

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

**Tornado Bus Co., Inc.**  
**535 E. Jefferson Blvd.**  
**Dallas, TX 75203**

)  
) **Order OOSO-2007-01**  
) **Service Date: \_\_\_\_\_**  
) **Time: \_\_\_\_\_**  
) **Person Served: \_\_\_\_\_**

**OPERATIONS OUT-OF-SERVICE ORDER**

This notice constitutes an **Operations Out-of-Service Order** by the United States Department of Transportation pursuant to 49 U.S.C. § 521(b)(5)(A), Public Law 105-59 § 4114, 119 Stat. 1144 (Aug. 10, 2005), and 49 C.F.R. § 386.72(b)(1), and pursuant to delegation of authority to the Field Administrator, Federal Motor Carrier Safety Administration, United States Department of Transportation, Atlanta, Georgia. The Order applies to Tornado Bus Co., Inc. and each of its officers and directors, including but not limited to Vicente Vasquez and Juan Vasquez (referred to collectively herein as "you," "your" or "Tornado").

The United States finds your motor coach operations constitute an **"imminent hazard."** This finding means that based upon your present state of unacceptable safety compliance and your failure to adequately establish safety management systems and oversee your drivers' duty status and hours of service (HOS), your motor carrier operation poses an **"imminent hazard"** to public safety.

**EFFECTIVE IMMEDIATELY, YOU MUST CEASE ALL COMMERCIAL  
MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE AND  
INTRASTATE TRANSPORTATION OF PASSENGERS AND PROPERTY BY DRIVERS  
FROM ALL DISPATCHING LOCATIONS OR TERMINALS.**

Vehicles and their drivers now in interstate or intrastate commerce may proceed to their next immediate destination, which is defined as the next scheduled stop for vehicles already in motion where the passengers can be safely accommodated. (See 49 C.F.R. 386.72)(b)).

**NO ADDITIONAL PASSENGERS MAY BE LOADED OR TRANSPORTED, NOR MAY THE BUSES BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE DURING THE PERIOD OF TIME THIS ORDER IS IN EFFECT. A BUS MAY BE MOVED TO A LOCATION TO BE REPAIRED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR.**

#### **JURISDICTION**

Tornado is a motor carrier engaged in interstate commerce and is therefore subject to the Federal Motor Carrier Safety Regulations ("FMCSRs"), 49 C.F.R. Parts 350-399, as well as the orders of the United States Department of Transportation and the Federal Motor Carrier Safety Administration ("FMCSA"). See 49 U.S.C. §§ 506, 507, 31133 and 31162.

Tornado is required to comply with, and to ensure that its drivers comply with the FMCSRs (49 C.F.R. § 390.11) and the HMRs (49 C.F.R. Parts 171 et seq.). This Order shall have the force and effect of any other Order issued by the FMCSA and shall be binding upon Tornado and any and all of its officers, directors, successors and assigns.

## BASIS FOR THE OUT-OF SERVICE ORDER

The basis for FMCSA's determination that Tornado's motor carrier operation poses an **"imminent hazard"** to safety is that Tornado currently permits and/or requires its drivers operating commercial motor vehicles ("CMV") in interstate commerce and to falsify records of duty status reports ("RODS") and/or to exceed maximum hours of service regulations in patent disregard for the safety of the driver and the public. Individually and cumulatively these violations substantially increase the likelihood of serious injury or death to Tornado's drivers, passengers and to the motoring public.

## BACKGROUND

On November 25, 2007, a Tornado bus transporting approximately 25 passengers from Milwaukee, Wisconsin to Dallas, Texas crossed the center median near Earle, Arkansas and struck a pick-up truck and semi-trailer. As a result of this crash, three passengers and the driver of the pick-up truck were killed. An initial review of the Tornado driver's RODS revealed that the driver was over the maximum hours of service allowed at the time of the crash. Additionally, the RODS listed a co-driver for the entirety of the trip. However, the RODS and payroll records for the co-driver listed, document that he was off duty in El Paso, Texas at the time of the accident. The investigation of the crash is still underway.

As a result of this multi-fatality crash, FMCSA initiated a compliance review ("CR") on November 26, 2007 by Safety Investigator John Gardiner. The current CR remains open. To date, documentation gathered during the CR demonstrate that Tornado's continual practice of

requiring or permitting drivers to falsify RODS and exceed the maximum hours of service limitations clearly and unambiguously signify a flagrant general disregard for compliance with the Federal Motor Carrier Safety Regulations and a management philosophy so indifferent to motor carrier safety as to constitute an imminent hazard to the public.

Since 2001, not including the current compliance review, Tornado has been the subject of four (4) compliance reviews (“CR”) which resulted in two (2) civil enforcement actions.<sup>1</sup> Four (4) additional civil enforcement actions were initiated as the result of violations discovered during roadside inspections.<sup>2</sup> In each CR, safety investigators discovered evidence that Tornado drivers were violating the hours of service requirements, either by falsification of RODS or exceeding the maximum driving time allowed. Additionally, the prior CRs uncovered instances of drivers failing to submit RODS within the required time periods, or failing to preserve the RODS. During each of the prior CRs, Tornado was specifically warned not to allow drivers to exceed the maximum hours of service limits and not to dispatch drivers who do not have adequate hours available to make or complete the trips. As a result of the civil enforcement actions initiated against Tornado, a total of \$63,090.00 has been assessed for violations of the Federal Motor Carrier Safety Regulations. Each of the civil penalties was paid in full after receipt of the respective Notices of Claim. Despite the imposition of these penalties, Tornado’s

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<sup>1</sup> CR-August 10, 2001; Notice of Claim – TX-2001-0743-US0114 - \$22,540  
CR - September 20, 2001  
CR April 1, 2004; Notice of Claim – TX-2004-0311-US0391 - \$35,140  
CR- May 13, 2004  
CR – November 14, 2005

<sup>2</sup> MX-2003-1380-US1131 - \$1,000  
TX-2005-0047-US1135 - \$2,000  
TX-2006-0028-US0930 - \$900  
TX-2007-0789-US0807 - \$1,510

method of operation remained unchanged. The immediate and severe hazard to safety stems from Tornado's egregious indifference to the hours of service requirements. As noted, the CR prompted by the triple fatal crash in November is still ongoing. Thus far, however, Tornado's hours of service violations in the CR include:

- (a) requiring or permitting a driver to drive more than 10 hours following 8 consecutive hours off duty;
- (b) requiring or permitting a driver to drive for any period after having been on duty 15 hours following 8 consecutive hours off duty; and
- (c) requiring or permitting a driver to drive for any period after having been on duty 70 hours in any period of 8 consecutive days.

**TORNADO'S DISREGARD FOR THE HOURS OF SERVICE REQUIREMENTS OF  
THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS POSE AN IMMINENT  
HAZARD TO THE PUBLIC**

The HOS regulations establish the maximum standards for the safe operation of commercial motor vehicles. The requirements are intended to guard against the cumulative effects of fatigue which accompany prolonged periods of on-duty time. Moreover, the regulations are designed to ensure that drivers have ample recuperative rest time before assuming any driving duties. While compliance with these rules is essential to safe operation for all motor carriers, HOS compliance takes on an even greater importance with regard to passenger transportation.

As of December 21, 2007, Tornado has demonstrated an ongoing failure to ensure its

drivers are preparing and submitting accurate RODS, and that they comply with the maximum HOS limitations. Moreover, Tornado either willfully or negligently disregards clear evidence that its drivers are consistently violating the HOS. During the course of the current compliance review, a review of driver RODS examined indicate a continuing practice on the part of Tornado management and dispatching personnel of scheduling trips which for a single driver would require significant breaks to ensure compliance with the maximum driving. Documentation reveals that these trips are scheduled so that they are completed with minimal stopping time. To facilitate these trips, a co-driver is routinely listed on the RODS. However, consistently, documentation in Tornado's records establish that the alleged co-driver has completed RODS indicating that he or she is either off duty or engaged in other transportation at the time the RODS show them serving as co-driver. Additionally, documentation examined during the compliance review demonstrates a continuing pattern of dropping portions of trips from the RODS entirely.

The CR has thus far has revealed an alarmingly high pattern of false log violations, nearly double the 10 percent violation rate that the FMCSA deems a "pattern of non-compliance" necessary to adversely affect a motor carrier's safety rating. See 49 C.F.R. Part 385 App. B, §II(g). Moreover, of the false RODS discovered, 21% were falsified for the purpose of concealing driving or other on-duty hours. The remaining 79% were falsified by drivers failing to record portions of their routine routes, or failing to accurately record their location at the change of duty status.

Routinely, Tornado is illegally dispatching drivers on routes that will take up to 17 hours

of driving time. However, the carrier is scheduling only a single driver for these trips. The scheduled routes do not allow time for the drivers to take a qualifying break, and therefore Tornado is requiring its drivers to violate 49 § CFR 395.5(a)(1). During these trips 41% of the driving time is *after* the driver has driven the maximum 10<sup>th</sup> hour of driving. From August 24, 2007 to November 25, 2007, Tornado dispatched at least 14 trips in violation of the regulations. These actions result in drivers transporting passengers at a time when they are significantly in excess of the maximum driving time. Such occurrences establish an imminently hazardous, and potentially deadly situation for the driver, Tornado's passengers, and the motoring public.

#### **REMEDIAL ACTION**

To eliminate this imminent hazard, and before your company will be permitted to resume those operations which are placed out of service by this Order, Tornado must undertake positive steps which will ensure and demonstrate compliance with the Federal Motor Carrier Safety Regulations.

#### **YOU MUST COMPLY WITH THE PROVISIONS OF THIS ORDER**

- 1. Tornado must take aggressive and progressive steps to control drivers' hours of service.**
- 2. Tornado must implement a system that ensures that no driver will be dispatched on any trip unless and until the carrier certifies in writing that the estimated driving time necessary for completion of the trip will not result in a violation of 49 CFR Part 395.**

- 3. Tornado must implement a system that ensures that no driver will be dispatched on any trip unless the driver has the necessary available hours of service or a verifiable co-driver with the necessary available hours of service to complete the trip in accordance with 49 C.F.R. Part 395. Any driver who is properly dispatched but whose continued service will subsequently exceed maximum permissible driving time shall be ordered by Tornado to cease driving and to accumulate, and the driver shall accumulate, adequate off-duty rest time before continuing in accordance with 49 C.F.R. Part 395.**
- 4. Tornado must ensure that its personnel are adequately trained in the requirements of the Federal Motor Carrier Safety Regulations and that they are able to conduct motor carrier operations consistent with those regulations.**
- 5. Tornado must ensure that drivers accurately complete their daily records of duty status and that they submit them to the carrier within 13 days of their completion. Tornado must maintain drivers' records of duty status and all supporting documents for a minimum period of 6 months. Further, you must ensure that all records of duty status are accurate by using all means available to you and by comparing each with all supporting documentation.**

#### **RESCISSION OF THIS ORDER**

Before resuming motor carrier operations Tornado must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard which your operation poses, and adequately demonstrate to the Southern Field Administrator, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the

safety problems. You cannot avoid this Operations Out-of-Service Order by continuing operations under the name of another person or company. Any lease of equipment and/or direct assignment of contracts or other arrangements require the written approval of the Southern Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. You must have the Order rescinded by the Southern Field Administrator before you may continue interstate or intrastate operations. Prior to rescission of the Order, you will be required to:

- 1. IDENTIFY THE CAUSE FOR YOUR NONCOMPLIANCE.**
- 2. DEVELOP A DETAILED PLAN OF ACTION THAT ADDRESSES EACH AREA OF NON-COMPLIANCE, THE STEPS YOU INTEND TO TAKE TO OVERCOME YOUR NON-COMPLIANCE AND A TIME TABLE FOR THESE STEPS. (SAFETY MANAGEMENT PLAN).**
- 3. DEVELOP AND CERTIFY THE COMMITMENT OF TORNADO TO COMPLY WITH THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.**
- 4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS.**

Your request to rescind this "Operations Out-of-Service Order" must be directed to the Southern Field Administrator, Federal Motor Carrier Safety Administrator, with a copy to Joanne Cisneros, Texas Division Administrator, Federal Motor Carrier Safety Administration, United States Department of Transportation, 826 Federal Building, 300 East 8<sup>th</sup> Street, Austin, Texas

78701.

**The request for rescission must be in written form, include the Safety Management Plan, and include certification by ALL corporate officers and managers of Tornado that the provisions of the Order have been complied with, and that the imminently hazardous conditions have been eliminated.**

### **FAILURE TO COMPLY**

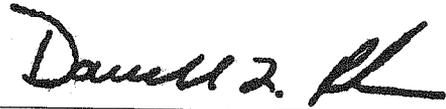
Failure to comply with the provisions of this Operations Out-of-Service Order may subject your company to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. Your company may be assessed civil penalties of up to \$16,000 per day for each day you continue the proscribed interstate or intrastate operations after the effective date and time of this Order. (49 C.F.R. Part 386 App. A. § IV(b)). If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 and a prison term of one year. (49 U.S.C. § 521 (b)(6)(A)).

### **PENALTIES FOR CURRENT VIOLATIONS**

In addition to this Operations Out-of-Service Order, civil penalties may be assessed for the violations discovered during the immediate Compliance Review.

**RIGHT TO REVIEW**

You have the right to an administrative review pursuant to 49 C.F.R. § 386.72(b)(2), in accordance with 5 U.S.C. § 554. The administrative review, if requested, must be provided within 10 days of issuance of the Out-of-Service Order. The Request for Review must be addressed to Ms. Rose McMurray, Associate Administrator and Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590. The request must state the material facts at issue which you dispute or which you believe contradict the finding that your company's operation constitutes an **imminent hazard** to the public. **A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR COMPLIANCE WITH THIS ORDER. (49 C.F.R. § 386.72(B)(2)).**



Darrell L. Ruban  
Federal Motor Carrier Safety Administration  
Field Administrator  
Southern Service Center  
1800 Century Boulevard, Suite 1700  
Atlanta, Georgia 30345  
(404) 327-7400