



Commonwealth of Virginia  
Office of the Governor

## Executive Order

### **NUMBER SEVENTY (2017)**

### **DECLARATION OF A STATE OF EMERGENCY FOR THE COMMONWEALTH OF VIRGINIA TO SUPPORT RESPONSE AND RECOVERY EFFORTS IN STATES AFFECTED BY HURRICANE HARVEY**

#### **Importance of the Issue**

On this date, September 1, 2017, I am declaring a state of emergency to exist for the Commonwealth of Virginia to provide response and recovery support to states affected by Hurricane Harvey. Hurricane Harvey began impacting Texas and Louisiana on August 25<sup>th</sup> where it made landfall as a category 4 hurricane with winds in excess of 130 mph. This storm brought heavy rain to both states with some areas of Texas receiving over 50 inches of rain over a period of several days. The rain has resulted in significant flooding and devastation to residential homes, businesses, and critical infrastructure necessary for response and recovery.

The health and general welfare of United States citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of this incident constitute a disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the *Code of Virginia*.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the *Code of Virginia*, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the *Code of Virginia*, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on this date, September 1, 2017, whereby I am proclaiming that a state of emergency exists, and I am directing that appropriate assistance be rendered by agencies of both state and local governments to support response and recovery efforts to states affected by Hurricane Harvey, assist in alleviating any conditions resulting from the incident, and to alleviate any impediments to the transport of gasoline through Virginia. Pursuant to § 44-75.1(A)(3) and (A)(4) of the *Code of Virginia*, I am also directing that the Virginia National Guard and the Virginia Defense Force be called forth to state active duty to be prepared to assist in providing such aid.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the *Code of Virginia*, I hereby order the following protective and restoration measures:

- A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, along with other appropriate state agency plans.
- B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST) to coordinate the provision of assistance to local governments as necessary and determined by the State Coordinator of Emergency Management. I am directing that the VEOC and VEST coordinate state actions in support of affected localities, other mission assignments to agencies designated in the COVEOP, and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety and Homeland Security, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.
- C. The activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the *Code of Virginia*, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment, and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the *Code of Virginia*.
- D. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies, livestock or poultry, feed or other critical supplies for livestock or poultry, heating oil, motor fuels, or propane, or providing restoration of utilities (including but not limited to electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination. Weight exemptions are not valid on interstate highways or on posted structures for restricted weight unless there is an associated Federal emergency declaration.

All over width loads, up to a maximum of 12 feet, and over height loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from vehicle registration with the Department of Motor Vehicles. This includes vehicles en route and returning to their home base. The above-cited agencies shall

communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

- E. This Emergency Declaration implements limited relief from the provisions 49 CFR 390-399. Accordingly, the State Coordinator of Emergency Management recognizes the exemption for hours of service by any carrier when transporting essential emergency relief supplies, passengers, property, livestock, poultry, equipment, food, feed for livestock or poultry, fuel, construction materials, and other critical supplies to, through, or from any portion of the Commonwealth for purpose of providing direct relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the *Code of Virginia* and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3.
- F. The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by § 52-8.4(A) of the *Code of Virginia*, and implemented in § 19 VAC 30-20-40(B) of the “Motor Carrier Safety Regulations,” shall remain in effect for 30 days from the onset of the disaster, while motor carrier and/or driver is in direct assistance providing emergency relief, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety and Homeland Security in consultation with the Secretary of Transportation, whichever is earlier.
- G. The authorization of the Commissioner of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure prescribed in emergency regulation 2 VAC 5-425 *et seq.*, and to prescribe a vapor pressure limit it deems reasonable. The temporary waiver shall remain in effect until September 15, 2017, or until emergency relief is no longer necessary, as determined by the Commissioner of Agriculture and Consumer Services.
- H. The implementation and discontinuance of the provisions authorized in paragraphs D through F above shall be disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement and disseminate this order as set forth in § 2.2-104 of the *Code of Virginia*.
- I. The authorization of a maximum of \$ 16,500,000 in state treasury loan and line of credit funds for state and local governments mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act or the Emergency Management Assistance Compact. This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster treasury loan and line of credit, an amount estimated at \$ 15,000,000, or more if available, is authorized for the Department of Military Affairs for the state’s portion of the eligible disaster-related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management. In addition, up to \$100,000 in sum sufficient funds shall be made available for operation of the Virginia Emergency Operations Center.
- J. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to

performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the *Code of Virginia*. § 44-146.24 of the *Code of Virginia* also applies to the disaster activities of state agencies.

- K. Designation of members and personnel of volunteer, professional, auxiliary, and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Medical Reserve Corps (MRCs), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(a) and (f) of the *Code of Virginia*, in the performance of their specific disaster-related mission assignments.
- L. The activation of the statutory provisions in § 59.1-525 *et seq.* of the *Code of Virginia* related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible during a time of disaster after issuance of a state of emergency. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials. I further request that all appropriate executive branch agencies exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this disaster event.
- M. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:
  - 1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations for this incident and in alleviating the human suffering and damage to property.
  - 2. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the *Code of Virginia* and are not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.
  - 3. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

- a. Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,
  - b. The same benefits, or their equivalent, for injury, disability, and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the *Code of Virginia*, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.
4. The following conditions apply to service by the Virginia Defense Force:
- a. Virginia Defense Force personnel shall receive pay at a rate equivalent to a National Guard soldier of like rank, not to exceed 25 years of service.
  - b. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;
  - c. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for the expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44 54.12 of the *Code of Virginia*;
  - d. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the *Code of Virginia*, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds with reimbursement through the Emergency Management Assistance Compact (EMAC).

**Effective Date of this Executive Order**

This Executive Order shall be effective September 1, 2017, and shall remain in full force and effect until June 30, 2018 unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 1<sup>st</sup> day of September, 2017.

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Terence R. McAuliffe, Governor

Attest:

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Kelly Thomasson, Secretary of the Commonwealth