

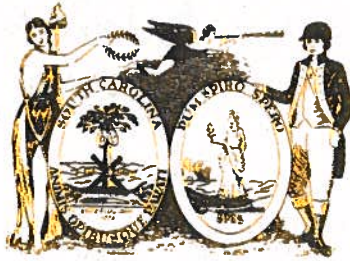
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Executive order no. 2022-04

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State of South Carolina

Executive Department



FILED

JAN 14 2022

Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2022-04

WHEREAS, the National Weather Service has determined from the latest forecast models that a severe winter storm may impact the southeastern region of the United States and has issued a winter storm watch for portions of the State of South Carolina; and

WHEREAS, according to preliminary forecasts, the aforementioned storm system will impact portions of the State of South Carolina beginning on January 15, 2022, and may cause significant damage to public and private property and disrupt essential utility services and systems throughout the State of South Carolina; and

WHEREAS, the undersigned has been advised that the forecasted severe weather event and anticipated impacts represent a significant threat to the State of South Carolina, which requires that the State proactively prepare for the same and take timely precautions to protect and preserve property, critical infrastructure, communities, and the general safety and welfare of the people of this State; and

WHEREAS, in light of the foregoing circumstances, the undersigned has determined that it is necessary and appropriate to take additional proactive action to expedite ongoing preparations and to facilitate future emergency management, response, recovery, and relief efforts in connection with the forecasted severe weather event and the anticipated impacts associated with the same; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is authorized pursuant to section 25-1-440 of the South Carolina Code of Laws, as amended, to “declare a state of emergency for all or part of the State if he finds a disaster . . . has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation”; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is “responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility,” to include issuing, amending, and rescinding “emergency proclamations and regulations,” which shall “have the force and effect of law as long as the emergency exists”; and

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WHEREAS, in accordance with section 56-5-70(A) of the South Carolina Code of Laws, as amended, during a declared emergency and in the course of responding to the emergency, requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility vehicles travelling on non-interstate routes for up to one hundred twenty (120) days, provided that such vehicles do not exceed a gross weight of ninety thousand (90,000) pounds and do not exceed a width of twelve (12) feet, and requirements relating to time of service suspensions for commercial and utility vehicles travelling on interstate and non-interstate routes are suspended for up to thirty (30) days, unless extended for additional periods pursuant to the Federal Motor Carrier Safety Regulations; 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, as amended, 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, due to the anticipated severe winter weather event, the Governor of North Carolina issued Executive Order No. 247 on January 13, 2022, declaring that an emergency exists in the State of North Carolina and temporarily waiving or suspending certain motor vehicle regulations; and

WHEREAS, the undersigned has determined that 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 South Carolina and neighboring States, and it is necessary and appropriate for the State of South Carolina to expedite ongoing preparations and support future emergency management, response, recovery, and relief efforts by facilitating the operation of critical transportation services; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned’s responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the forecasted severe weather event and anticipated impacts constitute an emergency for the State of South Carolina and that extraordinary measures are necessary to cope with the same.

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 the powers conferred upon me therein, I hereby declare that a State of Emergency exists in South Carolina. Accordingly, for the foregoing reasons and in accordance with the cited authorities and other applicable law, I further order and direct as follows:

Section 1. Emergency Measures

A. I hereby activate the South Carolina Emergency Operations Plan (“Plan”) and direct that the Plan be further placed into effect and that all prudent preparations be taken at the individual, local, and state levels to prepare for and respond to the forecasted severe weather event and the impacts associated with the same. I further direct the utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

B. I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and direct the Adjutant General to issue the requisite supplemental orders as he deems necessary and appropriate. I further order the activation of South Carolina National Guard personnel and the utilization of appropriate equipment at the discretion of the Adjutant General, and in coordination with the Director of the South Carolina Emergency Management Division (“EMD”), to take necessary and prudent actions to assist the people of this State. I authorize Dual Status Command, as necessary, to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status).

C. I hereby order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina shall be suspended, and I direct the South Carolina Law Enforcement Division (“SLED”) to initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

D. I hereby authorize and direct any agency within the undersigned’s Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or “suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,” in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law.

E. I hereby declare that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, are in effect and shall remain in effect for the duration of this State of Emergency.

Section 2. Transportation Waivers

A. I hereby determine and declare that the existing and anticipated threats and circumstances described herein associated with the forecasted severe winter storm and the 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 the FMCSA’s November 29, 2021 Extension of the Modified Emergency Declaration No. 2020-002 Under 49 C.F.R. § 390.25, or any future amendments or supplements thereto; providing direct assistance as defined by 49 C.F.R. § 390.5 to the declared emergency in this State or any declared emergency in the State of Georgia or the State of North Carolina in connection with the severe weather event or providing direct assistance to supplement state and local efforts and capabilities related to the same, 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, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips). I further authorize and direct DOT and DPS to issue, provide, or promulgate any necessary and appropriate clarification, guidance, rules, regulations, or restrictions regarding the application of this Section.

C. 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.

D. 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 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, 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. Any vehicles that exceed the above dimensions, weights, or both, must obtain a permit with defined routes from the South Carolina Department of Transportation Oversized/Overweight Permit 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. Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws relating to oversized/overweight loads operating on South Carolina roadways.

E. 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.

F. I hereby authorize and direct DPS, including the South Carolina Highway Patrol, as needed, to waive or suspend, in whole or in part, operation of the requisite rules and regulations, to include Regulation 38–600 of the South Carolina Code of Regulations, pertaining to the use of the South Carolina Highway Patrol Wrecker Rotation List.

G. This Section is effective immediately and shall remain in effect for thirty (30) days or until any declared emergency in the State of North Carolina or the State of Georgia 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.

Section 3. General Provisions

A. The provisions of this Order, or any subsequent Orders issued in connection with the State of Emergency declared herein, shall not be construed to modify, amend, or otherwise alter the provisions of Executive Order No. 2021-44, or any prior Orders addressed therein or any future issued in connection therewith, which shall remain in full force and effect in accordance with their respective terms unless and until otherwise modified, amended, or rescinded by subsequent Order.

B. 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.

C. 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

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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.

D. 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.

E. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

F. 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.

G. This Order is effective immediately and shall remain in effect for a period of fifteen (15) days unless otherwise expressly stated herein or modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.



GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 14th DAY OF JANUARY, 2022.

A handwritten signature in blue ink, reading "Henry McMaster", is written over a horizontal line.

HENRY MCMASTER
Governor

ATTEST:

A handwritten signature in blue ink, reading "Mark Hammond", is written over a horizontal line.

MARK HAMMOND
Secretary of State