

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

Alvarez Transport LLC

USDOT No. 2484230

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) Order No.: CT-2022-5001-IMH
)
) Service Date: 06-23-2022
)
) Service Time: 09:58AM
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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), 13905(f), 31132(3), 31133(a)(10), 31134, 31144(c)(1), and 49 CFR § 386.72(b)(1), and pursuant to a delegation of authority to the Regional Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration (“FMCSA”), and the United States Department of Transportation (“USDOT”). This ORDER applies to Alvarez Transport LLC (USDOT No. 2484230) and to all its officers, agents, and employees (collectively referred to as “you,” “your,” or “Alvarez Transport LLC”) and to all commercial motor vehicles owned or operated on your behalf.

The Secretary and the FMCSA find your continued operation of any commercial motor vehicle (“CMV”)¹ in interstate or intrastate commerce constitutes an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your

¹ Under 49 CFR § 390.5T, 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) [h]as 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) [i]s designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) [i]s designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.”

operation of any CMV substantially increases the likelihood of serious injury or death if not discontinued immediately.

EFFECTIVE IMMEDIATELY YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS IN INTERSTATE AND INTRASTATE TRANSPORTATION.

Your vehicles and drivers now in interstate or intrastate commerce may proceed to the next scheduled stop where the cargo on board can be safely secured. See 49 CFR § 386.72(b)(4) and (5).

YOU MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL CARGO OR OPERATE ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.

“Operate” or “operating” includes without limitation all interstate and intrastate transportation by your drivers from all dispatching locations or terminals. Commercial motor vehicles may not be operated in interstate or intrastate commerce by you or on your behalf.

Within eight (8) hours of the service of this ORDER, you must submit to the Regional Field Administrator in writing by facsimile and/or electronic mail the location of each CMV under your control. You must identify the vehicle by year, make, model and vehicle identification number (VIN). You must include a copy of the current registration. You must also identify the street address, city, and state of the location of each vehicle, and you must identify the driver last operating the vehicle. Your submission must be sent to:

Regional Field Administrator
Fax: (443) 703-2253
Electronic Mail: ESCEenforcement@dot.gov

You cannot avoid this ORDER by continuing operations under the name of another person or company. See 49 U.S.C. § 31135(b); 49 CFR §§ 385.1005 and 386.73.

I. JURISDICTION

You conduct motor vehicle operations in interstate commerce using CMVs and are subject to Federal motor carrier safety statutes and regulations, including the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 CFR Parts 350-399, and the alcohol and controlled substances regulations at 49 CFR Part 40, as well as Orders of the USDOT and FMCSA. See 49 U.S.C. §§ 506, 507, 13501, 31133, 31136, 31144 and 31306. You are required to comply, and to ensure your drivers comply, with the FMCSRs, alcohol and controlled substances regulations, and Orders of the USDOT and FMCSA. See 49 U.S.C. § 31135(a); 49 CFR § 390.11.

This ORDER has the force and effect of any other Order issued by FMCSA and is binding on you, and all owners, 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 you.

II. BACKGROUND AND BASIS FOR ORDER

The basis for determining that your motor vehicle operations pose an imminent hazard to the public is your continued widespread noncompliance with Federal safety regulations, including regulations in 49 CFR Part 382 (Controlled Substances and Alcohol Use and Testing), 49 CFR Part 383 (Commercial Driver’s License Standards; Requirements and Penalties), 49 CFR Part 391 (Qualifications of Drivers), and 49 CFR Part 396 (Vehicle Inspection, Repair, and Maintenance).

FMCSA’s investigation and inspection by FMCSA’s state partners revealed that you lack effective safety management controls to ensure drivers operate your CMVs safely and that

your CMVs are in safe operating condition. The cumulative violations of the FMCSRs significantly increase the likelihood of death or serious injury to your drivers and the motoring public and establishes an imminent hazard.

The specific deficiencies that substantially increase the likelihood of serious injury or death if not discontinued immediately are as follows:

A. Egregious Safety Violations

During a compliance investigation that began on May 25, 2022 (“Compliance Investigation”), the FMCSA safety investigators discovered extensive acute and/or critical violations in almost every part of the FMCSRs that they reviewed, including 49 CFR Parts 382, 383, 391, and 396. Cumulatively, these violations demonstrate your lack of effective safety management controls. The proposed safety rating based on the Compliance Investigation is Unsatisfactory.

Moreover, while the Compliance Investigation was ongoing, you dispatched driver Dante C. Elliott to drive a CMV for which a CDL is required in interstate commerce from New Haven, CT to Williamstown, VT on or about June 2, 2022. You did not ensure that Mr. Elliott was qualified to operate this CMV before dispatching him; in fact, you had in your records at the time of dispatch a copy of his driver’s license that showed it was expired. While attempting to navigate a sharp curve on Vermont Route 64 in this CMV, Mr. Elliott left the traveled portion of the roadway, the CMV slid into a ditch, overturned, and then came to a position of uncontrolled rest on its roof. Both Mr. Elliott and his passenger were killed in the crash. Witnesses reported that the CMV’s brakes were smoking before the crash, and a post-crash inspection discovered several out-of-service vehicle conditions, including cracked brake linings (a violation of 49 CFR § 393.47(a)), inoperative brakes (a violation of 49 CFR § 393.48(a)), and

chafed service and emergency brake air hoses (a violation of 49 CFR § 393.45). Local law enforcement is still in the process of investigating this crash.

1. Vehicle Maintenance and Inspection

You do not have a systematic vehicle inspection, repair, and maintenance program in place to prevent the operation of unsafe CMVs, in violation of 49 CFR § 396.3(a). During the 24 months preceding June 14, 2022, you had a vehicle out-of-service rate of 81.8%; the national vehicle out-of-service rate average is 21.4%. During this period, you were subject to six interstate roadside inspections. Four of these inspections involved an inspection of your vehicle, and in each of the four instances in which your vehicle was inspected, the inspector cited at least one vehicle maintenance violation.² Further, three of the four roadside inspections of your vehicles during this period resulted in the discovery of at least one vehicle out-of-service vehicle maintenance defect. During these six interstate inspections, your drivers were cited for 23 vehicle maintenance violations, including inoperative required lamps and turn signals (49 CFR § 393.9), inoperative or defective brakes (49 CFR § 393.48(a)), and air leak in brake system (49 CFR § 393.43(a)).

During the Compliance Investigation, FMCSA found violations in 49 CFR Part 396. The FMCSA safety investigators sampled five vehicle maintenance files and discovered that two of those files had no evidence that the CMVs were periodically inspected, in violation of 49 CFR § 396.17(a), a critical regulation.

FMCSA also discovered other Part 396 violations during the Compliance Investigation. You fail to systematically inspect, repair, and maintain, or cause to be systematically inspected,

² Two of the six interstate roadside inspections during this period were Level III inspections, meaning that they were driver-only inspections and therefore, the inspector did not inspect your vehicle. One of those two Level III inspections resulted in a roadside out-of-service order for improper loading of rebar.

repaired or maintained, all motor vehicles subject to your control, in violation of 49 CFR § 396.3(a). You fail to keep a maintenance record which identifies the vehicle, including make, serial number, year, and tire size, in violation of 49 CFR § 396.3(b)(1). You fail to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed, in violation of 49 CFR § 396.3(b)(2). You fail to keep a record of inspection, repairs and maintenance indicating their date and nature, in violation of 49 CFR § 396.3(b)(3). You fail to retain periodic inspection reports for 14 months from the date of inspection, in violation of 49 CFR § 396.21(b). You fail to retain evidence of brake inspector's qualifications, in violation of 49 CFR § 396.25(e).

During the Compliance Investigation, the investigator asked to see a vehicle when it returned from a dispatched trip. The vehicle had been placed out-of-service during a roadside inspection on May 17, 2022, because the brake warning light failed to illuminate. The investigator discovered that the defect had not been repaired because on June 9, 2022, you required or permitted the operation of a vehicle that had been declared "out-of-service" before repairs had been made, in violation of 49 CFR § 396.9(c)(2), an acute regulation. During the Compliance Investigation you were also cited for using CMVs without having had them periodically inspected, in violation of 49 CFR § 396.17(a), a critical regulation. For example, on or about June 9, 2022, you operated a CMV from Wallingford, CT to Orange, CT. When the investigator asked to see this vehicle when it returned from a trip, he discovered that the most recent periodic inspection on the vehicle was completed in March 2021 and expired on March 31, 2022. The vehicle had not passed a qualifying periodic inspection within the previous 12-month period.

2. Driver Qualification

You fail to ensure that drivers are qualified to operate your CMVs. You allowed Mr. Elliott, a driver with an expired commercial drivers' license, to operate your CMV on June 2, 2022, in violation of 49 CFR § 383.37(a), an acute regulation. In addition, on May 17, 2022, you allowed Dornis Yoryi Calero Solis to operate your CMV, in violation of 49 CFR § 391.11(b)(5). At the time, this driver did not have a valid license for the vehicle he was operating; his learner's permit had expired in 2008.

During the Compliance Investigation, the FMCSA investigator sampled five of your driver qualification files and determined that you failed to maintain medical examiner's certificates in two of these drivers' qualification files, in violation of 49 CFR § 391.51(b)(6), a critical regulation. The investigator's sample also revealed that you failed to require any of your drivers to complete employment applications, in violation of 49 CFR § 391.21(a), and you failed to investigate your drivers' backgrounds, in violation of 49 CFR § 391.23(a).

3. Controlled Substances and Alcohol Use and Testing

The Compliance Investigation revealed that you do not have an effective controlled substances and alcohol use testing program. You failed to register with the Drug and Alcohol Clearinghouse to conduct required queries of your drivers, in violation of 49 CFR § 382.711(b). You fail to conduct annual queries of your drivers in the Drug and Alcohol Clearinghouse, in violation of 49 CFR § 382.701(b)(1). You fail to conduct pre-employment queries of your drivers in the Drug and Alcohol Clearinghouse, in violation of 49 CFR § 382.701(a). During the investigation, the FMCSA investigators looked at 5 of your drivers and found that you used each driver to operate a CMV for which a CDL was required before you received a negative pre-employment test result, a critical violation of 49 CFR § 382.301(a). You only enrolled two of your eight drivers in your random selection pool, in violation of 49 CFR § 382.305(i)(2). You

failed to provide your employees a written policy on misuse of alcohol and controlled substances, in violation of 49 CFR § 382.601(b).

B. Effect of Violations

Your complete and utter disregard for the FMCSRs substantially increases the likelihood of serious injury or death for your drivers and the motoring public if your operations are not discontinued immediately. Your entire operations constitute an imminent hazard to safety which may only be abated by the cessation of your entire operations.

III. REMEDIAL ACTION

To eliminate this imminent hazard, and before you will be permitted to resume your motor carrier operations placed out of service by this Order, you must take specific steps to ensure and demonstrate compliance with the FMCSRs including the following:

1. You must establish and demonstrate safety management controls and procedures to ensure that your drivers are qualified to operate a CMV, as specified in 49 CFR § 391.11.
2. In accordance with 49 CFR § 391.51, you must also create and maintain complete driver qualification files.
3. You must establish and demonstrate procedures to ensure that any driver you use is qualified and has a current valid license for the type of vehicle that driver will operate.
4. You must establish safety management controls and procedures that ensure compliance with the Controlled Substances and Alcohol Use and Testing requirements in 49 CFR Parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol Use and Testing), including without limitation:
 - a. Registering with the Drug and Alcohol Clearinghouse.
 - b. Providing a copy of your Alcohol and Controlled Substance Testing Policy.
 - c. Describing your pre-employment testing.
 - d. Identifying the person and position that will be contacted by the consortium or service provider.

- e. Describing what steps will be taken to contact the driver selected for random testing and describing the actions the driver shall take once contacted.
 - f. Describing procedures for updating the list of CDL drivers with the service provider.
5. You must establish safety management controls and procedures that ensure that each and every CMV you operate or intend to operate, whether owned, rented, leased or otherwise used, is safe and is systematically and properly inspected, maintained, and repaired as required by 49 CFR Part 396, and that documentation of inspections, maintenance and repair are obtained and maintained as required. Your safety management controls must ensure that your drivers complete Driver Vehicle Inspection Reports when required in accordance with 49 CFR § 396.11.
6. You must ensure that each CMV you operate or intend to operate, whether owned, rented, leased or otherwise used, has been and is periodically inspected as required by 49 CFR § 396.17 and Appendix G to Subchapter B of Chapter III. You must also ensure, in accordance with 49 CFR § 396.19, that only qualified inspectors conduct such periodic inspections and that documentation of training and qualifications is maintained.
7. You must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of your CMVs are repaired and that vehicle out-of-service defects discovered are repaired before the vehicle is operated in accordance with 49 CFR § 396.9(c)(2).
8. You must contact FMCSA's Connecticut Division and arrange for inspection of each of your CMVs by an FMCSA inspector or an inspector designated by FMCSA.
9. In accordance with 49 CFR § 390.3T(e), you must ensure that all drivers are adequately trained in the requirements of the FMCSRs and that they can conduct motor carrier operations consistent with those regulations.
10. You must comply with all Orders issued by FMCSA.

IV. RESCISSION OF ORDER

You are subject to this ORDER unless and until this ORDER is rescinded in writing by FMCSA. Until this ORDER is rescinded and you have a valid and active USDOT number and, as applicable, operating authority registration, you are prohibited from operating any CMV, as

defined by 49 CFR § 390.5, in interstate and/or intrastate commerce. This ORDER will not be rescinded until the Regional Field Administrator for FMCSA's Eastern Service Center has determined that the Remedial Action requirements, specified in Paragraph III of this ORDER, have been fully satisfied and acceptable documentation submitted.

Before this ORDER may be rescinded, you must comply with the provisions of this ORDER, eliminate the deficiencies constituting the imminent hazard that your CMV operations pose, and provide evidence satisfactory to the Regional Field Administrator for FMCSA's Eastern Service Center of the actions taken to eliminate safety problems.

Any request to rescind this ORDER and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Regional Field Administrator, Eastern Service Center, with a copy to the Division Administrator, Connecticut Division, at the following addresses:

Regional Field Administrator, Eastern Service Center
Federal Motor Carrier Safety Administration
31 Hopkins Plaza
Suite 800
Baltimore, MD 21201
Email: ESCEenforcement@dot.gov

Division Administrator, Connecticut Division
Federal Motor Carrier Safety Administration
450 Main Street
Suite 524
Hartford, CT 06103
Email: Christopher.henry@dot.gov

In order for you to resume motor carrier operations in interstate or intrastate commerce, you will be required to apply for any required operating authority registration and demonstrate that you are 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 31139.

To be eligible for registration, you must not be subject to any other order prohibiting you from operating in interstate commerce.

V. ENFORCEMENT OF ORDER

This ORDER, issued pursuant to 49 U.S.C. §§ 521(b)(5)(A), 13905(f), 31144(c)(1) and (5), 31132(3), 31133, and 31134 and 49 CFR § 386.72(b)(1), is an Order of, and enforceable by, the Secretary. Violations of this ORDER may subject you to civil penalties and may also result in an action in the United States District Court for equitable relief and punitive damages. You may be assessed civil penalties of up to \$29,893 for each violation of this ORDER. *See* 49 U.S.C. §§ 507, 521(b)(2)(F) and 521(b)(4) and 49 CFR Part 386 App. A. § IV(g)). You may also be assessed civil penalties of not less than \$11,956 for providing transportation requiring registration, including operating a CMV in interstate commerce, without operating authority registration and up to \$16,864 for operating a CMV in interstate commerce without USDOT number registration. *See* 49 U.S.C. §§ 14901, 14702-03, 507, 521(b)(2)(F) and 31134. 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).

VI. PENALTIES FOR VIOLATIONS OF FEDERAL REQUIREMENTS

Any person, including any CMV operator, employer, and/or 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 statute 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.

VII. RIGHT TO REVIEW

You have the right to administrative review under 5 U.S.C. § 554 and 49 CFR § 386.72(b)(4). If requested, administrative 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. See 49 U.S.C. § 521(b)(5) and 49 CFR § 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 Adjudications Counsel and the Regional Field Administrator, Eastern Service Center, via electronic mail or at the following addresses:

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

Adjudications Counsel (MC-CCA)
Federal Motor Carrier Safety Administration
Office of the Chief Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Email: FMCSA.Adjudication@dot.gov

Regional Field Administrator, Eastern Service Center
Federal Motor Carrier Safety Administration
31 Hopkins Plaza
Suite 800
Baltimore, MD 21201
Email: ESCEnforcement@dot.gov

The request must state the material facts at issue which you believe dispute or contradict the finding that your CMV operations in interstate or intrastate commerce constitute an imminent hazard to the public.

A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT SUSPEND OR DELAY YOUR DUTY TO COMPLY WITH THIS ORDER IMMEDIATELY. See 49 CFR § 386.72(b)(4). This ORDER is separate and independent from all other orders or actions that may be issued by FMCSA or other jurisdiction and does not amend or modify any other orders or actions. Any request for administrative review of this ORDER does not attach to or apply to any other order or action.

TAFT DARRYL KELLY Digitally signed by TAFT DARRYL
KELLY
Date: 2022.06.22 15:21:36 -04'00'

**Taft Kelly, Regional Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration
Eastern Service Center**

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Alvarez Transport LLC

USDOT No. 2484230

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CERTIFICATE OF SERVICE

This is to certify that on the 23rd day of June, 2022 at 09:58 AM m., the undersigned hand-delivered one copy of the above-styled IMMINENT HAZARD OPERATIONS OUT-OF-SERVICE ORDER by serving in hand the individual listed below at the address shown below:

Lenny R. Alvarez
Individual Served

Address: 312 Boston Post Rd.
Orange, CT 06477

[Signature]
Signature

ERNEST GALANTE
Printed Name