

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

In the Matter of:

**GRAHAM TRUCKING, INC.
USDOT# 318974**

Petitioner

**Docket No. FMCSA-2013-0486
(Western Service Center)**

**FINAL ORDER ON REQUEST FOR REVIEW OF CONDITIONAL
SAFETY RATING**

I. Procedural History

On November 15, 2013, Graham Trucking, Inc. (Petitioner) served a request for administrative review of its final Conditional safety rating. Petitioner's safety rating resulted from a compliance review that occurred on June 18, 2013. Petitioner acknowledged that its request was untimely, but asserted that the errors in citing the violations "can be so clearly seen" that I should consider the merits of its position.

II. Calculation of Petitioner's Safety Rating

FMCSA's safety fitness rating methodology (SFRM) is contained in Appendix B to 49 CFR, part 385. The SFRM evaluates six Factors to determine a motor carrier's overall safety rating.¹ The regulatory Factor ratings are scored based on violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials regulations (HMRs), the carrier's vehicle out-of-service rate, and its recordable accident

¹ The six factors are identified as: Factor 1 – General, Factor 2 – Driver, Factor 3 – Operational, Factor 4 – Vehicle, Factor 5 – Hazardous Materials, and Factor 6 – Accident.

rate.²

The ratings for Factors 1 through 5 are assigned based on violations of “acute” regulations and patterns of noncompliance with “critical” regulations.³ 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. However, two points are assessed for each pattern of noncompliance with a “critical” regulation in 49 CFR Part 395.⁴

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. The rating for Factor 4 is based, in part, on the motor carrier’s vehicle-out-of-service rate.⁵ A vehicle out-of-service rate greater than 34% will result in an initial conditional Factor 4 rating.⁶

Under the Safety Rating Table, an unsatisfactory rating in one Factor with two or

² The terms critical and acute are defined in 49 CFR Part 385, App. B, Section II. (b)(c). The critical and acute violations are listed in Section VII to App. B. A pattern of non-compliance when a number of records are reviewed is defined as a violation rate of 10% or more.

³ These regulations are identified in 49 CFR Part 385, App. B. Section VII.

⁴ 49 CFR Part 385, App. B., Section II. (h).

⁵ 49 CFR Part 385, App. B.II.A. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle out-of-service rate is 34 percent or greater, the initial Factor rating will be conditional.

⁶ *Id.* Patterns of noncompliance with critical or noncompliance with acute regulations under 49 CFR Part 396 may lower the Factor rating to unsatisfactory.

fewer Conditional Factors will result in a Conditional safety rating. A Conditional safety rating may also result when a carrier has no unsatisfactory Factor ratings but has more than two conditional Factor ratings.⁷ Petitioner's Conditional safety rating resulted from the discovery of violations of acute regulations in 49 CFR Part 383 and 49 CFR Part 391.⁸ These violations resulted in an unsatisfactory Factor 2 rating. Because of the one unsatisfactory Factor rating, under the Safety Rating Table, Petitioner received an overall Conditional safety rating.⁹

On or about June 21, 2013, Petitioner submitted a request for upgrade of its safety rating under 49 CFR 385.17 to the Field Administrator for FMCSA's Western Service Center.¹⁰ Petitioner averred that as of the date of the filing of the instant request for review under 49 CFR 385.15, the Field Administrator had not yet rendered a decision on its request for upgrade based on corrective action.

III. Discussion

FMCSA's Safety and Fitness Electronic Records (SAFER) System indicate that Petitioner's current safety rating is Satisfactory as of January 22, 2014.¹¹ In a petition filed under 49 CFR 385.15, the only relief for any alleged errors in calculating a safety

⁷ 49 CFR Part 385, App. B.III.

⁸ Petition, Compliance Review.

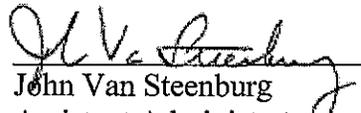
⁹ *Id.*

¹⁰ 49 CFR 385.17. Requests for upgrade based on corrective action are filed with and decided by the Field Administrator for the geographic area where the motor carrier maintains its principal place of business.

¹¹ <http://safer.fmcsa.dot.gov>

rating is an upgrade of Petitioner's safety rating.¹² Therefore, only errors affecting a safety rating will be addressed in a 49 CFR 385.15 proceeding. Petitioner's safety rating appears to have been upgraded to Satisfactory in the 49 CFR 385.17 proceedings. Therefore, even if Petitioner's allegations were accepted as true, there is no further relief that can be granted in these proceedings. The Petition is therefore rendered moot by the prior upgrade of Petitioner's safety rating to Satisfactory.

It is therefore ORDERED that Petitioner's request for review is moot; these proceedings are dismissed; and the docket is closed.


John Van Steenburg
Assistant Administrator

Federal Motor Carrier Safety Administration

1/27/14

Date

¹² 49 CFR 385.15.

CERTIFICATE OF SERVICE

This is to certify that on this 21 day of January, 2014, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

<p>Gary "Skip" Nash Director of Fleet Services Standard & Best of Oregon LLC 690 1st Ave., Suite 109 Canby, OR 97013-3417 <i>Petitioner's Representative</i></p>	<p>One Copy U.S. First Class Mail</p>
<p>Nancy Jackson Jedd Miloud Office of Chief Counsel Enforcement and Litigation Division Federal Motor Carrier Safety Administration Western Service Center 12600 West Colfax Avenue, Suite B-300 Lakewood, Colorado 80215 <i>Field Administrator's Attorneys</i></p>	<p>One Copy U.S. First Class Mail</p>
<p>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</p>	<p>Original Personal Delivery</p>