

Guidance for States on Relief from Federal Motor Carrier Safety Regulations in an Energy Emergency

NASEO

*National Association of
State Energy Officials*

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Disclaimer: This guidance is intended only to provide a summary and explanation of how and when regulatory relief is granted. The regulations govern the specific requirements for regulatory relief and should be first reviewed, and the FMCSA consulted as needed, if there are any questions on how and when they apply. This guidance was prepared by the National Association of State Energy Officials with input from the Federal Motor Carrier Safety Administration.

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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 FMCSRs¹ 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 as a result of 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 are 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 Officials' (NASEO) recommendation that this contingency be included in states' energy assurance plans as appropriate.

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 113-125](#)) which was signed into law by President Obama 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."

¹ [49 CFR § 390.23](#)

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 and only permit governor's to waive the FMCSR for 30 days following which only FMCSA Field Administrators may extend the exemption for 30-days.

Emergency relief from the FMCSR is triggered under a declared emergency following an event that results 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; a large-scale power blackout; or other similar events. Relief may also be necessitated after 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 increase in fuel supplies may be needed to support an overall recovery effort.

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, telecommunications) or essential supplies (e.g., food, fuel) are exempt from most of the FMCSR.² 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. 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.

What is an Emergency?

Under 49 CFR §390.5, the definition of an emergency means any hurricane,

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

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.

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. 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."³

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

³ 49 CFR § 390.23 as amended on October 22, 2014.

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 where 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.

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 oversize/overweight permits should work with the states along their route. FHWA has more size and weight information available at www.fhwa.dot.gov.

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.

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.

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 extend the 30-day limit for an exemption from the FMCSR 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

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>

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.

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.
2. Notify the motor carrier safety enforcement agency of state government that an emergency has been declared, in what part of the state it been 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 the declaration can be printed.
5. Provide notification to the energy emergency assurance coordinators in those states within the region that may have motor carriers passing through them to provide relief in the affected state. It is also advisable to coordinate with neighboring states in advance of this declaration, if possible.

Prepare to respond to notification to governors by EIA of 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. 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.
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 you 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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