



Minimizing Fuel Disruptions Due to Declared Emergencies or Natural Disasters (2019)

Introduction

A jurisdiction may be faced with a natural disaster or emergency that inhibits the flow of fuel (i.e. Gasoline, diesel, aviation gasoline, jet fuel, heating oil, kerosene etc.) and petroleum products into its state. A natural disaster is defined as a sudden event in nature that usually results in serious damage or loss of life. Examples of natural disasters include, but are not limited to, earthquakes, wildfires, and hurricanes. An emergency is defined as a sudden or unexpected event that may result in injury, property damage, or loss of life and requires immediate attention. In terms of fuel disruptions, a declared emergency could be construed as a damaged pipeline or work stoppage organized by employees. In either case, supply channels would be disrupted inhibiting the ability to distribute fuel or petroleum products to markets or to support disaster recovery. This document outlines steps administrators should consider implementing before an emergency is declared. These strategies limit fuel disruptions and ensure the destination state receives tax revenues on fuel imported into its state.

Mitigation Strategies

Fuel tax administrators have an obligation to minimize the impact of fuel disruptions as much as possible. This can be done by utilizing existing technologies, proposing legislation, and opening lines of communication with applicable state and federal jurisdictions. It is important to note that taxes or fees on fuel and petroleum products may be administered by more than one agency. If this is the case, each agency should be aware of any mitigating strategies prior to a declared emergency or natural disaster.

The following information identifies actions state tax administrators can take before and after a declared emergency or natural disaster to minimize fuel disruptions.

- **License Waiver** - Propose legislation that inhibits the origin state’s tax or fee from being charged if fuel is exported to a state under a declared state of emergency or natural disaster and the exporter does not have the proper licensing.

Sample Legislation

Export of Tax Free Fuels. —

A person may export fuel without an exporter’s license and without paying the tax/fee imposed pursuant to this part only under any of the following circumstances:

- A Governor of a state has declared a state of emergency, or the President of the United States has declared a major disaster in a state or territory of the United States, and/or
- Fuel is exported outside this state to a state or territory where an emergency or natural disaster has been declared and/or
- All destination state taxes or fees were paid on the fuel exported out of state.

This provision will remain in effect for the duration of the disaster response period as outlined in the emergency order or declared disaster.

- **Temporary License** - Propose legislation that creates a temporary importer, exporter, distributor, or transporter license during a declared state of emergency. Prior to drafting this legislation, state taxing jurisdictions should consider the following.



- ✓ Should the state waive bonding requirements, background checks, and fees to expedite the licensing process?
- ✓ Should the state activate the temporary license for a pre-defined period or for the duration of the declared emergency?

What should the state use as a basis for approving the temporary license? Consider using another license type, such as a sales tax license, or another states fuel license as the basis for approving the temporary license.

- ✓ Should the state require an electronic registration system in case employees are not available to process the application?
- ✓ Should the state require temporary license holders to file reports identifying fuel imported, exported, or carried to or from the applicable state?
- ✓ Should state law waive registration or certificate of authority requirements?

Note -

Registration/Certificate of Authority - Waiver language should be incorporated into the emergency/disaster legislation in the event the license registration requires the licensee to obtain this registration/certificate to transact business in the state and obtain a fuel license. You may want to verify with the Secretary of State office if this is acceptable in the event of an emergency/disaster.

- ✓ Should the state grant tax deferral privileges to the temporary license holder? Recourse should be extended to licensed suppliers in the event temporary license holders do not remit deferred taxes. In the event a state does not take this approach the law should be clear, so the supplier/permissive supplier is aware and can evaluate the credit worthiness of their customer if they (supplier/permissive supplier) wish to defer the customer's tax liability.
- ✓ Will the state allow the temporary license holder to receive a collection allowance? If a jurisdiction does not give the allowance privilege to the temporary licensee, then the state should indicate this position in the proposed law, so suppliers can make appropriate changes. Also, jurisdiction should adjust tax returns to account for the disallowed collection allowance to temporary license holders.

Sample Legislation

Temporary Licenses – Declared Emergency

(1)(a) Notwithstanding any provision to the contrary contained in this chapter, the department may grant a temporary fuel license for immediate use if:

1. The Governor has declared a state of emergency under s. X; or
2. The President of the United States has declared a major disaster in this state or in any other state or territory of the United States.

(b) Notwithstanding the provisions of this chapter requiring a license and a bond or criminal background check, the department may issue a temporary license as an importer, exporter, distributor or transporter.

(c) A temporary license expires on the last day of the month following the month in which the temporary license was issued. The department may extend any temporary license on a month-to-month basis during the period of a declared state of emergency or major disaster as provided



in this subsection. If the department extends a temporary license, the extended license expires on the last day of the month in which the temporary license was extended.

(d) To procure a temporary license, a person must provide to the department the following information.

1. The federal identification number of the business or, if such number is unavailable, the social security number of the owner.
2. The name under which the person will transact business within the state.
3. The location, with street number address, of his or her principal office or place of business within this state and the location where records will be made available for inspection.
4. Any other information required by the Department.

(e) A temporary license authorized by this subsection may not be renewed if the licensee has not filed the required returns or made payment of the taxes required under this chapter.

Note –

Destination State Tax - If consideration is given to waiving licensing requirements or issuing a temporary license, states should require the destination state tax to be collected. Terminal suppliers should collect the destination state tax for both rack tax states as well as distributor states. Distributor states should avoid allowing unlicensed distributors or distributors with a temporary license from receiving and selling tax-free fuel.

- **Dyed Fuel Waivers** - Prior to any impending natural disaster, taxing jurisdictions should consider submitting a request to the Internal Revenue Service and Environmental Protection Agency that would allow the use of dyed diesel fuel on-road when the availability of undyed fuel is limited. Alternative filing procedures or system enhancements may be required to provide taxpayers with the ability to report and pay all applicable tax and/or fees on dyed fuel used on-road as if the dyed fuel is clear.
- **Gasoline Volatility Waivers** - In response to a natural disaster or other fuel supply emergency, authorities should consider contacting industry, environmental regulators of State Implementation Plans (SIP), and the Environmental Protection Agency (EPA), in conjunction with the Department of Energy (DOE), to request state and federal gasoline volatility waivers. Volatility defines the evaporation characteristics of a liquid fuel which is measured by and referred to as RVP (Reid Vapor Pressure) and is regulated by the EPA and states to reduce o-zone harming emissions. The waivers could raise federal and state RVP seasonal limits, reduce co-mingling restrictions, or allow industry to produce, sell, and distribute conventional gasoline instead of reformulated gasoline (cleaner burning fuel that produces less smog and toxins) in air quality non-attainment areas. Removing restrictions on RVP will make it easier on industry to supply fungible gasoline to impacted areas.
- **Conditional License** - Prior to any natural disaster or state of emergency, create a pre-registration system that identifies potential importers, exporters, distributors or carriers that currently do not have a license, but are willing to do business in your state during a declared emergency. Qualified applicants would be given a conditional licensing status that would be activated during a declared state of emergency. The temporary license would be active for a pre-defined period of time or for the duration of the declared emergency. States should consider waiving background checks, fees, and bonding requirements when issuing a conditional license. States should also consider using another license type, such as a sales tax license, or another states fuel license as the basis for approving the conditional license. Anyone who qualifies for conditional licensing would be identified by name and posted on a public web site. The posting would notify vendors of potential transporters or suppliers willing to provide fuel during the applicable time frame.
- **Public Facing** - Post information on the taxing jurisdictions website that identifies exceptions to licensing, due dates, fuel usage or points of taxation if a state of emergency is declared.



Information may include, but is not limited to, registration procedures for temporary or conditional licenses, executive orders outlining alternative due dates or exceptions to dyed fuel use, areas impacted by the declared emergency, or tax law that takes effect if an emergency is declared.

- **Contingency Plan** - Develop a regional contingency plan between participating states. The plan will pre-define actions taken by each state if an emergency or natural disaster is declared. The purpose of the plan is to initiate executive orders or administrative actions that would remove barriers that inhibit the movement of fuel between states or cause double taxation. These actions include, but are not limited to, waiving, reducing, or expediting licensing requirements pertaining to imports, exports, distributors and transporters of fuel.
- **Storage Capacity** - Prior to a declared emergency, identify public and private sites where fuel can be stored for emergency use. This includes temporary storage and dispensing facilities such as rail cars or tanker trucks. Tax Administrators should be prepared to provide guidance related to points of taxation, filing, or tank registration requirements if fuel is dispersed directly from these tanks into vehicles or retail stations.

Conclusion

Although each state is bound by administrative or statutory requirements, there are actions that can be taken to minimize the effects of an emergency or natural disaster. These actions could expedite the flow of fuel, therefore easing the burden on those impacted by the emergency and in some cases, saving lives. It is important to consider the timing of these actions. Do not wait until the crisis occurs to create a contingency plan that addresses licensing, taxation, or filing deficiencies. Ignoring or postponing these actions will put taxing jurisdiction at a disadvantage when responding to its citizens. Finally, it is important for fuel tax administrators to reach out to their state and industry counterparts to discuss viable options. Open lines of communication with colleagues before, during, and after an emergency is paramount to a successful response.