

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

| | | |
|--------------------------|---|-----------------------------------|
| In the Matter of |) | |
| |) | |
| LEX EXPRESS, INC. |) | |
| Dbas LEX EXPRESS |) | |
| DOT NO. 824116 |) | DOCKET NO. FMCSA-2012-0459 |
| |) | |
| Petitioner. |) | |

FIELD ADMINISTRATOR'S RESPONSE TO INTERIM ORDER

The Field Administrator for the Federal Motor Carrier Safety Administration, Midwestern Service Center ("Field Administrator") files his Response to the Assistant Administrator's Interim Order of December 5, 2012 and states as follows:

I. BACKGROUND

This matter comes before the Federal Motor Carrier Safety Administration on a Request for Administrative Review ("Request for Review") of Petitioner's October 16, 2012 proposed unsatisfactory safety rating. On December 5, 2012, the Assistant Administrator ordered the Field Administrator to respond to the issues raised in the Request for Review. Petitioner essentially makes five arguments: (1) the series of inspection reports bearing conflicting information can be explained by a company policy that was not revealed to the FMCSA investigator; (2) the brakes on a motor coach involved in a crash were functioning properly; (3) the false logs counts are unsupported; (4) the proffered Level V inspections should have been accepted by the FMCSA investigator; and (5) one of the inspections that resulted in an unacceptably high out-of-service rate was erroneous.

II. ARGUMENT

Petitioner bears the burden of proving that FMCSA made an error in the assignment of a proposed safety rating. *In the Matter of Stricklin Trucking Co., Inc.*, FMCSA-2011-0127, Order on Reconsideration (March 20, 2012), at 14. Petitioner has failed to demonstrate that FMCSA erred when it issued a proposed unsatisfactory safety rating.

A. Petitioner maintained intentionally false vehicle inspection reports.

Sections 390.35 and 396.3(b) prohibit intentionally false entries on vehicle inspection and maintenance records. Petitioner maintained a series of vehicle inspection records that indicated no repairs were needed on the face of the form, but indicated on the back of the report that repairs were needed. *Exhibits A-2 through A-17*. Petitioner argues that the discrepancy is explained by its practice of replacing the brakes before the “wear line” is reached. Petitioner also argued that the back of the form was needed for this notation because the Repair Order form was not being used at that time. The more credible reason for this practice was offered by Petitioner’s mechanic, Eric Manson. After the compliance review, Mr. Manson contacted Investigator McConnell and told him that the practice was ordered by Walter Conroy, Petitioner’s shop manager, who told him to conceal the fact that repairs were needed on the front of the inspection form because the buses needed to keep operating and they could not repair them because of a limited budget. *Exhibit A*, Declaration of FMCSA Safety Investigator David McConnell, at ¶5.

Petitioner has not demonstrated that FMCSA erred when it determined that this practice was an intentional scheme to prevent FMCSA or state investigators from learning that repairs to Petitioner’s motor coaches were not being performed in a timely manner. Petitioner’s sloppiness allowed Investigator McConnell to discover this ruse. Petitioner’s explanation for this practice strains credulity and should be rejected.

B. Petitioner maintained documents bearing intentionally false information regarding LEX 23.

Petitioner argues that FMCSA's finding regarding Petitioner's motor coach designated as LEX 23 are erroneous because the motor coach's brakes were functioning properly during a crash. Around April 11, 2012, one of Petitioner's buses, LEX 23, was involved in an accident. The driver indicated that he had a problem stopping the bus. *Exhibit A*, ¶8. Documentation regarding the maintenance history of the bus shows that on the morning of April 8, 2012, the driver of the bus completed a Bus Driver Vehicle Inspection Report that stated, "brakes needed adjusting, got another bus." At the bottom of this form, the mechanic noted that he had inspected the bus and that he had fixed the defects noted by the bus driver. *Exhibit A-21*. However, on a LEX Repair Order form for the same motor coach, this mechanic stated that the brakes did not need adjusting. *Exhibit A-22*. This is another example of Petitioner's use of its inspection reports to conceal required repairs. Petitioner cannot argue that this discrepancy can be explained by the lack of use of a Repair Order form, because the form was, in fact, used in this instance. FMCSA did not base this violation on a finding that the accident demonstrated that the brakes were not functioning. *Exhibit A*, ¶8. Accordingly, Petitioner's argument on this issue should be rejected.

C. Petitioner violated §395.8(e) when it allowed its drivers to falsify logs.

Investigator McConnell discovered three false logs violations out of three records checked. *Exhibit A*. These violations are noted at Violation 7 of the compliance review. *Id.* One of the violations was proven by comparing Illinois Toll Authority I-Pass records with the driver's log. *Exhibit A*, ¶9. Petitioner asserts that this finding is erroneous because Petitioner does not know which I-Pass transponder was assigned to a particular motor coach. During the compliance review, Investigator McConnell asked Petitioner's officials for a list of transponder assignments, and a list was given to him. *Exhibit A*, ¶10, *Exhibit A-27*. Petitioner's claims of ignorance regarding the transponder assignments developed only after the compliance review. *Id.* Petitioner did not make

this claim to Investigator McConnell, thus FMCSA could not have erred during the compliance review. Further, this challenge is rendered moot by the fact that the other two violations were based on fuel records, not toll records. *Exhibit A*, ¶11, *Exhibits A-28 through A-36*. Even if the Assistant Administrator disregarded the false log proven by the toll record, Petitioner would have a critical false log rate (100%) – two false logs out of two records checked.

D. Petitioner had a critical rate of 396.17(a) violations.

Here, Petitioner argues that FMCSA should have considered Level V inspections whose out-of-service conditions were corrected within 15 days as “passing” inspections pursuant to 396.17(f). Petitioner also argues that its motor coach identified as LEX 32 should not have been considered in this list of failed inspections because it was not used in interstate commerce.

The Field Administrator is unaware of a practice pursuant to which Level V inspections would count as “passing” pursuant to 396.17(f) if the out-of-service defects are corrected within 15 days. Petitioner has not demonstrated that FMCSA has permitted this in the past, nor has Petitioner identified any language in the applicable regulations that supports its argument.

Regarding LEX 32, Investigator McConnell did not count an inspection or lack of an inspection of this motor coach as proof of Violation 15 of the compliance review. The motor coaches that Investigator McConnell considered in violation of 396.17(a) were LEX motor coach numbers 1, 12, 20 and 27. *Exhibit A*, ¶12.

E. Petitioner has not Demonstrated that the Inspection of LEX 32 Should not be Considered in Petitioners’ Out-of-Service Rate.

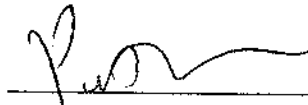
Petitioner argues that the inspection by the Illinois State Police of Petitioner’s bus designated as LEX 32 on August 22, 2012 should be disregarded because the citations for §393.83(c), improper exhaust from a generator, and §393.100(a), improper securement of cargo, are erroneous. Regarding the §393.83(c) violation, Illinois State Police Officer Rick McFarland found that this violation occurred because a generator that Petitioner had installed in the cargo area of the

bus did not have a proper exhaust system. *Exhibit B*, Declaration of Officer Rick D. McFarland, at ¶5. Petitioner argues that the generator would have had a proper exhaust system if a pipe that Petitioner removed for repairs would have been re-installed. Officer Rick McFarland and Illinois Department of Transportation Compliance Officer Greg Mack dispute this account. Both officers determined that even if the pipe had been reinstalled, an exhaust leak was at a location on the generator that the pipe would not have corrected. *Id.* and *Exhibit C*, Declaration of Officer Greg Mack, ¶4. Petitioner's officials told neither officer that LEX 32 had been removed from the road for repairs. *Id.* Since Petitioner has not demonstrated that the inspection of LEX 32 failed to contain an out-of-service condition, Petitioner's challenge of this inspection should be denied.

