

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:

- X 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:

The Commission objected to this Rule at its June 18, 2014 meeting, finding it was unclear and the agency lacked statutory authority for specific requirements within the Rule.

The agency is still diligently working with Commission staff and its regulated public to submit a rewritten rule to satisfy the Commission's objections. The agency believes it will be able to submit a rewritten rule for the September 2014 meeting.

Further, in a letter dated June 23, 2014, pursuant to G.S. 150B-21.9, the Commission asked the Office of State Budget Management to determine whether the Rule creates a substantial economic impact. At this time, the Office of State Budget Management has not sent its formal response, but the staff of that agency believes it will be available for the Commission's September meeting.

Therefore, there is no action for the Commission to take at the August meeting.

Amanda J. Reeder
Commission Counsel
Issued August 18, 2014



Letter to OSBM, requesting review pursuant to G.S. 150B-21.9 to determine if the rule creates a substantial economic impact.

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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

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

June 23, 2014

Anca Grozav
Office of State Budget and Management
Sent via email to anca.grozav@osbm.nc.gov

RE: Rule 14B NCAC 07A .0116

Ms. Grozav:

At its June 18, 2014 meeting, the Rules Review Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the above-referenced Rule has a substantial economic impact and therefore requires a fiscal note. Specifically, in the amended language in Subparagraph (a)(3) of the Rule, the Department of Public Safety is now requiring wrecker services to designate a wrecker for sole use in the specific county in order to remain on the county's rotation wrecker list maintained by the Department through the State Highway Patrol.

At the Commission meeting, a member of the public stated that the cost of complying with the Rule would cost her company approximately \$400,000 to purchase equipment. The individual stated that failure to comply with the Rule would result in a loss of revenue in excess of \$200,000 per year. In addition, the Commission received multiple letters of objection to this Rule that stated that if the Rule becomes effective, the individuals will lose their employment with a wrecker service. Commission staff shared those letters with you before the meeting via email on June 10, 2014.

A response to this request pursuant to G.S. 150B-21.9 will assist the Commission in determining whether the agency adopted the Rule in accordance with the Administrative Procedure Act.

The Commission objected to the Rule at the June meeting; as such, the Rule will remain under the Commission's review until the agency takes action pursuant to G.S. 150B-21.12. The Commission is aware that there are multiple demands on your time, and respectfully requests a response as soon as you are able to do so.

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Thank you for your assistance in this matter. Please let me know if I can be of any assistance or if you desire further information regarding the Commission's decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda J. Reeder". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Amanda J. Reeder
Commission Counsel

cc: Joe Dugdale, Counsel, Department of Public Safety
Cheryl Walker, Rulemaking Coordinator, Department of Public Safety



Letter to the agency,
notifying it of the
Commission's objection

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
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June 19, 2014

Cheryl Walker
NC Department of Public Safety
Sent via email to Cheryl.Walker@ncdps.gov

Re: Objection to Rule 14B NCAC 07A .0116

Dear Ms. Walker:

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

The Commission found the Rule is ambiguous and exceeds statutory authority, as stated in the Staff Opinion issued by the undersigned counsel on June 16, 2014. A copy of the Staff Opinion was sent to your agency on the same date; it is also enclosed in this correspondence for your convenience.

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

Sincerely,

Amanda J. Reeder
Commission Counsel

cc: Joe Dugdale, Counsel, Department of Public Safety

Enclosure

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AGENCY: Department of Public Safety/ State Highway Patrol

RULE CITATION: 14B NCAC 07A .0116

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:

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

Amanda J. Reeder
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.

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).)

