

Executive Authority During Energy Emergencies



A ROAD MAP FOR GOVERNORS

EXECUTIVE SUMMARY

THE ISSUE: An energy emergency, such as an electrical grid outage, pipeline disruption or fuel shortage, occurs when an imminent or realized severe energy supply interruption threatens the health, safety, economic stability, and national security of a population.

THE ROLE OF STATES: Governors have the authority to declare a state of emergency. An energy emergency may require Governors to execute their emergency powers to aid in response, restoration and recovery.

THE ROAD MAP: The road map is a tool to help Governors prepare in advance of an energy emergency and inform their decision making in the event of an energy emergency.

This road map will help Governors:

- Understand state and federal legal authorities,
- Learn about key decision points,
- * Identify when to execute formal and informal actions, and
- Provide guidance on communication and coordination strategies.

STEPS GOVERNORS CAN TAKE TO MANAGE AN ENERGY EMERGENCY

Governors can take four steps to manage energy emergencies in their state:

STEP 1: Outline the Governor's existing authority.

STEP 2: Identify the scope and scale of the event.

STEP 3: Determine the execution of actions.

STEP 4: Coordinate and communicate with key stakeholders.

INTRODUCTION

How to use the road map:

The road map is a tool that helps Governors and their key advisors determine how to act when an event—whether caused by natural disaster, malicious actor, or human error—causes an energy emergency. The road map will help Governors:

- Understand state and federal legal authorities,
- Learn about key decision points,
- * Identify when to execute formal and informal actions, and
- Provide guidance on communication and coordination strategies.

Governor authorities and energy emergency response steps are typically documented in the state's energy assurance plan. Governors can direct state energy officials to review and revise the state's energy assurance plan to ensure the plan outlines appropriate authorities and suitable responsibilities and procedures for state personnel and external partners. For more guidance on state energy assurance planning, see the National Association for State Energy Official's Energy Assurance Planning Resources (https://www.naseo.org/energyassurance).

States can leverage all or portions of the road map to guide state planning and policy development. This resource is supplementary to the state's emergency response plan. States will find that the road map:

- Helps contextualize energy emergencies and their consequences,
- * Outlines actions for Governors to consider when faced with an energy emergency, and
- Provides appendices that include examples of past state executive orders and other Governor actions.

States, commonwealths, and territories are collectively referenced as "states" in this document.

How the road map was developed:

The road map reflects recommendations from past NGA work on energy security and emergency management. The idea for this road map originated from a NGA learning lab on enhancing state energy assurance coordination with six states, held in May 2015 in New Jersey. State participants at that meeting identified a need to learn more about the actions Governors could take during an energy emergency.

The National Governors Association (NGA) hosted an experts roundtable in April 2017 that included Governors' energy advisors and homeland security advisors, state emergency managers, federal officials and private sector representatives to develop version 1.0 of the road map. During the roundtable, participants discussed the critical decision points that require Governors' executive authority during an energy emergency. Participants also offered recommendations on strategies that Governors' offices could take before, during and after an energy emergency. NGA published version 1.0 of the road map in July 2018.

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The 2021 revisions (version 2.0) incorporate updated guidance and add new content that addresses the additional authorities that Governors may need to respond to an energy emergency that occurs during a concurrent public health emergency, such as a pandemic. The COVID-19 pandemic illuminated many of these unique, complicating challenges that need to be addressed to quickly respond to and recover from an energy emergency. Those public health considerations are highlighted at the end of each section.

For additional information about the road map, please contact Dan Lauf at <u>dlauf@nga.org</u> or Michelle Woods at <u>mwoods@nga.org</u>.

NGA Work on Energy Security

Over the past decade, NGA has produced several aids to improve state energy security. Recent reports, guidance, and energy security updates can be found at NGA's <u>State Resource Center on</u> <u>Energy Security</u>. Consistent guidance for Governors on energy security practices includes:

- Developing relationships among a broad group of stakeholders, including the state energy office, homeland security office emergency management agency, public utility commission, state legislature, industry trade groups, and other state coordinative groups,
- Identifying potential risks to infrastructure by conducting routine threat and risk assessments to identify potential vulnerabilities before an event occurs,
- Updating energy assurance plans to reflect new threats and hazards and ensure that they align with the state emergency management plan,
- Conducting trainings and exercises to ensure that existing plans are sufficient and all stakeholders understand their role in emergencies, and
- Ensuring that internal and external communications are clear, consistent and contain up-todate information. Communications should include actions tailored to the specific audience that will help the response and recovery run smoothly.



BACKGROUND

What is an energy emergency?

An energy emergency, such as an electrical grid outage, pipeline disruption, or fuel shortage, occurs when an actual or imminent severe energy supply interruption threatens the health, safety and wellbeing of a population. 'Energy emergency' for many states may be a specific designation. Governors have the authority to declare an energy emergency that is distinct from the state's other options for declaring emergencies in at least 14 states. An energy emergency may be stand-alone or concurrent with a broader declared emergency such as a natural disaster (*See Appendix D. Examples of Authorizing Legislation for Governor-Declared Energy Emergencies for details*).

For more information on Governors' powers and authority see: https://www.nga.org/governors/powers-and-authority/

What are the possible consequences of an energy emergency?

Each energy emergency is unique. Different consequences necessitate different gubernatorial action and the appropriate response to these considerations will scale based on the severity of the emergency. Table 1 on page 6 provides a list of actions that governors and their key advisors should consider:

- These actions are listed by increasing severity and roughly correspond to an incident's size and scope.
- The table is not holistic; rather, it covers the most notable consequences. Because all events and emergencies are unique, NGA suggests using this table as a decision-making guide in conjunction with the recommendations of state and local authorities.



TABLE 1. ENERGY EMERGENCY RESPONSE TABLE

LOCAL

Impact: Minor inconveniences to residents and businesses, but individuals are otherwise able to continue day-to-day life. The emergency response can be led and coordinated by local authorities with state support. Impacted residents or businesses expect resolution within a few hours. Examples include: isolated power outages; minor damage to pipelines.

Possible Consequences		Possible Considerations				
Short-term disruptions of energy	ergy services	Monitoring conditions				
Poor traffic conditions		 Having sub-cabinet officials communicating with local authorities and the public 				
Schools and businesses oper	ating at reduced capacity	 Engaging with private industry stakeholders including outreach to impacted energy service owners/operators 				
Adverse impacts on interdept	may face more significant	• Ordering a "soft open" of the emergency operations facility				
impacts from small events	may face more significant	Reviewing of emergency plans				
		Ordering cabinet officials to communicate with local authorities and the public				
STATE	Some disruption to residents and bu or persists for an extended period of support. Residents are likely aware of Examples include: prolonged severe failure; and coordinated cyberattack	isinesses that forces individuals to make significant alterations to their day-to-day lives f time. The emergency requires state leadership and coordination with local or private of the emergency but expect the situation to be resolved in the immediate future. weather (for example, cold wave, heat wave); far-reaching technical or infrastructural s that target noncritical infrastructure.				
Possible Consequences		Possible Considerations				
• Critical services (for example,	hospitals, police departments)	Declaring a state of emergency				
reliant on fuel reserves or ba	ck-up generators	 Having Governor's office lead communication with the public 				
 Public, commercial, industrial temporarily closed due to lac 	and school buildings k of power	 Fully opening emergency operations facility 				
• Residents report difficulties h	eating or cooling homes	 Activating emergency contingency plans 				
Some environmental damage	e that complicates restoration	 Engaging with the federal government 				
Crews deployed to remove deployed to r	ebris or repair minor	 Suspending fuel carrier rules on hours of service or cargo weight 				
infrastructure damage		Suspending other state regulations and statutes				
• Fuel deliveries temporarily ha	alted or reduced	Requesting waivers from the federal government				
 Higher prices for gasoline and long lines at the gas station 	d other liquid fuels or	Facilitating restoration of service through debris removal, repair, etc.				
Difficulty accessing cybernetwo	orks on non-critical infrastructure	Osing mutual and agreements and coordinating with industry partners Activiting the patienal guard				
Severe traffic and gridlock that h	inders response and restoration	• Activating the national guard				
FEDERAL	Impact: Severe disruption for residents a weeks if not months. State resources m very aware of the emergency and do no international incident; and catastrophic	I and businesses that makes day-to-day life impossible. A heightened state of alarm may persist for ay not be enough to resolve the disaster and federal support is likely needed. State residents are it know if/when their lives will return to normalcy. Examples include: systematic power grid failure; failure of energy safety mechanisms.				
Possible Consequences		Possible Considerations				
Most public, commercial, indu	ustrial and school buildings	Requesting federal aid				
closed for an indeterminate p	period	 Coordinating resource allocation/distributing emergency resources 				
• Suppliers are unable to guara	intee the continued now of	 Signing supplementary purchasing contracts 				
• Major price hikes in delivered	energy, raw materials, and	 Mandating reductions in state agency energy consumption 				
services		Requesting reductions in public energy consumption				
 Significant environmental or (for example, multiple pipelin) 	nfrastructural failure e service disruptions	Activating price gouging protections				
leaks, backed-up sewage)		Establishing fuel rationing or monitoring				
 Providers unable to access networks due to coordinated or sophisticated cyber attack 		Restricting the sale of energy resources				
Public unrest or panic		Restricting bours and days of operation of public commercial				
Problems reported nationally	or internationally	industrial and school buildings				
	····· y	 Deploying the national guard for facility security 				
		 Seizing energy supplies and other necessary resources 				
		 Implementing evacuation/shelter in place plans 				

STEP 1: Outline the Governor's Existing Authority

In advance of an emergency or declaration, state officials should outline the governor's authority during an emergency, disaster, or energy emergency. This authority should be documented, updated and easy to access electronically and in hard copy for those in the governor's office who may need it. Doing so facilitates any executive action needed to respond to and recover from the emergency. These authorities should be outlined in the state's emergency response plans and energy assurance plans.

Gubernatorial authority may include:[1]

HAVE YOU CONSIDERED?

- Cataloging the governor's legal authority?
- Identifying the legal, regulatory, and administrative policies in place that could slow down the response?
- Establishing relationships with potential response partners, including utilities, federal agencies, and contractors?
- Declaration of emergency: A common tool that governors execute when the state experiences a natural or manmade event. Governors generally have discretion to issue emergency declarations for a period of time through specific statutory authorizations or constitutional powers.
 - » **Duration**: Governors should be aware of the legal authorization in their state pertaining to the length and latitude of an emergency declaration, whether it be ongoing until rescinded, effective for a specific period unless extended, or valid only for a certain period and then requiring coordination with the legislative branch for subsequent action.
 - » **Legislature**: In some states, legislatures can review, extend, or terminate a state of emergency or participate in subsequent gubernatorial extensions and otherwise modify the emergency declaration through concurrence votes or ratification of a Governor's proposed extension.
- Request for Federal Assistance: Governors can also request a federal emergency or disaster declaration under the Stafford Act to bring federal resources to bear on a declared state of emergency. Governors will coordinate with FEMA regional directors to develop a preliminary disaster assessment to support the request to the President for federal declaration.^[2]
- Declaration of an energy emergency: A more specific tool that some Governors possess that focuses on the energy sector in the Governor's authority rather than a traditional emergency declaration. Importantly, the statutory authorities for an energy emergency may be different for a standard state of emergency and, in some cases, more expansive. Much of this information will be codified in the state or territory's energy assurance plan.

