



Comments of the Shippers Coalition  
to the  
Federal Motor Carrier Safety Administration  
Docket No. FMCSA-2022-0028  
Clarification to the Applicability of Emergency Exemptions  
Notice of Proposed Rulemaking  
January 28, 2023

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The Shippers Coalition respectfully submits these comments in response to the Notice of Proposed Rulemaking (NPRM) by the Federal Motor Carrier Safety Administration (FMCSA or agency) in this docket; the FMCSA proposes to change its rules to limit when and, if so, the extent to which emergency exemptions to its rules are applicable. NPRM published at 87 Federal Register 75206 (December 8, 2022).

The Shippers Coalition includes many of the nation’s prominent companies and trade associations engaged in manufacturing, agribusiness, and other business. Coalition members directly or indirectly sustain millions of American jobs. They move freight by all modes and do not favor any mode. The Shippers Coalition (Coalition or we or our) has emerged as a leading voice for a modern, safe, efficient and environmentally-friendly freight transportation system. The Shippers Coalition seeks to improve supply chain fluidity and freight transportation efficiency while – advancing transportation safety; reducing emissions, fuel consumption and congestion; and protecting infrastructure.

We do not support the proposed rule, which does not address any identified problem. We particularly note that the FMCSA itself has acknowledged, in this NPRM, that it –

Has no information that suggests that past or existing emergency exemptions have in fact negatively impacted road safety.

NPRM at 75207. FMCSA made a virtually identical statement later on in the NPRM at 75208.

Moreover, we have a similar observation to report. During 2020 there was a short period when Federal truck weight limits on the Interstate Highway System could be waived by States and many did. Those of our members who kept track during that period found that, with respect to movement of their cargo during that time, the use of trucks on the Interstate at gross vehicle weight above the normal weight limit for the Interstate did not result in any negative change to safety performance. In short, another instance where emergency waivers did not have adverse safety impact.

While the proposal does not address any identified safety problem, we have no objection to some aspects of it. More specifically, FMCSA proposes to limit the scope of emergency waivers in most cases to waivers from hours of service (HOS) rules. Under present FMCSA rules regarding emergency waivers (49 CFR 390.23(a)), waivers often extend broadly across FMCSA rules specifically to waiving 49 CFR parts 390-399. This includes, for example, part 393, listing required equipment. We do not object to the general approach of reducing the reach of waivers, as, for example, trucks should be

equipped with required equipment. HOS service rules, however, must continue to be covered by these waivers. Without taking a position on each element of 49 CFR parts 390-399, we do not object to some reduction in the scope of parts being waived, provided that HOS is continued to be waived under these emergency waivers.

In addition, we specifically disagree with the proposed revision of the definition of “emergency” in sections 390.5 and 390.5T which, if anything, would reduce FMCSA’s ability to even consider much less take constructive action in response to real world supply chain problems, including those regarding the delivery of emergency and essential supplies. FMCSA’s proposed rule would inject into the meaning of “emergency” an exclusion -- that an emergency does not include economic conditions “caused by market forces....”

So, on the face of the proposed rule, to at least some extent, FMCSA is cutting back the scope of an “emergency” that could be addressed through FMCSA waivers. But that extent is unclear. Is it a “market” problem, here in the U.S., if a flood or accident in some other nation has put in motion a freight bottleneck with adverse impacts on delivery of important supplies here? Will FMC ever know of such an overseas contributing factor? How will FMCSA draw a line as to causality? Are circumstances involving failure to build redundancy or back up solutions into a supply chain that is stressed by natural emergencies a natural emergency or a market-based emergency?

And why should FMCSA want to draw such a line, anyway? FMCSA should want to at least retain and, in our view, expand its flexibility to help address emergencies. Instead, by this proposal FMC would walk away from the opportunity to help address an emergency supply chain problem and its consequences.

We also specifically disagree with the revisions to section 390.23 regarding the duration of regional emergencies declared by Governors. Reducing the duration of a waiver for such emergencies (declared by Governors) from 30 days to 5 days is not appropriate. Droughts, large forest fires, mudslide risk and other slope failures, conditions after rain, extreme winter weather, and other circumstances can easily result in emergency conditions for more than 5 days. Trucks may have to take long detours or work long hours due to such emergencies. FMCSA should abandon rather than finalize the proposed changes regarding the duration of regional emergencies declared by Governors. Governors, in declaring emergencies that last for 30 days under current rules, are closer to the facts than FMCSA and should be allowed to continue to play their current role, which better ensures strong emergency response and more fluid (or at least less constrained) supply chains.

In short, America wants to solve its supply chain problems!

Yet, FMCSA has proposed these restrictions to its waiver authority and its ability to respond to supply chain problems in emergencies while acknowledging that it has no evidence “that past or existing emergency exemptions have in fact negatively impacted road safety.” NPRM at 75207.

Accordingly, we do not support this NPRM. At a minimum, the proposed rule in this docket should be revised: to retain the current definition of “emergency” and eliminate the proposed narrowing of the definition; and to retain current authority for the duration of a regional emergency declared by a Governor. The current 30-day period (and the opportunity for extensions) should be continued, not shortened to 5 days.

The Shippers Coalition thanks the FMCSA for its consideration and recommends that any further action by USDOT or FMCSA on the subject matter of this proposed rule be in accord with the

positions and recommendations set forth in these comments.

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