

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

MATTHEW TABNER)	Order No.: MT-2021-5000-IMH
)	
NIXX LLC)	Service Date: January __, 2021
DBA VALLISE AUTOMOTIVE)	Service Time: _____
GROUP)	
(USDOT: 3547547))	
)	
CENTRAL LOGISTICS INC.)	
(USDOT: 3549608))	

IMMINENT HAZARD
OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order (“ORDER”) issued by the Secretary of the United States Department of Transportation (the “Secretary”) pursuant to 49 U.S.C. §§ 521(b)(5)(A), 13905(f), 31132(3), 31133(a)(10), 31134, 31144(c)(1), and 49 CFR § 386.72(b)(1), and pursuant to a delegation of authority to the Regional Field Administrator, Western Service Center, Federal Motor Carrier Safety Administration (“FMCSA”), and the United States Department of Transportation (“USDOT”). This ORDER applies to MATTHEW TABNER and any other business or name under which MATTHEW TABNER conducts motor carrier operations, including, but not limited to, NIXX LLC DBA VALLISE AUTOMOTIVE GROUP (USDOT No. 3547547) and CENTRAL LOGISTICS INC. (USDOT No. 3549608) (collectively referred to as “you,” “your,” or “TABNER”). Additionally, this ORDER applies to all your officers, agents, and employees and to all commercial motor vehicles owned or operated on your behalf.

The Secretary and the FMCSA find your continued operation of any commercial motor vehicle (“CMV”)¹ in interstate or intrastate commerce constitutes an **imminent hazard**. This finding means that based upon your present state of unacceptable safety compliance, your operation of any CMV substantially increases the likelihood of serious injury or death if not discontinued immediately.

EFFECTIVE IMMEDIATELY YOU MUST
CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS IN
INTERSTATE AND INTRASTATE TRANSPORTATION.

Except for driver [REDACTED], your vehicles and drivers now in interstate or intrastate commerce may proceed to the next scheduled stop where the cargo on board can be safely secured. Because [REDACTED] is an unqualified driver under 49 CFR § 391.11(b)(1), he is ordered out-of-service and must cease driving immediately. *See* 49 CFR § 386.72(b)(4) and (5).

YOU MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL CARGO OR
OPERATE ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR
INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.

“Operate” or “operating” includes without limitation all interstate and intrastate transportation by your drivers from all dispatching locations or terminals.

¹ Under 49 CFR § 390.5T, 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) [h]as 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) [i]s designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) [i]s designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation.”

Within eight (8) hours of the service of this ORDER, you must submit to the Regional Field Administrator in writing by facsimile and/or electronic mail the location of each CMV under your control. You must identify the vehicle by year, make, model and vehicle identification number (VIN). You must include a copy of the current registration. You must also identify the street address, city, and state of the location of each vehicle, and you must identify the driver last operating the vehicle. Your submission must be sent to:

Regional Field Administrator
(303) 407-2339 (fax)
WSCENF@dot.gov (electronic mail)

You cannot avoid this ORDER by continuing operations under the name of another person or company.

I. JURISDICTION

You conduct motor vehicle operations in interstate commerce using a combination of motor vehicles with a gross vehicle weight rating (“GVWR”) of 26,001 pounds or more. Therefore, you are subject to Federal motor carrier safety statutes and regulations, including the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 CFR Parts 350-399, and the alcohol and controlled substances regulations at 49 CFR Part 40, as well as Orders of the USDOT and FMCSA. *See* 49 U.S.C. §§ 506, 507, 13501, 31133, 31136, and 31144. You are required to comply, and to ensure your drivers comply, with the FMCSRs, alcohol and controlled substances regulations, and Orders of the USDOT and FMCSA. *See* 49 U.S.C. § 31135(a); 49 CFR § 390.11.

This ORDER has the force and effect of any other Order issued by FMCSA and is binding on you, and all owners, 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 you.

II. BACKGROUND AND BASIS FOR ORDER

The basis for determining that your motor vehicle operations pose an imminent hazard to the public is your continued widespread noncompliance with Federal safety regulations, including regulations in 49 CFR Part 382, (Controlled Substances and Alcohol Use and Testing), 49 CFR Part 383 (Commercial Driver's License Standards), 49 CFR Part 391 (Qualifications of Drivers), 49 CFR Part 395 (Hours of Service of Drivers), and 49 CFR Part 396 (Vehicle Inspection, Repair, and Maintenance).

