

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

)	Order No.: MA-2013-5002-IMH
)	
FUNG WAH BUS TRANSPORTATION,)	Service
INC.,)	Date: _____
)	
USDOT 954187)	
)	
)	

**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 Regional Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration (“FMCSA”), United States Department of Transportation (“USDOT”), Glen Burnie, Maryland. This Order applies to Fung Wah Bus Transportation, Inc. (USDOT# 954187) (referred to herein as “you,” “your,” “Fung Wah Bus Transportation, Inc.” and /or “Fung Wah”) and to all vehicles owned or operated by Fung Wah.

The Secretary and FMCSA” find your continued operation of any commercial motor vehicle (herein “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 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. Fung Wah’s 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 any driver; such commercial motor vehicles may not be operated – even without passengers. Any movement of Fung Wah’s commercial motor vehicles, specifically including the commercial motor vehicles identified in Appendix A of 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; Fung Wah’s commercial motor vehicles may be moved only upon the written approval of the Regional Field Administrator for FMCSA’s Eastern Service Center.

Your 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 any additional passengers.

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

Regional Field Administrator

(443) 703-2253 (facsimile)

I. JURISDICTION

Fung Wah Bus Transportation, Inc. 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.) Fung Wah Bus Transportation, Inc. 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 Fung Wah Bus Transportation, Inc., 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 Fung Wah Bus Transportation, Inc.

II. BASIS FOR ORDER

The basis for determining that Fung Wah Bus Transportation, Inc.’s motor carrier operations pose an imminent hazard to the public is that Fung Wah Bus Transportation, Inc. has no effective systematic maintenance program for its passenger-carrying vehicles, which has led to, among other things, significant safety problems and dangerous conditions on its buses. Moreover, the absence of an effective systematic maintenance program has resulted in Fung Wah failing to repair or causing to be repaired dangerous conditions on its buses which amount to safety violations, failing to consult and maintain its fleet in accordance with accepted industry standards, including the manufacturer’s specifications and Technical Service Bulletins (“TSBs”), and failing to systematically inspect, repair, and maintain, or causing to be systematically inspected, repaired, and maintained, vehicles subject to its control. Further, FMCSA found that Fung Wah Bus Transportation, Inc. made fraudulent or intentionally false entries on inspection

and vehicle maintenance records, rendering those records unreliable for the purpose of demonstrating that Fung Wah's vehicles were actually maintained as claimed. In addition, Fung Wah Bus Transportation, Inc. fails to monitor and ensure that its drivers comply with drivers' hours of service requirements, drivers' records of duty status requirements, drivers' qualification requirements, and drivers' controlled substances and alcohol use and testing requirements, thereby posing an ongoing and continuing imminent hazard. Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to Fung Wah Bus Transportation, Inc. drivers, passengers, and the motoring public.

III. BACKGROUND

On February 21, 2013, Fung Wah Bus Transportation, Inc. entered into a Consent Agreement with the Commonwealth of Massachusetts Department of Public Utilities ("DPU") whereby it voluntarily removed twenty-one (21) of its motor coaches from for-hire passenger service in order to allow inspection by the manufacturer's representative. According to the Consent Agreement, inspections by DPU revealed structural deficiencies and/or frame cracks in certain of Fung Wah's pre-2005 model motor coaches.

Subsequently, on or about February 25, 2013, FMCSA served on Fung Wah Bus Transportation, Inc. an Imminent Hazard Operations Out-Of-Service Order ("February 25 Order") directing Fung Wah not to operate these same twenty-one (21) motor coaches until they were inspected and Fung Wah had in place an approved Safety Management Plan. The February 25 Order found that Fung Wah does not maintain its older fleet of commercial motor vehicles in a safe and proper operating condition and not in accordance with manufacturer's specifications and Technical Service Bulletins, and does not systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, certain older motor vehicles subject to its control. To date, Fung Wah has not submitted to FMCSA a Safety Management

Plan for its review, nor has it contacted FMCSA to arrange for the inspection of its motor coaches.

A subsequent investigation by FMCSA has revealed that Fung Wah's maintenance deficiencies go beyond merely the older motor coaches in its fleet, and in fact Fung Wah does not have in place a vehicle maintenance program to prevent the operation of unsafe motor coaches. Indeed, FMCSA's investigation found that to the extent that Fung Wah maintains vehicle inspection records and reports, these records and reports cannot be relied upon with any certainty because they purport to show that vehicles were inspected on dates for which the mechanic whose signature appears on those reports was not actually working. FMCSA's investigation further revealed that Fung Wah requires or permits its drivers to make fraudulent or intentionally false statements on driver vehicle inspection reports by claiming that vehicles are in satisfactory mechanical condition when in fact they have out-of-service defects.

The absence of an effective systematic vehicle maintenance program has resulted in Fung Wah failing to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, its entire fleet in order to ensure safe operating condition, and dispatching vehicles declared "out-of-service" before having made repairs. Fung Wah also dispatches vehicles that do not have the required emergency equipment in place.

Fung Wah also does not follow FMCSA driver qualification requirements to ensure that its drivers are qualified to transport passengers in its motor coaches. Fung Wah uses drivers who have not completed and furnished employment applications, and fails to investigate drivers' backgrounds. Fung Wah does not comply with FMCSA-mandated controlled substances testing requirements to ensure that its drivers are able to safely operate its motor coaches. Fung Wah is using drivers who have not completed pre-employment controlled substances testing. Moreover, Fung Wah is permitting its drivers to improperly prepare records of duty status, falsify records of

duty status, and to operate motor vehicles not in accordance with the speed limits of the jurisdictions in which they are operated. Fung Wah's irresponsible actions substantially increase the likelihood of serious injury or death to Fung Wah's drivers, passengers, and the motoring public.

In sum, Fung Wah Bus Transportation, Inc.'s 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 own drivers, passengers, and for the motoring public.

IV. REMEDIAL ACTION

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

1. Fung Wah Bus Transportation, Inc. must ensure and demonstrate that its commercial motor 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).
2. Fung Wah Bus Transportation, Inc. must drastically change its maintenance posture, philosophy and infrastructure and 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. Fung Wah Bus Transportation, Inc. must ensure and demonstrate that vehicle maintenance and safety is a company priority and must ensure and demonstrate that inspection records are accurately completed. The maintenance program used by Fung Wah Bus Transportation, Inc. must be consistent

with the manufacturer's maintenance and repair specifications for the particular motor vehicle(s), and must take into account any TSBs published by the manufacturer or manufacturer's representative.

3. Fung Wah Bus Transportation, Inc. 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. Fung Wah Bus Transportation, Inc. 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.
4. Fung Wah Bus Transportation, Inc. must ensure that each of its drivers records his or her duty status for each 24-day period in accordance with 49 C.F.R. § 395.8. Fung Wah Bus Transportation, Inc. must ensure that each of its drivers complies with the hours of service rules in 49 C.F.R. Part 395. Fung Wah Bus Transportation, Inc. must maintain each record of duty status for a minimum of six months in accordance with 49 C.F.R. § 395.8(k)(1).
5. Fung Wah Bus Transportation, Inc. must implement a system to ensure that all its drivers accurately complete their records of duty status in the form and manner required in 49 C.F.R. Part 395. Fung Wah Bus Transportation, Inc. must ensure that its drivers accurately complete their daily records of duty status and that they submit these records to Fung Wah Bus Transportation, Inc. within 13 days of their completion. Fung Wah Bus Transportation, Inc. must maintain drivers' records of duty status and demonstrate a system showing that the company can and will

maintain all supporting documents. Further, Fung Wah Bus Transportation, Inc. must ensure that all records of duty status are accurate by using all means available to Fung Wah Bus Transportation, Inc. and by comparing each record with all supporting documentation.

6. Fung Wah Bus Transportation, Inc. 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.
7. Fung Wah Bus Transportation, Inc. must comply with all Orders issued by FMCSA.

V. RESCISSION OF ORDER

Fung Wah Bus Transportation, Inc. 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 Fung Wah Bus Transportation, Inc. has a valid and active USDOT number and operating authority registration, Fung Wah Bus Transportation, Inc. is prohibited from operating any commercial motor vehicle in interstate and/or intrastate commerce. This Order will not be rescinded until the Regional Field Administrator for FMCSA's Eastern 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, Fung Wah Bus Transportation, Inc. 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 Regional Field Administrator for FMCSA's Eastern Service Center the actions taken to eliminate the safety problems. Fung Wah Bus Transportation, Inc. 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 Fung

Wah Bus Transportation, Inc. requires the written approval of the Eastern Service Center Regional Field Administrator. Any such action taken in anticipation of this Order must cease immediately.

Prior to rescission of the Order, Fung Wah Bus Transportation, Inc. 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 timetable for these steps.**
- 3. Develop and certify the commitment of Fung Wah Bus Transportation, Inc. 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 Regional Field Administrator, Eastern Service Center, with a copy to the Division Administrator, Massachusetts Division, at the following addresses:

Regional Field Administrator
Eastern Service Center
Federal Motor Carrier Safety Administration
802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061

Division Administrator, Massachusetts Division
Federal Motor Carrier Safety Administration
50 Mall Road
Suite 212
Burlington, MA 01803

Rescission of this Order does not constitute a reinstatement of Fung Wah Bus Transportation, Inc.'s Federal operating authority registration or its USDOT Number. In order

for Fung Wah Bus Transportation, Inc. to resume motor carrier operations transporting passengers in the United States, Fung Wah Bus Transportation, Inc. will be required to apply to reactivate its USDOT number registration, reapply for operating authority registration in accordance with 49 U.S.C. 13902 and 49 C.F.R. Part 365, 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 Fung Wah Bus Transportation, Inc. to an action in the United States District Court for equitable relief and punitive damages. Fung Wah Bus Transportation, Inc. may be assessed civil penalties of up to \$25,000 for every 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 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 Regional Field Administrator, Eastern 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

Regional Field Administrator
Eastern Service Center
Federal Motor Carrier Safety Administration
802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061

The request must state the material facts at issue which you believe dispute or contradict the finding that Fung Wah Bus Transportation, Inc.'s operation of its commercial motor vehicle(s) constitutes 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, and

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

Date: March 28, 2013



Curtis L. Thomas
Regional Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration