

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

Rocky Lee Brown dba Moonlight Express ) **Order No.: NC-2014-5000-IMH**  
USDOT 2403330 )  
 ) **Service**  
 ) **Date:** \_\_\_\_\_  
 )  
Rocky Lee Brown ) **Service**  
 ) **Date:** \_\_\_\_\_  
 )

**IMMINENT HAZARD**  
**OPERATIONS OUT-OF-SERVICE ORDER**

This is an Imminent Hazard Operations Out-of-Service Order (“Order”) issued by the Secretary of Transportation pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1) and (5), and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration (“FMCSA”), United States Department of Transportation (“USDOT”), Atlanta, Georgia. This Order applies to Rocky Lee Brown dba Moonlight Express (USDOT# 2403330) and Rocky Lee Brown, individually (referred to collectively herein as “Moonlight Express”) and to all vehicles owned or operated by Moonlight Express, including without limitation the commercial motor vehicles identified in Schedule A, attached hereto.

The Secretary and FMCSA find Moonlight Express’s operations and the continued operation of any commercial motor vehicle (including without limitation those identified in Schedule A), referred to herein as “commercial motor vehicles” and/or “vehicles” constitutes an imminent hazard. This finding means that based upon Moonlight Express’s present state of unacceptable safety compliance, its operation of any commercial motor vehicle poses an imminent hazard to public safety.

**Effective immediately, Moonlight Express must cease operating any commercial motor vehicle, including but not limited to the commercial motor vehicles listed in Schedule A.** “Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. Moonlight Express’s commercial motor vehicle(s), including but not limited to the commercial motor vehicles listed in Schedule A, may not be operated in interstate or intrastate commerce by any other motor carrier or any driver. Any movement of Moonlight Express’s commercial motor vehicles, specifically including the commercial motor vehicles identified in Schedule A, to any storage or repair or other location for the purposes of repair, sale, storage, or final destination must be accomplished only by towing, such that the commercial motor vehicle itself is not driven or operated. Moonlight Express’s commercial motor vehicles may be moved only upon the written approval of the Field Administrator for FMCSA’s Southern Service Center.

Commercial motor vehicles and their drivers now in interstate or intrastate commerce may proceed to their next immediate destination, which is defined as the next scheduled stop for vehicles already in motion where the cargo can be safely secured. (*See* 49 C.F.R. § 386.72(b)(4) and (5)).

**MOONLIGHT EXPRESS MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL CARGO, NOR MAY MOONLIGHT EXPRESS OPERATE ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.**

**Within eight (8) hours of the service of this Order, Moonlight Express must submit to the Field Administrator in writing by facsimile the location of each of its commercial**

**motor vehicles, including without limitation the vehicles identified in Schedule A hereto.**

The submission must be sent to:

Field Administrator

404-327-7349 (facsimile)

## **I. JURISDICTION**

Moonlight Express is a property motor carrier engaged in interstate commerce using commercial motor vehicles and employing drivers and is therefore subject to the Federal Motor Carrier Safety Regulations (FMCSRs), 49 C.F.R. Parts 350-399, and the alcohol and controlled substances regulations at 49 C.F.R. Part 40, as well as the Orders of the USDOT and FMCSA. (*See* 49 U.S.C. §§ 506, 507, 5121, 13501, 31133, 31136, and 31144). Rocky Lee Brown is the individual who owns, manages, controls, directs or otherwise oversees the operations of Moonlight Express. Moonlight Express is required to comply with, and to ensure that its drivers comply with, the FMCSRs and Orders of the USDOT and FMCSA. (49 C.F.R. § 390.11). This Order has the force and effect of any other Order issued by the FMCSA and is binding upon Moonlight Express and Rocky Lee Brown, as well as any and all of its officers, members, directors, successors, assigns and closely affiliated companies. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by Moonlight Express, including but not limited to the vehicles identified in Schedule A hereto.

