



National Association of State Energy Officials

June 21, 2023

The Honorable Robin Hutcheson
Administrator
Federal Motor Carrier Safety Administration
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Clarification to the Applicability of Emergency Exemptions
(Docket No. FMCSA-2022-0028)

Dear Administrator Hutcheson,

The National Association of State Energy Officials (NASEO) offers our comments in response to the Federal Motor Carrier Safety Administration’s (FMCSA) Notice of Proposed Rulemaking (NPRM) on the Clarification to the Applicability of Emergency Exemptions. NASEO represents the governor-designated State Energy Directors and their offices from each of the 56 states, territories, and the District of Columbia. State Energy Offices are typically the state lead or key supporting agency for Emergency Support Function 12—Energy (ESF-12). In addition, Section 40108 of the Infrastructure, Investment and Jobs Act (IIJA) reinforces and expands the ESF-12 responsibilities of the State Energy Offices. NASEO works with federal partners, fuel providers, utilities, and key state and local energy stakeholders to ensure that State Energy Offices have the support and resources they need to prepare for, respond to, and mitigate against all hazards impacting the energy sector. NASEO strongly encourages FMCSA to consider the following:

1. Limiting the Proposed Waiver to Only the Hours-of-Service Requirements for Commercial Driver's License (CDL) Drivers Under Section 395.3

NASEO supports the proposed change to the regulation. The change would provide FMCSA the option to waive specific regulations covered in sections 390 to 399, rather than waiving all vital safety provisions. When states issue waivers, many recognize this broad exemption and indicate their intent to only allow for specific waivers of the Hours-of-Service Requirements and not all provisions of sections 390 to 399. The proposed change supports a state’s option for a more specific waiver.

2. Provide States with the Opportunity to Determine Appropriate Time Periods

NASEO is deeply concerned about FMCSA’s intent to significantly shorten the length of time a state’s waiver is effective in an emergency declaration from thirty days to only five days. Each response and recovery to an energy emergency is different. Most state and regional emergencies last far longer than the proposed five days. Fuel shortages caused by hurricanes, for example, are an event for which the

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energy system and fuel recovery period typically exceeds five days. The recovery from a major refinery or petroleum product pipeline shut down also often lasts more than five days. Although an energy emergency may be of short duration, replenishing inventory levels of refined petroleum and biofuel products can be ongoing and often lasts for several weeks. While the waiver could be extended, to issue repeated waiver extension requests would be distracting during an emergency – a time when every unnecessary action can be detrimental to avoiding loss of life and recovery efforts. Equally important, issuing a longer waiver aids in calming stressed fuel markets during a supply disruption.

The proposed highly-restrictive time period for a regionally declared emergency impairs states' abilities to adequately respond and communicate to the public actions that they should take. In short, the proposed rule change by FMCSA will needlessly delay state and local recovery efforts – impacting lives and livelihoods. For events lasting longer than five days, it would require state officials focused on recovery efforts to submit requests to FMCSA for multiple waivers or extensions, increasing the regulatory burden and communication efforts on both states and FMCSA and ultimately impeding recovery.

### **3. Perform Data Collection to Underpin Potential Rule Changes**

Overall, FMCSA has presented limited data to justify the proposed changes and restrictions of a state's authority for waiving regulations. Commercial motor vehicle operator incident information should be evaluated for periods when exemptions have been granted to identify which, if any, safety regulations should be considered for exemption or to remain in place. This approach would also benefit future rulemaking.

Before finalizing the proposed changes, NASEO strongly recommends that FMCSA evaluate previous state declarations for the need to reduce the length of a waiver and share this information with stakeholders for comment. If a data-driven rationale for such a reduction in exemption duration is not provided, FMCSA should preserve each state's authority to provide regulatory relief based on a regional emergency declaration by continuing to offer a thirty-day waiver period. However, if, based on further data evaluation by FMCSA, it is determined a reduction in time period is warranted, states should be given an option to request the thirty-day period or the alternative, shorter-time period FMCSA proposes. This would preserve state decision making in responding to an emergency, while acknowledging a shorter waiver period may be appropriate for some emergencies. States are ideally suited to make that decision because they are closest to the emergency event and the response efforts.

NASEO appreciates the opportunity to offer our views before FMCSA finalizes the proposed rule. We urge a reevaluation of the proposed changes in favor of strengthening our states' and the nation's ability to respond to energy emergencies and avoid inadvertently extending the duration of fuel supply disruptions.

Best regards,



David Terry, President  
NASEO

CC: State Energy Offices, U.S. Department of Energy