



**U.S. Department
of Transportation**
Federal Motor Carrier
Safety Administration

Midwestern Service Center
4749 Lincoln Mall Drive – Suite 300A
Matteson, IL 60443

July 2, 2015

GEMINI TRANSPORT LLC
9680 EAGLE ST
DEARBORN, MI 48120

Dear GEMINI TRANSPORT LLC:

A compliance review conducted at GEMINI TRANSPORT LLC (U.S. DOT# 1035057) on March 24, 2015 resulted in a safety fitness rating of “**Conditional**”. On May 22, 2015, GEMINI TRANSPORT LLC submitted a request to upgrade its safety rating based on corrective action that it has taken to come into compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) or Hazardous Materials Regulations (HMR).

In the compliance review completed on March 24, 2015, GEMINI TRANSPORT LLC was cited for violations of the FMCSR or HMR, including serious patterns of non-compliance in 49 CFR PARTS 395 and 396.

Your request for an upgrade and the Safety Management Plan (SMP) you submitted did not include sufficient evidence to justify an upgrade to GEMINI TRANSPORT LLC’s safety rating, and you have failed to demonstrate that adequate corrective actions have been taken to address the violations cited during the last compliance review. As required by 49 CFR § 385.17(c) the motor carrier must submit a written description of corrective actions taken and other documentation that may be relied upon as a basis for the requested change to the Conditional safety fitness rating.

After reviewing your request, the SMP, and the evidence submitted, the Federal Motor Carrier Safety Administration (FMCSA) is **denying** your request. You have failed to provide sufficient evidence that the violations cited in the compliance review have been corrected and that GEMINI TRANSPORT LLC current operation meets the safety fitness standard specified in 49 CFR § 385.5.

To upgrade a safety rating this office must be assured that corrective action has been taken and that the motor carrier’s current operations meet the safety fitness standard specified in 49 CFR § 385.5. You may submit another SMP and request for a change to the “Conditional” safety rating for reconsideration, or you may petition for an administrative review pursuant to 49 CFR § 385.15 within 90 days of this denial. [See 49 CFR § 385.17(j)]

If you choose to petition under 49 CFR § 385.15, your petition must be submitted in writing to the Assistant Administrator, Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, W60-312, Washington, D.C. 20590.

If GEMINI TRANSPORT LLC chooses to submit another request for an upgrade to the “**Conditional**” safety rating, in addition to the guidance already provided, you must address the following in your next SMP.

1. **CRITICAL Violation 49 CFR § 395.8(e) – False reports of records of duty status.**

Your SMP indicates that the motor carrier has done everything possible over the last four years to gain full compliance and that some drivers will not comply. The SMP states that carrier officials will be researching different e-log providers, deciding on a provider, and then installing e-logs over the next nine months.

Your SMP **failed** to demonstrate current compliance with all of the Hours of Service (HOS) regulations and failed to provide any evidence of disciplinary actions taken against drivers found to be in violation of HOS rules. Also, your SMP failed to identify individuals responsible for monitoring Records of Duty Status (RODS) for compliance and managing the disciplinary program.

Your SMP must address the following:

- A detailed description of your system for monitoring and controlling Hours of Service (HOS) and verifying the accuracy of driver’s Records of Duty Status (RODS) to ensure HOS compliance in the future, including at a minimum the following:
 - The titles of personnel responsible for verifying the accuracy of RODS and checking for HOS violations;
 - Training and/or experience of person checking the RODS;
 - The responsibilities of dispatchers in monitoring drivers’ HOS;
 - The procedures for verifying the accuracy of RODS;
 - A description of how you check for falsification of RODS;
 - The frequency of RODS checks and audits.
- Provide a detailed RODS audit summary for current drivers, which must include at a minimum the following:
 - The number of RODS checked by driver for compliance with the 11, 14, and 70 hours of service regulations.
 - The number of violations discovered by driver pursuant the 11, 14, and 70 hour of service regulations.
 - The number of RODS checked by driver for accuracy (falsification).
 - A list of all supporting documents used, by driver to check the RODS accuracy, including whether the document includes the date, time, location and driver/vehicle identification.

