

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

)	Order No.: SC-2013-5001-IMH
)	
DESTINY TOURS)	Service
USDOT 2208481)	Date: _____
)	
CORNELIUS SCOTT,)	Service
Individually)	Date: _____
)	

IMMINENT HAZARD
OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order (“Order”) issued by the Secretary of Transportation pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1), (2), and (5), and 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”), Atlanta, Georgia. This Order applies to Destiny Tours (USDOT# 2208481) and Cornelius Scott, individually (referred to collectively herein as “you”, “your”, “it”, and/or “Destiny Tours”) and to all vehicles owned or operated by Destiny Tours, including without limitation the commercial motor vehicle identified herein.

The Secretary and FMCSA find your operations and the continued operation of any commercial motor vehicle (including but not limited to VIN 1M8SDMTA8RP046531), referred to herein as “commercial motor vehicles,” “motor vehicles,” and/or “motor coaches,” constitutes an imminent hazard. This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicle poses an imminent hazard to public safety.

Effective immediately, you must cease operating any commercial motor vehicle, specifically including the commercial motor vehicle listed in this Order. “Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. Destiny Tours’ commercial motor vehicle(s), specifically including the commercial motor vehicle listed in this Order, may not be operated in interstate or intrastate commerce by any other motor carrier or any driver; such commercial motor vehicle may not be operated – even without passengers. Any movement of Destiny Tours’ commercial motor vehicle(s), specifically including the commercial motor vehicle identified in this Order, to any storage or repair or other location for the purposes of repair, sale, storage, or final destination must be accomplished only by towing, such that the commercial motor vehicle itself is not driven or operated. Destiny Tours’ commercial motor vehicles may be moved only upon the written approval of the Field Administrator for FMCSA’s Southern Service Center.

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 passengers can be safely accommodated. (*See* 49 C.F.R. § 386.72(b)(4) and (5)).

DESTINY TOURS MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL PASSENGERS, NOR MAY DESTINY TOURS OPERATE ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.

Within eight (8) hours of the service of this Order, Destiny Tours must submit to the Field Administrator in writing by facsimile the location of each of the commercial motor

vehicles operated by Destiny Tours, including the vehicle identified in this Order. The submission must be sent to:

Field Administrator

404-327-7349 (facsimile)

I. JURISDICTION

Destiny Tours is a passenger motor carrier engaged in interstate commerce using commercial motor vehicles and employing drivers and is therefore subject to the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 C.F.R. Parts 350-399, and the alcohol and controlled substances regulations at 49 C.F.R. Part 40, as well as the Orders of the USDOT and FMCSA. (*See* 49 U.S.C. §§ 506, 507, 13501, 31133, 31136, and 31144). Cornelius Scott is an individual who owns, manages, controls, directs or otherwise oversees the operations of Destiny Tours. Destiny Tours is required to comply with, and to ensure that its drivers comply with, the FMCSRs and Orders of the USDOT and FMCSA. (49 C.F.R. § 390.11). This Order has the force and effect of any other Order issued by the FMCSA and is binding upon Destiny Tours and Cornelius Scott, as well as any and all of its officers, members, 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 Destiny Tours, including but not limited to the vehicle identified in this Order.

II. BASIS FOR ORDER

The basis for determining that Destiny Tours’ motor carrier operations pose an imminent hazard to the public is Destiny Tours’ widespread and serious noncompliance with Federal safety regulations.¹ Destiny Tours fails to ensure that its motor coach is systematically and properly

¹ Cornelius Scott, as the owner, is responsible for ensuring Destiny Tours’ compliance with the FMCSRs.

inspected, repaired and maintained and meets minimum safety standards; indeed, Destiny Tours, through the actions of Cornelius Scott, applied an annual inspection sticker to its motor coach when in fact it had conducted no such inspection.² Destiny Tours could not provide FMCSA investigators any evidence showing that its motor coach had ever been inspected, repaired and/or maintained as required by Federal safety regulations. Destiny Tours is not inspecting pushout windows, emergency doors, and emergency marking lights on its motor coach.³ Destiny Tours fails to monitor and require its drivers to prepare driver vehicle inspection reports which would identify any vehicle defects and repairs.⁴ An inspection of Destiny Tours' motor coach conducted by a South Carolina State Transport Police Officer resulted in the vehicle being placed out-of-service for safety violations.⁵ Destiny Tours' inadequate maintenance program substantially increases the risk of serious injury or death and is an imminently hazardous and potentially deadly situation for Destiny Tours' drivers and passengers and the motoring public.

Destiny Tours fails to monitor and ensure that its drivers comply with drivers' hours of service requirements, drivers' records of duty requirements, and drivers' controlled substances and alcohol use and testing requirements. Destiny Tours does not have safety management practices in place to ensure its drivers are preparing and submitting accurate records of duty status and that they comply with the maximum hours of service limitations. Destiny Tours is

² During the investigation, Cornelius Scott admitted that he completed the annual inspection report and placed the annual inspection sticker on the motor coach without inspecting the vehicle.

³ *See* 49 C.F.R. § 396.3(a)(2).

⁴ *See* 49 C.F.R. § 396.11(a).

⁵ The April 24, 2013 inspection found 9 mechanical violations including 2 out-of-service violations.

not requiring its drivers to turn in records of duty status or supporting documents related to the records of duty status. During the investigation, Cornelius Scott admitted to FMCSA investigators that he does not require drivers to turn in records of duty status. Destiny Tours' reckless actions result in drivers transporting passengers at a time when they may be fatigued because of driving in excess of the maximum driving time and/or other hours of service regulations.

Destiny Tours' compliance with FMCSA mandated controlled substances and alcohol use and testing requirements is also egregiously deficient. Destiny Tours is using drivers to operate passenger-carrying commercial motor vehicles before receiving negative pre-employment controlled substance test results. Destiny Tours is also using drivers to transport passengers in its vehicles when the drivers have not been randomly tested for controlled substances or alcohol. Although Destiny Tours claims that it has only one driver, FMCSA's investigation revealed that the company has used two additional drivers during the past year. During 2012, Destiny Tours failed to send any drivers for random controlled substances and alcohol testing. Destiny Tours' irresponsible actions in allowing unqualified drivers to operate its motor coaches substantially increase the likelihood of serious injury or death to Destiny Tours' drivers and passengers and the motor public.

Individually and cumulatively, these violations and conditions of dispatch and operation substantially increase the likelihood of serious injury or death to Destiny Tours drivers and the motoring public.

III. BACKGROUND

Destiny Tours was created and applied for a USDOT number on or about November 8, 2011. On its November 8, 2011 Form MCS-150, Destiny Tours identified its owner as Frances

Fleming.

On or around May 6, 2013, FMCSA initiated an investigation of Destiny Tours as part of its 2013 passenger carrier safety initiative. The carrier was identified for investigation after being stopped recently while operating in interstate commerce without required Federal operating authority registration. During the investigation, FMCSA discovered that Destiny Tours is actually owned by Cornelius Scott, not Frances Fleming.

FMCSA's investigation uncovered egregious regulatory violations demonstrating Destiny Tours' flagrant disregard for motor coach passenger safety.⁶ In fact, Destiny Tours' compliance with Federal safety regulations and record-keeping requirements is almost nonexistent. Destiny Tours does not have a systematic vehicle inspection, repair, and maintenance program in place to prevent the operation of unsafe motor coaches.⁷ Instead of conducting an annual inspection of its motor coach, Destiny Tours falsified the annual inspection certification. During the investigation, FMCSA conducted a Level V inspection of Destiny Tours' motor coach. The inspection revealed that the motor coach had 9 mechanical violations, including 2 out-of-service violations.

Destiny Tours fails to monitor and ensure that its drivers comply with drivers' hours of service requirements, drivers' records of duty requirements, and drivers' controlled substances and alcohol use and testing requirements. Destiny Tours has no system for monitoring and tracking drivers' hours of service and does not require its drivers to complete records of duty

⁶ As part of its investigation, FMCSA completed a compliance review of Destiny Tours. Destiny Tours received a proposed safety rating of "Unsatisfactory."

⁷ See 49 C.F.R. § 396.3(a) ("Every motor carrier...must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicle...equipment subject to its control.")

status. Destiny Tours fails to test drivers for controlled substances before allowing them to perform safety-sensitive functions, and has no random controlled substance and alcohol testing program. Moreover, Destiny Tours has operated in violation of a FMCSA Order to Cease All Interstate Transportation and continues to operate without valid and active operating authority for transporting passengers in interstate commerce.⁸ Destiny Tours' continued and blatant disregard for the FMCSRs substantially increases the likelihood of serious injury or death and is an imminently hazardous and potentially deadly risk for its drivers and passengers and for the motoring public.

IV. REMEDIAL ACTION

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

1. Destiny Tours must drastically change its company and management philosophy regarding driver oversight and vehicle maintenance.

2. Destiny Tours 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.

Destiny Tours must use only those laboratories certified by the U.S. Department of Health and

⁸ Cornelius Scott's previous company, Happy Tours, LLC, also operated without the required operating authority. Indeed, Mr. Scott has a history of operating motor carriers in an unsafe manner. On November 30, 2010, FMCSA issued an Order to Cease All Interstate Transportation and Registration Suspension to Happy Tours, LLC for failure to pay a civil penalty. A Notice of Claim was issued to Happy Tours, LLC for one violation of 49 C.F.R. § 382.305, failing to implement a random controlled substance and/or an alcohol testing program; and one violation of 49 C.F.R. § 392.9a(a)(1), operating without the required operating authority.

Human Services' Substance Abuse and Mental Health Services Administration for the analysis of urine specimens. Destiny Tours must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). Destiny Tours 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.

3. Destiny Tours must ensure that each driver selected for random controlled substances or alcohol testing has an equal chance of being selected each time selections are made. Destiny Tours must ensure that it has received a negative pre-employment controlled substances test for each driver before using that driver to perform safety-sensitive functions. Destiny Tours must establish policies and procedures to ensure that it does not dispatch a driver who has tested positive for controlled substances or alcohol until that driver has completed the return-to-duty process in 49 C.F.R. Part 40.

4. Destiny Tours must establish sufficient safety management controls to abate the hazards associated with its lack of safety management controls over its drivers' hours of service. Destiny Tours must ensure its drivers accurately and fully complete their daily records of duty status and submit them to the carrier within 13 days of completion. Destiny Tours must maintain drivers' records of duty status and all supporting documents for a minimum period of 6 months. Further, Destiny Tours must ensure that all records of duty status are accurate by using all means available to it and by comparing each with all supporting documentation.

5. Destiny Tours must take aggressive and progressive steps to control drivers' hours of service.

6. Destiny Tours must implement a dispatch system that ensures that no driver will

be dispatched on any trip unless the driver has the necessary available hours of service to complete the trip in accordance with 49 C.F.R. Part 395.

7. Destiny Tours must ensure that each of its drivers records his or her duty status for each 24-hour period in accordance with 49 C.F.R. § 395.8. Destiny Tours must ensure that each of its drivers complies with the hours of service rules in 49 C.F.R. § 395.8. Destiny Tours must maintain each record of duty status for a minimum of six months in accordance with 49 C.F.R. § 395.8.

8. Destiny Tours must implement a system to ensure that all drivers accurately complete their records of duty status in the form and manner required in 49 C.F.R. Part 395. Destiny Tours must ensure that its drivers accurately complete their daily records of duty status and that they submit these records to Destiny Tours within 13 days of their completion. Destiny Tours must maintain drivers' records of duty status and demonstrate a system showing that the company can and will maintain all supporting documents. Further, Destiny Tours must ensure that all records of duty status are accurate by using all means available to Destiny Tours and by comparing each record with all supporting documentation.

9. Destiny Tours 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.

10. Destiny Tours must submit to the Field Administrator a plan detailing how you will (i) train all drivers used on compliance with the HOS regulations, (ii) monitor the compliance of all drivers with the HOS regulations, and (iii) ensure that all drivers are dispatched in such a way that scheduled routes may be completed within the maximum driving and on-duty hours, as provided in 49 C.F.R. § 395.5.

11. Destiny Tours must establish safety management controls and procedures that ensure that each and every commercial motor vehicle it operates is systematically and properly inspected, maintained and repaired as required by 49 C.F.R. Part 396, and that documentation of inspections, maintenance and repair are obtained and maintained as required.

12. Destiny Tours must demonstrate that it has an effective commercial motor vehicle maintenance program in place to inspect, maintain, and repairs its fleet and ensure compliance with the FMCSRs. Destiny Tours must ensure and demonstrate that vehicle maintenance and safety is a company priority and must ensure and demonstrate that inspection records are accurately completed.

13. Destiny Tours must ensure and demonstrate that its vehicles are in a safe operating condition and are in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operations) and Part 396 (Vehicle Maintenance).

14. Destiny Tours must require its drivers to prepare Driver Vehicle Inspection Reports at the end of each day, implement a procedure so that its drivers can report safety defects and/or deficiencies, and establish and abide by procedures to ensure that reported safety defects and/or deficiencies are repaired immediately before the commercial motor vehicle is operated again. Destiny Tours must train its drivers and ensure all drivers understand the meaning of a roadside out-of-service order and comply with roadside out-of-service orders.

15. Destiny Tours must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of its commercial motor vehicles are repaired prior to the vehicle being operated. Destiny Tours must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is used for the

transportation of passengers prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

16. Destiny Tours must contact FMCSA's South Carolina Division and arrange for inspection of each of its commercial motor vehicles by an FMCSA inspector or an inspector designated by FMCSA.

17. Destiny Tours must comply with all Orders issued by FMCSA.

V. RESCISSION OF ORDER

Destiny Tours is subject to this Order unless and until the Order is rescinded in writing by FMCSA. Unless and until this Order is rescinded, and until such time as Destiny Tours has a valid and active USDOT number and operating authority registration, Destiny Tours is prohibited from operating any commercial motor vehicle in interstate and/or intrastate commerce. This Order will not be rescinded until the Field Administrator for FMCSA's 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.

Before this Order will be rescinded, Destiny Tours must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that its operations and motor vehicles pose, and adequately demonstrate to the Field Administrator's satisfaction the actions taken to eliminate the safety problems. Destiny Tours cannot avoid this Order by continuing operations under the name of another person or company. Any sale, lease, or other transfer of commercial motor vehicles and/or direct assignment of contracts or other agreements for service by Destiny Tours requires the written approval of the Southern Service Center Field Administrator. Any such action taken in anticipation of this Order must cease immediately.

Prior to rescission of this Order, Destiny Tours will be required to:

- 1. Identify the cause for its noncompliance.**
- 2. Develop a detailed Safety Management 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.**
- 3. Certify in writing the commitment of Destiny Tours to comply with the FMCSRs.**
- 4. Execute the Safety Management Plan and provide certification by all owners and officers.**

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, South Carolina Division, at the following addresses:

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

Division Administrator, South Carolina Division
Federal Motor Carrier Safety Administration
1835 Assembly Street, Suite 1253
Columbia, South Carolina 29201-2430

Rescission of this Order does not constitute a reinstatement of Destiny Tours' Federal operating authority registration or its USDOT Number. In order for Destiny Tours to resume motor carrier operations in the United States, Destiny Tours will be required to apply to reactivate its USDOT number registration, reapply for and receive operating authority registration, and demonstrate that Destiny Tours is fit and willing and able to comply with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the FMCSRs; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49

U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this Order may subject Destiny Tours to an action in the United States District Court for equitable relief and punitive damages. Destiny Tours may be assessed civil penalties of up to \$25,000 for a violation of this Order. (49 U.S.C. § 521(b)(2)(F) and 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 and imprisonment for a term not to exceed one year. (49 U.S.C. § 521 (b)(6)(A)).

VII. PENALTIES FOR 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 and Orders of the FMCSA, 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 in accordance with 5 U.S.C. § 554 and 49 C.F.R. § 386.72(b)(4). An administrative review, if requested, must occur within 10 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 FMCSA's Adjudications Counsel and the Field Administrator, Southern Service Center at the following

addresses:

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

Federal Motor Carrier Safety Administration
Office of the Chief Counsel - Adjudications
1200 New Jersey Avenue S.E., W61-323
Washington, DC 20590

Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700
Atlanta, GA 30345

The request must state the material facts at issue which you believe dispute or contradict the finding that Destiny Tours' operations constitute an imminent hazard to the public.

**A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT IN ANY WAY
SUSPEND OR DELAY YOUR DUTY TO COMPLY WITH THIS ORDER**

IMMEDIATELY. This Order is separate and independent from all other orders or actions that may be issued by FMCSA, and does not amend or modify any other such orders or actions. Any request for administrative review of this Order does not attach to or apply to any other order or action.

Date: 5-30-13, 2013



Darrell Ruban, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration