

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

RHINO DISPLAYS)	ORDER NO. IL-2015-5000-IMH
)	
USDOT NO. 1474447)	Service Date: <u>06/04/2015</u>
)	
)	Service Time: <u>1557</u>
)	
)	Person Served: <u>Benjamin Ward</u>

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. 31133(a)(10), and 49 C.F.R. 386.72(b)(1), and pursuant to a delegation of authority to the Acting Field Administrator, Midwestern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Matteson, Illinois. This Order applies to RHINO DISPLAYS, USDOT No. 1474447 (also referred to herein as “you,” “your,” and/or “RHINO DISPLAYS”) and to all commercial motor vehicles owned or operated by or for RHINO DISPLAYS that transport hazardous materials.

The Secretary and FMCSA find RHINO DISPLAYS’ operations and continued operation of any commercial motor vehicle, referred to herein as “commercial motor vehicles” and/or “vehicles,” that transport hazardous materials, constitute an **imminent hazard** to public safety. This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicle(s) containing a placardable quantity of hazardous materials poses an **imminent hazard** to public safety.

**EFFECTIVE IMMEDIATELY YOU MUST CEASE OPERATING ANY
COMMERCIAL MOTOR VEHICLE CONTAINING A PLACARDABLE QUANTITY
OF HAZARDOUS MATERIALS.**

“Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. “Hazardous Materials” means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. § 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 C.F.R. § 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of 49 C.F.R. chapter 1. The general hazardous materials placarding requirements are located at 49 C.F.R. § 172.504. RHINO DISPLAYS’ commercial motor vehicles containing a placardable quantity of hazardous materials may be moved only upon the written approval of the Acting Field Administrator for FMCSA’s Midwestern Service Center.

Commercial motor vehicles containing a placardable quantity of hazardous materials and their drivers now in interstate commerce 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 cargo may be secured. (See 49 C.F.R. § 386.72(b)(4) and (5)).

**NO ADDITIONAL HAZARDOUS MATERIALS IN A PLACARDABLE
QUANTITY MAY BE LOADED OR TRANSPORTED, NOR MAY YOU OPERATE
ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR INTRASTATE**

COMMERCE CONTAINING A PLACARDABLE QUANTITY OF HAZARDOUS MATERIALS WHILE THIS ORDER IS IN EFFECT.

Within eight (8) hours of the service of this Order, you must submit to the Field Administrator in writing by facsimile the location of each of RHINO DISPLAYS' commercial motor vehicles containing hazardous materials. Your submission must be faxed to:

Jon Dierberger, Acting Field Administrator
FMCSA – Midwestern Service Center
708-283-3579

I. JURISDICTION

RHINO DISPLAYS is a private motor carrier transporting hazardous materials in interstate commerce and employing drivers and is therefore subject to the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 C.F.R. Parts 350-399; the alcohol and controlled substances regulations at 49 C.F.R. part 40; the hours of service regulations at 49 C.F.R. Part 395; the Hazardous Materials Regulations (“HMRs”) at 49 C.F.R. Parts 171- 180 as well as the Orders of the USDOT and FMCSA. (See 49 U.S.C. §§ 506, 507, 5101 *et seq.*, 31333, 31134, 31136 and 31144). RHINO DISPLAYS is required to comply, and to ensure its drivers comply, with the FMCSR's, HMRs and Orders of the USDOT and FMCSA. (See 49 U.S.C. §§ 5103(b) and 31135(a) and 49 C.F.R. §§ 171.2 and 390.11). This ORDER has the force and effect of any other ORDER issued by FMCSA and is binding upon RHINO DISPLAYS and its officers, members, directors, successors, assigns and closely affiliated companies. This ORDER applies to all hazardous materials motor carrier operations and to all motor vehicles owned, leased, rented or otherwise operated by and/or for RHINO DISPLAYS that transport hazardous materials.

II. BASIS FOR ORDER

The basis for determining that RHINO DISPLAYS' hazardous materials motor carrier operations pose an imminent hazard to the public is RHINO DISPLAYS' serious noncompliance with the FMCSRs, specifically 49 C.F.R. Parts 383, 391, 392, 393 and 395. RHINO DISPLAYS does not have safety management practices in place to ensure that its hazardous materials cargo is secured in its packages or containers. RHINO DISPLAYS uses drivers to drive commercial motor vehicles containing hazardous materials that do not possess Commercial Driver's Licenses or medical certificates. RHINO DISPLAYS uses drivers that transport alcoholic beverages in commercial motor vehicles containing hazardous materials. RHINO DISPLAYS uses drivers that do not make records of duty status. These violations substantially increase the likelihood of serious injury or death to RHINO DISPLAYS's drivers and the public.

III. BACKGROUND

In July 2010, RHINO DISPLAYS informed FMCSA that it had closed its business, a fireworks display company.¹ RHINO DISPLAYS would typically transport the fireworks, which are classified by the Pipeline and Hazardous Materials Safety Administration as Hazardous Materials Division 1.3 and 1.4 (explosives),² in commerce to sites where RHINO DISPLAYS would activate the fireworks. As a result of the July 2010 notification, FMCSA refrained from conducting compliance reviews or otherwise closely regulating an apparently defunct motor carrier.

On May 30, 2015, FMCSA investigators discovered that RHINO DISPLAYS transported fireworks in a commercial motor vehicle to a baseball stadium in Hannibal, Missouri. FMCSA investigators inspected the vehicle and driver and discovered numerous safety

¹ Rhino Displays mailed a Form MCS-150 (out-of-business notification) to FMCSA on July 31, 2010.

² See 49 C.F.R. §172.101, Hazardous Materials Table.

violations. The vehicle's trailer contained three open boxes and two plastic grocery bags containing fireworks which had been prepared for the display, and three sealed boxes of fireworks. None of the packages of fireworks were secured in a method that prevented shifting.³ Moreover, the investigators also discovered ferrous metals on the floor, wall and door of the trailer, a dangerous condition capable of causing the fireworks to explode in the trailer. The vehicle did not contain a fire extinguisher,⁴ nor did it contain warning devices such as emergency triangles.⁵ Furthermore, the investigators found a cooler containing several cans of beer.⁶

The driver of the RHINO DISPLAYS commercial motor vehicle did not have a Commercial Driver's License⁷ or a hazardous materials endorsement,⁸ nor did he have a valid medical certificate.⁹ Thus, RHINO DISPLAYS has not ensured that the driver is qualified to drive a commercial motor vehicle or possesses the knowledge required to transport hazardous materials safely.¹⁰ Further, the driver did not have in his possession the requisite instructions and documents related to explosive hazardous materials that would have outlined the procedures to

³ See 49 C.F.R. 393.100(c) ("Cargo must be contained, immobilized or secured . . . to prevent shifting upon or within the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected.").

⁴ See 393.95(a) ("A power unit that used to transport hazardous materials . . . must be equipped with a fire extinguisher. . . .").

⁵ See 393.95(f) ("*Warning devices for stopped vehicles.* . . . [O]ne of the following options must be used: (1) Three bidirectional emergency reflective triangles . . . (2) At least 6 fuses or 4 liquid-burning flares. . . .")

⁶ See 392.5(a)(3) ("No driver shall . . . (b) be on duty or operate a commercial motor vehicle while the driver possesses . . . beer. . . .").

⁷ See 49 C.F.R. 383.23(a)(2) ("[N]o person may legally operate a CMV unless such person possesses a CDL" and 383.3 ("The rules in [Part 383] apply to every person who operates a commercial motor vehicle in interstate, foreign or intrastate commerce [and] to all employers of such persons.").

⁸ See 49 C.F.R. § 383.23(a)(1) ("No person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests for a . . . CDL that meet the Federal standards . . . for the commercial motor vehicle that person operates . . ."), and 383.93 ("In addition to passing the knowledge and skills tests . . . , all persons who operate or expect to operate [specific] type(s) of motor vehicles . . . must pass specialized tests to obtain each endorsement.").

⁹ See 49 C.F.R. 391.41(a)(1)(i) ("A person . . . may not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so and . . . when on duty has on his or her person the original or a copy of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle. ").

¹⁰ See 391. 11 ("[A] motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle. . . .").

be followed in the event of an accident.¹¹ The driver also failed to make a record of duty status for the trip.¹² Making accurate records of duty status is especially important for drivers of vehicles containing explosive hazardous materials. Adherence to the hours of service regulations helps prevent driver fatigue, which causes countless fatal crashes.

FMCSA requires that certain carriers of hazardous materials obtain a Hazardous Materials Safety Permit (HMSP) from FMCSA.¹³ Carriers with an HMSP have demonstrated that they meet certain safety standards¹⁴ and must refrain from committing certain violations of the FMCSR's or HMRs.¹⁵ For example, FMCSA may revoke a motor carrier's HMSP if it fails to comply with federal or state requirements governing the transportation of hazardous materials, such as refusing to train its hazardous materials employees or failing to create and adhere to a hazardous materials security plan.¹⁶ Because of the fireworks in the vehicle, RHINO DISPLAYS was required to, yet failed, to obtain an HMSP for the transportation of hazardous materials. RHINO DISPLAYS also violated several HMRs¹⁷ when it transported the fireworks on May 30, 2015 including the failure to transport,¹⁸ and package¹⁹ the hazardous materials

¹¹ See 49 C.F.R. 397.19(a) ("A motor carrier that transports Division . . . 1.3 (explosive) materials must furnish the driver of each motor vehicle in which the explosives are transported . . . [a] document containing instructions on procedures to be followed in the event of accident or delay.").

¹² See 49 C.F.R. 395.8(a)(1) ("Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period.").

¹³ See 49 C.F.R. 385.403(b) ("(A) motor carrier may not transport in interstate commerce any of the following hazardous materials . . . unless the motor carrier holds a safety permit: . . . (b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material . . .")

¹⁴ See generally, 49 C.F.R. § 385.407.

¹⁵ See generally, 49 C.F.R. § 385.421.

¹⁶ See 49 C.F.R. § 385.421(5), 49 C.F.R. § 172.700 and 49 C.F.R. § 172.800.

¹⁷ 49 C.F.R. 392.2 ("Each commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.").

¹⁸ See generally, 49 C.F.R. § 177.835.

¹⁹ See generally, 49 C.F.R. § 173.24(c).

appropriately, the failure to placard²⁰ the vehicle, and the failure to include the appropriate shipping papers.²¹

These widespread violations substantially increased the likelihood of serious injury or death to RHINO DISPLAYS' drivers and the public.

IV. REMEDIAL ACTION

To eliminate the imminent hazard, and before RHINO DISPLAYS will be permitted to resume operations placed out of service by this ORDER, RHINO DISPLAYS must take specific steps to ensure and demonstrate compliance with the Federal Motor Carrier Safety Regulations. RHINO DISPLAYS must comply with all Orders issued by FMCSA and must submit to the Acting Field Administrator a plan detailing how RHINO DISPLAYS will:

1. Apply to reactivate its USDOT number and registration by filing with a Form MCS-150 or MCS-150B, informing FMCSA of its desire to resume commercial motor carrier operations.
2. Establish safety management controls and procedures that ensure that each driver it employs will comply with the cargo securement requirements in 49 C.F.R. Part 393.
3. Require its drivers to refrain from transporting alcoholic beverages in commercial motor vehicles while on duty and otherwise comply with the drug and alcohol regulations in 49 C.F.R. Part 382.
4. Establish safety management controls and procedures that ensure that each driver it uses to operate commercial motor vehicles possesses a valid CDL with the appropriate endorsements pursuant to 49 C.F.R. Part 383, and is qualified to operate a commercial motor vehicle pursuant to 49 C.F.R. Part 391.

²⁰ See generally, 49 C.F.R. § 172.504(a).

²¹ See generally, 49 C.F.R. § 172.200(a).

5. Require its drivers to make an accurate record of duty status when operating commercial motor vehicles in interstate commerce, and otherwise comply with 49 C.F.R. Part 395.
6. Obtain a Hazardous Materials Safety Permit (HMSP) before transporting hazardous materials that require an HMSP permit, in accordance with 49 C.F.R. § 385.403.
7. Demonstrate that it will transport hazardous materials in accordance with laws, ordinances and regulations of the jurisdiction in which it is being operated, including shipping paper, labelling, placarding, packaging, load securement, and security requirements of the HMRs.
8. Train all hazardous materials employees on the requirements of the HMRs, pursuant to 49 C.F.R. § 172.700.

V. RESCISSION OF ORDER

RHINO DISPLAYS is subject to this ORDER unless and until the ORDER is rescinded in writing by FMCSA. Unless and until this ORDER is rescinded, RHINO DISPLAYS is prohibited from operating any commercial motor vehicle containing a placardable amount of hazardous materials in interstate and/or intrastate commerce. This ORDER will not be rescinded until the Acting Field Administrator for FMCSA's Midwestern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this ORDER have been fully satisfied and acceptable documentation had been submitted.

Before resuming motor carrier operations, RHINO DISPLAYS must comply with the provisions of this ORDER, eliminate the problems constituting the imminent hazard that its operations pose, and adequately demonstrate to the Acting Field Administrator's satisfaction the actions taken to eliminate the safety problems. **RHINO DISPLAYS cannot avoid this**

ORDER by continuing to operate as a hazardous materials carrier under the name of

another person or company. Additionally, any sale, lease, or other agreements for service by RHINO DISPLAYS requires the written approval of the Midwestern Service Center Acting Field Administrator. Any such action taken in anticipation of this ORDER must cease immediately.

Prior to the rescission of this ORDER, RHINO DISPLAYS will be required to:

- 1. Identify the cause for your noncompliance.**
- 2. Develop a detailed Safety Management Plan of action that addresses each area of noncompliance, the steps it intends to take to overcome its noncompliance, and a timetable for these steps. The SMP must address each element outlined in section IV paragraphs 1-8 above.**
- 3. Certify in writing the commitment of RHINO DISPLAYS to comply with the Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations.**
- 4. Execute the Safety Management Plan and provide certification by all owners, members and officers.**

Any request to rescind this ORDER must be in writing. Written documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Acting Field Administrator, Midwestern Service Center, with a copy to the Division Administrator, Illinois Division, at the following addresses:

Acting Field Administrator, Midwestern Service Center
Federal Motor Carrier Safety Administration
4749 Lincoln Mall Drive, Suite 300A
Matteson, Illinois 60443

Division Administrator, Illinois Division
Federal Motor Carrier Safety Administration
3250 Executive Park Drive
Springfield, Illinois 62703

VI. ENFORCEMENT OF ORDER

This ORDER, issued pursuant to 49 U.S.C. 521(b)(5)(A), 49 U.S.C. 31144(c)(1) and (5), 31133 and 49 C.F.R. § 386.72(b)(1), is an ORDER of the Secretary. Violation of this ORDER may subject RHINO DISPLAYS to civil penalties and may also result in an action in the United States District Court for equitable relief and punitive damages. RHINO DISPLAYS may be assessed civil penalties of up to **\$25,000** for a violation of this ORDER. (49 U.S.C. §§ 507, 521(b)(2)(F), and 521(b)(4) and 49 C.F.R. Part 386 App. A. § IV(g)). Violations of this order may also subject RHINO DISPLAYS to criminal penalties, 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) and 526).

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 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). Subsequent to the issuance of the ORDER, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur

not later than ten days after issuance of such ORDER. (49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). FMCSA interprets this requirement to mean that if a petition for review is filed within ten days of issuance of such ORDER, a 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. 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 FMCSA's Adjudication's Counsel by mail and electronic mail, and the Acting Field Administrator, Midwestern Service Center at the following addresses:

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

Federal Motor Carrier Safety Administration
Office of the Chief Counsel – Adjudications
1200 New Jersey Avenue S.E. W61-323
Washington, D.C. 20590
FMCSA.Adjudication@dot.gov

Acting Field Administrator, Midwestern Service Center
Federal Motor Carrier Safety Administration
4749 Lincoln Mall Drive, Suite 300A
Matteson, IL 60443

The request must state the material facts at issue which you believe dispute or contradict the finding that RHINO DISPLAYS' operations constitute 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. Any request for administrative review of this ORDER does not attach to or apply to any other order or action.

Date: June 4, 2015



Jon Dierberger, Acting Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration