

# GUIDANCE FOR STATES ON RELIEF FROM FEDERAL MOTOR CARRIER SAFETY REGULATIONS IN AN ENERGY EMERGENCY (VERSION 3)

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TRIBUTE



**NASEO**

*National Association of  
State Energy Officials*

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## National Association of State Energy Officials

The National Association of State Energy Officials (NASEO) is the only national nonprofit organization whose membership includes governor-designated energy officials from each of the 56 states and territories. Formed in 1986, NASEO facilitates peer information exchange among State Energy Officials, serves as a resource for and about State Energy Offices, and advocates the interests of State Energy Offices to Congress and federal agencies.

Members are senior officials from State and Territory Energy Offices, as well as affiliates from the private and public sectors. Member State Energy Offices work on a wide range of energy programs and policies, including those that shape:

- Energy system resiliency, energy assurance, cybersecurity, and supply disruption preparedness, and response;
- Energy efficiency in all market sectors, including buildings, industry, and agriculture;
- Renewable energy development, such as solar, wind, geothermal, and biomass;
- Advanced transportation technologies, alternative fuels and infrastructure;
- The production and distribution of oil, natural gas, and electricity; and
- Energy/environment integration and the promotion of cost-effective energy solutions.

States manage and invest more than \$8 billion of their own funds each year. These funds are derived from state appropriations, system benefit charges, and other nonfederal sources and are utilized to advance cost-effective energy efficiency actions that aid consumers and businesses in reducing energy costs while enhancing economic competitiveness.

## Introduction

As part of their energy assurance plans, states should address how relief from Federal Motor Carrier Safety Regulations (FMCSR) can aid in the response to an energy emergency. Certain FMCSRs<sup>1</sup> allow temporary emergency relief from the safety regulations of any motor carrier or driver operating a commercial motor vehicle (CMV) to provide direct emergency assistance during an emergency declared by a governor or other authorized official. Emergency assistance supplements state and local efforts and capabilities to save lives or property, or to protect public health and safety due to an emergency.

This guidance explains how this relief is implemented under a declared emergency, what parts of the rules are waived, and how it is placed in effect. To further assist states in taking this action a draft governor's executive order is included. This order will need to be tailored to the circumstances and the statutory authority of each state. Following the draft executive order is a brief list of suggested implementation actions which again should be adapted as needed to the policies and practices of each State. It is the National Association of State Energy Official's (NASEO) recommendation that this contingency be included in states' energy assurance plans as appropriate.

This is the third revision and update to this guidance. It was first issued in October 2012 and updated in October 2014. This September 2018 update incorporated further clarification due to changes in CFR §390.23, which added that in addition to a declaration by the Governor an emergency relief declaration could also be initiated by "their authorized representatives having authority to declare emergencies." This update includes market factors and conditions that can help with making decisions on whether waivers are needed. It explains how the waivers apply to intra and interstate trucks and those with hazardous material designation, which fuel haulers fall under. It clarifies that tanker trucks returning home empty cannot transport petroleum products that are not related to relief of the emergency event on the return trip home under the safety waivers. Finally, it encourages communication among the States and the FMCSA on the use of state and federal regional waivers for emergency relief; including communication to avoid a patchwork of state waivers that may be in effect for different periods of time. It explores how States and the FMCSA can work together when a multi-state regional waiver by FMCSA may be appropriate and supported by both the impacted states and the FMCSA.

### **Changes in the Guidance Resulting from the 2014 Reliable Home Heating Act**

NASEO has updated this guidance document to reflect changes to the emergency relief provision as a result of the enactment of the Reliable Home Heating Act (Public Law

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<sup>1</sup> [49 CFR Parts 300-399](#)

113-125) which was signed into law on June 30, 2014 and adopted under an amendment (49 CFR § 390.23) to the FMCSR on October 22, 2014. The law has two principal provisions one which increases the governor's authority and one which requires the U.S. Energy Information Administration (EIA) to notify governors when regional fuel inventories are low.

