



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

Service Date: December 11, 2012

Jose Luis Hernandez Avila
d/b/a Comodin Transport
J Rendon Parra #232 B
Tijuana, Baja California Norte 22500
MEXICO

In reply, refer to:

USDOT Number: 1658186
MX Number: 6099991

Mailing Address:
9765 Marconi Drive, Suite 105
San Diego, CA 92154

**ORDER REJECTING APPLICATION FOR
AUTHORITY TO OPERATE IN THE U.S.-MEXICO CROSS-BORDER
LONG-HAUL PILOT PROGRAM**

BASIS FOR ORDER

This Order rejecting application for motor carrier operating authority in the U.S.-Mexico Cross-Border Long-Haul Pilot Program is issued by the U.S. Department of Transportation (USDOT), Federal Motor Carrier Safety Administration (FMCSA). This Order is based upon FMCSA's determination that Jose Luis Hernandez Avila has not made a *prima facie* showing that its application is materially complete and that it is fit, willing, and able to comply with applicable Federal requirements.

The standards by which FMCSA grants applications for operating authority are established by statute and regulations. In accordance with 49 U.S.C. § 13902(a)(1), FMCSA will grant a request for authority to operate in the U.S.-Mexico Cross-Border Long-Haul Pilot Program ("Pilot Program") if FMCSA finds that the applicant is fit, willing, and able to comply with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the Federal Motor Carrier Safety Regulations (49 C.F.R. parts 390 through 399); 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 minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

By this Order FMCSA finds that:

1. Jose Luis Hernandez Avila is a Mexico-domiciled motor carrier with OP-2 registration which permits it to operate commercial motor vehicles (CMVs) in the U.S. in the commercial zones along the U.S.-Mexico border. To maintain compliance while operating in the U.S., an authorized motor carrier must not allow a driver to operate a CMV in interstate commerce unless he/she has a currently valid CMV operator's license issued only by one State or jurisdiction in accordance with 49 C.F.R. Part 391.
2. On or about 06/22/2012, Jose Luis Hernandez Avila doing business as (DBA) Comodin Transport required or permitted driver Jose Luis Hernandez Avila to drive a CMV in interstate commerce from Tijuana, Baja California, Mexico to San Diego, California. At the time of this transportation, driver Jose Luis Hernandez Avila did not have a valid commercial driver's license (CDL) because he had not been physically reexamined within the past 24 months.

**PROHIBITION ON USE OF A DRIVER WITHOUT A CURRENTLY VALID
MOTOR VEHICLE OPERATOR'S LICENSE**

Under 49 U.S.C. § 13901, motor carriers providing transportation and operating over the public highways in interstate or foreign commerce must be registered with FMCSA. 49 C.F.R. §§ 391.11(a) and 391.11(b)(5) prohibit the use of a driver without a currently valid motor vehicle operator's license. The provisions provide:

Subpart B - Qualification and disqualification of drivers

§ 391.11 General qualifications of drivers.

(a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he/she—

...

(5) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction; ...

A compliance review conducted on July 12, 2012, resulted in identification of violations, a finding of non-compliance, and a single charge against the motor carrier for violations found. FMCSA issued a Notice of Claim (NOC) in the amount of \$670 as penalty for the finding of non-compliance. The issuance of an NOC constitutes sufficient grounds to

dismiss the application by Jose Luis Hernandez Avila DBA Comodin Transport for OP-1MX authority to participate in the Pilot Program.

ORDER

It is therefore ORDERED that Jose Luis Hernandez Avila's application for operating authority to transport property in the United States beyond the commercial zones along the U.S.-Mexico border in the Pilot Program is rejected.

RIGHT TO APPEAL

Jose Luis Hernandez Avila DBA Comodin Transport has the right to appeal this rejection of its application for authority under the Pilot Program to conduct long-haul transportation of property in the U.S. beyond the municipalities and commercial zones along the U.S.-Mexico border. In accordance with 49 C.F.R. § 365.111(a), a written appeal of this ORDER of rejection must be filed with FMCSA no later than 10 calendar days of the date of this ORDER. Any written appeal must be filed with FMCSA at the following address:

Mr. William A. Quade
Associate Administrator for Enforcement
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

The request may be faxed to (202) 366-7908.

Pursuant to 49 C.F.R. § 365.111(b), if an appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

Absent a timely appeal of this dismissal notice under 49 C.F.R. § 365.111, your application for OP-1MX operating authority will be dismissed within 20 days of the date of this notice. If you have any questions, please contact the North American Borders Division at (202) 366-4553.

NOTICE OF CLAIM ALSO FILED

Independent of the action herein, FMCSA also may pursue civil penalties for violating provisions of Federal regulations pertaining to the company's OP-2 operating authority, which limits transportation solely to defined commercial zones. Jose Luis Hernandez Avila DBA Comodin Transport has received a "Notice of Claim" (the official charging document used by FMCSA to initiate a civil action for a violation of Federal laws), citing violations of 49 C.F.R. 392.9a(a)(2) – Operating beyond the scope of authority granted. Jose Luis Hernandez Avila DBA Comodin Transport had the right to reply within 30 days. The procedures for reply are described in the charging document itself. However, FMCSA has now pursued a "Notice of Default" and "Final Agency Order" for your

company's failure to reply to the Notice of Claim within the allowed 30 days of the date of service of the Notice of Claim.

Failure to pay the civil penalty as directed in that Order constitutes a violation of the Order, and subjects Jose Luis Hernandez Avila DBA Comodin Transport to additional penalties, and possibly interest and administrative penalties. Finally, failure to reply and to pay the civil penalty subjects Jose Luis Hernandez Avila DBA Comodin Transport to a prohibition from operating in interstate commerce pursuant to 49 CFR 386.83, suspension of registration as a for-hire motor carrier, freight forwarder, or broker, registration suspension in accordance with State vehicle registration laws, referral to the U.S. Department of the Treasury for collection, and/or referral to the Attorney General of the United States for an action to be brought in the U.S. District Court to enforce the Final Agency Order and collect the civil penalty.

The ability to submit a new application as described in this Order for OP-IMX authority will not be considered until such time as the Notice of Claim, Notice of Default, and Final Agency Order have been resolved.

SUBMISSION OF NEW APPLICATION

Upon satisfaction of a Notice of Claim, Notice of Default, and Final Agency Order, a motor carrier whose application for authority to operate in the Pilot Program has been rejected by FMCSA may reapply to participate. If Jose Luis Hernandez Avila DBA Comodin Transport elects to submit a new application for participation in the Pilot Program, it must submit evidence to make an initial showing that it has corrected the deficiencies that resulted in FMCSA rejecting its application, and demonstrate that it is fit, willing, and able to comply with applicable Federal requirements. Such evidence must include documentation that Jose Luis Hernandez Avila DBA Comodin Transport has not allowed any drivers to operate without a valid CDL for a minimum period of 12 months.

To participate in the Pilot Program after such time, Jose Luis Hernandez Avila DBA Comodin Transport must submit a new Form OP-1(MX) "Application to Register Mexican Carriers for Motor Carrier Authority to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border", and a Form MCS-150, the "Motor Carrier Identification Report." Jose Luis Hernandez Avila DBA Comodin Transport must also satisfactorily complete a pre-authorization safety audit.

Sincerely,



Dr. G. Kelly Leone
Associate Administrator for Research and
Information Technology/Chief
Information Officer

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of December 2012, the undersigned served, as specified, the designated number of copies of the foregoing document to each of the parties listed below:

Jose Luis Hernandez Avila d/b/a Comodin Transport Josefina Rendon Parra #232 B OT Tijuana, BN 22500 MEXICO	One Copy United Parcel Service Tracking #
Jose Luis Hernandez Avila d/b/a Comodin Transport c/o Rosario I. Torres, Process Agent 9765 Marconi Drive, Suite 105 San Diego, CA 92154	One Copy US Postal Service Mail
Terry D. Wolf, Division Administrator Federal Motor Carrier Safety Administration California Division 1325 J Street, Suite 1540 Sacramento, CA 95814	One Copy Internal Mail
William R. Paden, Field Administrator U.S. Department of Transportation Federal Motor Carrier Safety Administration Western Service Center 12600 West Colfax Avenue, Suite B-300 Lakewood, CO 80215	One Copy Internal Mail


