

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

In the Matter of:

**CENTRAL CONTROL
DELIVERY,
U.S. DOT # 463862**

Petitioner.

**Docket No. FMCSA-2014-0075
(Midwestern Service Center)**

**INTERIM ORDER ON PETITION FOR ADMINISTRATIVE REVIEW OF
UNSATISFACTORY SAFETY RATING**

On February 10, 2014, Central Control Delivery, Inc. (Petitioner), submitted a Request for Stay and Administrative Review of Pending Unsatisfactory Safety Rating Pursuant to 49 CFR 385.15. According to Petitioner, its proposed Unsatisfactory safety goes into effect on April 5, 2014, based on a January 27, 2014 compliance review (CR).¹

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.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

¹ Petition, Exhibit 2.

² Appendix B to 49 CFR Part 385, section III. A. (b).

³ These regulations are identified in Appendix B to 49 CFR Part 385, section VII.

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.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. Under the Safety Rating Table, an unsatisfactory rating in one rating factor will result in an overall Conditional rating, even if all other factors are rated satisfactory. A carrier's Factor 6 rating is determined by reference to its recordable accidents.⁵ A non-urban motor carrier with a recordable accident rate greater than 1.5 will receive an unsatisfactory Factor 6 rating.⁶

The compliance review results in a Conditional safety rating if the motor carrier has one unsatisfactory Factor rating and two or fewer conditional Factor ratings.⁷ Petitioner's overall Unsatisfactory safety rating resulted from an unsatisfactory rating for Factor 2 (Driver: Parts 382, 383, and 391) and for Factor 6 (Recordable accident rate). Its Factor 2 rating was based on a pattern of noncompliance with two critical regulations: 49 CFR 382.303(a) – failing to conduct post-accident alcohol testing on a driver following a recordable crash; and 49 CFR 382.303(b) – failing to conduct post-accident testing on driver for controlled substances. Its recordable accident rate was based on two

⁴ 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).

⁵ 49 CFR Part 385, Appendix B.II.B.

⁶ *Id.*

⁷ 49 CFR Part 385, App. B, III.

recordable accidents and an annual mileage figure of 672,305 miles for a recordable accident rate of 2.97 per million miles.

In its Petition, Petitioner challenges the violation of 49 CFR 382.303(a), wherein driver Jeffrey Jadrych was not tested for controlled substances following a recordable crash that occurred on March 21, 2013. Petitioner argues that it was not practicable to test this driver following the accident, as Jadrych was hospitalized for seven days and suffered from seven broken ribs, a collapsed lung, and a concussion. Petitioner claims that Jadrych does not recall the actual accident, and that it is not clear when Jadrych actually received the citation for the accident. Petitioner avers that Jadrych was not served with the citation within the 8-hour or 32-hour windows for post-accident testing and thus it cannot be liable for failing to test Jadrych. Petitioner concludes that removal of this violation would no longer make the § 382.303(a) and (b) violations “critical” and thereby result in an overall safety rating to Conditional.

The purpose of an administrative appeal under 49 CFR 385.15 is to determine whether FMCSA committed error in assigning a safety rating. Under § 385.15(b), the motor carrier’s request must explain the error it believes the Agency committed in assigning the rating and provide information or documents in support of its argument. Petitioner has the burden of demonstrating error in the issuance of the safety rating.⁸

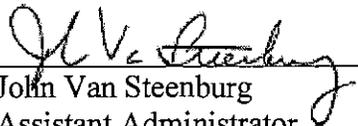
Although the administrative review procedures outlined in 49 CFR 385.15 do not require FMCSA to respond to Petitioner’s Petition, it would be beneficial for me to hear FMCSA’s position with respect to the issues raised in these proceedings.

⁸ *In the Matter of AA Logistic, Inc. f/k/a P & A Transport, Inc.*, FMCSA-2012-0206, Final Decision on Petition for Review of Safety Rating (Aug. 13, 2012).

Motion for Stay

Petitioner requested a stay of the effective date of its proposed Unsatisfactory safety rating. Petitioner argued that it has demonstrated a likelihood of success on the merits of its claim, and stated that it will suffer irreparable harm if the safety rating goes into effect. Under 49 CFR 385.15(e)(2), the Agency will complete its review of a petition for administrative review within 45 days after receiving a request from a motor carrier that has received a proposed or final Unsatisfactory safety rating. Adjudications counsel received Petitioner's request via electronic mail on February 10, 2014. In accordance with the regulation, a decision on Petitioner's request will be issued by March 27, 2014, which is well over a week before the effective date of the safety rating of April 5, 2014. Therefore, Petitioner's motion for a stay of the safety rating is denied as premature at this time. Petitioner may renew its motion for a stay at a later time.

Accordingly, it is hereby ORDERED that the Field Administrator for FMCSA's Midwestern Service Center must serve a response to Petitioner's Petition no later than 7 days following the date of service of this Order.



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

2/19/14
Date

CERTIFICATE OF SERVICE

This is to certify that on this 19 day of February, 2014, 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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