

Enforcement and Removal Operations
U.S. Department of Homeland
Security
500- 12th Street SW
Washington, DC 20024



**U.S. Immigration
and Customs
Enforcement**

August 25, 2025

Ms. Nancy Jackson
Office of Chief Counsel
Enforcement and Litigation Division
Federal Motor Carrier Safety Administration
12600 West Colfax Ave., Suite B-300
Lakewood, CO 80215

Dear Ms. Jackson,

The purpose of this letter is to request an exemption from the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) Rules 49 CFR 395.1(e)(1), “Short-haul operations,” and 395.5(a)(2) and (b), “Maximum driving time for passenger-carrying vehicles,” for Immigration and Customs Enforcement (ICE) transportation of detained aliens,¹ when they are being transported by ICE-qualified commercial passenger carriers.²

Rule 49 CFR 395.1(b)(1) – Adverse driving conditions

The FMCSA rule allows that “[a] driver who encounters adverse conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time or duty time during which driving is permitted under … § 395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than two additional hours beyond the maximum allowable hours permitted under … § 395.5(a) to complete the run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle[.]”

ICE Request for Exemption,

ICE requests that for purposes of the adverse driving conditions, 49 CFR § 395.1(a)(2), the period after having been on duty be increased from 15 hours to 18 hours following 8 consecutive hours off duty. This amount of time would give drivers of ICE-qualified commercial passenger carriers extra time to safely return to the starting location due to the unforeseen adverse driving

¹ For this exemption request, the term “detained aliens” includes all individuals under the Immigration and Nationality Act, which gives ICE the authority to detain aliens suspected of being illegally present in the United States pending the outcome of their immigration cases, 8 U.S.C. §§ 1225(b), 1226(a)(1), (c), and those aliens who have been ordered removed from the United States, 8 U.S.C. § 1231(a)(2).

² For this exemption request, the term “ICE-qualified commercial passenger carriers” includes carriers that are contracted by ICE’s routinely transport detainees for ICE operations.

conditions. Unlike other passenger carriers, ICE transports detained aliens, many which are a security concern. Nevertheless, if adverse driving conditions, as defined under 49 CFR § 395.2, would jeopardize the safety of the individuals, ICE will coordinate with the ICE-qualified commercial motor carrier to ensure the safety of the driver and the passengers.

Rule 49 CFR 395.1(e)(1) – Short-haul operations

The FMCSA rule requires that “[t]he driver operates within a 150 air-mile radius [] of the normal work reporting location[.]” Additionally, drivers are required to “return[] to the work reporting location and is released from the work within 14 consecutive hours[.]” Moreover, the FMCSA rule requires that “[a] passenger-carrying commercial motor vehicle driver has at least consecutive hours off-duty separating each 14 hours on-duty[.]”

ICE Request for Exemption

ICE requests that the short-haul operation air-mile radius be increased from 150 air-miles to 200 air-miles, thus providing an exemption to the current FMCSA rule in 49 CFR § 395.1(e)(1) so that drivers of ICE-qualified commercial passenger carriers transporting detained aliens have an increased radius to the normal work reporting location. Additionally, ICE requests an increase of the on-duty hours (from 14 hours to 16 hours) separating the required mandatory 8 hours off-duty, currently required by FMCSA. This relief is needed because drivers’ time behind the wheel and on the public roadway is not long in nature for mileage or time. Most of the time, the on-duty hours are spent inside the facility.

Under ICE’s request for exemption, drivers will still be required to have eight consecutive off-duty hours separating each 16 hours on-duty. However, the increase of the current air-mile radius in 49 CFR 395.1(e)(1) and the on-duty hours at 395(e)(1)(iii)(B) allows for flexibility to complete additional missions, without affecting the driver’s overall driving time. For example, the Florence Transportation contract, the longest run is 144 miles and is only 6 hours, driving time. However, the assignment in a passenger bus consistently runs 12 to 14 hours, due to non-driving actions. An increase in the air-mile radius would allow for more assignments to be completed away from the home facility, without having to be mandated by the Electronic Logging Devices (ELD) FMCSA rule.

Rule 49 CFR 395.5(a)(2) – Maximum driving time for passenger-carrying vehicles

The FMCSA rule prohibits that “[n]o motor carrier shall permit or require any driver used by it to drive a passenger-carrying commercial motor vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle … for any period after having been on duty 15 hours following 8 consecutive hours off duty.”

ICE Request for Exemption

ICE Requests that an exemption from 49 CFR 395.5(a)(2) so that the period that drivers of ICE-qualified commercial passenger carriers transporting detained aliens be allowed to drive a passenger-carrying commercial motor vehicle for any period after having been on duty be increased from 15 hours following 8 consecutive hours of off duty to 18 hours.

Under ICE's request for exemption, the drivers would still be afforded long periods of rest and breaks. A significant portion of the hours spent on required trips are spent waiting at facilities while detention staff load or unload detainees. Because the idle time at facilities or at the tarmac at the airport is recorded as "drive time", the current "on-duty" period limits the number of trips drivers are allowed to perform during the duty day. Furthermore, because ICE moves people, the anticipated duties will primarily be loading and unloading passengers, which afford drivers long periods of rest in between actual driving.

Rule 49 395.5(b) – Maximum driving time for passenger-carrying vehicles

The FMCSA rule prohibits that "[n]o motor carrier shall permit or require a driver of a passenger-carrying commercial vehicle to drive, nor shall any driver drive a passenger-carrying commercial motor vehicle, regardless of the number of passenger carriers using the driver's services, for any period after—(1) [h]aving been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate motor vehicles every day of the week; or (2) [h]aving been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week."

ICE Request for Exemption

ICE Requests that an exemption from 49 CFR 395.5(b)(1) and (2) so that the period that on-duty hours drivers are allowed to drive for a period after 7 days be increased from 60 hours to 70 hours if the employing motor carrier does not operate commercial vehicles every day of the week; and from 70 hours to 80 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

However, ICE does not anticipate this exemption to be an ongoing, continual process of drivers being tasked with working longer scheduled hours. The exemption is requested primarily to prevent unexpected disruptions in operations that occur when delays cause a driver to time out. ICE requires the ability for the drivers to be able to complete the day's assignment. When drivers time out during assignments, operations must be paused, detainees having to be rerouted to facilities that are not planned for them, and other scheduled assignments, movements of people, and deportation flights to be delayed. ICE has a national network of facilities and uses ground transportation to flight hubs where deportation flights occur. Unexpected interruptions impact operations across the country. For these reasons, ICE is requesting an exemption to increase the maximum number of hours a driver may be required to drive in a period.

Controls to Ensure a High Level of Safety and Security

ICE is committed to maintaining its outstanding transportation safety and security record by: (1) focusing on continuous improvement; (2) using the highest safety protocols and promoting safety and security by ensuring contractors follow the required rest times; (3) conducting thorough inspections; and (4) using safety-committed transportation service providers. ICE has been in discussion with its vendors, who are very familiar with the FMCSA regulations. Each vendor is prepared to monitor and ensure the safety of their drivers. Additionally, each vendor has already engaged with ICE and provided assurances, such as adding additional non-driving staff to relieve drivers during interrupted missions, increased use of technology for tracking

missions and cameras for onboard monitoring, increased dispatch/command center communications, preliminary security clearances to onboard staff more quickly, and dynamic scheduling to adjust rest periods after a mission goes longer than scheduled.

These assurances will be documented once the exception is approved.

Safety Impact of ICE Exemption Request

ICE anticipates no safety impacts from these exemptions. While ICE is requesting an increase in the regulatory on-duty maximum hours, the number of driving hours is not generally increasing and the impact on safety should be minimal because most of the time drivers are spent waiting, and drivers are rested. Moreover, the purpose of the exemption request is to allow drivers to complete routes at the end of the day.

ICE commits to maintain its outstanding transportation safety and security record. We expect that the transportation made under the requested exemption will achieve the level of safety and security that is at least equivalent to that which would be obtained by following the current regulations in 49 CFR § 395.1(b) and § 395.5(a) and (b).

Conclusion

We respectfully request that FMCSA grant the exemption described herein from 49 CFR §§ 395.1(b)(1), (e) and 395.5(a)(2), (b) to ICE, 500 12th Street, SW, Washington, DC 20024, Attention: Office of Removal Division, Enforcement and Removal Operations to be effective August 26, 2025, or the earliest possible date, for a period of six months and the ability to renew the exemption as mission needs require in response to the President's National Emergency Declaration, Executive Order 14165 (Proclamation No. 10886), *Declaring a National Emergency at the Southern Border of the United States*. The exemption would be limited to the drivers of ICE-qualified commercial passenger carriers transporting detained aliens for ICE. At present, approximately 10 ICE-qualified commercial passenger carriers and all their drivers are committed to the safe and secure transportation of detained aliens.

Thank you in advance for your prompt consideration of this exemption request. If you require additional information, please contact me at mellissa.b.harper@ice.dhs.gov or my Chief of Staff, Omar Charris, at omar.a.charris@ice.dhs.gov.

Sincerely,

Mellissa B Harper
Assistant Director
Removal Division
Enforcement and Removal Operations

cc:

Kathryn Sinniger (FMCSA)
Shawn O'Donnell (ICE/OAQ)
John Kirsch (ICE/OPLA)