous as written.*

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1. Subparagraph (a)(7) states that wrecker services shall be available on a 24 hour basis and calls shall not go unanswered for any reason. That is contradicted by Subparagraph (a)(16) that states that if the service cannot respond to calls, they must notify the Patrol. It is further contradicted by (a)(28), which states that failing to respond to a call means the service will be placed at the end of the wrecker rotation list. If this is intended to convey that calls must be answered [(a)(10)] unless prior notice is given [(a)(16)] and that failure to comply with (a)(10) will result in penalty [(a)(28)], then staff strongly believes that should be clearer in Rule and these three should be near each other in the Rule. Staff does not believe doing any of this will amount to an actual change to the effect of the Rule, other than making it clearer and easier to understand.
2. In Subparagraph (a)(6), the Department appears to be spelling out how Hazardous Materials Teams will be billing the Department. (Note – the Rule states on line 12 that hazardous materials must be handled by local Hazardous Material Teams.) Unless the wrecker service can also qualify as such a team (and staff does not know if that is what is anticipated by the language here), then the only individuals picking up hazardous materials (line 12) will be the people on the Teams. It does not appear that this information belongs in this Rule, as the Rule sets forth the requirements for wrecker services, not Hazardous Materials Teams.
3. In (a)(10), there is language regarding internal management. “Each Troop Commander shall designate a Troop Lieutenant to serve as a Rotation Wrecker Liaison for his or her respective Troop.” Paragraph (a) states that in order to be on the list, each service must agree in writing to the provisions in the Subparagraphs. No wrecker service can agree in writing to an internal management policy of the Highway Patrol over which the service will have no control or input. Staff further notes that the rest of the Subparagraph is unclear as to who will distribute the price list to the motorists. Staff assumes it will be the wrecker driver, but believes including the sentence about the Liaison in the middle of the verbiage about charging the consumers makes it unclear.
4. Subparagraph (a)(17), which speaks to notifications by the Department (presumably) to wrecker company, seems unnecessary in light of the language in (a)(2). If Subparagraph (a)(17) does not speak to notifications by the Department, then it is unclear as written.
5. Subparagraph (a)(22) references “periodic wrecker inspections” [line 17]. Staff requested the Department cite other rules or statutes that give guidance on this, including who conducts it, what is inspected, and where it takes place. Staff has not received a response to repeated requests for the information.

Also in the Request for Technical Changes, staff raised concerns regarding the Department's authority for certain requirements in the Rule.

1. In Subparagraph(a)(10) [lines 36-37], staff inquired about the agency's authority to state that the storage fees cannot accrue until the next calendar day. G.S. 20-188 states, in relevant part, “Towing, storage, and related fees charged may not be greater than fees charged for the same service for nonrotation calls that provide the same service, labor, and conditions.”

What if the wrecker service usually does this for nonrotation calls?

2. *In Subparagraph (a)(14), staff inquired about the authority of the Department to determine who will be employed and the standard of conduct at all times (not just during rotation calls.) Staff asked if the Patrol was relying upon G.S. 20-188, which states:*

The State Highway Patrol recognizes the need to utilize private wrecker services to remove vehicles from public roadways as part of its public safety responsibility. In order to assure that this public safety responsibility is accomplished, the Troop Commander shall include on the Highway Patrol's rotation wrecker list only those wrecker services which agree in writing to impose reasonable charges for work performed and present one bill to the owner or operator of any towed vehicle. Towing, storage, and related fees charged may not be greater than fees charged for the same service for nonrotation calls that provide the same service, labor, and conditions.

*The Department has not responded to staff's inquiries on this topic.*

3. *In Subparagraph (a)(21), staff inquired about the Department's authority to bar the wrecker service from employing any wrecker driver who has been convicted of, pled guilty to, or received a prayer for judgment continued for multiple crimes, including fraud, misdemeanor drunk and disruptive or disorderly conduct.*

*Staff believes that since the Department and the Highway Patrol is required to uphold traffic laws in G.S. 20-188, it is reasonable for the Department to state that someone who violated those laws would not qualify to be on the rotation wrecker list. Further, staff spoke with a member of the Highway Patrol on June 6, 2014, and was informed that the Patrol does not want to send someone with a history of criminal assaults to rescue stranded motorists. Staff understands that this appears to be in the interest of public safety.*

