



Motor Carrier Attachment 6

Accident Driver Imminent Hazard Order issued by FMCSA

Chattanooga, Tennessee 06/26/2015

HWY15MH009

(9 pages)

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

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Kentucky CDL

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Order No.: KY-2015-5000-IMH

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IMMINENT HAZARD OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order (“ORDER”) issued by the Secretary of Transportation (the “Secretary”) pursuant to 49 U.S.C. § 521(b)(5)(A) 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”). This ORDER applies to [REDACTED] (referred to herein as “you,” and/or “your”), a commercial motor vehicle (CMV) driver with a Kentucky Commercial Driver’s License (CDL).

The Secretary and the FMCSA find your continued operation of commercial motor vehicles, as defined in 49 C.F.R. § 390.5,¹ constitutes an “**IMMINENT HAZARD.**” This finding means that based upon your present state of unacceptable safety compliance, your operation of a commercial motor vehicle substantially increases the likelihood of serious injury or death if not discontinued immediately.

¹ Under 49 C.F.R. § 390.5, a commercial motor vehicle includes any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—(1) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.

**EFFECTIVE IMMEDIATELY YOU MUST CEASE OPERATING ANY
COMMERCIAL MOTOR VEHICLE IN INTERSTATE COMMERCE. YOU ARE
PROHIBITED FROM OPERATING ANY COMMERCIAL MOTOR VEHICLE
IN INTERSTATE COMMERCE AT ANY TIME DURING WHICH THIS
ORDER IS IN EFFECT.**

If you are served this ORDER while operating a commercial motor vehicle in interstate commerce, you must immediately park such vehicle, and notify the operating carrier of this Out-of-Service Order. You may not continue to operate the commercial motor vehicle.

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

I. JURISDICTION

You are a driver of commercial motor vehicles in interstate commerce and are subject to, and required to comply with, the requirements of the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 C.F.R. Parts 350-399, as well as the Orders of the USDOT and FMCSA. (*See* 49 U.S.C. §§ 506, 507, 13501, 31133, and 31306). You are required to comply with Federal statutes and regulations regarding driving of commercial motor vehicles, including those pertaining to controlled substances and alcohol, ill and/or fatigued driving, and hours of service. (49 C.F.R. Parts 382, 391 and 395.)

II. BASIS FOR ORDER

The basis for determining that your operation of a commercial motor vehicle poses an imminent hazard to the public is that you have engaged in an ongoing

egregious, willful, dangerous pattern of conduct while operating a commercial motor vehicle that places you and the motoring public at extreme risk of death or serious injury. On June 25, 2015, you were involved in an accident that resulted in the deaths of 6 individuals and injuries to 18 others. Preliminary results of the ongoing post-crash investigation show that your Records of Duty Status (RODS) were falsified in the days leading up to the day of the crash. The post-crash investigation also discovered that you recently tested positive for methamphetamine and amphetamine. Moreover, you falsified your employment application by omitting an earlier crash in which you were involved and omitting a 2015 speeding conviction.

Your blatant disregard for the safety of the motoring public and disregard of the FMCSRs substantially increases the likelihood of serious injury or death to you and to the motoring public. These acts, individually and cumulatively, result in the issuance of this ORDER.

III. BACKGROUND

On June 25, 2015, at approximately 7:10 p.m., you operated a commercial motor vehicle (CMV) in Tennessee for ([REDACTED]) USDOT number : [REDACTED] You were involved in an accident that resulted in the deaths of 6 individuals and injuries to 18 others. This was the sixth CMV crash in which you were involved since 2011, including a June 24, 2015 crash in Wildwood, Florida.

The ongoing post-crash investigation of the June 25, 2015 crash has revealed that you falsified your RODs in the days leading up to the crash. Specifically, you recorded on your RODS that you were off-duty from June 15, 2015 until 7:00 a.m. on June 25, 2015. Your employer's vehicle tracking system and other records show, however, that you were on-duty and driving on June 22, 23, and 24, 2015.

A review of your June 16, 2015 application for employment with [REDACTED] shows that you falsified that application. Specifically, the application required you to list all accidents in which you were involved in the previous three years. You omitted a June 22, 2013 accident. The application also required you to list all traffic convictions in the previous three years. On or about January 26, 2015, you were convicted on speeding 16-20 miles per hour over the limit, but on the application, you checked the box to indicate that you had no traffic convictions during those three years.

Moreover, on May 8, 2015, you submitted to a court-ordered hair follicle controlled substances test. You tested positive for controlled substances.

Your continued operation of a CMV substantially increases the likelihood of serious injury or death to yourself and to the motoring public.

IV. REMEDIAL ACTION

To abate this imminent hazard, and before you will be permitted to resume operations placed out of service by this ORDER, you must take specific steps to ensure and demonstrate compliance with the FMCSRs.

YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER

- 1. You may not operate a commercial motor vehicle in interstate commerce until you have fully complied with the Remedial Actions set forth in this section.**
- 2. You must demonstrate to the satisfaction of the Field Administrator, Southern Service Center, that you are qualified to drive a CMV in full compliance with 49 C.F.R. § 392.2 and 392.4(a).**
- 3. You must be evaluated by a Substance Abuse Professional (SAP), complete a substance abuse education/treatment program, and pass a return-to-duty controlled substance test.**
- 4. You must provide to the Field Administrator, Southern Service Center, documentation demonstrating that you have completed the**

SAP evaluation, required education/treatment, and return-to-duty process.

- 5. You must provide to the Field Administrator, Southern Service Center, a written authorization for release of all records and results pertaining to the evaluation, education, treatment, and testing directed by the SAP.**
- 6. You must provide to the Field Administrator, Southern Service Center, documentation demonstrating that you have a valid commercial driver's license.**
- 7. You must demonstrate the following in writing to the satisfaction of the Field Administrator, Southern Service Center:**
 - a. That you have completed a training course on the Federal Motor Carrier Safety Regulations (FMCSRs), with extensive review and certification on the Hours of Service regulations (49 C.F.R. Part 395); and**
 - b. That through the training, you have acquired the requisite knowledge of the rules and safety practices to operate a CMV in accordance with the FMCSRs.**
- 8. You must include a certification statement that you will accurately and fully complete all RODS and submit all RODS, along with all supporting documents, to any motor carrier for whom you operate a CMV.**
- 9. You must notify any motor carrier employer when you do not have the necessary available hours of service to start or to complete a trip in accordance with 49 C.F.R. Part 395.**
- 10. You must comply with all Orders issued by FMCSA.**

V. RECISSION OF ORDER

You are subject to this Order unless and until the Order is rescinded by the FMCSA. Before operating any commercial motor vehicle, as defined by 49 C.F.R. § 390.5, in interstate commerce, you must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that your operation of a commercial motor vehicle poses, and adequately demonstrate to the Field Administrator for the Southern Service Center, Federal Motor Carrier Safety Administration, United

States Department of Transportation, the actions taken to eliminate the safety problems. **You must have this Order rescinded by the Field Administrator for the Southern Service Center before conducting interstate operations.**

This ORDER will not be rescinded until the Field Administrator for the Southern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this Order have been fully satisfied and acceptable documentation is submitted. **You cannot avoid this Imminent Hazard Operations Out-of-Service Order by continuing to operate under another name or by driving for another motor carrier.**

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, Kentucky Division, at the following addresses:

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

and

Division Administrator, Kentucky Division
Federal Motor Carrier Safety Administration
330 West Broadway, Room 124
Frankfort, KY 40601

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this Imminent Hazard Operations Out-of-Service Order may subject you to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. You may be assessed civil penalties of up to \$2,500 and be disqualified from operating commercial

motor vehicles for not less than 180 days if you operate a commercial motor vehicle in violation of this ORDER. You may be assessed civil penalties of up to \$5,000 and be disqualified from operating commercial motor vehicles for not less than two years and not more than five years for a second violation of this ORDER. (*See* 49 U.S.C. §§ 521(b)(2)(A) and 31310(i), and 49 C.F.R. § 386.82(a)(4)). Knowing and/or willful violation of the provisions of this ORDER may subject you to criminal penalties. (*See* 49 U.S.C. § 521(b)(6)).

VII. ADDITIONAL PENALTIES FOR OTHER VIOLATIONS

Any motor carrier or driver that violates Federal requirements, including the FMCSRs, 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, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

VIII. RIGHT TO REVIEW

You have the right to an administrative review in accordance with 5 U.S.C. § 554 pursuant to 49 C.F.R. § 386.72(b)(4). Subsequent to the issuance of the ORDER, opportunity for review will be provided in accordance with section 554 of title 5. If a petition for review is filed, a review must commence within ten days after the petition for review is filed and must be concluded as expeditiously as practicable but may run longer than ten days from the date of issuance of such ORDER or the filing of the petition for review. 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 SE
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
FMCSA.Adjudication@dot.gov

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

The request must state the material facts at issue which you believe dispute or contradict the finding that your operation of a commercial motor vehicle constitutes an "imminent hazard" to the public.

A REQUEST FOR REVIEW DOES NOT IN ANY WAY 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 or apply to any other order or action.

ORDERED this the 16 day of July, 2015.



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