## **II. BASIS FOR ORDER**

The basis for determining that Moonlight Express's motor carrier operations pose an imminent hazard to the public is Moonlight Express's widespread and serious noncompliance with Federal safety regulations.<sup>1</sup> Moonlight Express fails to ensure that its commercial motor

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<sup>1</sup> Rocky Lee Brown, as the owner, is responsible for ensuring Moonlight Express's compliance with the FMCSRs.

vehicles are systematically and properly inspected, repaired and maintained and meet minimum safety standards. Moonlight Express does not maintain all required vehicle records with the date and nature of inspections, repairs, and maintenance conducted on its commercial motor vehicles. Moonlight Express does not have annual inspection forms for its vehicles and does not require its drivers to list vehicle numbers on their records of duty status or prepare driver vehicle inspection reports. Moonlight Express is also operating commercial motor vehicles in such a condition as to likely cause an accident or breakdown. Moonlight Express's nonexistent and inadequate maintenance program substantially increases the risk of serious injury or death and is an imminently hazardous and potentially deadly condition for Moonlight Express's drivers and the motoring public.

Moonlight Express also fails to oversee and monitor its drivers. Moonlight Express is not following FMCSA driver qualification requirements to ensure that its drivers are qualified to operate its vehicles. Moonlight Express has no driver qualification file for 4 of its 6 drivers and has incomplete driver qualification files for its other 2 drivers. Moonlight Express's files show that only 1 of its drivers has a current medical certificate. Moonlight Express also allowed a driver with a suspended commercial driver's license to operate its commercial motor vehicles. Moonlight Express's continued and blatant disregard for the FMCSRs substantially increases the likelihood of serious injury or death and is an imminently hazardous and potentially deadly risk for its drivers and for the motoring public.

Further, Moonlight Express does not have safety management practices in place to ensure its drivers are preparing and submitting accurate records of duty status and that they comply with the maximum hours of service limitations. Moonlight Express is not requiring its drivers to turn in all records of duty status. Indeed, Moonlight Express provided no documents in response to

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FMCSA's demand for copies of driver payroll records, fuel receipts, and bills of lading, effectively preventing FMCSA investigators from determining the dates and times that Moonlight Express drivers operated its commercial motor vehicles. Moonlight Express's blatant refusal to oversee its drivers' hours of service substantially increases the likelihood of serious injury or death for its drivers and for the motoring public.

Moonlight Express's compliance with FMCSA-mandated controlled substances and alcohol use and testing requirements is also egregiously deficient. Moonlight Express is allowing drivers to operate its vehicles when the drivers are not subject to random testing for controlled substances or alcohol. Moonlight Express also allows drivers to operate commercial motor vehicles before receiving a negative pre-employment controlled substance test result. Moonlight Express's irresponsible actions in allowing unqualified drivers to operate its commercial motor vehicles substantially increases the likelihood of serious injury or death to Moonlight Express's drivers and the motoring public.

Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to Moonlight Express's drivers and the motoring public.

### **III. BACKGROUND**

#### **A. Rocky Lee Brown**

Rocky Lee Brown conducts motor carrier operations under the trade name Moonlight Express<sup>2</sup>. Mr. Brown also conducts motor carrier operations under the trade name Rose Trucking (Rose Trucking).<sup>3</sup> The two operations are in effect one company, a sole

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<sup>2</sup> On May 6, 2013, Mr. Brown filed a MCS-150 for Rocky Lee Brown, dba Moonlight Express.

<sup>3</sup> Roadside inspections show that Mr. Brown ran Moonlight Express and Rose Trucking concurrently. Mr. Brown uses substantially the same drivers and commercial motor vehicles.

proprietorship owned and operated by Rocky Lee Brown, operating under two trade names with separate USDOT numbers. On September 18, 2013, FMCSA declared Rose Trucking out-of-service following a compliance investigation of Rose Trucking which resulted in an Unsatisfactory rating. FMCSA also brought an enforcement action against Rose Trucking for violations of the FMCSRs. Rose Trucking currently has alert BASICS in Unsafe Driving (73.9%), Hours of Service Compliance (74.8%), Driver Fitness (98.8%), Vehicle Maintenance (97.7%), and Crash Indicator (94.9%).

Mr. Brown has an extensive compliance and enforcement history with FMCSA through Rose Trucking, which includes a new entrant Safety Audit, two compliance reviews, two enforcement actions, and an Order to Cease Operations. Mr. Brown is clearly familiar with the FMCSRs. As the owner of Moonlight Express, Mr. Brown is responsible for ascertaining what the regulations require and complying with those regulations.

In the OP-1 Form filed for Moonlight Express, Mr. Brown falsely claimed that he had no affiliation with any other FMCSA-regulated entity within the past 3 years. In fact, Mr. Brown is and was the owner of Rose Trucking. Mr. Brown also falsified the MCS-150 Form he filed for Moonlight Express when he listed its principal place of business as 1301 E. Church Street, Cherryville, North Carolina. The building at that address is vacant, and Mr. Brown does not maintain any motor carrier records at that location. During the investigation, many of Moonlight Express's vehicles were parked in the yard at Mr. Brown's home.

#### **B. Moonlight Express**

On or around October 21, 2013, FMCSA started an investigation of Moonlight Express as part of its Operation Safe Driver initiative. FMCSA's investigation uncovered widespread regulatory violations demonstrating Moonlight Express's continuing, repeated and egregious

non-compliance with the FMCSRs and a management philosophy indifferent to motor carrier safety.<sup>4</sup> Moonlight Express's carrier operations are reckless, with almost nonexistent management safety oversight of its drivers and operations.

Moonlight Express does not have a systematic vehicle inspection, repair, and maintenance program in place to prevent the operation of unsafe motor vehicles<sup>5</sup> and was unable to produce all -- or even many -- of the required vehicle records containing the date and nature of inspections, repairs, and maintenance conducted.<sup>6</sup> Moonlight Express has no annual inspection forms in its maintenance files. Indeed, Moonlight Express has few maintenance records. Moreover, Moonlight Express could not identify the dates that its vehicles operated in interstate or intrastate commerce because the carrier does not require drivers to list the vehicle numbers on their records of duty status.<sup>7</sup> This confusion is exacerbated because Moonlight Express often exchanges license plates between and among its several vehicles. For instance, Moonlight Express uses license plate # MC9684 and at other times uses license plate number ML5915 on its commercial motor vehicle VIN 1FUYSSEB3WL820382. License plates numbers MC8812 and ML5916 were used by Moonlight Express and Rose Trucking on

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<sup>4</sup> As part of its investigation, FMCSA completed a compliance review of Moonlight Express. Moonlight Express received a proposed safety rating of "Unsatisfactory."

<sup>5</sup> See 49 C.F.R. § 396.3(a) ("Every motor carrier...must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicle...equipment subject to its control.")

<sup>6</sup> See 49 C.F.R. § 396.3(b) (Motor carriers must maintain records for each motor vehicle they control for 30 consecutive days. The required records include: (1) an identification of the vehicle including company number, if so marked, make, serial number, year, and tire size; (2) a means to indicate the nature and due date of the various inspection and maintenance operations to be performed; and (3) a record of inspection, repairs, and maintenance indicating their date and nature.)

<sup>7</sup> See 49 C.F.R. § 395.8(d)(3) (Motor carriers shall require every driver to record the truck or tractor and trailer number used on drivers' records of duty status.)

commercial motor vehicle VIN 1FUVDSEB9VL816409.

