



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

NOV 27 2012

1200 New Jersey Avenue, SE
Washington, DC 20590

Phone: (202) 366-4553
Fax: (202) 366-7908

Service Date: November 16, 2012

Physical Address:
Y & R Fashion Mex S de RL de CV
Calle Esmeralda 2095-3
Ensenada, Baja California Norte 22890
MEXICO

USDOT Number 1678162
MX Number 616838

Mailing Address:
2030 East 15th Street
Los Angeles, CA 90021

**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 U.S.-Mexico Cross-Border Long-Haul Trucking 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 Y & R Fashion Mex S de RL de CV 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 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 Federal Motor Carrier Safety Regulations (49 CFR 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. Y & R Fashion Mex S de RL de CV is a Mexico-domiciled motor carrier with OP-2 registration that permits it to operate CMVs in the U.S. in the commercial zones along the U.S.-Mexico border. Y & R Fashion Mex S de RL de CV is prohibited from operating any CMV(s) in the U.S. 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 U.S. outside the boundaries of such commercial zones.
2. During the period of November 2011 through April 2012, Y & R Fashion Mex S de RL de CV operated CMVs in interstate and foreign commerce from Mexico to destinations in the U.S. outside the boundaries of a commercial zone along the U.S.-Mexico border, and from points in the U.S. outside the boundaries of a commercial zone to Mexico.

**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 CFR § 392.9a(a) prohibits the operation of a CMV 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 U.S.-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 U.S. The civil penalty for an intentional violation by a carrier shall not be more than \$10,000 for each occurrence, and may include a disqualification from operating a CMV anywhere within the U.S. 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 U.S. and the disqualification may be permanent. Each

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.

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 Y & R Fashion Mex S de RL de CV's 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 long-haul pilot program is rejected.

RIGHT TO APPEAL

Y & R Fashion Mex S de RL de CV has the right to appeal this rejection of its application for authority under the cross-border long-haul 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 CFR § 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 appeal may also be faxed to (202) 366-7908.

Pursuant to 49 CFR § 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 CFR § 365.111, your application 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. Y & R Fashion Mex S de RL de CV 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 CFR 392.09a(a)(2) – Operating beyond the scope of authority granted. Y & R Fashion Mex S de RL de CV 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 Y & R Fashion Mex S de RL de CV to additional penalties, and possibly interest and administrative penalties. Finally, failure to reply and to pay the civil penalty subjects Y & R Fashion Mex S de RL de CV 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 right to appeal the action described in this Order regarding application for OP-1MX 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 the Notice of Claim, Notice of Default, and Final Agency Order, 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. If Y & R Fashion Mex S de RL de CV elects to submit a new application for participation, 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 long-haul pilot program after such period of time, Y & R Fashion Mex S de RL de CV 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." Y & R Fashion Mex S de RL de CV must also satisfactorily complete another pre-authorization safety audit.

Sincerely,

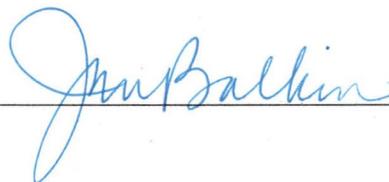


Dr. G. Kelly Leone
Associate Administrator for Research and
Information Technology/Chief
Information Officer

CERTIFICATE OF SERVICE

This is to certify that on the 27th 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:

| | |
|--|---|
| Y & R Fashion Mex S de RL de CV Calle Esmeralda 2095-3 Ensenada, BA 22890 MEXICO | One Copy United Parcel Service Tracking # |
| Y & R Fashion Mex S de RL de CV 2030 East 15 th St Los Angeles, CA 90021 | One Copy US Postal Service |
| Abigael Ortiz-Cass, Process Agent 2455 Otay Center Dr. #118-722 San Diego, CA,92154 | One Copy US Postal Service |
| 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 |



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