

EXECUTIVE ORDER NO.

2021-40

WHEREAS, the United States is currently experiencing significant supply chain disruptions, which are adversely impacting the movement and availability of critical consumer goods and industrial materials in South Carolina and other States; and

WHEREAS, particularly as Americans face increasing prices for gasoline and essential fuels, as well as historic inflation, supply chain disruptions are imposing further burdens on businesses, individuals, and families; and

WHEREAS, notwithstanding the fact that businesses are attempting to cope with and account for significant supply chain disruptions, as well as labor shortages and other complicating factors, President Joseph R. Biden, Jr. and his Administration (collectively, “Biden Administration”) are increasing burdensome regulations and seeking to impose unwarranted and unprecedented vaccine mandates on the private sector; and

WHEREAS, although the State of South Carolina, which boasts robust and reliable transportation infrastructure, including the Port of Charleston and productive inland ports, is uniquely prepared and positioned to mitigate interruptions in the national and international supply chains, recent reports indicate that disruptions due to supply shortages increased 638% nationwide during the first half of 2021 for essential products; and

WHEREAS, in recognition of the aforementioned and other circumstances, earlier this year, the undersigned allocated \$12 million in Governor’s Emergency Education Relief (“GEER”) Funds to provide short-term training programs for the transportation sector and other critical workforce areas, and more recently, the undersigned announced an additional investment of \$17 million in GEER Funds to create the Workforce Scholarships for the Future pilot program, which will provide thousands of South Carolinians with the skills needed to thrive in high-demand careers, including in the transportation, distribution, and logistics fields; and

WHEREAS, while South Carolina’s transportation infrastructure remains reliable and resilient and the State continues to proactively prepare for increasing demand, particularly in view of the approaching holiday season and the State’s continued economic growth, it is imperative that

the State utilize any and all necessary and appropriate measures to address the current and anticipated circumstances and to mitigate any interruptions in the national and international supply chain by further supporting and strengthening South Carolina's transportation industries and infrastructure; and

WHEREAS, citing research from the Massachusetts Institute of Technology, recent reports indicate that minor adjustments to existing transportation-related restrictions, such as allowing operators of commercial vehicles to utilize an additional twelve minutes of driving time each day, would help relieve the current strain on certain components of the transportation sector and significantly improve operational efficiencies amidst the existing labor shortage; and

WHEREAS, the undersigned has determined that the existing, ongoing, and anticipated supply chain disruptions and any actual, potential, or perceived interruptions in the availability, transportation, or delivery of critical consumer goods and industrial materials, which are of vital importance to South Carolina's continued economic prosperity, pose a threat to the people, businesses, and public welfare of the State of South Carolina and that the State must utilize any necessary and appropriate measures to both address the current circumstances and proactively prepare for and mitigate any future transportation-related interruptions; 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, on November 19, 2021, the Governor of the State of Georgia declared that emergency conditions existed in his State due to, *inter alia*, the continued negative impacts of COVID-19 and the need to facilitate economic recovery and, in doing so, the Governor of the State of Georgia temporarily waived or suspended certain motor vehicle and transportation-related rules and regulations in connection with the same; 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, for the aforementioned and other reasons, the undersigned has determined that the circumstances described herein in connection with existing, ongoing, and anticipated supply chain disruptions and any actual, potential, or perceived interruptions in the availability, transportation, or delivery of critical consumer goods and industrial materials in the State of South Carolina constitute an emergency for purposes of 49 C.F.R. § 390.23 such that it is necessary and prudent to provide additional relief to assist in facilitating, supporting, and strengthening South Carolina's transportation industries and infrastructure so as to avoid, mitigate, or minimize further national and international supply chain interruptions; and

WHEREAS, in view of the foregoing circumstances and in furtherance of the principles, considerations, and initiatives set forth herein, the undersigned has determined that it is necessary and appropriate to take additional proactive action to mitigate the impact on the State of South Carolina of current and future national and international supply chain interruptions and the Biden's Administrations actions or inactions related to the same; and

WHEREAS, the South Carolina Constitution expressly provides that the Governor of the State of South Carolina is vested with "[t]he supreme executive authority of this State" and that he "shall take care that the laws be faithfully executed," S.C. Const. art. IV, §§ 1, 15; and

WHEREAS, in recognition of the aforementioned authority, article IV, section 17 of the South Carolina Constitution states that "[a]ll State officers, agencies, and institutions within the Executive Branch shall, when required by the Governor, give him information in writing upon any subject relating to the duties and functions of their respective offices, agencies, and institutions, including itemized accounts of receipts and disbursements"; and

