

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

**ROGER HAINES dba  
HAINES TOURS  
5592 Kerswill  
Gladwin, Michigan 48624**

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**Order MI-2011-5000-IMH  
Service Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Person Served: \_\_\_\_\_**

**OPERATIONS OUT-OF-SERVICE ORDER**

This notice constitutes an **Operations Out-of-Service Order** ("ORDER") by the United States pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 31144(c)(5), and 49 C.F.R. § 386.72(b)(1), and pursuant to delegation of authority to the Field Administrator, Midwestern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation (USDOT), Matteson, Illinois. This ORDER applies to ROGER HAINES, dba HAINES TOURS, USDOT number 458060 (referred to collectively herein as "you," "your" and/or "HAINES").

The United States finds your motor carrier operations, consisting of the transportation of passengers in commercial motor vehicles, as defined in 49 C.F.R. § 390.51, for compensation in interstate commerce, constitute an **"imminent hazard."** This finding means that based upon your present state of unacceptable safety compliance regarding the unauthorized transportation of passengers in the cargo area of your motorcoaches, your motor carrier operations substantially increase the likelihood of serious injury or death if not discontinued immediately.

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<sup>1</sup> Under 49 C.F.R. § 390.5 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) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, or 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.

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

Vehicles and their drivers now operating 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.**

**I. JURISDICTION**

HAINES is a motor carrier engaged in interstate commerce using commercial motor vehicles and employing drivers subject to the requirements of 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, 13501, 31133, 31144 and 31306. HAINES is required to comply with, and to ensure that its drivers comply with, the Federal statutes and regulations including 49 C.F.R. Parts 350-399.

## **II. BASIS FOR THE OUT-OF-SERVICE ORDER**

FMCSA has determined that the continued operation of commercial motor vehicles in interstate or intrastate commerce by HAINES poses an “**imminent hazard**” to safety based upon evidence that HAINES currently permits and/or requires drivers operating commercial motor vehicles (“CMV”) in interstate commerce to transport passengers in the luggage compartments of motor coaches. This practice violates 49 C.F.R. § 392.62(c)(2) and (3) and substantially increase the likelihood of serious injury or death to HAINES’ passengers.

## **III. BACKGROUND**

On May 27, 2011, a HAINES bus transporting approximately 62 passengers was inspected by the Ohio State Highway Patrol in Lake Township, Ohio. The bus was travelling from Roscommon, Michigan to Clyde, Ohio. The Ohio State Highway Patrol officer discovered that six of the sixty-two passengers on the motorcoach were riding in the luggage compartment of the bus. The driver of the bus told the officer that the passengers were riding in the luggage compartment because there was no room for them in the passenger compartment. In addition to mattresses and pillows, the luggage compartment also contained luggage which was not secured to the vehicle, nor was it in a partitioned section of the compartment. Nothing prevented the luggage from striking these passengers in the event of a sudden deceleration. In addition, these luggage compartments are not designed nor intended to accommodate passengers.

In a compliance review conducted on or around August 11, 2010, HAINES was cited for using a section of the luggage compartment as an unauthorized sleeper berth for drivers. Specifically, HAINES was cited for violation of 49 C.F.R. § 393.76(a)(3), using a sleeper berth that does not allow an occupant’s direct and ready exit, and 49 C.F.R. § 393.76(c)(2)(ii), using a sleeper berth that does not have at least two exits, at opposite ends of the vehicle, that are usable

by the occupant without the assistance of any other person.

HAINES's disregard for its passengers' safety poses an imminent hazard to the public. Despite being warned in August, 2010 that it cannot transport people in the luggage compartment of its buses in violation of federal regulations, it continues to place people in the luggage compartment. While a compliance review is currently being conducted of HAINES' operations, this Imminent Hazard Order is necessary to put an immediate stop to this highly dangerous practice.

#### **IV. REMEDIAL ACTION**

To abate the imminent hazard, and before HAINES may resume operations of commercial motor vehicles in interstate or intrastate commerce, the following positive steps must be undertaken that ensure and demonstrate compliance with the FMCSR's including specifically 49 C.F.R. Part 392.

- 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.**
- 3. DEVELOP AND CERTIFY THE COMMITMENT OF HAINES TO COMPLY WITH THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.**
- 4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS.**

**V. RESCISSION OF THIS ORDER**

You are subject to this ORDER unless and until the ORDER is rescinded by FMCSA. Unless and until this ORDER is rescinded, you are prohibited from operating any commercial motor vehicle, as defined by 49 C.F.R. § 390.5, in interstate or intrastate commerce for or on behalf of HAINES. Before you are permitted to use HAINES to operate any commercial motor vehicle this ORDER must be rescinded. This ORDER will not be rescinded until the Field Administrator for the Midwestern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this ORDER have been fully satisfied and acceptable documentation submitted.

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

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

Division Administrator, Michigan Division  
Federal Motor Carrier Safety Administration  
315 W. Allegan, Room 219  
Lansing, Michigan 48933

**VI. FAILURE TO COMPLY**

Failure to comply with the provisions of this ORDER may subject you to an action in the United States District Court for equitable and/or declaratory relief and civil penalties. You may be assessed civil penalties of up to \$16,000 each time you operate a commercial motor vehicle in interstate or intrastate commerce. *See* 49 C.F.R. Part 386 App. A. § IV(b). Each day of operation would constitute a separate violation. *See* 49 U.S.C. §§ 521(b) and 49 C.F.R. § 386.82(a)(4). Knowing and/or willful violation of the provisions of this ORDER may also subject you to criminal penalties. *See* 49 U.S.C. §§ 521(b)(6).

**VII. PENALTIES FOR CURRENT VIOLATIONS**

Any motor carrier that violates Federal Requirements 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 FMCSR's 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 pursuant to 49 C.F.R. § 386.72(b)(2), in accordance with 5 U.S.C. § 554. If requested, administrative review shall occur within 10 working days of the issuance of this ORDER. *See* 49 C.F.R. § 521(b)(5) and 49 C.F.R. § 386.72. 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 the Field Administrator, Midwestern Service Center at the following addresses:

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

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

The request for review should state the material facts which you believe dispute or contradict the finding that your continued operation of commercial vehicles in interstate or intrastate commerce constitutes an imminent hazard to the public.

Date: 6-10-11



Darin G. Jones  
Federal Motor Carrier Safety Administration  
Field Administrator  
Midwestern Service Center  
4749 Lincoln Mall Drive, Suite 300  
Matteson, Illinois 60443  
(708) 283-3573



Michigan Division  
315 W. Allegan Room 219  
Lansing, MI 48933  
(517) 853-5990

### CERTIFICATE OF SERVICE

I, \_\_\_\_\_ certify that the OPERATIONS  
OUT-OF-SERVICE ORDER (Number: MI-2011-5000-IMH) issued by the United States  
Department of Transportation, Federal Motor Carrier Safety Administration to Roger  
Haines dba Haines Tours (UDOT 458060) was served this \_\_\_\_\_ day of June 2011 at  
\_\_\_\_\_ o'clock a.m. by personally handing it to:

\_\_\_\_\_ (name)

\_\_\_\_\_ (title)

At the location of:

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