

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**LEX EXPRESS, INC. dba
LEX EXPRESS,
U.S. DOT # 824116**

Petitioner.

**Docket No. FMCSA-2012-0459
(Midwestern Service Center)**

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ADMINISTRATION
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INTERIM ORDER ON PETITION FOR REVIEW OF SAFETY RATING

On October 31, 2012, Lex Express, Inc. dba Lex Express (Petitioner) filed a Petition for Administrative Review of a proposed Unsatisfactory safety rating. Petitioner's Unsatisfactory safety rating arose from an October 16, 2012 compliance review (CR) conducted by the Illinois State Police. Although Petitioner submitted documentation that its Petition was received by the Federal Motor Carrier Safety Administration (FMCSA) on November 1, 2012, Petitioner's submission was not docketed as a Petition for Administrative Review of a Safety Rating until recently. Nonetheless, I find there is insufficient information in the record to make a determination on the Petition at this time.

The procedures for assigning a safety rating at the conclusion of a compliance review are set out in Appendix B to 49 CFR Part 385. As pertinent, ratings are assigned for each of six factors, if applicable. These factor ratings then determine a carrier's overall safety rating according to a Safety Rating Table.¹

¹ Appendix B to 49 CFR Part 385, section III. A. (b).

The ratings for factors 1 through 5 are assigned based on violations of acute regulations and patterns of noncompliance with critical regulations.² A pattern of noncompliance with a critical regulation exists when the number of violations equals 10 percent or more of the records examined. A carrier is assessed one point for each violation of an acute regulation or each pattern of noncompliance with a critical regulation.³ The carrier will be rated unsatisfactory in a rating factor if the acute and/or critical violations for that factor total two or more points. It will be rated conditional in a rating factor if the acute and/or critical violations equal one point.

Petitioner's overall Unsatisfactory safety rating resulted from unsatisfactory ratings for Factor 3 (operational) and Factor 4 (vehicle), and a conditional rating for Factor 1 (general).⁴ Its Factor 1 rating was based on an acute violation of 49 CFR 390.35 – fraudulently or intentionally making false entries on inspection and vehicle maintenance records. Its Factor 3 rating was based on two critical violations of 49 CFR 395.8(e) – false reports of records of duty status. Its Factor 4 rating was based on one critical violation of 49 CFR 396.17(a) – using a commercial motor vehicle not periodically inspected, and a vehicle out-of-service rate greater than 34 percent.⁵

In its Petition, Petitioner alleges error in at least three of the violations cited in the

² These regulations are identified in Appendix B to 49 CFR Part 385, section VII.

³ However, patterns of noncompliance with critical regulations in 49 CFR Part 395 are assessed two points, in accordance with Appendix B to 49 CFR Part 385, section II. (h).

⁴ Petitioner received satisfactory ratings in the other applicable rating factors.

⁵ If a motor carrier has three vehicles inspected at the time of review and the vehicle out-of-service (OOS) rate is 34 percent or greater, the initial factor rating will be conditional. The factor rating may be lowered to unsatisfactory if an acute regulation or critical violation is also discovered. Petitioner had five OOS vehicles out of 14 vehicles inspected, thus resulting in a vehicle OOS rate of 36%. Appendix B to 49 CFR Part 385, section II. A. (a)(1).

CR report:

Violation 5: 49 CFR 390.35 - fraudulently or intentionally making false entries on inspection and vehicle maintenance records. Petitioner contends that although its employee noted that brakes were in need of service soon, this statement was misunderstood. Petitioner states that it maintains an internal policy of changing brakes above the manufacturer's wear-line and the brakes were not out of compliance. Regarding another instance of the same violation, Petitioner denies there were brake problems. Petitioner argues instead that the safety investigator failed to consider the total stopping distance required.

Violation 7: 49 CFR 395.8(e) – false reports of records of duty status (RODS). Petitioner asserts that FMCSA erred because the RODS were measured against the Illinois I-Pass on-site records. Petitioner contends that I-Pass has no means for tracking each vehicle in use. Petitioner also claims that when the safety investigator checked the RODS against the I-Pass modules for reported locations, the modules could have been in any vehicle in the fleet because the modules were not assigned to particular vehicles.

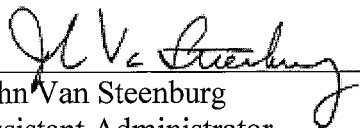
Violation 15: 49 CFR 396.17(a) – using a commercial motor vehicle not periodically inspected. Petitioner argues that based on previous compliance reviews, it had offered Level V roadside inspections as periodic inspections under the regulation, which FMCSA accepted in the past.

Petitioner's allegations regarding errors in the CR warrant a response from the Field Administrator for FMCSA's Midwestern Service Center.

Accordingly, it is hereby ORDERED that the Field Administrator for FMCSA's Midwestern Service Center submit a response to Petitioner's Petition within three (3)

days of the service date of this Order.

It Is So Ordered.



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

12/5/12
Date

CERTIFICATE OF SERVICE

This is to certify that on this 5th day of December, 2012, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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