United States Senate

WASHINGTON, DC 20510

October 29, 2025

Mr. Jesse Ellison
Acting Administrator and Chief Counsel
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, D.C. 20590

Request for FMCSA Memorandum Establishing a Preemptive and Proactive Policy Regarding Hours of Service Regulatory Flexibility

Dear Acting Administrator Ellison,

We write to request that the Federal Motor Carrier Safety Administration (FMCSA) adopt preemptive and proactive emergency declarations to provide for hours of service (HOS) exemptions in advance of major disasters and emergencies and in response to regional events.

As you are aware, in recent years, the number and intensity of disasters and emergencies interrupting the flow of essential services and supplies has been growing. The FMCSA is responsible for safely addressing strained logistics in a timely and predictable manner during such events. A preemptive and proactive policy for HOS exemptions is imperative for the immediate restoration of essential services and supplies in interstate commerce. Such actions would enhance state and regional preparedness and recovery efforts. Section 395.3 of the Federal Motor Carrier Safety Regulations (FMCSRs) establishes maximum driving time for property-carrying vehicles, including restrictions on daily driving and off-duty hours, as well as restart provisions.[1] HOS regulations impact the way energy marketers respond in the aftermath of major disasters.

Liquid fuel marketers provide vital services before, during, and after emergencies. They ensure fueling stations remain adequately supplied and, in cold weather, allow households to heat homes throughout life-threatening events, facilitating safe and swift recovery in affected areas. The Atlantic hurricane season presents significant logistical and operational challenges to energy marketers. As storms develop and make landfall, motor fuel supply chains face mounting pressure from supply disruptions, evacuation orders, demand spikes, and infrastructure damage. Fuel marketers are uniquely situated at the front lines of these responses. Timely and flexible delivery of motor fuels is essential to ensuring community preparedness, emergency evacuations, utility operation, and economic stability.

One of the most important actions the FMCSA can take to support marketers' transportation operations in direct assistance of an emergency or disaster response is to provide HOS regulatory flexibility under 49 C.F.R. § 390.23(b). This flexibility enables marketers to navigate complex conditions, such as increased fuel demand, road closures, challenging travel routes, longer fuel pickup distances, and extended wait times at terminals—all while ensuring safe and reliable fuel delivery. To make HOS flexibility most effective, the FMCSA should adopt a preemptive and

[1] 49 C.F.R. § 395.3(a)-(c).

proactive approach for exemptions, consistent with the statute and its legislative intent to provide timely and predictable flexibility during emergencies.

During hurricane events, petroleum terminals may suspend operations due to storm surge, electrical failure, wind speed, or other safety concerns. In some cases, ports are closed, tankers are rerouted, or pipelines are taken offline. As a result, marketers must travel longer distances to locate available products or wait in extended lines at functional terminals. Additionally, consumer behavior shifts dramatically in the days leading up to a storm. States of emergency, evacuation orders, and fear of supply shortages trigger panic buying, increasing fuel demand exponentially. Hospitals, utilities, and emergency responders also place additional orders to ensure continuity of operations. All these factors make compliance with HOS requirements under § 395.3 difficult if not impossible. Without preemptive regulatory flexibility, these factors leave energy marketers hamstrung in keeping up with the surge in demand while navigating the supply side difficulties.

Specifically, we urge the Administration to develop internal guidance to facilitate federal declaration of an emergency and trigger automatic flexibility at least 5 days before a reliably predicted disaster or emergency. A preemptive policy is crucial for preparedness and recovery efforts. Marketers must keep stations and homes adequately fueled ahead of an emergency or disaster to support evacuations and prepare for forthcoming logistics complications that could result in shortages. Likewise, heating oil marketers and their customers would benefit from advanced preparation to meet increased demand during severe weather events. Secondly, we urge the Administration to implement an administration policy on automatic regional flexibility to promote uniformity in disaster and emergency response.

Having only state-level regulatory flexibility in response to state and local emergency declarations often creates an uneven regulatory environment and confusion and delay in regional responses to emergencies and disasters, particularly for multi-state suppliers and retailers. A uniform federal approach to regional emergencies is essential to prevent confusion and compliance challenges caused by the piecemeal adoption of state emergency declarations with varying conditions. For two examples, consider situations in which heating fuels are covered in one state but not in another, or when such declarations have different start and end dates. In these situations, compliance requirements are confusing and fuel transportation becomes inefficient, thereby undermining efforts to be prepared and respond appropriately.

The FMCSA has the authority to issue an emergency declaration prior to state declarations. In the preamble to its final rulemaking on HOS flexibility in 2023, the agency emphasized its authority to declare emergencies and noted that it has exercised this authority many times. While coordination with state regulators is encouraged, the FMCSA should proactively address logistical challenges in interstate commerce. Establishing clear internal guidance on the issuance of regional flexibility will eliminate confusion when drivers must rely on multiple declarations to transport fuel across state lines. Clarity and consistency will enable drivers to make the best route decisions for the efficient restoration of essential fuel supplies.

Finally, we urge FMCSA to grant an exemption under Section 381.300 of the FMCSRs from the requirements of 49 C.F.R. § 395.3 for the period of June 1 through November 30 when emergencies are in effect. This exemption would apply exclusively to the transportation of motor fuels—including gasoline, diesel, ethanol blends, and biodiesel blends—in interstate commerce during the Atlantic hurricane season. Because the Atlantic hurricane season is both predictable and consistently disruptive, granting a standing exemption ensures that fuel suppliers can plan ahead, avoid state-by-state confusion, and guarantee the timely delivery of lifeline fuels.

We encourage the FMCSA to establish a preemptive and proactive approach in the issuance of regional emergency declarations and regulatory flexibility, as outlined above. We welcome the opportunity to work with the FMCSA in the development of this much-needed regulatory flexibility.

Sincerely,

Roger F. Wicker
United States Senator

Marsha Blackburn
United States Senator

Katie Boyd Britt
United States Senator

Bill Cassidy, M.D.
United States Senator

Cindy Hyde-Smith
United States Senator

Tom Cotton
United States Senator

Tim Scott
United States Senator