

By Order 98-6-7 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic, 1.3284  
Latin America, 1.4838  
Pacific, 1.5152

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: dated June 5, 1998.

**Charles A. Hunnicutt,**

*Assistant Secretary for Aviation and International Affairs.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-97-3202]

#### Waiver for Canadian Electric Utility Motor Carriers From Alcohol and Controlled Substances Testing

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of final determination.

**SUMMARY:** The FHWA is waiving certain Canadian electric utility motor carriers and drivers from the alcohol and controlled substances testing requirements in connection with certain limited emergency operations. The FHWA received a petition from Hydro Quebec and Eastern Utilities Associates to waive these carriers. The FHWA received no comments to the proposed waiver. The FHWA will waive those Canadian electric utility motor carriers and drivers who enter the United States at the emergency request of a member New England Mutual Assistance Roster utility to quickly restore electric utility service for the New England electric utilities and their customers. The FHWA is taking this action in accordance with the Commercial Motor Vehicle Safety Act of 1986. This waiver for Canadian electric utility motor carriers extends only to the alcohol and controlled substances testing requirements for drivers required to be licensed under the commercial driver's license (CDL) requirements.

**DATES:** This final determination is effective on July 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Miller, Office of Motor Carrier Research and Standards, (HCS-10), (202) 366-4009; Mr. Michael Falk, Office of the Chief Counsel, (HCC-20), (202) 366-1384; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

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#### Under What Authority Does the FHWA Have Responsibility To Act?

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, Title XII, October 27, 1986, 100 Stat. 3207-170), as amended, requires the FHWA to provide notice and an opportunity for comment before the FHWA waives a regulation as it applies to individuals or commercial motor vehicles. The specific section of the law, now codified at 49 U.S.C. 31315, provides the following:

After notice and an opportunity for comment, the Secretary of Transportation (Secretary) may waive any part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A waiver under this section shall be published in the **Federal Register** with reasons for the waiver. (Pub. L. 103-272, Sec. 1(e), July 5, 1994, 108 Stat. 1029).

This waiver authority has been delegated to the Federal Highway Administrator [49 CFR 1.48(v) (1997)].

On March 12, 1998 (63 FR 12144), the FHWA published a notice of petition for waiver and requested comments. The FHWA received no comments to the docket. The FHWA, therefore, will grant the petition and waive the alcohol and controlled substances testing requirements as proposed in the March 12, 1998, notice.

#### Who May Use This Waiver?

The Canadian utilities belonging to the New England Mutual Assistance Roster may use this waiver. The following four utilities and any other Canadian electric utility motor carriers in the provinces of Ontario, New Brunswick, Nova Scotia, and Quebec responding to the six New England States will also be eligible to use this waiver from compliance.

1. Hydro-Quebec 75 Boulevard Rene-Levesque ouest, Montreal, Quebec H2Z 1A4
2. Ontario Hydro, 700 University Avenue, Toronto, Ontario M5G 1X6

3. New Brunswick Power Corporation, 515 King Street, P.O. Box 2000, Fredericton, New Brunswick E3B 4X1
4. Nova Scotia Power Incorporated, P.O. Box 910, Halifax, Nova Scotia B3J 2W5.

The FHWA limits this waiver to Canadian electric utility motor carriers responding to any New England Mutual Assistance Roster member utility's request for emergency assistance.

#### What Conditions Apply to This Waiver?

The FHWA requires the following five conditions, modified from the New England Mutual Assistance Roster principles, to serve as the basis for this waiver governing emergency assistance between the Canadian utilities and the New England utilities in the United States:

1. The emergency assistance period begins when the Responding Canadian Electric Utility Motor Carrier's (the Responding Carrier) drivers or equipment cross the United States-Canada border transporting equipment and supplies to the Requesting New England Mutual Assistance Roster Motor Carrier (the Requesting Carrier). The emergency assistance period terminates when the Responding Carrier completes the transportation of such drivers or equipment and crosses back into Canada across the Canada-United States border.

2. The drivers of the Responding Carrier must at all times during the emergency assistance period in the United States continue to be drivers of the Responding Carrier and must not be deemed drivers of the Requesting Carrier for any purpose.

3. The Responding Carrier must make available at least one supervisor in addition to the crew foremen. All instructions for work to be done by the Responding Carrier's crews must be given by the Requesting Carrier to the Responding Carrier's supervisor(s); or, when the Responding Carrier's crews are to work in widely separated areas, to such of the Responding Carrier's foremen as may be designated for the purpose by the Responding Carrier's supervisor(s).

4. All time sheets and work records pertaining to the Responding Carrier's drivers furnishing emergency assistance must be kept by the Responding Carrier.

5. The Requesting Carrier must indicate to the Responding Carrier the type and size of trucks and other equipment desired as well as the number of job functions of drivers requested, but the extent to which the Responding Carrier makes available such equipment and drivers must be at the Responding Carrier's sole discretion.

### To Whom May the Canadian Utilities Provide Emergency Assistance?

The FHWA limits this waiver to emergency assistance provided by the Canadian electric utility motor carrier members in the four named Canadian provinces to any member of the New England Mutual Assistance Roster in the New England region of the United States. The following six States make up the New England region of the United States:

1. Connecticut
2. Maine
3. Massachusetts
4. New Hampshire
5. Rhode Island
6. Vermont

The following 19 electric utilities presently make up the United States members of the New England Mutual Assistance Roster. In the future, any new members in the above named six States will also be eligible to receive emergency assistance from the waived Canadian electric utilities.

1. Bangor Hydro-Electric Company, 33 State Street, P.O. Box 932, Bangor, Maine 04401
2. Boston Edison Company, 800 Boylston Street, Boston, Massachusetts 02199
3. Burlington Electric Department, 585 Pine Street, Burlington, Vermont 05401
4. Central Maine Power, 83 Edison Drive, Augusta, Maine 04336
5. Central Vermont Power Service Corporation, 77 Grove Street, Rutland, Vermont 05701
6. Citizens Utilities Company, Box 604, Newport, Vermont
7. Commonwealth Electric Company, 2421 Cranberry Highway, Wareham, Massachusetts 02571
8. Concord Electric Company, One McGuire Street, Concord, New Hampshire 03301
9. Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107.

Includes the following five electric utility divisions.

- a. Blackstone Valley Electric
- b. Eastern Edison
- c. EUA Service Corporation
- d. Montaup Electric
- e. Newport Electric
10. Exeter & Hampton Electric, 114 Drinkwater Road, Kensington, New Hampshire 03874
11. Fitchburg Gas and Electric Company, 285 John Fitch Highway, P.O. Box 2070, Fitchburg, Massachusetts 01420
12. Green Mountain Power Corporation, 25 Green Mountain Drive, P.O. Box 850, South Burlington, Vermont 05402-0580

13. New England Electric System, 25 Research Drive, Westborough, Massachusetts 01582
14. Northeast Utilities, P.O. Box 270, Hartford, Connecticut 06141-0270
15. Public Service of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, New Hampshire 03105
16. Taunton Municipal Lighting Plant, 55 Weir Street, Taunton, Massachusetts 02780
17. The United Illuminating Company, 157 Church Street, New Haven, Connecticut 06506
18. Vermont Electric Power Company, Inc., RR 1, Box 4077, Rutland, Vermont 05701
19. Vermont Marble—Power Division, 61 Main Street, Proctor, Vermont 05765.

### Is This Waiver of the Canadian Electrical Utilities in the Public Interest and Does it not Diminish the Safe Operation of Commercial Motor Vehicles?

The FHWA has determined this waiver meets the requirements of 49 U.S.C. 31315 and believes it is in the public interest to provide a limited waiver to the Canadian electric utility motor carriers. Unlike a Canadian for-hire or private motor carrier that regularly delivers or picks up products, or a provincial or Canadian Federal government entity regularly traversing a State to service provincial citizen interests, the Canadian utilities, on rare occasions, enter the United States for limited periods of time for the sole purpose of restoring electrical service to United States citizens. The FHWA believes such limited and infrequent operations in the United States do not diminish the safe operations of commercial motor vehicles and is in the public interest, especially in the affected localities.

The FHWA believes, through mutual cooperation with Canadian authorities, the Canadian Federal and provincial governments have sufficient regulations in place for Canadian electric utility motor carriers to limit drivers' use of alcohol and controlled substances while operating commercial motor vehicles wholly within Canada. See Standard 6, Items 12.1 through 12.6, 13.1, and 13.2 of the National Safety Code for Motor Carriers, Canada, December 1994. Read literally, the FHWA's current regulations require these Canadian electrical utility motor carriers to set up programs to conduct testing for drivers who may never come across the United States-Canadian border or for drivers that cross the border on a very limited emergency basis. The FHWA believes that the alcohol and controlled

substances testing rules, by preventing Canadian electric utility motor carriers and their Canadian drivers from responding quickly and effectively to requests for electrical emergency relief within the United States, may impede rather than promote safety. The safe operation of commercial motor vehicles may well depend upon rapid emergency response, e.g., to restore electricity to traffic signals. The safety of the public also depends upon rapid emergency response, e.g., to restore electricity as a source of heat and light to hospitals, the elderly, and homes in general. The regulatory burdens the testing requirements entail are not justifiable when their effect, during limited periods when electric power failures can most effectively be contained or mitigated, is to increase the risks to public health and welfare.

The FHWA believes this waiver will not impair the safety of the Canadian electric utilities' motor vehicle operations during emergencies. Other applicable provisions of the Federal Motor Carrier Regulations (49 CFR parts 300 through 399) remain in effect, unless an authority having the power to declare an emergency, as set forth in 49 CFR 390.23, does so. Commercial driver's license requirements in 49 CFR part 383 (and those under the Canadian National Safety Code) are not waived even if 49 CFR 390.23 was used to grant specific relief.

Based upon no comments to the docket for the proposed waiver, the FHWA finds good cause to assume the public believes the waiver is in the public interest and will not diminish the safe operation of commercial motor vehicles.

### Analyses and Notices

The FHWA has determined that this action is not a significant action within the meaning of the Department of Transportation's policies and procedures.

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this waiver on small entities with twenty or fewer truck tractors or straight trucks.

### Final Flexibility Analysis (FFA)

This action provides a limited waiver to certain Canadian electric utility motor carriers and their drivers. The FHWA believes there are a maximum of four affected small entities at this time. These are the Canadian electric utilities named above. Additional Canadian electric utilities will be eligible for this waiver, if the electric utilities are domiciled and operate primarily (i.e., 51

percent or more) in one of the four Canadian provinces of Ontario, Quebec, New Brunswick, or Nova Scotia.

The United States electric utilities named must, without this waiver, limit the responders available to restore highway safety, e.g., traffic signals, and restore electric power to their customers. Failure to grant the waiver will delay the efficient and quick response to restore electric power to prevent highway accidents and incidents, and to save lives from cold weather.

The FHWA believes no other Federal rules exist for alcohol and controlled substances testing of Canadian electric utility motor carriers responding to New England Mutual Assistance roster members. The FHWA is aware of Nuclear Regulatory Commission (NRC) and Department of Energy (DOE) testing requirements for alcohol and controlled substances, but believes these are limited to nuclear power plants and DOE installations in the United States. The FHWA believes the four named Canadian electric utility motor carriers are not required by the NRC or DOE to require alcohol and controlled substances testing to restore electric power to United States customers. The FHWA requested the New England Mutual Assistance Roster members to provide information on whether the NRC or the DOE have regulations requiring such testing. The FHWA received no comments from the roster members or anyone concerning this issue.

Based upon this FFA evaluation, the FHWA believes any impact upon these small entities is highly unlikely. Furthermore, the FHWA notes the Omnibus Act mandates alcohol and controlled substances testing and the CMVSA mandates the waiver authority irrespective of the size of the entities.

For the reasons in the FFA above, the FHWA certifies this action does not have a significant economic impact on a substantial number of small entities.

This waiver has been analyzed in accordance with the principles and

criteria contained in the Unfunded Mandates Reform Act of 1995 (the Unfunded Mandates Act) (Pub. L. 104-4, 109 Stat. 48). The FHWA has determined this action does not have sufficient unfunded mandate implications to warrant the preparation of an unfunded mandate assessment.

The amendments made by this waiver do not have a substantial direct effect on States, nor on the relationship or distribution of power between the national government and the States because these changes do little to limit the policy making discretion of the States.

The waiver is not intended to preempt any State law or State regulation. Moreover, the changes made by this waiver impose no additional cost or burden upon any State. Nor does the waiver have a significant effect upon the ability of the States to discharge traditional State governmental functions.

For purposes of section 202 of the Unfunded Mandates Act, the waiver of alcohol and controlled substances testing requirements does not impose a burden greater than \$100 million. The FHWA, therefore, is not required to prepare a separate unfunded mandate assessment for this waiver.

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, the FHWA estimates this waiver has an annual burden savings of about \$21,000. The information collection requirements associated with compliance by Canadian motor carriers and drivers with part 382 was included in the information collection budget approval request approved on September 22, 1997, by the Office of Management and Budget (OMB) under the PRA and has been assigned OMB control number 2125-0543, approved through September 30, 2000.

The FHWA estimates four Canadian electric utility motor carriers send no more than 100 drivers to the United States for an emergency relief effort. The FHWA estimates these four Canadian electric utility motor carriers have a few

thousand drivers each since they are monopolies in the areas they serve, but only send a couple dozen drivers to an emergency in the United States.

The FHWA has calculated the information collection burden on these carriers in complying with 49 CFR part 382 based upon figures submitted and approved by the OMB in 1997. See Docket No. FHWA-1997-2313-7. The four motor carriers share an estimated information collection start-up cost of \$US 10,000 (excluding laboratory set-up costs) and an estimated recurring annual cost of \$US 21,000 and 240 hours of time. The FHWA excluded laboratory start-up information collection costs because the approximately 70 laboratories across the United States and Canada able to perform the analysis of urine specimens have been in operation for at least one year and have incurred the start-up costs in prior years. The Canadian motor carriers do not incur the laboratory's start-up costs. The FHWA has calculated into the figure, though, the information collection cost of setting up contracts with the laboratories to conduct the testing.

The FHWA has included revised spreadsheets for these calculations in the docket for review. Refer to the docket number appearing at the top of this document.

Since the FHWA is granting this waiver, the FHWA will submit a request to the OMB, on a Form OMB-83C, to reduce the information collection burden by these amounts.

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

**Authority:** 49 U.S.C. 31301 *et seq.*; and 49 CFR 1.48.

Issued on: June 5, 1998.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

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