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

2

3 **14B NCAC 07A .0116 ROTATION WRECKER SERVICE REGULATIONS**

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

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

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

22 (3) Wrecker service facilities and equipment, including vehicles, office, telephone lines, office equipment
23 and storage facilities may not be shared with or otherwise located on the property of another wrecker
24 service and must be independently insured. Vehicles towed at the request of the Patrol must be placed
25 in the storage owned and operated by the wrecker service on the rotation list. A storage facility for a
26 small wrecker shall be located within the assigned zone. For wrecker services with large wreckers the
27 storage facility for vehicles towed with the large wrecker may be located anywhere within the county.
28 To be listed on the large rotation wrecker list, a wrecker service must have at least one large ~~wrecker.~~
29 wrecker located within the county and designated for the sole use in that county. To be listed on the
30 small rotation wrecker list, a wrecker service must have at least one small ~~wrecker.~~ wrecker located
31 within the assigned zone and designated for the sole use in that assigned zone. A wrecker may not be
32 on more than one Patrol Rotation list. In any case where husband and wife or other family members
33 are engaged in the business of towing vehicles and desire to list each business separately on the Patrol
34 wrecker rotation list, the wrecker service shall establish that it is a separate legal entity for every
35 purpose, including federal and state tax purposes. Nothing in this rule precludes a wrecker service
36 from responding to private calls outside the assigned zone or county.

- 1 (4) Each wrecker must be equipped with legally required lighting and other safety equipment to protect the
2 public and the equipment must be in good working order.
- 3 (5) Each wrecker on the Patrol Rotation Wrecker List must be equipped with the equipment required on
4 the application list and the equipment must, at all times, be operating properly.
- 5 (6) The wrecker service operator must remove all debris, other than hazardous materials, from the
6 highway and the right-of-way prior to leaving the incident/collision scene. This service must be
7 completed as a part of the required rotation service and shall not be charged as an extra service
8 provided. Hazardous materials consist of those materials and amounts that are required by law to be
9 handled by local Hazardous Materials Teams. Hazardous Materials or road clean-up other than debris
10 may be billed in quarter hour increments after the first hour on scene.
- 11 (7) The wrecker service must be available to the Patrol for rotation service on a 24-hour per day basis and
12 accept collect calls (if applicable) from the Patrol. Calls for service must not go unanswered for any
13 reason.
- 14 (8) The wrecker service shall respond, under normal conditions, in a timely manner. Failure to respond in
15 a timely manner may result in a second rotation wrecker being requested. If the second wrecker is
16 requested before the arrival of the first rotation wrecker, the initial requested wrecker shall forfeit the
17 call and shall immediately leave the collision/incident scene.
- 18 (9) For Patrol-involved incidents, the wrecker service shall respond only upon request from Patrol
19 authority or at the request of the person in apparent control of the vehicle to be towed.
- 20 (10) The wrecker service, when responding to rotation wrecker calls, shall charge reasonable fees for
21 services rendered. Towing, storage and related fees charged for rotation services may not exceed the
22 wrecker service's charges for nonrotation service calls that provide the same service, labor, and
23 conditions. Wrecker services may secure assistance from another rotation wrecker service when
24 necessary, but only one bill shall be presented to the owner or operator of the vehicle for the work
25 performed. A price list for recovery, towing and storage shall be established and kept on file at the
26 place of business. A price list for all small wreckers and rollbacks with a GVWR of less than 26,001
27 pounds shall be furnished, in writing on a Patrol form, to the District First Sergeant upon request. The
28 District First Sergeant shall approve all price lists submitted within their respective District if they are
29 determined to be reasonable, consistent with fees charged by other Highway Patrol rotation wrecker
30 services within the District and do not exceed the wrecker service's charges for nonrotation service
31 calls that provide the same service, labor, and conditions. The District First Sergeant shall retain a
32 copy of all approved price lists in the appropriate wrecker service file located in the district office.
33 Storage fees shall not begin to accrue until the next calendar day following the initial towing of the
34 vehicle. Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on
35 weekends may not exceed the towing fees for recovery and transport of vehicles charged during
36 regular "Business Hours" by more than 10 percent. A mileage fee may only be charged if the customer
37 requests the vehicle to be towed to a location outside of the assigned wrecker zone or county. If a

