



March 2, 2020

Via Elaine.Chao@dot.gov & US Mail

The Honorable Elaine Chao
Secretary of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: CLASS EXEMPTION APPLICATION FOR DRIVERS TRAVELING IN INTERSTATE COMMERCE WITH DOMESTIC ANIMALS PURSUANT TO 49 U.S.C. § 31315 & 49 CFR 381.310; REQUIRED TO BE PROCESSED WITHIN 180 DAYS

Dear Secretary Chao:

This is a class exemption application for property-carrying drivers of commercial motor vehicles traveling in interstate commerce with domestic animals pursuant to 49 U.S.C. § 31315 & 49 CFR 381.310, which, as you know, must be processed within 180 days.

BACKGROUND

During the course of its research, the SBTC has learned that sixty-seven percent of U.S. households, or about 85 million families, own a pet, according to the 2019-2020 National Pet Owners Survey conducted by the American Pet Products Association (APPA). In terms of trends, we note there has been a 56 percent increase of such ownership in U.S. households since 1988, the first year the survey was conducted.

According to a recent Harris Poll¹:

“More than three in five Americans (62%) have at least one pet in their household, with ownership highest among the two youngest generations tested (65% among Millennials, 71% among Gen X). What’s more, nearly all pet owners (95%, up 4 points from 2012 and 7 points since the question was first asked in 2007) consider their pets to be members of the family...”

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202-587-2751 www.Truckers.com Support@Truckers.com

¹ The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <https://theharrispoll.com/whether-furry-feathered-or-flippers-a-flapping-americans-continue-to-display-close-relationships-with-their-pets-2015-is-expected-to-continue-the-pet-industrys-more-than-two-decades-strong/>

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When it comes to the trucking industry, the same holds true. In fact, trucking media such as FleetOwner.com² have well-articulated that more than 60% of truck drivers are pet owners, with 40% of drivers taking their pets on the road.

TheOaklandPress.com³ offers up the main reasons why drivers take pets with them on the road, citing:

*“• **Companionship:** Trucking can be a lonely profession, and dogs are great companions! The presence of an optimistic pup in the front seat can help drivers combat feelings of boredom, isolation, and sadness.*

*• **Stress Relief:** Pets also help alleviate stress, which can have positive impacts for physical health too, like improvements in cholesterol and blood pressure.*

*• **Meet New People:** Most people are dog people, even if they're cat people. Walking your dog around the rest stop or local park is a great way to break the ice and make new friends. Many individuals will want to stop to pet and speak to your pup, making dog ownership a great way to get some good ol' fashioned human contact outside the cab.*

*• **Exercise:** Speaking of walks, having the responsibility of getting your canine some exercise is a great way to keep yourself active and healthy too.*

*• **Protection:** As friendly as they are, dogs can also serve as fantastic alert systems, with highly sensitive ears and protective instincts that make them likely to bark a warning to you if they sense a threat.*

*• **No More Dog-Sitters:** Finally, taking your dog on the road with you means you never have to leave them at home with someone else. We get attached to our pets, but if you're willing to adequately prepare for having a canine in the cab, you never have to be separated again...”*

² The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <https://www.fleetowner.com/trucks-at-work/article/21692179/trucking-may-be-going-to-the-dogs-and-cats-and-fish>

³ The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: https://www.theoaklandpress.com/lifestyles/pets/truckers-take-their-best-friends-on-the-road-with-them/article_899c3052-9766-11e9-9c2f-1fd0ab45cab.html

The industry recognizes the need for drivers to have their pets with them on the road. AllTrucking.com even publishes a Top 5 List of pet-friendly carriers.⁴ JB Hunt and Knight Transportation are among them. Some carriers, like Werner Enterprises, formally recognize drivers' desire to travel with their pets and notice their employees of their pro-pet policies in their Employee Handbooks.⁵

CURRENT FEDERAL EXEMPTIONS/RULEMAKING IN PLACE OR PENDING

First, we point to the National Pork Producers Council's Electronic Logging Device ("ELD") exemption application, which was filed under FMCSA Docket No. 2017-0297 (attached hereto as "Exhibit A").

That group pointed to how the ELD mandate caused disruptions for livestock haulers and it endangered the health and welfare of millions of animals transported daily.

While we note that this application technically remains pending, we point to the statutory exemption that superseded this application and effectively made it moot. We believe the same logic that went into the passage of Sec. 132 of Title I of Division L of the "Consolidated Appropriations Act" in 2018, which prohibits enforcement of the requirement for an ELD by livestock transporters, also applies to our exemption request. We reference the FMCSA's own Power Point presentation here⁶, and its reference to the statutory exemption on its website.

