

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

	)	Order No.: NY-2012-5000-IMH
)	
)	
APEX BUS INC.,	)	Service
USDOT 1648076	)	Date: _____
)	
NEW EGG,	)	Service
USDOT 1782669	)	Date: _____
)	
ASIA TOURS INC.,	)	Service
USDOT 1981036	)	Date: _____
)	
A-ONE BUS INC.,	)	Service
USDOT 2042137	)	Date: _____
)	
ALL STATE TRAVEL BUS,	)	Service
USDOT 1504113	)	Date: _____
)	
UNIVERSE BUS INC.,	)	Service
USDOT 1301467	)	Date: _____
)	
PAO HUA YU,	)	Service
	)	Date: _____
)	
TO LEE a/k/a LEO LEE,	)	Service
	)	Date: _____
)	
TOM CHEN.	)	Service
	)	Date: _____
)	

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 U.S.C. § 13102, 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1) and (2), 49 U.S.C. § 31144(c)(5), 49 C.F.R. § 386.2, 49 C.F.R. § 386.72(b)(1), 49 C.F.R. § 386.73, and 49 C.F.R. § 390.5 and pursuant

to a delegation of authority to the Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Glen Burnie, Maryland. This ORDER applies to Pao Hua Yu, To Lee a/k/a Leo Lee, Tom Chen, Apex Bus, Inc., USDOT # 1648076, MC 606826, New Egg, USDOT # 1782669, MC 649950, Asia Tours, Inc., USDOT # 1981036, MC 701758, A-One Bus, Inc., USDOT # 2042137, MC 716165, All State Travel Bus, USDOT # 1504113, MC 564604, and Universe Bus Inc., USDOT#1301467, MC 506409, each in their individual capacity and collectively as one commercial motor vehicle operation (referred to collectively herein as “you”, “your”, and /or “APEX”) and to any motor vehicles owned, leased, or operated by APEX, and used in the APEX motor carrier operation.

The Secretary and FMCSA find your operations constitute an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicles poses an **imminent hazard** to public safety.

EFFECTIVE IMMEDIATELY, YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE OR INTRASTATE TRANSPORTATION OF PASSENGERS BY DRIVERS FROM ALL DISPATCHING LOCATIONS OR TERMINALS.

THE PROHIBITIONS ON OPERATION IN THIS ORDER APPLY TO APEX, AS WELL AS ANY AND ALL OF ITS OFFICERS, DIRECTORS, AND MANAGERS, SUCCESSORS, ASSIGNS AND AFFILIATED COMPANIES. EXCEPT AS PROVIDED BELOW, APEX MAY NOT USE OWNED, LEASED, RENTED OR CHARTERED VANS, SHUTTLES, BUSES, OR OTHER MOTOR VEHICLES TO SUPPLEMENT ANY CONTINUED COMMERCIAL MOTOR VEHICLE OPERATIONS. FURTHER, APEX

MAY NOT CONTINUE ANY COMMERCIAL MOTOR VEHICLE OPERATIONS THROUGH INTERLINE AGREEMENTS, SERVICE AGREEMENTS OR CHARTER AGREEMENTS.

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)).

NO ADDITIONAL PASSENGERS MAY BE LOADED OR TRANSPORTED, NOR MAY THE COMMERCIAL MOTOR VEHICLES BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT. A COMMERCIAL MOTOR VEHICLE MAY BE MOVED TO A LOCATION TO BE REPAIRED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR, FMCSA EASTERN SERVICE CENTER.

YOU ARE FURTHER NOTIFIED THAT, AS A RESULT OF THE ISSUANCE OF THIS ORDER, AND PURSUANT TO 49 U.S.C. § 13905(f)(2), YOUR FEDERAL OPERATING AUTHORITY REGISTRATION IS HEREBY REVOKED.

I. JURISDICTION

APEX is a motor carrier engaged in interstate commerce and is therefore subject to 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 31136.) APEX is required to comply and to ensure its drivers and employees comply with the FMCSRs. 49 C.F.R. § 390.11.

II. BASIS FOR ORDER

The basis for determining that APEX's motor carrier operations and the continued operation of the vehicles identified in this ORDER pose an imminent hazard to the public is that APEX's operational structure and deficient safety management controls substantially increase the likelihood of serious injury or death if not discontinued immediately, thereby posing a continuing imminent hazard. APEX does not have adequate safety management controls in place to ensure acceptable compliance with applicable safety requirements. 49 C.F.R. § 385.5. APEX does not, among other things, ensure that its drivers comply with hours of service and records of duty status requirements (49 C.F.R. Part 395), administer a drug and alcohol testing program (49 C.F.R. Parts 40 and 382), ensure its commercial motor vehicles are properly and regularly inspected, repaired and maintained (49 C.F.R. Part 396), nor does it have adequate means of determining whether drivers are qualified to operate a commercial motor vehicle (49 C.F.R. Parts 383 and 391). Moreover, APEX has not designated a qualifying principal place of business (49 C.F.R. Part 390). Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to APEX drivers, passengers and the motoring public.

III. BACKGROUND

On or about June 20, 2011, FMCSA initiated an investigation, which remains open, concerning the operations of APEX, to determine the scope of the motor carrier operations and safety management controls. The investigation revealed widespread violations of the FMCSRs demonstrating a continuing and flagrant disregard for compliance with the FMCSRs and an organizational and safety management structure indifferent to motor carrier safety.

During the course of the investigation, FMCSA discovered anomalies in the management structure of Apex Bus, Inc., USDOT # 1648076, New Egg, USDOT # 1782669, Asia Tours, Inc., USDOT # 1981036, A-One Bus, Inc., USDOT # 2042137, All State Travel Bus, USDOT # 1504113, and Universe Bus Inc., USDOT#1301467, tending to show affiliation amongst the entities. Upon closer inspection, FMCSA determined that the several entities are in fact under the common control and management of Apex Bus, Inc., USDOT #1648076, Pao Hua Yu, To Lee a/k/a Leo Lee and Tom Chen, acting in both an individual and collective motor carrier capacity. For example, at various times material to this Order, the collective motor carrier operation shared financial responsibilities by engaging in activities such as paying employee salaries, fuel expenses, maintenance expenses, and/or toll receipts among and between all of the affiliated carriers.

At various times, FMCSA placed segments of the collective motor carrier operation, APEX, out-of-service. On September 30, 2011, FMCSA served All State Travel Bus, Inc., USDOT # 1504113, MC 564604, with a final UNSATISFACTORY safety rating, Order to Cease Operations and Revocation of Operating Authority. On November 22, 2011, FMCSA served Asia Tours, Inc., USDOT # 1981036, MC 701758, with a final UNSATISFACTORY safety rating, Order to Cease Operations and Revocation of Operating Authority. All of these orders remain in effect today.

FMCSA issued these Orders to individual components of the collective motor carrier operation because APEX used its organizational and management structure, including obtaining multiple motor carrier registrations, to mask the true nature of its identity and operational scope. As a consequence, APEX was able to continue motor carrier operations through reincarnated or affiliated carriers in flagrant violation of the Orders, unknown to

FMCSA until FMCSA discovered the motor carrier's true identity, organizational structure and operational scope through the ongoing investigation initiated in June 2011.

Results of the investigation revealed that APEX does not monitor its drivers' hours of service (HOS) to ensure that they do not violate the hours-of-service regulations. APEX does not require its drivers to prepare and submit records of duty status. APEX's negligent oversight of its drivers results in violations of the HOS regulations. For example, APEX'S practice of permitting drivers to operate more than one bus in a given duty period and failure to adequately document which buses drivers operate results in drivers transporting passengers at a time when they may be fatigued because of driving in excess of the maximum driving time, driving after the maximum on-duty time, and/or violation of other HOS regulations.

The results of the investigation also disclosed that APEX has not properly implemented an alcohol or controlled substances testing program. APEX fails to consistently require pre-employment or random testing of employees to ensure that its drivers are able to safely operate commercial motor vehicles. APEX fails to adequately maintain records of its alcohol misuse and controlled substances use prevention programs thereby thwarting FMCSA's ability to determine APEX's compliance.

In addition, APEX does not follow FMCSA driver qualification requirements. APEX does not consistently maintain driver qualification files for all drivers operating commercial motor vehicles in APEX'S operation. APEX does not consistently require that employees operating commercial motor vehicles possess a valid commercial driver's license. As a consequence, APEX is unable to ensure that its drivers are qualified to transport passengers in commercial motor vehicles thereby substantially increasing the likelihood of injury or death to passengers and the motoring public.

APEX does not have an adequate vehicle maintenance monitoring program. In fact, APEX does not routinely require its drivers to complete driver vehicle inspection reports on its commercial motor vehicles. Such actions permit the operation of unsafe commercial motor vehicles and establish an imminently hazardous and potentially deadly situation for the driver, APEX's passengers, and the motoring public.

APEX has attempted to shield the true nature of its operations by failing to designate a qualifying principal place of business. In fact, APEX has designated multiple locations as its place of business, but no motor carrier operations are conducted at those locations. Further, APEX does not maintain records required by the FMCSRs at a properly designated principal place of business. APEX's failure to designate a qualifying principal place of business has prevented FMCSA from monitoring APEX's commercial motor vehicle operations and ensuring compliance with the FMCSRs.

APEX's operational structure, continuing operations through reincarnated or affiliated carriers, and inadequate safety management controls do not function to effectively ensure acceptable compliance with applicable safety requirements to reduce associated risks. By continuing to operate in this manner and in violation of previous FMCSA orders APEX has acted to evade safety regulation and accountability. The deficiencies resulted in violations which substantially increase the likelihood of serious injury or death to APEX'S commercial motor vehicle drivers, passengers and the motoring public. FMCSA has therefore determined that APEX's continued operations constitute an imminent hazard under 49 U.S.C. § 521(b)(5)(A) and 49 C.F.R. § 386.72(b)(1). Accordingly, APEX must cease all motor carrier operations immediately.