FMCSA's investigation revealed that you lack any safety management controls to ensure drivers operate your CMVs safely. The cumulative violations of the FMCSRs significantly increase the likelihood of death or serious injury to your drivers and the motoring public and establishes an imminent hazard.

The specific deficiencies that substantially increase the likelihood of serious injury or death if not discontinued immediately are as follows:

A. Egregious Safety Violations Discovered During Investigation

During a January 2021 investigation, extensive and repeated acute and/or critical violations were discovered in 49 CFR Parts 382, 383, 387, 391, 395, and 396 that demonstrate your lack of any safety management controls. The proposed safety rating based on the compliance investigation is Unsatisfactory.

1. Vehicle Maintenance and Inspection

You do not have a systematic vehicle inspection, repair, and maintenance program in place to prevent the operation of unsafe CMVs in violation of 49 CFR § 396.3(a). Further, even when out-of-service vehicle violations were discovered by roadside officers, you allowed your

drivers to continue operating the vehicle prior to repairs being made, in violation of 49 CFR § 396.9(c)(2).

- a) On November 24, 2020, your vehicle, a power unit and trailer, was inspected during an interstate trip. The inspection resulted in, among other violations, both the power unit and trailer being placed out-of-service for brake issues in violation of 49 CFR §§ 393.40, 393.41 and 393.43(d). A New York State Uniform Traffic Ticket was issued for the violation of 49 CFR § 393.40, inoperative brakes on the trailer.
- b) The roadside officer checked on the location of the vehicle a couple hours after the roadside inspection was conducted and discovered that the vehicle was moved to a hotel, approximately 40 minutes away, in violation of the vehicle out-of-service notice. Another New York State Uniform Traffic Ticket was issued for violating the vehicle out-of-service notice.
- c) On November 25, 2020, the same power unit was inspected while on the same interstate trip. The inspection resulted in another vehicle out-of-service notice for the same brake issue, a violation of 49 CFR § 393.41.

Additionally, you fail to ensure any of your eight CMVs are periodically inspected in violation of 49 CFR § 396.17(a). You also fail to require drivers to prepare driver vehicle inspection reports in violation of 49 CFR § 396.11(a). Further, during the past 12 months, four out of five of your roadside inspections resulted in vehicle out-of-service violations.

2. Driver Qualification

You fail to ensure that only qualified drivers with proper licenses operate your CMVs. During the past 12 months, your drivers were cited for operating a commercial motor vehicle requiring a commercial driver's license ("CDL") without a CDL or commercial learner's permit ("CLP") in violation of 49 CFR § 383.23(a)(2) on four out of five of your roadside

inspections. Further, despite knowledge of driver out-of-service notices and citations during roadside inspections, you continue to allow an underage unqualified driver without a CDL to operate a commercial motor vehicle requiring a CDL in interstate commerce in violation of both 49 CFR §§ 391.11(b)(1) and 383.37(a). During the trips identified below, the driver was only 16 years old. He turned 17 on [REDACTED].

- a) On July 22, 2020, your driver, [REDACTED], operated a combination of motor vehicles with a GVWR over 26,001 pounds on a trip from Juneau, Wisconsin to Bozeman, Montana. Among other violations, a roadside inspection conducted on this date resulted in driver out-of-service violations for driving while under the age of 21 and without a CDL in violation of 49 CFR §§ 382.23(a)(2) and 391.11(b)(1). A citation was issued by the Minnesota State Patrol for the violation of 49 CFR § 383.23(a)(2), operating a commercial motor vehicle requiring a CDL without a CDL or CLP.
- b) On November 24, 2020, your driver, [REDACTED], operated a combination of motor vehicles with a GVWR over 26,001 pounds on a trip from Miles City, Montana to Lockport, New York. Again, driver [REDACTED] was cited during a roadside inspection with driver out-of-service violations for driving while under the age of 21 and without a CDL in violation of 49 CFR §§ 382.23(a)(2) and 391.11(b)(1). A New York State Uniform Traffic Ticket was issued for the violation of 49 CFR § 383.23(a)(2), operating a commercial motor vehicle requiring a CDL without a CDL or CLP.
- c) On November 25, 2020, driver [REDACTED] was issued another New York State Uniform Traffic Ticket for violating the driver out-of-service notice. Driver [REDACTED] admitted that on November 24, 2020, after being cited for the driver out-of-service violation

at approximately 2:15 p.m. EST, he drove the truck and trailer to a hotel approximately 40 minutes away in violation of 49 CFR § 383.37(d).

- d) On December 1, 2020, the same roadside officer involved in the November 24 and 25, 2020 inspections observed driver [REDACTED] operating the same truck and trailer. Driver [REDACTED] was followed to the Buffalo Bobcat dealer in Lockport, New York where driver [REDACTED] unhooked and left the trailer.
- e) On December 3, 2020, your driver, [REDACTED], operated a combination of motor vehicles with a GVWR over 26,001 pounds on a trip from Lockport, New York to Bozeman, Montana. Yet again, driver [REDACTED] was cited during a roadside inspection with driver out-of-service violations for driving while under the age of 21 and without a CDL in violation of 49 CFR §§ 382.23(a)(2) and 391.11(b)(1). A citation was issued by the Montana Department of Transportation for the violation of 49 CFR § 383.23(a)(2), operating a commercial motor vehicle requiring a CDL without a CDL or CLP.

Currently, driver [REDACTED] has two convictions on his Montana driving record. On December 23, 2020, he was convicted of driving a commercial motor vehicle requiring a CDL without a CDL or CLP on December 3, 2020. Additionally, on August 7, 2020, he was convicted of careless driving on May 10, 2020.

Matthew Tabner, owner of Nixx LLC d/b/a Vallise Automotive Group and Central Logistics Inc., was also cited during a roadside inspection on February 21, 2020 for operating a commercial motor vehicle requiring a commercial driver's license ("CDL") without a CDL or commercial learner's permit ("CLP") in violation of 49 CFR § 383.23(a)(2).

You also allowed your driver to operate a CMV without possessing a current medical examiner's certificate in violation of 49 CFR § 391.45 and you fail to maintain driver qualification files in violation of 49 CFR § 391.51.

3. Alcohol and Controlled Substances

You failed to implement an alcohol and controlled substances testing program on the date you began using motor vehicles with a GVWR over 26,001 pounds in violation of 49 CFR § 382.115(a). Despite stating, on January 20, 2021, that you are coming into compliance with the controlled substance and alcohol testing requirements, you still have not conducted any tests, enrolled in a random testing program, taken reasonable suspicion training, or developed a controlled substance and alcohol testing policy. Further, the consortium you stated you are using informed FMCSA that you have not enrolled in its services.

4. Hours of Service

You fail to have a system in place to monitor your drivers' hours of service compliance as required by 49 CFR Part 395. You do not require your drivers to complete records of duty status ("RODS") as required by 49 CFR § 395.8. If a driver does complete RODS, you fail to preserve them for six months as required by 49 CFR § 395.8(k)(1). You do not review your drivers' RODS for falsification and do not review RODS for completeness, accuracy, or violations of maximum HOS regulations.

During the past 12 months, three out of five of your roadside inspections resulted in the driver being placed out-of-service for having no RODS. Further, on at least one occasion, you also allowed your driver to violate an out-of-service notice based on having no RODS.

B. Pattern of Providing False and Misleading Information to Officials

You have repeatedly engaged in conduct designed to evade regulation and oversight by the FMCSA. On February 21, 2020, Matthew Tabner, owner of Nixx LLC d/b/a Vallise

Automotive Group and Central Logistics Inc., indicated during a roadside inspection that his company name was Matthew Tabner. During the inspection, the roadside officer explained to Mr. Tabner that he was subject to the FMCRS and needed a USDOT number. However, during subsequent roadside inspections on November 24 and 25 and December 3, 2020, your drivers provided false company names to roadside officers. As a result, violations cited during the roadside inspections were not linked to you.

On January 11, 2021, the Montana Department of Transportation, a Motor Carrier Safety Assistance Program (“MCSAP”) partner agency to FMCSA, initiated a compliance investigation of your motor carrier operations after receiving information that you were operating without a USDOT number. As you still did not have a USDOT number, the investigator requested that you fill out a Motor Carrier Identification Report (“MCS-150”) resulting in the assignment of USDOT number 3547547 to Nixx LLC d/b/a Vallise Automotive Group. You also submitted an MCS-150 on January 13, 2021 for Central Logistics Inc. and obtained USDOT number 3549608 for this company.