*Staff asked in the Request for Technical Change and again in a separate email sent June 12, 2014, if the Department was relying upon G.S. 20-188 to ensure public safety, and therefore, is setting forth the crimes listed in the Subparagraph. The Department has not responded to staff's request. As such, staff is not satisfied that the agency has the authority to set this requirement in Rule.*

*Staff believes that many of these issues could be resolved by the Department giving an explanation of these areas and/or making minor clarifying changes to the Rule. However, the Department stated it prefers not to do this and will instead present its arguments to the Commission at the meeting.*

*Without the requested changes and explanations, staff cannot recommend approval of the Rule as initially filed or as rewritten. Staff therefore recommends the Commission object to the Rule as it is unclear and ambiguous and exceeds statutory authority as written.*

Article 4.

State Highway Patrol.

**§ 20-184. Patrol under supervision of Department of Public Safety.**

The Secretary of Public Safety, under the direction of the Governor, shall have supervision, direction and control of the State Highway Patrol. The Secretary shall establish in the Department of Public Safety a State Highway Patrol Section, prescribe regulations governing the Section, and assign to the Section such duties as the Secretary may deem proper. (1935, c. 324, s. 2; 1939, c. 387, s. 1; 1941, c. 36; 1975, c. 716, s. 5; 1977, c. 70, ss. 13, 14, 15; 2011-145, s. 19.1(g), (hh).)

**§ 20-185. Personnel; appointment; salaries.**

(a) The State Highway Patrol shall consist of a commanding officer, who shall be appointed by the Governor and whose rank shall be designated by the Governor, and such additional subordinate officers and members as the Secretary of Public Safety, with the approval of the Governor, shall direct. Members of the State Highway Patrol shall be appointed by the Secretary, with the approval of the Governor, and shall serve at the pleasure of the Governor and Secretary. The commanding officer, other officers and members of the State Highway Patrol shall be paid such salaries as may be established by the Division of Personnel of the Department of Administration. Notwithstanding any other provision of this Article, the number of supervisory personnel of the State Highway Patrol shall not exceed a number equal to twenty-one percent (21%) of the personnel actually serving as uniformed highway patrolmen. Nothing in the previous sentence is intended to require the demotion, reassignment or change in status of any member of the State Highway Patrol presently assigned in a supervisory capacity. If a reduction in the number of Highway Patrol personnel assigned in supervisory capacity is required in order for the State Highway Patrol to meet the mandatory maximum percentage of supervisory personnel as set out in the fourth sentence of this subsection, that reduction shall be achieved through normal attrition resulting from supervisory personnel resigning, retiring or voluntarily transferring from supervisory positions.

(a1) Applicants for employment as a State Trooper shall be at least 21 years of age and not more than 39 years of age as of the first day of patrol school. Highway Patrol enforcement personnel hired on or after July 1, 2013, shall retire not later than the end of the month in which their 62nd birthday falls.

(b) to (f) Repealed by Session Laws 1979, 2nd Session, c. 1272, s. 2.

(g), (h) Struck out by Session Laws 1961, c. 833, s. 6.2.

(i) Positions in the Highway Patrol Section approved by the General Assembly in the first fiscal year of a biennium to be added in the second fiscal year of a biennium may not be filled before adjustments to the budget for the second fiscal year of the budget are enacted by the General Assembly. If a position to be added in the Highway Patrol Section for the second fiscal year of the biennium requires training, no applicant may be trained to fill the position until the budget adjustments for the second fiscal year are enacted by the General Assembly. (1929, c. 218, s. 1; 1931, c. 381; 1935, c. 324, s. 1; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 1; 1953, c. 1195, s. 1; 1955, c. 372; 1957, c. 1394; 1959, cc. 370, 1320; 1961, c. 833, s. 6.2; 1973, c. 59; 1975, c. 61, ss. 1, 2; c. 716, s. 5; 1977, c. 70, ss. 6-8, 13; c. 329, ss. 1-3; cc. 749, 889; 1979, 2nd Sess., c. 1272, s. 2; 1989 (Reg. Sess., 1990), c. 1066, s. 133; 2011-145, s. 19.1(g), (p); 2013-289, s. 9.)

**§ 20-187. Orders and rules for organization and conduct.**

The Secretary of Public Safety is authorized and empowered to make all necessary orders, rules and regulations for the organization, assignment, and conduct of the members of the State Highway Patrol. Such orders, rules and regulations shall be subject to the approval of the Governor. (1929, c. 218, ss. 1, 3; 1931, c. 381; 1933, c. 214, ss. 1, 2; 1939, c. 387, s. 2; 1941, c. 36; 1977, c. 70, s. 13; 2011-145, s. 19.1(g).)

**§ 20-188. Duties of Highway Patrol.**

The State Highway Patrol shall be subject to such orders, rules and regulations as may be adopted by the Secretary of Public Safety, with the approval of the Governor, and shall regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State. To this end, the members of the Patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the State having criminal jurisdiction, and are likewise authorized to arrest without warrant any person who, in the presence of said officers, is engaged in the violation of any of the laws of the State regulating travel and the use of vehicles upon the highways, or of laws with respect to the protection of the highways, and they shall have jurisdiction anywhere within the State, irrespective of county lines. The State Highway Patrol shall enforce the provisions of G.S. 14-399.

The State Highway Patrol shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor, and such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

The Secretary of Public Safety shall direct the officers and members of the State Highway Patrol in the performance of such other duties as may be required for the enforcement of the motor vehicle laws of the State.

Members of the State Highway Patrol, in addition to the duties, power and authority hereinbefore given, shall have the authority throughout the State of North Carolina of any police officer in respect to making arrests for any crimes committed in their presence and shall have authority to make arrests for any crime committed on any highway.

Regardless of territorial jurisdiction, any member of the State Highway Patrol who initiates an investigation of an accident or collision may not relinquish responsibility for completing the investigation, or for filing criminal charges as appropriate, without clear assurance that another law-enforcement officer or agency has fully undertaken responsibility, and in such cases he shall render reasonable assistance to the succeeding officer or agency if requested.

The State Highway Patrol recognizes the need to utilize private wrecker services to remove vehicles from public roadways as part of its public safety responsibility. In order to assure that this public safety responsibility is accomplished, the Troop Commander shall include on the Highway Patrol's rotation wrecker list only those wrecker services which agree in writing to impose reasonable charges for work performed and present one bill to the owner or operator of any towed vehicle. Towing, storage, and related fees charged may not be greater than fees charged for the same service for nonrotation calls that provide the same service, labor, and conditions. (1929, c. 218, s. 4; 1933, c. 214, ss. 1, 2; 1935, c. 324, s. 3; 1939, c. 387, s. 2; 1941, c. 36; 1945, c. 1048; 1947, c. 1067, s. 20;

1973, c. 689; 1975, c. 716, s. 5; 1977, c. 70, ss. 10, 13; c. 887, s. 3; 2009-461, s. 3; 2011-145, s. 19.1(g).)



# North Carolina Department of Public Safety

*Prevent. Protect. Prepare.*

Pat McCrory, Governor

Frank L. Perry, Secretary

June 12, 2014

Cover letter accompanying  
the rewritten Rule

Amanda J. Reeder  
Counsel to the Rules Review Commission  
NC Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, NC 27609

VIA EMAIL/HAND DELIVERY

Re: Resubmission of DPS, SHP, Rotation Wrecker Regulations Rule,  
14B NCAC 07A .0116

Dear Ms. Reeder:

Pursuant to your request, the Highway Patrol has reviewed each of the technical changes to the above-referenced rule as recommended in your correspondence dated May 29, 2014. As you know, these rules have existed in their current format since being amended in July 2008. Implementation of the 2008 amendments, however, was delayed initially by the filing of letters of objection by the industry and, subsequently, by the issuance of injunctive relief in Macon County and a Court order in Haywood County. The objections to the 2008 modifications were also addressed by the Legislature in Session Law 2009-461 and ultimately resolved in the state's favor in *Danny's Towing 2, Inc., et. al. vs North Carolina Highway Patrol*, 213 N.C. App. 375 (2011). Since that time, the rules have been enforced by the Highway Patrol without incident with the exception of the filing of an administrative case by a wrecker service challenging the Patrol's interpretation of the rule related to requiring that the wrecker be located within the rotation zone. The wrecker service prevailed in court, thereby necessitating this proposed rule change.

I share the above-described history with you to illustrate how difficult it is to make any changes whatsoever to these rules. The Highway Patrol has approximately 1,200 wrecker services on the rotation list statewide and we have learned from experience that once they become accustomed to a set of rules they can be resistant, if not suspicious of any change. Hence, we were reluctant to make any changes to the existing rules unless absolutely necessary. We are especially wary of making any changes that could possibly appear to be substantive in nature as that would most certainly be perceived by the wrecker industry as a breach of trust on our part.

Despite the Patrol's above-described concerns, we are cognizant of and fully respect the statutory authority of the Commission to "review the entire rule that is being amended." Accordingly, as evidenced by the attached resubmission, the Highway Patrol has incorporated most of the technical changes as suggested by you and Commissioner Curran. Representatives of the Highway Patrol will be present at the Commission meeting on June 18, 2014 to answer any

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questions that you or the Commission members may have. In the interim, I hope you can agree that these rules help support the Highway Patrol's public safety mission. Without these rules, the Patrol would not be able to clear North Carolina roadways in a timely manner thereby resulting in travel delays and secondary collisions resulting in collateral property damage and personal injury; nor would we be able to protect the general public from unscrupulous or dangerous wrecker service owners or drivers.

Sincerely,

*Cheryl L. Walker*

Program Assistant V/Rulemaking Coordinator  
Office of the General Counsel

Attachment

cc: Commander's Office  
Interim General Counsel  
Deputy General Counsel

1 14B NCAC 07A .0116 is amended as published in 28:16 1861-1865 with changes as follows:

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

(a) The Troop Commander shall include on the ~~Patrol Rotation Wrecker List~~ rotation wrecker list only those wrecker services ~~which that~~ agree in writing to adhere to the following provisions:

(1) A wrecker service desiring to be included on the ~~Highway Patrol Rotation Wrecker List~~ rotation wrecker list shall complete a wrecker application on a form designated by the Patrol. All applications shall be submitted to the appropriate District First Sergeant.

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

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

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

- 3 (4) Each wrecker ~~must~~ 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 Patrol Rotation Wrecker List ~~rotation wrecker list~~ must shall be equipped with the  
6 equipment required on the application list and the equipment ~~must,~~ shall be operating properly at all  
7 times. at all times, be operating properly.
- 8 (6) The wrecker service operator must remove all debris, other than hazardous materials, from the  
9 highway and the right-of-way prior to leaving the incident/collision scene. This service must be  
10 completed as a part of the required rotation service and shall not be charged as an extra service  
11 provided. Hazardous materials consist of those materials and amounts that are required by law to be  
12 handled by local Hazardous Materials Teams. Hazardous ~~Materials~~ materials or road clean-up other  
13 than debris may be billed in ~~quarter-hour~~ quarter-hour increments after the first hour on scene.
- 14 (7) The wrecker service ~~must shall~~ be available to the Patrol for rotation service on a 24-hour per day  
15 basis and accept collect calls (if applicable) from the Patrol. Calls for service ~~must shall~~ not go  
16 unanswered for any reason.
- 17 (8) The wrecker service shall respond, under normal conditions, in a timely manner. Failure to respond in  
18 a timely manner ~~may shall~~ result in a second rotation wrecker being requested. If the second wrecker  
19 is requested before the arrival of the first rotation wrecker, the initial requested wrecker shall forfeit  
20 the call and shall ~~immediately~~ 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~~ storage, and related fees charged for rotation services may not  
25 exceed the wrecker service's charges for nonrotation service calls that provide the same service, labor,  
26 and 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~~ towing, and storage shall be established and kept on file  
29 at 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,~~ furnished in writing on a Patrol ~~form,~~ form to the District First  
31 Sergeant upon request. The District First Sergeant shall approve all price lists submitted within ~~their~~  
32 his or her respective District if they are determined to be reasonable, consistent with fees charged by  
33 other 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 calendar  
37 day following the initial towing of the vehicle. Wrecker service towing fees for recovery and transport

