

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

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)	Order No.: SC-2014-5002-IMH
)	
CLARENCE E. RISHER JR. dba)	
EDWARD RISHER TRUCKING)	Service
USDOT 685781)	Date: _____
MC 425618)	
)	Time: _____
)	
CLARENCE EDWARD RISHER JR.)	Service
)	Date: _____
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)	Time: _____
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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) 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 Clarence E. Risher Jr. dba Edward Risher Trucking (USDOT No. 685781) and Clarence Edward Risher Jr., individually (referred to collectively herein as “Edward Risher Trucking”) and to all vehicles owned or operated by Edward Risher Trucking.

The Secretary and FMCSA find Edward Risher Trucking’s operations and its continued operation of any commercial motor vehicle constitutes an imminent hazard. This finding means that based upon Edward Risher Trucking’s present state of unacceptable safety compliance, its

operation of any commercial motor vehicle poses an imminent hazard to public safety.

Effective immediately, Edward Risher Trucking must cease operating any commercial motor vehicle. “Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. Edward Risher Trucking’s commercial motor vehicle(s) may not be operated in interstate or intrastate commerce by any other motor carrier or any driver. Any movement of Edward Risher Trucking’s commercial motor vehicles 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. Edward Risher Trucking’s 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 cargo can be safely secured. (*See* 49 C.F.R. § 386.72(b)(4) and (5)).

EDWARD RISHER TRUCKING MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL CARGO, NOR MAY EDWARD RISHER TRUCKING 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, Edward Risher Trucking must submit to the Field Administrator in writing by facsimile the location of each of its commercial motor vehicles. The submission must be sent to:

Field Administrator
Southern Service Center
404-327-7349 (fax)

I. JURISDICTION

Edward Risher Trucking is a property 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, 5121, 13501, 31133, 31136, and 31144).). Clarence Edward Risher Jr. is the owner of Edward Risher Trucking and is the individual directly responsible for management, control, direction, and oversight of the operations of Edward Risher Trucking.

Edward Risher Trucking 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 Edward Risher Trucking and any and all of its officers, members, directors, successors, assigns and closely affiliated companies, and Clarence Edward Risher Jr. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by Edward Risher Trucking.

II. BASIS FOR ORDER

The basis for determining that Edward Risher Trucking’s motor carrier operations pose an imminent hazard to the public is that on December 10, 2013, FMCSA issued an Imminent Hazard Operations Out-of-Service Order against Clarence Edward Risher, Jr. in his individual

capacity. Clarence Edward Risher Jr. operates Edward Risher Trucking, and as a sole proprietorship, the Imminent Hazard conditions of the individual extend to Edward Risher Trucking.

On November 27, 2013, Clarence E. Risher Jr. caused a fatal accident while driving a commercial motor vehicle (“CMV”) in interstate commerce when he lost control of his CMV and collided into a passenger vehicle. Following the collision, Clarence Edward Risher Jr. began correcting and updating his logbook. Police officers found an open container of alcohol and substances believed to be methamphetamine and cocaine in the CMV. Mr. Risher is currently in the custody of Henrico County law enforcement.

Clarence Edward Risher Jr. should not have been operating a CMV in interstate commerce because his commercial driver’s license (“CDL”) had been suspended and/or revoked for almost four years. In the past six months, Mr. Risher has operated CMVs in interstate commercial for his father’s company, CER Trucking, LLC, on at least sixteen trips. On December 17, 2013, CER Trucking, LLC was declared an imminent hazard and its operations were placed out-of-service.

On September 25, 2013, an officer with the North Carolina State Highway Patrol issued Mr. Risher an out-of-service order for driving with a suspended CDL. Despite the out-of-service order, Mr. Risher continued to operate CMVs in interstate commerce. Currently, Mr. Risher has two pending criminal charges in state court. Mr. Risher has been charged with possession of marijuana and with obstructing a police officer in the discharge of his duty. Mr. Risher was also arrested in May of 2013 in Colleton County, South Carolina for theft of a military fuel tank truck and its load of fuel.

Clarence Edward Risher Jr.’s actions and serious regulatory violations demonstrate a

continuing and flagrant disregard for compliance with the FMCSRs and his operation of Edward Risher Trucking poses an imminent hazard to public safety.

III. BACKGROUND

On November 27, 2013, a 2003 Peterbilt truck tractor¹ being operated by Clarence Edward Risher Jr. on Route 5 in Henrico County, Virginia attempted to stop for a vehicle ahead of him that was slowing down. Clarence Edward Risher Jr. was not able to stop the 2003 Peterbilt and instead crossed over the double yellow lines and struck a 2002 Ford Mustang, causing the death of the driver of the passenger vehicle. Following the collision, Clarence Edward Risher Jr. moved the 2003 Peterbilt and began correcting and updating his logbook which was neither factually correct nor current at the time of the accident.

Police officers at the scene of the accident found an open container of alcohol, an unknown powdery substance and glass-like material believed to be methamphetamine, one piece of aluminum foil folded multiple times with an unknown type of residue and one cigarette butt, and a white powder suspected to be cocaine in the 2003 Peterbilt. Clarence Edward Risher Jr. was charged with driving without a driver's license; reckless driving;² a logbook violation; operating a commercial motor vehicle while disqualified; and possession of alcohol in a commercial motor vehicle. The female passenger in the 2003 Peterbilt was charged with possession of a schedule I/II drug (methamphetamine). The third passenger in the 2003 Peterbilt was released by police officials.

Clarence Edward Risher Jr. shows a general disregard for motor vehicle law and a pattern

¹ The 2003 Peterbilt truck tractor was pulling a 2000 Wabash trailer.

² See 49 C.F.R. § 392.2 (“Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.”)

of endangering public safety. Mr. Risher should not have been operating a CMV in interstate commerce because his CDL had been suspended and/or revoked for almost four years.³ On March 17, 2010, the South Carolina Department of Motor Vehicles (SC DMV) suspended Mr. Risher's CDL because he had committed two serious traffic violations within a three year period. On January 28, 2012, the SC DMV revoked Mr. Risher's CDL because he failed to appear for court/trial in North Carolina. On April 17, 2012, the SC DMV suspended Mr. Risher's CDL after he was convicted of driving under a suspended CDL. The two suspensions and one revocation are still in effect. Clarence Risher's driving record includes 16 traffic violations (CDL and Non-CDL).

On September 25, 2013, an officer with the North Carolina State Highway Patrol placed Mr. Risher out-of-service for operating a CMV with a suspended CDL. At the time, Mr. Risher was transporting agricultural products from Columbia, South Carolina to Marlboro, North Carolina. Despite the out-of-service order, Mr. Risher continued to operate CMVs in interstate commerce. In the past six months, Mr. Risher has operated CMVs in interstate commercial for his father's company, CER Trucking, LLC, on at least sixteen trips. On December 17, 2013, CER Trucking, LLC was declared an imminent hazard and its operations were placed out-of-service.

Mr. Risher is also not complying with federal hours-of-service regulations. At the accident scene, Mr. Risher falsified the record of duty status in the CMV.⁴ Mr. Risher also could not provide police officials with his previous seven days of records of duty status.⁵

³ See 49 C.F.R. § 383.51(a) (A person required to have a CDL who is disqualified must not drive a CMV.)

⁴ See 49 § C.F.R. 395.8(e) (A driver and/or carrier is liable for false records of duty status.)

⁵ See 49 § C.F.R. 395.8(k)(2) (A driver must retain a copy of each record of duty status for the

In addition to the Virginia criminal case, Mr. Risher has two other criminal cases pending in South Carolina State Court. In one case, Mr. Risher has been charged with possession of marijuana. In the second case, Mr. Risher has been charged with obstructing a police officer in the discharge of his duty. Mr. Risher was also arrested in May of 2013 in Colleton County, South Carolina for theft of a military fuel tank truck and its load of fuel.

In sum, Clarence Edward Risher Jr.'s operation of Edward Risher Trucking poses an imminently hazardous and potentially deadly risk for its drivers and the motoring public.