Key Governor Authority: It remains important to emphasize that emergencies of all types — energy, public health, disaster, etc. — are not situations that can be led, administered, and organized through a committee process. Emergencies require a whole of government approach, but one led by a Governor and the executive branch. In reviewing their existing statutory emergency frameworks, states should be mindful of the need to preserve and protect the ability of the executive branch to lead during emergencies and provide life-saving and essential services.



Typically, Governors will declare an energy emergency after the triggering event. However, they may have the authority to declare an emergency or request federal declaration of a major disaster before the event occurs if there is an imminent threat or impact to citizens (such as a major hurricane). The Governor can make this declaration to ensure that energy and emergency response personnel, equipment and goods are in place and ready to be deployed and to secure direct federal assistance or waivers. While state emergency declarations facilitate response and restoration, a Governor may have state statutory limits on the length of a declared emergency. In those cases, the Governor will need to engage other governmental branches if an extension is needed and the statute requires legislative or other approval. Energy and disaster declarations are useful to facilitate and streamline emergency response and avail the state to federal funding. However, where pertinent Governors may also balance considerations of potential negative responses or outcomes, such as whether public fuel panic purchasing may be exacerbated by the formal declaration of an emergency.

As part of their emergency preparations, Governors may wish to conduct an assessment of their current emergency powers in the context of an energy emergency. As necessary, Governors can bolster their responses to energy emergencies in the following ways:

- Propose legislation for new energy-specific powers,
- * Establish processes for activating relevant authorities in response to an energy emergency, and
- Coordinate with emergency managers to ensure clear lines of authority and responsibility during energy emergencies.

Governors should also understand the level to which emergency or energy emergency response depends on coordination with and action from other jurisdictions and the private sector:

- Federal government: For example, the U.S. Department of Transportation (USDOT), Environmental Protection Agency (EPA) and other agencies may waive certain regulations and in the event of a state emergency declaration, such as hours of service (HOS) and safety waivers for trucking governed by the Federal Motor Carrier Safety Administration (FMCSA). Officials should know how state and federal emergency declarations affect regulations to maximize their recovery capacity.
- Private sector and utility companies: Utilities often depend on their peers across the country connected through mutual aid agreements. Under those agreements, utilities share trucks, work crews and equipment with one another to more rapidly recover from outages. For larger response events, work crews and equipment are often required to drive across state boundaries.
- Neighboring states: Governors should understand how neighboring states will respond during an emergency declaration and whether they can work with their peers to create agreements that facilitate industry and governmental response. If an emergency has been declared and certain restrictions are waived within a state, that waiver's authority may end at the state's border. Restrictions may still be in place in neighboring states that limit the ability of crews to move and respond. In addition, a state of emergency that the federal government or another state government declares may waive some restrictions in unaffected states for motor carriers and work crews traveling interstate in response to the emergency. Governors should be familiar with and enforce those exemptions to expedite response and recovery efforts in other jurisdictions. Emergency management and state police should coordinate



with neighboring jurisdictions, national coordination mechanisms, and local law enforcement to communicate regulatory waivers and other actions to expedite response.

- Building relationships in advance, including developing robust contact lists for the key state, local, federal, and energy sector partners who may need to be called upon during an emergency, can improve and accelerate energy emergency response and restoration.
- Collaborative emergency response exercises, whether held at the state level or nationally with the federal government or energy sector, can be effective tools to assess planning, emergency authority, and coordination gaps and ensure the state and its partners are prepared for a potential energy emergency.

CONSIDERATIONS IN CASE OF A CONCURRENT PUBLIC HEALTH EMERGENCY

Declaration of Emergency	Depending on the type of incident, more than one type of emergency declaration may be appropriate, such as an energy emergency declaration alongside a public health emergency declaration. During an extended public health emergency, Governors may need to ensure that adequate declaration provisions are in place to sustain energy supply and emergency response abilities, such as exempting essential energy-sector employees from certain travel restrictions and prioritizing protective equipment for those employees.
Suspension of utility disconnections	Governors may have the authority to prohibit utilities from disconnecting customers or issuing fees for late payment during a public health emergency, as was done in at least 33 states during the COVID-19 pandemic. ^[3] The legal provision triggering the appropriate deployment of such a moratorium might differ based on the nature of the emergency and/or statutory framework. More than thirty states also have annual, date- or temperature-bounded winter moratoriums, with some rules contingent on some customer circumstances such as financial hardship, elderly status, medical necessity, or enrollment in a payment plan. ^[4]
Designation of energy sector workers as essential personnel	Governors can designate certain energy and utility workers as essential or critical employees to facilitate their ability to work, travel, and prioritize them for access to essential resources like personal protective equipment, testing and vaccinations when health or other emergency restrictions are in place. If federal guidance is available through agencies like DHS' Cybersecurity and Infrastructure Security Agency (CISA) ^[5] and DOE Office of Cybersecurity, Energy Security, and Emergency Response (CESER), ^[6] Governors may, at their discretion, elect to align with that guidance.
Understanding the impact of federal actions	Governors may also coordinate with state agencies to administer and promote federal assistance funds such as expanded relief available to the public or energy sector partners such as through the Low-Income Home Energy Assistance Program (LIHEAP.)



STEP 2: Identify the Scope and Scale of the Event

The scope and scale of an emergency will dictate the response required. Governors, in coordination with the state's emergency management authorities, legal counsel, state energy officials, and utility regulators, should determine whom on their staff and within industry and the federal government to convene to adequately respond to the emergency and work with those individuals to understand:

- Consequences of the emergency: What is the impact? Was the impact limited to the electric or fuels sector, or were there cascading effects in other sectors? Has infrastructure been compromised that will hinder recovery efforts?
- Geographic impact: How widespread is the emergency? Is it limited to one utility service territory or several? Can the state map the affected critical assets and layer those geographic data over utility outage data? Does the outage cross state lines? If so, will the state be competing with other states for resources?
- Affected population: Whom does the energy emergency affect? Are the customers primarily in the residential sector, the commercial sector, or a combination? Does the event affect multiple utilities, and if so, how many and to what degree? Are neighboring states affected? What are the critical, lifeline assets affected, and what impact will their outages have on the health and safety of residents, in particular disadvantaged populations?
- Outage duration: How long will the energy emergency last? Will power be out for hours, days, weeks, or longer? Is there sufficient access to backup generation? Do backup generators have an adequate stock of fuel to continue to operate throughout the duration of the outage? Can other utilities, such as water, wastewater and telecommunications, continue to operate through the outage? Which private sector entities need to be engaged to estimate the duration and impacts of the outage resulting from the event? Depending on the duration of the emergency, what powers does the Governor have to implement restoration actions after the event?

HAVE YOU CONSIDERED?

- Identifying which statutes will require waivers to support the response and recovery?
- Identifying any gaps the state has that will require additional external support?
- Developing a restoration prioritization list and socializing that list to the appropriate parties?



When the scope, scale and recovery needs of the emergency have been determined, it is critical to assess the existing regulations and restrictions that will impede recovery and response efforts and consider the following actions:

Transportation Actions

- Suspension of carrier rules (for example, HOS, road weight restrictions, the need to stop at weigh stations)^[7]
- > Toll waivers for utility and emergency response crews
- » Access and credentialing:
 - Site access restrictions
 - Volunteer access and credentials
 - Out-of-state access and credentials
 - Equipment and supply access

Economic Actions

- » Fuel rationing:
 - Priority access for emergency personnel and utility crews
 - Rationing for the public in times of shortage
- » Seizure of or regulation of critical energy emergency response supplies such as fuel stocks or infrastructure or personal protective equipment and appropriate compensation for actions constituting a taking
- Protections against price gouging

Environmental Actions

- » Pollution control regulations:
 - By waiving certain fuel standards, the federal government can ensure that an adequate supply of fuel is available, especially for emergency operations and the lifeline sectors.^[8] Governors should consider any risks or potential unintended consequences associated with a given waiver to ensure the waiver issued or requested suitably balances response facilitation and risk protection.
 - Additional pollution control regulations:
 - Suspend permitting and other restrictions for air emissions and wastewater discharge.
 - » Suspend inspections of retail fueling stations

^{*} Governors can reference their state petroleum shortage response plans or relevant petroleum shortage response planning processes within the state's energy assurance plan. See National Association of State Energy Officials, "Guidance For States On Petroleum Shortage Response Planning," page 9, February 2018, <u>http://www.naseo.org/Data/Sites/1/petroleum-guidance/final-naseo-petroleum-guidance-feb-2018.pdf</u>



CONSIDERATIONS IN CASE OF A CONCURRENT PUBLIC HEALTH EMERGENCY

Additional waiver requests	Will the public health emergency restrict travel, building access, or office openings? If so, what regulatory waivers or credentials are needed to allow essential energy and utility employees to perform their jobs and restore energy supply?
Additional waiver requests or suspension of procedures, regulations, and restrictions to facilitate energy response and restoration during a public health emergency	Governors can issue or request additional waivers of state or federal regulations and procedures beyond those already requested for energy sector response to accommodate added response complications due to the public health emergency. Governors and appropriate state agencies can coordinate guidance to the energy sector to ensure sector partners understand the waiver impact on response operations. These temporary waivers can facilitate credentialing, access, and movement of utility personnel to respond to an energy emergency while they navigate restrictions in place for public health emergency management.
Scope of concurrent energy and health emergencies	Have critical infrastructure workers been quarantined or become ill? Which critical public health facilities and assets (e.g., hospitals, nursing homes, and emergency shelters) are affected by the energy outage and require prioritized restoration? Will worker impacts impede the operation of critical energy equipment?
Public health resource needs	Which resources need to be prioritized for essential energy and utility workers? Will those workers need prioritized access to PPE, testing, or vaccinations? highly specialized job functions that must be performed in person (e.g., generator control room operators) that will need prioritized access to testing, equipment, and vaccines.
Regulatory taking of critical response supplies	Is there a scarcity of critical response supplies the state must garnish and compensate as a regulatory taking?

STEP 3: Determine the Execution of Actions

When the preliminary scope, scale and nature of the event have been determined, Governors can work with their staff, federal government, and industry to determine a response. These actions, such as fuel and permit waivers, may include movement of people and goods; transportation of restoration and recovery equipment; allowance of adverse environmental impacts that may not otherwise be tolerable; and the deployment of communications, emergency response and other support services.

HAVE YOU CONSIDERED?

- Developing executive order templates?
- Implementing feedback mechanisms to share information with local governments so that they can stay abreast of the situation?