III. CONCLUSION

For the foregoing reasons, the Field Administrator submits that the Illinois Division did not err when it issued Petitioner an unsatisfactory safety rating. The Field Administrator asks that the Assistant Administrator deny Petitioner's Request for Review.

Respectfully Submitted,



Peter Hines, Trial Attorney
Federal Motor Carrier Safety Administration
Midwestern Service Center
4749 Lincoln Mall Drive
Suite 300A
Matteson, Illinois 60443
(708) 283-3568

CERTIFICATE OF SERVICE

This is to certify that on this 10th day of December, 2012, the undersigned mailed, electronically filed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Robert L. Frazier, President/CEO
LEX Express, Inc.
310 Tiffany Court
Champaign, Illinois, 61822

One Copy
U.S. Mail

U.S. DOT Dockets
U.S. Department of Transportation
Docket Operations, M-30
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590
(202) 493-2251

One Copy
Electronically Filed

Darin Jones
Field Administrator
Federal Motor Carrier Safety Administration
Midwestern Service Center
4749 Lincoln Mall Dr.
Suite 300A
Matteson, IL 60443

One Copy
Hand Delivered



**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of

LEX EXPRESS, INC.

Db a LEX EXPRESS

DOT NO. 824116

Respondent.

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DOCKET NO. FMCSA-2012-0459

DECLARATION OF DAVID MCCONNELL

I, David McConnell, declare as follows:

1. I am a Safety Investigator for the U.S. Department of Transportation, Federal Motor Carrier Safety Administration ("FMCSA") assigned to the Illinois Division. As a Safety Investigator for FMCSA, my primary responsibility is to investigate and review the safety practices of interstate motor carriers to ensure that they are complying with the FMCSA regulations and HM regulations. This Declaration is based on my own personal knowledge obtained in my official capacity as a Safety Investigator.

2. FMCSA Safety Investigators conduct safety and hazardous material transportation compliance reviews to increase the level of regulatory compliance by motor carriers and hazardous materials shippers. During the compliance review all aspects of the carrier are examined consistent with 49 CFR Parts 382-397 and 49 CFR Parts 100-199. When the FMCSA conducts a safety compliance review of a carrier's operations, records and information in the carrier's possession are inspected to ensure that drivers are properly qualified to operate a commercial motor vehicle and are being properly tested for drug and alcohol usage; that the carrier has sufficient levels of liability insurance coverage; that vehicles are properly inspected and maintained; that accident reports are being properly maintained; that drivers are not exceeding the maximum driving and on-duty time



set by federal regulations; and that carriers transporting hazardous materials are properly complying with applicable regulations.

3. Around August 20, 2012, I began to conduct a compliance review on LEX Express, Inc., dba LEX Express, USDOT Number 824116 ("LEX"), an Illinois-based passenger carrier. The compliance review was conducted at LEX'S facility located at 310 Tiffany Court in Champaign, Illinois. Illinois State Patrol and Illinois Department of Transportation officers assisted the compliance review by performing inspections of motor coaches. At the beginning of the compliance review, I told the managers of LEX that we wanted to inspect motor coaches that were ready to be dispatched. We did not want to inspect motor coaches that had been pulled from the road for repairs.

4. At the end of the compliance review, FMCSA issued to Respondent a proposed unsatisfactory rating on October 16, 2012. *Exhibit A-1*. I have read Respondent's Request for Administrative Review ("Request for Review") of the proposed unsatisfactory rating.

5. Respondent challenges the Maintenance Vehicle Inspection Reports referenced in Violation 5 of the compliance review. On these reports, the LEX employee indicates on the front of the form that, for example, the brakes do not need repair. But on the back of the same form, the LEX employee indicates that the brakes need repair. See *Exhibits A-1 through A-16*. The back of the inspection form is attached as the exhibit immediately after the front of the same form. On September 28, 2012, I interviewed Eric Manson, the mechanic who conducted eight of the nine inspections that I counted for this violation. He told me that "Walter" told him to place the comments on the back of the inspection forms. See *Exhibit A-18*. On the same day, I asked Walter Conroy, LEX's Shop Manager, why the comments are written on the back of the inspection forms. He told me that at that time, LEX was not using a work order form, and that this was the only way to record required repairs. *Exhibit A-19*. Later, on October 26, 2012, Mr. Manson called me and

told me that FMCSA was correct in saying that the inspection forms were fraudulent. He said that he was initially filling out the forms correctly by marking the defects on the front of the form but was told by Walter not to put out-of-service defects on the front of the form because the buses need to stay operating and they didn't have the means to repair the buses because of a limited budget.

See Exhibit A-20.

6. Around early September 2012, I met with LEX officials including the shop manager, Walter Conroy and compliance officer David Mendoza to discuss my findings. I informed them of all the violations I found, including the fraudulent inspection reports. Neither official mentioned that I was incorrect about the fraudulent inspection documents because of a company policy to fix the brakes at a specific wear line threshold.

7. At the compliance review closeout meeting, around October 16, 2012, I met with Frazier, Mendoza, and the owner, Robert Frazier. I discussed my findings with them. Again, neither mentioned the wear line threshold argument they stated in their petition for Administrative Review.

8. LEX argues that I made a mistake regarding my finding that a Vehicle Inspection Report for the bus identified as LEX 23 was fraudulently completed. LEX 23 had been involved in an accident, and the driver of the bus said that he had trouble stopping the bus. LEX argues that I made a conclusion that the brakes on the bus were faulty, and this caused the accident. I did not draw this conclusion, and this is not why the Report for LEX 23 was fraudulently completed. On the Bus Driver Vehicle Inspection Report that was completed for this bus on the morning of April 8, 2012, the driver stated, "brakes needed adjusting, got another bus" and he also identified a problem with the "license plate light." He also noted that the bus was unsatisfactory for operation. *Exhibit A-21.* The mechanic who examined the bus marked on the same form that the defects were

corrected. However, on a LEX Repair Order form for the same motor coach, this mechanic stated that the light bulb was fixed, and that the brakes did not need adjusting. *Exhibit A-22*.

9. LEX argued that the false records of duty status counts forming the basis for the violations at #7 of the compliance review were based on I-Pass toll transponder records, which should be rejected because at the time of the compliance review, there was no way to tell which transponder assigned to a particular vehicle. Violation 7 was based on three false logs. Only one of the false logs was found via the I-Pass toll records. This one was for driver Robert Frazier, for his record of duty status for April 6, 2012. His log shows that on April 6, 2012, he operated a motor coach designated as LEX 11 (LEX 20 was also indicated on the log, but it was crossed out by Frazier and LEX 11 was written over it) and entered an on duty period in Champaign, Illinois at 10:00 p.m. CDT. *Exhibit A-23*. A copy of the I-Pass report shows that at 10:00 p.m. CDT on April 6, 2012, LEX 11 was at Toll Plaza 43, I-80 West, Ln. 53. *Exhibit A-24*. This is approximately 118 miles from Champaign, Illinois. Even if I accepted that Frazier was operating LEX 20 on that day, LEX 20 transponder shows that LEX 20 was at Toll Plaza 51, York Rd. Ln 53. This is approximately 140 miles from Champaign, Illinois. *Exhibits A-25, A-26*.

10. During the compliance review, I asked the company officials to tell me which transponders were assigned to which motor coaches. They gave me a list that I used to compare to the logs and the I-Pass records. *Exhibit A-27*. During the compliance review, and at the close out of the compliance review, LEX's managers never told me that they did not know which transponder was assigned to which motor coach.

11. The other two false logs violations referenced in Violation 7 were proven by using driver Ron Rochkes's logs, weekly time sheets, and a copy of the carrier's Gas and Diesel Fuel Report for the month of July 2012. *See Exhibits A-28 through A-36*.

12. Regarding the 396.17(a) violations, in order to use Level V roadside inspections as equivalent inspections, the inspections must be passing pursuant to 396.17(f). I am not aware of an exception such as the one described in LEX's petition for review. Regarding the challenge to using LEX 32 as one of the 396.17 violations in Violation 15, I did not use this bus for one of these violations. I used LEX bus numbers 1, 12, 20 and 27 for these violations.

13. Regarding the challenge to using the August 22, 2012, inspection for LEX 32 in the out-of-service rate, I do not have any indication that LEX submitted a DataQ challenge to this inspection. During the compliance review, and during the closeout meeting, I was not told by any of the LEX managers that LEX 32 had been pulled from the road for repairs to a generator or any other part of the motor coach.


I declare under penalty of perjury and pursuant to 20 U.S.C. §1746 that the foregoing is true and correct.

Executed on December 10, 2012



David McConnell
Safety Investigator
Federal Motor Carrier Safety Administration

UNITED STATES DEPARTMENT OF TRANSPORTATION

| | | | | |
|---|---------------------------|--|--|--|
|  | US DOT # 824116 | | Legal: LEX EXPRESS INC Operating (DBA): LEX EXPRESS | |
| | MC/MX #: 366041 | | Federal Tax ID: | |
| Review Type: Compliance Review (CR) | | | | |
| Scope: Principal Office | | Location of Review/Audit: Company facility in the U. S. | | Territory: |
| Operation Types Interstate Intrastate | | | | |
| Carrier: Non-HM Non-HM | | Business: Corporation | | |
| Shipper: N/A N/A | | Gross Revenue: \$3,028,386.00 for year ending: 12/31/2011 | | |
| Cargo Tank: N/A | | | | |
| Company Physical Address: | | | | |
| 310 TIFFANY COURT CHAMPAIGN, IL 61822 | | | | |
| Contact Name: David Mendoza | | | | |
| Phone numbers: (1) 2173526682 (2) 2172021359 Fax 2173984038 | | | | |
| E-Mail Address: davidmendoza.lexillini@gmail.com | | | | |
| Company Mailing Address: | | | | |
| 310 TIFFANY COURT CHAMPAIGN, IL 61822 | | | | |
| Carrier Classification | | | | |
| Authorized for Hire | | | | |
| Cargo Classification | | | | |
| Passengers | | | | |
| Does carrier transport placardable quantities of HM? No | | | | |
| Is an HM Permit required? N/A | | | | |
| Driver Information | | | | |
| | Inter | Intra | Average trip leased drivers/month: 0 | |
| < 100 Miles: | | 2 | Total Drivers: 34 | |
| >= 100 Miles: | 24 | 8 | CDL Drivers: 25 | |
| Equipment | | | | |
| | Owned | Term Leased | Trip Leased | |
| Motor Coach | 25 | 0 | 0 | Van, 9-15 |
| Limousine, 9-15 | 1 | 0 | 0 | Owned Term Leased Trip Leased 4 0 0 |
| Power units used in the U.S.: 30 | | | | |
| Percentage of time used in the U.S.: 100 | | | | |





LEX EXPRESS (LEX EXPRESS INC dba)
U.S. DOT #: 824116

Review Date:
10/16/2012

Part A

Questions about this report or the Federal Motor Carrier Safety or Hazardous Materials regulations may be addressed to the Federal Motor Carrier Safety Administration at:

3250 Executive Park Drive
Springfield, IL 62703-4514
Phone: (217)492-4608 Fax:(217)492-4986

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Robert Frazier

Title: President

Name: David Mendoza

Title: Compliance





LEX EXPRESS (LEX EXPRESS INC dba)
U.S. DOT #: 824116

Review Date:
10/16/2012

Part B Violations

| | | | | | |
|--|--|-----------------|----------------|---------------------------------------|---------------|
| 1 FEDERAL | Primary: 382.301(a) | Discovered 1 | Checked 2 | Drivers/Vehicles In Violation 1 | Checked 2 |
| Description Using a driver before the motor carrier has received a negative pre-employment controlled substance test result. Example Driver Name: Charles Shaffer Trip Date: 08-21-2012 | | | | | |
| 2 FEDERAL | Primary: 382.601(b) | Discovered 1 | Checked 9 | Drivers/Vehicles In Violation 1 | Checked 9 |
| Description Failing to provide to employees a written policy on misuse of alcohol and controlled substances. Example Driver Name: Charles Shaffer Trip Date: 08-21-2012 | | | | | |
| 3 FEDERAL | Primary: 383.23(a) | Discovered 1 | Checked 21 | Drivers/Vehicles In Violation 1 | Checked 21 |
| Description Operating a commercial motor vehicle without a valid commercial driver's license. Example Driver Name: Charles Shaffer Trip Date: 08-21-2012 | | | | | |
| 4 FEDERAL | Primary: 390.21(a) | Discovered 2 | Checked 2 | Drivers/Vehicles In Violation 2 | Checked 2 |
| Description Failing to ensure every self-propelled CMV, as defined in section 390.5, is marked as specified in paragraphs (b), (c), and (d) of this section. Example Driver Name: David Mendoza Trip Date: 08-24-2012 LEX 19 | | | | | |
| 5 FEDERAL ACUTE | Primary: 390.35 Secondary: 396.3(b) | Discovered 9 | Checked 221 | Drivers/Vehicles In Violation 2 | Checked 13 |
| Description Fraudulently or intentionally making false entries on inspection and vehicle maintenance records. Example Mechanic's name: Eric Manson Date: 4-10-2012 Vehicle number: LEX 23 | | | | | |





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Part B Violations

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|---|---|------------------|----------------|--|---------------|
| 6 FEDERAL | Primary: 392.2 | Discovered 1 | Checked 1 | Drivers/Vehicles In Violation 1 | Checked 1 |
| Description Operating a commercial motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated - Vehicle Maintenance. 08/23/2012- The FMCSA and State partners identified violations across multiple inspections at the roadside over the previous 24 months that are reflected in the Vehicle Maintenance BASIC of the Carrier Safety Measurement System, including: Driver Name: Eleanor Briere Trip Date: 10/07/2011 No or defective bus emergency exits | | | | | |
| 7 STATE CRITICAL | Primary: 395.8(e) CFR Equivalent: 395.8(e) | Discovered 3 | Checked 3 | Drivers/Vehicles In Violation 2 | Checked 7 |
| Description False reports of records of duty status. Example Driver Name: Robert Frazier Trip Date: 04-06-12 | | | | | |
| 8 FEDERAL CRITICAL | Primary: 395.8(e) | Discovered 15 | Checked 121 | Drivers/Vehicles In Violation 1 | Checked 7 |
| Description False reports of records of duty status. Example Driver name: Ron Rochkes Trip Date: 06-28-2012 | | | | | |
| 9 FEDERAL | Primary: 395.8(e) | Discovered 84 | Checked 124 | Drivers/Vehicles In Violation 6 | Checked 7 |
| Description False reports of records of duty status. Example Driver name: Ron Rochkes Trip date: 06-20-2012 | | | | | |
| 10 FEDERAL | Primary: 396.3(a)(2) | Discovered 13 | Checked 13 | Drivers/Vehicles In Violation 13 | Checked 13 |
| Description Failing to inspect pushout windows, emergency doors, and emergency marking lights in buses at least every 90 days. Example LEX 12 Minimal records of inspections for pushout windows, emergency doors, and emergency marking lights exist from September 2011 through February 2012 | | | | | |





LEX EXPRESS (LEX EXPRESS INC dba)
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Part B Violations

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|--|---|------------------|----------------|--|---------------|
| 11 FEDERAL | Primary: 396.3(b)(1) | Discovered 4 | Checked 13 | Drivers/Vehicles In Violation 4 | Checked 13 |
| Description Failing to keep a maintenance record which identifies the vehicle, including make, serial number, year, and tire size. LEX 27 Failed to identify the vehicle by make, serial number, year, and tire size. | | | | | |
| 12 FEDERAL | Primary: 396.7(a) | Discovered 1 | Checked 1 | Drivers/Vehicles In Violation 1 | Checked 1 |
| Description Operating a motor vehicle in such a condition as to likely cause an accident or breakdown. Example Company number: LEX 23 Driver Name: David Chang Trip date: 04-11-2012 | | | | | |
| 13 FEDERAL | Primary: 396.11(c) | Discovered 9 | Checked 102 | Drivers/Vehicles In Violation 6 | Checked 13 |
| Description Failing to correct safety-related defects listed on vehicle inspection report(s). Example Identify vehicle: LEX 12 Date defects reported: 04-13-2012 Date repair made: No Record of Repair Trip date: 05-04-2012 | | | | | |
| 14 FEDERAL | Primary: 396.13(c) | Discovered 77 | Checked 285 | Drivers/Vehicles In Violation 13 | Checked 13 |
| Description Failing to require driver to sign vehicle inspection report when defects or deficiencies were noted. Example Vehicle Identification: LEX 9 Driver name: Gerald Silver Trip Date: 05-13-2012 | | | | | |
| 15 STATE CRITICAL | Primary: 396.17(a) CFR Equivalent: 396.17(a) | Discovered 4 | Checked 13 | Drivers/Vehicles In Violation 4 | Checked 13 |
| Description Using a commercial motor vehicle not periodically inspected. Example Vehicle Identification: LEX 27 Driver Name: Bill Moreland Date of Trip: 04-27-2012 | | | | | |





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Part B Violations

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|---------------------------|--------------------|-----------------|---------------|---------------------------------------|---------------|
| 16 FEDERAL CRITICAL | Primary: 396.17(a) | Discovered 4 | Checked 13 | Drivers/Vehicles In Violation 4 | Checked 13 |
|---------------------------|--------------------|-----------------|---------------|---------------------------------------|---------------|

Description

Using a commercial motor vehicle not periodically inspected.

Example

Vehicle Identification: LEX 9

Driver Name: Gerald Silver

Date of Trip: 05-13-2012

Safety Fitness Rating Information:

Total Miles Operated 930,750

Recordable Accidents 1

Recordable Accidents/Million Miles 1.07

OOS Vehicle (CR): 5

Number of Vehicle Inspected (CR): 14

OOS Vehicle (MCMIS): 0

Number of Vehicles Inspected (MCMIS): 0

Your proposed safety rating is :

UNSATISFACTORY

| Rating Factors | | Acute | Critical |
|----------------|---|-------|----------|
| Factor 1: | C | 1 | 0 |
| Factor 2: | S | 0 | 0 |
| Factor 3: | U | 0 | 2 |
| Factor 4: | U | 0 | 1 |
| Factor 5: | N | 0 | 0 |
| Factor 6: | S | - | - |

Effective date: The unsatisfactory rating will take effect 45 days after the date of a forthcoming official notice from the Federal Motor Carrier Safety Administration headquarters office in Washington, D.C.

PROHIBITION: Under 49 USC sections 13905(f)(1)(B) and 31144, and 49 CFR section 385.13, a motor carrier that receives a final safety rating of unsatisfactory is prohibited from operating a commercial motor vehicle in interstate and intrastate commerce and, if applicable, shall have its registration revoked unless and until such time the FMCSA determines the motor carrier is fit and the motor carrier has reinstated its registration.

49 U.S.C. 31144 provides that the prohibition takes effect unless the motor carrier, within 45 days of the date of the forthcoming official notice, takes the necessary steps to improve the rating to conditional or satisfactory.

Unless the motor carrier receives an improved rating within 45 days from the date of the forthcoming official notice from Washington, D.C, the motor carrier will be subject to the prohibition in 49 CFR 385.13.

Corrective actions must be taken for the violations (deficiencies) listed on Part B of this review. Title 49 CFR Sections 385.15 and 385.17 provide for administrative review and a change to a safety rating based on corrective actions, respectively. A request for a change to a safety rating under section 385.17 may be made at any time. A motor carrier may request, in writing, a change in the rating by providing evidence of corrective actions to the Field Administrator for the FMCSA Service Center in which the carrier maintains its principal place of business. (See 49 CFR 385.17 for additional details). A request for administrative review under section 385.15 must be made within 90 days of the date of the proposed safety rating issued under section 385.11(c) or a final safety rating issued under section 385.11(b), or within 90 days after denial of a request for a change in rating under section 385.17

Administrative Review: A motor carrier of hazardous materials or passengers may appeal its proposed safety rating in a petition filed pursuant to 49 CFR section 385.15 if it believes that the rating is in error and there are factual and procedural issues in dispute. Such appeals must be made within 90 days of the date of the proposed safety rating, but should be made within 15 days of the date of the safety rating notice to allow the FMCSA to issue a written decision before the prohibitions in 49 CFR 385.13 take effect. Appeals filed pursuant to section 385.15 should be addressed to: Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., S.E., Washington, DC 20590. The motor carrier will receive a written decision on the petition within 30 days from receipt of the petition by the Chief Safety Officer. (See 49 CFR 385.15 for additional details.)





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Part B Violations

(Note: Neither a petition to contest the rating nor a request for a change in the rating will delay the effective date of the rating, if unchanged.)





LEX EXPRESS (LEX EXPRESS INC dba)

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Part B Requirements and/or Recommendations

1. The CSA Safety Management Cycle is a model that provides a holistic systems view of the management processes and safety improvement practices a carrier should have in place in order to ensure compliance with FMCSA regulations. The six safety management processes in the cycle are areas that a motor carrier can systematically explore to discover what safety management processes are broken or not in place, thus identifying the process breakdowns.

1. Policies and Procedures

2. Roles and Responsibilities

6. Meaningful Action

3. Qualification and Hiring

5. Monitoring and Tracking

4. Training and Communication

2. A.

For questions about U.S. DOT numbers or biennial updates: 800-832-5660 or 703-280-4001

For questions about licensing, authority or MC numbers: 202-366-9805

For questions about insurance: 866-637-0635 or 202-385-2423

For household goods complaints: 888-DOT-SAFT (888-368-7238)

B.

• If you have any questions concerning this report, please contact the Federal Motor Carrier Safety Administration,

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Steven M. Mattioli, Division Administrator
3250 Executive Park Drive
Springfield, IL 62703-4514

Seek Out Resources:

• You are encouraged to review your company's record at the following website:

<http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.

• If you do not have a PIN Number, use the link below to request a PIN number for your DOT number and MC Number. The PIN number allows you to complete any updates on-line and much quicker than via the mail or fax.

The PIN number is sent to you via U.S. mail and should take about a week.

https://li-public.fmcsa.dot.gov/LIVIEW/PKG_PIN_START.PRC_INTRO

• Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

C.

• Understand Why Compliance Saves Time and Money: Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.

• Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.

• A complete Educational and Technical Assistance package entitled "A MOTOR CARRIER'S GUIDE TO IMPROVING HIGHWAY SAFETY" is available free on the FMCSA website to assist you in complying with the safety regulations. It contains many forms and documents useful for improving the safety of your operations.
www.fmcsa.dot.gov/factsfigs/eta/index.html.





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- **NOTICE:** A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.
- **NOTICE:** 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.
- The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:
<http://www.psp.fmcsa.dot.gov/Pages/default.aspx>
- All motor carriers and truck drivers need to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities. Discuss with your employees/drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier official. Motor carriers should visit the following website for more information:
<http://www.fmcsa.dot.gov/documents/Hijacking-Brochure.pdf>

Please take a minute to check out the DHS information on human trafficking. You may be able to help increase awareness among your colleagues, partners and friends. <http://www.dhs.gov/files/programs/humantrafficking.shtm>

Truckers Against Trafficking website <http://truckersagainstrafficking.com/>

For all Investigations that could result in a Notice of Claim:

- **PLEASE NOTE:** The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Notice of Claim. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Notice of Claim.