- The number of RODS determined to be false.
- A description of the false RODS and the supporting document used determine falsification.
- Provide one example (copy) of each type of supporting document used to verify the accuracy of driver RODS.
- A summary of each driver found to be in violation of an HOS regulation by date and violation discovered (i.e., 11-hour, 14-hour, 60/70-hour, or false RODS).
- A description of disciplinary action taken against the driver, including evidence of disciplinary action taken against each driver.
- Your RODS audit summary report must clearly define for each driver and the cumulative totals of all drivers, the number of RODS checked for each HOS regulation cited above and the number of violations discovered for each regulation cited above.

Additionally, your summary must include a sufficient time period to properly evaluate any corrective measures implemented and to ensure that the plan is effective in reducing ALL 49 CFR § Part 395 HOS violations and any other evidence necessary to demonstrate corrective action(s) has resulted in HOS compliance.

- Provide a detailed description of your **progressive disciplinary program** specific to HOS compliance and RODS falsification.
 - Name(s) of person(s) responsible for administering the driver HOS disciplinary program;
 - Develop a written or provide a copy of your progressive disciplinary policy given to drivers for noncompliance with HOS for 1st, 2nd, 3rd offense, etc. The disciplinary policy should include written reprimands or warnings, remedial training, suspensions without pay and termination;
 - The disciplinary policy should include violations for:
 - Violation of 11, 14, and 70 hour rule;
 - Falsification/Incorrect RODS;
 - Failure to turn in RODS within 13 days;
 - Failure to submit supporting documents with RODS;
 - Failure to prepare RODS.
 - Copies of written reprimands or warnings issued within the last 90 days;
 - HOS remedial training;
 - The violations and actions to be taken by the company need to be clearly defined.

Critical Violation 49 CFR § 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.

The SMP indicates that an agreement is in place with Wolverine Freightliner to have an annual inspection equivalent completed on their trucks twice a year.

The SMP does not provide details on your procedures to ensure Daily Vehicle Inspection Reports (DVIRs) are prepared and retained when defects are discovered. The SMP does not provide any details on your policy or procedures for repairing defects reported on DVIRs or indicate the individuals responsible for ensuring repairs are made.

Your SMP must address the following:

- You must provide copies of Daily Vehicle Inspection Reports (DVIRs) for all drivers required to prepare a DVIRs for the most recent 30 day period of your SMP;
- You must explain how you will ensure commercial motor vehicles declared out-of-service (whether at the roadside or on the driver vehicle inspection report) are repaired before operating them;
- Submit a copy of your disciplinary plan for drivers who fail to prepare driver vehicle inspection reports;
- Provide evidence of any disciplinary action taken against a driver or employee who fails to prepare a driver vehicle inspection report.

You may assess the violation data available from the Motor Carrier Safety Measurement System (SMS) (<http://www.safer.fmcsa.dot.gov>) to identify specific violation trends. (Ex. - tires, brakes, lights, etc).

Submit your request for a change in safety rating to:

Jon Dierberger, Field Administrator
Federal Motor Carrier Safety Administration
4749 Lincoln Mall Drive, Suite 300A
Matteson, IL 60443

Ensure that a copy of your request is mailed to:

Patrick Muinch, Division Administrator
Federal Motor Carrier Safety Administration
315 West Allegan, Room 219
Lansing, MI 48933

Please continue your efforts to improve your compliance with the FMCSR HMR. Should you have any questions, please feel free to contact the Enforcement team at 708-283-3555.

Sincerely,



Jon Dierberger
Field Administrator

CC: Patrick Muinch, Division Administrator, MI

385.17 DECISION TRACKING FORM

Carrier Name: GEMINI TRANSPORT LLC

U.S. DOT # 1035057 Division MI

Violations Resulting in Rating:

395.8(e)

396.11(a)

Rating prior to CR: CONDITIONAL Date: 08/05/2011

Rating: CONDITIONAL Effective Date: 05/27/2015

Date of Compliance review: 03/24/2015 Date of request for upgrade and SMP: 05/22/2015

Division Recommendation: Date: 05/27/2015

Approve: DENY: X N/A:

EPS Review: Concur with recommended action

Yes: X No: Initials: CDJ Date: 6/2/2015

Comments:

The SMP failed to provide any evidence of current compliance for the violations resulting in the adverse rating.

EPC Review: Concur With Recommended Action:

Yes: [check] No: Initials: DM Date: 6/2/15

Comments:

FA Review: Concur With Recommended Action:

Yes: [check] No: Initials: [signature] Date: 7/2/15

Comments:

Legal - Yes PR 6-23/15