Specifically, the law states:

*"If the Governor of a State declares a state of emergency caused by a shortage of residential heating fuel and, at the conclusion of the initial 30- day emergency period (or a second 30-day emergency period authorized under this subsection), the Governor determines that the emergency shortage has not ended, any extension of such state of emergency by the Governor, up to 2 additional 30-day periods, shall be recognized by the Federal Motor Carrier Safety Administration as a period during which parts 390 through 399 of chapter III of title 49, Code of Federal Regulations, shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide residential heating fuel in the geographic area so designated as under a state of emergency."*

*"The Administrator of the Energy Information Administration, using data compiled from the Administration's Weekly Petroleum Status Reports, shall notify the Governor of each State in a Petroleum Administration for Defense District if the inventory of residential heating fuel within such district has been below the most recent 5-year average for more than 3 consecutive weeks."*

States should understand these provisions only cover residential heating fuels: heating oil, natural gas, and propane. They do not govern shipments of motor gasoline or diesel fuel which remains subject to the rules that have been in place.

## I. Emergency Relief

### What Is an Emergency?

Under 49 CFR §390.5, the definition of an emergency means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, ice storm, blizzard, sandstorm), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food, fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the governor of a state, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other federal, state or local government officials having authority to declare emergencies.

### What Is Emergency Relief?

Emergency relief from the safety regulations has been commonly referred to by the states as a waiver of driver hours-of-service. However, for commercial motor vehicle (CMV) drivers qualifying for the exemption, a declaration of emergency invokes 100 percent exemption from all of the safety regulations contained under regulations 49 CFR Parts 390—399 (see below). This is true regardless of whether the emergency declaration specifically states the full extent of the federal exemption. Furthermore, the exemption to parts 390-399 is in effect regardless of the language of the declaration. This means a declaration cannot provide regulatory relief from only a certain part (e.g., Hours of Service, etc.). The only exception is an extension issued by the Federal Motor Carrier Safety Administration (FMCSA) which may contain limitations.

- Part 390—General Applicability
- Part 391—Qualification of Drivers
- Part 392—Driving of Commercial Motor Vehicles
- Part 393—Parts and Accessories Necessary for Safe Operation of a CMV
- Part 395—Hours-of-Service of Drivers
- Part 396—Inspection, Repair and Maintenance
- Part 397—Transportation of Hazardous Materials – Driving and Parking Rules
- Part 398—Transportation of Migrant Workers
- Part 399—Employee Safety and Health Standards

A summary of the provisions of each of these parts is provided below.

When an emergency is declared, truck and bus activities involving transportation and other relief services for the immediate restoration of essential services (e.g., electricity, medical care, sewer, water, and telecommunications) or essential supplies (e.g., food, fuel) are exempt from most of the FMCSR.<sup>2</sup> Motor carriers are not required to obtain approval from the FMCSA prior to participating in the emergency relief effort. The regulatory relief is automatically granted without further action by any motor carriers who are supplying the area covered by the emergency declaration. A FMCSA waiver applies to inter- and intrastate motor carriers transporting heating fuel because the heating fuel transported is considered an activity of interstate commerce. The nature of heating fuel movement – through states by pipeline, truck, and railcar – is interstate even if a motor carrier driver himself only operates in intrastate. FMCSA’s explanation is below.

***How does one distinguish between intra- and interstate commerce for the purposes of applicability of the FMCSRs?*** Interstate commerce is determined by the essential character of the movement, manifested by the shipper’s fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.<sup>3</sup>

Once motor carriers complete service to the affected region or state, the motor carrier can utilize the waiver to return to the home location. Motor carriers cannot utilize a waiver to transport other products to an area or state outside the affected area or state. The emergency relief does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property have passed.

## **When Is Emergency Relief Granted?**

Emergency relief from the FMCSR is triggered under a declaration of an emergency that may result in or has resulted in reduced fuel supplies or required transportation capacity to resupply the affected area. Events could be caused by the unanticipated shutdown of a large refinery or of multiple refineries; a disruption to a major petroleum pipeline; disruption or delay in railway transportation; a large-scale power blackout; or other similar events. Relief may also be necessitated because of a natural disaster, which damages or reduces the capacity of energy infrastructure that is needed to meet state and regional energy demands. Even if energy infrastructure is not damaged, an

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<sup>2</sup> The emergency exemptions do not apply to commercial driver license, drug/alcohol testing requirements, or FMCSA insurance requirements.

<sup>3</sup> Federal Motor Carrier Safety Administration, Interpretations Section 390.3: General Applicability, available at <https://www.fmcsa.dot.gov/regulations/title49/part/390> (last visited September 5, 2018).

increase in fuel supplies may be needed to support an overall preparation or recovery effort. State laws may permit emergency relief in anticipation of an emergency event.

## I. FMCSA Regional Emergency Relief

The FMCSA can issue regional waivers when conditions warrant. Recently a regional waiver due to energy supply concerns was issued December 30, 2017.<sup>4</sup> This waiver was in “response to anticipated home heating fuel shortage due to Winter Storm Frankie severe weather and the demand for increased usage.” This waiver was put into effect for 36 States and the District of Columbia primarily in the eastern United States. It was in effect until January 14, 2018. In the fall of 2017 a series of federal and state waivers were put into effect due to hurricanes Harvey, Irma and Maria. When there is a serious event involving several states that clearly impacts the delivery of energy supplies, federal waivers have the advantages of providing a consistent basis and time frame for the waivers reducing uncertainty for the trucking industry as they work to respond to additional demand. This also would generally be preferable to a series of state waivers that would be issued under state emergency declarations that may have different effective dates and governed by state laws that may have some differences in the conditions that need to be present in order to declare an emergency. In addition, the FMCSA can also promptly and directly inform state motor carrier enforcement agencies that a waiver has been placed into effect.

## II. State Emergency Relief

The below questions may help inform the decision by a state to determine there is sufficient evidence to warrant a waiver. It is not necessary that all questions are answered affirmatively. A number of these factors reflect what could be described as a discussion guide for speaking with fuel suppliers when evaluating the severity of the problem. If the request is coming from fuel suppliers, it is incumbent on them to share sufficient information to demonstrate the value of a waiver.

Weather Factors	
1.	Is snow, ice, water, or fire sufficiently severe that full recovery of highways and primary roads will take more than a few days? (The state Department of Transportation and/or county road commissions may be able to provide this information.)
2.	Is snow, ice, water, or fire sufficiently severe that full recovery of secondary and rural roads will take up to a week? (Check with the county road commission or county emergency management coordinators.)
3.	Is cold or wet weather sufficiently severe that fuel use by significant numbers of consumers will outstrip the ability of local retailers (operating under normal hours of service limitations) to replenish critically-low fuel tanks?
4.	Is cold or wet weather sufficiently severe that fuel transporters (operated by transporters, jobbers or retailers under normal hour of service limitations) are unable to replenish the supplies of retail outlets in the face of increased consumer demand?

<sup>4</sup> <https://www.fmcsa.dot.gov/emergency/fmcsa-regional-emergency-declaration-winter-12-30-2017>

5. Have the heating degree days or wet weather during harvest season substantially exceeded normal for a week or longer period?
6. Have any counties been declared under a local or state emergency of any sort? Under a state declaration, even if limited to one or more counties, the waivers are already legally in effect as recognized by the FMCSA.

#### Multistate Regional Weather Consideration

1. Regional emergencies should not be requested solely because of severe weather; the severe weather must be shown to have a significant and prolonged effect on the supply system that threatens human health, safety, or public welfare. The impact of a hurricane can often affect multiple states and substantial flooding and power outage would likely result in state emergency declarations that would trigger waivers.
2. The fact that one or two retailers or distributors are having supply problems should not alone be grounds for requesting a regional emergency. Retailers that mismanage supplies or that make no extraordinary efforts to obtain extra supplies or contract with additional drivers should not normally be seen as grounds for granting a waiver.
3. The fact that a limited number of “will-call” customers<sup>5</sup> are on the verge of running out of fuel because they have not called sufficiently in advance for a delivery (e.g., calling one day before they are likely to run out) should not be grounds for a regional emergency. The inability of retailers to fully supply “keep full” customers may be a better barometer of the inability to meet demand.

#### Market Conditions, Supply Shortage, and Infrastructure Damage Considerations

1. Are terminal lines or product shortages the result of product allocations by a single supplier within the region, or have many suppliers or one of the major regional suppliers been affected?
2. What is the state and regional inventory picture and how does it compare to last year, the recent average for the month, or the high and low for the month?
3. Has a pipeline, refinery, railway or terminal been damaged or closed for repair or maintenance?
4. Is a damaged pipeline refinery or terminal dispensing reduced quantities of product? Has distribution actually stopped?
5. How long is a damaged pipeline, refinery, railway, or terminal expected to be at reduced capacity or shut down?
6. What is the geographic range of product distribution from the pipeline, refinery, railway, or terminal?
7. Are terminals within the region out of a fuel for much longer than may be usual and if so for how long?
8. Are terminal outages limited to one or two terminals within the region?
9. Are alternative suppliers available within the region or outside the region?
10. Can transporters reach alternative suppliers within normal hours of service limitations?
11. Are there other mitigating factors that will lessen the threat to the public (e.g., mild weather, alternative product availability)?

#### Multistate Regional Supply Shortage and Infrastructure Damage

1. A regional emergency should not be declared solely because of outages or lines at one or a few terminals, unless obtaining fuel from alternative suppliers is impossible within normal hours of service limitations.
2. A regional emergency should not be declared if consumer demand for a given product is low at the time of the supply shortage (e.g., warm weather during a propane shortage), unless the shortage becomes sufficiently sustained that retailers are unable to replenish their own supplies.
3. A regional emergency should not be declared if alternative products are readily available (e.g., low sulfur on-highway diesel fuel in place of high sulfur, Number 2 home heating oil, propane).
4. Weather factors can exacerbate supply problems or infrastructure damage; the combined effects of different factors that by themselves would not result in emergencies should be considered.
5. Infrastructure failures that disrupt significant capacity to supply fuel, such as an extended pipeline or refinery shutdown or railway disruptions, might present conditions that would warrant emergency declarations.

#### Transportation Considerations

1. Have jobbers, transporters and retailers utilized all qualified drivers in service?
2. Have or will all qualified drivers exhaust their hours of availability under normal hours of service limitations?

<sup>5</sup> These are customers that do not have regularly scheduled deliveries but rather only purchase fuel when they need to by calling the company to arrange for a delivery.

3. Have all available trucks been placed into service?
4. Have third party carriers been contacted and found to be not available?
5. Are there lines at fuel terminals and what is the wait time for loading?
6. Are there lines at fuel terminals during all hours, including nighttime?
7. Are trucks lined up at fuel terminals with waits longer than four hours to load supplies; if so, during what hours of the day and/or night have lines been observed?
8. Are lines at terminals isolated to one or two specific terminals within the region?
9. What other actions has the industry taken to avoid the need to grant safety rule waivers?
10. The fact that fuel truck drivers require special training and certification is a limitation on the ability to employ extra drivers during emergencies. However, retailers, transporters, and jobbers should make efforts to hire all available drivers and to place into service all available trucks during emergencies or shortages.
11. Long waits at terminals during the day do not demonstrate a shortage of product or a need for driver-hour waivers if those lines disappear at night.
12. Lines at one terminal and the absence of lines at another may reflect price shopping rather than product shortages or transportation disruptions. Waivers should not be granted where terminal lines are the result of economic decisions.

#### Multistate Regional Transportation Considerations

1. Which states have been directly affected by severe weather (e.g., cold, ice, snow, wet weather)?
2. How many states are served by terminals that are out of product or at which there are long lines?
3. How many states are served by pipelines that are out of service or that have restricted supplies?
4. How many states are served by railways that are out of service or that have restricted traffic?
5. How do affected states obtain fuel supplies? Is travel outside the state vital to obtaining product?
6. Has severe weather affected a state that significant numbers of transporters from another state need to travel in to obtain supplies?

#### Reasons for Waivers from FMCSA Regional Administrator

1. Uniformity in hours of service requirements among affected states is desirable. If several states are similarly affected, they should receive (or be denied) the same relief.
2. Consideration should be given to the fact that states with cold-related emergencies (heightened demand) may draw supplies from a state that is less affected by the same problem; drivers serving an emergency in one state will still need to cross state lines to obtain product.
3. Consideration should be given to where drivers will need to go to obtain alternative supplies in the event of severe shortages or extreme demand. The preceding information is intended to serve as a general guideline. It is not expected that information answering all of these questions will be available. However, to the extent that states can provide a good, detailed assessment of the problem, the potential for the appropriate granting of a waiver by the FMCSA regional administrator is more likely.
4. A wide spread natural disaster affecting multiple states for which state and federal disaster declarations have or are anticipated to be issued.

## Do Governors Need to Take Any 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. This may also be used to waive provision of State law that may have incorporated federal requirements. This would, for example, apply to gasoline and diesel fuel. It is the state's responsibility to designate if the emergency is declared in all or only part of the state.

49 CFR § 390.23 was amended in October 2014 to conform with the provision of the Reliable Home Heating Act which grant the Governor additional authority when dealing with shortages of residential heating fuels. This part includes the following provisions:

*“If a Governor who declares an emergency caused by a shortage of residential heating fuel (namely heating oil, natural gas, and propane), subsequently determines at the end of the 30-day period immediately following the declaration that the emergency shortage has not ended, and extends the declaration of an emergency for up to 2 additional 30-day periods, this exemption shall remain in effect up to the end of such additional periods, not to exceed 60 additional days, for a motor carrier or driver providing residential heating fuel in the geographic area designated by the Governor’s declaration of emergency.”<sup>6</sup>*

Governors are best suited to determine the need for a declaration of emergency in their state and have the authority to issue such a declaration. The rulemaking history goes back to 1992 in response to Hurricane Hugo. At this time, the first federal regulatory relief standard was introduced. In 1995, it was amended in wake of the response to Hurricane Andrew by allowing state and local authorities to be included. More recently, the heating oil and propane shortage that occurred during the extremely cold winter of 2013-2014 saw numerous instances where governors declared emergencies to provide regulatory relief to help facilitate the movement of fuel to customers who, in a number of instances, had run out of fuel. These waivers were extended when needed and ultimately the FMCSA Administrator declared a regional shortage. To further address this issue, Congress passed the Reliable Home Heating Act which President Obama signed into law on June 30, 2014.

### **Are Motor Carriers Exempt from The Safety Regulations Throughout Their Route Even Though They May Be Driving Through One Or More States in Order to Provide Relief to Another State?**

A declaration of emergency by the governor (or other authorized official) provides the temporary exemption to any motor carrier providing relief to a state (or affected area of a state) regardless of the motor carrier’s starting point. This means trucks drivers passing through one or more states to service the needs of another state where an emergency or disaster has been declared are covered by the regulatory relief if they are hauling supplies needed in the recovery effort. In the event of a fuel shortage this would include any refined petroleum products, and any biofuels including biodiesel and ethanol. The only requirement is that the motor carrier be providing direct emergency assistance to the area in which an emergency has been declared. For example, a motor carrier based in California which picks up propane in Texas to directly assist a declared emergency in Minnesota is covered by the exemption for the entire route.

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<sup>6</sup> 49 CFR § 390.23 as amended on October 22, 2014.

Vehicle registration and fuel tax compliance are administered by the states through the International Registration Plan and International Fuel Tax Agreement respectively. Motor carriers should work with the states along their route to determine whether trip permits or emergency relief are available for registration and fuel tax.

Truck size and weight relief is a state-by-state matter, where the Federal Highway Administration (FHWA) is the lead federal agency. Some states have size and weight or procedural reliefs in place for the emergency. Motor carriers desiring oversized/overweight permits should work with the states along their route. FHWA has more size and weight information available at [www.fhwa.dot.gov](http://www.fhwa.dot.gov).

### **III. Operation under Emergency Relief**

#### **Are Motor Carriers Required to Have Documentation On-Board Their Vehicles Identifying the Drivers and Vehicles Used in The Emergency Relief Effort?**

No. FMCSA does not require motor carriers to have paperwork documenting their involvement in the emergency relief effort while the declaration is in effect. However, FMCSA recommends that motor carriers have documents to show to enforcement officials in the event the vehicle is stopped prior to reaching the scene of the emergency. The documents may also be needed to enter into the emergency area. In addition, declarations and waivers may state that drivers should keep a copy of the declaration in the vehicle.

Drivers should have a manifest with them that clearly shows a destination for delivery of essential service or commodity in the state declaring the emergency. When the emergency declaration ends or no longer provides direct support, drivers must resume their compliance with all safety regulations.

States can facilitate the implementation of emergency relief by notifying their motor carrier enforcement agency and the trucking industry that emergency relief from the safety regulations is in effect and for how long. States should make the emergency declaration and any relevant executive order available on a state website and provide a link to the documents and recommend, but not require, that motor carriers serving the emergency area should have a copy of the declaration with them to help facilitate their ability to assist in the recovery effort. The FMCSA website lists known emergency declarations in the “News and Alerts” box at the top of its homepage at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

## How Long Does the Emergency Relief Last?

The emergency relief remains in effect for the duration of the emergency (as defined in 49 CFR 390.5) or 30 days, whichever is less. Only FMCSA Field Administrators may issue an initial exemption period of greater than 30 days, if additional emergency relief efforts are necessary on a regional or local basis. If a governor declares a state of emergency caused by a shortage of residential heating fuels including heating oil, natural gas, or propane the emergency relief can be in effect for up to 30 days and 2 subsequent 30-day extensions can be granted by the governor as may be required. Upon termination of support for the emergency, a driver may not drive until he or she has met the requirements of 49 CFR 395.3(a) and 395.5(a) and the driver has had at least 34 consecutive hours off duty when the driver has been on duty more than 60 hours in the previous 7 days or more than 70 hours in the previous 8 days.

## When the Emergency Declaration and the Emergency Relief Have Terminated are the Safety Rules in Effect?

Yes, Part 390.23 of the regulations states, *“Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier’s terminal or the driver’s normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.”*

## What Specific Safety Regulations Are Waived?

Following is a summary of the safety regulations that are waived or exempted in a declared emergency.

### 49 CFR Part 390—General Applicability

- Defines which drivers and vehicles are covered by 49 CFR Parts 390—399
- Establishes requirements for maintaining an accident register
- Establishes registration requirements to obtain a U.S. Department of Transportation number
- Defines marking (identification) requirements for CMVs
- Defines recordkeeping locations

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- 49 CFR Part 391—Qualification of Drivers
  - Establishes qualification standards for drivers to operate a CMV including:
    - Age and driver’s license
    - Employment application process
    - Employment background checks
    - Annual review of driving record
    - Road tests
    - Medical qualifications
  - Establishes requirements for maintaining a complete driver qualification file
- 49 CFR Part 392—Driving of Commercial Motor Vehicles
  - Requires drivers of CMVs to comply with all state and local traffic laws
  - Establishes prohibition from operating a CMV while ill, fatigued, or while using or recently used alcohol or drugs
  - Establishes standards for slowing and stopping at railroad grade crossings
  - Establishes standards for using emergency signals and flares when a CMV stops or becomes inoperable at the roadside
  - Establishes general precautions for the operation of CMVs
- 49 CFR Part 393—Parts and Accessories Necessary for Safe Operation of a CMV
  - Establishes CMV equipment standards, including:
    - Lights, reflectors and electrical equipment
    - Brakes and braking systems
    - Window/windshield glazing and construction
    - Fuel systems
    - Coupling devices
    - Tires and wheels
    - Frame and suspension systems
    - Mirrors, windshield wipers, horns, exhaust systems and
    - Other miscellaneous CMV parts and accessories
    - Establishes standards for the proper loading and securement of freight
- 49 CFR Part 394—Reserved
- 49 CFR Part 395—Hours of Service of Drivers
  - Establishes maximum driving limits for drivers of CMVs
  - Establishes record-keeping requirements for drivers’ hours-of service
  - Establishes standards for hours-of service automatic on-board recorders
- 49 CFR Part 396—Inspection, Repair and Maintenance
  - Establishes for the proper inspection, repair and maintenance of CMVs
  - Establishes prohibitions for operating a CMV in an unsafe mechanical condition

- Establishes record-keeping requirements for inspection, repair and maintenance activities
- Establishes qualification standards for persons performing inspection, repair and maintenance duties

#### 49 CFR Part 397—Transportation of Hazardous Materials—Driving and Parking Rules

- Establishes requirements for the safe parking and monitoring of CMVs when transporting hazardous materials
- Establishes prohibitions regarding smoking in or around a CMV when transporting hazardous materials
- Establishes requirements for safe routing of a CMV when transporting hazardous materials

#### 49 CFR Part 398—Transportation of Migrant Workers

- Establishes standards for the safe transportation of migrant workers
- Standards are a “streamlined” version of 49 CFR Parts 391—396 defined above

#### 49 CFR Part 399—Employee Safety and Health Standards

- Establishes standards for safe entry and egress from a CMV
- Establishes testing and maintenance standards for the steps, handholds, and or deck plates used for safe entry and egress from a CMV

While 49 CFR Part 390.23 allows for temporary relief from the safety regulations, the regulation does not allow FMCSA to suspend requirements for a Commercial Driver’s License (49 CFR Part 383), controlled substances and alcohol testing (49 CFR Part 382) or motor carrier financial responsibility/insurance (49 CFR Part 387).

### **Where Is More Information Available?**

For more information, contact the nearest FMCSA field office. Contact information is available online: <http://www.fmcsa.dot.gov/about/contact/offices/displayfieldroster.aspx>.

For Emergency Declarations, Waivers, Exemptions and Permits in effect, visit the FMCA website: <http://www.fmcsa.dot.gov/emergency>.

The Department of Energy has a Waivers Library which also includes information on waivers of the FMCSA safety rules. The library can be found at: <https://www.energy.gov/ceser/energy-waiver-library>.

## **IV. State Energy Official Action under Emergency Relief**

### **State Implementation of Relief from Federal Motor Carrier Safety Regulations**

The following is sample language that can be adapted for used in a state emergency, disaster, or energy emergency declaration where the state wishes to be explicit that FMCSR are waived (including Driver Hours of Service) along with other safety provisions to facilitate the recovery effort. This is only a sample and should be adapted as needed to conform to the statutory and regulatory requirements of each state.

This action should be considered if fuel supplies have been seriously impacted by an emergency that has broadly impacted the petroleum industry capability to supply the affected area or that the recovery effort requires additional fuel supplies to speed the recovery effort.

**DRAFT-DO NOT DISTRIBUTE**

**Governor's Executive Order No. [Insert E.O. Number and Year]**  
**State of [Energy] Emergency [Disaster]**  
**Waiver of Select Regulations Covering Motor Carriers and Drivers**  
**Transporting [insert fuels to be covered by the order e.g. gasoline, diesel fuel, propane, #2 home heating oil, etc.]**

WHEREAS, *[Insert citation to legal authorities' that give the Governor the authority to take the actions contained in the order]*

WHEREAS, *[Insert a brief description of the event(s) that have required this action];* and

WHEREAS, *[Insert a brief description of the consequences and impacts of the event(s)];* and

WHEREAS, it is in the best interests of the State of *[Insert Name]* to provide for the safe transportation of petroleum products within this State, and to assure that petroleum product supplies will remain sufficient to protect the health, safety, and economic well-being of the State's residents and visitors; and

WHEREAS, this declaration of emergency *[disaster]* is recognized by the Federal Motor Carrier Safety Administration (FMCSA) to cause, and to place into immediate effect relief from Federal Motor Carrier Safety Regulations (FMCSR) contained in 49 CFR Parts 390-399; and *[If applicable, insert any corresponding or equivalent reference in State Law.]*

WHEREAS, all of the safety regulations contained in 49 CFR Parts 390-399 are waived, including Driver Hours of Service, however motor carriers are encouraged to comply with the safety regulations which do not otherwise restrict or impede their ability to assist in the recovery effort in the area for which an emergency has been declared.

NOW, THEREFORE, I, *[Insert Name]*, Governor of the State of *[Insert Name]*, by virtue of the power and authority vested in the Governor by *[Insert Legal reference to authorities]*, order the following:

1. A State of *[Energy] Emergency [Disaster]* is declared in the State of *[Insert Name]* for *[Insert the names of the counties in which this declaration applies or specify that it is a Statewide declaration]*
2. Relief from Federal Motor Carrier Safety Regulations contained in 49 CFR Parts 390-399; and *[If applicable, insert any corresponding or equivalent reference in State Law as may be needed]*.
3. This order applies only to *[Insert fuels to be covered by this order e.g. gasoline, diesel fuel, #2 home heating oil, propane, biofuels, etc.]* No other petroleum products or other fuels are covered by the exemption and suspension under this Order.
4. The relief from these regulations shall remain in effect for the duration of the emergency or thirty (30) days whichever is less. The governor may elect to extend the emergency declaration from home heating fuel shortages for two successive thirty (30) day periods if the emergency conditions have not ended. Only the FMCSA Field Administrator can extend the thirty (30) day limit for an extension of relief from the federal safety regulations for transportation fuels or other supplies needed to recover from the emergency conditions.
5. Nothing in this Order shall be construed as an exemption from applicable controlled substances and alcohol use and testing requirements (49 CFR Part 382 and *[insert applicable State statute, order, and/or rule]*), the commercial driver's license requirements (49 CFR Part 383 and *[insert applicable State statute, order, and/or rule]*), the financial responsibility requirements (49 CFR Part 387 and *[insert applicable any similar State statute, order, and/or rule]*), applicable size and weight requirements, or any portion of federal and State regulations not specifically identified.
6. Motor carriers or drivers currently subject to an out-of-service order are not eligible for the exemption and suspension until the out-of-service order expires or the conditions for rescission have been satisfied.

Dated: \_\_\_\_\_  
*[Insert City, State]* \_\_\_\_\_

*[Governor's name and the date]*

File with the *[Insert State Agency name as may be required, if not eliminate this part]*,  
on \_\_\_\_\_.

## **Suggested Communications and Implementation Procedures**

States can facilitate the implementation of the waiver to the FMCSR by taking the following steps:

1. Post a copy of the governor's (or other authorized official's) emergency declaration on a publicly available website and provide a link to the emergency declaration as part of notifications made to state, local, and federal agencies and the motor carrier industry. Similar notifications should be made by the state when a regional multi-state waiver is issued by the FMCSA.
2. Notify the motor carrier safety enforcement agency of state government that an emergency has been declared either by the state or federally, in what part of the state it is declared, and that as a result of this declaration the safety regulations are temporarily waived.
3. Provide notification of emergency declaration to the FMCSA state office and regional administrator.
4. Notify motor carrier industry associations or motor carriers servicing the state directly through any automated system to quickly communicate with the industry. This communication should encourage, but not require, drivers transporting fuels to the areas in which an emergency has been declared to have with them a copy of the emergency declaration and a copy of the website link from which the declaration can be printed.
5. Provide notification to the state Energy Emergency Assurance Coordinators (EEAC) in those states within the region that may have motor carriers passing through the states to provide relief in the affected state. The EEAC in turn should inform their state agency responsible for motor carrier enforcement as to the waiver(s) that is (are) in effect. It is also advisable to coordinate with neighboring states in advance of this declaration, if possible.

## **Prepare for Low Inventories of Home Heating Fuels**

States should be prepared to provide a supply and demand analysis for home heating fuels. State agencies responsible for energy assurance planning and preparedness should be ready to provide further details on the implications of the low inventories for the state. States should engage in prepared during non-heating seasons in order to make timely assessments of the impact of an emergency in the state. The following steps are suggested:

1. Regularly monitor weekly inventories of heating oil, natural gas and propane in your region as available on the Energy Information Administration website as published in the Weekly Petroleum Status report.
2. If the inventories of residential heating fuels within the Petroleum Administration for Defense District (PADD) are expected to remain below the most recent 5-year average for more than 3 consecutive weeks, state should prepare a supply and demand and price assessment that can make available to the governor's office prior to or in response to an EIA notification of low inventories.
3. This supply and demand and price assessment should compile and compare the following statistics for the state and region and the effected fuel source: heating oil, natural gas, and propane.
  - a. What are historical state inventory levels and how do they compare as a percentage of PADD stocks to your region. Distillate fuel oil and propane inventories.
  - b. For natural gas see the weekly Natural Gas Storage report.
  - c. For natural gas also see the Natural Gas Weekly Update report.
  - d. For heating oil and propane check the trends in the U.S. Weekly Product Supplies report and the historical trend for the states as shown in the Prime Supplier Sales Volumes Monthly report that shows the monthly deliveries of petroleum products to the state for final consumption.
  - e. For natural gas check the trends in states' natural gas consumption in the Consumption by End Use by States report.
  - f. If your state participates in the State Heating Oil and Propane Price Survey check state and regional residential and wholesale propane and heating oil prices in found in the Weekly Heating Oil and Propane Prices report.
  - g. Take a look at factors affecting short term energy supply trends which may provide insight to patterns of use in your states. See EIA's Short-Term Energy Outlook.
  - h. Check the population weighted Heating Degree Days for your state. This National Weather Service Climate Prediction Center data shows how much colder or warmer than normal temperatures have been.

4. Know the heating fuel used in homes by type, state, and county. This is available from the U.S. Census Bureau through the American Community Survey. This will allow one to determine where there are higher concentrations of homes using specific heating fuels and may help pinpoint geographic locations in the state that may be more highly dependent on one fuel vs. another. The system allows the data to be graphically mapped by county.
5. Once you have compiled a more complete picture for your state you should talk to your heating oil, natural gas, and propane industry contacts. Your state petroleum and propane associations may be able to provide some perspective as can other industry contacts. Public Utility Commissions typically have detailed information on the natural gas market conditions from natural gas utilities that serve as Local Distribution Companies.
6. This information along with other sources available to the state can help construct a fairly detailed picture of current market conditions effecting home heating fuels. This can serve as the basis for a summary that can be made available to the governor's office and other policy makers that will help them understand factors effecting inventories and whether any actions at the state level might be needed. The state's energy assurance plan should also be reviewed to determine if it suggests any further actions or notifications under the current market conditions.

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