C. Effect of Violations

Your complete and utter disregard for the FMCSRs substantially increases the likelihood of serious injury or death for your drivers and the motoring public if your operations are not discontinued immediately. Your entire operations constitute an imminent hazard to safety which may only be abated by the cessation of your entire operations.

Upon information and belief, you continue to purchase equipment for your business that requires the use of CMVs in interstate commerce, but you have not provided any evidence to FMCSA of your intent to comply with any of the FMCSRS. Additionally, during the investigation, you stated that you recently hired an experienced and licensed driver to assist with regulatory compliance. However, this driver made an interstate trip from approximately

December 21 – December 23, 2020 without a negative pre-employment controlled substances test or driver qualification file and the driver failed to complete RODS during the trip.

Further, the CMV operated by this driver did not have a periodic inspection. You also still do not have the required minimum levels of financial responsibility coverage, in violation of 49 CFR § 387.7(a), leaving the traveling public with little recourse should a crash occur.

III. REMEDIAL ACTION

To eliminate this imminent hazard, and before you will be permitted to resume your motor carrier operations placed out of service by this Order, you must take specific steps to ensure and demonstrate compliance with the FMCSRs including the following:

1. You must implement a controlled substance and alcohol testing program in accordance with 49 CFR Parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol Use and Testing).
2. You must establish safety management controls and procedures to ensure that drivers that operate commercial motor vehicles, as defined in 49 CFR 383.5, in interstate and intrastate commerce comply with the prohibitions and limitations on the use of alcohol and controlled substances in accordance with 49 CFR Part 382.
3. In accordance with 49 CFR Part 383, you must establish safety management controls and procedures to ensure that each and every driver that operates a commercial motor vehicle, as defined in 49 CFR 383.5, in interstate or intrastate commerce has the necessary driver's license, including any required endorsements, for the motor vehicles the driver operates.
4. You must establish safety management controls and procedures to ensure that you do not require or permit a driver who has been declared out-of-service to continue to operate your CMVs until the out-of-service violation has been resolved.
5. You must establish and demonstrate safety management controls and procedures to ensure that your drivers are qualified to operate a CMVs, as specified in 49 CFR § 391.11. These safety management controls must ensure that you do not use drivers to operate CMVs in interstate commerce who are not at least 21 years of age.

6. In accordance with 49 CFR § 391.51, you must also create and maintain driver qualification files.
7. You must establish safety management controls and procedures to ensure that your drivers comply with the hours of service requirements as set forth in 49 CFR Part 395 including ensuring that your drivers (1) prepare and submit records of duty status using the appropriate method (2) retain and submit supporting documents, (3) do not exceed maximum driving times, and (4) do not falsify records of duty status. Your safety management controls must also ensure that you maintain drivers' records of duty status and supporting documents for 6 months in accordance with 49 CFR § 395.8(k).
8. You must establish safety management controls and procedures that ensure that each and every CMV you operate or intend to operate, whether owned, rented, leased or otherwise used, is safe and is systematically and properly inspected, maintained, and repaired as required by 49 CFR Part 396, and that documentation of inspections, maintenance and repair are obtained and maintained as required. Your safety management controls must ensure that your drivers complete Driver Vehicle Inspection Reports when required in accordance with 49 CFR § 396.11.
9. You must ensure that each CMV you operate or intend to operate, whether owned, rented, leased or otherwise used, has been and is periodically inspected as required by 49 CFR § 396.17 and Appendix G to Subchapter B of Chapter III. You must also ensure, in accordance with 49 CFR § 396.19, that only qualified inspectors conduct such periodic inspections and that documentation of training and qualifications is maintained
10. You must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of your CMVs are repaired and that vehicle out-of-service defects discovered are repaired before the vehicle is operated in accordance with 49 CFR § 396.9(c)(2).
11. You must contact FMCSA's Montana Division and arrange for inspection of each of your CMVs by an FMCSA inspector or an inspector designated by FMCSA.
12. In accordance with 49 CFR § 390.3T(e), you must ensure that all drivers are adequately trained in the requirements of the FMCSRs and that they can conduct motor carrier operations consistent with those regulations.
13. You must comply with all Orders issued by FMCSA.

IV. RESCISSION OF ORDER

You are subject to this ORDER unless and until this ORDER is rescinded in writing by FMCSA. Until this ORDER is rescinded and you have a valid and active USDOT number and, as applicable, operating authority registration, you are prohibited from operating any commercial motor vehicle, as defined by 49 CFR § 390.5, in interstate and/or intrastate commerce. This ORDER will not be rescinded until the Regional Field Administrator for FMCSA's Western Service Center has determined that the Remedial Action requirements, specified in Paragraph III of this ORDER, have been fully satisfied and acceptable documentation submitted.

Before this ORDER may be rescinded, you must comply with the provisions of this ORDER, eliminate the deficiencies constituting the imminent hazard that your CMV operations pose, and provide evidence to the Regional Field Administrator for FMCSA's Western Service Center of the actions taken to eliminate safety problems.

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

Regional Field Administrator, Western Service Center
Federal Motor Carrier Safety Administration
12600 West Colfax Avenue, Suite B-300
Lakewood, CO 80215
wscenf@dot.gov

Division Administrator, Montana Division
Federal Motor Carrier Safety Administration
2880 Skyway Drive
Helena, MT 59602
Bruce.Holmes@dot.gov

In order for you to resume motor carrier operations in interstate or intrastate commerce, you will be required to apply for any required operating authority 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) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31139.

To be eligible for registration, you must not be subject to any other order prohibiting you from operating in interstate commerce.

V. ENFORCEMENT OF ORDER

This ORDER, issued pursuant to 49 U.S.C. §§ 521(b)(5)(A), 13905(f), 31144(c)(1) and (5), 31132(3), 31133, and 31134 and 49 CFR § 386.72(b)(1), is an Order of, and enforceable by, the Secretary. Violations of this ORDER may subject you to civil penalties and may also result in an action in the United States District Court for equitable relief and punitive damages. You may be assessed civil penalties of up to \$27,813 for each violation of this ORDER. *See* 49 U.S.C. §§ 507, 521(b)(2)(F) and 521(b)(4) and 49 CFR Part 386 App. A. § IV(g)). You may also be assessed civil penalties of not less than \$11,125 for providing transportation requiring registration, including operating a CMV in interstate commerce, without operating authority registration and up to \$15,691 for operating a CMV in interstate commerce without USDOT number registration. *See* 49 U.S.C. §§ 14901, 14702-03, 507, 521(b)(2)(F) and 31134. 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).

VI. PENALTIES FOR VIOLATIONS OF FEDERAL REQUIREMENTS

Any person, including any CMV operator, employer, and/or 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 statute 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.

VII. RIGHT TO REVIEW

You have the right to administrative review under 5 U.S.C. § 554 and 49 CFR § 386.72(b)(4). If requested, administrative review must commence within ten days after the petition for review is filed and must be concluded as expeditiously as practicable but may run longer than ten days from the date of issuance of such Order or the filing of the petition for review. See 49 U.S.C. § 521(b)(5) and 49 CFR § 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 Adjudications Counsel and the Regional Field Administrator, Western Service Center, via electronic mail or at the following addresses:

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

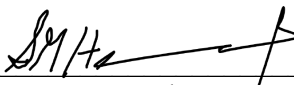
Adjudications Counsel (MC-CCA)
Federal Motor Carrier Safety Administration
Office of the Chief Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590
FMCSA.Adjudication@dot.gov

Regional Field Administrator, Western Service Center
Federal Motor Carrier Safety Administration
12600 W. Colfax Ave., Suite B-300
Lakewood, CO 80215
wscenf@dot.gov

The request must state the material facts at issue which you believe dispute or contradict the finding that your CMV operations in interstate or intrastate commerce constitute an imminent hazard to the public.

A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT SUSPEND OR DELAY YOUR DUTY TO COMPLY WITH THIS ORDER IMMEDIATELY. *See* 49 CFR § 386.72(b)(4). This ORDER is separate and independent from all other orders or actions that may be issued by FMCSA or other jurisdiction, and does not amend or modify any other orders or actions. Any request for administrative review of this ORDER does not attach to or apply to any other order or action.

Date: January 23, 2021



Scott G. Hernandez
Regional Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration