

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

GUNTHERS TRANSPORT, LLC

USDOT 1549504

) **Order No.: MD-2012-5000-IMHA**
)
) **Service**
) **Date:** 11/8/2011
) **Time:** 3:40 A.M.
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)
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OPERATIONS OUT-OF-SERVICE ORDER

This notice is an Operations Out-of-Service Order ("ORDER") by the United States pursuant to 49 U.S.C. § 521(b)(5)(A), 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 delegation of authority to the Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Glen Burnie, Maryland. This ORDER applies to GUNTHERS TRANSPORT, LLC, USDOT number 1549504 (referred to herein as "you", "your", and/or "GUNTHERS TRANSPORT, LLC.>").

The United States finds the condition of your operation of commercial motor vehicles constitutes an "imminent hazard." This finding means that based upon your present state of unacceptable safety compliance, your failure to adequately establish and maintain safety management systems, your failure to ensure your drivers are qualified, and the condition of your commercial motor vehicles, your motor carrier operation substantially increases the likelihood of serious injury or death if not discontinued immediately.

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

If you are served this ORDER while operating a commercial motor vehicle in interstate or intrastate commerce, vehicles in transit may proceed to their next scheduled stop where the cargo on board can be safely secured. Thereafter, you may not continue to operate the commercial motor vehicle.

YOU ARE PROHIBITED FROM OPERATING ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR INTRASTATE COMMERCE AT ANY TIME THIS ORDER IS IN EFFECT.

I. JURISDICTION

GUNTHERS TRANSPORT, LLC, 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.) GUNTHERS TRANSPORT, LLC, is required to comply, and to ensure its drivers comply, with the FMCSRs (49 C.F.R. § 390.11). This ORDER applies to GUNTHERS TRANSPORT, LLC, as well as any and all of its officers, directors, successors, assigns and closely affiliated companies. GUNTHERS TRANSPORT, LLC may not use lessees, lessors, owner-operators, affiliates, assigns or other commercial motor vehicles or motor carriers to conduct any continued operations.

II. BASIS FOR ORDER

The basis for determining that GUNTHERS TRANSPORT, LLC’s motor carrier operations pose an imminent hazard to the public is that GUNTHERS TRANSPORT, LLC fails

to ensure it is complying with vehicle maintenance and repair regulations, vehicle out-of-service orders, drivers' log requirements, and drivers' hours of service requirements, thereby posing a continuing imminent hazard to the public. GUNTHERS TRANSPORT, LLC's safety management oversight is deficient. Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to GUNTHERS TRANSPORT, LLC's drivers and to the motoring public.

III. BACKGROUND

FMCSA relies upon the Safety Measurement System ("SMS") to assess a motor carrier's on-road performance. The SMS assessment of GUNTHERS TRANSPORT, LLC, covers the 24-month period ending on October 28, 2011. The SMS uses Behavior Analysis and Safety Improvement Categories ("BASICS") to provide details on a carrier's safety performance and to provide a percentage score in each of the BASIC categories. A high BASIC score indicates poor safety performance. GUNTHERS TRANSPORT, LLC was found to be seriously deficient in 4 of the seven 7 BASICS: Unsafe Driving (66.9%), Fatigued Driving (hours-of-service 99.3%), Driver Fitness (77.3%), and Vehicle Maintenance (100%).

On October 11, 2011, FMCSA conducted an on-site, focused investigation on GUNTHERS TRANSPORT, LLC. As a result of the investigation, FMCSA confirmed that GUNTHERS TRANSPORT, LLC did not require its drivers to perform a pre-trip vehicle safety inspection, in violation of 49 CFR §392.7; required or permitted its drivers to drive more than 11 hours, in violation of 49 CFR §395.3(a)(1); required or permitted its drivers to drive after the end of the 14th hour after coming on duty, in violation of 49 CFR §395.3(a)(2); required or permitted its drivers to falsify drivers' records of duty status, in violation of 49 CFR §395.8(e); required or permitted the operation of commercial motor vehicles that were in such a condition as to likely cause an accident or breakdown, in violation of 49 CFR §396.7(a); required or permitted the operation of a motor vehicle declared "out-of-service" before repairs were made, in violation of

49 CFR §396.9(c)(2); failed to correct safety-related defects listed on a motor vehicle roadside inspection report, in violation of 49 CFR §396.9(d)(2); failed to ensure driver vehicle inspection report were complete and accurate, in violation of 49 CFR §396.11(b); and, failed to retain vehicle inspection reports for at least 3 months, in violation of 49 CFR §396.11(c)(2). GUNTHERS TRANSPORT, LLC was issued a proposed UNSATISFACTORY safety rating safety fitness rating, as a result of the October 11, 2011 on-site focused investigation. GUNTHERS TRANSPORT, LLC lacks a functional vehicle maintenance program and driver hours of service monitoring and compliance program.

During the last 12 months, GUNTHERS TRANSPORT, LLC has had 7 recordable crashes resulting in 4 injuries and 1 fatality. Following 2 of the 7 crashes, post-accident driver/vehicle inspections were conducted. A Level III driver only post-crash inspection was conducted after the April 28, 2011 crash that occurred when a commercial motor vehicle, operated by driver Maurice Davis, left the roadway and collided with a fixed object. According to the inspection report, driver Davis failed to possess a Medical Examiner's Certificate, failed to prepare his records of duty status, as required, and was operating commercial motor vehicles (tractor/trailer) that were not periodically inspected, as required.

Following the crash on August 8, 2011, that resulted in 1 injury and 1 fatality, a post-crash Level I driver/vehicle inspection was performed by the Maryland State Police. That inspection revealed that several serious mechanical defects/deficiencies existed at the time of the crash, including 9 out-of-service defects. Specifically, the inspection revealed deficiencies in tire tread depth, inoperative and/or defective brakes, and an inoperative turn signal. Similar deficiencies have been found on all or substantially all of GUNTHERS TRANSPORT, LLC's vehicles during roadside inspections conducted during the past 6 months, through November 2, 2011.

GUNTHERS TRANSPORT, LLC has had previous contact with FMCSA. Specifically, it was subject to Compliance Reviews on or about July 14, 2008, September 5, 2008, January 13, 2011, and April 21, 2011. As a result of those reviews, GUNTHERS TRANSPORT, LLC has previously been cited for operating vehicles declared out of service, operating vehicles in such a condition as to likely cause an accident or breakdown, failure to prepare driver/vehicle inspection reports, false records of duty status and drug and alcohol violations.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before GUNTHERS TRANSPORT, LLC will be permitted to resume those operations placed out of service by this ORDER, GUNTHERS TRANSPORT, LLC must undertake positive steps which will ensure and demonstrate compliance with the FMCSRs.

YOU MUST COMPLY WITH THE PROVISIONS OF THIS ORDER.

1. GUNTHERS TRANSPORT, LLC must comply with vehicle repair, maintenance and out of service regulations. GUNTHERS TRANSPORT, LLC 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 before the commercial motor vehicle is operated again. GUNTHERS TRANSPORT LLC 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.

2. GUNTHERS TRANSPORT, LLC 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. GUNTHERS TRANSPORT, LLC must maintain drivers' records of duty status and all supporting documents for a minimum period of 6 months. Further,

GUNTHERS TRANSPORT, LLC 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. GUNTHERS TRANSPORT, LLC must comply with all Orders issued by FMCSA and must submit to the Field Administrator a plan detailing how GUNTHERS TRANSPORT, LLC will (i) train all drivers used by GUNTHERS TRANSPORT, LLC or its successors or assigns, on compliance with the HOS regulations and vehicle inspection, repair and maintenance regulations, (ii) monitor the compliance of all drivers used by GUNTHERS TRANSPORT, LLC or its successors or assigns with the HOS regulations and vehicle repair and maintenance regulations, and (iii) ensure that all drivers used by GUNTHERS TRANSPORT, LLC 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 395.3.