1 mileage fee is warranted, the wrecker driver shall inform the owner, operator or legal possessor of the
2 vehicle of any additional charge for mileage prior to towing. Each Troop Commander shall designate
3 a Troop Lieutenant to serve as a Rotation Wrecker Liaison for their respective Troop. The individual
4 price list for each respective wrecker service shall be made available to customers upon request.
5 Copies of the approved price list shall be maintained within each wrecker and shall be given to the
6 owner, operator or legal possessor of a vehicle being towed as a result of a Highway Patrol rotation
7 wrecker call by the wrecker driver, if the owner, operator or legal possessor of the vehicle being towed
8 is present at the scene. Prices indicated on this form shall be the maximum amount that will be
9 charged for a particular service; however, this does not prevent charges of a lesser amount for said
10 service.

11 (11) All wrecker operators shall have a valid driver's license for the type of vehicles driven; a limited
12 driving privilege is not allowed.

13 (12) Wrecker owners, operators and employees shall not be abusive, disrespectful, or use profane language
14 when dealing with the public or any member of the Patrol and shall cooperate at all times with
15 members of the Patrol.

16 (13) The wrecker service shall adhere to all Federal and State laws and local ordinances and regulations
17 related to registration and operation of wrecker service vehicles and have insurance as required by
18 G.S. 20-309(a).

19 (14) The wrecker service shall employ only wrecker operators who demonstrate an ability to perform
20 required services in a safe, timely, efficient and courteous manner and who satisfy all of the
21 requirements for wrecker drivers established or referenced ~~herein~~ herein; and shall not allow
22 unauthorized passengers when responding to Highway Patrol rotation calls.

23 (15) The wrecker service must notify the District First Sergeant of any insurance lapse or change. Wrecker
24 Services shall ensure the NC Highway Patrol is listed as "Certificate Holder" on the Certificate of
25 Liability Insurance, in c/o the District First Sergeant, complete with the current mailing address for the
26 Highway Patrol District Office tasked with the responsibility for ensuring compliance with Highway
27 Patrol policy regarding the respective wrecker service.

28 (16) The wrecker service shall notify the Patrol whenever the wrecker service is unable to respond to calls.

29 (17) Notification of rotation wrecker calls shall be made to the owner/operator or employee of the wrecker
30 service. Notification shall not be made to any answering service, pager or answering machine.

31 (18) Wrecker service vehicles shall be marked on each side by printing the wrecker service name, city and
32 state in at least three inch letters. No magnetic or stick-on signs shall be used. Decals are permissible.
33 The wrecker service operator shall provide a business card to the investigating officer or person in
34 apparent control of the vehicle before leaving the scene.