For all Investigations resulting in serious violations:

Serious violations were recorded on this investigation report. These violations will impact your safety record. Furthermore, these violations may result in a follow-up investigation unless you forward adequate evidence of corrective action to our office:

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Steven M. Mattioli, Division Administrator
3250 Executive Park Drive
Springfield, IL 62703-4514

For all Investigations resulting in a proposed conditional or unsatisfactory rating:

385.15

If you believe the proposed rating is in error and there are factual and procedural issues in dispute, Part 385.15 (copy





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provided) outlines procedures for petitioning the Federal Motor Carrier Safety Administration for an administrative review of these findings. Your petition should be addressed to:

Chief Safety Officer
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE,
Washington, DC 20590

385.17

In addition, a request for a revised rating based on corrective actions may be made at any time. Part 385.17 (copy provided) outlines the procedures for such a request. The request must be made in writing, must describe the corrective action taken and must include other documentation that may be relied upon as a basis for the requested change. Send a duplicate paper copy or electronic version of your request to each addressee:

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Midwestern Service Center
Darin G. Jones, Field Administrator
4749 Lincoln Mall Drive, Suite 300A
Matteson, IL 60443

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Steven M. Mattioli, Division Administrator
3250 Executive Park Drive
Springfield, IL 62703-4514

This letter should be submitted as soon as possible.

For all Investigations resulting in a proposed unsatisfactory rating:

- Passenger & placardable HM Carriers:

This review will result in a Proposed Safety Rating. The findings indicate you are currently operating at an unsatisfactory level of safety compliance. A written notice of proposed unsatisfactory rating will be sent, via U.S. Mail, to you by the FMCSA. If you fail to obtain an improved rating within 45 days of the date that notice is sent, the unsatisfactory rating will become final and you must cease interstate operations.

- Information on your compliance status, roadside inspections, regulatory changes, accident countermeasures and hazardous material incident prevention manual is available on the Internet at the Federal Motor Carrier Safety Administration's web site at <http://www.fmcsa.dot.gov/> and <http://www.safer.fmcsa.dot.gov/>.

3. VEHICLE MAINTENANCE BASIC PROCESS BREAKDOWN: Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN

Carrier implemented maintenance policy in conjunction with 08-10-2012 Settlement Agreement with the Mid West Service Center. The policy is not consistently followed as designed and missed assigning responsibilities to key tasks such as maintaining each vehicle's periodic schedule, ensuring annual inspections are current, and filing work orders.

The main breakdown occurs in monitoring and tracking. The DVIRs and 90 point inspections are not examined closely enough so consequently the carrier failed to make repairs and/or document repairs of defects.

BASIC SPECIFIC RECOMMENDED REMEDIES





Part B Requirements and/or Recommendations

Implement Safety Improvement Practices: The following are recommended practices related to Monitoring and Tracking Processes.

- Check all inspections and relevant records, such as Driver Vehicle Inspection Records (DVIRs), pre-trip and annual inspections, and maintenance and repair records, to ensure that company inspection, repairing, and maintenance policies and procedures are adhered to and properly documented.
- Ensure that Driver Vehicle Inspection Records (DVIRs) are effectively coordinated with maintenance and operations, result in timely corrective measures, and are verified during pre-trip inspections as applicable.
- Require mechanics to note whether parts came from inventory or were ordered, to ensure accuracy of maintenance records.
- Monitor and track roadside inspection results to ensure that vehicle defects are repaired and documented promptly and to prevent Out-of-Service (OO) vehicles from operating prior to being repaired.
- Monitor manufacturer recalls through www.nhtsa.dot.gov and consult with manufacturer service representatives to keep current with service bulletins for proactive maintenance.
- Implement a system for keeping accurate records of employee inspection, repair, and maintenance training needs, including updates on a carrier's fleet or equipment and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- Regularly evaluate the company's vehicle-maintenance-related inspection results via the Federal Motor Carrier Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them.
- Maintain inspection, repair, maintenance, vehicle identification, and communication records to help evaluate the performance of all staff (drivers, dispatchers, mechanics, and managers) involved in fleet maintenance and the effectiveness of compliance with vehicle maintenance policies, procedures, and regulations.
- Evaluate personnel who are monitoring vehicle maintenance performance by making sure they are using Driver Vehicle Inspection Records (DVIRs), roadside inspections, and other data; applying performance standards fairly, consistently, and equitably; and documenting evaluations.
- When monitoring and tracking vehicle maintenance issues, always assess whether an issue is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).

Passenger Carriers:

- Monitor manufacturer recalls through www.nhtsa.dot.gov; consult with manufacturer service representatives to keep current with service bulletins for proactive maintenance, especially with regard to preowned buses.
- Monitor and track vehicle-maintenance-related passenger complaints and assess safety implications.

4. VEHICLE MAINTENANCE BASIC PROCESS BREAKDOWN: Policies and Procedures

DESCRIPTION OF PROCESS BREAKDOWN

Carrier implemented maintenance policy in conjunction with 08-10-2012 Settlement Agreement with the Mid West Service Center. The policy is not consistently followed as designed and missed assigning responsibilities to key tasks such as maintaining each vehicle's periodic schedule, ensuring annual inspections are current, and filing work orders.

The main breakdown occurs in monitoring and tracking. The DVIRs and 90 point inspections are not examined closely enough so consequently the carrier failed to make repairs and/or document repairs of defects.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Policies and Procedures.

- Develop a system of preventive maintenance for compliant, safe, and efficient fleet operations, including a schedule for periodic maintenance, inspection, and record keeping. This system should be attuned to manufacturer recommendations, the carrier's own experience, and regulatory requirements.
- Develop a procedure ensuring that vehicle defects that impact safety and/or safety compliance are reported, repaired, and certified before the vehicle is operated.
- Develop procedures to ensure that management is notified of vehicle defects through the use of Driver Vehicle Inspection Records (DVIRs) and other communication channels, such as driver call-in and e-mail from mechanics.





Part B Requirements and/or Recommendations

- Develop a policy ensuring that drivers are qualified to complete thorough and timely Driver Vehicle Inspection Records (DVIRs) by the end of the day of the trip and prior to a subsequent assignment.
- Establish a policy requiring drivers to submit copies of all roadside inspections to carrier management within 24 hours.
- Develop policies and procedures requiring drivers to immediately notify appropriate management of any roadside vehicle Out-of-Service (OOS) order.
- Develop a written, progressive disciplinary policy comprising warning letters, suspensions, and fines, and ultimately leading to termination, focused on taking corrective action to ensure that employees comply with vehicle inspection, repair and maintenance regulations, and company policies. This policy should also specify consequences for any carrier official who knowingly and willfully allows vehicle maintenance violations.

Passenger Carriers:

- Develop systematic procedures for inspecting maintenance items critical to fire-safety and emergency evacuation - for example, checking wheel-hub lubrication levels according to the manufacturer's recommended inspection intervals, checking wheels for signs of excess heat every time the motor coach is parked, regularly inspecting wiring and electrical systems for shorts circuits, and inspecting emergency-exit operation and markings.
 - Consider installation of fire-detection-and-suppression systems on current fleets and as purchase options on new coaches.
5. Establish a systematic maintenance records program for all vehicles. Maintain a complete file for each subject vehicle, recording all repair, maintenance and inspection operations performed.
 6. Review with your drivers periodically the procedures for doing pre-trip and post-trip inspections. Ensure that safety defects reported by drivers on their Vehicle Inspection Reports (VIR) are repaired before the vehicle is re-dispatched. Require drivers to prepare Vehicle Inspection Reports on a daily basis. Keep them on file for 90 days.
 7. Ensure that the persons or entities that perform preventative maintenance inspections on your equipment are abiding by agreed time or mileage intervals. Ensure that records are kept of such periodic preventative maintenance inspections. Take corrective action, if schedules are not being adhered to.
 8. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. www.fmcsa.dot.gov/safety-security/eta/index.htm
 9. Require all drivers to prepare complete and accurate records of duty status for each day, and to submit them within 13 days. Maintain all duty status records on file, with all supporting documents, for at least 6 months.
 10. **FATIGUE DRIVING (HOS) BASIC PROCESS BREAKDOWN: Monitoring and Tracking**

DESCRIPTION OF PROCESS BREAKDOWN

Carrier does not use available resources such as time cards, IPASS, fuel logs, and fuel receipts to verify the accuracy of the driver's RODS.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Monitoring and Tracking Processes.