1 of vehicles after 5:00 p.m. and on weekends ~~may shall~~ not exceed the towing fees ~~by more than 10~~  
2 ~~percent~~ for recovery and transport of vehicles charged during regular "Business Hours" ~~by more than~~  
3 ~~40 percent.~~ ~~business hours.~~ A mileage fee ~~may shall only~~ be charged ~~only~~ if the customer requests the  
4 vehicle to be towed to a location outside of the assigned wrecker zone or county. If a mileage fee is  
5 warranted, the wrecker driver shall inform the owner, ~~operator operator,~~ or legal possessor of the  
6 vehicle of any additional charge for mileage prior to towing. Each Troop Commander shall designate  
7 a Troop Lieutenant to serve as a Rotation Wrecker Liaison for ~~their his or her~~ respective Troop. The  
8 individual price list for each respective wrecker service shall be made available to customers upon  
9 request. Copies of the approved price list shall be maintained within each wrecker and shall be given  
10 to the owner, ~~operator operator,~~ or legal possessor of a vehicle being towed as a result of a Highway  
11 Patrol rotation wrecker call by the wrecker driver, if the owner, ~~operator operator,~~ or legal possessor of  
12 the vehicle being towed is present at the scene. Prices indicated on this form shall be the maximum  
13 amount that will be charged for a particular service; however, this does not prevent charges of a lesser  
14 amount for said service.

- 15 (11) All wrecker operators shall have a valid driver's license for the type of vehicles ~~driven; driven. a A~~  
16 limited driving privilege is not allowed.
- 17 (12) Wrecker owners, ~~operators operators,~~ and employees shall not be abusive, disrespectful, or use profane  
18 language when dealing with the public or any member of the Patrol and shall cooperate at all times  
19 with members of the Patrol.
- 20 (13) The wrecker service shall adhere to all Federal and State laws and local ordinances and regulations  
21 related to registration and operation of wrecker service vehicles and have insurance as required by  
22 G.S. 20-309(a).
- 23 (14) The wrecker service shall employ only wrecker operators who demonstrate an ability to perform  
24 required services in a safe, timely, ~~efficient efficient,~~ and courteous manner and who satisfy all of the  
25 requirements for wrecker drivers established or referenced ~~herein; herein; and shall not allow~~  
26 ~~unauthorized passengers when responding to Highway Patrol rotation calls.~~
- 27 (15) The wrecker service ~~must shall~~ notify the District First Sergeant of any insurance lapse or change.  
28 Wrecker ~~Services 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 mailing  
30 address for the Highway Patrol District Office tasked with the responsibility ~~for 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 calls.
- 33 (17) Notification of rotation wrecker calls shall be made to the owner/operator or employee of the wrecker  
34 service. Notification shall not be made to any answering service, ~~pager pager,~~ or answering machine.
- 35 (18) Wrecker service vehicles shall be marked on each side by printing the wrecker service name, city and  
36 state in at least three inch letters. No magnetic or stick-on signs shall be used. Decals are permissible.

1 The wrecker service operator shall provide a business card to the investigating officer or person in  
2 apparent control of the vehicle before leaving the scene.

3 (19) Each wrecker service vehicle ~~must shall~~ be registered with the Division of Motor Vehicles in the name  
4 of the wrecker service and insured by the wrecker service. Dealer tags shall not be displayed on  
5 wreckers that respond to rotation calls.

6 (20) Wrecker ~~Services services~~ shall secure all personal property at the scene of a collision to the extent  
7 possible, and preserve personal property in a vehicle ~~which that~~ is about to be towed.

8 (21) ~~Upon application to the Patrol Rotation Wrecker List, the~~ ~~The~~ owner shall ensure that ~~the owner he or~~  
9 ~~she~~ and each wrecker driver has not been convicted of, pled guilty to, or received a prayer for  
10 judgment continued (PJC):

11 (A) Within the last five years of:

- 12 (i) A first offense under G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-  
13 138.2B;
- 14 (ii) Any misdemeanor involving an assault, an affray, disorderly conduct, being drunk  
15 and disruptive, larceny or fraud;
- 16 (iii) Misdemeanor Speeding to Elude Arrest; or
- 17 (iv) A violation of ~~G.S. 14-223; Resist, Obstruct, Delay. G.S. 14-223.~~

18 (B) Within the last ten years of:

- 19 (i) Two or more offenses in violation of G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A  
20 or G.S. 20-138.2B;
- 21 (ii) Felony speeding to elude arrest; or
- 22 (iii) Any Class F, G, H or I felony involving sexual assault, assault, affray, disorderly  
23 conduct, being drunk and disruptive, fraud, larceny, misappropriation of property or  
24 embezzlement.

25 (C) At any time of:

- 26 (i) Class A, B1, B2, C, D, or E felonies;
- 27 (ii) Any violation of G.S. 14-34.2, ~~Assault with deadly weapon on a government officer~~  
28 ~~or employee,~~ 14-34.5, ~~Assault with firearm on a law enforcement officer;~~ or G.S.  
29 ~~14-34.7, Assault on law enforcement officer inflicting injury;~~ or G.S. 14-34.7;
- 30 (iii) Any violation of ~~G.S. 20-138.5, Habitual DWI. G.S. 20-138.5; For convictions~~  
31 ~~occurring in federal court, another state or country or for North Carolina~~  
32 ~~convictions for felonies which were not assigned a class at the time of conviction,~~  
33 ~~the North Carolina offense which is substantially similar to the federal or out of~~  
34 ~~state conviction or the class of felony which is substantially similar to the North~~  
35 ~~Carolina felony shall be used to determine whether the owner or driver is eligible.~~  
36 ~~Any question from the owner of a Wrecker Service concerning a criminal record~~  
37 ~~shall be discussed with the First Sergeant or his designee; or~~

1 (iv) Three felony offenses in any federal or state court or combination thereof. The  
2 commission of a felony is not considered to be a second or subsequent felony unless  
3 it is committed after the conviction of or guilty plea to the previous felony.

4 For convictions occurring in federal court, another state or country or for North Carolina  
5 convictions for felonies which were not assigned a class at the time of conviction, the North  
6 Carolina offense which is substantially similar to the federal or out of state conviction or the  
7 class of felony which is substantially similar to the North Carolina felony shall be used to  
8 determine whether the owner or driver is eligible. Any question from the owner of a Wrecker  
9 Service concerning a criminal record shall be discussed with the First Sergeant or his or her  
10 designee.

11 (22) Upon employment or upon the request of the District First Sergeant, the owner of the wrecker service  
12 shall supply to the Patrol with the full name, current address, date of birth, and photo-copy photocopy  
13 of drivers license, valid work VISA, or other INS Documentation documentation for all wrecker  
14 drivers and owner(s) in order for the Patrol to obtain criminal history information. The Wrecker  
15 Service owner of the wrecker service shall also provide a certified copy of the driving record for the  
16 owner and each driver authorized to drive on rotation upon initial application, upon the hiring of a  
17 driver if hired after initial application, and at the time of periodic wrecker inspections. The wrecker  
18 service shall inform the District First Sergeant if the owner or a driver is charged with, convicted of,  
19 enters a plea of guilty or no contest to, or receives a prayer for judgment continued (PJC) for any of  
20 the crimes listed in Subparagraph (21) of this Paragraph. Upon notification that a driver or owner was  
21 charged with any of the crimes listed in this Rule, Subparagraph (21) of this Paragraph, the Patrol may  
22 shall conduct an independent administrative investigation. Willful failure to notify the District First  
23 Sergeant as required herein shall result in removal from the rotation wrecker service for a minimum of  
24 12 months.

25 (23) Upon request or demand, request of the vehicle owner, the rotation wrecker shall return personal  
26 property stored in or with a vehicle, whether or not the towing, repair, or storage fee on the vehicle has  
27 been or will be paid. Personal property, for purposes of this provision, includes any goods, wares,  
28 freight, or any other property having any value whatsoever other than the functioning vehicle itself.

29 (24) The wrecker service shall tow disabled vehicles to any destination requested by the vehicle owner or  
30 other person with apparent authority, authority after financial obligations have been finalized.

31 (25) Unless notified by the Patrol that the vehicle is being preserved by the Patrol as evidence, the wrecker  
32 service shall allow insurance adjusters access to and allow inspection of the vehicle at any time during  
33 the wrecker service's normal working hours.

