

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

H & W TOUR, INC.

USDOT 1433545

)
) Order No.: GA-2011-IMH-02
)
) Service
) Date: _____
)
) Time: _____
)

IMMINENT HAZARD
OPERATIONS OUT-OF-SERVICE ORDER

This notice is an Imminent Hazard Operations Out-of-Service Order ("ORDER") by the United States pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1) and (2), 49 U.S.C. § 31144(c)(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 H & W TOUR, INC., USDOT number 1433545, (referred to herein as "you", "your", and /or "H & W TOUR") and to the commercial motor vehicles described herein.

The United States finds your operations and the continued operations of your commercial motor vehicles (VIN 1FBSS31L58DA49586 and VIN 1FBSS31L19DA10107, herein "vehicles," "motor vehicles," and/or "motor coaches") constitute an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicles, any operation of these commercial motor vehicles identified in this Order pose an **imminent hazard** to public safety.

EFFECTIVE IMMEDIATELY, YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE OR INTRASTATE TRANSPORTATION OF PASSENGERS BY DRIVERS FROM ALL DISPATCHING LOCATIONS OR TERMINALS.

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 passengers can be safely accommodated. (See 49 C.F.R. § 386.72(b)(4) and (5)).

NO ADDITIONAL PASSENGERS MAY BE LOADED OR TRANSPORTED, NOR MAY THE COMMERCIAL MOTOR VEHICLES BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT. A COMMERCIAL MOTOR VEHICLE MAY BE MOVED TO A LOCATION TO BE REPAIRED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR, FMCSA SOUTHERN SERVICE CENTER.

YOU ARE FURTHER NOTIFIED THAT, AS A RESULT OF THE ISSUANCE OF THIS ORDER, AND PURSUANT TO 49 U.S.C. § 13905(f)(2), YOUR FEDERAL OPERATING AUTHORITY REGISTRATION IS HEREBY REVOKED.

I. JURISDICTION

H & W TOUR is a motor carrier engaged in interstate commerce and is therefore subject to 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 31136.)

H & W TOUR is required to comply, and to ensure its drivers comply, with the FMCSRs.

49 C.F.R. § 390.11. THE PROHIBITIONS ON OPERATION IN THIS ORDER APPLY TO H & W TOUR, AS WELL AS ANY AND ALL OF ITS OFFICERS, DIRECTORS, MANAGERS, SUCCESSORS, ASSIGNS AND CLOSELY AFFILIATED COMPANIES. EXCEPT AS PROVIDED BELOW H & W TOUR MAY NOT USE VAN SERVICES, SHUTTLES OR OTHER COMMERCIAL MOTOR VEHICLES TO SUPPLEMENT ANY CONTINUED OPERATIONS.

II. BASIS FOR ORDER

The basis for determining that H & W TOUR motor carrier operations and the continued operation of the vehicles identified in this ORDER pose an imminent hazard to the public is that H & W TOUR fails to monitor and ensure that its drivers comply with drivers' hours of service requirements, drivers' records of duty requirements, drivers' qualification requirements, and drivers' controlled substances and alcohol use and testing requirements, thereby posing a continuing imminent hazard. Indeed H&W Tour has no drug and alcohol testing program whatsoever, and neither of its three current drivers has passed a pre-employment drug test, as required under Federal regulations. Further, H & W TOUR fails to ensure its commercial motor vehicles are properly and regularly inspected, repaired and maintained, thereby posing a continuing imminent hazard to the public. In addition, H & W TOUR does not have the statutorily required level of bodily injury and property damage ("BIPD") insurance coverage and does not have valid and active operating authority for transporting passengers in interstate commerce.

Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to H & W TOUR drivers, passengers and the

motoring public.

III. BACKGROUND

On June 29, 2011, FMCSA conducted a Compliance Review of H & W TOUR, uncovering violations of the FMCSRs so widespread as to demonstrate a continuing and flagrant general disregard for compliance with the FMCSRs and a management philosophy indifferent to motor carrier safety. The Compliance Review proposed a safety fitness of “Unsatisfactory.” Evidence obtained during the Compliance Review disclosed H & W TOUR’s continued transportation of passengers in interstate commerce in commercial motor vehicles without the required operating authority and without the required level of BIPD insurance. On January 1, 2006, FMCSA denied H & W TOUR’s request for operating authority. However, five years later, H & W TOUR flagrantly continues to transport passengers in interstate commerce in its commercial motor vehicles without the required operating authority from FMCSA. H & W TOUR advertises itself to the general public as providing daily bus transportation between Anderson, South Carolina, Atlanta, Georgia, Greenville, South Carolina, Spartanburg, South Carolina, and New York, New York.

Further, H & W TOUR does not monitor its drivers’ hours of service (HOS) to ensure that they do not violate the hours-of-service regulations. H & W TOUR does not require its drivers to prepare and submit records of duty status. H & W TOUR’s negligent oversight of its drivers result in drivers transporting passengers at a time when they may be fatigued because of driving in excess of the maximum driving time, driving after the maximum on-duty time, and/or other HOS regulations. H & W TOUR also has not implemented an alcohol or controlled substances testing program to ensure that its drivers are able to safely operate its

motor coaches. In addition, H & W TOUR fails to follow FMCSA driver qualification requirements to ensure that its drivers are qualified to transport passengers in its commercial motor vehicles.

H & W TOUR has no vehicle maintenance monitoring program to prevent the operation of unsafe commercial motor vehicles. In fact, H & W TOUR does not require its drivers to complete driver vehicle inspection reports on its commercial motor vehicles. Such actions establish an imminently hazardous and potentially deadly situation for the driver, H & W TOUR's passengers, and the motoring public.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before H & W TOUR will be permitted to resume operations placed out of service by this Order, or to operate vehicles identified in this Order, H & W TOUR must take specific steps to ensure and demonstrate compliance with the FMCSRs.

YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER

- 1. H & W TOUR 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 procedures to ensure that reported safety defects and/or deficiencies are repaired immediately.**
- 2. H & W TOUR must ensure its drivers accurately and fully complete their daily records of duty status and submit them to the carrier within 13 days of their completion. H & W TOUR must maintain drivers' records of duty status and all supporting documents for a minimum period of 6 months. Further, H & W TOUR must ensure that all records of duty**

status are accurate by using all means available to it and by comparing each with all supporting documentation.

3. H & W TOUR must comply with all Orders issued by FMCSA and must submit to the Field Administrator a plan detailing how H & W TOUR will (i) train all drivers used by H & W TOUR or its successors or assigns, on compliance with the HOS regulations, (ii) monitor the compliance of all drivers used by H & W TOUR or its successors or assigns with the HOS regulations, and (iii) ensure that all drivers used by H & W TOUR or its successors or assigns are dispatched in such a way that scheduled routes may be completed within the maximum driving and on-duty hours, as provided in 49 CFR 395.5.

4. The commercial motor vehicles identified in this ORDER (VIN 1FBSS31L58DA49586 and VIN 1FBSS31L19DA10107) may not be operated in interstate and/or intrastate commerce by any entity or by any individual until you have fully complied with the Remedial Actions set forth in this section.

5. H & W TOUR 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.

6. H & W TOUR 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.

7. H & W TOUR 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.
8. H & W TOUR must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b).
9. H & W TOUR must ensure that it maintains driver qualification files, as required by 49 C.F.R. part 391.
10. H & W TOUR must ensure that a three-year previous employment check is performed on its drivers prior to their operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23.
11. H & W TOUR must take aggressive and progressive steps to control drivers' hours of service.
12. H & W TOUR 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.
13. H & W TOUR must implement a system to ensure that all its drivers accurately complete their records of duty status in the form and manner required in 49 C.F.R. part 395. H & W TOUR must ensure that its drivers accurately complete their daily records of duty status and that they submit these records to H & W TOUR within 13 days of their completion. H & W TOUR must maintain drivers' records of duty status and demonstrate a system demonstrating that the company can and will maintain all supporting documents. Further, H & W TOUR must ensure that all records of duty status are accurate by using

all means available to you and by comparing each record with all supporting documentation.

14. H & W TOUR 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.

15. H & W TOUR must ensure that an annual list of traffic violations is obtained from each driver, an annual Motor Vehicle Record is obtained, and that an annual review is performed on each driver's driving record.

16. In accordance with 49 C.F.R. § 396.11, H & W TOUR must require all its drivers to prepare Driver Vehicle Inspections Reports at the end of each day, and must implement procedures so that drivers can report safety defects or deficiencies and that such defects or deficiencies are repaired before the commercial vehicle is operated again.

17. H & W TOUR must mark, in accordance with 49 CFR § 390.21, any vans or other commercial motor vehicles owned by H & W TOUR or transporting passengers as part of a transportation initiated or continued by H & W TOUR. This requirement applies to vehicles designed to carry 9 or more passengers, including passenger vans owned, operated, or affiliated with H & W TOUR. H & W TOUR must ensure that drivers operating such vans or other commercial motor vehicles comply with the FMCSRs, including the HOS regulations.

V. RESCISSION OF ORDER

Before resuming motor carrier operations H & W TOUR must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that its

operations and vehicles pose and adequately demonstrate to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the safety problems. H & W TOUR cannot avoid this Operations Out-of-Service Order by continuing operations under the name of another person or company. Any lease of equipment and/or direct assignment of contracts or other arrangements by H & W TOUR requires the written approval of the Southern Service Center Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. H & W TOUR must have the Order rescinded by the Southern Service Center Field Administrator before it may continue interstate or intrastate operations.

Prior to rescission of the Order, H & W TOUR will be required to:

- 1. IDENTIFY THE CAUSE FOR ITS NONCOMPLIANCE.**
- 2. DEVELOP A DETAILED 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 (THE SAFETY MANAGEMENT PLAN).**
- 3. DEVELOP AND CERTIFY THE COMMITMENT OF H & W TOUR TO COMPLY WITH THE FMCSRs.**
- 4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS.**

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, Georgia 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, Georgia Division
Federal Motor Carrier Safety Administration
Two Crown Center
1745 Phoenix Boulevard, Suite 380
Atlanta, Georgia 30349

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this Operations Out-of-Service Order may subject H & W TOUR to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. H & W TOUR may be assessed civil penalties of up to \$16,000 per day for each day it continues the proscribed interstate or intrastate operations after the effective date and time of this Order. (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 or imprisonment for a term not to exceed one year, or both. (49 U.S.C. § 521 (b)(6)(A)).

VII. ADDITIONAL PENALTIES FOR OTHER 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, 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). If requested, administrative review shall occur within 10 working 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 the Field Administrator, Southern Service Center at the following addresses:

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

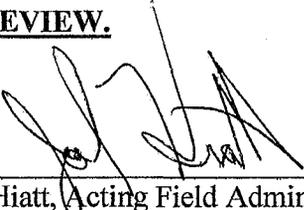
Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700
Atlanta, Georgia 30345

The request must state the material facts at issue which you believe dispute or contradict the finding that H & W TOUR's operation and the operation of the two identified motor coaches constitute an "imminent hazard" to the public.

A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO COMPLY WITH THIS ORDER IMMEDIATELY. H & W TOUR'S RESPONSE TO THIS OPERATIONS OUT-OF-SERVICE ORDER WILL NOT ALTER THE PROPOSED "UNSATISFACTORY" SAFETY FITNESS RATING THAT RESULTED FROM THE JUNE 29, 2011 COMPLIANCE REVIEW.

Date:

June 29, 2011


Joel Hiatt, Acting Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration