

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

FTW TRANSPORT, LLC
USDOT 1891989

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) Order No.: TX-2014-5000-IMH
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) Service
) Date: _____
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) Time: _____
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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), 49 U.S.C. § 31144(c)(1) and (5), 49 U.S.C. § 31133(a)(10) and 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”), Lakewood, Colorado. This ORDER applies to FTW TRANSPORT, LLC (USDOT No. 1891989) and to its officers, agents, and employees, (referred to herein as “you,” “your”, and/or “FTW TRANSPORT”) and the operation of its commercial motor vehicles.

The Secretary and the FMCSA find your operations and your continued operation of commercial motor vehicles (herein “commercial motor vehicles,” “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 commercial motor vehicle(s) poses an **imminent hazard** to public safety.

EFFECTIVE IMMEDIATELY

**YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS
INCLUDING ALL INTERSTATE AND INTRASTATE TRANSPORTATION OF
PROPERTY FROM ALL DISPATCHING LOCATIONS**

Your commercial motor vehicles and their drivers now in interstate or intrastate commerce may proceed to their next immediate destination. (*See* 49 C.F.R. § 386.72(b)(4) and (5)). You may not load or transport any additional freight.

NO ADDITIONAL PROPERTY MAY BE LOADED OR TRANSPORTED, NOR MAY ANY COMMERCIAL MOTOR VEHICLE(S) BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.

Commercial motor vehicles may only be moved upon the written approval of the Field Administrator for FMCSA's Western Service Center.

I. JURISDICTION

FTW TRANSPORT is a motor carrier engaged in interstate and intrastate transportation of property and hazardous materials, in commerce in the United States using commercial motor vehicles and employing drivers and is therefore subject to Federal motor carrier safety statutes and regulations, including the Federal Motor Carrier Safety Regulations ("FMCSRs"), 49 C.F.R. Parts 350-399, the Federal Hazardous Materials Regulations ("HMRs"), 49 C.F.R. Parts 171-180, 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, 31136, and 31144.)

FTW TRANSPORT 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 FTW

TRANSPORT, as well as any and all of its officers, members, directors, successors, assigns and closely affiliated companies.

II. BASIS FOR ORDER

The basis for determining that FTW TRANSPORT's motor carrier operations and the continued operation of commercial motor vehicles pose an imminent hazard to safety is its significant and serious noncompliance with Federal motor carrier safety regulations resulting in commercial motor vehicle operations which substantially increase the likelihood of serious injury or death if not discontinued immediately. FTW TRANSPORT fails to ensure that its drivers comply with hours of service and records of duty status requirements, and permits widespread falsification of records of duty status. FTW TRANSPORT has no system in place for reviewing its drivers' records of duty status, and even after FMCSA interventions, continues to fail to make even minimal checks or verification of its drivers' records of duty status. FTW TRANSPORT also fails to comply with driver controlled substances and alcohol use and testing requirements, uses drivers despite not having ensured the driver has completed follow-up testing as required by a Substance Abuse Professional after having violated alcohol and/or controlled substances use prohibitions, and fails to ensure its drivers comply with alcohol and controlled substances use prohibitions. Additionally, FTW TRANSPORT fails to ensure that its commercial motor vehicles are systematically and properly inspected, maintained and repaired to meet minimum safety standards, and fails to maintain adequate records of inspection, maintenance and repairs. Moreover, FTW TRANSPORT has had five recordable crashes in the preceding 12 months, and has a crash rate nearly 25% higher than the safety rating accident factor unsatisfactory threshold. Four crashes involved serious injuries or fatalities.

Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to FTW TRANSPORT's drivers and the motoring public.

III. BACKGROUND

FMCSA's Safety Measurement System (SMS) which measures a motor carrier's relative safety performance show FTW TRANSPORT's Behavior Analysis and Safety Improvement Categories ("BASICS") at elevated levels, including five BASIC categories at "alert" status above FMCSA's intervention thresholds; FTW TRANSPORT's Hours-of-Service Compliance is at 96.1%; Vehicle Maintenance at 91.9%, Driver Fitness Basic at 88.7%, and Unsafe Driving at 74.2%. During the previous 12-months, FTW TRANSPORT has had 5 preventable recordable crashes; 4 of the crashes involved serious injuries or fatalities.

In December 2013 FMCSA initiated a compliance review of FTW TRANSPORT's motor carrier operations as a result of its high BASIC scores. During the investigation, serious non-compliance with Federal Motor Carrier Safety Regulations (FMCSRs) was discovered. Investigators returned to FTW TRANSPORT in February 2014 and again uncovered serious violations of the FMCSRs. The compliance review is resulting in a proposed unsatisfactory safety rating. Moreover, the Investigators documented the same that had been discovered in December 2013, demonstrating a continuing and flagrant disregard for compliance with the FMCSRs.

FTW TRANSPORT fails to ensure that its drivers comply with hours of service and records of duty status requirements, and permits widespread falsification of records of duty status (RODS). FTW TRANSPORT has no system in place for reviewing its drivers' RODS, and even after FMCSA interventions, continues to fail to make even minimal checks or

verification of its driver's RODS. FTW TRANSPORT has a critical rate of falsification on drivers' RODS, and FTW TRANSPORT is not taking any action to control its drivers' hours of service; in fact, of five drivers discovered in December 2013 to have a critical level of false RODS, three were still employed by FTW TRANSPORT during the completion of the compliance review in March, and these drivers continue to have a critical level of log falsification. Furthermore, despite the Investigators showing the log falsification violations to FTW TRANSPORT in December, the rate of falsification discovered in March was significantly higher, and FTW TRANSPORT continues to not evaluate its drivers' logs in any way and therefore cannot control its drivers. Of 260 relevant inspections of FTW TRANSPORT drivers, 86 inspections cited drivers with hours of service compliance violations. Even after the compliance review was initiated in December 2013, 11 separate roadside inspections have cited FTW TRANSPORT drivers with hours of service violations, and three FTW TRANSPORT drivers were found to be so significantly in violation of hours of service requirements, that they were placed out of service during the inspections and not allowed to continue driving until able to do so lawfully. Further, on 10 separate occasions in the last 12 months, FTW TRANSPORT drivers have been cited with violations demonstrating that they are failing to obey fundamental driving safety laws, including speeding and failing to obey traffic signals and texting while driving. Additionally, a driver cited with careless driving in a double fatality crash was cited with having false logs in the days leading up to the crash.

FTW TRANSPORT's compliance with FMCSA mandated controlled substances and alcohol use and testing requirements is also egregiously deficient. FTW TRANSPORT fails to comply with driver controlled substances and alcohol use and testing requirements, uses drivers despite not having ensured the driver has completed follow-up testing as required by a

Substance Abuse Professional (SAP) after having violated alcohol and/or controlled substances use prohibitions, and fails to ensure its drivers comply with alcohol and controlled substances use prohibitions. FTW TRANSPORT twice failed to post-accident test one of its drivers for alcohol and controlled substances even after a crash that resulted in two fatalities. FTW TRANSPORT also failed to require its positive-tested driver to fulfill SAP requirements for returning to safety sensitive duties. Additionally, FTW TRANSPORT failed to complete pre-employment drug testing and make required inquiries into drivers' alcohol and controlled substances history, even after one of its drivers tested positive and one was found to have alcohol in his truck during a roadside inspection.

Further, FTW TRANSPORT fails to ensure that its commercial motor vehicles are systematically and properly inspected, maintained and repaired to meet minimum safety standards, and fails to maintain adequate records of inspection, maintenance and repairs. Roadside inspections on vehicles operated by FTW TRANSPORT show that 27% of the vehicles inspected have an out-of-service defect. FTW TRANSPORT has no meaningful way of ensuring its vehicles are inspected and maintained in such a way to ensure they are safe to operate. Of 13 vehicles sampled, not one had a complete vehicle maintenance file containing even the minimum records of inspection and maintenance. The only records of vehicle maintenance maintained by the carrier were roadside inspection reports citing vehicle maintenance violations, which were kept in the driver files rather than the vehicle files.

FTW TRANSPORT's crash history reveals an alarmingly high number of preventable crashes. FTW TRANSPORT had five preventable crashes in the last 12 months, and a crash rate almost 25% higher than the safety rating accident factor unsatisfactory threshold. In two of those crashes, FTW TRANSPORT drivers were cited with careless driving, or careless driving

resulting in death. The driver cited for careless driving resulting in a double fatality was also cited with false logs in the days leading up to the crash. Other FTW TRANSPORT drivers involved in crashes were listed as having contributed to the crashes by following too closely/improper passing, distracted driving, and operating a vehicle at an imprudent speed.

FTW TRANSPORT's lack of safety management controls over its drivers, and ongoing serious safety violations demonstrate a continuing and flagrant general disregard for compliance with the FMCSRs and indifference to motor carrier safety. FTW TRANSPORT's actions, its lack of basic safety management systems and inability to control its drivers and their driving behavior substantially increases the likelihood of serious injury or death. This condition of operations is an imminently hazardous and potentially deadly risk for FTW TRANSPORT's drivers and for the motoring public.

IV. REVOCATION OF OPERATING AUTHORITY REGISTRATION AND SUSPENSION OF USDOT NUMBER REGISTRATION

49 U.S.C. § 13905(f)(2) requires FMCSA to revoke the operating authority registration of a motor carrier if the FMCSA finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property. Additionally, in accordance with 49 U.S.C. § 31134(c)(1), the Secretary is required to suspend the USDOT number registration of a motor carrier if the Secretary determines that the motor carrier's operating authority registration is subject to revocation as a result of such imminent hazard finding. Accordingly, pursuant to 49 U.S.C. § 13905(f)(2), FTW TRANSPORT's United States Federal operating authority registration is revoked, and in accordance with 49 U.S.C. § 31134(c)(1), FTW TRANSPORT's USDOT number registration is suspended.

V. REMEDIAL ACTION

To eliminate this imminent hazard, and before FTW TRANSPORT will be permitted to resume operation of commercial motor vehicles, FTW TRANSPORT must take specific steps to ensure and demonstrate compliance with the FMCSRs.

A. FTW TRANSPORT must establish safety management controls and procedures to ensure that its drivers comply with hours of service requirements as set forth in 49 C.F.R. Part 395.

B. FTW TRANSPORT must establish safety management controls and procedures to ensure that its drivers do not falsify records of duty status, and ensure that each driver accurately completes his or her records of duty status in the form and manner required in 49 C.F.R. Part 395.

C. FTW TRANSPORT must establish safety management controls and procedures to ensure that each and every driver subject to the commercial driver's license requirements of 49 C.F.R. Part 383, the Licencia Federal de Conductor (Mexico) requirements, or the commercial drivers license requirements of the Canadian National Safety Code that it employs is subject to, and complies with, the controlled substances and alcohol testing requirements of 49 C.F.R. Part 382, and is tested for controlled substances and alcohol use. FTW TRANSPORT must provide documentation of such testing, including copies of custody and control forms and test results reviewed by a medical review officer, to the Field Administrator for FMCSA's Western Service Center.

D. FTW TRANSPORT must ensure and demonstrate that each and every commercial motor vehicle it operates or intends to operate is in a safe operating condition and in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operation)

and Part 396 (Inspection, Repair and Maintenance), and that all defects and deficiencies have been corrected and repaired.

E. FTW TRANSPORT must establish safety management controls and procedures that ensure that each and every commercial motor vehicle it operates or intends to operate is systematically and properly 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.

F. FTW TRANSPORT 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. FTW TRANSPORT must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is used for the transportation of property prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

G. FTW TRANSPORT 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. FTW TRANSPORT must check the driving history, including the driver's controlled substances and alcohol use and testing history, and 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.

H. FTW TRANSPORT must establish safety management controls to control driver compliance with the laws, ordinances and regulations of the jurisdiction in which they operate.

I. FTW TRANSPORT must establish an accident prevention program including at a minimum, an analysis of the cause(s) of each recordable accident during the previous 12-months, identification of drivers exhibiting dangerous or negligent driving behavior, and accident countermeasures.

J. FTW TRANSPORT 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.

VI. 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 taken necessary action and your safety rating is not unsatisfactory, you are prohibited from operating any commercial motor vehicle in interstate and/or intrastate commerce. 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 this ORDER may be rescinded you must comply with the provisions of this ORDER, eliminate the problems constituting the imminent hazard that your operations pose, and adequately demonstrate to the Field Administrator for FMCSA's Western Service Center the actions taken to eliminate the safety problems. You 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 by you requires the written approval of the Western Service Center Field Administrator. Any such action taken in anticipation of this ORDER must cease immediately.

Prior to rescission of this ORDER, FTW TRANSPORT 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. 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 of the request and documentation to the Division Administrator, Texas Division, at the following addresses:

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

Division Administrator
Texas Division
Federal Motor Carrier Safety Administration
903 San Jacinto Blvd., Suite 101
Austin, Texas 78701

Rescission of this ORDER does not constitute a reinstatement of FTW TRANSPORT's Federal operating authority registration or its USDOT number registration. In order for FTW TRANSPORT to resume motor carrier operations transporting property in interstate or intrastate commerce, FTW TRANSPORT will be required to apply to reactivate its USDOT number registration, and if its operations require Federal operating authority apply for new 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.

VII. ENFORCEMENT OF ORDER

This ORDER, issued pursuant to U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1) and (5), § 31133, and § 31134 and 49 C.F.R. § 386.72(b)(1), is an Order of, and enforceable by, the Secretary. Violation of this ORDER may subject FTW TRANSPORT to civil penalties and may also result in an action in the United States District Court for equitable relief and punitive damages. FTW TRANSPORT 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)). FTW TRANSPORT may also be assessed civil penalties up to \$10,000 for providing transportation requiring registration, including operating a commercial motor vehicle in interstate commerce, without operating authority registration (49 U.S.C. §§ 14901, 14702-03) and up to \$25,000 for operating a commercial motor vehicle in interstate commerce without USDOT number registration (49 U.S.C. §§ 507, 521(b)(2)(F) and 31134). Violations of this ORDER may also subject FTW TRANSPORT 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).

VIII. PENALTIES FOR VIOLATIONS OF FEDERAL REQUIREMENTS

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. 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.

IX. 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 days. (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 Adjudications Counsel, at the following addresses:

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

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

A copy of any request for administrative review should also be sent to the Field Administrator at the following address:

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

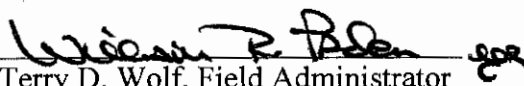
The request must state the material facts at issue which you believe dispute or contradict the finding that FTW TRANSPORT's operation of commercial motor vehicles in interstate or intrastate commerce constitutes an imminent hazard to the public.

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: 3/19/2014


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