

EXECUTIVE ORDER NO.

2023-33

WHEREAS, certain areas in the southeastern region of the United States, including the State of North Carolina, are experiencing or are anticipated to experience hazardous weather conditions in connection with Tropical Storm Ophelia, which was previously designated as Potential Tropical Cyclone No. 16; and

WHEREAS, the Federal Motor Carrier Safety Regulations limit, *inter alia*, the hours of service for operators of commercial vehicles, 49 C.F.R. §§ 390 *et seq.*, and federal law prescribes certain weight limitations for vehicles on interstate highways, 23 U.S.C. § 127; and

WHEREAS, pursuant to 49 C.F.R. § 390.23, the governor of a state may suspend certain federal rules and regulations for commercial vehicles responding to an emergency if the governor determines that an emergency condition exists; and

WHEREAS, section 56-5-70(B) of the South Carolina Code of Laws provides that “[w]hen an emergency is declared which triggers relief from regulations pursuant to 49 C.F.R. [§] 390.23 in North Carolina or Georgia, an emergency, as referenced in the regional emergency provision of 49 C.F.R. [§] 390.23(a)(1)(A), must be declared in this State by the Governor”; and

WHEREAS, on September 22, 2023, the Governor of North Carolina issued Executive Order No. 288, declaring that an emergency exists in the State of North Carolina and temporarily suspending certain motor vehicle and transportation regulations in connection with the aforementioned weather conditions; and

WHEREAS, the prompt restoration of utility services and the uninterrupted transportation of essential goods, equipment, and products to or from the impacted areas are critical to the safety and welfare of the people of North Carolina and those in other States; and

WHEREAS, for the aforementioned and other reasons, the undersigned has determined that it is necessary and appropriate for the State of South Carolina to support current or future emergency management, response, recovery, and relief efforts in the State of North Carolina and

in neighboring States by providing additional regulatory flexibility to facilitate the operation of critical transportation services.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and of these United States and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Transportation Waivers Due to Tropical Storm Ophelia

A. I hereby determine and declare that the existing and anticipated threats, circumstances, or conditions described herein associated with Tropical Storm Ophelia and the potential impacts related to the same constitute an emergency pursuant to 49 C.F.R. § 390.23 for purposes of suspending certain rules and regulations, as set forth below, for commercial vehicles and operators of commercial vehicles in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws.

B. I hereby authorize and direct the South Carolina Department of Transportation (“DOT”) and the South Carolina Department of Public Safety (“DPS”), including the State Transport Police, as needed, to waive or suspend application and enforcement of the requisite state and federal rules and regulations pertaining to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of any emergency declaration issued by the Federal Motor Carrier Safety Administration (“FMCSA”); responding or providing direct assistance, as defined by 49 C.F.R. § 390.5, to any emergency conditions in this State or any declared emergencies in the State of North Carolina or in other States in connection with the forecasted severe weather associated with Tropical Storm Ophelia or the anticipated impacts thereof; providing direct assistance to supplement state and local efforts and capabilities related to the same; or otherwise assisting with the existing or anticipated threats and circumstances associated with Tropical Storm Ophelia, to include commercial vehicles and operators of commercial vehicles transporting equipment, materials, or persons necessary for the restoration of utility services or debris removal and those transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum, and other refined petroleum products and related equipment or assets), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips).

C. I hereby authorize DOT and DPS, as applicable, to apply for or request any additional federal regulatory relief, waivers, permits, or other appropriate flexibility deemed necessary, whether pertaining to the transportation of overweight loads on interstate highways or otherwise, on behalf of the State of South Carolina and to promptly implement the same without the need for further Orders.

D. This Section shall not be construed to require or allow an ill or fatigued driver to operate a commercial motor vehicle. In accordance with 49 C.F.R. § 390.23, “a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least ten (10) consecutive hours off duty before the driver is required to return to such terminal or location.” Likewise, this Section shall not be construed as an exemption from the applicable controlled

substances and alcohol use and testing requirements in 49 C.F.R. § 382, the commercial driver's license requirements in 49 C.F.R. § 383, or the financial responsibility requirements in 49 C.F.R. § 387, and it shall not be interpreted to relieve compliance with any other state or federal statute, rule, order, regulation, restriction, or other legal requirement not specifically waived, suspended, or addressed herein or addressed in any additional or supplemental guidance, rules, regulations, restrictions, or clarifications issued, provided, or promulgated by DOT or DPS.

E. Subject to any guidance, rules, regulations, restrictions, or clarification issued, provided, or promulgated, or which may be issued, provided, or promulgated, by DOT or DPS, as authorized herein or as otherwise provided by law, and notwithstanding the waiver or suspension of certain rules and regulations as set forth above, drivers in South Carolina are still subject to the following state requirements to ensure public safety:

1. Weight, height, length, and width for any such vehicle with a minimum of five (5) weight bearing axles on highways or roadways maintained by the State of South Carolina shall not exceed, for continuous travel on all non-interstates, United States, and South Carolina designated routes, maximum dimensions of twelve (12) feet in width (except as provided in Paragraph 5 below), thirteen (13) feet six (6) inches in height, and ninety thousand (90,000) pounds in gross weight.
2. Posted bridges may not be crossed.
3. All vehicles shall be operated in a safe manner, shall not damage the highways nor unduly interfere with highway traffic, shall maintain the required limits of insurance, and shall be clearly identified as a utility vehicle or shall provide appropriate documentation indicating they are responding to the emergency.
4. Except as provided below, any vehicles that exceed the above dimensions, weights, or both, must obtain a permit with defined routes from DOT's Oversize/Overweight Permit ("OSOW") Office. To order a permit, please call (803) 737-6769 during normal business hours, 8:30 a.m. – 5:00 p.m., or (803) 206-9566 after normal business hours.
5. In accordance with federal law, vehicles traveling on non-interstate routes within the National Network may not exceed a width of 102 inches or 8.6 feet without a special permit. A special permit for width on the National Network is available on DOT's OSOW website, and a list of routes on the National Network is set forth in Appendix A to 23 C.F.R. Part 658.
6. Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws and OSOW guidelines relating to oversize/overweight loads operating on South Carolina roadways.

F. I hereby authorize DOT and DPS to issue, provide, or promulgate any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application, implementation, or enforcement of this Section, or to otherwise provide clarification regarding the same, without the need for further Orders.

Section 2. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. This Order shall be implemented consistent with and to the maximum extent provided by applicable law and shall be subject to the availability of appropriations. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to impair, impede, or otherwise affect the authority granted by law to an executive agency or department, or the officials or head thereof, including the undersigned.

D. I hereby expressly authorize the Office of the Governor to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Order or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

E. This Order is effective immediately and shall remain in effect for thirty (30) days or until the declared emergency in the State of North Carolina is terminated, whichever is less, in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, unless otherwise modified, amended, or rescinded by subsequent Order.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 22nd DAY
OF SEPTEMBER, 2023.**

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State