

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

	)	<b>Order No.: KS-2013-5000-IMH</b>
	)	
<b>MIDNIGHT EXPRESS LLC</b>	)	<b>Service Date and</b>
	)	<b>Time:</b> _____
<b>USDOT# 2408558</b>	)	
	)	<b>Person Served:</b> _____
	)	
	)	<b>Service Date and</b>
<b>ADAM BREIDENTHAL, Individually</b>	)	<b>Time:</b> _____
	)	
	)	<b>Service Date and</b>
<b>DERRICK HANSROTH, Individually</b>	)	<b>Time:</b> _____
	)	
	)	<b>Service Date and</b>
<b>EDWARD GOETZ, Individually</b>	)	<b>Time:</b> _____

**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, Midwestern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Matteson, Illinois. This Order applies to MIDNIGHT EXPRESS LLC (USDOT #240558), to passenger-carrying operations by each of its Members, Adam Breidenthal, Derrick Hansroth and Edward Goetz, individually (referred to collectively herein as "you," "your", and/or “MIDNIGHT EXPRESS”), and to all passenger-carrying

commercial motor vehicles<sup>1</sup> owned or operated by MIDNIGHT EXPRESS, including the vehicle specifically identified herein.

The Secretary and FMCSA find your passenger-carrying operation and your passenger-carrying commercial motor vehicles (including but not limited to vehicle VIN 1FDXE40SXXHC10203), referred to herein as “passenger-carrying commercial motor vehicles,” and/or “motor coaches,” constitute an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your operation of any passenger-carrying commercial motor vehicle poses an **imminent hazard** to public safety.

**EFFECTIVE IMMEDIATELY YOU MUST CEASE OPERATING ALL PASSENGER-CARRYING COMMERCIAL MOTOR VEHICLES, INCLUDING THE MOTOR COACH IDENTIFIED IN THIS ORDER. FURTHER, THE MOTOR COACH IDENTIFIED IN THIS ORDER IS PROHIBITED FROM BEING OPERATED IN INTERSTATE OR INTERSTATE COMMERCE BY ANY OTHER MOTOR CARRIER OR ANY DRIVER.** “Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. MIDNIGHT EXPRESS' motor coach(es) may not be operated in interstate or intrastate commerce by any other motor carrier or any driver; such motor coach(es) may not be operated - even without passengers. Any movement of MIDNIGHT EXPRESS' motor coach(es) 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 motor coach itself is not operated under its own power. MIDNIGHT

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<sup>1</sup> As used herein, a passenger carrying commercial motor vehicle, or alternatively “motor coach”, is defined as a vehicle “designed or used to transport more than 8 passengers, including the driver, for compensation”, or “designed or used to transport more than 15 passengers, including the driver, not for compensation.” See 49 C.F.R. § 390.5.

EXPRESS' motor coach(es) may be moved only upon the written approval of the Field Administrator for FMCSA's Midwestern Service Center.

**Your passenger-carrying 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)). YOU MAY NOT LOAD OR TRANSPORT ADDITIONAL PASSENGERS , NOR MAY YOU OPERATE ANY PASSENGER-CARRYING COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.**

Within eight (8) hours of the service of this Order, you must submit to the Field Administrator in writing by facsimile the location of the passenger-carrying commercial motor vehicle(s) operated by MIDNIGHT EXPRESS, including the motor coach identified in this Order. Your submission must be faxed to 708-283-2319 and addressed to:

Mr. Darin G. Jones  
Field Administrator, Midwestern Service Center  
Federal Motor Carrier Safety Administration  
4749 Governors Drive, Suite 300A  
Matteson, Illinois 60443

**I.**  
**JURISDICTION**

MIDNIGHT EXPRESS is a for-hire passenger motor carrier engaged in interstate and intrastate commerce using passenger carrying 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, 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). Adam Breidenthal, Derrick Hansroth and Edward Goetz are the individual Members of Midnight Express LLC who are directly responsible for management, control, direction, and oversight of the operations of MIDNIGHT EXPRESS. MIDNIGHT EXPRESS is required to comply with, and to ensure its drivers comply with, the FMCSRs and Orders of the USDOT and FMCSA. (See 49 C.F.R. §390.11). This Order has the force and effect of any other Order issued by FMCSA and is binding upon MIDNIGHT EXPRESS, its successors, assigns and closely affiliated companies, and its Members, Adam Breidenthal, Derrick Hansroth and Edward Goetz,. This Order applies to all passenger-carrying operations, and all motor coach vehicles owned, leased, rented or otherwise operated, by MIDNIGHT EXPRESS and/or its Members, including but not limited to the vehicle specifically identified in this Order.

## **II.** **BASIS FOR ORDER**

The basis for determining that MIDNIGHT EXPRESS' motor coach operations and the motor coach identified in this Order pose an imminent hazard to the public is that MIDNIGHT EXPRESS' operational structure and safety management controls are so utterly deficient as to substantially increase the likelihood of serious injury or death if not discontinued immediately. MIDNIGHT EXPRESS fails to properly and regularly inspect, maintain and repair motor coaches and associated safety systems and equipment. MIDNIGHT EXPRESS has failed to establish the systems necessary to ensure drivers comply with drivers' qualification requirements, drivers' controlled substance and alcohol use and testing requirements, drivers' hours of service requirements, and drivers' records of duty status requirements. Individually and cumulatively, these violations substantially increase the likelihood of serious injury or death to MIDNIGHT

EXPRESS' drivers, passengers and the motoring public. As the Members of MIDNIGHT EXPRESS, Adam Breidenthal, Derrick Hansroth and Edward Goetz are responsible for the complete breakdown of safety oversight and management.

### **III.** **BACKGROUND**

On May 4, 2013, while MIDNIGHT EXPRESS was transporting passengers between Merriam, Kansas and Kansas City, Missouri in the motor coach described herein, a female passenger fell from the rear doors used to load party supplies to the pavement and was struck by vehicles following the MIDNIGHT EXPRESS vehicle. The passenger subsequently died from her injuries. On or about May 6, 2013, the Kansas Highway Patrol conducted a Level 1 (full) inspection of the motor coach. The motor coach, VIN 1FDXE40SXXHC10203, is a 21-passenger commercial motor vehicle with a Gross Vehicle Weight Rating (“GVWR”) of 14,050 lbs. The Kansas Highway Patrol’s report documented that the emergency exit windows were blocked by vehicle seats that had been rotated 90 degrees so that seat backs were arranged parallel to and blocking the emergency exit windows. The report documented five (5) egregious regulatory safety violations, including “no or defective emergency exit windows”, for which the motor coach was placed out-of-service by the Kansas Highway Patrol. On May 15, 2013, the Kansas Division of the Federal Motor Carrier Safety Administration initiated a Compliance Review of MIDNIGHT EXPRESS. The review found MIDNIGHT EXPRESS’ compliance with the Federal Motor Carrier Safety violations to be practically nonexistent. MIDNIGHT EXPRESS never filed a Motor Carrier Identification Report, Form MCS-150, before beginning operations. MIDNIGHT EXPRESS had no USDOT number, which has allowed you to operate without safety oversight by

either State or Federal agencies.<sup>2</sup> MIDNIGHT EXPRESS does not carry the \$5,000,000 in liability insurance required of passenger carriers.

FMCSA's Compliance Review found that MIDNIGHT EXPRESS' operations fail to comply with driver qualification requirements in virtually every respect. MIDNIGHT EXPRESS has no driver qualification files and does not maintain the required driver applications, copies of drivers' medical cards, responses to previous employer inquiries, or driver driving histories.<sup>3</sup> MIDNIGHT EXPRESS' operations completely fail to comply with drug and alcohol testing requirements. MIDNIGHT EXPRESS has not established a controlled substance and alcohol testing program. Potential employees are not tested. No random testing is performed. No MIDNIGHT EXPRESS employee has been drug or alcohol tested.<sup>4</sup> MIDNIGHT EXPRESS' compliance with driver hours of service requirements is equally appalling. Drivers are not required to submit records of duty status or complete time cards. MIDNIGHT EXPRESS maintains no records of driver start and end times or total hours on duty, and it has no effective method in place to ensure drivers do not exceed maximum hours of service.<sup>5</sup>

However, the most egregious example of MIDNIGHT EXPRESS' utter disregard for safety is reflected in your complete failure to establish a system of equipment inspection, maintenance and repair – especially with regard to passenger safety. MIDNIGHT EXPRESS has no preventative maintenance program. No records are maintained of required minimum maintenance.<sup>6</sup> FMCSA's Compliance Review demonstrates that MIDNIGHT EXPRESS does not ensure that motor coach emergency exit windows are inspected, fully accessible and functioning.

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<sup>2</sup> FMCSA assigned USDOT# 2408558 to Midnight Express at the start of the Kansas Division's Compliance Review to enable uploading of the review to FMCSA's Motor Carrier Management Information System (MCMIS) and tracking of this Order by FMCSA and State law enforcement.

<sup>3</sup> See 49 CFR § 391.51(a).

<sup>4</sup> See 49 CFR § 382.115(a).

<sup>5</sup> See 49 CFR Part 395.

<sup>6</sup> See 49 CFR Parts 393 and 396.

There is no record of the required 90 day inspection for emergency push-out windows, emergency doors or emergency door marking lights.<sup>7</sup> The Kansas Highway Patrol's post fatality roadside inspection found the motor coach involved in the May 4, 2013 fatal incident was designed with emergency exit windows. However, all 4 side emergency exit windows are blocked by seat backs. In addition, the rear emergency exit window is blocked by an ice box apparatus; the release latch is jammed and inoperable. These violations<sup>8</sup> were cited as vehicle out-of-service conditions. The Kansas Highway Patrol's inspection report also demonstrates the only on-board fire extinguisher was fully discharged, and it was last recharged in 2004. There are no bus emergency exit markings, no posted operating instructions, and no bus standee line or notice to stand behind the required line while the bus was in motion.<sup>9</sup> MIDNIGHT EXPRESS operates the motor coach with no brake pedal reserve, meaning the brake pedal goes to the floor when depressed. The engine exhaust system leaks from beneath the passenger compartment. These violations were also cited by the Kansas Highway Patrol as vehicle out-of-service conditions.<sup>10</sup> These violations and the violations described in FMCSA's subsequent Compliance Review substantially increase the likelihood of serious injury or death to MIDNIGHT EXPRESS' drivers, passengers and the motoring public.

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

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

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<sup>7</sup> See 49 CFR § 396.3

<sup>8</sup> See 49 CFR § 393.62(c).

<sup>9</sup> See 49 CFR §§ 393.95(a), 393.6(e), and 393.90

<sup>10</sup> See 49 CFR § 393.40

YOU MUST COMPLY WITH THE PROVISIONS OF THIS ORDER

1. MIDNIGHT EXPRESS must complete an MCS-150 Motor Carrier Identification Report to update its record associated with USDOT # 2408558.
2. MIDNIGHT EXPRESS must drastically change its company and management philosophy regarding driver qualification and drug and alcohol compliance and demonstrate that it has an effective program in place to ensure that only qualified drivers operate its motor coach(es) and to ensure compliance with the FMCSRs.
3. MIDNIGHT EXPRESS must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391. MIDNIGHT EXPRESS must ensure that every driver it uses has completed and furnished an employment application. MIDNIGHT EXPRESS 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. MIDNIGHT EXPRESS must ensure that it obtains from each driver an annual list of traffic violations, that it obtains an annual Motor Vehicle Record for each driver, and that it performs an annual review on each driver's driving record. MIDNIGHT EXPRESS must ensure that a previous employment check is performed on each driver, in accordance with 49 CFR § 391.23. MIDNIGHT EXPRESS 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. MIDNIGHT EXPRESS 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 Midwestern Service Center Field Administrator. MIDNIGHT EXPRESS must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b).
5. MIDNIGHT EXPRESS must take aggressive and progressive steps to control drivers' hours of service.
6. MIDNIGHT EXPRESS must implement a system to ensure that all drivers accurately complete records of duty status and/or time records, as appropriate, in the form and manner required in 49 C.F.R. Part 395. MIDNIGHT EXPRESS must ensure that its drivers accurately complete their daily records of duty status and that they submit these records to MIDNIGHT EXPRESS within 13 days of their completion and must maintain drivers' records of duty status and demonstrate a system showing that the company can and will maintain all supporting documents.
7. MIDNIGHT EXPRESS must ensure that all drivers are adequately trained in the requirements of the FMCSRs and they are able to conduct motor carrier operations consistent with those regulations.

8. **MIDNIGHT EXPRESS must drastically change its maintenance posture and philosophy and demonstrate that it has an effective passenger-carrying commercial motor vehicle maintenance program in place to inspect, maintain, and repair its motor coach(es) and ensure compliance with the FMCSRs.** MIDNIGHT EXPRESS must ensure and demonstrate that vehicle maintenance and safety is a company priority and must ensure and demonstrate that inspection records are accurately completed.

9. **MIDNIGHT EXPRESS must ensure and demonstrate that its motor coaches 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).** Motor coach emergency exit windows must be free and clear of obstruction and fully and completely operational – with all required signage and posted instructions. MIDNIGHT EXPRESS must also ensure that it has an adequate maintenance program in place to ensure compliance with the FMCSRs.

10. MIDNIGHT EXPRESS must comply with all Orders issued by FMCSA.

#### V. **RESCISSION OF ORDER**

MIDNIGHT EXPRESS 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 MIDNIGHT EXPRESS successfully submits a Motor Carrier Identification Report, Form MCS-150 and has received any operating authority required by virtue of the nature of its operations, MIDNIGHT EXPRESS is prohibited from operating passenger carrying commercial motor vehicles in interstate and/or intrastate commerce. This Order will not be rescinded until the Field Administrator for FMCSA's Midwestern Service Center 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, MIDNIGHT EXPRESS must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard posed by its operations and motor coach(es), and adequately demonstrate to the Field Administrator for FMCSA's Midwestern Service Center the actions taken to eliminate the safety problems. MIDNIGHT EXPRESS cannot avoid this Order by continuing operations under the name of

another person or company. Any sale, lease, or other transfer of passenger carrying commercial motor vehicles and/or direct assignment of contracts or other agreements for service by MIDNIGHT EXPRESS requires the written approval of the Midwestern Service Center Field Administrator. Any such action taken in anticipation of this Order must cease immediately.

**Prior to rescission of this Order, MIDNIGHT EXPRESS 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 MIDNIGHT EXPRESS to comply with the FMCSRs.**
- 4. Execute the Safety Management Plan and provide certification by all Members and officers.**

Any request to rescind this Order and the 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, Kansas 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, Kansas Division  
Federal Motor Carrier Safety Administration  
1303 SW First American Place  
Topeka, Kansas 66604

In order for MIDNIGHT EXPRESS to resume motor coach operations in the United States, MIDNIGHT EXPRESS will be required to successfully submit an MCS-150 Motor Carrier Identification Report, successfully apply for any operating authority required by virtue of its operations, and demonstrate that it 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 MIDNIGHT EXPRESS to an action in the United States District Court for equitable relief and punitive damages. MIDNIGHT EXPRESS 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 pursuant to 49 C.F.R. § 386.72(b)(4). An administrative review, if requested, must occur within 10 days

of the issuance date 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, Midwestern 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, 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 MIDNIGHT EXPRESS's operation of its passenger carrying commercial motor vehicle(s) constitutes an imminent hazard to the public. This Order is separate and distinct from all other orders or actions that may be issued by FMCSA, and does not amend or modify such orders or actions, and any request for administrative review of this Order does not attach to or apply to any other order or action.

**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, and any request for administrative review of this Order does not attach to or apply to any other order or action.

Date: May 29, 2013

A handwritten signature in black ink, appearing to read "Darin G. Jones". The signature is written in a cursive style with a horizontal line underneath it.

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