

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

SCAPADAS MAGICAS LLC
USDOT 601750

)
) Order No.: CA-2013-5000-IMHA
)
) Service
) Date: 2/8/13
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) Time: 4:17 pm
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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 the United States Department of Transportation (the “Secretary”) pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Regional Field Administrator, Western Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Lakewood, Colorado. This ORDER applies to SCAPADAS MAGICAS LLC, USDOT No. 601750, and to its officers, members, agents, and employees, (referred to herein as “you”, “your”, and/or “SCAPADAS MAGICAS”).

The Secretary and the FMCSA find your operations and the continued operation of your commercial motor vehicles (herein “vehicles,” and/or “motor vehicles,”) in the United States constitute an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicle(s) poses an **imminent hazard** to public safety.

EFFECTIVE IMMEDIATELY

**YOU MUST CEASE ALL OPERATION OF ANY COMMERCIAL MOTOR VEHICLE
IN THE UNITED STATES INCLUDING ALL INTERSTATE AND INTRASTATE
TRANSPORTATION OF PASSENGERS FROM ALL DISPATCHING AND/OR
SERVICE LOCATIONS OR TERMINALS.**

Your 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)).

**YOU MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL PASSENGERS,
NOR MAY YOU OPERATE ANY COMMERCIAL MOTOR VEHICLE(S) IN THE
UNITED STATES IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS
ORDER IS IN EFFECT.**

Your commercial motor vehicle(s) in the United States may be moved to a location to be repaired only upon the written approval of the Regional Field Administrator for FMCSA's Western Service Center.

I. JURISDICTION

SCAPADAS MAGICAS is a passenger motor carrier engaged in foreign and interstate commerce in the United States 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, 13501, 31133, 31136, and 31144.)

SCAPADAS MAGICAS is required to comply, and to ensure its drivers comply, with the FMCSRs and Orders of the USDOT and FMCSA. (49 C.F.R. § 390.11). This ORDER shall

have the force and effect of any other Order issued by the FMCSA and is binding upon SCAPADAS MAGICAS, as well as any and all of its officers, members, directors, successors, assigns and closely affiliated companies. SCAPADAS MAGICAS may not use van services, shuttles, minibuses, motor coaches or other commercial motor vehicles to supplement any continued operations.

II. BASIS FOR ORDER

The basis for determining that SCAPADAS MAGICAS' motor carrier operations and the continued operation of commercial motor vehicles pose an imminent hazard to the public is that SCAPADAS MAGICAS fails to ensure that its commercial motor vehicles are systematically inspected, repaired and maintained and fails to ensure that its drivers are properly qualified and have appropriate licenses for the commercial motor vehicles they operate. SCAPADAS MAGICAS fails to ensure its commercial motor vehicles are properly and regularly inspected, repaired and maintained and fails to ensure that its drivers are knowledgeable in pre-inspection procedures and requirements. SCAPADAS MAGICAS fails to ensure that the commercial motor vehicles it operates meet minimum safety standards, and SCAPADAS MAGICAS operates commercial motor vehicles with significant safety defects resulting in failed safety inspections. Additionally, SCAPADAS MAGICAS uses drivers despite not having ensured the driver is qualified to operate a commercial motor vehicle, including drivers where SCAPADAS MAGICAS has not made required checks into the drivers' driving record.

Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to SCAPADAS MAGICAS' drivers, passengers and the motoring public.

III. BACKGROUND

On February 3, 2013, SCAPADAS MAGICAS operated a commercial motor vehicle transporting passengers on a day trip from Tijuana, Baja California, Mexico to a ski resort in the Southern California mountains. During the return trip the driver lost control, and the commercial motor vehicle crashed into other vehicles and rolled over. The crash resulted in at least eight fatalities and injuries to more than forty others, as well as catastrophic damage. The driver and passengers reported that the commercial motor vehicle had been experiencing mechanical problems prior to the crash, and witnesses reported observing smoke coming from the rear underside of the vehicle. The driver stated that the vehicle's brakes failed.

As part of FMCSA's post-crash investigation, FMCSA conducted safety inspections on two other motor coaches operated in the United States by SCAPADAS MAGICAS. Serious safety violations were discovered during each inspection, and both vehicles were placed out of service. Further, during the investigation FMCSA determined that SCAPADAS MAGICAS has failed to ensure its inspector and mechanics are properly qualified and certified, and failed to ensure its drivers are trained to conduct adequate vehicle inspections. SCAPADAS MAGICAS does not have basic safety management controls to ensure that its commercial motor vehicles are systematically inspected, maintained and repaired, and that the commercial motor vehicles it operates meet minimum safety standards.

SCAPADAS MAGICAS has been cited during the previous 24 months for vehicle maintenance violations, including multiple brake problems. During SCAPADAS MAGICAS' most recent 25 vehicle inspections, vehicle maintenance violations were cited during 21 inspections; vehicle maintenance violations requiring the vehicle to be placed out of service were discovered during 36% of the inspections. As a result of these out-of-service violations, SCAPADAS MAGICAS was required to correct the out-of-service violations prior to any

further operation of the out-of-service vehicle. Further, during a compliance review conducted in January 2013, investigators discussed breakdowns in safety management systems that were resulting in vehicle maintenance violations, and necessary corrective actions to be taken; SCAPADAS MAGICAS failed to take necessary action to remedy its safety management deficiencies. The documentation and information SCAPADAS MAGICAS provided during the January review led investigators to conclude that the company systematically inspected, maintained and repaired its commercial motor vehicles when in fact it had no such compliance system.

SCAPADAS MAGICAS also fails to ensure its drivers are properly qualified to operate commercial motor vehicles, including failing to ensure that its drivers are medically examined and certified and meet qualification requirements. SCAPADAS MAGICAS fails to ensure that required checks are conducted to ensure that drivers have valid licenses and do not have poor driving records.

The investigations of SCAPADAS MAGICAS's commercial motor vehicles and operation disclose continuing violations of the FMCSRs demonstrating a continuing general disregard for safety. SCAPADAS MAGICAS' actions establish an imminently hazardous and potentially deadly situation for its passengers, drivers, and the motoring public.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before SCAPADAS MAGICAS will be permitted to resume motor carrier operations placed out of service by this Order, or to operate commercial motor vehicles in the United States, SCAPADAS MAGICAS must take specific steps to ensure and demonstrate compliance with the FMCSRs.

A. SCAPADAS MAGICAS must ensure and demonstrate that each and every commercial motor vehicle it operates is in a safe operating condition and in full compliance with 49

C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operations) and Part 396 (Vehicle Maintenance).

B. SCAPADAS MAGICAS must establish safety management controls and procedures that ensure that each and every commercial motor vehicle it operates is systematically 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. SCAPADAS MAGICAS must ensure that its employees, contractors and/or agents used to inspect and maintain each and every commercial motor vehicle it operates are trained and qualified to conduct such inspections, maintenance and repairs.

C. SCAPADAS MAGICAS must require its drivers to conduct pre- and post-trip commercial motor vehicle inspections, and must require its drivers to prepare Driver Vehicle Inspection Reports at the end of each day and establish procedures to ensure that reported safety defects and/or deficiencies are repaired immediately as required by 49 C.F.R. Part 396.

D. SCAPADAS MAGICAS must ensure that each and every commercial motor vehicle it operates is periodically inspected as required and in accordance with 49 C.F.R. Part 396 and Appendix G to Subchapter B of Chapter III.

E. SCAPADAS MAGICAS 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 to transport passengers. SCAPADAS MAGICAS must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is used for the transportation of passengers prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

F. SCAPADAS MAGICAS must establish safety management controls and procedures to ensure that each and every driver it uses is qualified to operate a commercial motor

vehicle and that it has obtained and maintains all required documentation showing the qualification of each driver as required by 49 C.F.R. Part 391. SCAPADAS MAGICAS must ensure that each and every driver it uses to operate a commercial motor vehicle has been medically examined and certified as required, and must provide medical certificates for each and every driver to the Regional Field Administrator for FMCSA's Western Service Center. SCAPADAS MAGICAS must check the driving record of each and every driver it uses to operate a commercial motor vehicle and obtain copies of the driving records for each driver. SCAPADAS MAGICAS must provide copies of driver records for each and every driver to the Regional Field Administrator for FMCSA's Western Service Center.

G. SCAPADAS MAGICAS must establish safety management controls and procedures to ensure that each and every driver that operates a commercial motor vehicle has the necessary commercial drivers' license, including any required endorsements, for the motor vehicle(s) the driver operates.

H. SCAPADAS MAGICAS must also ensure that all drivers have valid and current commercial driver's licenses at all times when operating a commercial motor vehicle.

I. SCAPADAS MAGICAS must ensure that all of its employees, including 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. RESCISSION OF ORDER

You are subject to this ORDER unless and until the ORDER is rescinded in writing by FMCSA. Unless and until this ORDER is rescinded, and you have valid and active USDOT number and operating authority registration, you are prohibited from operating any commercial motor vehicle(s) in the United States in interstate and/or intrastate commerce. This ORDER will not be rescinded until the Regional Field Administrator for FMCSA's Western 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 may be rescinded SCAPADAS MAGICAS 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 Regional Field Administrator for FMCSA's Western Service Center the actions taken to eliminate the safety problems. SCAPADAS MAGICAS cannot avoid this ORDER by continuing operations under the name of another person or company. Any sale, lease or other transfer of any commercial motor vehicle and/or direct assignment of contracts or other agreements for service by SCAPADAS MAGICAS requires the written approval of the Western Service Center Regional Field Administrator. Any such action taken in anticipation of this ORDER must cease immediately.

Prior to rescission of this ORDER, SCAPADAS MAGICAS 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. Develop and certify the commitment of SCAPADAS MAGICAS 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 Regional Field Administrator, Western Service Center with a copy of the request and documentation to the Division Administrator, California Division, at the following addresses:

William R. Paden, Regional Field Administrator
Western Service Center
Federal Motor Carrier Safety Administration
12600 West Colfax Avenue, Suite B-300
Lakewood, Colorado 80215

Lynda Holst, Acting Division Administrator
California Division
Federal Motor Carrier Safety Administration
2297 Niels Bohr Court, Suite 204
San Diego, CA 92154

Rescission of this ORDER does not constitute a reinstatement of SCAPADAS MAGICAS' Federal operating authority registration or its USDOT Number. In order for SCAPADAS MAGICAS to resume motor carrier operations transporting passengers in the United States, SCAPADAS MAGICAS will be required to apply to reactivate its USDOT number registration, reapply for operating authority registration, and demonstrate that it 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

Failure to comply with the provisions of this ORDER may subject SCAPADAS MAGICAS to an action in the United States District Court for equitable relief and punitive damages. SCAPADAS MAGICAS may be assessed civil penalties of up to \$25,000 for a 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 pursuant to 49 C.F.R. § 386.72(b)(4). If requested, administrative review shall occur within 10 working days of such request. (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 Regional Field Administrator, Western Service Center at the following addresses:

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

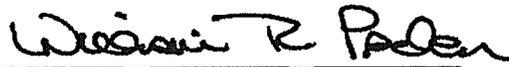
Regional Field Administrator, Western Service Center
Federal Motor Carrier Safety Administration
12600 West Colfax Avenue, Suite B-300
Lakewood, Colorado 80215

The request must state the material facts at issue which you believe dispute or contradict the finding that SCAPADAS MAGICAS' operation of its commercial motor vehicle(s) in the United States constitutes 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, and any request for administrative review of this ORDER does not attach to or apply to any other order or action.

Date: 2/8/2013



William R. Paden, Regional Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration