

From: McDonald, Linda C - Legal <McDonaldLC@scdot.org>
To: Piarik, HollyHollyPiarik@gov.sc.gov
CC: Wessinger, Barbara MWessingeBM@scdot.org
Date: 1/28/2016 1:31:03 PM
Subject: Executive Orders - suspending hours of operation limits
Attachments: CVSA Emergency Relief Guidance_Final.docx
EORS PROCEDURES - 2016 - January final.4 1-22-2016.docx

Holly, Please see attached and Barbara Wessinger's e-mail below. I would be happy to discuss it with you, or you can call Barbara directly. She is at 737-1348.

Linda

Linda C. McDonald
SCDOT Chief Counsel
803-737-1255

From: Wessinger, Barbara M
Sent: Thursday, January 28, 2016 1:27 PM
To: McDonald, Linda C - Legal
Subject: FW: Time of Service
Importance: High

Hi Linda,

I wanted to make sure that the template (ATTACHMENT A) to the Attached EORs is correct. Right now, it says that pursuant to the Governor Haley's EO, under 56-5-70(A)(1)(b), only time of service (interpreted to mean "hours of service" under Fed. Reg 49) is suspended. However, according to DPS, they are suspending the enforcement of all requirements of Part 390 – 399 (not just Part 395). He sent me the attached CVSA Guidelines in support of this position. On page 3, it provides:

Excerpt from page 3 of CVSA Guidance document (see attachment): "Emergency relief from the safety regulations has been commonly referred to by the states as a waiver of driver hours-of-service. However, for motor carriers and CMV drivers qualifying for the exemption, a declaration of emergency invokes a 100 percent exemption from all of the safety regulations contained under regulations 49 CFR Parts 390—399..."

I'm thinking that we should interpret 56-5-70(A)(1)(b) to suspend all Parts 390-399 and say so in the template.

BTW - CVSA is an international not-for-profit organization comprised of local, state, provincial, territorial and federal motor carrier safety officials and industry representatives from the United States, Canada, and Mexico. Our mission is to promote commercial motor vehicle safety and security by providing leadership to enforcement, industry and policy makers

Your thoughts. I'd like Holly to weigh in if you think she should be contacted.

Barbara

From: Price, John D. [mailto:JohnPrice@SCDPS.GOV]

Sent: Friday, January 22, 2016 2:31 PM
To: Wessinger, Barbara M
Subject: RE: Time of Service
Importance: High

Barbara,

I agree that (A)(1)(b) suspends time of service which includes the Hours of Service Requirements contained in Part 395 and also the Intrastate Hours of Service rules contained in Section 56-5-90 (Driving Limitations for Intrastate motor carrier driver.) of SC Code.

However, per Part 390.23(a) any declaration of emergency provides relief from ALL of parts 390-399 for up to 30 days for Motor Carriers and CMV Drivers engaged in relief efforts.

§ 390.23: Relief from regulations.

(a) Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) Regional emergencies.

(i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

(B) The FMCSA Field Administrator has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) Except as provided in § 390.25, this exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

SEE CVSA Emergency Relief Guidance Document attached to this email.

Excerpt from page 3 of CVSA Guidance document (see attachment): "Emergency relief from the safety regulations has been commonly referred to by the states as a waiver of driver hours-of-service. However, for motor carriers and CMV drivers qualifying for the exemption, a declaration of emergency invokes a 100 percent exemption from all of the safety regulations contained under regulations 49 CFR Parts 390—399..."

Question from page 4 of CVSA document:" Do Governors need to take an action beyond issuing the emergency or disaster declaration?

Once an emergency is declared the regulatory relief is automatically in effect even if the state does not explicitly request that this relief be granted. However a state may declare an emergency or disaster and take actions under the declaration stating that it provides this regulatory relief and specifying the commodities covered, such as fuel, equipment, or supplies needed to repair damaged energy infrastructure. It is the state's responsibility to designate if the emergency is declared in all or only part of the state."

I hope this is responsive to your request. Please don't hesitate to contact me.

John D. Price
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From: Wessinger, Barbara M [mailto:WessingeBM@scdot.org]

Sent: Friday, January 22, 2016 1:23 PM

To: Gore, Marcus K.; Price, John D.

Subject: Time of Service

I want to make sure that I am interpreting section 56-5-70(A)(1)(b) properly before the next declaration of emergency by Governor Haley. Is it your understanding that (A)(1)(b) only suspends 49 CFR 395 (Hours of Service) and not the other parts in 390-399? We have interpreted “time of service” to be “hours of service”.

Thanks for your help.

Barbara

SECTION 56 5 70. Certain vehicle requirements suspended during state of emergency.

(A)(1) Notwithstanding any provision of this chapter or any other provision of law, during a state of emergency declared by the Governor and in the course of responding to the state of emergency:

(a) requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility vehicles traveling on non-interstate routes for up to one hundred twenty days, provided the vehicles do not exceed a gross weight of ninety thousand pounds and do not exceed a width of twelve feet;

*(b) requirements relating to **time of service** suspensions for commercial and utility vehicles traveling on interstate and non-interstate routes are suspended for up to thirty days, unless extended for additional periods in accordance with 49 C.F.R. 390-399.*