

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

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<b>In the Matter of</b>	)	
	)	
<b>LEX EXPRESS, INC.</b>	)	
<b>Dbas LEX EXPRESS</b>	)	
<b>DOT NO. 824116</b>	)	<b>DOCKET NO. FMCSA-2012-0459</b>
	)	
<b>Respondent.</b>	)	

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**FIELD ADMINISTRATOR'S RESPONSE TO THE  
ASSISTANT ADMINISTRATOR'S SECOND 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 Second Interim Order on Petition for Review of Safety Rating and states as follows:

**I. INTRODUCTION**

On October 16, 2012, FMCSA completed a compliance review of Illinois passenger carrier LEX Express, Inc., doing business as LEX Express ("Petitioner"). FMCSA issued a proposed unsatisfactory rating based on that compliance review. On November 19, 2012, the Field Administrator issued an Order to Cease All Transportation in Interstate and Intrastate Commerce and Revocation of Registration (Order to Cease), effective December 7, 2012.

Petitioner filed a Request for Immediate Stay of the Order to Cease on December 7, 2012 until FMCSA has reached a decision on its pending 49 C.F.R. §§385.15 and 385.17 petitions ("Request for Stay"). Petitioner argues that FMCSA missed its 30-day deadline to make its decision on the §385.15 petition, and that the Order to Cease will cause a loss of revenues and customers.

## **II. ARGUMENT**

The Assistant Administrator has explained that a motion to stay the effectiveness of a safety rating is similar to a motion for injunctive relief. *In the Matter of AA Logistic, Inc.*, FMCSA-2012-0206, Preliminary Order on 385.15 Petition, (June 13, 2012). To qualify for injunctive relief, a moving party must establish that: (1) there is a substantial likelihood that the moving party ultimately will prevail on the merits; (2) the moving party will suffer irreparable injury absent the injunction; (3) the threatened injury outweighs whatever damage the injunction may cause the opposing party; and (4) the injunction will not harm the public interest.

### **A. Petitioner has not Established a Substantial Likelihood of Success on the Merits.**

Unsubstantiated allegations of error in the compliance review do not establish a substantial likelihood of success on the merits of the petition. *See, AA Logistic*, at 2, *In the Matter of WTW Enterprises, Inc.*, FMCSA-2011-0159, Preliminary Order on §385.15 Petition, (Nov. 21, 2011), at 2. In its Request for Stay, LEX Express offers no arguments on the merits of its §385.15 or §385.17 petitions. Further, in its §385.15 petition, Petitioner presents issues concerning the findings of the compliance review without submitting any evidence to support its arguments. Accordingly, Petitioner has failed to establish a substantial likelihood of success on the merits of its Request for Stay.

### **B. LEX Express has not Demonstrated Irreparable Injury.**

Petitioner argues that if a stay is not granted, Petitioner “cannot sustain the company business loss in revenues and customers.” Petitioner offers no evidence to support this assertion.

The Assistant Administrator has rejected similar claims of financial harm:

Petitioner has also not established that it will suffer irreparable injury if the proposed rating is not stayed. Petitioner makes the general assertion that its safety rating is critical to its business prospects, but provides no documentation or other specific information regarding potential lost business opportunities. More critically, Petitioner has

only presented argument that it may suffer monetary losses, which does not typically qualify as an irreparable injury.

*WTW Enterprises*, at 2. Here, as in *WTW Enterprises*, Petitioner makes a broad claim of financial harm, but fails to demonstrate that it cannot recover from a period of inactivity. Since Petitioner has failed to establish irreparable injury, the Assistant Administrator should deny the Request for Stay.

**C. The Injury to FMCSA Outweighs any Injury to LEX Express.**

To prevail, Petitioner must establish that its injury outweighs the damage to FMCSA. As noted above, Petitioner asserted a general financial injury without any evidence to support its claim. Staying an unsatisfactory safety rating harms FMCSA because, “A stay would interfere with the agency's ability to effectively monitor carrier compliance with safety requirements.” *AA Logistic*, at 2. Here, FMCSA’s interest in monitoring the safety requirements of Petitioner, a carrier with substantial safety problems, clearly outweighs the carrier’s interest in avoiding unspecified financial injury while FMCSA considers the pending petitions.

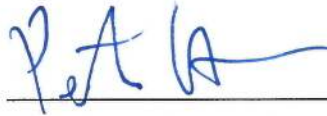
**D. A Stay would Harm the Public Interest.**

The Assistant Administrator has stated, “(S)hippers and the public in general have a substantial interest in being apprised of the safety status of motor carriers with whom they do business and share the roadway. Absent a clear showing that Petitioner has a substantial likelihood of prevailing on the merits, a stay of the unsatisfactory safety rating would misrepresent to the public the documented status of Petitioner's safety management programs.” *WTW Enterprises* at 2. As noted above, Petitioner has not demonstrated that it has a substantial likelihood of success on the merits of its petitions filed under §§385.15 or 385.17. Since a stay might confuse the public regarding the current safety status of Petitioner, a stay should not be granted.

### **III. CONCLUSION**

For the foregoing reasons, the Field Administrator submits that Petitioner's Request for a Stay of Petitioner's unsatisfactory safety rating should be denied.

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

This is to certify that on this 10<sup>th</sup> 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

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U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor  
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One Copy  
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