WHEREAS, section 1-1-840 of the South Carolina Code of Laws, as amended, similarly authorizes the Governor to "call upon any department or institution at any time for such special reports as may be deemed in the interest of the public welfare"; and

WHEREAS, section 1-3-10 of the South Carolina Code of Laws, as amended, also requires that "[t]he departments, bureaus, divisions, officers, boards, commissions, institutions and other agencies or undertakings of the State, upon request, shall immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities"; and

WHEREAS, it is axiomatic that the undersigned's Executive Orders shall have the force and effect of law, *see* S.C. Code Ann. § 1-23-100; *Amisub of S.C., Inc. v. S.C. Dep't of Health & Env't Control*, 407 S.C. 583, 600, 757 S.E.2d 408, 417 (2014); *see also Com. of Va. v. Cannon*, 228 F.2d 313, 315 (4th Cir. 1955) (noting that courts "must look to the proclamations of the Governors to determine what the policy of the state was [and] that these have the effect of statutory enactments"); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to "take care that the laws be faithfully executed" and 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 it is necessary and appropriate to provide certain regulatory flexibility and relief and to take other proactive action to assist in facilitating, supporting, and strengthening South Carolina's transportation industries and infrastructure so as to avoid, mitigate, or minimize further national and international supply chain disruptions.

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 to Address Supply Chain Disruptions

A. I hereby determine and declare that the existing and anticipated threats and circumstances described herein associated with supply chain disruptions 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 August 31, 2021 Extension and Amendment of Emergency Declaration No. 2020-002 Under 49 C.F.R. § 390.25, or any future amendments or supplements thereto; responding to the declared emergency in the State of Georgia; transporting critical consumer goods, industrial materials, and essential fuels and petroleum products; or otherwise assisting with the existing or anticipated threats and circumstances associated with supply chain disruptions as further described herein.

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 clarification 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 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.

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.

G. This Section is effective immediately and shall remain in effect for thirty (30) days or until the state of emergency in 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 2. Directives to Address Supply Chain Disruptions

A. Pursuant to article IV, section 17 of the South Carolina Constitution and sections 1-1-840 and 1-3-10 of the South Carolina Code of Laws, I hereby direct DOT, DPS, and the South Carolina Department of Motor Vehicles (“DMV”), as well as any other agency, department, or official with jurisdiction or authority over critical components of the supply chain, to include transportation-related industries and infrastructure and operators of commercial vehicles, to review and identify any relevant state statutes or regulations impacting the supply chain, which, if modified, amended, repealed, or rescinded, would provide relief from or mitigate the circumstances described herein, and to promptly notify the undersigned of the same in advance of the General Assembly’s next ensuing regular session.

B. Pursuant to the cited authorities and other applicable law, I hereby authorize and direct DOT, DPS, and DMV, as well as any other agency, department, or official with jurisdiction or authority over critical components of the supply chain, to include transportation-related industries and infrastructure and operators of commercial vehicles, to review and identify any applicable internal policies, procedures, rules, or operations impacting the supply chain, which, if

modified, amended, repealed, or rescinded, would provide relief from or mitigate the circumstances described herein, and to promptly take any necessary and appropriate action.

C. In furtherance of the foregoing, any such agencies, departments, or officials with jurisdiction or authority over critical components of the supply chain, to include transportation-related industries and infrastructure and operators of commercial vehicles, should consult with other state agencies or entities as applicable, as well as similarly situated agencies or departments in neighboring States, private sector stakeholders, and other interested parties, to collaborate regarding possible measures to avoid, alleviate, or mitigate any existing, ongoing, or anticipated supply chain disruptions or any actual, potential, or perceived interruptions in the availability, transportation, or delivery of critical consumer goods and industrial materials in the State of South Carolina.

D. To facilitate the operation of critical transportation services and to minimize delays in transporting or delivering critical consumer goods and industrial materials, I hereby authorize and direct DPS to enforce, to the maximum extent provided by law and subject to any applicable exceptions or exemptions, the provisions of Act No. 64 of 2021, codified at section 56-5-1885 of the South Carolina Code of Laws, to ensure that drivers do not operate vehicles “in the farthest left-hand lane of a controlled access highway except when overtaking and passing another vehicle.”

Section 3. 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 to 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 unless otherwise expressly stated herein or modified, amended, extended, or rescinded by subsequent Order.

**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 23rd DAY
OF NOVEMBER, 2021.**

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State