IV. REMEDIAL ACTION

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

1. Edward Risher Trucking 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. Edward Risher Trucking 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. Edward Risher Trucking must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). Edward Risher Trucking 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.

previous seven days which shall be in his possession and available for inspection while on duty.)

2. Edward Risher Trucking 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. Edward Risher Trucking 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. Edward Risher Trucking 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.

3. Edward Risher Trucking must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391. Edward Risher Trucking must ensure that every driver it uses has completed and furnished an employment application. Edward Risher Trucking 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. Edward Risher Trucking must ensure that it obtains from each driver an annual list of traffic violations and an annual Motor Vehicle Record, and that it performs an annual review on each driver's driving record. Edward Risher Trucking must ensure that it performs a three-year previous employment check on its drivers prior to their operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23. Edward Risher Trucking must ensure each driver possesses a DOT medical examiner's certificate as well as ensure that a copy of each driver's medical examiner's certificate is maintained in the driver's qualification file.

4. Edward Risher Trucking must take aggressive and progressive steps to control drivers' hours of service.

5. Edward Risher Trucking 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.

6. Edward Risher Trucking 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. Edward Risher Trucking must ensure that each of its drivers complies with the hours of service rules in 49 C.F.R. § 395.3. Edward Risher Trucking must maintain each record of duty status for a minimum of six months in accordance with 49 C.F.R. § 395.8.

7. Edward Risher Trucking 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. Edward Risher Trucking must ensure that its drivers accurately complete their daily records of duty status and that they submit these records to Edward Risher Trucking within 13 days of their completion. Edward Risher Trucking must maintain drivers' records of duty status and demonstrate a system showing that the company can and will maintain all supporting documents. Further, Edward Risher Trucking must ensure that all records of duty status are accurate by using all means available to Edward Risher Trucking and by comparing each record with all supporting documentation.

8. Edward Risher Trucking 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.

9. Edward Risher Trucking must submit to the Field Administrator a plan detailing how it 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. § 395.3.

10. Edward Risher Trucking 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.

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

12. Edward Risher Trucking 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).

13. Edward Risher Trucking 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. Edward Risher Trucking 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.

14. Edward Risher Trucking 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. Edward Risher

Trucking must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is operated prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

15. Edward Risher Trucking must contact FMCSA's South Carolina Division and arrange for inspection of each of its commercial motor vehicles by a FMCSA inspector or an inspector designated by FMCSA.

16. Edward Risher Trucking must comply with all Orders issued by FMCSA.

V. RESCISSION OF ORDER

Edward Risher Trucking 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 Edward Risher Trucking has a valid and active USDOT number and operating authority registration, Edward Risher Trucking 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, Edward Risher Trucking 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. Edward Risher Trucking cannot avoid this Order by continuing operations under the name of another person or company. Any sale, lease, or other transfer of commercial motor vehicle(s) and/or direct assignment of contract(s) or other agreement(s) for service by Edward Risher Trucking 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, Edward Risher Trucking 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 Edward Risher Trucking 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

Rescission of this Order does not constitute a reinstatement of Edward Risher Trucking's Federal operating authority registration or its USDOT Number. In order for Edward Risher Trucking to resume motor carrier operations in the United States, Edward Risher Trucking will be required to

apply to reactivate its USDOT number registration, reapply for and receive operating authority registration, and demonstrate that Edward Risher Trucking 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 WITH THIS ORDER

Failure to comply with the provisions of this Order may subject Edward Risher Trucking to an action in the United States District Court for equitable relief and punitive damages.

Edward Risher Trucking may also be assessed civil penalties of up to \$25,000 for each 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

Edward Risher Trucking has 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 Edward Risher Trucking believes disputes or contradicts the finding that Edward Risher Trucking's operations constitute an imminent hazard to the public.

A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT IN ANY WAY SUSPEND OR DELAY EDWARD RISHER TRUCKING'S 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: December 19, 2013

A handwritten signature in cursive script, appearing to read "Darrell M. Ruban", written in black ink. The signature is positioned above a horizontal line.

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