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

- 1 (20) Wrecker Services shall secure all personal property at the scene of a collision to the extent possible,
2 and preserve personal property in a vehicle which is about to be towed.
- 3 (21) Upon application to the Patrol Rotation Wrecker List, the owner shall ensure that the owner and each
4 wrecker driver has not been convicted of, pled guilty to, or received a prayer for judgment continued
5 (PJC):
- 6 (A) Within the last five years of:
- 7 (i) A first offense under G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A or G.S. 20-
8 138.2B;
- 9 (ii) Any misdemeanor involving an assault, an affray, disorderly conduct, being drunk
10 and disruptive, larceny or fraud;
- 11 (iii) Misdemeanor Speeding to Elude Arrest; or
- 12 (iv) A violation of G.S. 14-223, Resist, Obstruct, Delay.
- 13 (B) Within the last ten years of:
- 14 (i) Two or more offenses in violation of G.S. 20-138.1, G.S. 20-138.2, G.S. 20-138.2A
15 or G.S. 20-138.2B;
- 16 (ii) Felony speeding to elude arrest; or
- 17 (iii) Any Class F, G, H or I felony involving sexual assault, assault, affray, disorderly
18 conduct, being drunk and disruptive, fraud, larceny, misappropriation of property or
19 embezzlement.
- 20 (C) At any time of:
- 21 (i) Class A, B1, B2, C, D, or E felonies;
- 22 (ii) Any violation of G.S. 14-34.2, Assault with deadly weapon on a government officer
23 or employee, 14-34.5, Assault with firearm on a law enforcement officer; or G.S.
24 14-34.7, Assault on law enforcement officer inflicting injury;
- 25 (iii) Any violation of G.S. 20-138.5, Habitual DWI. For convictions occurring in
26 federal court, another state or country or for North Carolina convictions for felonies
27 which were not assigned a class at the time of conviction, the North Carolina
28 offense which is substantially similar to the federal or out of state conviction or the
29 class of felony which is substantially similar to the North Carolina felony shall be
30 used to determine whether the owner or driver is eligible. Any question from the
31 owner of a Wrecker Service concerning a criminal record shall be discussed with
32 the First Sergeant or his designee; or
- 33 (iv) Three felony offenses in any federal or state court or combination thereof. The
34 commission of a felony is not considered to be a second or subsequent felony unless
35 it is committed after the conviction or guilty plea to the previous felony.
- 36 (22) Upon employment or upon the request of the District First Sergeant, the owner of the wrecker service
37 shall supply the Patrol with the full name, current address, date of birth, and photo copy of drivers

1 license, valid work VISA, or other INS Documentation for all wrecker drivers and owner(s) in order
2 for the Patrol to obtain criminal history information. The Wrecker Service shall also provide a
3 certified copy of the driving record for the owner and each driver authorized to drive on rotation upon
4 initial application, upon the hiring of a driver if hired after initial application, and at the time of
5 periodic wrecker inspections. The wrecker service shall inform the District First Sergeant if the owner
6 or a driver is charged with, convicted of, enters a plea of guilty or no contest to, or receives a prayer
7 for judgment continued (PJC) for any of the crimes listed in Subparagraph (21) of this Paragraph.
8 Upon notification that a driver or owner was charged with any of the crimes listed in this Rule, the
9 Patrol may conduct an independent administrative investigation. Willful failure to notify the District
10 First Sergeant as required herein shall result in removal from the rotation wrecker service for a
11 minimum of 12 months.

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

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

18 (25) Unless the vehicle is being preserved by the Patrol as evidence, the wrecker service shall allow
19 insurance adjusters access to and allow inspection of the vehicle at any time during normal working
20 hours.

21 (26) Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of
22 Patrol or Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the
23 Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that the Patrol wrongfully
24 authorized the tow and orders the Patrol to pay transportation and storage fees.

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

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

32 (29) The District First Sergeant or his designee shall subject rotation wreckers and facilities to inspections
33 during normal business hours.

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

36 (31) If a rotation wrecker service moves its business location or has a change of address, the owner of the
37 wrecker service must notify the District First Sergeant of the new address or location. Notification

1 shall be made in writing, no later than ten days prior to the projected move. The wrecker service is not
2 entitled to receive rotation calls prior to inspection of the new facility.

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

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

8 (34) A wrecker service shall have in effect a valid hook or cargo insurance policy issued by a company
9 authorized to do business in the State of North Carolina in the amount of fifty thousand dollars
10 (\$50,000) for each small wrecker and one hundred fifty thousand dollars (\$150,000) for each large
11 wrecker or as otherwise required by Federal regulation, whichever is greater. In addition, each
12 wrecker service shall have a garage keeper's insurance policy from an insurance company authorized
13 to do business in the State of North Carolina covering towed vehicles in the amount of one hundred
14 thousand dollars (\$100,000).

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

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

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

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

28
29 *History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*
30 *Temporary Adoption Eff. June 9, 2000;*
31 *Eff. April 1, 2001;*
32 *Amended Eff. April 1, 2010; July 18, 2008;*
33 *Transferred from 14A NCAC 09H .0321 Eff. June 1, 2013.*
34 *Amended Eff. July 1, 2014.*