



State of North Carolina

ROY COOPER
GOVERNOR

July 15, 2022

EXECUTIVE ORDER NO. 265

EXTENDING TRANSPORTATION-RELATED PROVISIONS IN PREVIOUS EXECUTIVE ORDERS AND FACILITATING THE TRANSPORTATION OF BABY FORMULA IN THE STATE

WHEREAS, on March 10, 2020, the undersigned issued Exec. Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purposes of protecting the health, safety and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, 228-232, 234, 236, 238-240, 244-245, 252-253, 256-257 and 261; and

WHEREAS, on March 13, 2020, in response to the emerging COVID-19 pandemic, and to facilitate the transportation of essential emergency relief supplies, the Federal Motor Carrier Safety Administration ("FMCSA") issued Emergency Declaration No. 2020-02 ("FMCSA

Emergency Declaration”), which provided exemptions from certain Federal Motor Carrier Safety Regulations; and

WHEREAS, Executive Order No. 116 included suspensions of related state regulations; and

WHEREAS, the FMCSA has subsequently made several modifications to the FMCSA Emergency Declaration to expand the categories of goods, equipment and persons covered by the declaration to respond to the changing needs of emergency relief; and

WHEREAS, the FMCSA has determined that the production and transport of fuels, including gasoline, diesel, jet fuel, and others, is significantly impacted by the COVID-19 emergency; and

WHEREAS, on May 27, 2022, the FMCSA extended the FMCSA Emergency Declaration through August 31, 2022; and

WHEREAS, as of the date of this Executive Order, due to a national shortage of certain specialty baby formulas, families across the United States are experiencing difficulty procuring infant formula; and

WHEREAS, on May 18, 2022, the President of the United States invoked the Defense Production Act to increase baby formula production and require suppliers to direct ingredients to baby formula manufacturers as a priority; and

WHEREAS, on May 23, 2022, the FMCSA issued Emergency Declaration No. 2022-005, effective through June 30, 2022, to provide regulatory relief for commercial motor vehicle operations that are responding to product recall and unplanned closure of a key manufacturing facility of baby formula by waiving certain federal regulations governing the maximum hours of service for a commercial motor vehicle operator; and

WHEREAS, on June 30, 2022, the FMCSA extended Emergency Declaration No. 2022-005 through July 31, 2022; and

WHEREAS, Emergency Declaration No. 2022-005, as extended, provides necessary relief by addressing nationwide emergency conditions creating a need for immediate transportation of baby formula, its ingredients for production, and baby formula containers and packaging to manufacturers, distributors, and stores; and

WHEREAS, the unencumbered transportation of baby formula and its ingredients to manufacturers, distributors, and stores is an essential need of the public and any interruption in the delivery and stocking of these items threatens public health; and

WHEREAS, on July 11, 2022, the undersigned announced that the State of Emergency declared in response to COVID-19 will be lifted on August 15, 2022; and

WHEREAS, the undersigned has determined that provisions in Executive Order No. 116, as amended herein, need to remain in place through the termination of the State of the Emergency to allow for the continued expedited movement of vehicles in the state to facilitate the delivery of baby formula, as well as essential supplies necessary to wind-down certain COVID-19 relief efforts in the state; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.70(b), allows the undersigned to declare by executive order that the health, safety, or economic well-being of persons or property in this state require that the maximum hours of service prescribed by the Department of Public Safety (“DPS”) pursuant to N.C. Gen. Stat. § 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services; and

WHEREAS, for the reasons described above, the undersigned has made the determinations required pursuant to N.C. Gen. Stat. § 166A-19.70(b).

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Extension

For the reasons and pursuant to the authority set forth above and set forth in the relevant Executive Orders referenced below, the undersigned orders as follows:

A. Executive Order No. 116.

1. Section 5 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119, Section 1 of Executive Order No. 146, Section 1 of Executive Order No. 150, Section 1 of Executive Order No. 157, and Section 1 of Executive Order No. 192, and extended by Executive Order Nos. 133, 140, 146, 150, 157, 164, 197, 217, 230, 239, 252, and 261, and reissued in Executive Order No. 192) is amended herein and extended pursuant to N.C. Gen. Stat. § 166A-19.70(b) through the end of the calendar day on August 15, 2022.

Section 5 of Executive Order No. 116 is amended to read as follows:

In order to ensure adequacy and location of supplies and resources to respond to COVID-19 or to fuel or baby formula shortages, DPS, in conjunction with the North Carolina Department of Transportation (“DOT”), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381 subject to the restrictions and limitations in this Executive Order, if the driver is transporting (1) livestock and livestock feed; (2) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; (3) vaccines, constituent products, and medical supplies and equipment including ancillary supplies/kits for the administration of vaccines, related to the prevention of COVID-19; (4) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; (5) food, paper products and other groceries for emergency restocking of distribution centers or stores; (6) gasoline, diesel, jet fuel, ethyl alcohol, and heating fuel including propane, natural gas, and heating oil; (7) supplies to assist individuals impacted by the consequences of the COVID-19 pandemic (e.g., building materials for individuals displaced or otherwise impacted as a result of the emergency); or (8) baby formula, baby formula containers and packaging, and the ingredients for baby formula production, including but not limited to corn syrup, casein, hydrolyzed protein, and whey. Direct assistance does not include non-emergency transportation of qualifying commodities or routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of this Executive Order.

Section 2. Enforcement

The North Carolina State Highway Patrol shall enforce the conditions set forth in this Executive Order in a manner that does not endanger North Carolina motorists.

Section 3. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 4. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect through the end of the calendar day on August 15, 2022, unless repealed, replaced, or rescinded by another applicable Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 15th day of July in the year of our Lord two thousand and twenty-two.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