34 (26) Being called by the Patrol, Patrol to tow a vehicle, vehicle does not create a contract with or obligation  
35 on the part of the Patrol or Patrol personnel to pay any fee or towing charge except when towing a  
36 vehicle owned by the Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that

1 ~~the Patrol wrongfully authorized the tow and orders the Patrol to pay transportation and storage fees.~~  
2 ~~fees when; when towing a vehicle:~~

3 (A) ~~owned by the Patrol;~~

4 (B) ~~that is later forfeited to the Patrol; or~~

5 (C) ~~that a court determines that the Patrol wrongfully authorized the tow and orders the Patrol~~  
6 ~~to pay transportation and storage fees.~~

7 (27) Being placed on the ~~Patrol Rotation Wrecker List~~ ~~rotation wrecker list~~ does not guarantee a particular  
8 number or quantity of calls, does not guarantee an equivalent number of calls to every wrecker service  
9 on the rotation wrecker list, nor ~~does it~~ entitle any wrecker service to any compensation as a  
10 consequence for not being called in accordance with the list or when removed from the rotation  
11 wrecker list.

12 (28) The failure to respond to a call by the Patrol shall result in the wrecker service being placed at the  
13 bottom of any rotation wrecker list and the wrecker service shall then be "automatically by-passed"  
14 when that wrecker service comes up for its next rotation call.

15 (29) The District First Sergeant or ~~his~~ ~~his or her~~ designee shall subject rotation wreckers and facilities to  
16 inspections during normal business hours.

17 (30) A rotation wrecker service, upon accepting a call for service from the Patrol, ~~must~~ ~~shall~~ use its  
18 wrecker. Wrecker ~~companies~~ ~~services~~ shall not refer a call to another wrecker company or substitute  
19 for each other.

20 (31) If a rotation wrecker service ~~moves~~ ~~plans to move~~ its business location ~~or has a change of address,~~ the  
21 owner ~~of the wrecker service must notify the District First Sergeant of the new address or location.~~  
22 ~~Notification shall be made in writing, no later than ten days prior to the projected move. shall send~~  
23 ~~written notification of the new address to the District First Sergeant not less than 10 days prior to the~~  
24 ~~move.~~ The wrecker service ~~is~~ ~~shall~~ not ~~entitled to~~ receive rotation calls prior to inspection of the new  
25 facility.

26 (32) A wrecker service may dispatch either a wrecker or a ~~car carrier~~ ~~"rollback"~~ ~~rollback~~ in response to a  
27 Patrol rotation wrecker call, except where the wrecker service is advised that a particular type of  
28 recovery vehicle is needed due to existing circumstances.

29 (33) A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor of  
30 alcohol on ~~his/her~~ ~~his or her~~ breath or while under the influence of alcohol, ~~drugs~~ ~~drugs,~~ or any  
31 impairing substance.

32 (34) A wrecker service shall have in effect a valid hook or cargo insurance policy issued by a company  
33 authorized to do business in the State of North Carolina in the amount of fifty thousand dollars  
34 (\$50,000) for each small wrecker and one hundred fifty thousand dollars (\$150,000) for each large  
35 wrecker or as otherwise required by Federal regulation, whichever is greater. In addition, each  
36 wrecker service shall have a garage keeper's insurance policy from an insurance company authorized

1 to do business in the State of North Carolina covering towed vehicles in the amount of one hundred  
2 thousand dollars (\$100,000).

3 (b) The District First Sergeant shall conduct an investigation of each wrecker service desiring that applied to be placed  
4 on the ~~Patrol Rotation Wrecker List~~ rotation wrecker list and determine if the wrecker service meets the requirements set  
5 forth in this Rule. If the District First Sergeant determines that a wrecker service fails to satisfy one or more of the  
6 requirements set forth in this Rule, the First Sergeant shall notify the wrecker service owner of the reason(s) for refusing  
7 to place it on the rotation wrecker list. Any wrecker service that fails to comply with the requirements of this Rule may  
8 shall be removed from the rotation wrecker list.

9 (c) The Troop Commander or designee shall ensure that a wrecker service will only shall be included only once on each  
10 rotation wrecker list.

11 (d) If the Troop Commander or designee chooses to use a contract, zone, or other system administered by a local agency,  
12 the local agency rules govern the system.

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

16  
17 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*  
18 *Temporary Adoption Eff. June 9, 2000;*  
19 *Eff. April 1, 2001;*  
20 *Amended Eff. April 1, 2010; July 18, 2008;*  
21 *Transferred from 14A NCAC 09H .0321 Eff. June 1, 2013.*  
22 *Amended Eff. July 1, 2014.*