

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

**GD CARS, INC.**  
**USDOT 2373977**

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) **Order No.: CO-2013-5000-IMH**  
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) **Service**  
) **Date:** \_\_\_\_\_  
)  
) **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, Western Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Lakewood, Colorado. This ORDER applies to GD CARS, INC. (USDOT Number 2373977) (hereinafter “you,” “your,” and/or “GD CARS”) and to any and all commercial motor vehicles owned, leased, or otherwise operated by GD CARS, including the commercial motor vehicles identified in Appendix A to this ORDER.

The Secretary and the FMCSA find your operations and the continued operation of your commercial motor vehicles (herein “commercial motor vehicles,” “motor vehicles,” and/or “vehicles”) constitute 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 VEHICLES, SPECIFICALLY INCLUDING THE  
COMMERCIAL MOTOR VEHICLES LISTED IN APPENDIX A TO THIS ORDER.  
“OPERATE” OR “OPERATING” INCLUDES WITHOUT LIMITATION ALL  
INTERSTATE AND INTRASTATE TRANSPORTATION BY DRIVERS FROM ALL  
DISPATCHING LOCATIONS OR TERMINALS.**

GD CARS’ commercial motor vehicles, specifically including the commercial motor vehicles listed in Appendix A to this Order, may not be operated in interstate or intrastate commerce by any other motor carrier or driver under GD CARS’ control. Any movement of GD CARS’ commercial motor vehicles, specifically including the commercial motor vehicles identified in Appendix A to 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; GD CARS’ commercial motor vehicles may be moved only upon the written approval of the Field Administrator for FMCSA’s Western 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)).

**Within eight (8) hours of the service of this Order, you must submit to the Field Administrator in writing by facsimile the location of each of the commercial motor vehicles identified in Appendix A to this Order. Your submission must be sent to:**

**Field Administrator – 303-407-2339 (facsimile)**

## **I. JURISDICTION**

GD CARS is a for-hire 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, 521, 13501, 31132, 31133, 31136, and 31144). GD CARS is required to comply, and to ensure your drivers comply, with the FMCSRs. (49 C.F.R. § 390.11).

This ORDER has the force and effect of any other Order issued by the FMCSA, and is binding on and applies to GD CARS as well as any and all of your officers, directors, managers, successors, assigns and closely affiliated companies. This ORDER applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by GD CARS, including but not limited to those identified in Appendix A.

## **II. BASIS FOR ORDER**

The basis for determining that GD CARS’ motor carrier operations pose an imminent hazard to the public is that you have violated numerous FMCSRs. GD CARS currently fails to ensure that its commercial motor vehicles are inspected, repaired, and maintained; fails to monitor and ensure that its drivers comply with drivers’ hours of service (HOS) and records of duty status requirements; fails to ensure that its drivers have appropriate licenses for the commercial motor vehicles they operate; fails to ensure its drivers are medically examined and certified; fails to ensure its drivers are properly qualified to operate commercial motor vehicles; fails to comply with driver controlled substances and alcohol use testing requirements and fails to have adequate levels of insurance, thereby posing an ongoing and continuing imminent hazard.

Individually and cumulatively, these violations and these conditions of operation as well as your lack of basic safety management controls substantially increase the likelihood of serious

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injury or death to GD CARS drivers and the motoring public.

### **III. BACKGROUND**

GD CARS primary business is hauling used cars and trucks in interstate commerce. On or about May 13, 2013, a compliance review was conducted on GD CARS. The investigation uncovered violations of the FMCSRs so widespread as to demonstrate a continuing and flagrant general disregard for compliance with the FMCSRs and a management philosophy indifferent to motor carrier safety. The violations discovered include a failure to periodically inspect your commercial motor vehicles, a failure to maintain records of maintenance and repair, a failure to require drivers to prepare driver vehicle inspection reports, a failure to require drivers to make records of duty status, falsification of records of duty status, using a driver with no CDL, a failure to establish driver qualification files, and a failure to establish any drug and alcohol program. You have no safety management plan in place to determine whether or not your drivers violated Hours of Service (HOS) rules contained in 49 C.F.R. Part 395. GD CARS' actions and operations establish an imminently hazardous and potentially deadly situation for its drivers and the motoring public.

The compliance review identified a complete breakdown of management controls and oversight to ensure that your commercial motor vehicles are inspected, repaired, and maintained. You maintain minimal records of maintenance for the commercial motor vehicles you operate and have a general disregard for the mechanical state of your commercial motor vehicles, resulting in the dispatch of unsafe vehicles. On or about May 20, 2013, you dispatched a commercial motor vehicle to Kansas in order to retrieve another commercial motor vehicle (truck and trailer) that had been impounded with multiple out-of-service conditions. After retrieving the out-of-service commercial motor vehicle, you were stopped and inspected by the Kansas Highway Patrol. During this inspection on May 20, 2013, CO-2013-5000-IMH – IMMINENT HAZARD OUT-OF-SERVICE ORDER

multiple out-of-service conditions were discovered in the commercial motor vehicle used to retrieve the impounded vehicle. The violations found during this roadside inspection included failing to repair mechanical defects with the trailer that were cited on a previous inspection conducted May 3, 2013. Thereafter, all three vehicles, including the previously impounded truck that was being hauled on the trailer, were impounded by the Kansas Highway Patrol for unsafe out-of-service conditions. GD CARS does not require its drivers to prepare driver vehicle inspection reports (DVIR) in order to identify mechanical discrepancies on its commercial motor vehicles. During the May 13, 2013 compliance review, you were unable to produce a single DVIR in the last 90 days.

The complete breakdown of management controls also extends to driver qualifications and oversight, leading to the dispatch of unqualified and potentially unsafe drivers. GD CARS does not require drivers to submit records of duty status, does not monitor records of duty status, and does not maintain driver records of duty status on current drivers to ensure compliance with HOS requirements or to ensure drivers are adequately rested before operating commercial motor vehicles. On multiple occasions in the past five months, you did not require your drivers to prepare and submit records of duty status. In fact, GD CARS was cited for hours-of-service violations related to inadequate or no records of duty status in five out of six roadside inspections since February 2013.

Moreover, GD CARS failed to qualify or otherwise establish driver qualification files for two of its three drivers, failed to make the required inquiries into its drivers' driving records, and repeatedly uses drivers who do not hold a commercial driver's license (CDL) or who are otherwise not qualified. In fact, prior to being notified of the compliance review, you employed three drivers and none of them held CDLs. You reported that two of those drivers were "fired" just prior to the May 13, 2013 compliance review. During roadside inspections, CO-2013-5000-IMH – IMMINENT HAZARD OUT-OF-SERVICE ORDER

GD CARS was cited four times since March 2013 for failing to ensure that its drivers are medically examined and certified.

GD CARS failed to establish any drug and alcohol program prior to May 3, 2013 and currently does not have a fully compliant drug and alcohol program. During a roadside inspection on March 29, 2013, your driver was cited for possession of drug paraphernalia. Further, the driver you used on May 20, 2013, for the return trip from Kansas (trip identified above) was hired on May 20, 2013, and never drug tested.

GD CARS should have been aware of FMCSA regulatory requirements. During the May 13, 2013 compliance review, the GD CARS representative was Gheorghe Reul. Mr. Reul identified himself as a former manager, friend, interpreter, helper, and driver. He also indicated he does minor/small maintenance on carrier vehicles. Mr. Reul, however, was knowledgeable about all aspects of GD CARS, which obtained its USDOT number on or about January 28, 2013. The “owner” identified on GD CARS’ MCS-150, dated January 28, 2013, is Mr. Dmitry Tsubarkov. But Mr. Tsubarkov was minimally present during the compliance review and deferred to Mr. Reul on questions related to GD CARS. Mr. Reul is also identified on GD CARS’ MCS-150 as a company officer. Mr. Reul was the owner of Everest Automotive Car Hauler, Inc. aka Everett Automotive Car Hauler, Inc.<sup>1</sup> (hereinafter “Everest/Everett Auto”) (USDOT 2316478). On February 26, 2013, Everest/Everett Auto’s new entrant registration was revoked and it was ordered to cease all interstate transportation for failing to respond to a Demand for Written Response, which was based on a driver out of service rate of 100% for a 90-day period. On March 25, 2013, Everest/Everett Auto was also ordered to cease operations for failing a new entrant safety audit. Many of the same violations found in the new entrant

