

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

Before Commissioners: Andrew J. French, Chairperson
Dwight D. Keen
Annie Kuether

In the Matter of the Suspension of Operating)
Authority of **Alvarez Underground**)
Construction LLC of Kansas City, Kansas, for)
Failure to Comply with New Entrant Safety) Docket No. 25-TRAM-162-OOS
Requirements as Required by the Motor Carrier)
Safety Statutes, Rules and Regulations.)

**ORDER ADOPTING THE FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION'S ORDER AND SUSPENDING OPERATING AUTHORITY**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the records and being duly advised in the premises, the Commission makes the following findings:

I. Legal Standards

1. Pursuant to K.S.A. 66-1,108b, 66-1,111, 66-1,112, and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. 390.5 and as adopted by K.A.R. 82-4-3f, 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. 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. 66-1,129(a)(7), no public motor carrier of property, household goods or passengers or private motor carrier of property shall operate, or allow the operation of, any commercial motor vehicle on any public highway in this state without following rules and regulations consistent with the federal motor carrier safety assistance program.

II. Analysis

4. On September 9, 2024, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice (Federal Notice) of violation(s) of the federal motor carrier safety regulations to Alvarez Underground Construction LLC (Carrier), wherein Carrier was given 10 days to comply with the regulations or its New Entrant Registration would be revoked.¹ A copy of the Federal Notice is attached hereto as Attachment “A” and is hereby incorporated by reference. Carrier failed to act upon the FMCSA’s Federal Notice.

5. On September 20, 2024, the FMCSA issued Carrier an Order to Revoke “New Entrant” Registration and Cease All Interstate Transportation (Federal Order), attached hereto as Attachment “B” and is hereby incorporated by reference, due to Carrier’s failure to agree to the FMCSA’s safety audit.

6. Pursuant to the Federal Order, Carrier’s operations were placed out of service immediately and Carrier must immediately cease all interstate motor carrier operations in the United States.²

7. Carrier is a motor carrier as defined in 49 C.F.R. 390.5 and as adopted in K.A.R. 82-4-3f, which operates commercial motor vehicle(s) in interstate commerce in a manner that requires Commission authority.

¹ See Attachment A.

² See Attachment B.

8. Carrier is registered as a motor carrier with the U.S. Department of Transportation (USDOT), and operates under USDOT Number 4122155.

9. The Commission finds Carrier's failure to comply with requirements of a new entrant audit is a violation of K.S.A. 66-1,129(a)(7).

10. Therefore, the Commission finds that the Federal Order be adopted and that the Carrier's intrastate motor carrier operations be suspended, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such time as the carrier takes the necessary steps to become compliant. This includes submitting to the Commission verifiable evidence of the correction of the violation(s) noted in Federal Order including, but not limited to, proof of federal reinstatement and attendance of a Commission-sponsored safety seminar within thirty (30) 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 timely submitted to Litigation Counsel within five (5) days of completion.

THEREFORE, THE COMMISSION ORDERS:

A. The Federal Motor Carrier Safety Administration's Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation issued on September 20, 2024 is hereby accepted and adopted.

B. Alvarez Underground Construction LLC of Kansas City, Kansas is suspended and ordered to immediately cease all intrastate Kansas commercial motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such time as Carrier 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 September 20, 2024 Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation. This 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.

C. Alvarez Underground Construction LLC is hereby ordered to attend a Commission-sponsored safety seminar within thirty (30) days from the date of this Order and timely provide Litigation Counsel with written proof of attendance within five (5) days of completion.

D. **Pursuant to K.S.A. 77-537 and K.S.A. 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 Executive Director, 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. 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 Carrier's right to a hearing, and this Order will become a Final Order.

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.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 10/22/2024



Lynn M. Retz
Executive Director

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ATTACHMENT “A”



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

**Federal Motor Carrier
Safety Administration**

September 9, 2024

In reply refer to:
USDOT Number: **4122155**

**ALVAREZ UNDERGROUND CONSTRUCTION LLC
2824 N 38TH ST
KANSAS CITY, KS 66104-2524**

Action Required: Out of Service/Revocation Warning Letter Planned Revocation Date September 20, 2024.

On August 25, 2023 the Federal Motor Carrier Safety Administration (FMCSA) informed you that your application seeking registration to operate in interstate commerce within the United States was approved. That letter also informed you that the FMCSA would continue to evaluate your safety management practices through a Safety Audit. FMCSA regulations require that all records and documents required for the safety audit shall be made available for inspection upon request. Failure to do so could be considered failure to permit a safety audit whereby your registration will be revoked under 49 CFR Section 385.337 and the applicable penalty provisions in 49 USC Section 521(b)(2)(A). Our records indicate that you either failed to attend your safety audit or failed to submit the documents required to confirm that your company has basic safety management controls in place for a safety audit.

If you failed to attend your audit, in accordance with 49 CFR 385.337(b), you are hereby advised that your USDOT New Entrant registration will be revoked on September 20, 2024 and your operation placed out of service unless you **agree in writing**, within 10 calendar days from the service date of this notice, to permit a safety auditor to conduct the Safety Audit required under Part 385. Your correspondence should be directed to the contact information listed below.

Questions concerning your failure to attend your scheduled audit, please contact your local State MCSAP Office at the address below:

KANSAS HIGHWAY PATROL
LT. RYAN CLARK – RYAN.CLARK@KS.GOV
700 SW JACKSON STE 704
TOPEKA, KS 66603
Telephone No.: 785-296-8533

If you failed to provide the necessary documentation requested by the Safety Auditor to perform the safety audit, in accordance with 49 CFR 385.337(b), you are hereby advised that your USDOT New Entrant registration will be revoked on September 20, 2024 and your operation placed out of service unless you submit the necessary documentation or provide a written explanation for your failure to submit the documentation to <http://ai.fmcsa.dot.gov/newentrant> or via mail. FMCSA must **RECEIVE** the requested information within 10 calendar days from the service date of this notice, to permit the safety auditor to conduct the Safety Audit required under Part 385.

An inability to produce an essential document may lead to a safety audit determination that your company's basic safety management controls are inadequate, and that your company's USDOT new entrant registration will be revoked and your operations placed out of service unless your company takes specified actions to remedy your safety management practices.

Questions concerning submission of requested documentation, please contact your local State MCSAP Office at the address below:

KANSAS HIGHWAY PATROL
LT. RYAN CLARK – RYAN.CLARK@KS.GOV
700 SW JACKSON STE 704
TOPEKA, KS 66603
Telephone No.: 785-296-8533

If your USDOT New Entrant registration is revoked, you may reapply no sooner than 30 days after the date of the revocation. Should that occur, you would need to initiate the USDOT New Entrant registration process again by completing an updated Motor Carrier Identification Report (MCS-150).

Sincerely,



David J. Yessen
Chief, Compliance Division

ATTACHMENT “B”



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

**Federal Motor Carrier
Safety Administration**

September 20, 2024

In reply refer to:
USDOT Number: **4122155**

**ALVAREZ UNDERGROUND CONSTRUCTION LLC
2824 N 38TH ST
KANSAS CITY, KS 66104-2524**

**ORDER TO REVOKE "NEW ENTRANT" REGISTRATION AND CEASE
ALL INTERSTATE TRANSPORTATION U.S. DOT Number: 4122155**

This Order is issued pursuant to 49 CFR 385.337(b). In a letter dated September 9, 2024 ALVAREZ UNDERGROUND CONSTRUCTION LLC was notified that its New Entrant Registration would be revoked unless it agreed in writing within 10 days of September 9, 2024 to permit a Safety Audit to be performed. Because ALVAREZ UNDERGROUND CONSTRUCTION LLC has failed to agree to the safety audit its New Entrant Registration is hereby revoked and ALVAREZ UNDERGROUND CONSTRUCTION LLC's operations are placed out of service effective immediately. ALVAREZ UNDERGROUND CONSTRUCTION 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.

Under section 385.329, ALVAREZ UNDERGROUND CONSTRUCTION LLC may reapply for new entrant registration no earlier than 30 days from the date of this Order. In accordance with 49 CFR 385.329, in order to reapply ALVAREZ UNDERGROUND CONSTRUCTION LLC must submit an updated MCS-150 (Motor Carrier Identification Report), submit to a safety audit, 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.

Sincerely,

David J. Yessen
Chief, Compliance Division

CERTIFICATE OF SERVICE

25-TRAM-162-OOS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 10/22/2024.

Francisco Alvarez-Solis, OWNER
Alvarez Underground Construction LLC
2824 N 38th St
Kansas City, KS 66104
alvarezuc21@gmail.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
ahsan.latif@ks.gov

/S/ KCC Docket Room
KCC Docket Room