

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Jay Scott Emler

In the Matter of the Emergency Suspension of)
Operating Authority of **Auto Encomiendas**)
Cruz Express LLC of Kansas City, Kansas,)
for Failure to Comply with New Entrant Safety) Docket No. 19-TRAM-324-OOS
Requirements as Required by the Motor Carrier)
Safety Statutes, Rules and Regulations.)

EMERGENCY SUSPENSION OF OPERATING AUTHORITY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on its own motion. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION AND BACKGROUND

1. Pursuant to K.S.A. 2018 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2018 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.

2. Pursuant to K.S.A. 2018 Supp. 66-1,129a, 66-1,130, and 66-1,142b, the Commission may suspend operations, revoke, or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision, or regulation of the Commission.

3. Pursuant to K.S.A. 2018 Supp. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-1 *et seq.*) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

4. K.S.A. 2018 Supp. 77-536 governs the use of emergency proceedings. The statute provides in part as follows:

- (a) A state agency may use emergency proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.
- (b) The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

II. FINDINGS OF FACTS

5. Auto Encomiendas Cruz Express LLC (Respondent) is a motor carrier as defined in K.S.A. 2018 Supp. 66-1,108, that operates commercial motor vehicle(s) in interstate commerce in a manner that requires authority.

6. Respondent is registered as a motor carrier with the U.S. Department of Transportation (USDOT), and operates under USDOT Number 3059854.

7. On December 12, 2018, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice of violation(s) of the federal motor carrier safety regulations to Respondent, wherein Respondent was given 60 days to comply with the regulations.

8. As of February 12, 2019, FMCSA records indicate Respondent had not complied with new entrant requirements. As a result, the FMCSA issued Respondent an

Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation. FMCSA's Order is attached hereto.

III. STAFF'S RECOMMENDATIONS

9. Staff asks the Commission to find that Respondent received sufficient notice from the FMCSA of the violation(s) of motor carrier safety rules and regulations, and a requisite opportunity to correct the violation(s) and to obtain compliance.

10. Staff asks the Commission to find that Respondent failed to act upon the FMCSA's notice.

11. Staff asks the Commission to find that Respondent's failure to comply with requirements of a new entrant audit is sufficient evidence of unsafe motor carrier operations and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.

12. Based on the presented facts, Staff recommends the Commission issue an Emergency Suspension of Operating Authority Order until such time as Respondent takes the necessary steps to obtain compliance with the federal and state motor carrier safety rules and regulations. After Respondent submits verifiable evidence of the same to Staff, Staff will recommend that the Commission enter an order reinstating the Respondent's motor carrier operating authority.

13. Furthermore, Staff recommends the Commission order Respondent to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and to provide Litigation Counsel with written proof of attendance.

IV. CONCLUSIONS OF LAW

14. The Commission finds it has jurisdiction over Respondent as the Respondent is a motor carrier as defined in K.S.A. 2018 Supp. 66-1,108.

15. The Commission finds Respondent received sufficient notice from the FMCSA of violation(s) of motor carrier safety rules and regulations and a requisite opportunity to correct the violation(s) and obtain compliance.

16. The Commission finds Respondent failed to act upon this notice.

17. The Commission also finds Respondent's failure to comply with requirements of a new entrant audit is sufficient evidence of unsafe motor carrier operations, and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas. Therefore, this Commission orders the Respondent to suspend all intrastate motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 2018 Supp. 66-1,129, until such time as the carrier takes the necessary steps to become compliant. This includes submitting to Staff verifiable evidence of the correction of the violation(s) noted in FMCSA's February 12, 2019 Order including, but not limited to, proof of federal reinstatement and attendance of a Commission-sponsored safety seminar within ninety (90) days from the date of this Order. A schedule of dates and locations for the safety seminar can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm. The proof of attendance at the safety seminar should be submitted to Litigation Counsel.

THE COMMISSION THEREFORE ORDERS THAT:

A. Auto Encomiendas Cruz Express LLC of Kansas City, Kansas is to be immediately suspended from all intrastate Kansas commercial motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 2018 Supp. 66-1,129, until such time as Respondent presents to Staff verifiable evidence, including, but not limited to, proof of federal reinstatement documenting the correction of the safety concerns identified in the FMCSA's February 12, 2019 Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation. This Emergency Suspension of Operating Authority Order may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of any Order to cease operations or suspend operating authority.

B. Auto Encomiendas Cruz Express LLC of Kansas City, Kansas, is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance.