Second, we note there is a pending 2019 exemption application by the National Cattlemen's Beef Association under Docket Number FMCSA-2018-0334 ("Exhibit B"). Here, the group requests:

"...an exemption, for a period of five years,² from the HOS requirements that: (1) limit the maximum driving hours for property-carrying drivers to 11 (45 C.F.R. § 395.3(a)(3)); and (2) limit the total consecutive on-duty hours for those drivers to 14 (45 C.F.R. § 395.3(a)(2)). We request approval to, after 10 consecutive hours off duty, (1) drive through the 16th consecutive hour after coming on duty, and (2) drive a total of 15 hours during that 16-hour period (sic)".

⁴ The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <http://www.alltrucking.com/article/top-5-trucking-companies-that-allow-pets/>

⁵The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <https://drivers.werner.com/Documents/Driver%20Handbook%20March%202017.pdf>

⁶The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/regulations/hours-service/405336/ag-powerpoint-presentation-final.pdf>

They point to how they carry livestock over long distances, again cite concerns about the health and welfare of the livestock that livestock haulers haul, and the risks and burdens the current HOS pose for these animals. They also suggest their fatigue management techniques employees that consider the fact they transport animals transcend the general advantages obtained by the HOS rule.

Third, FMCSA has announced in the Federal Register⁷ a crime prevention initiative aimed at studying the prevalence, seriousness, and nature of the problem of harassment and assaults against minority and female truckers, many of whom keep dogs in their truck for self-protection. We would recommend as part of their study the agency examine the use of dogs by female and minority truckers for self-protection. We are therefore posting this exemption request to that docket as a comment in furtherance of this suggestion and would hope the agency would look at crimes against all truckers.

Comes, now... the SBTC to request the United States Department of Transportation (“USDOT”) better accommodate truckers and their pets by granting relief from the rigid hours of service regulations in two respects.

THE SBTC PET EXEMPTION APPLICATION

The SBTC hereby requests on behalf of the class duly defined as all property-carrying⁸ operators of commercial motor vehicles (“CMVs”) operating in interstate commerce who operate such vehicles whenever accompanied by any domestic animal, the following two exemptions each for five years:

- (1) Exemption from the Electronic Logging Device (“ELD”) requirement codified at 49 C.F.R. § 395.8(a) provided that such drivers track their compliance with the hours of service (“HOS”) regulations using paper record of duty status logs; and
- (2) Exemption from the HOS requirements that: (1) limit the maximum driving hours for property-carrying drivers to 11 hours (49 C.F.R. § 395.3(a)(3)); and (2) limit the total consecutive on-duty hours for those drivers to 14 hours (49 C.F.R. § 395.3(a)(2)). We request approval, after 10 consecutive hours off duty, to (1) drive through the 16th consecutive hour after coming on duty, and (2) drive a total of 13 hours during that 16-hour period.

⁷ The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <https://www.govinfo.gov/content/pkg/FR-2020-02-28/pdf/2020-04100.pdf>

⁸ Throughout this document, “property” should be read to include drivers operating CMVs on behalf of common and contract motor carriers of household goods as well.

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We would like to remind the agency that we previously filed notice that the agency's regulations do not appear to cover class exemption applications and that we previously petitioned the agency to promulgate same pursuant to 49 C.F.R. § 389.31. The agency acknowledged same on June 8, 2018 but did not engage in such rulemaking within the statutory 180-day period that is required under the Fixing America's Surface Transportation ("FAST") Act⁹. We therefore offer the information required by 49 C.F.R. § 381.310 with the understanding that it is SBTC's position that said regulation applies to individual drivers and carriers but not trade groups filing class exemption applications.

Therefore, my name, job title, mailing address, and daytime telephone number:

JAMES LAMB, SBTC Executive Director

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The name of the individual or motor carrier that would be responsible for the use or operation of CMVs:

Various individuals and motor carriers

Principal place of business for the motor carrier (street address, city, State, and zip code):

Various places of business for various carriers

The USDOT identification number for the motor carrier:

Various USDOT numbers for various carriers

Estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption:

According to industry statistics, there are approximately 3.5 million truck drivers in the United States. So, 40% of that number is 1,400,000 drivers.

In terms of how carriers that employ members of the proposed exempt class would ensure that they could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulations and our assessment as to the safety impacts the exemptions may have... given the fact that paper logs were in existence and were deemed sufficient to track HOS compliance for decades, dating back to the 1930's, by USDOT and the Interstate Commerce Commission ("ICC") before it; given we are asking for a mere 2 hour extension which conforms to existing adverse driving conditions rule already deemed safe by the

⁹ <https://www.fmcsa.dot.gov/regulations/petitions>

agency; and given the FMCSA has already granted numerous ELD exemptions, we believe the agency will concur that these requests would have minimal safety impacts.

Furthermore, we point to how it is already the wisdom of Congress --and now Federal law --to grant relief to carriers of livestock through the statutory exemption because of these animals' special needs. Our rationale, here, in asking for these exemptions is nearly identical to Congress' rationale in passing said law; that is, it makes no difference whether the animal is cargo or a passenger companion of the driver, the needs of an animal on the road remain the same.

In terms of the impacts the industry could experience if the exemption is not granted by the FMCSA, we believe 1.4 million animals are suffering right now due to the ELD requirement and the rigid HOS regulations and would continue to suffer without such relief. It is for this reason, we are enlisting the support of animal rights groups and encouraging them to comment on this application once the application is published in the Federal Register.

We also would contend that a decision to deny our exemption from ELDs when Congress has already enacted a comparable statutory exemption for livestock haulers would entail an arbitrary and capricious action on the part of the agency that would not be lawful, would be contrary to Congress' stated intent and public policy, and would not withstand judicial scrutiny. We contend all animals deserve equal protection of the laws.

We also incorporate by reference our rationale in our previous ELD Exemption applications under Docket No. FMCSA-2018-0180 and Docket No. FMCSA-2019-0239.

In terms of the reasons this five-year exemption is needed...

Currently, due to the patchwork of various state laws, the lack of a national concealed carry firearms permit reciprocity law that would otherwise provide uniformity to enable interstate CMV operators to carry firearms nationwide for self-protection, as well as carrier, shipper and receiver anti-weapons policies, drivers are in harm's way and unable to sufficiently protect themselves while on the road.

In fact, according to media reports¹⁰ from December 2019 on the latest data released by the Bureau of Labor Statistics ("BLS"), attached here as "Exhibit C", truck driving remains one of the top ten most dangerous occupations in the United States. Ranking in currently at 6th most dangerous, the job of trucker is dangerous because of inherent risks associated with driving a truck on the highways for eleven hours at a time.

¹⁰ The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <https://www.cnbc.com/2019/12/27/the-10-most-dangerous-jobs-in-america-according-to-bls-data.html>

But their job also takes truckers through and into some of the most dangerous parts of the country. This results in horror stories reported multiple times each week.

SBTC has, over the past year, inundated FMCSA, USDOT and Congress with complaints about how the National Highway Traffic Safety Administration's ("NHTSA) October 2019 data release shows we are currently at a 30-year high on highway fatalities for occupants of large trucks. But another statistic --also alarmingly high-- that we have articulated to the federal government the past 6 years is the unusually high rate of drivers **murdered** on the job. While the media have made the likes of Jason Rivenburg¹¹ and Michael Boeglin¹² famous, there are 40 others murdered each year that go unnoticed. That is dangerously close to a rate of one murder a week.

As we have stated repeatedly in the past, BLS data show that 42 workers in interstate transportation are murdered on average each year. Attached as "Exhibit D" is the data table for BLS Workplace Homicides from 2011 to 2017¹³ Line 1271 shows data for the category of "Transportation and Warehousing". If you add these up, its 291 people murdered over these past 7 years. ...or currently an average of 42 per year.

We would ask the FMCSA to note that concern about the safety of occupants of large trucks should be part of the overall mission of the Federal Motor Carrier **Safety** Administration. The agency seems to have lost sight of that portion of its mission.

Dogs are currently the main way drivers protect themselves while on the road. Once it is understood why dogs are needed in trucks as a method of protection for the driver, we then move on to the arguments of how they should be treated once on board. And we heavily rely on the arguments put forth by the National Pork Producers Council and the National Cattlemen's Beef Association, arguments that already have been deemed worthy by the Federal government insofar as a statutory ELD exemption is concerned.

We ask that you note that the current model of pay-by-the-mile is inconsistent with the regulate-by-the-clock hours of service safety standard; that is, drivers are pressured -- and at times even unlawfully coerced --by dispatchers, shippers, receivers and brokers to push the limits and remain productive due to the 11 hour and 14 hour rules. With the onset of ELDs, drivers are now 'racing the clock' more than ever. As FMCSA knows, we believe this has induced many drivers to recklessly speed, thereby endangering their fellow drivers and the motoring public.

¹¹ <http://www.timesjournalonline.com/details.asp?id=31188>

¹² <https://duboiscountyherald.com/b/ferdinand-trucker-found-murdered-in-detroit>

¹³ https://www.bls.gov/iif/oshwc/cfoi/work_homicide.xlsx

Drivers with pets are therefore in a precarious position of needing to address the needs of --and properly care for-- their animals on board and keep the powers that be happy. Whereas dispatchers would have a driver stop only once for 30 minutes in an 11-hour run, animals need more time than that to feed, drink, urinate, defecate, and exercise. Indeed, *People for the Ethical Treatment of Animals (PETA)* has published a guide for travelling with animals¹⁴. That guide encourages dog owners who take their dogs on the road to “Stop to walk dogs often.”

We note with respect to anti-idling laws, many states’ law enforcement officers will look the other way when there is an animal in the vehicle and outdoor temperatures require the animal receive a climate controlled-environment to ensure its wellness; they appreciate the precarious position a driver is in to try to respect both animal cruelty laws and anti-idling laws simultaneously. And whereas the EPA cites municipal ordinances¹⁵ that seek to protect both humans and animals from fumes outside a truck, we would suggest the USDOT should be just as concerned about the wellness of animals inside the truck. We would suspect groups like PETA and the Humane Society would agree.

If 1.4 million drivers take their pets on the road, then it logically follows that 1.4 million animals are currently being transported as passenger companions. Like the National Pork Producers Council successfully argued to Congress, we, too, believe the current HOS regulations and the ELD mandate pose threats to --and endanger the health and welfare of-- these animals transported daily. Drivers that have such animals on board have the added responsibility of tending to their animals’ health, safety and wellness needs in addition to looking out for public safety. They need extra flexibility to be able to reconcile all of these demands and interests... much like FMCSA tries to balance all stakeholders’ interests when promulgating rules.

Drivers need to deal with the impact of hot and cold weather conditions on their pets in order to prevent sickness and injury to these animals. Drivers need to drive slower—rather than race the clock—when animals are on board to prevent injuries, especially when negotiating rough roads so they need more than the normal hours of service to complete their runs. When drivers have an extended day beyond the 14-hour rule, they can take more breaks, feed, relieve and exercise their pets, and reduce the likelihood that they will drive fatigued. This additional two hours will reduce the current trend in large truck occupant fatalities, improve overall safety, which is clearly in the public

¹⁴The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <https://www.peta.org/living/animal-companions/tips-traveling-dogs/>

¹⁵ The following research report, technical paper, and/or other publication/document is hereby incorporated by reference: <https://www.epa.gov/sites/production/files/documents/CompilationofStateIdlingRegulations.pdf>

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interest, and save the lives of thousands of animals not currently being included in the large truck occupant fatality statistic by NHTSA. We suggest animals count too.

We believe that ELDs have done nothing to improve safety and that a return to a more cost-effective method of tracking hours of service is in order as that is in the best interest of both truckers' pets and public safety. ELDs have routinely failed these last two years with at least two major outages being reported and they are nothing but an expensive, confusing, and technologically complicated burden on drivers and their pets.

In closing, ELDs and the 11 and 14 hour rules are simply incompatible with the needs of the trucking industry's drivers that take pets with them on the road for companionship and self-protection. We contend FMCSA has an obligation to finally consider pets too as "stakeholders" during decision-making processes and give precedence to their needs.

If our exemptions are granted, drivers with pets would revert to paper logs as an alternate method of compliance to ensure and achieve maximum safety. They would continue to abide by the 60/70 and the 34-hour restart rules until and unless amended by FMCSA in the course of its HOS reform rulemaking currently in progress.

We suggest that for most drivers who have and travel with pets, they consider the pet to be members of their family. These drivers are a unique subset of the overall driver population because to many of them, these animals are equivalent to their sons and daughters. In fact, for many... these pets are the only family they have. With that said, these are the types of drivers who are already likely to be extra careful when operating their vehicles because they have not only their own lives in their hands, but that of their pet "family" members. We would suggest that they are as careful as they drive with their pets... as you would be driving you son or daughter to soccer practice. They are already less inclined to drive fatigued or recklessly speed... out of love, care and concern for their pet companion along for the ride. FMCSA should reward these drivers for their safe operation by extending their day so they can take multiple rests for the comfort and convenience of their pets and to avoid fatigue. Please eliminate the ELD requirement for them as it only causes them anxiety.

Lastly, we suggest that these two exemption requests should be approved because they are in the public interest, in the interest of the health and wellness of 1.4 million animals on the road, and the rules in question are neither necessary to carry out the transportation policy of 49 U.S.C. 13101 nor necessary to protect shippers from abuse of market power.

On behalf of our members, America's truck drivers on the road with their pets, and their pets themselves who otherwise have no one to speak for them, I thank you for your consideration of this exemption request.

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Sincerely,

/s/ JAMES LAMB

Executive Director

cc: Mr. Mullen, Mr. Minor and Mr. Socci