STATE OF MINNESOTA
Executive Department

Governor Tim Walz

Emergency Executive Order 20-49

Allowing Commercial Food Trucks to Operate at Highway Rest Areas in Minnesota During the COVID-19 Peacetime Emergency

I, Tim Walz, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

The COVID-19 pandemic presents an unprecedented challenge to our State. Minnesota has taken proactive steps to ensure that we are ahead of the curve on COVID-19 prevention and response. On March 13, 2020, I issued Executive Order 20-01 and declared a peacetime emergency because this pandemic, an act of nature, threatens the lives of Minnesotans, and local resources are inadequate to address the threat. On April 13, 2020, after notifying the Legislature, I issued Executive Order 20-35, extending the peacetime emergency declared in Executive Order 20-01.

On March 13, 2020, the President declared a national emergency related to the COVID-19 pandemic. On March 16, 2020, I issued Executive Order 20-04 ordering the closure of bars, restaurants, and other places of public accommodation. Limiting certain activities and practicing social distancing at all times are vital tools required to mitigate the community spread of COVID-19 in Minnesota and nationwide. Accordingly, on April 8, 2020, I issued Executive Order 20-33 extending the Stay at Home Order and Temporary Closure of Bars, Restaurants and other Places of Public Accommodation. Community spread of COVID-19 continues to increase in Minnesota and nationwide, and so on April 30, 2020 I issued Executive Order 20-48, again extending those Executive Orders through May 17, 2020 at 11:59 pm.

The Federal Highway Administration ("FHWA") issued a Notice of Enforcement Discretion on April 3, 2020, recognizing that truck drivers depend on eating meals at restaurants, and during this pandemic, with most restaurants closed across much of the United States, food trucks may be an additional option for providing freshly prepared meals to commercial truck drivers. Commercial truck drivers are critical to the nation's continued ability to deliver needed food and relief supplies to the communities impacted by the economic disruptions and healthcare strains caused by COVID-19. For these reasons, the FHWA notice suspended enforcement measures for states that choose to permit commercial food trucks to operate and sell food in designated federally funded Interstate Highway rest areas.

In Minnesota, most restaurants are closed or limited to take-out or delivery, which means commercial truck drivers are faced with an increasing inability to find complete, nutritious, and freshly prepared meals while they are providing the critical and essential function of delivering goods and supplies. Providing easy and reliable access to nutritious, prepared meals for commercial truck drivers is especially important while there are orders at both the federal and state levels that exempt certain drivers from the hours of service requirements.

Minnesota Statutes 2019, section 160.08, subdivision 7, provides that no commercial establishments, with the exception of vending machines, may be constructed or located within the right-of-way. Further, Minnesota Statutes 2019, section 160.2725, subdivision 1, likewise limits food and beverage sales at safety rest areas to vending machines. These provisions have the effect of prohibiting food trucks from operating at highway rest areas.

Commercial truck drivers play a critical role in supporting the supply chain and in the COVID-19 emergency response efforts by transporting essential supplies including medicine, food, household supplies, and personal protective equipment across our State and the country. Strict enforcement of the restrictions pertaining to commercial activities at highway rest areas prevents efforts to provide additional fresh food options for those truck drivers operating in Minnesota. Action to allow food trucks to operate at rest stops is consistent with similar measures taken by other states to ensure that commercial truck drivers have easy and reliable access to nutritious and freshly prepared meals.

In Minnesota Statutes 2019, section 12.02, subdivision 1, the Minnesota Legislature recognized the "existing and increasing possibility of the occurrence of natural and other disasters of major size and destructiveness" and conferred upon the Governor the emergency and disaster powers provided in Chapter 12 to "ensure the preparations of this state will be adequate to deal with disasters," to "generally protect the public peace, health, and safety," and to "preserve the lives and property of the people of the state." Pursuant to Minnesota Statutes 2019, section 12.21, subdivision 1, the Governor has general authority to control the State's emergency management as well as carry out the provisions of Minnesota's Emergency Management Act. Pursuant to subdivision 3 of that same section, the Governor may "make, amend, and rescind the necessary orders and rules to carry out the provisions" of Minnesota Statutes 2019, Chapter 12. When approved by the Executive Council and filed in the Office of the Secretary of State, such orders and rules have the force and effect of law during the pendency of a peacetime emergency. Any inconsistent rules or ordinances of any agency or political subdivision of the State are suspended during the pendency of the emergency.

For these reasons, I order as follows:

1. "Food truck" and "food truck vendor," as used in this Executive Order, mean a "mobile food unit" as defined in Minnesota Statutes 2019, section 157.15, subdivision 9.

2. Consistent with the FHWA's April 3, 2020 Notice of Enforcement Discretion, the restrictions in Minnesota Statutes 2019, sections 160.08, subdivision 7, and 160.2725, subdivision 1, are waived to the extent that they prohibit commercial food trucks from operating and selling food in designated highway rest areas.

3. I authorize the Commissioner of the Minnesota Department of Transportation ("MnDOT") to:

    a. Designate up to six highway rest areas in the state for temporary food truck operations.

    b. Develop and implement a process to issue temporary permits allowing commercially licensed food truck vendors otherwise in compliance with state and local licensing and permitting requirements to operate and sell food in designated highway rest areas. The development and implementation of this process is not subject to the requirements in Minnesota Statutes 2019, Chapter 14, pertaining to agency rulemaking.

4. MnDOT may require that permitted food truck vendors comply with additional conditions or restrictions, including licensing requirements and any limitations necessary to ensure the safe operation of highway rest areas.

5. Permitted food truck vendors operating at designated highway rest areas in Minnesota must:

    a. Have a currently valid license to operate as a food truck. A license issued by the Minnesota Department of Health ("MDH"), the Minnesota Department of Agriculture, or a local health department under delegation with MDH is legally sufficient for the purposes of operating under this Executive Order.

    b. Adhere to guidance put forth by the Centers for Disease Control and Prevention and MDH pertaining to safety measures intended to help prevent the spread of COVID-19, such as practicing social distancing, encouraging cashless payment transactions, and not offering self-serve condiments. In addition to complying with the food code requirements in Minnesota Rules, Chapter 4626, food truck vendors and employees must follow the guidance put forth by the U.S. Food and Drug Administration establishing best practices for food safety during the COVID-19 pandemic, available at: https://www.fda.gov/food/food-safety-during-emergencies/best-practices-retail-food-stores-restaurants-and-food-pick-updelivery-services-during-covid-19

6. While this Executive Order is in effect, staff from MDH or a local health department under delegation from MDH are authorized to investigate complaints and conduct inspections of food trucks operating at designated rest areas. MDH and local health departments are encouraged to coordinate as to avoid duplication of efforts.

7. Nothing in this Executive Order may be construed to provide an exemption from other applicable state laws or federal regulations, such as restrictions on outdoor advertising or the Randolph-Sheppard Act.

8. This Executive Order is effective through May 17, 2020 at 11:59 pm, until it is rescinded by proper authority, until the peacetime emergency declared in Executive

Order 20-01 is terminated, or until the national emergency declared by the President on March 13, 2020 ends, whichever occurs sooner.

Pursuant to Minnesota Statutes 2019, section 4.035, subdivision 2, and section 12.32, this Executive Order is effective immediately upon approval of the Executive Council.

A determination that any provision of this Executive Order is invalid will not affect the enforceability of any other provision of this Executive Order. Rather, the invalid provision will be modified to the extent necessary so that it is enforceable.

Signed on May 1, 2020.

Tim Walz
Governor

Filed According to Law:

Steve Simon
Secretary of State

Approved by the Executive Council on May 1, 2020:

Alice Roberts-Davis
Secretary, Executive Council