C. **Pursuant to K.S.A. 2018 Supp. 77-537 and K.S.A. 2018 Supp. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Secretary, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Order.** Pursuant to K.S.A. 2018 Supp. 66-1,129a, hearings will be held within ten (10) days upon written request. Failure to timely request a hearing will result in a waiver of Respondent's right to a hearing, and this Order will become a Final Order against Respondent, suspending

Respondent's motor carrier intrastate operations, ordering Respondent to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Litigation Counsel with written proof of attendance.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties of \$500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2018 Supp. 66-1,142b(e) and amendments thereto.

E. Failure to comply with the provisions of this Order may result in further sanctions to include, but not limited to, the assessment of civil penalties and/or the impoundment of commercial motor vehicles found operating in violation of this Order and any other remedies available to the Commission by law, without further notice.

F. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 02/19/2019



Lynn M. Retz
Secretary to the Commission

AAL



U.S. Department of
Transportation
1200 New Jersey Ave. S.E.
Washington, D.C. 20590

**Federal Motor Carrier
Safety Administration**

February 12, 2019

In reply refer to:
USDOT Number: **3059854**

**AUTO ENCOMIENDAS CRUZ EXPRESS LLC
900 S 66TH TER
KANSAS CITY, KS 66111-2347**

**ORDER TO REVOKE "NEW ENTRANT" REGISTRATION AND CEASE
ALL INTERSTATE TRANSPORTATION U.S. DOT Number: 3059854**

This Order is issued pursuant to 49 CFR 385.325(b). On December 12, 2018 AUTO ENCOMIENDAS CRUZ EXPRESS LLC was notified that its USDOT New Entrant registration would be revoked and its interstate operations placed out of service unless AUTO ENCOMIENDAS CRUZ EXPRESS LLC took action to remedy its safety management practices and submit in writing evidence of necessary corrective action within 60 days. Because AUTO ENCOMIENDAS CRUZ EXPRESS LLC has failed to submit sufficient evidence of the necessary corrective action, AUTO ENCOMIENDAS CRUZ EXPRESS LLC's USDOT New Entrant registration is hereby revoked and its interstate operations placed out of service, effective immediately.

AUTO ENCOMIENDAS CRUZ EXPRESS LLC must immediately cease all Interstate motor carrier operations in the United States.

Failure to comply with this order may subject the carrier to a penalty in accordance with 49 USC 521 (b)(2)(a) and the minimum/maximum penalty schedule in 49 CFR Part 386 Appendix A and B.

In accordance with 49 CFR 385.327, AUTO ENCOMIENDAS CRUZ EXPRESS LLC may request an administrative review if it believes Federal Motor Carrier Safety Administration (FMCSA) has committed an error in determining that its basic safety management controls are inadequate and/or that its corrective action under section 385.319(c) is insufficient. Under section 385.327(c) (1), the request must be submitted within 90 days of the date of the notice of FMCSA determining that its basic safety management controls are inadequate resulting in failure of the safety audit or under section 385.327(e) (2) within 90 days of the date that of the notice that FMCSA determined that the corrective actions are insufficient. The request for administrative review must include a description of the error(s) believed made by FMCSA in its determination and include a list of all factual and procedural issues disputed and any supporting information or documentation. The Field Administrator's decision will constitute final agency action. A request for administrative review must be submitted to:

DARIN JONES
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
MIDWESTERN SERVICE CENTER
4749 LINCOLN MALL DRIVE, SUITE 300A
MATTESON, IL 60443
Email: MSCCAP@DOT.GOV
Phone: 708-283-3564
Fax: 877-547-0381

Under section 385.329, AUTO ENCOMIENDAS CRUZ EXPRESS LLC may reapply for USDOT New Entrant registration no earlier than 30 days from the date of this Order. In order to reapply AUTO ENCOMIENDAS CRUZ EXPRESS LLC must begin the application process from the beginning, submit an updated Motor Carrier Identification Report (MCS-150), submit adequate evidence that the violations that resulted in the USDOT New Entrant registration revocation and adequate basic safety management controls have been established, and restart the 18-month new entrant monitoring period. Reapplication may be made via the FMCSA web site (<http://safer.fmcsa.dot.gov>) or by submitting a MCS-150 form. The form may be obtained by calling FMCSA support services at 1-800-832-5660 or via the FMCSA web site at <http://www.fmcsa.dot.gov>.

Contact your local FMCSA office if you have questions about what corrective actions must be submitted and where to submit them.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe P. DeLorenzo", written in a cursive style.

Joseph P. DeLorenzo
Director, Office of Enforcement and Compliance

CERTIFICATE OF SERVICE

19-TRAM-324-OOS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 02/20/2019.

FELIX CRUZ, MANAGING MEMBER
AUTO ENCOMIENDAS CRUZ EXPRESS LLC
900 S 66TH TERR
KANSAS CITY, KS 66111-2347

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe