



State of North Carolina

ROY COOPER
GOVERNOR

September 22, 2023

EXECUTIVE ORDER NO. 288

DECLARATION OF A STATE OF EMERGENCY AND TEMPORARY WAIVER AND SUSPENSION OF MOTOR VEHICLE REGULATIONS

WHEREAS, Potential Tropical Cyclone Sixteen (“PTC Sixteen”) will likely cause significant impacts to the State of North Carolina; and

WHEREAS, PTC Sixteen could have a significant impact on public and private property and could seriously disrupt essential utility services and systems; and

WHEREAS, the anticipated impacts from PTC Sixteen constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(20); and

WHEREAS, certain measures are necessary to ensure the protection and safety of North Carolina residents and to coordinate the emergency response among state and local entities and officials; and

WHEREAS, N.C. Gen. Stat. § 166A-19.1(3) provides that it is the responsibility of the undersigned, state agencies, and local governments to “provide for the rapid and orderly rehabilitation of persons and restoration of property”; and

WHEREAS, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to “provide for cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states and with other private and quasi-official organizations”; and

WHEREAS, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the undersigned to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

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

WHEREAS, under N.C. Gen. Stat. § 166A-19.30(b)(3) the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, under N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, the anticipated impacts from PTC Sixteen may result in extensive damage, including widespread power outages throughout the state that will require vehicles bearing equipment

and supplies for utility restoration and debris removal to move through North Carolina on the interstate and intrastate highways; and

WHEREAS, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential before, during, and after PTC Sixteen, and any interruption in the delivery of those commodities threatens the public welfare; and

WHEREAS, the prompt restoration of utility services is essential to the safety and well-being of the state's residents; and

WHEREAS, the undersigned has found that residents may suffer losses and further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3 and 166A-19.21(b); and

WHEREAS, 49 C.F.R. § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 C.F.R. Part 390 if the Governor determines that an emergency condition exists; and

WHEREAS, nothing contained in this declaration shall be construed as an exemption from the controlled substances and alcohol use and testing requirements (49 C.F.R. Part 382), the commercial driver's license requirements (49 C.F.R. Part 383), the financial responsibility (insurance) requirements (49 C.F.R. Part 387), operating authority (49 C.F.R. Part 365), applicable size and weight requirements, ill or fatigued operator (49 C.F.R. § 392.3) or any other portion of the regulations not specifically identified; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70(g), upon the recommendation of the North Carolina Commissioner of Agriculture and the existence of an imminent threat of severe economic loss of livestock, poultry or crops ready to be harvested, the Governor shall direct the North Carolina Department of Public Safety ("DPS") to temporarily suspend weighing vehicles used to transport livestock, poultry or crops ready to be harvested; and

WHEREAS, this suspension does not permit the gross weight of any vehicle or combination to exceed the safe load carrying capacity established by the North Carolina Department of Transportation ("DOT") on any bridge pursuant to N.C. Gen. Stat. § 136-72, or to permit the operation of a vehicle when a law enforcement officer has probable cause to believe the vehicle is creating an imminent hazard to public safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70(b), the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops ready to be harvested, and (3) vehicles used in the restoration of utility and transportation services; and

WHEREAS, PTC Sixteen will create a statewide emergency area, as that term is defined in the Emergency Management Act to mean an "emergency applicable to two-thirds or more of the counties in North Carolina"; and

WHEREAS, the undersigned has sought and obtained Concurrence of the Council of State, as that term is defined in N.C. Gen. Stat. § 19.3(2d), on the provisions of this Executive Order requiring concurrence; and

WHEREAS, the undersigned has documented the contact and response of each Council of State member and has released the concurrence, non-concurrence, or non-response of each member by position on the website in which this Executive Order is published.

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

Section 1.

I hereby declare that a statewide state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(20), exists in the State of North Carolina due to the anticipated impacts from PTC Sixteen.

For purposes of this Executive Order, the emergency area is the State of North Carolina ("the Emergency Area").

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

Section 3.

I delegate to Eddie M. Buffaloe, Jr., the Secretary of DPS, or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Secretary Buffaloe, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

I further direct Secretary Buffaloe, or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and to seek reimbursement for costs incurred by the state in responding to this emergency.

Section 4.

DPS, in conjunction with DOT, shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381 for (1) persons transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops ready to be harvested and (3) vehicles used in the restoration of utility and transportation services. In addition, DPS shall, pursuant to N.C. Gen. Stat. § 166A-19.70(g), temporarily suspend weighing, pursuant to N.C. Gen. Stat. § 20-118.1, those vehicles used to transport livestock, poultry, livestock or poultry feed, or crops ready to be harvested.

Section 5.

Subject to Section 6 below, DPS, in conjunction with DOT, shall waive enforcement of certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles supporting emergency relief efforts in the Emergency Area.

Section 6.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer ("GVWR") or 90,000 pounds gross weight, whichever is less.
- b. When the vehicle weight exceeds a single-axle weight of 22,000 pounds, a tandem-axle weight of 42,000 pounds, or a gross weight of 90,000 pounds.
- c. When the vehicle consists of a five or more axle combination vehicle that exceeds a single-axle weight of 26,000 pounds, a tandem-axle weight of 42,000 pounds and a gross weight 90,000 pounds, with a length of at least forty-eight (48) feet between the center of axle one and the center of the last axle of the vehicle and a minimum of eleven (11) feet between the center of axle one and the center of axle two of the vehicle.
- d. When the vehicle consists of a two-axle vehicle that exceeds a gross weight of 37,000 pounds and a single-axle weight of no more than 27,000 pounds, with a length of at least fourteen (14) feet between the center of axle one and the center of axle two of the vehicle.

- e. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
- f. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (A) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (B) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.
- g. Commercial vehicles operating outside the normal weight, height, and length restrictions under the authority of this State of Emergency shall be issued permits by DOT. Said vehicles shall be subject to any special conditions DOT and DPS may list on applicable permits. Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, nor shall anything in this Executive Order be construed to relieve compliance with restrictions other than those specified in this Executive Order or from any statute, rule, order, or other legal requirement not specifically waived herein.
- h. Oversize permits may be issued by the DOT, Oversize/Overweight Unit, during normal business hours, Monday through Friday by calling 1-888-221-8166 or contacting them through the online portal at <https://connect.ncdot.gov/business/trucking/Pages/overpermits.aspx>

Section 7.

Vehicles referenced under Sections 5 and 6 of this Executive Order shall be exempt from the following registration requirements, except where otherwise noted below:

- a. The requirement to obtain a temporary trip permit in N.C. Gen. Stat. § 105-449.49.
- b. The requirement of filing a quarterly fuel tax return.
- c. The registration requirements under N.C. Gen. Stat. §§ 20-382.1 and 20-382 concerning interstate for-hire authority; however, vehicles shall maintain the required limits of insurance as required.
- d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

Section 8.

The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. Size and weight exemptions shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

Section 9.

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 10.

Pursuant to 49 C.F.R. § 390.23, I hereby waive 49 C.F.R. § 395.3 for vehicles transporting loads that are for use in (1) providing direct assistance supporting emergency relief efforts including transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) transporting livestock, poultry, and crops ready to be harvested, or (3) the restoration of utility and transportation services in response to PTC Sixteen in North Carolina.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are for use in providing direct assistance supporting emergency relief efforts including transporting loads that are for use in (1) providing direct assistance supporting emergency relief efforts including transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) transporting livestock, poultry, and crops ready to be harvested, or (3) the restoration of utility and transportation services in response to PTC Sixteen.

Direct assistance terminates when a driver or commercial motor vehicle is used in intrastate/interstate commerce to transport cargo or provide services that are not in support of emergency relief efforts related to PTC Sixteen in North Carolina, or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin operations in commerce. (49 C.F.R. § 390.23(b)).

Upon termination of direct assistance to emergency relief efforts related to transporting loads that are for use in (1) providing direct assistance supporting emergency relief efforts including transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) transporting livestock, poultry, and crops ready to be harvested, or (3) the restoration of utility and transportation services in response to PTC Sixteen in North Carolina or affected states, the motor carrier and driver are subject to the requirements of 49 C.F.R. § 395.3, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with 49 C.F.R. § 395.3. When a driver is moving from emergency relief efforts to normal operations a 10- hour break is required if the total time a driver operated, whether conducting emergency relief efforts or a combination of emergency relief efforts and normal operations, equals or exceeds fourteen (14) hours.

Section 11.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale, or purchase of alcoholic beverages.

Section 12.

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

Section 13.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days, unless earlier terminated.

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 22nd day of September in the year of our Lord two thousand and twenty-three.



Roy Cooper
Governor

ATTEST:



Rodney S. Maddox
Chief Deputy Secretary of State