Moonlight Express is also operating commercial motor vehicles in such a condition as to likely cause an accident or breakdown.<sup>8</sup> On August 29, 2013, the Kentucky State Police declared a Moonlight Express vehicle out-of-service (OOS) following a roadside safety inspection. The vehicle had 17 separate safety violations, including 7 out-of-service violations:

<u>Code Section</u>	<u>OOS</u>	<u>Violations Discovered</u>
393.83(g)	Y	Exhaust leak under truck cab and/or sleeper – the exhaust pipe and muffler are not connected and allowing exhaust to escape
393.207(f)	N	Air suspension pressure loss – The left rear air bag on the rear of the sleeper has an audible air leak
393.207(f)	N	Air suspension pressure loss – The right rear air bag on the rear of the sleeper has an audible air leak and duct taped up
393.81	N	Horn inoperative – The city and air horn are inoperative on the tractor
393.209(d)	Y	Steering system components worn, welded, or missing – The drag link is worn and can be moved with hand pressure
393.207(a)	Y	Axle positioning parts defective/missing – Axle #2 has the bushing missing out of the torque rod
393.47(e)	N	Clamp type brake out-of-adjustment – Axle #2 left side brake measured 3” and is only allowed 2”
393.53(b)	N	CMV manufactured after 10/19/94 has an automatic airbrake adjustment system that fails to compensate for wear
390.21(a)	N	Not marked in accordance with regulations – The left and right reflective L’s are missing from the rear of the trailer
393.47(e)	N	Clamp type brake out-of-adjustment – Axle # 4 left side brake measured 2¼” and is only allowed 2”
393.53(b)	N	CMV manufactured after 10/19/94 has an automatic airbrake adjustment system that fails to compensate for wear
393.45	Y	Brake tubing and hoses; hose assemblies and end fittings – Axle # 5 left side has a hole in the line out of the chamber
393.48(a)	Y	Inoperative/defective brakes – Axle # 5 left side brake has no movement when the brake is applied
393.48(a)	Y	Inoperative/defective brakes – Axle # 5 right side brake has no movement when the brake is applied
396.3(a)(1)	N	Inspection, repair and maintenance of parts & accessories – Axle # 4 left and right side tank bolts are loose
396.3(a)(1)	N	Inspection, repair and maintenance of parts & accessories – Axle # 5 left and right side tank bolts are loose
396.3(a)(1)	Y	Brakes out of service: The number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combined

<sup>8</sup> See 49 C.F.R. § 396.7(a) (“A motor vehicle shall not be operated in such a condition as to likely cause an accident or breakdown of the vehicle.”)



On September 9, 2013, the Ohio State Highway Patrol declared a second Moonlight Express vehicle out-of-service subsequent to a roadside safety inspection. The vehicle had 11 safety violations, including 4 out-of-service violations:

<u>Section/Code</u>	<u>OOS</u>	<u>Violations Discovered</u>
392.9(a)(1)	N	Failing to secure cargo as specified in 49 CFR 393.100 through 393.142, ref 393.104(c) right side rear cargo door does not latch at bottom
396.17(c)	N	Operating a CMV without periodic inspection; last inspection shown was completed July 2012
393.45(d)	N	Brake connections with leaks or constrictions, audible air leak from end seal of junction valve left side of firewall under hose, system maintains
396.3(a)(1)	N	Brakes: rust holes in back of brake chamber left side #2 axle
393.43	Y	No or improper breakaway or emergency braking, air escapes from emergency side glad hand on brake application, primary side drops below 20 PSI valve inoperable
396.17(c)	N	Operating a CMV without periodic inspection, last inspection shown completed October 2011
393.75(c)	N	Tire-other tread depth less than 2/32 of inch, right inside tire #5 has several sections of zeros tread across tire
396.3(a)(1)	Y	Brakes: spring brake chamber dented, unmanufactured hole in spring brake section #4 axle left side
393.47(e)	N	Clamp or Roto type brake out-of-adjustment, right side #4 brake pushrod travel measured 2 ½ inches, 2 inches allowed
393.48(a)	Y	Inoperative/defective brakes, right side #5 brake not operable, brake pushrod not attached to slack adjuster
396.3(a)(1)	Y	Brake Out of Service: The number of defective brakes is equal to or greater than 20 percent of the service brakes on the vehicle or combination

Further, Moonlight Express is not requiring its drivers to prepare driver vehicle inspection reports that identify vehicle defects.<sup>9</sup> During the investigation, Moonlight Express could not

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<sup>9</sup> 49 C.F.R. § 396.11(a) states: Every motor carrier must require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated.... The report shall cover at least the following parts and accessories:

- Service brakes including trailer brake connections
- Parking (hand) brake
- Steering mechanism
- Lighting devices and reflectors
- Tires
- Horn
- Windshield wipers
- Rear vision mirrors

produce any driver vehicle inspection reports. With a BASIC score of 97.7% for Vehicle Maintenance, Moonlight Express is among the worst ranked motor carriers in the nation for poor vehicle safety performance. Moonlight Express's dispatch of vehicles that have not passed annual inspections, combined with evidence of a clearly ineffective or nonexistent vehicle maintenance program, substantially increases the likelihood of serious injury or death if not the company's operations are not discontinued immediately.

Moonlight Express also fails to follow FMCSA driver qualification requirements to ensure that its drivers are qualified to operate its commercial motor vehicles. At the investigation, Mr. Brown could not immediately identify all drivers employed by Moonlight Express. When asked to complete a driver list form, Mr. Brown wrote only his own name and his father's name on the form. After being apprised that FMCSA had confirmed the names of other Moonlight Express drivers through roadside inspections, Mr. Brown listed six additional names on the driver list form but stated that two of these drivers had not yet been hired.

Moonlight Express had no driver qualification files for four of the six drivers. Mr. Brown could not provide hire dates, termination dates, dates of birth, or driver's license numbers for any of those four drivers. Moonlight Express had incomplete driver qualification files for the other two drivers. Further, Moonlight Express allowed driver R.M. to operate its commercial motor vehicle with a suspended commercial driver's license. On June 13, 2013, the North Carolina State Highway Patrol stopped driver R.M. for a Level II inspection and placed driver R.M. out-of-service for driving a commercial motor vehicle with a suspended

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- Coupling devices
  - Wheel and rims
  - Emergency equipment)

commercial driver's license.<sup>10</sup> The North Carolina State Highway Patrol also cited Moonlight Express for violating 392.2 (speeding 11-14 miles per hour over the speed limit); 393.75(a)(1)(tire-ply or belt material exposed/axle 4 left inside tire); and 393.75(b)(tire-front tread depth less than 4/32 of inch).

Moonlight Express does not have safety management practices in place to ensure its drivers are preparing and submitting records of duty status and that they comply with the maximum hours of service limitations. Moonlight Express is not requiring its drivers to turn in records of duty status. Moonlight Express had no records of duty status for four of its six drivers. Although Mr. Brown asserted that he is the dispatcher for the company, he could not identify the drivers that transported loads for Moonlight Express during the last month. Mr. Brown also refused to comply with FMCSA's demand for copies of driver payroll records, fuel receipts, and bills of lading so that FMCSA investigators could determine which Moonlight Express drivers operated commercial motor vehicles.

Moonlight Express's drivers have a history of multiple revocations and suspensions of their commercial drivers' license and an extensive history of speeding, reckless driving, driving the wrong way on a one way street, and improper passing. Driver R.M. has the following BASIC scores: Unsafe Driving (88.27%), Driver Fitness (92.01%) and Vehicle Maintenance (89.92%). Driver D.M. has the following BASIC scores: Unsafe Driving (88.98%), Fatigued Driving (77.76%), and Driver Fitness (85.19%). Driver M.P. has the following BASIC scores: Unsafe Driving (71.42%), Fatigued Driving (71.79%), and Vehicle Maintenance (88.22%). Driver M.B. has the following BASIC score: Vehicle Maintenance (88.72%). Moonlight Express's negligent oversight of its drivers results in drivers operating commercial motor

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<sup>10</sup> See 49 C.F.R. § 383.51(a)(2)(An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a commercial motor vehicle.)

vehicles at a time when they may be fatigued because of driving in excess of the maximum driving time and/or other hours of service regulations.

Moonlight Express's compliance with FMCSA mandated controlled substances and alcohol use and testing requirements is also egregiously deficient. Moonlight Express has not implemented an alcohol or controlled substances testing program to ensure that its drivers are able to safely operate its commercial motor vehicles. Moonlight Express is using drivers to operate commercial motor vehicles before receiving negative pre-employment controlled substance test results. Moonlight Express is also using drivers to operate its commercial motor vehicles when the drivers have not been randomly tested for controlled substances or alcohol. Moonlight Express's irresponsible actions in allowing unqualified drivers to operate its commercial motor vehicles substantially increase the likelihood of serious injury or death to Moonlight Express's drivers and the motoring public.

In sum, Moonlight Express's continued and blatant disregard for the FMCSRs substantially increases the likelihood of serious injury or death, and its operations pose an imminently hazardous and potentially deadly risk for its drivers and the motoring public if not discontinued immediately.

#### **IV. REMEDIAL ACTION**

To eliminate this imminent hazard, and before Moonlight Express will be permitted to resume operations placed out-of-service by this Order, Moonlight Express must take specific steps to ensure and demonstrate compliance with the FMCSRs.

1. Moonlight Express must establish a DOT controlled substance and alcohol testing program in compliance with 49 C.F.R. Parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol Use and Testing)

and provide evidence of this program to the Southern Service Center Field Administrator. Moonlight Express must use only those laboratories certified by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration for the analysis of urine specimens. Moonlight Express must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). Moonlight Express must ensure that driver supervisors undergo at least 60 minutes of training on alcohol misuse as well as an additional 60 minutes of training on controlled substance use that conforms to 49 C.F.R. § 382.603.

2. Moonlight Express must ensure that each driver selected for random controlled substances or alcohol testing has an equal chance of being selected each time selections are made. Moonlight Express must ensure that it has received a negative pre-employment controlled substances test for each driver before using that driver to perform safety-sensitive functions. Moonlight Express must establish policies and procedures to ensure that it does not dispatch a driver who has tested positive for controlled substances or alcohol until that driver has completed the return-to-duty process in 49 C.F.R. Part 40.

4. Moonlight Express must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391. Moonlight Express must ensure that every driver it uses has completed and furnished an employment application. Moonlight Express must investigate each driver's background within 30 days of employment, and must maintain a copy of the response from each State agency in the driver's qualification file. Moonlight Express must ensure that it obtains from each driver an annual list of traffic violations and an annual Motor Vehicle Record, and that it performs an annual review on each driver's driving record. Moonlight Express must ensure that it performs a three-year previous employment check on its drivers prior to their

operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23. Moonlight Express must ensure each driver possesses a DOT medical examiner's certificate as well as ensure that a copy of each driver's medical examiner's certificate is maintained in the driver's qualification file.

5. Moonlight Express must take aggressive and progressive steps to control drivers' hours of service.

6. Moonlight Express must implement a dispatch system that ensures that no driver will be dispatched on any trip unless the driver has the necessary available hours of service to complete the trip in accordance with 49 C.F.R. Part 395.

7. Moonlight Express must ensure that each of its drivers records his or her duty status for each 24-hour period in accordance with 49 C.F.R. § 395.8. Moonlight Express must ensure that each of its drivers complies with the hours of service rules in 49 C.F.R. § 395.3. Moonlight Express must maintain each record of duty status for a minimum of six months in accordance with 49 C.F.R. § 395.8.

8. Moonlight Express must implement a system to ensure that all drivers accurately complete their records of duty status in the form and manner required in 49 C.F.R. Part 395. Moonlight Express must ensure that its drivers accurately complete their daily records of duty status and that they submit these records to Moonlight Express within 13 days of their completion. Moonlight Express must maintain drivers' records of duty status and demonstrate a system showing that the company can and will maintain all supporting documents. Further, Moonlight Express must ensure that all records of duty status are accurate by using all means available to Moonlight Express and by comparing each record with all supporting documentation.

9. Moonlight Express must ensure that all drivers are adequately trained in the requirements of the FMCSRs and that they are able to conduct motor carrier operations consistent with those regulations.

10. Moonlight Express must submit to the Field Administrator a plan detailing how it will (i) train all drivers used on compliance with the HOS regulations, (ii) monitor the compliance of all drivers with the HOS regulations, and (iii) ensure that all drivers are dispatched in such a way that scheduled routes may be completed within the maximum driving and on-duty hours, as provided in 49 C.F.R. § 395.3.

11. Moonlight Express must establish safety management controls and procedures that ensure that each and every commercial motor vehicle it operates is systematically and properly inspected, maintained and repaired as required by 49 C.F.R. Part 396, and that documentation of inspections, maintenance and repair are obtained and maintained as required.

12. Moonlight Express must demonstrate that it has an effective commercial motor vehicle maintenance program in place to inspect, maintain, and repairs its fleet and ensure compliance with the FMCSRs. Moonlight Express must ensure and demonstrate that vehicle maintenance and safety is a company priority and must ensure and demonstrate that inspection records are accurately completed.

13. Moonlight Express must ensure and demonstrate that its vehicles are in a safe operating condition and are in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operations) and Part 396 (Vehicle Maintenance).

14. Moonlight Express must require its drivers to prepare Driver Vehicle Inspection Reports at the end of each day, implement a procedure so that its drivers can report safety defects and/or deficiencies, and establish and abide by procedures to ensure that reported safety defects

and/or deficiencies are repaired immediately before the commercial motor vehicle is operated again. Moonlight Express must train its drivers and ensure all drivers understand the meaning of a roadside out-of-service order and comply with roadside out-of-service orders.

15. Moonlight Express must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of its commercial motor vehicles are repaired prior to the vehicle being operated. Moonlight Express must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is operated prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

16. Moonlight Express must contact FMCSA's North Carolina Division and arrange for inspection of each of its commercial motor vehicles by an FMCSA inspector or an inspector designated by FMCSA.

17. Moonlight Express must comply with all Orders issued by FMCSA.

## **V. RESCISSION OF ORDER**

Moonlight Express is subject to this Order unless and until the Order is rescinded in writing by FMCSA. Unless and until this Order is rescinded, and until such time as Moonlight Express has a valid and active USDOT number and operating authority registration, Moonlight Express is prohibited from operating any commercial motor vehicle in interstate and/or intrastate commerce. This Order will not be rescinded until the Field Administrator for FMCSA's Southern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this Order have been fully satisfied and acceptable documentation submitted.

Before this Order will be rescinded, Moonlight Express must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that its operations and motor vehicles pose, and adequately demonstrate to the Field Administrator's satisfaction the



actions taken to eliminate the safety problems. Moonlight Express cannot avoid this Order by continuing operations under the name of another person or company. Any sale, lease, or other transfer of commercial motor vehicle(s) and/or direct assignment of contract(s) or other agreement(s) for service by Moonlight Express requires the written approval of the Southern Service Center Field Administrator. Any such action taken in anticipation of this Order must cease immediately.

**Prior to rescission of this Order, Moonlight Express will be required to:**

- 1. Identify the cause for its noncompliance.**
- 2. Develop a detailed Safety Management Plan of action that addresses each area of non-compliance, the steps it intends to take to overcome its non-compliance, and a time table for these steps.**
- 3. Certify in writing the commitment of Moonlight Express to comply with the FMCSRs.**
- 4. Execute the Safety Management Plan and provide certification by all owners and officers.**

Any request to rescind this Order and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Field Administrator, Southern Service Center, with a copy to the Division Administrator, North Carolina Division, at the following addresses:

Field Administrator, Southern Service Center  
Federal Motor Carrier Safety Administration  
1800 Century Blvd., NE, Suite 1700  
Atlanta, Georgia 30345

Division Administrator, North Carolina Division  
Federal Motor Carrier Safety Administration  
310 New Bern Avenue, Suite 468  
Raleigh, North Carolina 27601

Rescission of this Order does not constitute a reinstatement of Moonlight Express's Federal operating authority registration or its USDOT Number. In order for Moonlight Express to resume motor carrier operations in the United States, Moonlight Express will be required to apply to reactivate its USDOT number registration, reapply for and receive operating authority registration, and demonstrate that Moonlight Express is fit and willing and able to comply with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the FMCSRs; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49 U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

## **VI. FAILURE TO COMPLY WITH THIS ORDER**

Failure to comply with the provisions of this Order may subject Moonlight Express to an action in the United States District Court for equitable relief and punitive damages. Moonlight Express may also be assessed civil penalties of up to \$25,000 for each violation of this Order. (49 U.S.C. § 521(b)(2)(F) and 49 C.F.R. Part 386 App. A. § IV(g)). If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 and imprisonment for a term not to exceed one year. (49 U.S.C. § 521 (b)(6)(A)).

## **VII. PENALTIES FOR VIOLATIONS**

Any motor carrier that violates Federal requirements, including the FMCSRs, and/or permits its employee(s) to violate Federal requirements is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and

distinct from this Order. Penalties may be assessed for the violations of Federal requirements, including the FMCSRs and Orders of the FMCSA, previously discovered, discovered after the service of this Order, and/or discovered during subsequent investigations.

### **VIII. RIGHT TO REVIEW**

You have the right to administrative review in accordance with 5 U.S.C. § 554 and 49 C.F.R. § 386.72(b)(4). An administrative review, if requested, must occur within 10 days of the issuance of this Order. (49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, with a copy sent to FMCSA's Adjudications Counsel and the Field Administrator, Southern Service Center at the following addresses:

Assistant Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Federal Motor Carrier Safety Administration  
Office of the Chief Counsel - Adjudications  
1200 New Jersey Avenue S.E., W61-323  
Washington, DC 20590

Field Administrator, Southern Service Center  
Federal Motor Carrier Safety Administration  
1800 Century Blvd., NE, Suite 1700  
Atlanta, GA 30345

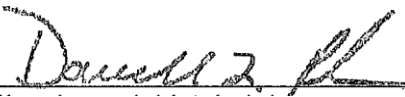
The request must state the material facts at issue which you believe dispute or contradict the finding that Moonlight Express's operations constitute an imminent hazard to the public.

**A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT IN ANY WAY  
SUSPEND OR DELAY YOUR DUTY TO COMPLY WITH THIS ORDER**

**IMMEDIATELY.** This Order is separate and independent from all other orders or actions that

may be issued by FMCSA, and does not amend or modify any other such orders or actions. Any request for administrative review of this Order does not attach to or apply to any other order or action.

Date: October 30, 2013

A handwritten signature in black ink, appearing to read "Darrell Ruban", is written over a horizontal line.

Darrell Ruban, Field Administrator  
United States Department of Transportation  
Federal Motor Carrier Safety Administration

## Schedule A

<u>YEAR</u>	<u>MAKE</u>	<u>VIN</u>
1998	FREIGHTLINER	1FUYSSEB3WL820382
2005	KENWORTH	1XKADB9X25J079553
2000	KENWORTH	1XKWDB9X5YR860708
2005	KENWORTH	1XKADB9X25J079552
1997	FREIGHTLINER	1FUYDSEB9VL816409