



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

NOV 19 2012

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Washington, DC 20590

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Figueroa Robles Gabriel, Owner
d/b/a Akemigabby Transport
Calle Lima 6
Tijuana, Baja California Norte 22116
MEXICO

SERVICE DATE: November 14, 2012

In reply refer to:
USDOT Number 2301851

Mailing Address:
2498 Roll Drive, 808
San Diego, CA 92154

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

BASIS FOR ORDER

This Order rejecting the application for motor carrier operating authority in the cross-border long-haul pilot program is issued by the United States Department of Transportation (USDOT), Federal Motor Carrier Safety Administration (FMCSA). This Order is based upon FMCSA's determination that Figueroa Robles Gabriel d/b/a Akemigabby Transport has not made a *prima facie* showing that its application is materially complete and that it is fit and 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 cross-border long-haul 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 FMCSRs (49 C.F.R. parts 390 through 399); 3) the commercial motor vehicle (CMV) 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. Figueroa Robles Gabriel d/b/a Akemigabby Transport is a Mexico-domiciled motor carrier that does not have authority to operate in the United

States. Figueroa Robles Gabriel d/b/a Akemigabby Transport does not have OP-2 registration to operate CMVs transporting property in the United States in the commercial zones along the U.S.-Mexico border. Figueroa Robles Gabriel d/b/a Akemigabby Transport also is prohibited from operating any CMV(s) in the United States outside the boundaries of a commercial zone along the U.S.-Mexico border, and is prohibited from leasing any of its CMVs to any motor carrier for the transportation of property in the United States outside the boundaries of such commercial zones.

2. On June 7, 2012, Figueroa Robles Gabriel d/b/a Akemigabby Transport operated CMVs in interstate and foreign commerce transporting property from Mexico to Riverside, California, a destination in the United States outside the boundaries of a commercial zone along the U.S.-Mexico border.
3. Figueroa Robles Gabriel d/b/a Akemigabby Transport concealed this transportation of property in the United States by falsely representing itself to the public as an authorized motor carrier by operating as United States domiciled USDOT 1116886 Sonia Fernandez Brambila, d/b/a BASA, Inc. and as United States domiciled USDOT 2262603 Serapio Mendoza Mendoza, d/b/a Aleyser Transport.

PROHIBITION ON TRANSPORTATION WITHOUT AUTHORITY OR BEYOND THE SCOPE OF AUTHORITY GRANTED

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. § 392.9a(a) prohibits the operation of a motor vehicle providing transportation in interstate and foreign commerce without the required operating authority or beyond the scope of any operating authority that has been granted. Section 219 of the Motor Carrier Safety Improvement Act of 1999 (“MCSIA”),¹ at 49 U.S.C. § 14901 note, prohibits a Mexico-domiciled motor carrier from leasing any CMV(s) to any motor carrier for the transportation of property outside of the boundaries of a commercial zone along the United States-Mexico border.

Pursuant to 49 U.S.C. § 14901 note,² a foreign motor carrier or foreign motor private carrier operating without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone may be subject to a civil penalty and may be disqualified from operating a CMV anywhere within the United States. The civil penalty for an intentional violation by a carrier shall not be more than \$10,000 for each occurrence, and may include a

¹ P.L. 106-159, December 9, 1999, 113 Stat. 1748. Section 219(d) codified at 14901 note, (d) LEASING.— Before the implementation of the land transportation provisions of the North American Free Trade Agreement, during any period in which a suspension, condition, restriction, or limitation imposed under section 13902(c) of title 49, United States Code, applies to a motor carrier (as defined in section 13902(e) of such title), that motor carrier may not lease a commercial motor vehicle to another motor carrier or a motor private carrier to transport property in the United States.

² Ibid.

disqualification from operating a CMV anywhere within the United States for a period of not more than 6 months. The civil penalty for a pattern of intentional violations shall not be more than \$25,000 for each occurrence and the carrier shall be disqualified from operating a CMV anywhere within the United States and the disqualification may be permanent. Each transportation of property outside the boundaries of a commercial zone along the U.S.-Mexico border constitutes a separate occurrence and a separate violation.

ORDER

It is therefore ORDERED that the above-captioned application for operating authority to transport property in the United States beyond the commercial zones along the U.S.-Mexico border in the cross-border pilot program is rejected.

RIGHT TO APPEAL

Figueroa Robles Gabriel d/b/a Akemigabby Transport has the right to appeal this rejection of its application for authority under the cross-border pilot program to conduct long-haul transportation of property in the United States 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 will be dismissed within 20 days of the date of this letter. If you have any questions, please contact the North American Borders Division at (202) 366-4553.

SUBMISSION OF NEW APPLICATION

A motor carrier whose application for authority to operate in the cross-border long-haul pilot program has been rejected by FMCSA may reapply to participate in the pilot program. Figueroa Robles Gabriel d/b/a Akemigabby Transport may submit a new application to participate in the cross-border pilot program. If Figueroa Robles Gabriel d/b/a Akemigabby Transport elects to submit a new application for participation in the pilot program, it must (1) submit evidence to make an initial showing that it has corrected the

deficiencies that resulted in FMCSA rejecting its application, and (2) submit documentation (records, shipping papers, driver logs, etc.) that those corrections have resulted in compliance with the requirement for which it was cited for at least a minimum period of 12 months, to be able to demonstrate that it is now fit, willing, and able to comply with applicable Federal requirements.

To participate in the cross-border pilot program, Figueroa Robles Gabriel d/b/a Akemigabby 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." Figueroa Robles Gabriel d/b/a Akemigabby Transport must also satisfactorily complete a pre-authorization safety audit.

Sincerely,

A handwritten signature in black ink, appearing to read "Dr. G. Kelly Leone". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of November 2012, the undersigned served, as specified, the designated number of copies of the foregoing document to each of the parties listed below:

Figuroa Robles Gabriel, Owner d/b/a Akemigabby Transport Calle Lima 6 Tijuana, Baja California Norte 22116 MEXICO	One Copy United Parcel Service Tracking #
Rosario I. Torres, Process Agent Servicios Garita Otay 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