4. GUNTHERS TRANSPORT, LLC must take immediate, aggressive and progressive steps to control drivers' hours of service.

5. GUNTHERS TRANSPORT, LLC 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.

6. GUNTHERS TRANSPORT, LLC 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.

V. RECISSION OF ORDER

Before resuming motor carrier operations GUNTHERS TRANSPORT, LLC must comply with the provisions of this ORDER, eliminate the problems constituting the imminent

hazard that its operations pose and submit a safety management plan to the Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, which specifically outlines the actions taken to eliminate the safety problems. GUNTHERS TRANSPORT, LLC cannot avoid this Operations Out of Service ORDER by continuing operations under the name of another person or company. Any sale, lease or other transfer of equipment and/or direct assignment of contracts or other agreements for service by GUNTHERS TRANSPORT, LLC requires the written approval of the Eastern Service Center Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service ORDER must cease immediately. GUNTHERS TRANSPORT, LLC must have this ORDER rescinded by the Eastern Service Center Field Administrator before it may continue interstate or intrastate operations. Prior to rescission of the ORDER, GUNTHERS TRANSPORT, LLC will be required to:

- 1. IDENTIFY THE CAUSE FOR ITS NONCOMPLIANCE.**
- 2. DEVELOP AND SUBMIT TO THE FIELD ADMINISTRATOR 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 GUNTHERS TRANSPORT, LLC TO COMPLY WITH THE FMCSRS.**
- 4. EXECUTE THE SAFETY MANAGEMENT PLAN AND SUBMIT TO THE FIELD ADMINISTRATOR 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, Eastern Service

Center with a copy of the request and documentation to the Division Administrator, Maryland Division, at the following addresses:

Field Administrator, Eastern Service Center
Federal Motor Carrier Safety Administration
801 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061

Division Administrator, Maryland Division
Federal Motor Carrier Safety Administration
10 S Howard St., Suite 2710
Baltimore, MD 21201

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this Operations Out-of-Service ORDER may subject GUNTHERS TRANSPORT, LLC to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. GUNTHERS TRANSPORT, LLC 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, § IVg)). If violations are determined to be knowing and willful, criminal penalties may be imposed, including a fine of up to \$25,000 and a prison term of one year, or both. (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, previously discovered, discovered after the service of this Order, and/or discovered during subsequent investigations.

VIII. RIGHT TO REVIEW

You have a right to administrative review in accordance with 5 U.S.C. § 554 pursuant to 49 C.F.R. § 386.72(b)(2). If requested, administrative review shall occur within 10 days of the issuance of this ORDER. (See 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, Eastern Service Center at the following addresses:

Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Field Administrator, Eastern Service Center
Federal Motor Carrier Safety Administration
801 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061

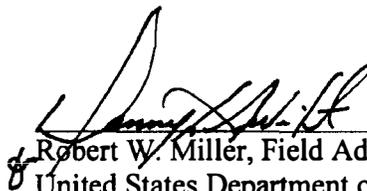
The request must state the material facts at issue which you believe dispute or contradict the finding that GUNTHERS TRANSPORT, LLC's operation constitutes an "imminent hazard" to the public.

REQUEST

11,

Date:

11/8/2011



Robert W. Miller, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration



U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Eastern Service Center

November 8, 2011

802 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061

Phone: (443) 703-2240
Fax: (443) 703-2253

CERTIFICATE OF SERVICE

I, Ellise Griffin, certify that the **Operations Out-of-Service Order (Order No. MD-2012-5000-IMHA)** issued by the United States Department of Transportation, Federal Motor Carrier Safety Administration to GUNTHERS TRANSPORT, LLC was served this 8th day of November, 2011 at 3:40 o'clock p.m. by personally handing it to:

Richard Denton (name) General Manager (title)

at the location of:

7462 Railroad Avenue (street address) Harmans, MD 21077 (city, state, zip code)

Ellise Griffin
(signature)

Ellise Griffin
(name)

Special Agent
(title)

10 S. Howard Street, Ste #2710 Baltimore, MD 21201
(business address)

(410) 962-2889
(office telephone number)

Comments: _____

