

From: Taylor, Richele
To: Price, John D. <JohnPrice@SCDPS.GOV>
Wessinger, Barbara M <WessingeBM@scdot.org>
CC: Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>
McDonald, Linda C - Legal <McDonaldLC@scdot.org>
Date: 11/1/2016 6:15:14 PM
Subject: RE: HOS waiver

Thank you both. Hopefully we do not have to make a call on this.

Also, I appreciate the help with the extension of the HOS wavier for the hurricane and your contacting FMCSA!

Have a good evening,

Richele

Richele K. Taylor
Chief Legal Counsel
Office of the Governor
O: 803-734-8465
C: 803-231-9763

It's a great day in South Carolina

Safe Place SC – www.safeplaceSC.sc.gov

-----Original Message-----

From: Price, John D. [mailto:JohnPrice@SCDPS.GOV]
Sent: Tuesday, November 01, 2016 6:07 PM
To: Wessinger, Barbara M
Cc: Taylor, Richele; Schimsa, Rebecca; McDonald, Linda C - Legal
Subject: Re: HOS waiver

I agree with Ms. Taylor's assessment below. Any waiver of HOS (part 395) or any other regulation in Parts 390-399 beyond the initial 30 day period should come from FMCSA. I believe the pipeline explosion to be a separate issue and thus eligible for a 30 Day HOS waiver by Governor's ED if warranted. The ED automatically triggers the regulatory relief from Parts 390-399 which includes the HOS regs (Part 395).

Please let me know if you need anything else.

John D. Price
SC State Transport Police

> On Nov 1, 2016, at 5:45 PM, Wessinger, Barbara M <WessingeBM@scdot.org> wrote:

>

> Captain Price,

> Please weigh in on my answer to questions #2 below. Since DPS enforces the HOS requirements (49 CFR 390-399), you may have a different opinion.

> Thanks

>

> Barbara

>

>

>

>

> From: Wessinger, Barbara M

> Sent: Tuesday, November 01, 2016 5:42 PM

> To: 'Taylor, Richele'

> Cc: 'Schimsa, Rebecca'; McDonald, Linda C - Legal; Mabry, Mechelle V

> Subject: RE: HOS waiver

>

> Richele,

> See below response. I am available to discuss the above if you have

> any questions – 737-1348

>

> Barbara

>

>

> From: Taylor, Richele [mailto:RicheleTaylor@gov.sc.gov]

> Sent: Tuesday, November 01, 2016 3:30 PM

> To: Wessinger, Barbara M; Schimsa, Rebecca; McDonald, Linda C - Legal

> Cc: Schimsa, Rebecca

> Subject: RE: HOS waiver

>

> Thank you Barbara. I was just reading the Federal Regulations trying to figure out if you could extend 30 to 30 back to back, and saw the exception was only for residential heating fuel. Your response is very timely! A few follow up questions for you or Linda since you both have a lot of insight in this area.

>

> First, the Executive Order also waived the weight requirement for 120 days, until February 1st. My understanding in reviewing the law is that weight guidelines are separate from the FMCSA emergency section; Waiver of weight falls under Federal Highway Administration. Is this accurate? Meaning that the 30 day restriction is not applicable to the weight waiver. Correct. The 49 CFR Parts 390-399 exemptions do NOT apply to size & weight requirements. Under 56-5-70, the Governor has the authority to suspend weight up to 90,000 lbs on non-interstate routes for up to 120 days. See attached.

>

> Second, knowing there is a potential pipeline issue after the Colonial explosion, if emergency conditions came into effect because of the pipeline problems down the road, it seems to be that

would be a separate state of emergency and allow a separate 30 day waiver even if they were back to back. Thoughts? See Page 4 of CVSA document attached: "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." The attached CVSA guidance does not appear to require a specific EO for each emergency to invoke the HOS waiver, only that an emergency be declared. However, 49 CFR 390.23 is clear that the waiver is only for thirty (30) days unless extended by the FMCSA. Therefore, I do not believe you are allow to have back-to-back EOs for HOS; rather, an extension from FMCSA would be required beyond 30 days.

>

>

>

> Richele

>

> Richele K. Taylor

> Chief Legal Counsel

> Office of the Governor

> O: 803-734-8465

> C: 803-231-9763

> It's a great day in South Carolina

>

> Safe Place SC – www.safeplaceSC.sc.gov<<http://www.safeplacesc.sc.gov/>>

>

>

>

> From: Wessinger, Barbara M [mailto:WessingeBM@scdot.org]

> Sent: Tuesday, November 01, 2016 2:59 PM

> To: Schimsa, Rebecca; McDonald, Linda C - Legal

> Cc: Taylor, Richele; Price, John D.

> Subject: RE: HOS waiver

>

> Rebecca,

>

> The Governor will need to request an extension under 49 CFR 390-399 per 56-5-70(A)(1)(b). Attached is a request from October 2015. I believe DPS (Captain Price) initiated the request to FMCSA in October.

>

>

>

> Barbara

>

>

>

>

>

> § 56-5-70. Certain vehicle requirements suspended during state of
> emergency; declarations of emergency triggering federal relief under
> 49 C.F.R. 390.23. (Effective: May 7, 2015)

> (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 noninterstate 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 noninterstate routes are suspended for up to thirty days, unless extended for
additional periods in accordance with 49 C.F.R. 390-399.

> From: Schimsa, Rebecca [mailto:RebeccaSchimsa@gov.sc.gov]
> Sent: Tuesday, November 01, 2016 2:29 PM
> To: McDonald, Linda C - Legal; Wessinger, Barbara M
> Cc: Taylor, Richele
> Subject: HOS waiver

> Linda and Barbara,

> On Thursday at midnight, the HOS waiver expires. The Governor is interested in issuing a HOS
waiver for another 30 days. Please let us know if you see any issues with this. If not, we plan to issue
the new waiver tomorrow.

> Thank you,

> Rebecca

> Rebecca S. Schimsa
> Deputy Legal Counsel
> Office of Governor Nikki R. Haley
> O: 803-734-6068 | C: 803-429-4561

> <FMCA cannot exempt size and weight.1.docx> <CVSA Emergency Relief

