

Procedures for States to Request Regional Driver Hours Waivers for the Federal Motor Carrier Safety Administration (FMCSA) in the Event of a Potential Serious Shortage of Deliverable Fuels

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Situations have occurred in winter months when the transportation of deliverable fuels for residential space heating (#2 fuel oil and propane) has been unable to keep up with demand. Such problems have typically been widespread, affecting a number of states and caused by factors that exceed the reasonable bounds of the industries ability to respond. Under such circumstances, and to the extent they can be independently verified, states in the affected region may wish to make a coordinated request to the FMCSA for the temporary waivers of driver hour's requirements.

This procedure is not intended to be used in the event of a major emergency where the governor has made a disaster declaration and for which he they have clear authority. These procedures are to be used under less than disastrous situations, but where there is a clear and serious threat to the ability to assure regionally that residential customers are supplied with heating fuels during the winter.

The Federal Motor Carrier Safety Regulations (FMCSRs) (390.23) provides relief from compliance with most safety regulations when an emergency is declared. According to 49 CFR 390.5 an "Emergency means any... storm (e.g. thunderstorm, snowstorm, ice storm...) earthquake... explosion, blackout, or other occurrence, natural or man made, that interrupts the delivery of essential services... or supplies (such as food and fuel) or otherwise immediately threatens human life or public welfare...." Under such situations the FMCA Field Administrator may declare emergencies if there is a regional crises which justifies such regulator relief.

Procedure

1. A state learns that a supply problem may be developing. This information may come from numerous sources including: requests from suppliers for driver hour waivers; information from the State Heating Oil and Propane Prices survey conducted by many states; the occurrence of very cold weather for a protracted period; major winter storms that may impede highway travel, ice conditions that effect barge traffic on rivers supplying key terminals, etc.
2. A state will contact other states in the region that it believes may be also effected to determine if they are experiencing similar problems. Such contacts would be typically through the Energy Emergency Information Coordinators ,

- which have been named in each state. Contacts can use e-mail; phone call or regional conference calls can be scheduled if it is believed the problem is a wide scale regional problem.
3. If it is determined by a group of states that a request for a regional waiver is warranted each state will prepare information that provides a foundation supporting the waiver.
 - a. If individual suppliers have requested waivers they should be asked to provide detailed information in support of their request.
 - a. State industry association representatives should be consulted to confirm that the problem is more wide spread in nature.
 - b. The state should prepare an analysis of the supply situation drawing from independent sources of information such as the Energy Information Administration, National Weather Service, etc.
 - c. Determine the amount of time for which the waiver is to be requested for, i.e. 5 days 10 day, etc. This time should be specific by date and should be not longer than absolutely needed for the supply problems to be resolved
 4. States should agree to request a regional waiver and provided specific information supporting the request within a specific period of time, i.e. 24/48 hours and to send this request and information by Fax or e-mail to the appropriate FMCSA Field Administrator. A copy of the request should also be sent to the State Director of FMCSA

Request to the FMCSA Field Administrator should come from appropriate state officials. While this request might come directly from the Governor, this may not be practical due to time or other constraints. In this case other state officials which have authority for energy, emergency and/or motor carrier matters, such as the head of the state's motor carrier enforcement agency, the director of the State Energy Office, the chair of the public utility commission, the secretary of the Department of Transportation, or the head of the state's emergency management agency, might submit a letter or letters over one or more of the signatures of such agencies. In all cases states are strongly encourage to assure that all appropriate states agencies are involved and consulted as part of the process.

Please note that following this procedure is no guarantee that waivers will be granted. That decision remains that of the FMCSA Field Administrator. However, to the extent several states provide detailed information and analysis of the supply and other factors affecting the ability of drivers to maintain the supply to residential customers, there is a greater likelihood that a waiver will be granted.

Factors which States Should Consider in Assessing the Need to Make a Request for Regional Driver Hours Waivers:

Weather

1. Is snow or ice sufficiently severe that full recovery of highways and primary roads will take more than two days? (The state department of transportation and or county road commissions may be able to provide this information.)
2. Is snow or ice sufficiently severe that full recovery of secondary and rural roads will take two to four days? (Check with the county road commission or county emergency management coordinators.)
3. Is cold sufficiently severe that fuel use by significant numbers of households will outstrip the ability of local retailers (operating under normal hours of service limitations) to replenish critically-low home fuel tanks?
4. Is cold sufficiently severe that fuel transporters (operated by jobbers or retailers under normal hours of service limitations) are unable to replenish the supplies of retail outlets in the face of increased consumer demand?
5. Have the Heating Degree Days substantially exceeded normal for a prolonged period?
6. Which counties have been declared under a state of emergency of any sort?

Weather points to emphasize:

- A. 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 life or public welfare.
- B. The simple fact that one or two retailers are in trouble 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 of jobbers should not be seen as grounds for granting a waiver.
- C. The simple fact that some "will-call" customers are on the verge of running out of fuel because of their own mismanagement of their supply (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 supply "keep full" customers is a better barometer of inability to meet demand.

Supply Shortage and Infrastructure Damage

1. Are terminal lines or product shortages the result of product allocations by a single supplier within the region?
2. What is the state and regional inventory picture how does it compare to last year, the recent average for the month or the high and lows for the month?
3. Has a pipeline, refinery, or terminal been damaged?
4. Is a damaged pipeline refinery, or terminal dispensed reduced quantities of product; has distribution actually stopped?
5. How long is a damaged pipeline, refinery, or terminal expected to be at reduced capacity or shut down?
6. What is the geographic range of product distribution from the pipeline, refinery, or terminal?
7. Are terminals within the region out of a given product 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?
10. Can transporters reach alternative suppliers within normal hours of service limitations?
11. Are there others mitigating factors that will lessen the threat to the public (e.g. mild weather, alternative product availability).

Supply Shortage and Infrastructure Damage points to emphasize:

- A. 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.
- B. 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 long that retailers are unable to replenish their own supplies.
- C. 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 no.2 home heating oil).
- D. 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.

Transportation

1. Have jobbers and/or retailers pressed all qualified drivers into service?
2. Have or will all qualified drivers exhaust their hours of availability under normal hours of service limitations?
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?
6. Are there lines at fuel terminals during all hours, including nighttime?
7. Are trucks lined up at fuel terminal 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 have the industry take to avoid the need to grant Driver hour waivers?

Transportation points to emphasize:

- A. 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 and jobbers should make efforts to hire all available drivers and to place into service all available trucks during emergencies or

shortages.

- B. Long waits at terminals during the day do not demonstrate a shortage of product or a need for driver hour's waivers if those lines disappear at night.
- C. Lines at one terminal and the absence of lines at another may signify price shopping rather than product shortages or transportation disruptions. Waivers should not be granted where terminal lines are the result of economic decisions.

Regional Effect

1. Which states have been directly affected by severe weather (cold, ice, or snow)?
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 do affected states obtain fuel supplies; is travel outside the state vital to obtaining product?
5. Has severe weather affected a state that significant numbers of transporters from another state need to travel in to obtain supplies?

Regional Effect points to emphasize:

- A. 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.
- B. 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.
- C. Consideration should be given to where drivers will need to go to obtain alternative supplies in the event of severe shortage 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 waivers is more likely.