- Implement an effective process for monitoring, tracking, and evaluating all drivers' compliance with Hours-of-Service (HOS) regulations and company policies.
- Promptly review all Records of Duty Status (RODS) for Hours-of-Service (HOS) violations and falsification. Look for discrepancies by comparing driver logs with their "check-in" calls and other supporting documents.
- Document all findings of fatigue-related noncompliance with regulations and/or company policies.
- Systematically check to see if drivers and dispatchers are regularly communicating about Hours-of-Service (HOS) availability and driver-fatigue level.
- Maintain roadside inspection, Records of Duty Status (RODS), supporting documents, dispatch schedules, and





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communication records to help evaluate the performance of all staff (drivers, dispatchers, and managers) involved in Hours of Service (HOS) and the effectiveness of compliance with HOS policies, procedures, and regulations.

- Regularly evaluate the company's fatigue-related inspection results via the Federal Motor Carrier Safety Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them.
- Implement a system for keeping accurate records of employees' Hours-of-Service (HOS) training needs and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- Evaluate personnel (log clerks, payroll, dispatchers, and third-party safety consultants) who are monitoring drivers' Records of Duty Status (RODS) for accuracy; for whether they are applying performance standards fairly, consistently, and equitably; and for whether they are documenting evaluations.
- Consider using electronic on-board recorders (EOBRs) to monitor and track Hours-of-Service (HOS) violations.
- When monitoring and tracking any fatigue-related issues, always assess whether an issue is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).

Passenger Carriers:

- Monitor and track driver-fatigue-related passenger complaints and assess safety implications.
- Ensure that management ascertains that available hours account for rest periods, separate operations within-company, intermittent and relief drivers, and changes to itinerary that require "extended day." Check in with drivers at predesignated intervals.

11. Conduct periodic internal reviews of your driver qualification, hours of service control, maintenance, accident analysis/reporting, training, and other safety systems to ensure continued compliance with the FMCSR.
12. Ensure that all drivers' records of duty status (logs) are accurate. Check them against "supporting documents" to verify accuracy. Prohibit falsification of logs by any driver. Review the rules on supporting documents. Take appropriate action against drivers who falsify logs.
13. New & intermittently used drivers must provide a signed statement showing their total time on-duty for the seven days preceding any trip. These records must be kept on file for 6-months.

395.8 Interpretation Question 11:

Is a driver who works for a motor carrier on an occasional basis and who is regularly employed by a non-motor carrier entity required to submit either records of duty status or a signed statement regarding the hours of service for all on-duty time as "on-duty time" as defined by §395.2?

Guidance: Yes.

Partial Extract from definitions listed in 395.2

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. On duty time shall include:

- (1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;
- (2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All driving time as defined in the term driving time;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
- (5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;
- (7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by part 382 of this subchapter when directed by a motor carrier;
- (8) Performing any other work in the capacity, employ, or service of a motor carrier; and





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(9) Performing any compensated work for a person who is not a motor carrier.
Code of Federal Regulations 484

PROVISION: On-duty time

CURRENT RULE: Includes any time in CMV except sleeper-berth.

FINAL RULE COMPLIANCE DATE FEBRUARY 27, 2012

Does not include any time resting in a parked vehicle (also applies to passenger-carrying drivers). In a moving property-carrying CMV, does not include up to 2 hours in passenger seat immediately before or after 8 consecutive hours in sleeper-berth.

PROVISION: Penalties

CURRENT RULE: "Egregious" hours of service violations not specifically defined.

FINAL RULE COMPLIANCE DATE FEBRUARY 27, 2012

Driving (or allowing a driver to drive) 3 or more hours beyond the driving-time limit may be considered an egregious violation and subject to the maximum civil penalties. Also applies to passenger-carrying drivers.

14. Establish a system to control passenger-carrying drivers' hours of service. Do not dispatch drivers who don't have adequate hours available to complete assigned trips legally. Do not allow drivers to exceed the 10, 15, and 60/70-hour limits.

15. CRASH INDICATOR BASIC PROCESS BREAKDOWN: Training and Communication

DESCRIPTION OF PROCESS BREAKDOWN

Carrier provides detailed instructions to all drivers upon initial hiring but does not provide any form of refresher training or conduct regular employees meetings.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Communication and Training.

- Communicate expectations for adhering to safe-driving regulations and company policies and procedures to all staff, and provide new hire and refresher training and company communication channels to support meeting those expectations.
- Implement a training/testing program that includes hands-on demonstrations of safe driving with a focus on defensive driving skills and techniques and crash avoidance. Create opportunities for individual instruction and coaching as appropriate.
- Reinforce training by developing job aids and/or establishing communication channels for all staff.
- Ensure that managers and supervisors regularly communicate with their drivers and demonstrate their commitment to the management of safety and safe driving, in particular.

Passenger Carriers:

- Provide training on intersection and lane-change safety and on pedestrian awareness for bus drivers in inner cities.

16. Accident Countermeasures is a set of defensive strategies designed to reduce preventable accidents. The strategies and forms for implementing accident countermeasures can be found on the FMCSA website at:
<http://www.fmcsa.dot.gov/forms/print/accident.htm>

17. Ensure that all vehicles are properly marked with your name or trade name and U.S. DOT number. If your vehicles





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are also periodically operating for other carriers, they must be marked with that carrier's name and U.S. DOT#.

18. To better understand your company's responsibilities under the Department of Transportation's Americans with Disabilities Act (ADA) regulations concerning accessibility of over-the-road buses, review the information on the Federal Motor Carrier Safety Administration's Web site at:
<http://www.fmcsa.dot.gov/rules-regulations/bus/company/ada-guidelines.htm>
19. Provide pre-trip safety information to motor coach passengers. For information about the Basic Plan for Motor coach Passenger Safety Awareness that was published by the Federal Motor Carrier Safety Administration, go to the Agency's Web site at:
<http://www.fmcsa.dot.gov/about/outreach/bus/bus-safety-awareness-plan.htm>





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Part C

Reason for Review: Compliance Review

Planned Action: Prosecution

IL-2012-0384-US1440

Parts Reviewed Certification:

| | | | | | | | | | | | | | | | | | | |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 325 | 382 | 383 | 387 | 390 | 391 | 392 | 393 | 395 | 396 | 397 | 398 | 399 | 171 | 172 | 173 | 177 | 178 | 180 |
| | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | | | | |

Prior Reviews

8/18/2011
8/19/2010
7/17/2009

Prior Prosecutions

8/10/2012

Unsat/Unfit Information

Is the motor carrier of passengers subject to the safety fitness procedures contained in 49 CFR part 385 subpart A, AND does it transport passengers in a commercial motor vehicle?

Yes - Interstate and Intrastate

Does carrier transport placardable quantities of hazardous materials?

Unsat/Unfit rule:

45-Day - Interstate Passenger

Corporate Contact: David Mendoza

Corporate Contact Title: Compliance

Special Study Information:

Remarks:

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REMARKS:

INVESTIGATIVE REPORT RECEIVED BY:

The carrier president, Robert Frazier, and compliance officer, David Mendoza received the investigative report on 10-16-2012. Also, present for the close out meeting were FPM Tim Armstrong and from LEX Express/ Illini Tours were Bent Ladage, Walter Conroy, and Trinity Brock.

During the meeting, Robert Frazier and David Mendoza repeatedly compared the results of the current level V inspections and current CR violations to their previous results. They argued that they are doing better in compliance with the FMCSRs because the vehicles placed OOS only received one OOS violation this time and not 5-6 as compared to the previous level V results.

After presenting the reports for both carriers (LEX Express and Illini Tours) Tim Armstrong and David McConnell were asked to leave to the room and permitted to return approximately 25 minutes later. At that time, Robert Frazier signed the statements and gave Tim Armstrong a tour of the facility. During the meeting, David Mendoza read the statements aloud to Mr. Frazier. Neither he nor Mr. Frazier objected with the contents of the statements at that time. The carrier asked for and received a copy of the statements after the meeting.

Robert Frazier contacted David McConnell via telephone approximately 1 hour after the meeting to ask what his signature on the statements meant and what happened if he refused to sign them. I informed him to read page 2 above his signature and the statements have the same effect with or without his signature. At that point, he recanted his signature on the statements, declared them null and void, and demanded that I return the signed statements to him. I advised him to send his objections in an email to me so that I can discuss it with the Tim Armstrong.

After discussions with the FPM and the Mid West Service Center's legal team, Mr. Frazier's objections to the statements will be attached to and become part of the original statements. The carrier was informed telephonically and via email on October 18, 2012.





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REASON FOR INVESTIGATION:

Other. Full CR was assigned by FPM Armstrong on 6 Aug 2012 as part of the 2012 Passenger Carrier Strike Force.

David McConnell completed this review.

SCOPE OF INVESTIGATION:

Full Rated CR as part of the 2012 Passenger Carrier Strike Force. The full investigation included CDLIS, Authority, Insurance, and Red Flag drivers in accordance with current CSA and eFOTM guidance.

CARRIER OPERATION DESCRIPTION:

The passenger carrier is owned and operated by Robert Frazier. At the time of the investigation the carrier hauls passengers (mainly University of Illinois (U I) College Students) in intrastate, interstate, and international commerce with \$5 million of insurance. All equipment is owned by LEX Express but also leased to Illini Tours through a term lease. The president also owns and operates Illini Tours DOT # 1759981 and several other non-transportation related businesses from the same location.

LEX Express and Illini Tours regularly share drivers, vehicles, dispatchers, and mechanics without distinction between the two carriers. Most paperwork, including the drug and alcohol consortium, company policies and portions of the employment application are titled LEX Express/ Illini Tours. LEX Express operates scheduled runs while Illini Tours operates chartered runs. Mr. Frazier stated that LEX Express does not leave the state of Illinois.

Gross Revenue - The combined gross revenue for both companies is \$3,028,386. The carrier was unable to separate the income for each company.

Document the officers of the company. According the Secretary of State website, Robert Frazier is sole officer for LEX Express and Illini Tours.

Mechanics interviewed during this investigation were Ralph Canas (brakes/suspension), Kyle Hildreth (body), Jehu Valdez (tires/general work), Hal Clark (motors/engines), Charles Shaffer Jr. (pretrips), Cody Schrock (small vehicle engines), Bob Parish (brakes/pretrips), Eric Manson (annuals/assistant shop manager), and Walter Conroy (shop manager).

Drivers interviewed during this investigation were Brad Sims, Vincent Gillespie, Ron Rochkes, Brent Ladage, and David Chang.

Mr. Frazier resides at 3909 Farmington Dr Champaign IL 61822.

The PPOB is located at 310 Tiffany Court. There are approximately 15 busses on this property that are in scrap condition with engines, radiators, and other parts removed. The carrier's vehicle list, provided on 20 Aug 2012, contains 25 motor coaches, four 9-15 passenger vans, a one 9-15 passenger limo. Of the 25 motor coaches, the carrier claims that only 15 were in operation at this time. Operation defined by the carrier as the bus having a valid license plate. During the summer months, when the U I is closed, the carrier does not need use of its entire fleet and allows the registrations to expire. Rhonda Lucas (217-785-1801) from the Illinois Secretary of State stated that LEX express has 6 buses with apportioned plates and 18 records of buses with public transportation plates. She also supplied screen prints of the 6 vehicles with apportioned plates and 6 public transportation plates and 8 public transportation plates that expired on 06-30-2012.

The carrier performs maintenance on site. There is a maintenance pit for one bus on one side of the building and permanent ramps on the other side of the building for 2 buses.

PRE-INVESTIGATION:

L&I, MCMIS, ISS, EMIS, EDMS, SMS, DIR, and the carrier's profiles were checked prior to the investigation.

Carrier has been operating since September 1999. Carrier had 2 Alert BASICs when assigned. The carrier's BASICs scores, based on the SMS dated 27 July 2012 are DRIVER FITNESS - Alert, VEHICLE MAINTENANCE 75.2%, AND CRASH INDICATOR 45.6%. The carrier's BASICs scores, based on the SMS dated 24 Aug 2012 are VEHICLE MAINTENANCE 82.6%, AND CRASH INDICATOR 45.4%.





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Part C

The carrier's compliance review history is
Compliance Review 08/18/2011 Conditional
Compliance Review 08/19/2010 Satisfactory
Compliance Review 05/22/2009 Unsatisfactory Upgraded 07/17/2009 Conditional
Non-Ratable Review 03/17/2009
Compliance Review 02/08/2007 Satisfactory
Compliance Review 07/21/2006 Unsatisfactory Upgraded 09/15/2006 Conditional
Compliance Review 06/30/2004 Satisfactory
Compliance Review 09/26/2002 Conditional

The carrier entered into a Settlement Agreement for case IL-2011-0136-US1369 on 08-10-2012 for Two (2) violations of 49 CFR 396.11 (c) - Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again; and One (1) violation of 49 CFR 396.11 (c)(I) - Failing to certify that repairs were made or were not necessary. See the Investigation section for more details.

ACCIDENT SUMMARY

Carrier has 1 reportable accident in the past 365 days, resulting in 3 injuries. Accident occurred 4-11-12. Unit 2 and 3 were in front of unit 1. Unit 1 is LEX 23 operated by LEX Express. Driver could not stop in time and hit unit 2 causing unit 2 to hit unit 3. 3 injuries 1 tow. LEX Express driver was not issued citation.

The driver involved in the accident was interviewed and stated that he was traveling 30-35 mph in rush hour traffic behind a tractor-trailer. The tractor-trailer stopped suddenly so LEX driver swerved to other lane to avoid hitting tractor-trailer and saw a passenger car about 1/2 up the length of the tractor-trailer. He slammed on brakes but could not stop. Driver stated that based on his driving experience that the brakes should have been able to stop the vehicle in that distance traveling at that speed.

Vehicle maintenance record for LEX 23. A different driver refused to drive the vehicle on 4-8-12 noting, "Brakes need adjusting. Got another Bus." and marked the condition of the vehicle as UNSATISFACTORY. Mechanic inspected brakes on 4-10-12 and noted on repair order "Inspected Brakes No Adjustment Needed" but marked DVIR as Above Defects Corrected. There is no record of a driver reviewing the repairs. The vehicle's annual inspection expired on September 2011 and was not re-inspected until 9-1-2012. The required 6-month inspections were current. The driver on the date of the accident was unaware of the vehicle's recent maintenance history. The carrier was cited for fraudulently or intentionally making false entries on inspection and vehicle maintenance records. This vehicle was placed OOS during level V inspections.

CDLIS (DRIVER LICENSE) CHECK:

The CDLIS sampling size was 20. All checks were completed with no discrepancies noted.

DRIVERS WITH RED FLAG VIOLATIONS:

As of the 27 July 2012, the carrier had no Red Flag drivers identified on their profile.

CONTROLLED SUBSTANCES AND ALCOHOL SUPPLEMENTAL REVIEW:

A complete review of the drug and alcohol program was completed. LEX Express/ Illini Tours is enrolled in a consortium through Carle Physicians Group in Urbana, IL and met their annual drug and alcohol test rate for 2011. The random pool drivers list is current and shows no extra drivers.

1 pre-employment drug test result was reviewed with no evidence that the driver operated a CMV before the carrier received the test results. 1 driver tested positive for marijuana in June 2011 and did not receive the required SAP referrals. She walked out of the carrier's office when presented with her drug test results.

One mechanic was observed driving a motor coach on a public road from one side of the facility to the other in order to have maintenance performed in the carrier's other maintenance bay. The mechanic was not properly licensed, enrolled in the consortium and did not receive the required drug and alcohol policies.

INVESTIGATION:

The unannounced investigation began on Monday August 20 at approximately 10 am with the intention of conducting level





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V inspections using the carrier's pit. During our initial contact, Mr. Walter Conroy, Shop Manager, permitted the use of their pit for the inspections. In a change to the carrier's previous level of cooperation, the carrier's president, Robert Frazier, and compliance officer David Mendoza denied the use of their pit citing the FMCSA Settlement Agreement as the reason. The carrier claimed that as stated in the Settlement Agreement, the carrier conducts a 90-point inspection on all buses before each trip and that our inspections without allowing them that courtesy violates that agreement.

FPM Armstrong permitted the carrier to perform their 90-point inspection prior to our level V inspections but the carrier still denied use of the pit. The inspections were conducted at the PPOB using IDOT's portable ramps. After the carrier performed their 90-point inspection, Illinois State Troopers Curt Welsh, Rick McFarland, Patty Clendenny, Sgt Kevin Kersey, IDOT Compliance Officer Greg Mack, and SI McConnell conducted 13 level V inspections of all motor coaches with current license plates and 1 level V of a 9-15 passenger van. Although the carrier performed their 90-point inspection, 5 motor coaches were placed OOS (LEX 9, 12, 23, 27, and 32) with a motor coach OOS rate of 38.4% (5 of 13) and an overall OOS rate of 35.7% (5 of 14). The two most prevalent OOS reasons were the steer tires contacting the steering column and improper exhaust. It is significant to note that at least two additional buses with evidence of prior contact of the steer tires with the steering column were repaired, painted, and/or adjusted prior to our inspection.

The 90 point inspection and DVIR process described by the carrier in the Settle Agreement was analyzed for all 13 vehicles chosen in the random sampling. The analysis period began 7-1-2012 and roughly ended 08-19-2012. The 90-point inspections were to be conducted before every trip a vehicle made but this is not the case. The 3 vehicles with the most inspections show that a 90-point inspection was completed an average of 60% of the time that the vehicle was operated.

All requested David Mendoza provided documents without delay. Driver's RODS are maintained in a folder by month and driver and stored in a box in Mendoza's office. Maintenance records are located in at least 3 separate binders and/or folders and stored in the shop manager's office. All of the RODS and maintenance files were transferred to the conference room and permitted unlimited access. The drug and alcohol and drivers DQ files are stored in Mendoza's office.

Maintenance Files.

The sample size is 8 but was expanded to 13 due to the carrier's past performance and the results of the level V inspections. All maintenance files for the level V OOS vehicles were reviewed as well as the 3 blue motor coaches (LEX 18, 19, & 24) primarily used by Illini Tours. The carrier returned 2 motor coaches (LEX 1 & 16) to operation on Aug 24, which were included in the maintenance file review, but did not receive a level V inspection. The remaining 3 maintenance files were chosen randomly.

11 of the 13 maintenance files reviewed did not contain a current annual inspection; however, there was only sufficient evidence to prove that 8 of those vehicles were operated on a trip by LEX Express.

The carrier has no evidence of a current periodic maintenance schedule. The shop manager stated that they use the new 90-point inspection process as their periodic schedule. The carrier transitioned from using a date sequenced maintenance summary record to using a repair order form generated for each repair. This new process creates an overwhelming amount of paper and the carrier does not have an efficient filing process. The work orders are filed by unit number but the associated part orders and/or receipts are filed in the accounting section. Each vehicle has at least three separate maintenance records or folders.

The carrier has minimal records of inspections for the push out windows, emergency doors, and emergency door marking lights from the period of September 2011 through April 2012. The carrier transitioned from using a dedicated form to record these inspections to relying on the 90-point inspection form to record the inspections.

Daily Vehicle Inspection Reports.

The sample size was 210 but was expanded to 285 due to the carrier's past performance.

One mechanic was instructed by the shop manager to write required repairs on the back of the 90-point inspection form because the carrier did not have a repair order form at the time. However, the mechanic indicated on the front of the form that the brakes passed the inspection but wrote contradictory statements on the back of form indicating the brakes needed replaced. The carrier was cited for fraudulently or intentionally making false entries on inspection and vehicle maintenance records.

Records of Duty Status





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LEX Express makes frequent interstate and international trips to O'Hare and Midway airports.

The RODS sample size was 210 with 219 RODS actually checked during the sampling. The RODS included 124 days of supporting documents for falsification. No 10, 15, or 70-hour violations were discovered. 18 critical false RODS and 84 nominal false RODS were discovered using IPASS, driver's time cards, and vehicle's fuel log. The driver's time cards and vehicle's fuel log were used together to validate the falsification. At the time of the review, the carrier required the drivers to clock in and clock out but has since discontinued this practice. The drivers are required to refuel the buses they operate upon their return and complete a fuel log. The fuel log is completed by the driver and among other items includes their name, date, number of gallons and time of fueling. The fuel log is kept in the driver's lounge area approximately 10 feet from the time clock used to record their time cards. The accuracy of the time clock was verified at 10:26am on 10-01-2012 against a cell phone. The time device used for the fuel log is unknown.

Illinois Department of Revenue

One of Illinois State Police officers conducting Level 5 inspections suggested the carrier did not have current IFTA. I assisted Gary May (Illinois Department of Revenue 217-557-8771 or 217-785-8200) interpret the driver's logs and the carrier's trip reports to identify interstate trips.

Proposed UNSATISFACTORY rating

The proposed rating was determined on October 1, 2012 and discussed with Illinois Division Administrator Steve Mattioli and FPM Tim Armstrong. Steve advised to prepare the written reports so that he can forward the reports to the Mid West Service Center prior to closing out the review.

The Mid West Service Center asked questions and requested several documents in the interim but completed their review and analysis of the investigation on October 16, 2012.

FOLLOW-ON ACTION:

Enforcement action is planned for the carrier in the following areas under case number IL-2012-0384-US1440:

1. § 395.8(e) False reports of records of duty status
2. § 390.35 Fraudulently or intentionally making false entries on inspection and vehicle maintenance records
3. § 396.17(a) Using a CMV not periodically inspected

During future reviews investigators should request copies of each driver's report received prior to the run and time cards for the RODS they analyze. The drivers report shows the origins and destinations with scheduled pick up and drop off times while the time cards will show the pay received for each trip. Comparing the RODS, the fuel logs, and the driver's time card should create a very high possibility of detecting false logs and dropped trips from the RODS.

DOCUMENTS PROVIDED TO CARRIER:

The carrier was provided a copy of Table 1 violations and the How to Request an Upgrade (SMP) letter.

The carrier was also provided copies of the carrier's BASICS overview from SMS along with fact sheets corresponding to those BASICS over the threshold. The carrier was also given a copy of the ISS selection page, the FMCSA homepage, a frequently contacted numbers list, and directions to access and download the ETA package.





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