

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

)	Order No.: MN-2013-5000-IMH
NEBYOU BROOK)	Service
CDL No.: (California))	Date: _____
)	Time: _____
)	Person Served: _____

IMMINENT HAZARD OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order (“ORDER”) issued by the Secretary of Transportation (the “Secretary”) pursuant to 49 U.S.C. § 521(b)(5)(A), 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Midwestern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (“USDOT”). This ORDER applies to **NEBYOU BROOK** (referred to herein as “you,” “your,” and/or “**BROOK**”).

The Secretary and the FMCSA find your continued operation of commercial motor vehicles, as defined in 49 C.F.R. § 390.5,¹ constitutes an “**IMMINENT HAZARD.**” This finding means that based upon your present state of unacceptable safety compliance, your operation of commercial motor vehicles poses an imminent hazard to the public.

¹ Under 49 C.F.R. § 390.5, a commercial motor vehicle includes any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle-- (1) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.

EFFECTIVE IMMEDIATELY YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE TRANSPORTATION OF COMMERCIAL MOTOR VEHICLES AND/OR GOODS.

If you are served this ORDER while operating a commercial motor vehicle in interstate commerce, you must immediately park such vehicle, and notify the operating carrier of your OOS order. You may not continue to operate the commercial motor vehicle.

NO ADDITIONAL CARGO MAY BE LOADED OR TRANSPORTED, NOR MAY ANY COMMERCIAL MOTOR VEHICLE BE OPERATED IN INTERSTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.

**I.
JURISDICTION**

NEBYOU BROOK is a driver of commercial motor vehicles in interstate commerce and is subject to, and required to comply with, the requirements of 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 31306). BROOK is required to comply with Federal statutes and regulations regarding driving of commercial motor vehicles, including drugs and alcohol (49 C.F.R. Part 392) and drivers’ hours of service, including 49 C.F.R. Part 395.

**II.
BASIS FOR ORDER**

The basis for determining that BROOK’S operation of a commercial motor vehicle poses an imminent hazard to the public is that BROOK has failed to exercise an appropriate duty of care to the motoring public regarding his operation of a commercial motor vehicle. BROOK has ignored the drug, alcohol and hours of service prohibitions within the FMCSRs. BROOK’S

blatant disregard of the FMCSRs and disregard for the safety of the motoring public substantially increase the likelihood of serious injury or death to himself and/or to the motoring public.

III. BACKGROUND

On or about March 2, 2012, a commercial motor vehicle (“CMV”) operated by BROOK for BK Trucking, Westerville, Ohio was inspected by Trooper Sean Shields of the Colorado State Patrol. Trooper Shields cited BROOK for violating 49 C.F.R. § 392.5A and placed him out of service. His report recorded, “driver consuming an intoxicating beverage within 4 hours before operating a motor vehicle.” Trooper Shields also cited violations of 49 C.F.R. §§ 395.3 (11 and 14 hour driving violations) and 395.8 (records of duty status not current).

On September 11, 2012, while BROOK operated a CMV for TWA Express LLC of Saint Louis, Missouri, New Mexico State Inspector Jonathan Gonzales cited BROOK for violating 49 C.F.R. §§ 392.4A (possessing a controlled substance while on duty) - after Inspector Gonzales discovered marijuana in the cab and 392.5A (possessing an open container of alcoholic beverage). Both violations constituted grounds for placing BROOK out of service.

On October 19, 2012, Inspector G. Venne of the Wisconsin State Patrol cited BROOK for violating 49 C.F.R. § 395.8(f) (incomplete and not current records of duty status) while operating a CMV for Purpose Driven Services LLC, Apple Valley, Wisconsin.

Most recently, on February 5, 2013, Indiana State Police Inspector and Sergeant Wanda D. Clay responded to a call for assistance from the Gary, Indiana Police. Gary Police had stopped BROOK after he drove his CMV off the roadway, across a parking lot, and over concrete parking blocks. BROOK was placed under arrest after a field breathalyzer test indicated a .18 Blood Alcohol Content (“BAC”) result. Sergeant Clay conducted a level II inspection and recorded in her report that she encountered a strong odor of alcoholic beverage

when she spoke with the driver. BROOK reportedly had a white substance around his lips. Five prescription bottles with the driver's name were discovered behind the windshield visor. An open, partially consumed and still cold bottle of beer was discovered behind the passenger seat. Brook was unable to tell Sergeant Clay or Gary Police where he was going and or coming from. He could not locate his logbook or the vehicle keys. BROOK could only answer that the keys were somewhere on or around the dash.

BROOK's operation of a CMV, while also violating drug, alcohol and driver hours of service regulations and conditions of operation, substantially increases the likelihood of serious injury or death to BROOK and to the motoring public.

IV. REMEDIAL ACTION

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

YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER

- 1. You may not operate a commercial motor vehicle in interstate commerce until you have fully complied with the Remedial Actions set forth in this section.**
- 2. You must demonstrate to the satisfaction of the Field Administrator, Midwestern Service Center, that you are qualified to drive a commercial motor in full compliance with 49 C.F.R. § 392.4 and § 392.5**
- 3. Before you may operate a commercial motor vehicle or perform any safety-sensitive duties for any employer, you must comply with Part 40 (Subpart O: Procedures for Transportation Workplace Drug and Alcohol Testing Programs) of the Department of Transportation's drug and alcohol regulations. Therefore, you must demonstrate to the satisfaction of the Field Administrator, Midwestern Service Center, that you completed the SAP evaluation, referral, and education/treatment process set forth in § 40.285 (49 C.F.R. § 40.285) and FMCSA regulation § 382.605 (49 C.F.R. § 382.605) – before you may operate a commercial motor vehicle or perform any safety sensitive duties for any employer.**

4. **You must undergo training in the hours of service requirements contained in 49 C.F.R. Part 395 and demonstrate successful completion of that training to the satisfaction of the Field Administrator, Midwestern Service Center.**
5. **You must comply with all Orders issued by FMCSA.**

V.
RECISSION OF ORDER

Before operating any commercial motor vehicle, as defined by 49 C.F.R. § 390.5, in interstate commerce, you must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that your operation of a commercial motor vehicle poses, and adequately demonstrate to the Field Administrator for the Midwestern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the safety problems. **You must have this Order rescinded by the Field Administrator for the Midwestern Service Center before continuing interstate operations.** This ORDER will not be rescinded until the Field Administrator for the Midwestern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this Order have been fully satisfied and acceptable documentation is submitted. **You cannot avoid this Operations Out-of-Service Order by continuing to operate under another name or by driving for another motor carrier.**

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, Minnesota Division, at the following addresses:

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

Division Administrator, Minnesota Division
Federal Motor Carrier Safety Administration
380 Jackson Street
St. Paul, Minnesota 55101

VI.
FAILURE TO COMPLY

Failure to comply with the provisions of this Operations Out-of-Service Order may subject you 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 \$2,500 and be disqualified from operating commercial motor vehicles for not less than 180 days if you operate a commercial motor vehicle in violation of this ORDER. You may be assessed civil penalties of up to \$5,000 and be disqualified from operating commercial motor vehicles for not less than two years and not more than five years for a second violation of this ORDER. (See 49 U.S.C. §§ 521(b)(2)(A) and 31310(i), and 49 C.F.R. § 386.82(a)(4)). Knowing and/or willful violation of the provisions of this ORDER may subject you to criminal penalties. (See 49 U.S.C. § 521(b)(6)).

VII.
ADDITIONAL PENALTIES FOR OTHER VIOLATIONS

Any motor carrier or driver that violates Federal requirements, including the FMCSRs, 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:

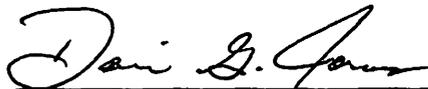
Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, D.C. 20590

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

The request must state the material facts at issue which you believe dispute or contradict the finding that your operation of a commercial motor vehicle 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: 2-14-13



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