Governors have a few options for how to act in the event of an energy emergency:

* Formal action:

- » Declare a state of emergency or an energy emergency (if the Governor has that authority).
- » Activate State Emergency Operations Center.
- » Issue an executive order, proclamation or other, equivalent executive directive.
- » Issue related response-enabling executive orders like suspensions of identified economic, environmental or transportation regulations as described in Step Two.
- » Request federal assistance if needed. If a Governor requests a federal emergency declaration to unlock federal resources under the Stafford Act, FEMA requires a damage assessment outlining the nature and extent of state resource exhaustion.^[9]

Informal action:

- » Partially or "soft" open an emergency operations center so personnel can monitor conditions in a partially activated state, even if a full emergency declaration has not yet been issued.
- » Issue public service announcements.
- » Work with unaffected states or establish interstate coordination including to ensure energy workers have sufficient credentials or waivers to travel freely, access necessary facilities, and assist in restoration without interruption.
- » Leverage relationships with state officials, other Governors, businesses, etc.
- » Work with the media to provide timely public updates and guidance. Coordinate public messaging with industry.
- » Delegate responsibility to state agencies.
- No action:
 - » Although this road map focuses heavily on Governors' use of executive action, some events may not warrant an emergency declaration.
 - » In this instance, Governors should continue to monitor the situation and determine whether they need to reevaluate the state's role in response and recovery if the circumstances change.



DOE Energy Waiver Library

During energy emergencies, alleviating regulatory restrictions through waivers can expedite response and restoration and avoid delays. Temporarily forgoing enforcement of certain safety, environmental and statutory requirements, when appropriate, can accelerate response efforts, restoring power and moving fuel more quickly to affected citizens. The Department of Energy's Energy Waiver Library gathers, categorizes, and illustrates energy sector waivers of regulation and standards from across six granting agencies. The library clarifies special permits or waived enforcement of requirements for generation, fuel use, fuel transportation and distribution, and clean up and event recovery. This central location includes background on the energy response waiver or special permit, examples of past use, links to previously issued waivers, and an appropriate point of contact from whom to request such waivers should the need arise. Access the Energy Waiver Library at: <u>https://www.energy.gov/ceser/energy-waiver-library</u>

CONSIDERATIONS IN CASE OF A CONCURRENT PUBLIC HEALTH EMERGENCY

Implement public health safety protocols for the state emergency operations center (EOC)	If a public health emergency necessitates avoiding in-person contact then activate the EOC virtually while ensuring staff have necessary equipment to fulfill their functions. Governors may consider acquiring a software to support the activation of a virtual EOC to support interconnectivity of remote staff. Ensure there are defined protocols in place for remote EOC access and protective health measures for in-person gathering such as sanitation.
Re-evaluate continuity of operations protocols	Governors may facilitate improved energy emergency response by initiating reviews and updates to state continuity of operations protocols to account for remote work, testing, worker impacts from illness or quarantines, and other potential impacts to energy emergency response caused by a simultaneous public health emergency.
Review and address any public health restrictions that may impede utility response	Are there temporary rules or restrictions in place to manage a separate concurrent emergency that might affect energy emergency responders? Will stay-at-home orders, facility closures, or PPE requirements limit the ability of utility crews to respond to an energy emergency and restore services?
Evaluate energy sector access to protective equipment	Dialog with state energy regulatory agencies and energy industry to determine if essential energy sector personnel have sufficient access to needed medical testing, personal protective equipment, or medical treatments and vaccinations as needed and are adequately prioritized. Consider including a state energy official if the state establishes an inter-agency committee to identify public health resource needs and prioritization.
Procure personal protective equipment	Coordinate with state procurement and public health officials and to ensure essential energy worker protection when a health emergency strains the supply chain for personal protective equipment.

STEP 4: Coordinate and Communicate with Key Stakeholders

Coordinating activity across sectors and groups is a significant undertaking.

Governors will need to consider how to coordinate in several ways.

- Federal-state coordination through FEMA regions and appropriate federal agencies, including between the Governor's office and the designated federal emergency response energy-lead, DOE, the federal Emergency Support Function #12 (ESF-12) agency under the FEMA National Response Framework.^{[10][11]}
- Interstate coordination through mutual aid agreements and waiver exemptions:
 - » *Emergency Management Assistance Compact (EMAC)*,^[12] which is a mutual aid agreement among the 50 states, the District of Columbia, Guam, Puerto Rico and the

HAVE YOU CONSIDERED?

- Developing a crisis communication protocol?
- Identifying alternative communication methods in case traditional means are inoperable?
- Sharing anticipated needs and priorities with partners, including the federal government, neighboring states, the private sector and nongovernmental organizations?

U.S. Virgin Islands that enables the sharing of personnel, equipment and commodities to states impacted by disasters.

- Governors have invoked the EMAC during major weather events such as Hurricanes Harvey, Irma, and Maria in 2017,^[13] wildfires in 2020 and 2021,^[14] and Hurricane Ida in 2021,^[15] as well as in response to critical energy infrastructure incidents such as the Colonial Pipeline cybersecurity incident in 2021.^[16]
- » Energy Utility mutual assistance agreements facilitate service restoration by providing restoration workers and logistics coordination across utility service territories. These include:
 - **Regional Mutual Assistance Groups (RMAG)**^[17] are regional groups that coordinate mutual aid assistance among investor-owned electric utilities within an affected region.^[18]
 - Mutual assistance for public power utilities is coordinated through the American Public Power Association's (APPA) Utilities Mutual Aid Regions.^[19] In addition, a national APPA and National Rural Electric Cooperative Association (NRECA) mutual aid agreement is in place for more than 2,000 public power and rural electric cooperative utilities.^[20]
 - NRECA member electric cooperatives also coordinate mutual assistance through statewide cooperative associations.^[21]
 - The natural gas sector coordinates mutual aid through the American Gas Association Mutual Assistance Program.^[22]

[†] For more information, see the National Association of Regulatory Utility Commissioners report, *Regional Mutual Assistance Groups: A Primer*.

- The electric power and natural gas industries, collaborating through the Electricity Subsector Coordinating Council (ESCC), instituted a Cyber Mutual Assistance Program that facilitates the timely exchange of industry cybersecurity expertise in advance of or during a cyber-attack disrupting service. More than 170 energy companies participate, serving about 80 percent of U.S. electricity customers and 75 percent of domestic natural gas customers.^[23]
- » Work with unaffected and neighboring states to ensure they have the necessary transportation waivers in place to allow utility mutual assistance crews to quickly reach the affected state.
- Intrastate coordination between state and local agencies as well as those agencies that are outside of emergency management, such as:
 - State energy offices and utility regulators to coordinate with the electric sector, including the state ESF-12 lead, which is typically housed under the state energy office or public utility commission. Governors are advised to identify who their state's ESF-12 lead is in advance of an emergency.
 - State energy and homeland security agencies and advisors to respond to energy events threatening state security, such as cyberattacks against critical infrastructure.
 - State departments responsible for weights and measures, as they may have information about transportation fuel availability,
 - State environment departments to issue fuel and other relevant waivers,
 - State departments of transportation to issue or request transportation waivers, including temporarily lifting toll and weigh station requirements for responding utility crews,
 - » **Ensure that transportation waivers** are left in place long enough to allow work crews providing mutual assistance to return.
 - » **Private sector coordination**, including energy and utility companies. Work with critical facilities and infrastructure operators to assess and address backup generation and restoration needs.
 - » Non-governmental coordination (for example, volunteers.)

The Electricity Subsector Coordinating Council (ESCC) facilitated additional mutual assistance adapted to the unique demands of the COVID-19 public health emergency. The ESCC Resource Guide outlined mitigation and response planning resources and considerations for sector personnel including restricted area operations, , critical personnel identification, control center continuity management, staff workload flexibilities, industry supply chain impacts, and communications. The Guide includes a regularly updated Pandemic Mutual Assistance Checklist for sector entities providing or requesting assistance, which addresses work practices, general COVID-19 safety practices, staging sites, lodging and meals, external outreach and communication, and health issues. For more information see ESCC- Assessing and Mitigating the Novel Coronavirus (COVID-19): A Resource Guide.

Create a communications plan

Communication is key to ensuring that the public and all parties involved are aware of the current state of affairs.

Governors should incorporate the following components into any energy emergency public communications plans:

- Identify communication methods:
 - » Identify a clear communication chain that includes the energy sector for any message coordination needs.
 - » Identify communications technologies that can operate reliably in the event of an energy emergency, including backup technologies.
- * Tailor the message that Governors or their representatives send to stakeholders:
 - » Coordinate and unify the message with the private sector and the federal government.
 - » Ensure that information provided aligns with public records laws and does not disclose sensitive critical energy infrastructure information (CEII.) For more information about protections for CEII, see: <u>https://www.nga.org/wp-content/uploads/2019/05/CEII-Paper-June-2019-Revised.pdf</u>
- Spread the message:
 - » Leverage the state's Joint Information Center to coordinate public and media messaging.
 - » Use social media and trusted local organizations such as NGOs and community partners to communicate publicly and combat misinformation.
 - » Use a combination of digital and traditional communications methods to ensure that those without broadband service receive important communications.
 - » Issue communications in multiple languages to keep them broadly accessible.

CONSIDERATIONS IN CASE OF A CONCURRENT PUBLIC HEALTH EMERGENCY

Intrastate Coordination	Are the Governor and state energy officials coordinating with public health officials to ensure essential energy sector personnel have sufficient access to equipment, testing and vaccinations? Governors and state energy officials can communicate with industry sector entities and responders to target resources optimally.
Public Communication	Is utility access to homes or businesses needed for energy restoration? If so, Governors can message accordingly to the public with guidance on safe interaction with crews, facility access, and navigation of damaged infrastructure assets. Governors may consider whether additional messaging is needed to advise the public on restoration activities, shelter-in-place, evacuation, and emergency sheltering directives during a concurrent energy and public health emergency.
Logistical Sheltering and Resources for Emergency and Utility Assistance Crews	Do energy restoration crews need short-term or extended shelter, food, or other resources? How can the state partner with industry responders or otherwise facilitate and accommodate their logistical needs, especially in situations where hotels, restaurants, or public amenities like restrooms are closed due to a public health emergency?

Appendix A

Example Executive Orders

The following pages contain sample Executive Orders from:

- * <u>Michigan</u>
- * South Carolina
- * <u>Virginia</u>





GRETCHEN WHITMER GOVERNOR STATE OF MICHIGAN OFFICE OF THE GOVERNOR LANSING

GARLIN GILCHRIST II LT. GOVERNOR

EXECUTIVE ORDER

No. 2021-3

Declaration of State of Energy Emergency

Extreme cold across most of the Central United States caused by an arctic air mass, coupled with people spending more time at home due to the global pandemic, has created a strong demand for home heating fuel. At the same time, these conditions have caused longer delivery times. Heavy snowfall has produced hazardous road conditions and increased demand has led to longer wait times at supply and distribution terminals. As a result, many drivers are nearing or reaching maximum weekly driving and on-duty limits, which are set by federal and state law in 49 CFR Part 395, and adopted in Public Act 181 of 1963, MCL 480.11 et seq. In short, while supply is available, the current weather event has hindered distribution of that supply.

At present, Michigan's neighboring states and a majority of states in the nation are under some form of federal or state energy emergency declaration due to the extreme weather event.

Under Public Act 191 of 1982, "the governor may declare, by executive order . . . a state of emergency . . . upon the governor's own initiative if the governor finds that an energy emergency exists or is imminent." MCL 10.83(1). An "energy emergency" means a "condition of danger to the health, safety, or welfare of the citizens of this state due to an impending or present energy shortage." MCL 10.81(b). Moreover, an "energy shortage" means a "lack of adequate available energy resources in the state, or any part of the state." MCL 10.81(e).

Among other powers, during a declared state of energy emergency, the governor may issue an executive order to "suspend a statute or an order or rule of a state agency or a specific provision of a statute, rule, or order, if strict compliance with the statute, rule, or order or a specific provision of the statute, rule, or order will prevent, hinder, or delay necessary action in coping with the energy emergency." MCL 10.84(c).

Therefore, acting under the Michigan Constitution of 1963 and Michigan law, including 1982 PA 191, MCL 10.81 to 10.87, I order the following:

GEORGE W. ROMNEY BUILDING • 111 SOUTH CAPITOL AVENUE • LANSING, MICHIGAN 48909 www.michigan.gov PRINTED IN-HOUSE

- 1. A state of energy emergency is declared across the State of Michigan.
- 2. Motor carriers and drivers transporting propane and heating oil are exempt from compliance with MCL 480.11a and any other applicable state statute, order, or rule substantially similar to MCL 480.11a, and 49 CFR Part 395. Any provision of a state statute, order, or rule pertaining to the hours-of-service is suspended. This exemption and suspension apply to all highways in Michigan, including the national system of interstate and defense highways.
- 3. No motor carrier or driver operating under the terms of this order may require or allow an ill or fatigued driver to operate a motor vehicle. Any driver who informs a carrier that he or she needs immediate rest must be given at least ten consecutive off-duty hours before the driver is required to return to work.
- 4. Nothing in this order creates an exemption from applicable controlled substances and alcohol use and testing requirements (49 CFR Part 382 and any similar state statute, order, or rule); the commercial driver's license requirements (49 CFR Part 383 and any similar state statute, order, or rule); the financial responsibility requirements (49 CFR Part 387 and any similar state statute, order, or rule); driver qualifications (49 CFR Part 391); driving of commercial motor vehicle requirements (49 CFR Part 392); requirements for equipment, parts, and accessories necessary for the safe operation of vehicles (49 CFR Part 393); applicable size and weight requirements; or any portion of federal and state regulations not specifically identified.
- 5. 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.
- 6. Upon expiration of this order, or when a motor carrier or driver ceases to provide direct assistance to the emergency relief effort, a driver that has had at least 34 consecutive off-duty hours must be permitted to start his or her on-duty hours and 60/70-hour clock at zero.
- 7. This order applies only to propane and heating oil. No other petroleum products are covered by the exemption and suspension under this order.
- 8. The Commercial Vehicle Enforcement Division of the Michigan Department of State Police must coordinate state compliance with this order.
- 9. This order is effective upon filing and remains in effect for the duration of the emergency or until Sunday, February 28, 2021, at 11:59 p.m., whichever comes first.

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Hutchen Winten

Date: February 20, 2021

Time: 9:44 a.m.



GRETCHEN WHITMER

By the Governor

GOVERNOR

CRETARY OF STATE

FILED WITH SECRETARY OF STATE

21

State of South Carolina

Executibe Department

MAY 1 3 2021 Mark Hammond

SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO.

2021-24

WHEREAS, on May 7, 2021, the Colonial Pipeline Company ("Colonial Pipeline"), which operates a fuel pipeline system that serves numerous States along the East Coast and in the southeastern region of the United States, reported that it had been the target or victim of a cybersecurity incident or attack involving ransomware, and in response to the same and to contain the corresponding threats, Colonial Pipeline temporarily halted all pipeline operations; and

WHEREAS, Colonial Pipeline is responsible for transporting a substantial portion of the critical fuels delivered to and consumed in the State of South Carolina, including gasoline, diesel fuel, jet fuel, and other refined petroleum products; and

WHEREAS, the temporary shutdown and disruption of Colonial Pipeline's operations, as well as any attendant actual, potential, or perceived intermittent shortage or interruption in the availability, transportation, or delivery of essential fuels and petroleum products, poses a threat to the people, critical infrastructure, and public welfare of the State of South Carolina; and

WHEREAS, although Colonial Pipeline recently initiated the restart of certain pipeline operations, Colonial Pipeline has advised that it will take additional time for the critical supply chain to return to normal and that some markets may experience or continue to experience periodic or intermittent service interruptions during this period; and

WHEREAS, the undersigned has determined that the sudden and unexpected suspension of Colonial Pipeline's operations and the corresponding disruption of critical fuel supplies and supply chains has posed, and continues to pose, a threat to the State of South Carolina and that the State must utilize any necessary and appropriate measures to address the current circumstances and to proactively prepare for and mitigate any further intermittent interruptions in the availability, transportation, or delivery of essential fuels or additional delays in connection with Colonial Pipeline resuming normal operations; and

WHEREAS, on May 7, 2021, the undersigned issued Executive Order No. 2021-22, declaring a State of Emergency in connection with certain public health threats and other impacts associated with the 2019 Novel Coronavirus ("COVID-19") and, *inter alia*, expressly providing that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, shall remain in effect for the duration of the State of Emergency and waiving

Executive Order No. 2021-24 Page 2 May 13, 2021

or suspending transportation-related rules and regulations, in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for certain commercial vehicles and operators of commercial vehicles, to include those transporting essential fuels and petroleum products; and

WHEREAS, although Executive Order No. 2021-22 has provided important regulatory relief and flexibility to date in connection with the aforementioned threats and circumstances, the undersigned has determined that it is necessary and prudent to provide additional relief to proactively assist in facilitating and further supporting the operation of critical transportation services and mitigating additional intermittent interruptions and delays related to the availability of essential fuels and petroleum products and the delivery of the same to the impacted areas until such time as Colonial Pipeline fully restores service to the State of South Carolina; and

WHEREAS, the Federal Motor Carrier Safety Regulations limit, *inter alia*, the hours of service for operators of commercial vehicles, 49 C.F.R. §§ 390 *et seq.*, and federal law prescribes certain weight limitations for vehicles on interstate highways, 23 U.S.C. § 127; and

WHEREAS, pursuant to 49 C.F.R. § 390.23, the governor of a state may suspend certain federal rules and regulations for commercial vehicles responding to an emergency if the governor determines that an emergency condition exists; and

WHEREAS, subsequent to the undersigned's issuance of Executive Order No. 2021-22 and the corresponding waiver or suspension of certain transportation-related rules and regulations as set forth therein, by separate Executive Orders dated May 10, 2021, the Governor of the State of North Carolina and the Governor of the State of Georgia declared that emergency conditions existed in their respective States due to the aforementioned disruption in Colonial Pipeline's operations and temporarily waived or suspended certain similar motor vehicle and transportationrelated rules and regulations in connection with the same; and

WHEREAS, section 56-5-70(B) of the South Carolina Code of Laws provides that "[w]hen an emergency is declared which triggers relief from regulations pursuant to 49 C.F.R. [§] 390.23 in North Carolina or Georgia, an emergency, as referenced in the regional emergency provision of 49 C.F.R. [§] 390.23(a)(1)(A), must be declared in this State by the Governor"; and

WHEREAS, on May 11, 2021, the Federal Motor Carrier Safety Administration ("FMCSA") issued Amended Regional Emergency Declaration No. 2021-002 Under 49 C.F.R. § 390.23 to provide certain regulatory relief for commercial motor vehicle operations in response to the unanticipated shutdown of the Colonial Pipeline system and the impacts of the same on the supply of gasoline, diesel fuel, jet fuel, and other refined petroleum products throughout the Affected States identified therein; and

WHEREAS, following requests from the South Carolina Department of Health and Environmental Control and authorities in other impacted States, on May 11, 2021, the United States Environmental Protection Agency issued a waiver of certain gasoline-related regulations "to address the fuel supply emergency caused by a cyberattack on Colonial Pipeline's computer networks that led to the pipeline's shutdown" and "to minimize or prevent disruption of an adequate supply of gasoline to consumers"; and Executive Order No. 2021-24 Page 3 May 13, 2021

WHEREAS, for the aforementioned and other reasons, the undersigned has determined that the existing and anticipated threats and circumstances described herein in connection with the temporary shutdown and disruption of Colonial Pipeline's operations and any actual, potential, or perceived intermittent shortage or interruption in the availability, transportation, or delivery of essential fuels and petroleum products in the State of South Carolina, as well as any additional delays associated with Colonial Pipeline resuming normal operations and service to the State, constitute an emergency for purposes of 49 C.F.R. § 390.23.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and of these United States and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Transportation Waivers

A. I hereby determine and declare that the existing and anticipated threats and circumstances described herein associated with the temporary suspension of Colonial Pipeline's operations and the impacts related to the same constitute an emergency pursuant to 49 C.F.R. § 390.23 for purposes of suspending certain rules and regulations, as set forth below, for commercial vehicles and operators of commercial vehicles in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws.

B. I hereby authorize and direct the South Carolina Department of Transportation ("DOT") and the South Carolina Department of Public Safety ("DPS"), including the State Transport Police, as needed, to waive or suspend application and enforcement of the requisite state and federal rules and regulations pertaining to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of the FMCSA's May 11, 2021 Amended Regional Emergency Declaration No. 2021-002 Under 49 C.F.R. § 390.23, or any future amendments or supplements thereto; responding to the emergency conditions in the State of South Carolina or providing direct assistance to supplement state and local efforts and capabilities in connection with the same; responding to the declared emergencies in the State of North Carolina or the State of Georgia; or otherwise assisting with the existing or anticipated threats and circumstances associated with the temporary suspension of Colonial Pipeline's operations and further described herein, to include commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as essential fuels and petroleum products, to include gasoline, diesel fuel, jet fuel, and other refined petroleum products and related equipment or assets.

C. I hereby authorize and direct DOT and DPS, as applicable, to apply for or request any additional federal regulatory relief, waivers, permits, or other appropriate flexibility deemed necessary, whether pertaining to the transportation of overweight loads on interstate highways or otherwise, on behalf of the State of South Carolina and to promptly implement the same without the need for further Orders.

D. This Section shall not be construed to require or allow an ill or fatigued driver to operate a commercial motor vehicle. In accordance with 49 C.F.R. § 390.23, "a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least ten (10) consecutive hours off duty before the driver is required to return to such terminal or location." Likewise, this Section shall not be construed as an exemption from the applicable controlled

Executive Order No. 2021-24 Page 4 May 13, 2021

substances and alcohol use and testing requirements in 49 C.F.R. § 382, the commercial driver's license requirements in 49 C.F.R. § 383, or the financial responsibility requirements in 49 C.F.R. § 387, and it shall not be interpreted to relieve compliance with any other state or federal statute, rule, order, regulation, restriction, or other legal requirement not specifically waived, suspended, or addressed herein or addressed in any additional or supplemental guidance, rules, regulations, restrictions, or clarification issued, provided, or promulgated by DOT or DPS.

E. Subject to any guidance, rules, regulations, restrictions, or clarification issued, provided, or promulgated, or which may be issued, provided, or promulgated, by DOT or DPS, as authorized herein or as otherwise provided by law, and notwithstanding the waiver or suspension of certain rules and regulations as set forth above, drivers in South Carolina are still subject to the following state requirements to ensure public safety:

- 1. Weight, height, length, and width for any such vehicle on highways or roadways maintained by the State of South Carolina shall not exceed, for continuous travel on all non-interstates, United States, and South Carolina designated routes, maximum dimensions of twelve (12) feet in width, thirteen (13) feet six (6) inches in height, and ninety thousand (90,000) pounds in gross weight.
- 2. Posted bridges may not be crossed.
- 3. All vehicles shall be operated in a safe manner, shall not damage the highways nor unduly interfere with highway traffic, shall maintain the required limits of insurance, and shall be clearly identified as a utility vehicle or shall provide appropriate documentation indicating they are responding to the emergency.
- 4. Any vehicles that exceed the above dimensions, weights, or both, must obtain a permit with defined routes from the South Carolina Department of Transportation Oversized/Overweight Permit Office. To order a permit, please call (803) 737-6769 during normal business hours, 8:30 a.m. 5:00 p.m., or (803) 206-9566 after normal business hours.
- 5. Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws relating to oversized/overweight loads operating on South Carolina roadways.

F. I hereby authorize DOT and DPS to issue, provide, or promulgate any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application, implementation, or enforcement of this Section, or to otherwise provide clarification regarding the same, without the need for further Orders.

Section 2. General Provisions

A. The provisions of this Order, or any subsequent Orders issued in connection with the matters addressed or circumstances described herein, shall not be interpreted, applied, implemented, or construed in a manner so as to modify, amend, or otherwise alter the provisions of Executive Order No. 2021-22, or any prior Orders addressed therein or any future Orders issued in connection therewith, which shall remain in full force and effect in accordance with their respective terms unless and until otherwise modified, amended, or rescinded by subsequent Order.

Executive Order No. 2021-24 Page 5 May 13, 2021

B. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

C. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

D. This Order is effective immediately and shall remain in effect for thirty (30) days or until the declared emergencies in the State of North Carolina and the State of Georgia are terminated, whichever is less, in accordance with 49 C.F.R. § 390.23 and section 56-5-70(D) of the South Carolina Code of Laws, except that requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility vehicles travelling on non-interstate routes for up to one hundred twenty (120) days, pursuant to the provisions of section 56-5-70(A) of the South Carolina Code of Laws, unless otherwise modified, amended, or rescinded by subsequent Order.



ATTEST:

MARK HAMMOND Secretary of State

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 13th DAY OF MAY, 2021.

HENRY MCMASTER Governor





Commonwealth of Virginia Office of the Governor



NUMBER SEVENTY-EIGHT (2021)

DECLARATION OF A STATE OF EMERGENCY DUE TO THE SHUTDOWN OF THE COLONIAL PIPELINE

Importance of the Issue

On this date, May 11, 2021, I declare that a state of emergency exists in the Commonwealth of Virginia to prepare and coordinate our response to the voluntary shutdown of the Colonial Pipeline due to a cyber-attack on its business systems' informational technology infrastructure on May 7, 2021. If prolonged, the pipeline closure will result in gasoline supply disruptions to various retailers throughout the Commonwealth, since the pipeline is the primary source of gasoline to many Virginia retailers. While current gasoline reserves in the Commonwealth are sufficient to address immediate supply concerns, a long-term disruption in the pipelines will require transportation of fuel and other oil-derivatives via interstate and state roadways. The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to alleviate any conditions resulting from the situation and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

- A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.
- B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

- C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.
- D. Activation of § 59.1-525 et seq. of the Code related to price gouging.

Effective Date of this Executive Order

This Executive Order shall be effective May 11, 2021, and shall remain in full force and in effect until June 10, 2021, unless sooner amended, terminated, or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 11th day of May, 2021.



S/lorte

Ralph S. Northam, Governor

Attest:

Kelly Thomass

Kelly Thomasson, Secretary of the Commonwealth

Appendix B

List of Notable Executive Orders

State	Order or Proclamation	ctive	testinerence sponse plant	tes on Hose	the Son Loads	esprotection response protection	events fuel M	Netonal ance protection
	Proclamation: State of Emorranger Hurricano Ida (Aurust 28	br 6	e Gr &	e Gr &		~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	s/ ۵۰ ۵	२ ° ♦
AL	2021) ²⁴	Yes	Yes	Yes	Yes	-	Yes	Yes
AL	EO 2021-03-25; State of Emergency: Severe Weather (March 25, 2021) ²⁵	Yes	Yes	Yes	Yes	-	Yes	Yes
AL	EO 2021-02-14; State of Emergency: Winter Weather (February 14, 2021) ²⁶	Yes	-	Yes	Yes	-	Yes	Yes
AR	EO 20-24; Executive Order To Declare and Emergency, As Authorized by ARK. Code Ann. § 12-75-114, and Order the Arkansas Oil and Gas Commission to Take Immediate Action to Prevent the Waste of Oil and Gas Resources (May 1, 2020) ²⁷¹	-	-	-	-	Yes	-	Yes
CA	EO 2021-07-09; Proclamation of a State of Emergency (July 9, 2021) ^{28]}	Yes	-	-	-	-	-	-
со	EO D 2020 012; Order Limiting Evictions, Foredosures, and Public Utility Disconnections and Expediting Unemployment Insurance Claim Processing to Provide Relief to Coloradans Affected by COVID-19 (March 20, 2020) ²⁹	-	-	-	-	Yes	-	Yes
GA	EO 08.31.05.01; Declaring an energy emergency and prohibiting motor fuel price gouging (August 31, 2005) ³⁰	-	-	-	Yes	-	-	
GA	EO 05.10.21.02; Declaring a State of Emergency for Petroleum Shortage due to the cyberattack against Colonial Pipeline Company (May 10, 2021) ^[31]	Yes	Yes	Yes	Yes	-	-	Yes
IN	EO 21-04; Waiver Of Hours Of Service Regulations Relating To Motor Carriers And Drivers Transporting Propane Gas (February 11, 2021) ^{32]}	-	Yes	-	-	-	-	-
IN	EO 19-01; Waiver of Hours of Service Regulations Relating to Motor Carriers and Drivers Transporting Propane Gas (November 8, 2019) ^[33]	-	Yes	-	-	-	-	-
IN	EO 14-02; Declaration of an Energy Emergency and Suspension of Overweight Divisible Load Regulations (January 29, 2014) ^[34]	-	-	Yes	-	-	-	-
IA	Proc 12-18-13; (December 18, 2013) 351	-	Yes	-	-	-	-	-
IA	Proc 01-31-14; Proclamation of Disaster and Energy Emergency (January 31, 2014)[36]	Yes	-	-	-	-	-	-
ME	Proc 12-2016; Proclamation for US-DOT Federal Motor Carrier Safety Administration Hours of Service Waiver (December 20, 2016) ³⁷	-	Yes	-	-	-	-	-
МІ	EO 2013-11; State of Energy Emergency: Waiver of Regulations Relating to Motor Carriers and Drivers Transporting Propane (December 20, 2013) $^{\rm 381}$	-	Yes	Yes	-	-	-	-
MI	EO 2014-01; State of Energy Emergency: Waiver of Regulations Relating to Motor Carriers and Drivers Transporting Propane and Heating Oil (January 10, 2014) ³⁹	-	Yes	Yes	-	-	-	-
MI	EO 2016-10; State of Energy Emergency: Waiver of Regulations Relating to Motor Carriers and Drivers Transporting Petroleum Products (June 6, 2016) ⁻⁴⁰¹	-	Yes	-	-	-	-	-
МІ	EO 2021-03; Declaration of State of Energy Emergency (February 20, 2021) ⁴¹	-	Yes	-	-	-	-	-

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State	Order or Proclamation	Activat	esponse susper	ules on the susper	ules on Active	soinst Propinst	ationing order	Jud Publichergent
MN	EO 20-20; Directing Minnesotans to Stay at Home (March 25, 2020) ^{42]}	-	-	-	-	-	-	Yes
MN	EO 20-58; Authorizing the Minnesota Public Utilities Commission to Hold Remote Meetings as Necessary to Protect Health and Safety (May 15, 2020) ⁴³	-	-	-	-	-	-	Yes
MN	EO 21-09; Declaring an Emergency and Providing for Relief from Regulations to Motor Carriers and Drivers Operating in the State of Minnesota (February 12, 2021) ¹⁴¹	-	Yes	-	-	-	-	-
MN	EO 21-27; Providing for Emergency Relief from Regulations to Motor Carriers and Drivers Transporting Fuels in Minnesota (August 5, 2021) ⁴⁵	-	Yes	-	-	-	-	Yes
МТ	EO 1-2017; Executive Order Declaring a State of Energy Emergency and Temporarily Exempting Certain Carriers from Hours of Service Regulations Under Montana Law to Help Meet Fuel Demands (February 21, 2017) ⁴⁶	-	Yes	-	-	-	-	-
NE	$\underline{\rm EO}$ 07-06; Easing Gasoline and Diesel Fuel Supply Shortages (August 30, 2007) $^{\rm 471}$	-	Yes	-	-	-	-	-
NE	EO 13-01; Easing Propane Supply Shortages (October 26, 2013) ⁴⁸	-	Yes	-	-	-	-	-
NJ	EO 108; Declares a limited state of energy emergency with regard to the supply of motor fuel and implementing odd-even rationing for gasoline purchases in 12 New Jersey counties (November 2, 2012) ⁴⁰	-	-	-	-	Yes	-	-
NM	EO 2015-022; Liquid Petroleum Emergency Declaration (December 28, 2015) ^{50]}	-	Yes	-	-	-	-	-
NC	EO 121; Stay at Home Order and Strategic Directions for North Carolina in Response to Increasing Covid-19 Cases (March 27, 2020) ⁵¹¹ Note: Protection against price gauging is automatically invoked upon declaration of a state of emergency (NC Gen Stat § 75-38). EO 121 was issued during an ongoing State of Emergency, so this protection was already in effect.	-	-	-	See Note	-	-	Yes
NC	EO 213; Declaration of a State of Emergency and Temporary Suspension of Motor Vehicle Regulations to Ensure Adequate Fuel Supplies Throughout the State (May 10, 2021) ^[52]	Yes	Yes	Yes	Yes	-	-	-
ND	EO 2020-25; Remote Public Hearings and Auctions (April 8, 2020) ^{53]}	-	-	-	-	-	-	Yes
ОН	Proc 2014-02-14; Amending State of Energy Emergency Waiver of Regulations, to Extend Relief Relating to Motor Carriers and Drivers Transporting Propane and Heating Oil (February 14, 2014) ⁵⁴	-	Yes	-	-	Yes	Yes	
SC	2021-24; Suspending Transportation-Related Regulations Due to Colonial Pipeline Disruption (May 13, 2021) ⁵⁵¹	-	Yes	Yes	-	-	-	Yes
TN	EO.35; An Order Declaring a State Of Emergency for the Purpose of Ensuring the Uninterrupted Delivery of Home Heating Fuels (January 21, 2014) ^[56]	-	Yes	-	-	-	-	-
TN	EO 56; An Order Declaring a State of Emergency for the Purpose of Ensuring the Uninterrupted Supply of Fuel (September 16, 2016) ⁵⁷	-	Yes	-	-	-	-	-
TN	EO 76; An Order Declaring An Energy Emergency In Tennessee (February 16, 2021) ^{58]}	Yes	-	-	-	-	-	-

State	Order or Proclamation	Activation	estine parsence	as super	the Studio and Studios	scarso esprotection sanst rices sanst rices	atorine orders	Natorial Pulitness of Provisions
UT	\underline{EO} 2021-02; Establishing a COVID-19 Vaccination Plan (January 8, 2021) $^{\rm S91}$	-	-	-	-	-	-	Yes
VA	EO 78; Declaration of a State of Emergency Due to the Shutdown of the Colonial Pipeline (May 11, 2021) ^[60]	Yes	-	-	-	-	-	-
WA	EO 20-23; UTC – Ratepayer Assistance (March 18, 2020) ^[61]	Yes	-	-	-	-	Yes	-
WI	$\underline{\rm EO}$ 148; Relating to the Declaration of an Energy Emergency Due to Intermittent Propane Pipeline Supplies (January 9, 2015).	-	Yes	-	-	-	-	-

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Appendix C

Example Federal Regulation Exemption Request Waivers

Federal Agency	Waiver or Permit	Description	Example
ttion(DOT)	Hazardousmaterial permits	The Pipeline and Hazardous Materials Safety Administration can issue special permits authorizing a variance of specified hazardous materials transportation safety regulations. This exception provides for transportation of hazardous materials in a way that achieves a safety level at least equal to that required under existing law or that is consistent with the public interest and Chapter 51, Title 49, if a required safety level does not exist. Three types of special permit exist: (1) those authorizing the offer of a hazardous material for transportation in a different manner than otherwise required in the Hazardous Materials Regulations (HMR), (2) those authorizing the transport of a hazardous material in a different manner than required in the HMR, and (3) those authorizing the manufacture and sale of packaging for use in transporting hazardous material when the packaging does not meet thedesign specification or performance requirements in the HMR.	DOT-SP 9198 ^[63]
U.S. Department of Transporta	HOS and other carrier safety regulations	During an emergency, officials can waive regulations pertaining to recordkeeping, driver qualifications, pre-trip inspections and fatigued operations, carrier parts and accessories, HOS and carrier maintenance. Mostexemptions occur automatically upon the declaration of an emergency by the President, Governor or local official. Presidential and state declarations are effective up to 30 days, and local declarations are effective up to 5 days.Only an FMCSA regional or field administrator has the authority to extend the waivers beyond the initial 30 days and place additional restrictions on thewaivers. The waivers apply to any commercial motor vehicle responding fromanywhere in the United States to provide direct relief to the emergency.	Waiver Extension forEnergy Emergency Caused by Tropical Storm Harvey (September 11, 2017) ^[64]
	Federal Railroad Administration(FRA) Emergency Relief Docket(ERD)	The FRA ERD is a special provision in U.S. DOT's regulations that provides forthe expedited review and approval of waiver requests from railroads related toa specific emergency. The Administrator of FRA has the authority to designate specific events as emergencies and, therefore, trigger the opening of the ERD. Once opened, the ERD can grant relief from applicable inspection daterequirements. The ERD allows railroads to seek expedited requests for waiversrelated to the emergency pursuant to 49 Code of Federal Regulations (C.F.R.) 211.45.	The FRA Administrator's Declaration of Emergency Event: Polar Vortex (February 2021) ⁶⁵

Federal Agency	Waiver or Permit	Description	Example
U.S. Department of Energy(DOE)	Federal Power Act Section 202(c) Emergency Order ^[66]	Under Section 202(c) of the Federal Power Act, "during the continuance of a war in which the United States is engaged or when an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy, or of facilities for the generation or transmission of electric energy, or of the fuel or water for generating facilities, or other causes, the Secretary of Energy may require by order temporary connections of facilities, and generation, delivery, interchange, or transmission of electricity as the Secretary determines will best meet the emergency and serve the public interest." 16 U.S.C. § 824a(c).	Order Pursuant to Section 202(c) of the Federal Power Act (February 14, 2021) ^{(दर})
al Protection Agency(EPA)	Reformulated Gasoline (RFG) Requirements Waiver	RFG is a blended gasoline and cleaner burning alternative to conventional gasoline that is required to meet a threshold of air quality metrics in 17 statesand the District of Columbia. During emergency response situations, officials can waive these air quality metrics to ensure that an adequate supply of fuel is available.	Fuel Waiver Concerning Reformulated Gasoline in Alabama,Delaware, Georgia, Kentucky, Maryland, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia and the District of Columbia (November 3, 2016) ^[68]
Environmenta	Gasoline Reid Vapor Pressure Waiver	EPA regulates the vapor pressure of gasoline sold at retail stations during the summer ozone season to reduce evaporative emissions from gasoline that contribute to ground-level ozone and diminish the effects of ozone-related health problems. Depending on the state and month, gasoline may not exceed 7.4 psi or 9.0 psi. During an emergency, these air quality regulations may besuspended to ensure continued access to fuel.	First Fuel Waiver Concerning Louisiana and Mississippi(August 30, 2021) ⁽⁶⁹)
Department of Homeland Security (DHS)	Jones ActWaivers	The Merchant Marine Act of 1920 (the "Jones Act") requires that all goods transported by water between U.S. ports be carried on U.S. flag ships. Requests for waivers of certain provisions of the act are reviewed by the Maritime Administration's (MARAD) Office of Emergency Preparedness and DHS on a case-by-case basis. DHS issues the waiver, with assistance from MARAD in determining the necessity, extent and duration of the waiver, by identifying available U.S. flagged sealift capacity. Waivers can be granted in cases of national emergencies or strategic interest.	Jones Act Waiver(September 8, 2017) ^[70]
Internal Revenue Service (IRS)	Diesel Fuel Penalty Waiver	The IRS imposes a tax penalty of 24.4 cents per gallon on diesel fuel sold for "on-road" use. Dyed red diesel fuel used off-road is not ordinarily subject to this tax. Typically, if diesel fuel that was not subject to this excise tax was converted to use for "on-road" purposes, the IRS would require that use to be reported and the tax paid accordingly. When a waiver is instated, the tax penalty cannot be applied to individuals who sell or use dyed diesel fuel for highway use.	IRS Waives Diesel Fuel Penalty Due to Hurricane Sandy (November 3, 2012) ^[71]

Appendix D

Examples of Authorizing Legislation for Governor-Declared Energy Emergencies

State	Code	Actions for the Governor	Determining an Emergency					
Note: Ti manage an ener Statutoi	Note: This appendix tracks statutory-specific authorities for "energy emergencies" as unique legal authorities, distinguished from emergency nanagement codes that enable disaster declarations that do not mention energy but do not preclude the Governor from using the declaration for an energy event. This should not be taken as a full accounting of where all 55 states and territories stand.							
СТ	CT Gen Stat § 16a-2, 16a-11, 16a-12 (2019) ^[72]	In the event of an energy emergency, the Governor may proclaim that such emergency exists and designate by order all or any part of the energy emergency plan he intends to implement and the effective date thereof, provided during any such energy emergency, the Governor may designate by order additional parts of said energy emergency plan to be implemented and the effective dates thereof. In the event of an emergency not covered by said plan, the Governor may proclaim an energy emergency and in connection therewith issue orders such as are permitted pursuant to chapter 517 and such orders may include Establishment of programs, controls, standards, priorities and quotas for the allocation, rationing, conservation, distribution and consumption of available energy resources; Suspension and modification of existing statutes, standards and requirements affecting or affected by the use of energy resources; Adoption of measures affecting the type and composition and production and distribution of energy resources; Imposition of price restrictions on energy resources; Establishment and implementation of regional programs and agreements for the purpose of coordinating energy resource programs and actions of the state with those of the federal government and of other states and localities.	A situation where the health, safety or welfare of the citizens of the state is threatened by an actual or impending acute shortage in usable energy resources					
ΙΑ	IA Code § 473.8 (2020) ^[73]	Regulate the operating hours of energy consuming instrumentalities of state government, political subdivisions, private institutions and business facilities to the extent the regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state. However, the Governor shall have no authority to suspend, amend or nullify any service being provided by a public utility pursuant to an order or rule of a federal agency which has jurisdiction over the public utility. Establish a system for the distribution and supply of energy. The system shall not include a coupon rationing program, unless the program is federally mandated. Curtail public and private transportation utilizing energy sources. Curtailment may include measures designed to promote the use of car pools and mass transit systems. Delegate any administrative authority vested in the Governor to the authority or the director. Provide for the temporary transfer of directors, personnel, or functions of state departments and agencies, for the purpose of performing or facilitating emergency measures pursuant to subparagraphs (1) and (2). Accept the delegation of other mandatory measures as allowed by the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102.	If the authority by resolution determines the health, safety, or welfare of the people of this state is threatened by an actual or impending acute shortage of usable energy, it shall transmit the resolution to the Governor together with its recommendation on the declaration of an emergency by the Governor and recommended actions, if any, to be undertaken. Within thirty days of the date of the resolution, the Governor may issue a proclamation of emergency which shall be filed with the secretary of state. The proclamation shall state the facts relied upon and the reasons for the proclamation.					

State	Code	Actions for the Governor	Determining an Emergency
IN	IN Code § 10-14-3- 13 (2019) ⁷⁴	Implement programs, controls, standards, priorities and quotas for the conservation and consumption of energy, including plans and commissionregulations for the curtailment of energy if the Governor imposes controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency. Suspend and modify state pollution control standards and requirements affecting or affected by the use of energy, including standards or requirements relating to air or water quality control. Establish and implement intrastate regional programs and agreements forthe purposes of coordinating the energy program and actions of the state with the federal government and other states, localities, and other persons. Designate the execution and enforcement of emergency orders to a state agency that regulates the energy form, resource, or suppliers that are the subject of the proclaimed emergency. Suspend the provisions of any state statute regulating transportation or the orders or rules of any state agency if strict compliance with any of the provisions would prevent, hinder, or delay necessary action in coping with the energy emergency.	The availability of regional and national energy resources; Local, state, regional and national energy needs and shortages; The availability of short term alternative supplies on a local, state, regional and national basis; The economic effect of the declaration and the implementation of any curtailment or conservation plans.
MA	MA Gen L ch 25a § 8 (2020) ⁷⁵ 1	Upon issuance of such declaration of an energy emergency the Governor shall implement, at his discretion, with or without any federal delegation, action or approval (i) such energy supply shortage contingency plans including conservation contingency plans and rationing contingency plans as have been developed by the department and which conform to the substantive requirements of 42 USC Secs. 6261–6275 and (ii) any petroleum plan or other measures which comply with the substantive requirements of 15 USC Sec. 751–760H or successor federal legislation.	Due to actual or imminentsevere energy supply interruption in the commonwealth, or resulting from the obligating of the United States under the international energy program of the United States, or like obligation
ME	37-B ME Rev Stat § 742 (2020) ⁷⁶]	Establish and implement programs, controls, standards, priorities andquotas for the allocation, conservation and consumption of energy resources; Regulate the hours and days during which nonresidential buildings may beopen and the temperatures at which they may be maintained; Regulate the use of gasoline and diesel-powered land vehicles, watercraftand aircraft; After consulting, when appropriate, with the New England governors and upon the recommendations of the Public Utilities Commission, regulate thegeneration, distribution and consumption of electricity; Establish temporary state and local boards and agencies; Establish and implement programs and agreements for the purposes of coordinating the emergency energy response of the State with those of theFederal Government and of other states and localities; Temporarily suspend truck weight and size regulations, but not in conflictwith federal regulations; Regulate the storage, distribution and consumption of home heating oil; and If the energy emergency was caused by a lack of electric grid reliability in this State resulting from insufficient capacity resources, take appropriate action, in consultation with the Public Utilities Commission, to procure sufficient capacity resources including generation capacity and interruptible, demand response or energy capacity resources. When an energy emergency proclamation is in effect, the Governor may call the Board of Environmental Protection into extraordinary session to consider temporary waivers or suspensions of rules and standards related to air and water quality necessary to relieve then existing energy shortages.	When an actual or impending acute shortage in energy resourcesthreatens the health, safety or welfare of the citizens of the State
MD	MD Pub Safety Code § 14-304 (2019) ⁷⁷¹	 [T]he Governor may promulgate orders, rules, or regulations to: (1) establish and implement programs, controls, standards, priorities, and quotas for the allocation, conservation, and consumption of energy resources; (2) suspend and modify existing standards and requirements affecting or affected by the use of energy resources, including those that relate to air quality control, the type and composition of various energy resources, the production and distribution of energy resources, and the hours and days during which public buildings and commercial and industrial establishments are authorized or required to remain open; and (3) establish and implement regional programs and agreements to coordinate the energy resource programs and actions of the State with those of the federal government and of other states and localities. 	On reasonable apprehension that an energy emergency exists, the Governor may proclaim a state of emergency.

State	Code	Actions for the Governor	Determining an Emergency
MI	MI Comp L S 10.83 (2020) ⁷⁸¹	During an energy emergency, the Governor may do all of the following: Order specific restrictions on the use and sale of energy resources. Restrictions imposed by the Governor under this subdivision may include: The interior temperature of public, commercial, industrial and schoolbuildings. Hours and days during which public, commercial, industrial and schoolbuildings may be open. Conditions under which energy resources may be sold to consumers. Lighting levels in public, commercial, industrial and school buildings. Use of display and decorative lighting. Use of privately owned vehicles or a reduction in speed limits. Use of public transportation including directions to close a publictransportation facility. Use of pupil transportation programs operated by public schools. Direct an energy resource supplier to provide an energy resource to a health facility, school; public utility; public transit authority, fire or police station or vehicle; newspaper or television or radio station for the purpose of relaying emergency instructions or other emergency message; food producer, processor, retailer, or wholesaler; and to any other person or facility which provides essential services for the health, safety and welfare of residents of this state. By executive order, suspend a statute or an order or rule of a state agency or a specific provision of a statute, rule, or order, if strict compliance with the statute, rule, or order or a specific provision of the statute, rule, or order will prevent, hinder, or delay necessary action in coping with the energy emergency.	Upon notification of an impending energy emergency by the energy advisory committee under section 2(2), or upon the Governor's own initiative if the governor finds that an energy emergency exists or is imminent.
MN	Minn. R. 7620; MN Stat § 216C.15 (2020) ⁷⁹]	During a declared energy supply emergency, the Governor has the authority to directly manage operations, such as the controlling the distribution and rationing of energy to ensure first responders and other agencies/organizations get the fuels they need to protect public health and safety, operate critical infrastructure and facilitate recovery operations. [NGA Summary text; quotes follow] During a declared energy supply emergency, the [state] will set up anenergy operating center. In an energy supply emergency resulting from a shortage of fuel oil; [gasoline, diesel fuel, or other petroleum product used as a motor fuel] highest priority uses are those essential for the health and safety of the citizens of the state. Second priority fuel oil uses are those necessary to minimize the economic disruption of a fuel oil shortage. Suppliers shall be requested to deliver fuel oil to higher priority consumers before lowerpriority consumers, where no practicable substitute fuels are available. Homeowners and renters shall be requested to turn their thermostats backto between 62 degrees Fahrenheit and 66 degrees Fahrenheit during theday and 60 degrees Fahrenheit and 58 degrees Fahrenheit and 66 degrees Fahrenheit during theday and 60 degrees Fahrenheit and 58 degrees Fahrenheit and 66 degrees Fahrenheit and 115 degrees Fahrenheit (or the lowest setting). Voluntary industrial, commercial, government and residential conservationtargets shall be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage. Commercial and industrial establishments shall be requested to reduce their hours of operations where this action saves energy. Commercial and industrial users shall be requested to release fuel oil frominventory supplies. Business, industrial and government institutions shall be requested to substantially reduce or discontinue use of their diesel-powered automobiles may be requested to substantially reduce or discontinue use of their diesel vehicles during severe fuel	Shortage of energy resources, including petroleum products,natural gas, or electricity. When the Department of Commerce's forecast shows thatshort-term demand for a fuel or fuels exceeds the forecast of short-term supply and that a supply shortage will occur within three months, the commissioner may recommend that an energy supply emergency be declared by submitting a written statement to the Executive Council or legislature. The Executive Council (consisting of the governor, the lieutenant Governor, the attorney general, theauditor and the secretary of state) or the legislature has responsibility for declaring an energy supply emergency.
МТ	90-4-310 ^{(80]}	Implement programs, controls, standards, priorities and quotas for the production, allocation, conservation and consumption of energy, includingplans for the curtailment of energy. Suspend and modify existing pollution control standards and requirementsor any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and Establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the statewith those of the federal government and of other states, localities and other persons.	Upon finding that a situation exists that threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized

State	Code	Actions for the Governor	Determining an Emergency
NV	NV Rev Stat § Ch. 416 (2020) ^[#1]	Collect and compile information concerning current, past and futuresources, users and supplies of water and energy. Devise contingency plans that provide for conserving, allocating, using, increasing the supply or taking whatever steps are necessary to prevent a water or energy emergency, or in the event of a water or energy emergency, to ensure the fairest and most advantageous use of water orenergy or of any water or energy source or supply. Prepare reports explaining the purposes and projected economic impact of the proposed contingency plans and indicating those areas in which theplans are inconsistent with any existing rule, order, plan or regulation of any state agency or political subdivision of the State. Serve as liaison with the Federal Government and other states on waterand energy matters. Request any state agency or political subdivision of the State to supply anyinformation in its possession or readily accessible to it concerning the use, supply, source, allocation or distribution of water or energy. Request any business, industry, trade association or other organization or person doing business or representing persons doing business in this state to supply any information in their possession or that can reasonablybe assumed to be readily accessible to them concerning the use, supply, source, allocation or distribution of water or energy. Issue a subpoena to any officer or agent of any such public or private entity to give oral testimony or produce any relevant book, paper, account, memorandum or record to deal with any actual or impendingemergency including without limitation the regulation as necessary of the allocation, conservation or use of water or energy during the emergency. Amend or suspend any regulation of any state agency or political subdivision of the State if the Governor determines that the action is necessary to lessen the adverse impact of the water or energy emergency including without limitation the regulation of the State to the greatest extent practicable and necessary	The President of the United States or Congress has declared that an actual or impending water or energyemergency exists in this state or elsewhere in the United States; or The health, safety or welfare of the citizens of this state is threatened by reason of an actual or impending acute shortage in usable water or energy resources.
NJ	NJ Rev Stat \$ 52:27F-17 (2020) ⁸²]	 During the duration of a state of energy emergency the commissioner to the extent not in conflict with applicable Federal law or regulation but notwithstanding any State or local law or contractual agreement, shall be empowered to: (1) Order any person to reduce by a specified amount the use of any energy form; to make use of an alternate energy form, where possible; or to cease the use of any energy form; (2) Order any person engaged in the distribution of any energy form to reduce or increase by a specified amount or to cease the distribution of such energy form; to distribute a specified amount and type of energy form to certain users as specified by the commissioner; or to share supplies of any energy form to certain users as specified by the commissioner; or to share supplies of any energy form to the distribution of any energy form by: (3) Establish priorities for the distribution and sale of any energy form by: (a) Establishing such limitations, priorities, or rationing procedures as shall be necessary to insure a fair and equitable distribution of available supplies; (b) Establishing minimum and maximum quantities to be sold to any purchaser; (c) Fixing the days and hours of access to retail dealers; (d) Compelling sales to members of the general public during times when a retail dealer is open for the sale of an energy form; (e) Establishing methods for notifying the public by flags, symbols, or other appropriate means whether such retail dealers are open and selling the subject energy form; (5) Direct the heads of those departments and agencies within State Government that were ordered to develop contingency plans to implement said plans. During the existence of a state of energy emergency, the Governor may order the suspension of any laws, rules, regulations, or orders of any department or agency in State Government or within any political subdivision which deal with or affect energy and which imped	Upon a finding by the commissioner that there exists or impends an energy supply shortage of a dimension which endangers the public health, safety, or welfare in all or any part of the State, the Governor is authorized to proclaim by executive order a state of energy emergency for a period of up to 6 months. The Governor may limit the applicability of any such state of emergency to specific kinds of energy forms or to specific areas of the State in which such a shortage exists or impends.

State	Code	Actions for the Governor	Determining an Emergency
NM	NM Stat § 12-12-3 (2020) ^{83]}	Imposition of restrictions on any wasteful, inefficient or nonessential use ofenergy resources; Allocation of available supplies of energy resources among areas, users, persons or categories of persons or users. In allocating available resources the Governor shall give priority to energy resource use essential to public health and safety, and shall thereafter attempt to allocate the remaining supply equitably; Regulation of the days and times when energy resources may be sold to end users and the amounts which may be sold or purchased; Regulation of the hours and days during which nonresidential buildings may be open and the temperature at which they may be maintained; and Such provisions as may be necessary to assure that adequate transportation facilities exist to supply the energy needs of this state.	The Governor, upon termination of an energy supply alert or after determining that the declaration of an energy supply alert would be insufficient to meet the situation facing the people of New Mexico and after making written findings of the grounds upon which he bases his decision that an energy emergency exists, which findings shall be provided the presiding officer of each house of the legislature, may issue a declaration that such an emergency exists.
NC	NC Gen Stat § 113B- 20-22 (2020) ⁽⁸⁴⁾	Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management shall be created. Upon the declaration of an energy crisis, the Governor shall submit to the Legislative Committee for its prompt consideration such emergency orders, rules and regulations as deemed necessary to alleviate the effects of the energy crisis. The Governor shall immediately consult with the Legislative Committee about the emergency proposals. Establishment and implementation of programs, controls, standards, priorities and quotas for the allocation, conservation and consumption of energy resources; the suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to air quality control and the hours and days during which public buildings may or may not be required to remain open; and the establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities.	An energy crisis exists when the health, welfare or safety of the citizens of North Carolina are threatened by reason of an actual or impending acute shortage in usable, necessary energy resources.
ОН	Ohio Rev Code § 4935.03 (2020) ^[85]	Restrict the energy consumption of state and local government offices and industrial and commercial establishments; Restrict or curtail public or private transportation or require or encourage the use of car pools or mass transit systems; Order, during a declared energy emergency, any electric light, natural gas or gas, or pipeline company; any supplier subject to certification under section 4928.08 [Certification to Provide Retail Electric Competitive Service] or 4929.20 [Certifying Governmental Aggregators and Retail Natural Gas Suppliers] of the Revised Code; electric power or gas utility that is owned by a municipal corporation or not for profit; coal producer or supplier; electric power producer or marketer; or petroleum fuel producer, refiner, wholesale distributor, or retail dealer to sell electricity, gas, coal, or petroleum fuel in order to alleviate hardship, or if possible to acquire or produce emergency supplies to meet emergency needs; Order, during a declared energy emergency, other energy conservation or emergency energy production or distribution measures to be taken in order to alleviate hardship; Mobilize emergency management, national guard, law enforcement, or emergency medical services.	Governor finds that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.
UT	UT Code § 53-2a- 1004, 1006-1008 (2020) ⁸⁶ 1	Subpoena witnesses, material and relevant books, papers, accounts, records, and memoranda, administer oaths, and cause the depositions of persons residing within or without the state to obtain information relevant to energy resources that are the subject of the proclaimed emergency. Cause to be established, and revised as appropriate, standby priorities for curtailment in the use of energy resources. Require reduction in energy resource usage and the application of conservation, prevention of waste, and the salvaging of energy resources and the materials, services, and facilities derived therefrom or dependent thereon, by state agencies and political subdivisions in this state; Direct the establishment by state agencies and political subdivisions in this state of programs necessary to implement and comply with federal energy conservation programs where these programs have not theretofore been so established, including, but not limited to, allocation or rationing of energy resources and the state's discretionary allotments; Require involuntary curtailments, adjustments, or allocations in the supply and consumption of energy resources and manner in which these resources are supplied or consumed; or Prescribe and direct activities promoting the conservation, prevention of waste, and salvage of energy resources and the materials, services, and schedules, or the suspension of weight limits or other restrictions from the transportation routes and schedules, or the suspension of weight limits or other restrictions from the transportation of energy resources, to the extent permissible under federal law and regulations.	An existing or imminent severe disruption or impending shortage in the supply of one or more energy resourcesthreatens the availability of essential services or transportation; or the operation of the economy; and jeopardizes the peace, health, safety, and welfare of the people of this state.

State	Code	Actions for the Governor	Determining an Emergency
VA	VA Code § 56- 586.1 (2020) ⁽⁸⁷⁾	Require any generator or any municipal electric utility that is capable of generating but (i) is not generating at its full potential during such declared electric emergency, to generate, dispatchor sell electricity from a facility that it operates within the Commonwealth, to the Commonwealth for distribution within the areas of the Commonwealth designated in the declaration. The quantity of electricity required to be generated, dispatched or sold andthe duration of such requirements, shall be as determined by the Governor to be necessary to alleviate the electric energy emergency hardship. The Commonwealth shall compensate an entity required to generate, dispatch, or sell electricity pursuant to this subsection, and the operator ofany transmission facilities over which the electricity is transmitted. The Department of Environmental Quality, the State Air Pollution Control Board, the State Water Control Board and the Virginia Waste ManagementBoard shall issue any temporary or emergency permit, order, or variance necessary to authorize any permit amendments or other changes needed to meet the requirements imposed under this section.	"Electric energy emergency" meansan unplanned interruption in the generation or transmission of electricity resulting from a hurricane, ice storm, windstorm, earthquake or similar natural phenomena, or from a criminal act affecting such generation or transmission, act of war or act of terrorism, which interruption is (i) of such severity that minimum levels of reliable service cannot be maintained using resources practicably obtainable from the market and (ii) so imminently and substantially threatening to the health, safety or welfare of residents of this Commonwealththat immediate action of state government is necessary to prevent loss of life, protect the public health or safety and prevent unnecessary oravoidable damage to property.
WA	WA Rev Code § 43.21G.040 (2020) ⁸⁸]	Governor shall present to the committee [Joint Committee on Energy Supply and Energy Conservation, Legislative Chapter 44.39] any proposed plans for programs, controls, standards and priorities for the production, allocation and consumption of energy during any current or anticipated condition of energy emergency, any proposed plans for the suspension or modification of existing rules of the Washington Administrative Code, and any other relevant matters the Governor deems desirable; Suspend or modify existing rules of the Washington Administrative Code of any state agency relating to the consumption of energy by such agency or to the production of energy; Direct any state or local governmental agency to implement programs relating to the consumption of energy by the agency which have been developed by the Governor or the agency and reviewed by the committee; Implement programs, controls, standards and priorities for the production, allocation and consumption of energy; Suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and Establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states and localities.	Upon finding that an energy emergency exists within this state or any part thereof

Source: The Network for Public Health Law. Emergency declaration authorities across all states and D.C. https://www.networkforphl.org/_asset/gxrdwm/ Emergency-Declaration-Authorities.pdf

Appendix E

Energy Emergency Response Complications from Coincident Public Health State of Emergency

There are several key strategies Governors can consider to facilitate energy emergency response and reliability during a concurrent public health emergency. The following list consolidates and summarizes the pertinent public health emergency recommendations in steps 1-4:

Pre-emptive Resource Mapping: Governors can prepare for effective state energy emergency response during a public health emergency by consulting federal resources like the CDC National Standards for State, Local, Tribal, and Territorial Public Health and FEMA's National Preparedness Goal, as well as agencies like DOE and CISA, to map out resources and capabilities needed to respond to an event. These resources can help Governors account for the public health emergency capabilities and needs when responding to a concurrent energy emergency. Governors can also leverage federal assistance through programs such as the CDC's Division of State and Local Readiness technical assistance and FEMA's State Homeland Security Program to exercise state preparedness plans, support state public health, emergency readiness, pass funding through to local communities, and ensure state public health, emergency management, homeland security, and energy personnel are coordinating in advance of emergency response. For more information see A Governors Guide To Public Health Preparedness.

Essential Designations: If the public health emergency leads the ordered closure of businesses, Governors can designate essential energy sector personnel to exempt from these closures. If available, consider incorporating any existing federal guidance on essential personnel designations. During the COVID-19 public health emergency, many Governors, at their discretion, crafted executive orders that mirrored or adapted guidance from the Cybersecurity and Infrastructure Security Administration (CISA) to identify essential workers and critical work functions such as energy workers key to preventing infrastructure breakdown, help officials understand which roles required special approaches to minimize risk to workers performing those functions (such as energy workers who could not work remotely and perform mission critical work, may not be able to social distance, may come into close proximity with customers, or may have highly specialized skills), and consider priority sectors to allocate limited resources like vaccines and personal protective equipment. These designations also ensure critical energy workers can move freely during a public health event like a stay-at-home order. Essential personnel may include those typically involved in energy emergency response and restoration, such as linemen, and specialized positions that cannot work remotely, such as control center operators.

Resource Allocation Prioritization: When developing resource deployment prioritizations, Governors can also consult or reference federal guidance on resource allocation, such as the CDC's tiered priority recommendations for COVID-19 infection testing, PPE distribution, and vaccination, which incorporated CISA's federal essential worker designation guidance described above to elevate essential workers most at risk.^[89] This is particularly relevant when health supplies are limited.

S During the COVID-19 public health emergency several states elevated energy sector personnel for critical health supplies such as personal protective equipment, testing, and vaccinations. The CDC <u>categorized</u> energy-related jobs across the Phase 1b and 1c essential worker categories, with utilities under 1c. State priority tiers varied but some did specifically elevate energy personnel. **Colorado** included energy and utility workers in an expansion of at-home testing resources for public-facing employees in April 2021, **Wisconsin** made utility and communications infrastructure workers <u>eligible</u> for vaccines in priority Phase 1b, and **Wyoming** <u>elevated</u> utility workers required to enter private residences to Phase 1b.

Responder Flexibility: Ensure that emergency response and utility restoration personnel are given legal flexibility through exemptions from other executive actions in place during a public health emergency, such as restrictions on movement or mandates for public use of certain types of PPE that might interfere with persons wearing or using specialized industry gear or equipment. Consider suspending regulations and statutes in parallel with federal temporary regulatory relief such as transportation hours of service waivers.

State Entity Flexibility: Waiving procedural regulations like in-person public meeting requirements (including public utility commission convenings) or filings and allowing those functions to be performed remotely through virtual platforms may accelerate response while protecting state employees.

Interstate Coordination and Waived Travel Restrictions: Where multiple states are affected, Governors can consider waiving interstate travel restrictions and mutually recognizing essential credentials that authorize the bearer to move freely during a shelter-in-place for first responders and local and mutual assistance utility crews, including those acting under mutual aid agreements that may be traveling from states not adjacent to the energy emergency. This might also include coordinating access to and ensuring food/restroom services at rest stops to facilitate energy workers and other first responders that need to travel long distances or cross state boundaries during an energy emergency and/or concurrent public health emergency.

Resource Sharing and Mutual Aid: Governors can coordinate to share limited resources so that they are distributed optimally to maximize regional emergency response. This might include the services of energy crews themselves, or supporting resources such as PPE, viral testing supplies, or vaccine doses during a public health state of emergency that complicates energy emergency response. The Emergency Management Assistance Compact (EMAC) and other interstate coordinative bodies highlighted under Step 4 can help Governors bring external resources and capacity into the response effort and provide an additional forum for coordination between states and public, private, and federal partners.

Activating and Leveraging the National Guard: The National Guard can bolster state emergency response capacity to a variety of threats and hazards, including energy and public health emergencies, and may be especially critical to bolster challenging state responses to simultaneous energy and public health emergencies. National Guard members on State Active Duty assist with a wide range of energy and public health emergency response actions such as vaccine and testing administration, fuel movement, cyber operations, route clearance, facility security, wildfire response, and flood protection and recovery. Governors can send their state's national guard into a neighboring state upon request to assist with an emergency as part of EMAC. Governors from the sending and requesting state should consider the potential need to modify the designated guard mission to expand response in the event of a new simultaneous emergency or reassign guard members to respond to the new emergency. During complicated responses such as energy emergencies occurring during an ongoing public health emergency and in scenarios where state resources to respond and fund National Guard deployment are impacted, Governors may request from the federal government a Title 32 authorization which would federally fund the National Guard. Governors retain control of the National Guard while under a Title 32 approved mission.

Institute a Utility Disconnections Moratorium: Governors may have authority to order a suspension of utility customer disconnections for non-payment during a public health emergency. Consider applying such exemptions to both regulated investor-owned utilities as well as unregulated utilities including rural electric cooperatives and public power utilities and fuel distributors, where statutory authority allows for such exemptions. This tool is commonly used for energy reasons to preserve home power during extreme hot or cold weather or a defined winter season but may also be a valuable instrument to protect the public during a health emergency, especially if a stay-at-home order is in effect.

Governors can consider these different strategies to facilitate energy emergency response while also managing a public health emergency.

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Endnotes

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