

EFFECTIVE IMMEDIATELY, YOU MUST CEASE OPERATING ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE OR INTRASTATE TRANSPORTATION FROM ALL DISPATCHING LOCATIONS OR TERMINALS. FURTHER, THE COMMERCIAL MOTOR VEHICLES IDENTIFIED BY THIS ORDER ARE PROHIBITED FROM BEING OPERATED IN INTERSTATE OR INTRASTATE COMMERCE BY ANY OTHER MOTOR CARRIER OR ANY DRIVER.

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 on board can be safely secured. You may not continue to operate the commercial motor vehicle beyond this point. (See 49 C.F.R. §386.72(b)(4) and (5)).

NO ADDITIONAL CARGO MAY BE LOADED OR TRANSPORTED, NOR MAY THE COMMERCIAL MOTOR VEHICLES 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 ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR FOR THE MIDWESTERN SERVICE CENTER.

I. **JURISDICTION**

HP Distribution LLP (USDOT# 1180918) and HP Distribution LLC (USDOT# 869516) operate or have operated as for-hire motor carriers as defined in 49 U.S.C. § 13102 transporting property in interstate commerce using commercial motor vehicles and are therefore subject to the jurisdiction of the FMCSA and Federal motor carrier safety statutes and regulations, including 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 31336). HP Distribution LLP and HP Distribution LLC are required to comply with, and ensure that their drivers comply with, applicable federal statutes and regulations including 49 C.F.R. Parts 40 and 350-399. (See 49 C.F.R. §§ 390.3 and 390.11).

THE PROHIBITIONS ON OPERATION IN THIS ORDER APPLY TO HP DISTRIBUTION LLP AND HP DISTRIBUTION LLC, AS WELL AS ANY AND ALL OF THEIR OFFICERS, DIRECTORS, PARTNERS, MANAGERS, SUCCESSORS, ASSIGNS AND CLOSELY AFFILIATED COMPANIES. THIS ORDER APPLIES TO ALL COMMERCIAL MOTOR VEHICLES OWNED, LEASED, RENTED OR OTHERWISE OPERATED BY HP DISTRIBUTUION LLP AND HP DISTRIBUTION LLC, INCLUDING BUT NOT LIMITED TO THOSE IDENTIFIED IN THE ACCOMPANYING ATTACHMENT.

II. BASIS FOR ORDER

The basis for determining that HP Distribution LLP's and HP Distribution LLC's motor carrier operations pose an imminent hazard to the public is that HP Distribution LLP and HP Distribution LLC currently permit or require drivers who operate commercial motor vehicles in interstate commerce to violate the FMCSA hours of service regulations by flagrantly falsifying their records of duty status. You are fully aware of driver violations through your own log checking reports but have taken no discernible steps to stop driver behavior. The evidence demonstrates that you refuse to comply with the hours of service regulations and refuse to require drivers to do the same. As a consequence, you dispatch drivers to the highways in a potentially fatigued or excessively fatigued condition and without regard for their or the public's safety. Your actions

substantially increase the likelihood of serious injury or death to drivers who operate commercial motor vehicles for HP Distribution LLP and HP Distribution LLC and to the motoring public.

III. BACKGROUND

A. History of Non-Compliance and Avoidance of FMCSRs.

Compliance reviews (“CR”) were conducted on the motor carrier operations of HP Distribution LLP (USDOT# 1180918) in 2006 and 2009. Each CR discovered serious violations of the FMCSRs – including violations 49 CFR Part 395 involving driver hours of service requirements. The 2006 CR proposed an Unsatisfactory safety rating. The resulting Notice of Claim charged the carrier with permitting drivers to drive after being on duty more than 70 hours in 8 consecutive days. The 2009 CR discovered a 34% records of duty status falsification rate (103 for 299 records checked) for the 11 drivers sampled. HP Distribution LLP received a proposed conditional safety rating and was served with a Notice of Claim that charged 72 violations of 49 CFR 395.8(e) and levied a \$63,000 civil penalty. In response, HP Distribution LLP submitted a corrective action Safety Management Plan that promised to address driver falsifications - in part by using its existing GPS vehicle tracking system and Rapid Logs checking software. HP Distribution LLP promised to implement a progressive driver disciplinary program to control drivers who violate the FMCSRs. However, as will be demonstrated below, never acted on these promises; the violations continue unabated.

B. Current Investigation Discovers Extreme, Broad Based Violations of the Hours of Service Regulations and a Company Management Philosophy That Encourages Hours of Service Violations.

Based upon roadside inspection and other data compiled by FMCSA, HP Distribution LLP has Safety Measurement System (“SMS”) scores of 87.8% in the Fatigued Driving BASIC, 73.1% in the Unsafe Driving BASIC, 82.8% in the Crash Indicator BASIC and 81.2% in the

Vehicle Maintenance BASIC. On August 8, 2012, Kansas FMCSA Special Agent Michael Christopher initiated a third compliance review of HP Distribution LLP, which is ongoing. Agent Christopher sampled 8 drivers as part of his investigation. He reviewed the carrier's own Rapid Logs (log checking) reports and discovered a 25% falsification rate for 7 of the 8 drivers. Furthermore, HP Distribution LLP's own records show that you knew of the violations but undertook no discernible disciplinary action to hold drivers accountable. The Kansas Division reconstructed the drivers' actual hours of service with the carrier's own NexTraq GPS² vehicle location system and reports and discovered that the false records of duty status covered up egregious 14 hours violations that exceeded 25% for the sampled drivers. Yet, at most, carrier personnel only discussed violations with drivers – but took no serious disciplinary action.

As a result of this startling discovery, Agent Christopher expanded the investigation. Again using the carrier's own Rapid Logs reports, Agent Christopher determined that 72% of the drivers audited falsified their records of duty status at a critical rate exceeding 10%. This represents more than 60% of HP Distribution LLP's 50 drivers. Five drivers had falsification rates that exceeded 30%. Five more drivers falsified more than 40% of their records of duty status – with the most heinous violator exceeding 50%. Only one (1) driver had no false entries on his records of duty status. HP Distribution LLP knew of the falsifications and the extreme driving times because you possessed the Rapid Logs and Nextraq GPS systems and had in your possession reports used by Agent Christopher to easily discover the violations.

² As noted in III.A. above, HP Distribution LLP has used this system and Rapid Logs log checking software since at least 2009. These were the very systems the carrier pledged in the 2009 SMP to use in order to control driver's violations.

C. HP Distribution LLP Recently Created HP Distribution LLC
to Avoid a Negative Safety and Enforcement Compliance History.

HP Distribution LLC was created under the laws of the State of Kansas in May 2012 by Tanner Craig Cunningham, son of the HP Distribution LLP managing partner and president, Craig Cunningham. On August 3, 2012 – on the eve of the Kansas Division’s CR - Kimberly Cunningham, wife of Craig Cunningham, filed an MCS-150 to register HP Distribution LLC with FMCSA. This MCS-150 uses USDOT# 869516 which was originally assigned by FMCSA in 2000 to the Hitching Post Steak Company – the first company created by Craig Cunningham. In May 2012 the Hitching Post Steak Company changed its name to HP Distribution LLC. Craig Cunningham’s wife, Kimberly Cunningham, reported the name change in the August 3, 2012 filing. HP Distribution LLC and HP Distribution LLP share the same business address, facilities, telephone numbers and vehicles. HP Distribution LLP drivers are being moved to HP Distribution LLC. HP Distribution LLC uses the same HP Distribution LLP drivers that Agent Christopher found falsifying their records of duty status at an alarming rate and for the obvious purpose of concealing driver hours of service violations. The same management staff that ignored the falsifications and refused to discipline drivers while working for HP Distribution LLP now hold similar positions with HP Distribution LLC.

IV.
REMEDIAL ACTION

To abate the imminent hazard, and before you may operate a commercial motor vehicle in interstate or intrastate commerce, HP Distribution LLP and HP Distribution LLC must undertake positive steps that ensure and demonstrate compliance with *all* applicable requirements of the FMCSRs including 49 C.F.R. Part 395. **You must comply with all provisions of this order.**

1. HP Distribution LLP and HP Distribution LLC must comply with all orders issued by FMCSA and must submit to the Field Administrator a plan detailing how you will:

(i) Use all supporting documents, information and data to review drivers' hours of service on a regular basis;

(ii) Prevent your drivers from violating the hours of service regulations, including falsification of records of duty status and exceeding maximum hours of service;

2. HP Distribution LLP and HP Distribution LLC must implement a disciplinary policy and system that effectively prevents hours of service violations by your drivers and dispatch personnel.

3. HP Distribution LLP and HP Distribution LLC must ensure that all management officials, safety management employees, drivers and dispatch personnel are adequately trained in the hours of service regulations and that they are able to conduct motor carrier operations in compliance with those regulations. You must ensure the aforementioned personnel carry out their duties per these requirements.

4. HP Distribution LLP and HP Distribution LLC must implement a comprehensive safety management plan that defines and demonstrates the safety management program policies/procedures, roles/responsibilities, training/communication, monitoring/tracking, and meaningful action established to ensure operations comply with the FMCSRs.

**V.
RECISSION OF ORDER**

Before resuming motor carrier operations, HP Distribution LLP and HP Distribution LLC must comply with the provisions of this Imminent Hazard Order, eliminate the problems constituting the imminent hazard that your operations pose, and adequately demonstrate to the

Field Administrator, Midwestern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to effectively eliminate the safety problems. You cannot avoid this Operations Out-of-Service Order by continuing operations under the name of another person, company or entity. Any lease of equipment and/or direct assignment of contracts or other arrangements require the written approval of the Field Administrator for the Midwestern Service Center. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. Before you may continue interstate or intrastate operations HP Distribution LLP and HP Distribution LLC must have this ORDER rescinded by the Midwestern Service Center Field Administrator. This ORDER will not be rescinded until the Field Administrator for the Midwestern Service Center has determined that all 4 requirements specified above are fully satisfied.

Prior to rescission of the Order, HP Distribution LLP and HP Distribution LLC 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 THE COMMITMENT OF HP DISTRIBUTION LLP AND HP DISTRIBUTION LLC TO COMPLY WITH THE FMCSRs.**
- 4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION BY ALL OWNERS, PARTNERS AND COMPANY OFFICIALS. FOR PURPOSES OF THIS PARAGRAPH, “OWNERS, PARTNERS AND COMPANY**

OFFICIALS” MEANS ANY PERSON OWNING MORE THAN A 10 PERCENT SHARE IN HP DISTRIBUTION LLP AND/OR HP DISTRIBUTION LLC, ALL REGISTERED OFFICERS AND PARTNERS AND ANY INDIVIDUAL RESPONSIBLE FOR OR PERFORMING DRIVER SCHEDULING OR DISPATCHING.

Any request to rescind this ORDER **must be in writing**, include documentation demonstrating satisfaction of the Remedial Action requirements and must be directed to the Field Administrator for the Midwestern Service Center. A copy of the request and documentation must also be submitted to the Kansas Division Administrator. The addresses are as follows:

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

Division Administrator, Kansas Division
Federal Motor Carrier Safety Administration
1303 SW First American Place, Suite 200
Topeka, KS 66604-4040

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. You may be assessed civil penalties of up to \$16,000 per day for each day you operate a commercial motor vehicle in violation of an Out-of-Service Order. Each separate day constitutes a separate violation. (See 49 U.S.C. §§ 521(b)(2)(A) 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 of up to \$25,000 or imprisonment for a term not to exceed one year, or both. (See 49 U.S.C. § 521(b)(6)).

VII.
PENALTIES FOR VIOLATIONS

Any motor carrier that violates Federal requirements, including the FMCSRs, and/or permits its employees to violate Federal requirements is subject to civil and/or criminal penalty provisions. Penalty provisions are separate and distinct from this ORDER. Penalties may be assessed for the violations of Federal requirements, including the FMCSRs, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

VIII.
RIGHT TO REVIEW

You have a 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 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, Midwestern Service Center at the following addresses:

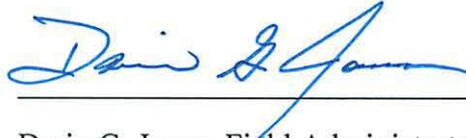
Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, D.C. 20590

Field Administrator, Midwestern Service Center
Federal Motor Carrier Safety Administration
4749 Lincoln Mall Drive, 300A
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 a commercial motor vehicle 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 IMMEDIATELY WITH THIS
ORDER.**

Date: September 13, 2012



Darin G. Jones, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration