

To: NASEO State Members
From: David Terry, Executive Director, NASEO
Subject: New Federal Motor Carrier Safety Law and Governor Authority
Date: July 24, 2014

On June 30, 2014, President Obama signed into law the *Reliable Home Heating Act* ([Public Law 113-125](#)). The measure was introduced by Senator Thune, SD on March 6, 2014, and was originally co-sponsored by Senators Klobuchar, MN; Coats, IN; and Blunt, MO with bipartisan support from additional co-sponsors Senators Hoeven, ND; Ayotte, NH; Chambliss, GA; Fischer, NE; McCaskill, MO; and Johnson, SD.

The Act directs the Federal Motor Carrier Safety Administration (FMCSA) to recognize any 30-day emergency period declared by a state governor due to a shortage of residential heating fuel (and up to two additional 30-day periods) as one during which FMCSA Federal Motor Carrier Safety Regulations shall not apply to any motor carrier or driver operating a commercial motor vehicle providing residential heating fuel in a geographic area designated as under a state of emergency. It defines the term "residential heating fuel" to include heating oil, natural gas, and propane.

It also directs the Administrator of the U.S. Energy Information Administration (EIA), using data compiled from the EIA Weekly Petroleum Status Reports, to notify the governor of each state in a Petroleum Administration for Defense District if that district's inventory of residential heating fuel has been below the most recent five-year average for more than three consecutive weeks.

The law also requires FMCSA to revise its' rules, as needed, to be consistent with the law and such revisions might provide for additional clarification of how it should be applied. NASEO's initial review suggests that states should be prepared to make changes as may be required for granting waivers from the federal motor carrier safety rules. The new law allows Governor's to waive the rules for up to a total of 90 days. However, the existing rules also state that 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. The FMCSA must initiate rulemaking to implement this element of the statute. In the current regulations, only the FMCSA Field Administrator has the authority to extend the original 30 day emergency declaration. A proposed rulemaking would modify the existing regulations to allow the Governor to extend the emergency relief in support of an ongoing emergency specifically related to the operation of a commercial motor vehicle providing residential heating fuel, for the duration of the emergency or an additional 60 days, whichever is less.

It should be remembered that the waiver of these rules does pose a public safety risk and the rules should only be waived for a period no longer than needed to resolve the supply constraints. NASEO and State Energy Offices (SEOs) will need to more closely monitor the EIA Weekly Petroleum Status Reports if it appears inventories could reach a level that would trigger the law requiring EIA's notification to governors. Should this occur SEOs should be prepared to respond to inquiries from the governor's office and be ready to provide additional information about residential heating fuel supply, deliveries, and retail and wholesale prices in the state and region.

The laws' impact is still being evaluated by NASEO, and staff will be working with the FMCSA and U.S. Department of Energy to assess what it may mean for state waivers in the context of energy emergency preparedness and response. NASEO will provide additional information on this issue as it becomes available and encourage members to participate in the Energy Security Committee meeting which will be held in conjunction with the NASEO 2014 Annual Meeting in

Savannah, Georgia to learn more about this and other new energy assurance and emergency issues.

If you have any questions, please contact Jeff Pillon, NASEO's Director of Energy Assurance at: 517.580.7626 or jpillon@naseo.org.