

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. (See 49 C.F.R. § 386.72(b)(4) and (5)).

THE COMMERCIAL MOTOR VEHICLES MAY NOT 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, FMCSA MIDWESTERN SERVICE CENTER.

I. JURISDICTION

U & D SERVICE, INC. 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 USDOT and FMCSA. (See 49 U.S.C. §§ 506, 507, 13501, 31133 and 31136). U & D SERVICE, INC. is required to comply, and to ensure its drivers comply, with the FMCSRs. 49 C.F.R. § 390.11.

THE PROHIBITIONS ON OPERATION IN THIS ORDER APPLY TO U & D SERVICE, INC., AS WELL AS ANY AND ALL OF ITS OFFICERS, DIRECTORS, MANAGERS, SUCCESSORS, ASSIGNS AND CLOSELY AFFILIATED COMPANIES.

II. BASIS FOR ORDER

The basis for determining that U & D SERVICE, INC.’s motor carrier operations pose an imminent hazard to the public is that U & D SERVICE, INC. currently fails to ensure that its

drivers comply with commercial driver's license requirements, English proficiency requirements, vehicle weight limits and tire load weight limits, thereby posing an ongoing and continuing imminent hazard.

U & D SERVICE, INC. was identified as a New Entrant Carrier on May 27, 2011. Pursuant to 49 C.F.R. §385.307, a new entrant carrier is subject to the new entrant safety monitoring period of 18 months. During this 18 month period, the carrier's roadside activity is closely monitored to ensure that the carrier has basic safety management controls that are operating effectively. The FMCSA has identified seven violations that subject a new entrant carrier to an expedited safety audit or compliance review if cited during a roadside inspection. These seven violations include using a driver not possessing a valid commercial driver's license to operate a commercial motor vehicle as defined under §383.5.

From November 3, 2011 through January 27, 2012, the Indiana State Police ("ISP") conducted roadside inspections of U & D SERVICE, INC.'S commercial motor vehicles approximately 26 times. Based on these inspections, the ISP has cited U & D SERVICE INC.'S drivers twelve times for lacking a required commercial driver's license (49 C.F.R. § 383.23), ten times for exceeding vehicle weight limits (49 C.F.R. § 392.2), eight times for exceeding tire weight limits (49 C.F.R. § 393.75(f)) and 21 times for English proficiency violations (49 C.F.R. § 391.11(b)(2)).

On December 12, 2011, FMCSA served U & D SERVICE, INC. with an expedited action letter. In this letter, FMCSA demanded that U & D SERVICE, INC. respond to the results of a roadside inspection that occurred on December 7, 2011. In this inspection, one of U & D SERVICE, INC.'s drivers was found to have operated a commercial motor vehicle in interstate commerce without a commercial driver's license.

On January 9, 2012, U & D SERVICE, INC. responded in writing to the December 12, 2011 expedited action letter. In this letter, U & D SERVICE, INC. admitted that the truck was overweight, and it explained that it understood the commercial motor vehicle regulations regarding the weight of a commercial motor vehicle and commercial driver's license requirements. Further, U & D SERVICE, INC. assured FMCSA that the company would take corrective action to check the weight of all vehicles before leaving its terminal, and that it would hire drivers who possess valid CDL's for transportation that requires a CDL.

After U & D SERVICE, INC.'S assured FNCSA that it would remedy its safety problems, the Indiana State Police continued to find U & D SERVICE, INC.'S drivers in violation of these same regulations. ISP cited the company drivers six times over the next 3 weeks for failing to have required commercial driver's licenses and six times for overweight vehicles. Following FMCSA's December 12, 2011 expedited action letter, FMCSA has served U & D SERVICE, INC. with six additional expedited action letters that cite U & D SERVICE, INC.'S failure to use drivers with commercial driver's licenses. By blatantly failing to meet its commitment to remedy the violations, and by blatantly ignoring FMCSA's multiple warnings in response to additional violations, U & D SERVICE, INC. has demonstrated that it is not willing to comply with state and Federal safety regulations. Cumulatively, the violations cited in the ISP inspection reports and the expedited action letters substantially increase the likelihood of serious injury or death to U & D SERVICE, INC.'S drivers and the motoring public.

III. BACKGROUND

Based on roadside inspections and other data compiled by FMCSA, U & D SERVICE,

INC. has a Safety Measurement System (“SMS”)¹ score of 83.4% in the Unsafe Driving BASIC, 70.9% in the Fatigued Driving (Hours of Service) BASIC, and 99.9% in the Driver Fitness BASIC. Each of these SMS scores indicates that U & D SERVICE, INC. significantly exceeds the FMCSA intervention threshold and that the motor carrier may be therefore prioritized for further monitoring Driver Fitness (99.9%) Behavior Analysis and Safety Improvement Categories (“BASICS”).

U & D SERVICE, INC. repeatedly uses drivers in interstate commerce who do not possess valid commercial driver’s licenses. The primary objective of the commercial driver’s license requirements in 49 C.F.R. § Part 383 is to ensure that drivers are qualified to safely operate the type of vehicle they will drive. The requirements include a driving test and an assessment of the driver’s knowledge of the rules and regulations governing the operation of vehicles on the highways. U & D SERVICE, INC.’s drivers violated this requirement nine times in a three-month period. U & D SERVICE, INC.’S negligence in allowing its drivers to drive commercial motor vehicles without commercial driver’s licenses clearly endangers the driving public because its drivers have not demonstrated that they can safely drive these vehicles.

U & D SERVICE, INC. allows its drivers to drive commercial motor vehicles that are overweight. The danger to the public here is obvious – an overloaded truck is more likely to experience problems with braking, handling, and damaged tires. These conditions could cause

¹ The SMS is a tool for assessing available roadside performance data and ranking an entity’s relative performance in any of the six Behavior Analysis and Safety Improvement Categories (BASICS). The SMS quantifies the on-road safety performance of individual entities to identify entities with significant safety problems, determine the specific safety problems an entity exhibits, and monitor safety problems through the Intervention Process. The SMS computes a percentile for each BASIC using a time-weighted methodology, and assigns a percentile rank to each BASIC, on a 0-100 scale, with 100 indicating the worst performance. U & D SERVICE, INC.’S score was beyond the intervention threshold in three of these BASICS.

catastrophic results.

In addition, U & D SERVICE, INC. employs several drivers that cannot speak the English language sufficiently to converse with the general public. The Indiana State Police found that many of U & D SERVICE, INC.'s drivers could not answer basic questions such as, "where are you going" and "where are you coming from." In more than one case, the Indiana State Police told a driver employed by U & D SERVICE, INC. that he was out-of-service and could not leave the inspection area, but the driver responded by starting the engine and driving away. A lack of English skills sufficient to respond to the commands of law enforcement officers is in itself an out-of-service violation under the CVSA North American Standard Out-of-Service Criteria, see 49 C.F.R. § 390.5, and can easily be life threatening in emergency situations.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before U & D SERVICE, INC. will be permitted to resume operations placed out of service by this Order, U & D SERVICE, INC. must take specific steps to ensure and demonstrate compliance with the FMCSRs.

YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER

1. U & D SERVICE, INC. must comply with all Orders issued by FMCSA and must submit to the Field Administrator a plan detailing how U & D SERVICE, INC. will: (i) hire a sufficient number of drivers for its operations with commercial driver's licenses, (ii) do not dispatch commercial motor vehicles with drivers who lack commercial driver's licenses, (iii) do not dispatch overweight commercial motor vehicles, and (iv) ensure that each driver can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

2. U & D SERVICE, INC. must implement a policy to insure that prior to the dispatch of any motor vehicles in interstate commerce, the weight of the loaded vehicle is checked to determine whether the vehicle meets or does not meet the definition of commercial motor vehicle in 49 C.F.R. § 383.5. Further, U & D SERVICE, INC. must implement a policy to ensure that all drivers of commercial motor vehicles meeting the definition in 49 C.F.R. § 383.5 possess valid commercial driver’s licenses.

3. U & D SERVICE, INC. must implement a policy to ensure that prior to the dispatch of any commercial motor vehicles in interstate commerce, the weight of the loaded vehicle is checked to determine whether the vehicle complies with Federal and local laws and regulations covering the maximum weight of commercial motor vehicles and maximum tire weight ratings, as required by 49 C.F.R. § 392.2 and 49 C.F.R. § 393.75, respectively.

4. U & D SERVICE, INC. must ensure that each driver cited in a roadside inspection for a violation of 391.11(b)(2), insufficient English language proficiency, receives training conducted by a provider approved by the Field Administrator, Midwestern Service Center, that enables the driver to read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records. 5. A summary report must be prepared and submitted that documents English proficiency examinations and training conducted by a suitable provider for each driver employed by U & D SERVICE, INC. The report must include at a minimum the following: (i) reason for the exam or training (new hire, roadside violation, etc.), (ii) employee name, (iii) start and completion date of training, (iv) examination and final result, and (v) driver’s current status.

6. U & D SERVICE, INC. must ensure that 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.

V. RESCISSION OF ORDER

Before resuming motor carrier operations U & D SERVICE, INC. must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that its 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 eliminate the safety problems. U & D SERVICE, INC. cannot avoid this Operations Out-of-Service Order by continuing operations under the name of another person or company. Any sale, lease, or other transfer of equipment and/or direct assignment of contracts or other agreements for service by U & D SERVICE, INC. requires the written approval of the Midwestern Service Center Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. U & D SERVICE, INC. must have the Order rescinded by the Midwestern Service Center Field Administrator before it may continue interstate or intrastate operations.

Prior to rescission of the Order, U & D SERVICE, INC. will be required to:

- 1. IDENTIFY THE CAUSE FOR ITS NONCOMPLIANCE.**
- 2. DEVELOP A DETAILED 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 (THE SAFETY MANAGEMENT PLAN).**

3. DEVELOP AND CERTIFY THE COMMITMENT OF U & D SERVICE, INC. TO COMPLY WITH THE FMCSRs.

4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS. FOR PURPOSE OF THIS PARAGRAPH, “OWNERS AND COMPANY OFFICIALS” MEANS ANY PERSON OWNING MORE THAN A 10 PERCENT SHARE IN U & D SERVICE, INC., ALL REGISTERED CORPORATE OFFICERS AND ANY INDIVIDUAL RESPONSIBLE FOR OR PERFORMING HIRING, QUALIFYING, OR SCHEDULING OF DRIVERS OR SCHEDULING OR DIRECTING VEHICLE INSPECTION, REPAIR AND/OR MAINTENANCE.

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

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

Division Administrator, Indiana Division
Federal Motor Carrier Safety Administration
575 N. Pennsylvania St. Room 261
Indianapolis, IN 46204

VI. FAILURE TO COMPLY

Failure to comply with this Operations Out-of-Service Order may subject U & D SERVICE, INC. to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. U & D SERVICE, INC. may be assessed civil penalties of up to \$16,000 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 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. 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 FMCSRs, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

VIII. RIGHT TO REVIEW

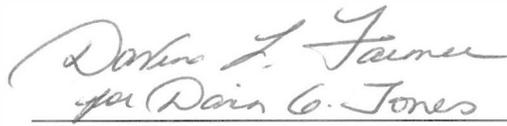
You have the right to an administrative review in accordance with 5 U.S.C. § 554 pursuant to 49 C.F.R. § 386.72(b)(4). If requested, administrative review shall occur within 10 working days of the issuance of this ORDER. (49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, with a copy sent to the Field Administrator, Midwestern Service Center at the following addresses:

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

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

The request must state the material facts at issue which you believe dispute or contradict the finding that U & D SERVICE, INC.'S operation constitutes an “**imminent hazard**” to the public. **A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO COMPLY WITH THIS ORDER IMMEDIATELY.**

Date: Feb 6, 2012



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