IV. REMEDIAL ACTION

To eliminate this imminent hazard and before this ORDER will be rescinded APEX must take specific steps to ensure and demonstrate compliance with the FMCSRs.

YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER

- 1. APEX must comply with all Orders FMCSA issued to any segment of the motor carrier operation.**
- 2. APEX must consent to FMCSA permanently revoking all certificates of registration previously issued to APEX pursuant to 49 U.S.C. § 13902, and must operate under one certificate of registration once all hazards are abated and the Secretary grants new operating authority registration.**
- 3. APEX must consent to conduct all motor carrier operations under one USDOT Number once all hazards are abated, the Secretary consolidates the records of all USDOT numbers currently held by APEX and grants new registration pursuant to 49 U.S.C. § 13902.**
- 4. APEX must identify management officials responsible for safety oversight and compliance with the Federal Motor Carrier Safety Regulations.**
- 5. APEX 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 procedures so that reported safety defects and/or deficiencies are repaired before the commercial motor vehicle is operated again.**
- 6. APEX must ensure its drivers accurately and fully complete their daily records of duty status and submit them to the carrier within 13 days of their completion. APEX must maintain drivers' records of duty status and all supporting documents for a minimum period**

of 6 months. Further, APEX must ensure that all records of duty status are accurate by using all means available to it and by comparing each with all supporting documents.

7. APEX must submit to the Field Administrator a plan detailing how APEX will: (i) train all drivers used by APEX or its successors or assigns, on compliance with the HOS regulations; (ii) monitor the compliance of all drivers used by APEX or its successors or assigns with the HOS regulations; and (iii) ensure that all drivers used by APEX or its successors or assigns are dispatched in such a way that scheduled routes may be completed within the maximum driving and on-duty hours, as provided in 49 CFR § 395.5.

8. APEX 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 Eastern Service Center Field Administrator.

9. APEX must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391.

10. APEX must ensure that a three-year previous employment check is performed on its drivers prior to their operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23.

11. APEX 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.

12. APEX must ensure that an annual list of traffic violations is obtained from each driver, an annual Motor Vehicle Record is obtained, and that an annual review is performed on each driver's driving record.

13. APEX must mark, in accordance with 49 CFR § 390.21, any vans or other commercial motor vehicles owned by APEX or transporting passengers as part of a transportation initiated or continued by APEX. This requirement applies to vehicles designed to carry 9 or more passengers, including passenger vans owned, operated, or affiliated with APEX. APEX must ensure that drivers operating such vans or other commercial motor vehicles comply with the FMCSRs, including the HOS regulations.

14. APEX must identify a qualifying principal place of business and provide that location in writing to the FMCSA Field Administrator, Eastern Service Center.

V. RESCISSION OF ORDER

Before this ORDER will be rescinded APEX 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, Eastern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the safety problems. APEX cannot avoid this Operations Out-of-Service 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 APEX requires the written approval of the Eastern Service Center Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. In addition, any interline agreement, service agreement or charter agreement entered into in anticipation of this Operations Out-of-Service Order must cease immediately. APEX must have the ORDER rescinded by the Eastern Service Center Field Administrator before it may continue interstate or intrastate operations.

Prior to rescission of the Order, APEX will be required to:

1. IDENTIFY THE CAUSE FOR ITS NONCOMPLIANCE.

2. DEVELOP A DETAILED 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 (THE SAFETY MANAGEMENT PLAN).

3. DEVELOP AND CERTIFY THE COMMITMENT OF APEX TO COMPLY WITH THE FMCSRs.

4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS.

Any request to rescind this ORDER, and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Field Administrator, Eastern Service Center with a copy to the Division Administrator, New York Division, at the following addresses:

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

Division Administrator, New York Division
Federal Motor Carrier Safety Administration
Leo W. O'Brien Federal Building
Room 815
Clinton Ave. & Pearl Street
Albany, NY 12207

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this Operations Out-of-Service Order may subject APEX to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. APEX may be assessed civil penalties of up to \$16,000

per day for each day it continues the proscribed interstate or intrastate operations after the effective date and time of this ORDER. (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 or imprisonment for a term not to exceed one year, or both. (49 U.S.C. § 521 (b)(6)(A)).

VII. ADDITIONAL PENALTIES FOR OTHER 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 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, Eastern Service Center at the following addresses:

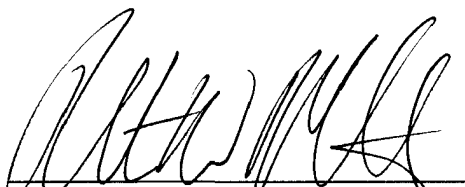
Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

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 APEX's 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. APEX'S RESPONSE TO THIS OPERATIONS OUT-OF-SERVICE ORDER WILL NOT ALTER ANY PROPOSED OR FINAL SAFETY FITNESS RATINGS.

Issued this 30th day of May, 2012.



Robert W. Miller, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration