

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

LONNIE ROTH)
USDOT No. 2461387) Order No.: SD-2015-5000-IMH)
LONNIE ROTH) Service Date: January 30, 2015)
Individually) Service Time: 1504)
)

IMMINENT HAZARD
OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order ("Order") issued by the Secretary of Transportation pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1) and (5), 49 U.S.C. § 31133(a)(10), 49 U.S.C. § 31134, and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Western Service Center, Federal Motor Carrier Safety Administration ("FMCSA"), United States Department of Transportation ("USDOT"). This Order applies to **Lonnie Roth (USDOT No. 2461387), a motor carrier, and its officers, agents, and employees, and to Lonnie Roth, in his individual capacity**, (hereinafter collectively referred to as "you," "your," "it," and/or "Lonnie Roth"), and to all commercial motor vehicles owned or operated by or on behalf of Lonnie Roth, including without limitation your 2005 Peterbilt the commercial motor vehicle (VIN 1XP5DB9X75N853414, South Dakota License Plate PR26608) and your 2015 Timp commercial trailer (VIN 1TDH40026FB147932, South Dakota License Plate U116122).

The Secretary and FMCSA find that Lonnie Roth's operations and continued operation of any commercial motor vehicle (hereinafter referred to as "commercial motor vehicles" and/or "vehicles") constitutes 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 operating any commercial motor vehicle, specifically including the commercial motor vehicles identified above. “Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. Lonnie Roth’s commercial motor vehicles, including but not limited to the commercial motor vehicles identified above, may not be operated in interstate or intrastate commerce by any other motor carrier or any driver, even without freight. Any movement of Lonnie Roth’s commercial motor vehicles, specifically including the commercial motor vehicles identified above, to any storage, repair, or other location for the purposes of repair, sale, storage, or final destination must be accomplished only by towing, such that the commercial motor vehicle itself is not driven or operated. Lonnie Roth’s commercial motor vehicles may be moved only upon the written approval of the Field Administrator for FMCSA’s Western Service Center.

LONNIE ROTH 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.

Within eight hours of the service of this Order, Lonnie Roth must submit to the Field Administrator in writing by facsimile the location of each commercial motor vehicle under your control, including without limitation the vehicles identified above.

Your submission must be faxed to the Field Administrator at 303-407-2339.

I. JURISDICTION

Lonnie Roth is a property motor carrier engaged in interstate commerce using commercial motor vehicles 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, 5121, 13501, 31133 and 31136, and 31144. Lonnie Roth 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. Mr. Lonnie Roth is the sole owner/proprietor of Lonnie Roth, a motor carrier, and is the individual directly responsible for management, control, direction, and oversight of the operations of Lonnie Roth.

Lonnie Roth is also a commercial motor vehicle driver who previously held a South Dakota commercial driver’s license (CDL) and is also subject to the FMCSRs, 49 C.F.R. Part 40, and Orders of the USDOT and FMCSA. This Order has the force and effect of any other Order issued by FMCSA and is binding upon Lonnie Roth, a motor carrier, as well as any and all of its officers, members, directors, successors, assigns, and closely affiliated companies and Lonnie Roth in his individual capacity as a commercial motor vehicle driver. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by Lonnie Roth, including but not limited to the vehicles identified above, as well as Lonnie Roth in his individual capacity as a commercial motor vehicle driver.

II. BASIS FOR ORDER

The basis for determining that Lonnie Roth’s motor carrier operations and Lonnie Roth, individually as a commercial motor vehicle driver, pose an imminent hazard to the public is serious noncompliance with Federal safety regulations and statutes. Lonnie Roth has violated

FMCSA's Order to Cease all Transportation in Interstate and Intrastate Commerce, issued December 18, 2014, and effective December 28, 2014 ("Order to Cease") by operating on at least one occasion on Monday, January 26, 2015. The Order to Cease was issued following a compliance review, completed on October 28, 2014, that resulted in an Unsatisfactory safety rating.

Furthermore, Lonnie Roth, in his individual capacity, operated a commercial motor vehicle while he did not have a valid CDL. On December 5, 2014, your South Dakota CDL was disqualified and your driving privileges were withdrawn as a result of operating a commercial motor vehicle under the influence of alcohol. Notwithstanding the disqualification of your CDL and withdrawal of your driving privileges, you nevertheless operated a commercial motor vehicle on January 26, 2015 while in possession of alcohol and after having consumed alcohol within four hours of operating a motor vehicle.

Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to you and/or the motoring public.

III. BACKGROUND

On October 22, 2014, FMCSA completed an investigation of Lonnie Roth. The compliance review resulted in FMCSA assigning a proposed safety rating of Unsatisfactory. The Unsatisfactory safety rating became effective December 28, 2014, and remains in effect. The Unsatisfactory safety rating resulted from the following critical and acute violations:

- 49 C.F.R. § 382.201 – Using a driver known to have an alcohol concentration of 0.04 or greater;
- 49 C.F.R. § 382.305 – Failing to implement a random controlled substance and/or an alcohol testing program;
- 49 C.F.R. § 395.3(a)(2) – Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty;

- 49 C.F.R. § 395.3(a)(3)(i) – Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours; and
- 49 C.F.R. § 395.8(e) – False reports of records of duty status.

Prior to the compliance review, on or about September 22, 2014, Lonnie Roth was arrested for driving a commercial motor vehicle while under the influence of alcohol. You were charged with two alcohol related offenses as well as speeding. On December 4, 2012, you were convicted of driving a commercial motor vehicle under the influence of alcohol. In a letter dated December 5, 2014, the State of South Dakota notified you that your CDL was disqualified, effective December 20, 2014. The CDL disqualification was based on operating a commercial motor vehicle while under the influence of alcohol (September 22, 2014 incident).

Moreover, in a Notice of Claim (Case No. SD-2015-0004-US0718), served October 27, 2014, FMCSA charged Lonnie Roth with, among other things, violating 49 C.F.R. § 382.201 – Using a driver known to have an alcohol concentration of 0.04 or greater. On December 29, 2014, through a settlement agreement, you admitted to the violation. The violation was based on the September 22, 2014 incident identified above.

On January 26, 2015, Lonnie Roth operated a commercial motor vehicle in interstate commerce in violation of the Order to Cease and without a valid CDL. A patrolman with the Minnesota State Patrol conducted a roadside inspection and you were placed out-of-service at the roadside. In addition to operating in violation of the Order to Cease and driving without a valid CDL, you were cited for the following violations:

- 49 C.F.R. § 395.8(a) – No records of duty status;
- 49 C.F.R. § 395.8(k)(2) – Failing to retain records of duty status for the previous seven days;
- 49 C.F.R. § 392.2 – Speeding 6-10 miles per hour over the speed limit;

- 49 C.F.R. § 392.5(a) – Consuming alcohol within four hours of operating a motor vehicle; and
- 49 C.F.R. § 392.5(a)(3) – Possessing alcohol while on duty or driving.

The Minnesota State Patrolman conducting the inspection found the Order to Cease and Notification of Withdrawal of Driving Privileges in your commercial motor vehicle during the inspection. As such, you were well aware of the Order to Cease and CDL disqualification. Furthermore, your blood alcohol content indicated alcohol in your system at the time of the roadside inspection.

Finally, on May 13, 2014, you were in a single-vehicle accident (roll over) in your commercial motor vehicle and cited by the Minnesota State Patrol for failing to wear your seatbelt and inattentive driving.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before Lonnie Roth will be permitted to resume operations and commercial driving 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 AND ANY OTHER ORDER ISSUED BY FMCSA.** You may not resume operations and commercial driving placed out of service by this Order until you have fully complied with the Remedial Actions set forth in this section.

1. Lonnie Roth 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 Western Service Center Field Administrator. Lonnie Roth 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.

2. Lonnie Roth must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). Lonnie Roth 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.

3. Lonnie Roth must ensure that each driver selected for random controlled substances or alcohol testing has an equal chance of being selected each time selections are made. Lonnie Roth must ensure that it has received a negative pre-employment controlled substances test for each driver before using that driver to perform safety-sensitive functions. Lonnie Roth must establish policies and procedures to ensure that it does not dispatch a driver who has tested positive for controlled substances or alcohol until that driver has completed the return-to-duty process in 49 C.F.R. Part 40.

4. Lonnie Roth must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391. Lonnie Roth must ensure that every driver it uses has completed and furnished an employment application. Lonnie Roth must investigate each driver's background within 30 days of employment, and must maintain a copy of the response from each State agency in the driver's qualification file. Lonnie Roth must ensure that it obtains from each driver an annual list of traffic violations and an annual Motor Vehicle Record, and that it performs an annual review on each driver's driving record. Lonnie Roth must ensure that it performs a three-year previous employment check on its drivers prior to their operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23. Lonnie Roth must ensure each driver possesses a DOT medical examiner's certificate as well as ensure that a copy of each driver's medical

examiner's certificate is maintained in the driver's qualification file.

5. Lonnie Roth must take aggressive and progressive steps to control drivers' hours of service.

6. Lonnie Roth 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.

7. Lonnie Roth must ensure that each of its drivers records his or her duty status for each 24-hour period in accordance with 49 C.F.R. § 395.8. Lonnie Roth must ensure that each of its drivers complies with the hours of service rules in 49 C.F.R. § 395.3. Lonnie Roth must maintain each record of duty status for a minimum of six months in accordance with 49 C.F.R. § 395.8.

8. Lonnie Roth must implement a system to ensure that all drivers accurately complete their records of duty status in the form and manner required in 49 C.F.R. Part 395. Lonnie Roth must ensure that its drivers accurately complete their daily records of duty status and that they submit these records to Lonnie Roth within 13 days of their completion. Lonnie Roth must maintain drivers' records of duty status and demonstrate a system showing that the company can and will maintain all supporting documents. Further, Lonnie Roth must ensure that all records of duty status are accurate by using all means available to Lonnie Roth and by comparing each record with all supporting documentation.

9. Lonnie Roth 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.

10. Lonnie Roth must submit to the Field Administrator a plan detailing how it will:

(i) train all drivers used on compliance with the HOS regulations; (ii) monitor the compliance of all drivers with the HOS regulations; and (iii) ensure that all drivers are dispatched in such a way that scheduled routes may be completed within the maximum driving and on-duty hours, as provided in 49 C.F.R. § 395.3.

11. Lonnie Roth must demonstrate to the satisfaction of the Field Administrator, Western Service Center, that he is qualified to drive a CMV in full compliance with 49 C.F.R. § 392.2 and 392.4(a).

12. Lonnie Roth 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.

13. Lonnie Roth must provide to the Field Administrator, Western Service Center, documentation demonstrating that he has completed the SAP evaluation, required education, and return-to-duty process. Lonnie Roth must also provide to the Field Administrator a written authorization for release of all records and results pertaining to the evaluation, education, treatment, and testing directed by the SAP.

14. Lonnie Roth must provide to the Field Administrator, Western Service Center, documentation demonstrating that he has a valid commercial driver's license and that any suspension, withdrawal, or revocation of his driving privileges has been lifted.

15. Lonnie Roth must demonstrate the following in writing to the satisfaction of the Field Administrator, Western Service Center:

- a. That he has 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);

b. That through the training, he has acquired the required knowledge of the rules and safety practices to operate a CMV in accordance with the FMCSRs; and

c. That all drivers employed by Lonnie Roth are adequately trained in the requirements of the FMCSRs and that they are able to conduct motor carrier operations consistent with those regulations.

16. Lonnie Roth must provide a certification statement that he 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.

17. Lonnie Roth must notify any motor carrier employer when he does not have the necessary available hours of service to start or to complete a trip in accordance with 49 C.F.R. Part 395.

18. Lonnie Roth must comply with all Orders issued by FMCSA.

19. Lonnie Roth must demonstrate compliance with FMCSA's Order to Cease.

20. Lonnie Roth must demonstrate that he will comply with any other FMCSA orders.

21. Lonnie Roth must demonstrate that he will comply with all federal regulations and statutes, including the FMCSRs.

22. Lonnie Roth must demonstrate that he will not allow a driver who does not have a valid commercial driver's license to drive a commercial motor vehicle on his behalf.

V. RESCISSION OF ORDER

Lonnie Roth's motor carrier operations and individual commercial driving privileges are subject to this Order unless and until this Order is rescinded in writing by FMCSA. Unless and until this Order is rescinded, and until such time as Lonnie Roth has a valid and active USDOT

number and operating authority registration (if applicable), Lonnie Roth is prohibited from operating any commercial motor vehicle as a motor carrier in interstate and/or intrastate commerce. Before driving any commercial motor vehicle, as defined by 49 C.F.R. § 390.5, in interstate commerce, Lonnie Roth 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 Western 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 Western Service Center before conducting interstate operations.** This Order will not be rescinded until the 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 resuming motor carrier operations, you must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that your operations and driving pose, and adequately demonstrate the actions taken to eliminate the safety problems. Lonnie Roth cannot avoid this Order by continuing operations under the name of another person or company.

Any sale, lease, or other agreements involving your commercial motor vehicles or motor carrier operations require the written approval of the Field Administrator. Any such action taken in anticipation of this Order must cease immediately.

Prior to rescission of the Order, Lonnie Roth 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 noncompliance, and a time table for these steps.

3. Certify in writing the commitment of Lonnie Roth 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 Field Administrator, Western Service Center, with a copy to the Division Administrator, South Dakota Division, at the following addresses:

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

Division Administrator, South Dakota Division
Federal Motor Carrier Safety Administration
1410 East Highway 14, Suite B
Pierre, SD 57501

Rescission of this Order does not constitute a reinstatement of Lonnie Roth's USDOT Number or operating authority registration. In order for Lonnie Roth to resume motor carrier operations in the United States, you are required to apply to reactivate your USDOT Number registration and operating authority registration and address the Order to Cease.

VI. FAILURE TO COMPLY WITH THIS ORDER

As a motor carrier, your failure to comply with the provisions of this Order may subject you to an action in the United States District Court for equitable relief and punitive damages. You may be assessed civil penalties of up to \$25,000 for each 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).

As a driver, your 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, 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 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. (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, and should be sent to the attention of Adjudications Counsel by facsimile or electronic mail as follows:

By Fax:

Adjudications Counsel (MC-CCA)
(202) 366-3602

or electronic mail:

FMCSA.Adjudication@dot.gov

with a copy mailed or sent by commercial delivery service to the Assistant Administrator and Adjudications Counsel at the following address:

Adjudications Counsel (MC-CCA)
Federal Motor Carrier Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590

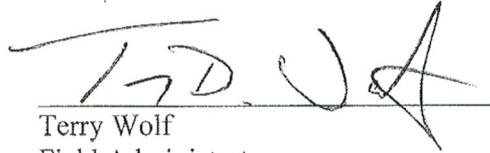
A copy of any request for administrative review must also be sent to the Field Administrator by mail and facsimile as follows:

Field Administrator, Western Service Center
Federal Motor Carrier Safety Administration
12600 West Colfax Avenue, Suite B-300
Lakewood, CO 80228
Fax: (303) 407-2339

The request must state the material facts at issue which you believe dispute or contradict the finding that Lonnie Roth's operations and Lonnie Roth, individually, 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.** This Order

is separate and independent from all other orders or actions that be issues 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 to or apply to any other order or action.

Date: January 30, 2015

A handwritten signature in black ink, appearing to read 'Terry Wolf', written over a horizontal line.

Terry Wolf
Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration