



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Midwestern Service Center

19900 Governors Drive  
Suite 210  
Olympia Fields, IL 60461-1021

Phone: (708) 283-3555

Fax: (708) 283-3565

**Certified/ Return Receipt Requested**

February 1, 2006

Rob Estes, President And CEO  
Estes Express Lines, Inc.  
3901 West Broad Street  
Richmond, VA 23230-3962

**NOTICE OF CLAIM<sup>1</sup>** -- Violations of 49 CFR § 172.202(a); 172.800(b); 385.403.

**CIVIL PENALTY: \$19,480**

**Case Number: IL-2006-0268-US0769**

**US DOT Number: 121018**

Dear Mr. Estes:

A safety compliance review was conducted at your offices in Chicago, Illinois on December 9, 2005. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against Estes Express Lines, Inc. for the amount of \$19,480.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. **Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit Estes Express Lines, Inc. from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.**

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1) A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal Laws.

## SUMMARY OF VIOLATIONS

Your company is charged with:

1. One (1) violation of 49 CFR § 172.202(a)- Failing to enter the proper description of a hazardous material on a shipping paper.
2. One (1) violation of 49 CFR § 172.800(b)- Offering or transporting without a security plan that conforms to the Subpart requirements
3. One (1) violation of 49 CFR § 385.403- Transporting quantities of hazardous materials that requires a Hazardous Materials Safety Permit after January 1, 2005 following the date that the motor carrier is required to file a Motor Carrier Identification Report Form (MCS-150) according to the schedule set forth in §390.19(a).

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

## NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

1. Do not offer a shipment of hazardous materials for transportation unless a properly prepared shipping paper, including quantity, proper DOT shipping name, hazard class, identification number, packing group, additional description requirements if applicable, and a valid emergency response telephone number is provided to the motor carrier in accordance with 49 CFR Parts 172 and 177.
2. Do not transport placarded quantities of hazardous materials in commerce without developing and implementing a hazardous materials security plan as required.
3. Do not transport any hazardous material that requires a hazardous materials safety permit (HMSP) unless your company first implements all of the requirements for holding a HMSP and obtains a HMSP in accordance with 49 CFR Part 385 Subpart E.

### Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions. Under Section 222 of the Motor Carrier Safety Improvement Act of 1999, recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) that result in three or more enforcement actions within a six-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violations with a checkmark in the "§ 222 Applied" column in the penalty table below are subject to this "Section 222" provision and the maximum penalties have been assessed. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

## PENALTY

### Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

### Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901 (c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

### Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the compliance review, but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA is proposing a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION<sup>2</sup></u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>§222 APPLIED</u>	<u>TOTAL</u>
172.202(a)	HM	1	\$4,290.00		\$4,290.00
172.800(b)	HM	1	\$11,060.00		\$11,060.00
385.403	HM	1	\$4,130.00		\$4,130.00

**Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$19,480.**

## HOW TO REPLY TO THE NOTICE OF CLAIM

2) CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalties assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commerical Regulations.

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) **PAYMENT OF PENALTY:** Within 25 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at (708) 283-3555.

All payments must be by cashier or certified check, or money order made payable to the FMCSA and mailed to: United States Department of Transportation, Federal Motor Carrier Safety Administration, Midwestern Service Center, 19900 Governors Drive, Suite 210, Olympia Fields, IL 60461-1021. Personal or company checks will not be accepted and will be returned. Alternatively, you may pay electronically through our SAFER website at <http://safer.fmcsa.dot.gov/> by selecting "Online Fine Payment".

**Payment of the penalty will constitute admission of the violation(s) set forth in the Notice of Claim and these violations shall constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.**

(2) **REQUEST FOR A HEARING:** You may request a hearing on the record on any material issues of fact in dispute. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within 15 days after service of this Notice of Claim.

(3) **SUBMISSION OF EVIDENCE AND ARGUMENT WITHOUT HEARING:** You may also contest the allegations in the Notice of Claim without a formal hearing. To do so, you must serve notice of your intention to proceed in this manner by filing a written Reply within 15 days after service of this Notice of Claim (49 CFR §§ 386.14(b)(2) and 386.14(c)). Service of the notice of intent must also be made upon the Chief Safety Officer (Assistant Administrator) and all representatives listed in the Service List that is attached to this Notice of Claim. If you choose this option, you and the FMCSA Field Administrator for this Service Center are required to serve all written evidence and written argument on each party listed on the Service List and on the Chief Safety Officer for the Federal Motor Carrier Safety Administration, Attn: Dockets, 400 7th Street, S.W., Room PL-401, Washington D.C. 20590, within 40 days of the service date of this Notice of Claim (include a copy of

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this Notice of Claim with your initial filing to the Docket). All evidence must be in the form described in 49 CFR § 386.49, Form of Written Evidence. The Chief Safety Officer for the Federal Motor Carrier Safety Administration will make a final decision based on the written evidence and written argument submitted by all of the parties.

(4) **BINDING ARBITRATION AVAILABILITY:** If you dispute **only** the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Chief Safety Officer will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Chief Safety Officer's decision regarding your request. You can choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: <http://www.fmcsa.dot.gov/>. You can also request a copy of the guidelines from the Service Center.

**YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR §386.31.**

**THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 WILL BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN FIFTEEN (15) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.**

**FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE EXACT MANNER SPECIFIED IN 49 CFR § 386.14 WILL BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(e), A FAILURE TO REPLY WILL CAUSE THIS NOTICE OF CLAIM TO BECOME THE FINAL AGENCY ORDER IN THIS PROCEEDING TWENTY-FIVE (25) DAYS AFTER IT IS SERVED.**

**A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(b). UNLESS A CONCISE STATEMENT OF FACTS CONSTITUTING EACH DEFENSE IS PROVIDED IN YOUR REPLY, A DEFAULT MAY BE ENTERED AGAINST YOU.**

**IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.**

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Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,

Steven M. Mattioli  
Division Administrator  
Federal Motor Carrier Safety Administration

Enclosures

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## **APPLICABLE STATUTES**

Violations of the provisions of the hazardous materials transportation statutes (49 U.S.C. 5101 et seq.) and the Hazardous Materials Regulations (HMRs)(49 C.F.R. Parts 171-180), issued pursuant to these statutes, are subject to a civil penalty of not more than \$32,500 and not less than \$275 for each violation. (49 USC § 5123, 68 Fed. Reg. 15381(March 31, 2003)). Each day the violation continues shall constitute a separate offense.

## STATEMENT OF CHARGES

**Violation 1 --- 49 CFR 172.202(a) - Failing to enter the proper description of a hazardous material on a shipping paper.**

**CHARGE #1:**

On or about 11/30/2005, Estes Express Lines, Inc. offered Organic Peroxide Type F Liquid, 5.2, UN3109, II, a hazardous material, for transportation from Alsip, IL to Elyria, OH. The shipment was not accompanied by a properly prepared shipping paper.

**Violation 2 --- 49 CFR 172.800(b) - Offering or transporting without a security plan that conforms to the Subpart requirements**

**CHARGE #1:**

On or about 10/17/2005, Estes Express Lines, Inc. offered Nitric Oxide Compressed, 2.3, UN1660, Poison Inhalation Hazard Zone A, a hazardous material, for transportation from Alpha, NJ to Boise, ID. At the time the shipment was accepted and transported the carrier did not have an acceptable hazardous materials security plan.

**Violation 3 --- 49 CFR 385.403 - Transporting quantities of hazardous materials that requires a Hazardous Materials Safety Permit after January 1, 2005 following the date that the motor carrier is required to file a Motor Carrier Identification Report Form (MCS-150) according to the schedule set forth in § 390.19(a).**

**CHARGE #1:**

On or about 10/12/2005, Estes Express Lines, Inc. used driver [REDACTED] to transport one 9" X 51" cylinder (weighing approximately 160 pounds) of "Nitric Oxide Compressed, 2.3, UN1660, Poison Inhalation Hazard, Zone A," from Alpha, NJ to Parsippany, NJ. At the time this transportation was provided or arranged, Estes Express Lines, Inc. did not have a hazardous materials safety permit, as required.



## SERVICE LIST

This is to certify that on February 1, 2006, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

Rob Estes, President And CEO  
Estes Express Lines, Inc.  
3901 West Broad Street  
Richmond, VA 23230-3962

Original  
Certified/ Return Receipt Requested

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

One Copy  
Personal Delivery

U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
FMCSA Docket Clerk  
Midwestern Service Center  
1990 Governors Drive  
Suite 210  
Olympia Fields, IL 60461-1021

One Copy  
U.S. Mail or Electronic Mail

U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
Peter Snyder, Attorney  
1990 Governors Drive  
Suite 210  
Olympia Fields, IL 60461-1021

One Copy  
U.S. Mail or Electronic Mail

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**EXHIBIT A**

**SUBJECT : Estes Express Lines, Inc.**

**CASE NUMBER : IL-2006-0268-US0769**

Policy from Estes Express Lines, Inc. regarding transportation of hazardous materials that warrant a hazardous materials safety permit.

**EXHIBIT B**

**SUBJECT : Estes Express Lines, Inc.**

**CASE NUMBER : IL-2006-0268-US0769**

Table 1: Violations Discovered During Review/Inspection.

**SUBJECT : Estes Express Lines, Inc.**

**CASE NUMBER : IL-2006-0268-US0769**

**Violation --- 49 CFR 172.202(a) - Failing to enter the proper description of a hazardous material on a shipping paper.**

**CHARGE**

On or about 11/30/2005, Estes Express Lines, Inc. offered Organic Peroxide Type F Liquid, 5.2, UN3109, II, a hazardous material, for transportation from Alsip, IL to Elyria, OH. The shipment was not accompanied by a properly prepared shipping paper.

**SUPPORTING DOCUMENTS**

Pro 028-2119918

Estes Express Lines Road Manifest 028-34407

Union Carbide Bill of Lading for Type F Liquid Organic Peroxide, 5.2(8), UN3109, II

MSDS for Organic peroxide type F, liquid

Extract from the HM Table with the proper shipping name for UN3109

**SUBJECT : Estes Express Lines, Inc.**

**CASE NUMBER : IL-2006-0268-US0769**

**Violation --- 49 CFR 172.800(b) - Offering or transporting without a security plan that conforms to the Subpart requirements**

**CHARGE**

On or about 10/17/2005, Estes Express Lines, Inc. offered Nitric Oxide Compressed, 2.3, UN1660, Poison Inhalation Hazard Zone A, a hazardous material, for transportation from Alpha, NJ to Boise, ID. At the time the shipment was accepted and transported the carrier did not have an acceptable hazardous materials security plan.

**SUPPORTING DOCUMENTS**

Estes Express Security Plan prepared 09/25/2003

Estes Express Lines Pro 084-0649034 Shipping paper for 2.3 Zone A Poison Inhalation Hazard

Material Safety Data Sheet for Nitric Oxide Compressed

**SUBJECT : Estes Express Lines, Inc.**

**CASE NUMBER : IL-2006-0268-US0769**

**Violation --- 49 CFR 385.403 - Transporting quantities of hazardous materials that requires a Hazardous Materials Safety Permit after January 1, 2005 following the date that the motor carrier is required to file a Motor Carrier Identification Report Form (MCS-150) according to the schedule set forth in § 390.19(a).**

**CHARGE**

On or about 10/12/2005, Estes Express Lines, Inc. used driver [REDACTED] to transport one 9" X 51" cylinder (weighing approximately 160 pounds) of "Nitric Oxide Compressed, 2.3, UN1660, Poison Inhalation Hazard, Zone A," from Alpha, NJ to Parsippany, NJ. At the time this transportation was provided or arranged, Estes Express Lines, Inc. did not have a hazardous materials safety permit, as required.

**SUPPORTING DOCUMENTS**

List of carriers who have a hazardous materials safety permit (permanent and temporary) for Virginia on 12/10/2005

Driver's Pick-Up Manifest for 091 [REDACTED] Pro 084-0649034

Pro 084-0649034

HM Training record for [REDACTED] terminal PAR 084, from Estes Express Lines, Inc.

MSDS For Nitric Oxide Compressed

Exhibit A: Policy from Estes Express Lines, Inc. regarding transportation of hazardous materials that warrant a hazardous materials safety permit.