

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

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) **Order No.: LA-2013-5000-IMH**  
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**BEN GORDON ENTERPRISES LLC**  
**DBA GORDON'S TREE SERVICE**  
**SLIDELL, LOUISIANA**

**US DOT: 1528707**

**IMMINENT HAZARD OPERATIONS OUT-OF-SERVICE ORDER**

This is an Imminent Hazard Operations Out-of-Service Order ("ORDER") issued by the Secretary of Transportation (the "Secretary") pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 31144(c)(1) and (2), 49 U.S.C. § 31144(c)(5), 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation ("USDOT"), Darrell Ruban. This ORDER applies to **BEN GORDON ENTERPRISES LLC DBA GORDON'S TREE SERVICE** (USDOT 1528707), referred to herein as "you," "your," and/or "BEN GORDON ENTERPRISES LLC", as well as any and all owners, officers, directors, successors, assigns and closely affiliated companies.

The Secretary and the FMCSA find your continued operation of commercial motor vehicles (CMV), identified in ATTACHMENT A and defined in 49 C.F.R. § 390.5,<sup>1</sup> constitutes an "**IMMINENT HAZARD.**" This finding means that based upon your present state of

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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, of 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.

unacceptable safety compliance, your operation of CMVs poses an imminent hazard to the public.

**EFFECTIVE IMMEDIATELY YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE OR INTRASTATE TRANSPORTATION OF COMMERCIAL MOTOR VEHICLES AND/OR GOODS.**

Commercial motor 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 cargo can be safely secured. (See 49 C.F.R. § 386.72(b)(4) and (5)).

**NO ADDITIONAL CARGO MAY BE LOADED OR TRANSPORTED, NOR MAY ANY COMMERCIAL MOTOR VEHICLE BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT. A COMMERCIAL MOTOR VEHICLE MAY BE MOVED TO A LOCATION TO BE REPAIRED OR STORED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR, FMCSA SOUTHERN SERVICE CENTER.**

**I.**

**JURISDICTION**

BEN GORDON ENTERPRISES LLC DBA GORDON'S TREE SERVICE (USDOT 1528707) is a motor carrier engaged in interstate commerce and is subject to the Federal Motor Carrier Safety Regulations ("FMCSRs"), 49 C.F.R. Parts 350-399, as well as the Orders of the USDOT and FMCSA. (See 49 U.S.C. §§ 506, 507, 13501, 31133 and 31136). BEN GORDON ENTERPRISES LLC DBA GORDON'S TREE SERVICE is required to comply, and to ensure its drivers comply, with the FMCSRs. (49 C.F.R. § 390.11).

This ORDER applies to BEN GORDON ENTERPRISES LLC DBA GORDON'S TREE SERVICE, US DOT No.1528707, as well as any and all owners, officers, directors, successors, assigns and closely affiliated companies. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by you, including but not limited to CMVs identified in ATTACHMENT A, attached hereto. You may not use lessees, lessors, owner-operators, affiliates, assigns, or other CMVs or motor carriers to conduct any continued operations.

## II.

### **BASIS FOR ORDER**

The basis for determining that your operations pose an imminent hazard to the public is that you fail to comply with FMCSA Orders and Federal Motor Carrier Safety Regulations (FMCSR); the new entrant registration obligations; controlled substance and alcohol requirements; driver qualification and reporting requirements; commercial driver's license (CDL) standards; and inspection, repair and maintenance requirements. Further, you have continued to operate CMVs in in disregard for these important safety regulations and in willful violation of an FMCSA out-of-service order. Individually and collectively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to your drivers and to the motoring public.

You have been out-of-service since October 15, 2007. You have had at least 6 inspections for using drivers who do not have a valid or current CDL, 6 inspections using drivers who do not have a valid or current medical certificate, and at least 5 of the inspections occurred while you were subject to the out-of-service order served in 2007. On July 2, 2012 you were involved in an accident involving another CMV and your driver did not have a current or valid CDL. On October 11, 2012 you had 2 separate inspections which resulted in both drivers being

arrested for driving under the influence and in possession of alcohol. On October 30, 2012 you were charged with operating in violation of a FMCSA Out-of-Service Order which resulted in a Notice of Default and Final Agency Order being served December 5, 2012. In a compliance review of your operations conducted on or about November 29, 2012 you received a proposed unsatisfactory safety rating after the investigation found that you used drivers who engaged in conducted prohibited by 49 C.F.R. part 382, subpart O, without being evaluated by a Substance Abuse Professional (SAP), failed to implement an alcohol and/or controlled substance testing program, used drivers without valid CDLs, operated in violation of an out-of-service order, failed to maintain an accident register and accident reports, failed to maintain driver qualification files, failed to keep records of inspections and vehicle maintenance, and failed to require drivers to prepare vehicle inspection reports. On December 4, 2012 you were charged with failing to implement an alcohol and/or controlled substance testing program and for using a driver without a valid CDL.

### **III.**

#### **BACKGROUND**

##### **A. Roadside Inspection # LAAQ003280**

On or about August 10, 2007, a roadside inspection was conducted on BEN GORDON ENTERPRISES LLC in St. Tammany Parish, Louisiana. The driver that operated the CMV for BEN GORDON ENTERPRISES LLC was [REDACTED] did not possess a CDL that was required for the vehicle combination he was operating and possessed an expired medical examiner's certificate.

##### **B. Failure to Submit to a New Entrant Safety Audit**

BEN GORDON ENTERPRISES LLC was scheduled to participate in a New Entrant Safety Audit on September 22, 2007. No representative for BEN GORDON ENTERPRISES LLC showed up for the safety audit. On September 24, 2007 a letter was issued to BEN

GORDON ENTERPRISES LLC advising it that its registration would be revoked if the carrier did not agree, in writing, to undergo the safety audit. On October 15, 2007, BEN GORDON ENTERPRISES LLC'S new entrant registration was revoked and an out of service order went into effect.

**C. Roadside Inspection # LAOZ000515**

On or about October 6, 2010, a roadside inspection was conducted on BEN GORDON ENTERPRISES LLC in Livingston Parish, Louisiana while the carrier was subject to a FMCSA out-of-service order. The driver that operated the CMV for BEN GORDON ENTERPRISES LLC was [REDACTED] did not possess a CDL that was required for the vehicle he was operating. Additionally, [REDACTED] was cited for not having a medical examiner's certificate in his possession.

**D. Roadside Inspection # LADG005769**

On or about April 20, 2011, a roadside inspection was conducted on BEN GORDON ENTERPRISES LLC in West Feliciana Parish, Louisiana while the carrier was subject to a FMCSA out-of-service order. The driver that operated the CMV for BEN GORDON ENTERPRISES LLC was [REDACTED] was operating a CMV while his CDL was under suspension. [REDACTED] was also cited for not having a medical examiner's certificate in his possession.

**E. Roadside Inspection # CCHP000087**

On or about June 23, 2011, a roadside inspection was conducted on BEN GORDON ENTERPRISES LLC in Madison County, Alabama while the carrier was subject to a FMCSA out-of-service order. The driver that operated the CMV for BEN GORDON ENTERPRISES LLC was [REDACTED] did not possess a CDL that was required for the vehicle he was operating. [REDACTED] was also cited for not having a medical examiner's certificate in his possession.

**F. Crash – Report # LA0120025826**

On or about July 2, 2012, Ben Gordon Enterprises LLC was involved in a CMV accident with another CMV in Livingston Parish, Louisiana while the carrier was subject to a FMCSA out-of-service order. The driver that operated the CMV for BEN GORDON ENTERPRISES LLC was [REDACTED]. The crash investigation found [REDACTED] did not possess a CDL that was required for the vehicle he was operating.

**G. Roadside Inspection # LAGG008963**

On or about October 11, 2012, a roadside inspection was conducted on BEN GORDON ENTERPRISES LLC in Tangipahoa Parish, Louisiana while the carrier was subject to a FMCSA out-of-service order. The driver that operated the CMV for BEN GORDON ENTERPRISES LLC was [REDACTED] did not possess a CDL that was required for the vehicle he was operating. [REDACTED] was cited for not having a medical examiner's certificate in his possession. The inspection revealed that [REDACTED] was operating the CMV both under the influence of alcohol and while in possession of an alcoholic beverage while on duty. Mr. [REDACTED] was arrested and transported to the Ponchatoula, Louisiana Police Department.

**H. Roadside Inspection # LAAQ008093**

Also on October 11, 2012, a second roadside inspection was conducted on BEN GORDON ENTERPRISES LLC in Tangipahoa Parish, Louisiana. The driver that operated the CMV for BEN GORDON ENTERPRISES LLC was [REDACTED] was cited for not having a medical examiner's certificate in his possession. The inspection revealed [REDACTED] was also operating the CMV both under the influence of alcohol and while in possession of an alcoholic beverage while on duty. [REDACTED] was arrested and transported to the Ponchatoula, Louisiana Police Department.

**I. Notice of Default and Final Agency Order – LA-2013-0008-US0550**

On or about October 30, 2012, BEN GORDON ENTERPRISES LLC was served with a Notice of Claim charging the carrier with operating while in violation of a FMCSA Out-of-Service Order issued for refusal to submit to a safety audit in 2007. On December 5, 2012, as a result of that Notice of Claim in case No. LA-2013-0008-US0550 a Notice of Default and Final Agency Order was served on BEN GORDON ENTERPRISES LLC DBA GORDON'S TREE SERVICE.

**J. Notice of Claim – LA-2013-0025-US1513**

On or about November 29, 2012 BEN GORDON ENTERPRISES LLC DBA GORDON'S TREE SERVICE received a proposed unsatisfactory safety rating after FMCSA discovered several violations of the FMCSR including using drivers who engage in conducted prohibited by part 382 subpart O without being evaluated by a SAP, failing to implement an alcohol and/or controlled substance testing program, using drivers without valid CDLs, operating in violation of an out-of-service order, failing to maintain an accident register and reports, failing to maintain driver qualification files, failing to keep records of inspections and vehicle maintenance, and failing to require drivers to prepare vehicle inspection reports. On December 4, 2012 BEN GORDON ENTERPRISES LLC DBA GORDON'S TREE SERVICE was charged with failing to implement an alcohol and/or controlled substance testing program and for using a driver without a valid CDL.

**IV.**

**REMEDIAL ACTION**

To eliminate this imminent hazard, and before you will be permitted to resume operations placed out of service by this Order, you must take specific steps to ensure and demonstrate compliance with the FMCSR.

**YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER**

- 1. You may not operate a commercial motor vehicle (CMV) in interstate and/or intrastate commerce until you have fully complied with the Remedial Actions set forth in this section.**
- 2. You 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 Southern Service Center Field Administrator. You 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.**
- 3. You 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.**
- 4. You must demonstrate to the Field Administrator, Southern Service Center, full compliance with all applicable controlled substance testing and return-to-duty requirements within 49 C.F.R. parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol Use and Testing).**
- 5. You must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b), ensuring that each driver selected for random controlled substances or alcohol testing has an equal chance of being selected each time selections are made, and that you have received a negative pre-employment controlled substances test for each driver before using that driver.**

6. You must ensure that you maintain driver qualification files, as required by 49 C.F.R. part 391, and ensure that every driver you use has completed and furnished an employment application. You 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. You must ensure that an annual list of traffic violations is obtained from each driver, an annual Motor Vehicle Record is obtained, and that an annual review is performed on each driver's driving record. You must ensure that a three-year previous employment check is performed on all drivers prior to their operating a CMV, in accordance with 49 C.F.R. § 391.23.
7. You must ensure and demonstrate that your vehicles are in a safe operating condition, are in full compliance with 49 C.F.R. parts 393 (Parts and Accessories Necessary for Safe Operations) and 396 (Vehicle Maintenance), and there is an adequate maintenance program in place to ensure compliance with the FMCSRs.
8. You must require all your drivers to prepare Driver Vehicle Inspection Reports at the end of each day, implement a procedure so that your drivers can report safety defects and/or deficiencies and establish procedures to ensure that reported safety defects and/or deficiencies are repaired immediately before the CMV is operated again. You must train your drivers and ensure all drivers understand the meaning of a roadside out-of-service order and comply with roadside out-of-service orders.
9. You must ensure that you maintain an accident register and accident reports after an accident occurs as required by 49 C.F.R. part 390.
10. You must ensure that you maintain driver qualification files as required by 49 C.F.R. part 391.
11. You must ensure that you maintain records of vehicle inspections and vehicle maintenance as required by 49 C.F.R. part 396.

12. **You must ensure that all of your drivers are adequately trained in the requirements of the FMCSR.**
13. **You must ensure that you do not operate in violation of any FMCSA out-of-service orders.**
14. **You must comply with all Orders issued by FMCSA.**

**V.**

**RECISSION OF 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 CMV, as defined by 49 C.F.R. § 390.5, in interstate or intrastate commerce. Before you are permitted to operate any CMV this ORDER must be rescinded. This ORDER will not be rescinded until the Field Administrator for the Southern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this ORDER have been fully satisfied and acceptable documentation submitted. **You cannot avoid this Operations Out-of-Service Order by continuing to operate under another name or by operating under another motor carrier's USDOT number.**

**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 (THE SAFETY MANAGEMENT PLAN).**
3. **DEVELOP AND CERTIFY YOUR COMMITMENT TO COMPLY WITH THE FMCSR.**

**4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE  
CERTIFICATION.**

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

Field Administrator, Southern Service Center  
Federal Motor Carrier Safety Administration  
1800 Century Boulevard, NE, Suite 1700  
Atlanta, Georgia 30345

Division Administrator, Louisiana Division  
Federal Motor Carrier Safety Administration  
5304 Flanders Drive, Suite A  
Baton Rouge, Louisiana 70808

**VI.**

**FAILURE TO COMPLY**

Failure to comply with the provisions of this ORDER will subject you to an action in the United States District Court for equitable and/or declaratory relief and civil penalties. Failure to comply with this 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 \$25,000 per day for each day it continues to operate commercial motor vehicles (as defined in 49 C.F.R. § 390.5) in or affecting interstate commerce after the effective date and time of this Order. (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 or imprisonment for a term not to exceed one year, or both. (49 U.S.C. § 521 (b)(6)(A)).

## VII.

### **ADDITIONAL PENALTIES FOR OTHER VIOLATIONS**

Any motor carrier or driver that violates Federal requirements, including the FMCSR, 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, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

## VIII.

### **RIGHT TO REVIEW**

You have the right to an 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 working days of the issuance of this ORDER. (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 the Field Administrator, Southern Service Center, at the following addresses:

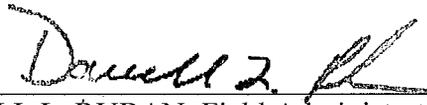
Assistant Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE  
Washington, D.C. 20590

Field Administrator, Southern Service Center  
Federal Motor Carrier Safety Administration  
1800 Century Boulevard, NE, Suite 1700  
Atlanta, Georgia 30345

The request must state the material facts at issue which you believe dispute or contradict the finding that your operations 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.**

Executed this 6<sup>th</sup> day of December, 2012.

A handwritten signature in black ink, appearing to read "Darrell L. Ruban", written over a horizontal line.

DARRELL L. RUBAN, Field Administrator  
United States Department of Transportation  
Federal Motor Carrier Safety Administration

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

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**US DOT: 1528707**

**ATTACHMENT A**

**BEN GORDON ENTERPRISES, LLC EQUIPMENT LIST**

2001	GMC	8500	#1GDP7H1E81J509182
2000	INTL	4700	#1HTTSCBP2YH274655
2000	FORD	F-450	#1FDXW47F4YEB92130
2001	GMC	7H4	#1GDP7H1E81J509182
1995	INTL	490	#1HTSDAAN8SH615593
1996	GMC	C7H	#1GDL7H1P1TJ516381
1994	INTL	490	#1HTSDAAN5RH602536
1994	INTL	490	#1HTSDAAN7RH602537
1997	INTL	470	#1HTSCABN4VH451605
1985	INTL	CF0	#1HSRDJXRXFH819104
2002	CHEV	7H4	#1GBJ7H1C82J513179
2000	INTL	470	#1HTSCABP2YH274655