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<sup>1</sup> The MCS-150, dated June 15, 2012, indicates the motor carrier’s name is *Everest* Automotive Car Hauler, Inc. The new entrant safety audit, dated January 8, 2013, indicates the carrier’s name is *Everett* Automotive Car Hauler, Inc.

safety audit conducted on Everest/Everett Auto were found during both the May 13, 2013 compliance review on GD CARS and roadside inspections on GD CARS<sup>2</sup>.

#### **IV. REMEDIAL ACTION**

To eliminate this imminent hazard, and before GD CARS 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 FMCSRs. In addition, before resuming interstate operations, you must apply for and receive new operating authority registration from FMCSA pursuant to 49 U.S.C. § 13902 and 49 C.F.R. Part 365.

A. GD CARS must establish safety management controls and procedures that ensure that each and every commercial motor vehicle it operates is inspected, maintained and repaired as required by 49 C.F.R. Part 396. You must require your drivers to prepare DVIRs at the end of each day and establish procedures to ensure that reported safety defects and/or deficiencies are repaired immediately. You must also ensure that each and every commercial motor vehicle you operate is periodically inspected as required.

B. GD CARS must comply with all Orders issued by FMCSA and must submit to the Field Administrator a plan detailing how you will: (i) train all drivers used by GD CARS or its successors, assigns or closely related affiliates, on compliance with the HOS regulations; (ii) monitor the compliance of all drivers used by GD CARS or its successors, assigns or closely related affiliates with the HOS regulations; and (iii) ensure that all drivers used by GD CARS or its successors, assigns or closely related affiliates 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.

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<sup>2</sup> During the January 8, 2013 new entrant safety audit, Everest/Everett Auto was cited for not maintaining driver qualification files, using a driver with no medical certificate, no drug and alcohol program, using a driver that did not have a CDL, not requiring drivers to make driver records of duty status, no periodic inspections on vehicles, and not requiring driver to make DVIRs, and not maintaining minimum levels of insurance.

C. GD CARS must establish and implement a complete and compliant alcohol and controlled substances testing program that complies with the requirements of 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 Field Administrator for FMCSA's Western Service Center.

D. GD CARS must ensure that each and every driver subject to the commercial driver's license requirements of 49 C.F.R. Part 383 is tested for controlled substances use, and provide documentation of such testing, including copies of custody and control forms and test results reviewed by a medical review officer, to the Field Administrator for FMCSA's Western Service Center. GD CARS must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). GD CARS 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.

E. GD CARS must establish safety management controls and procedures to ensure that each and every driver it uses is qualified to operate a commercial motor vehicle and that it has obtained and maintains all required documentation showing the qualification of each driver as required by 49 C.F.R. Part 391. You must ensure that each and every driver you use to operate a commercial motor vehicle has been medically examined and certified as required, and must provide medical certificates for each and every driver to the Field Administrator for FMCSA's Western Service Center. You must check the driving record of each and every driver you use to operate a commercial motor vehicle and obtain copies of the driving records for each driver. You must provide copies of driver records for each and every driver to the Field Administrator for FMCSA's Western Service Center.

F. GD CARS must establish safety management controls and procedures to ensure that each and every driver that operates a commercial motor vehicle has the necessary commercial drivers' license, including any required endorsements, for the motor vehicle(s) the driver operates. You must also ensure that all drivers required to have commercial driver's licenses have valid and current commercial driver's licenses.

G. GD CARS must ensure that you maintain complete driver qualification files, as required by 49 C.F.R. Part 391. You must 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. GD CARS must ensure that it obtains from each driver an annual list of traffic violations, that it obtains an annual Motor Vehicle Record, and that it performs an annual review on each driver's driving record.

H. GD CARS must implement a system to ensure that all its drivers comply with the hours of service regulations, and accurately complete their records of duty status in the form and manner required in 49 C.F.R. Part 395. You must ensure that your drivers accurately complete their daily records of duty status and that they submit these records within 13 days of their completion. Further, you must demonstrate a system to ensure that all records of duty status are accurate by using all means available to you and by comparing each record with all supporting documentation. You must ensure records are maintained in compliance with retention requirements.

I. GD CARS must maintain records of inspections, repairs, and maintenance indicating the date and nature of the work performed. You must maintain completed inspection forms for 12 months from the date of inspection at your principal place of business. You must maintain evidence of inspector and brake inspector qualifications.

J. GD CARS must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of your commercial motor vehicles are repaired prior to the vehicle being operated to transport cargo. You must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is used for the transportation of cargo prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

K. GD CARS must submit proof of insurance and a MCS-90 indicating minimum levels of insurance. You must also ensure minimum levels of insurance will be maintained while conducting operations.

L. GD CARS 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**

GD CARS is subject to this ORDER unless and until this ORDER is rescinded in writing by FMCSA. Unless and until this ORDER is rescinded, and you have obtained valid and active operating authority registration, you are prohibited from operating any commercial motor vehicle(s) in interstate and/or intrastate commerce. This ORDER will not be rescinded until the Field Administrator for FMCSA's Western Service Center has determined that the Remedial Action requirements specified in Section IV. of this ORDER have been fully satisfied and acceptable documentation submitted.

Before this ORDER may be rescinded GD CARS must comply with the provisions of this ORDER, eliminate the problems constituting the imminent hazard that its operations and vehicles pose, and adequately demonstrate to the Field Administrator for FMCSA's Western Service Center the actions taken to eliminate the safety problems. **You cannot avoid this**

**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 GD CARS requires the written approval of the Western Service Center Field Administrator. Any such action taken in anticipation of this ORDER must cease immediately.

Prior to rescission of this ORDER, GD CARS will be required to:

- A. Identify the cause of its noncompliance;
- B. 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; and
- C. 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, Western Service Center with a copy of the request and documentation to the Division Administrator, Colorado Division, at the following addresses:

Field Administrator, Western Service Center  
Federal Motor Carrier Safety Administration  
12600 West Colfax Avenue, Suite B-300  
Lakewood, Colorado 80215

Division Administrator, Colorado Division  
Federal Motor Carrier Safety Administration  
12300 West Dakota Avenue, Suite 130  
Lakewood, CO 80228

Rescission of this ORDER does not constitute a reinstatement of your Federal operating authority registration or your USDOT number. In order for you to resume motor carrier

operations, you will be required to reapply for operating authority registration, apply to reactivate your USDOT number registration, and demonstrate that you are 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) the 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 GD CARS 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 violations 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, 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 pursuant to 49 C.F.R. § 386.72(b)(4). An administrative review, if requested, must occur within 10 days

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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, Western Service Center at the following addresses:

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

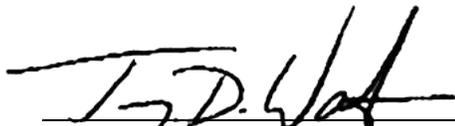
Federal Motor Carrier Safety Administration  
Office of the Chief Counsel - Adjudications  
1200 New Jersey Avenue S.E., W61-323  
Washington, DC 20590

Field Administrator, Western Service Center  
Federal Motor Carrier Safety Administration  
12600 West Colfax Avenue, Suite B-300  
Lakewood, Colorado 80215

The request must state the material facts at issue which you believe dispute or contradict the finding that GD CARS' 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. 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, and any request for administrative review of this ORDER does not attached to or apply to any other order or action.

Date: May 22, 2013

  
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Terry D. Wolf, Field Administrator  
United States Department of Transportation  
Federal Motor Carrier Safety Administration

**APPENDIX A**

<b><u>Year</u></b>	<b><u>Make</u></b>	<b><u>VIN #</u></b>
1999	Dodge	1B7MC3368XJ527072
2005	Dodge	3D7MR48C95G701061
2007	Torino	121CC53346M014276
2008	Unknown	5C7EE48358D002713
2006	Unknown	15XFW53206L000163