



August 1 2022

Larry Minor
Associate Administrator of Policy
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Special Exemption Application related 49 C.F.R. 395.3(a)-(c)

Dear Mr. Minor,

The National Propane Gas Association (NPGA), acting on behalf of its members and to assist the propane industry, respectfully submits this request for a special exemption to waive the requirements of 49 C.F.R. 395.3(a)-(c)¹ to enable the propane industry to prepare and respond to peak periods of consumer demand among residential, agricultural, and commercial consumers in anticipation of, during, and to recover from emergency conditions. Section 395.3 of the Hours of Service of Drivers regulations limits the maximum daily driving time and daily off-duty time as well as the restart procedures for property-carrying commercial motor vehicle drivers.² NPGA requests a special exemption to deviate from §395.3 under defined conditions of peak consumption. NPGA requests that the special exemption applies on the basis of per-driver, per-route, and that each company that elects to utilize the special exemption on a per-driver, per-route basis must maintain appropriate documentation to demonstrate the presence of peak consumer demand conditions within the scope of the special exemption. The requested special exemption does not include waiving any other component of the hours of services regulations.³

NPGA is the national trade association of the propane industry with a membership of about 2,500 companies, and 36 state and regional associations representing members in all 50 states. NPGA's membership includes retail marketers of propane gas who deliver the fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. Propane gas is used in millions of homes, agricultural operations, schools, commercial, and commercial operations through the U.S. for water and space heating, cooking, and other appliances as well as grain drying, on-site power generation, commercial off-road equipment, industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks. The propane industry also serves as the immediate emergency response fuel for a variety of consumers after emergency conditions, such as hurricanes, wildfires, blizzards, and other natural disasters as well as other instances of electricity outages and natural gas curtailment.

¹ 49 C.F.R. 393.3(a)-(c)(2022).

² *Id.*

³ If the special permit is granted, motor carriers may configure electronic logging devices to designate a driver and route as exempt from its use and/or otherwise annotate the driver's electronic logging device record. *See* 49 C.F.R. 395.28(b)-(c)(2022). Use of the special permit by ordinarily short-haul drivers, would not implicate additional hours of service requirements. *See* 49 C.F.R. 395.1(e)(2022).

Equivalent Level of Safety

This request is based on the agency's prior approval of similar exemption applications for other industries that enable individual drivers to respond to specified conditions with temporary waiver of certain provisions of the hours of service regulations.⁴ The request does not propose to waive the requirement for 10 consecutive hours off duty.⁵ The request proposes to extend by three hours the daily driving and on-duty maximums, which is similar to other special exemptions approved by FMCSA.⁶ The proposed special exemption also includes a limit on the number of consecutive days that a driver may utilize the special exemption, which must conclude with an off-duty period of 34 or more consecutive hours that parallels the systematic rest breaks integrated in the current regulations.⁷ Therefore, under the specified conditions identified in this special exemption request, we believe it enables the safe and efficient transportation of propane to prepare for peak consumer demands, service consumers during these periods, and restock bulk storage facilities subsequent to these periods.

Need for Special Permit

The purpose of the request for relief from 49 C.F.R. 393.5(a)-(c) is to efficiently and safely prepare and serve residential, commercial, and agricultural consumers ahead of and during peak consumption periods. Over the last several years, the hours of service regulations have evolved with specific limits on driving times, breaks, off-duty times, sleeper berth periods, etc. The country's roadways and highways along with the pipeline systems and railroads, however, have experienced very little change or expansion. Meanwhile, the propane industry has experienced an increase of consumers who rely on propane for daily living and operations as well as during emergency conditions when other energies are interrupted. Recently, the Federal Motor Carrier Safety Administration (FMCSA) Emergency Division has improved the execution of Emergency Declarations in anticipation of and in response to significant emergency conditions,⁸ which has enabled the propane industry to safely provide propane services to regular consumers as well as those suffering interrupted service from other energies.

In addition to the emergency circumstances that warrant Emergency Declarations,⁹ the propane industry experiences periods of sizeable peak consumer demand, often in anticipation of and during natural or manmade conditions outside the scope of an Emergency Declaration. These conditions may be outside the scope of an Emergency Declaration by their nature – such as a tropical storm or extended period of below average temperatures, or interruption in electricity or natural gas service, or railcar delays – or the conditions may be narrow in geographical impact – such as two or three states or portions of states. In advance of these conditions and during service through these conditions, the propane industry experiences significant increases in consumer demand, which creates an increase to deliveries to consumers as well as deliveries to bulk storage locations. As a result of these needs, long- and short-haul drivers often reach the maximum operating limits defined in §393.5 within three or four days.¹⁰ Subsequently, operations experience reductions in available drivers while consumer demand continues. NPGA submits this special

⁴ E.g., Hours of Service of Drivers: Association of American Railroads and American Short Line and Regional Railroad Association; Application for Exemption, 85 Fed. Reg. 247,84096 (Dec. 23, 2020); *see also*, Fed. Motor Carrier Safety Admin., Exemptions, <https://www.fmcsa.dot.gov/regulations/exemptions-0> (last updated July 15, 2022).

⁵ 49 C.F.R. 395.3(a)(2)(2022).

⁶ *See supra* note 4, at 84098.

⁷ *See* 49 C.F.R. 395.3(c)(2022).

⁸ *See* 49 C.F.R. 390.23 (2022).

⁹ *See* 49 C.F.R. 390.23; *see also* 390.5 (2022) (definition of 'Emergency').

¹⁰ 49 C.F.R. 395.3 (2022). Drivers operating under the terms of the short-haul exemption may exceed the daily maximums. *See* 49 C.F.R. 395.1(e)(2022).

exemption request to provide a supplemental means by which the propane industry may prepare for, respond to, and recover from these periods of peak consumer demand.

Special Exemption Request

To clearly define the scope of this request, please find below an outline of the terms and conditions to apply to individuals employed by companies providing propane services while driving commercial motor vehicles to consumers and/or bulk storage facilities in anticipation of, during, or recovery from a period of peak consumer demand. Companies providing propane services that utilize the special exemption must maintain documentation to demonstrate conditions as outlined below. Such documentation must comply with current FMCSA recordkeeping regulations 390.29¹¹ and 390.31,¹² and companies must retain such documentation in accordance to 395.8.¹³

Periods of peak consumer demand includes the following:

- Railcar delays in excess of five business days;
- Interruption of electricity services;
- Interruption of natural gas services;
- Limitation of pipeline services due to pipeline allocation;
- Weather- and storm-related events including but not limited to fallen trees, rock and mudslides, and other debris on the roadways as a result of the weather or storm events, snow, below average temperatures for the serviced area, flooding, and tropical storms.
- Interruption of normal operations due to communicable disease, such as influenza, COVID-19, etc.

Documentation to demonstrate periods of peak consumer demand includes but is not exclusive to the following:

- Notice of railroad delivery delays;
- Report of electrical service interruption, such as utility website statements, alerts, or customer notices;
- Report of natural gas interruption, such as utility website statements, alerts, or customer notices;
- Information of pipeline allocation, such as customer notices, industry alerts or notifications, and company statements;
- Forecast and weather reports by officials, such as National Weather Service Climate Prediction Center Outlooks for temperature and precipitation,¹⁴ Energy Information Administration Short-Term Energy Outlook,¹⁵ Winter Fuels Outlook,¹⁶ or Propane Market Update,¹⁷ or local or state reports on weather-related or storm-related events or roadway debris;
- Report of communicable disease infections, such as the Centers for Disease Control and Prevention National Notifiable Diseases Surveillance System.

The terms of the special exemption requested are:

- A driver may extend the 14-hour duty period in 395.3(a)(2) to no more than 17 hours;

¹¹ *Location of records or documents*, 49 C.F.R. 390.29 (2022).

¹² *Copies of records or documents*, 49 C.F.C. 390.31 (2022).

¹³ *Retention of driver's record of duty status and supporting documents*, 49 C.F.R. 395.8(k) (2022).

¹⁴ Nat'l Oceanic & Atmospheric Admin., Climate Prediction Ctr,

<https://www.cpc.ncep.noaa.gov/products/predictions/814day/> (2022).

¹⁵ Energy Info. Admin., Short-Term Energy Outlook, <https://www.eia.gov/outlooks/steo/> (2022).

¹⁶ Energy Info. Admin., Winter Heating Fuels, <https://www.eia.gov/special/heatingfuels/#US:propane:week> (2022).

¹⁷ Energy Info. Admin., This Week in Petroleum: Propane, <https://www.eia.gov/petroleum/weekly/propane.php> (2022).

- A driver may extend the 11-hour driving period in 395.3(a)(3) to no more than 14 hours, following 10 consecutive hours off duty;
- A driver may waive the 60- and 70-hour rule in 395.3(b) for a period of no more than six consecutive days;
- A period of six consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours;
- Before operating under the special exemption, drivers must complete the Fatigue and Wellness Awareness course available online by the Propane Education & Research Council;¹⁸
- Recordkeeping relating to use of the special permit shall be in accordance with provisions 49 C.F.R. 390.29, 49 C.F.R. 390.31, and 49 C.F.R. 395.8;
- Drivers and motor carriers must comply with all other provisions of the Federal Motor Carrier Safety Regulations.
- Requested duration of this special permit is five (5) years.

Applicant Name: National Propane Gas Association
 Applicant Address: 1140 Connecticut Avenue NW, Suite 1075, Washington DC 20036
 E-mail Address: sreboli@npga.org
skaminski@npga.org
 Phone Number: 202-355-0321
 Agent Name: Sarah J. Reboli
 CEO: Stephen Kaminski

Physical addresses associated with special permit use: See enclosure (*NPGA Member Locations*).

Thank you for your consideration of the request special permit. Please feel free to contact us with any additional questions.

Sincerely,



Sarah J. Reboli
 Vice President, Regulatory & Industry Affairs
 National Propane Gas Association

¹⁸ The online course is currently featured on NPGA's website here: <https://www.npga.org/wp-content/uploads/take-a-test-drive/story.html>. It is also available online free to the propane industry via the Propane Learning Center <https://propane.com/propane-learning-center/>. Further, the Fatigue and Wellness Awareness course was designed to comply with entry-level driver training requirements specified in 49 C.F.R. 380, Appendix A and Appendix B. See 49 C.F.R. 380, Appendices A-B (2022).