

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DEPT. OF TRANSPORTATION  
DOCKETS

MAY 23 2008 2:07

**In the Matter of:**

**RAPID LOGISTICS, LLC,**

**Respondent.**

**Docket No. FMCSA-2008-0113<sup>1</sup>  
(Western Service Center)**

**ORDER ON MOTION FOR CLARIFICATION**

On May 7, 2008, Claimant, the Field Administrator for the Western Service Center, Federal Motor Carrier Safety Administration (FMCSA), served a Motion for Extension of Time To Submit Written Evidence. Claimant's motion was docketed by the U.S. Department of Transportation Docket Operations; it was the first document in the docket.

On June 10, 2008, an Order was issued closing the docket<sup>2</sup> without ruling on Claimant's motion because the matter was not already pending before the Assistant Administrator; thus, there was no need to request an extension. The Order concluded that the parties may stipulate to a reasonable extension between themselves, and that the stipulation flowed from a reading of 49 CFR 386.5(f), which permits stipulation even in matters that are pending before the Agency decisionmaker. With no docket being opened, the matter is not pending before the Assistant Administrator, discovery may not begin, and a settlement, if one were reached, would not require his or her approval.

On July 3, 2008, Claimant submitted a Motion for Clarification of the June 10<sup>th</sup>

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<sup>1</sup> The prior case number of this matter was CA-2008-0250-US1275.

<sup>2</sup> The parties subsequently entered into a settlement agreement. The docket is reopened only for the issuance of this Order.

Order. Claimant believed that the Order may be read to eliminate the right of either party in a civil penalty proceeding to request an extension of time through the filing of a timely motion in a case not already before a decisionmaker. “The Order thus could be read to establish a stipulation among the parties as the exclusive mechanism for extensions of time....”

Claimant maintained that 49 CFR 386.5(f) is permissive in allowing stipulation between parties, but it does not require a party to request or attempt to seek a stipulation from another party before filing a motion for extension of time to the decisionmaker. Claimant also contended that nothing in the preamble to the revised Rules of Practice limits the ability of any party to seek an extension of time from the Assistant Administrator or request a stipulation from another party as an antecedent requirement before filing a motion for extension of time with the Assistant Administrator.

## **2. Discussion**

Claimant’s point is well taken. Stipulating to a reasonable extension is permissive, and there is nothing in the preamble discussion concerning 49 CFR 386.5(f) limiting the ability of a party to seek an extension from the Assistant Administrator or require the request for a stipulation as an antecedent requirement before filing with the Assistant Administrator. Although parties are encouraged to agree upon reasonable extensions between themselves, the revised Rules of Practice do not prohibit a party from seeking an extension of time from the Assistant Administrator. If the parties are unable to reach an agreement concerning an extension, or if there is not sufficient time before a deadline in which to come to an agreement, the party needing the extension would have no other choice than to make the request of the Assistant Administrator.

As the June 10, 2008, Order stated, however, discovery should not be available at this point in the proceeding; a party should not be able to use a motion for an extension in order to initiate discovery. Accordingly, if a party does request an extension from the Assistant Administrator, the matter will be pending before the decisionmaker for that issue only. Because it will not be before the Assistant Administrator for any other purpose, and it may not come before the Assistant Administrator for a substantive decision, discovery will not be available, and the motion will not require the Assistant Administrator to approve a settlement. As the June 10<sup>th</sup> Order also stated, the revised Rules of Practice did not intend for the Assistant Administrator to approve a settlement in a matter that came before him or her solely on a motion for an extension of time.

*It Is So Ordered.*



Rose A. McMurray

Assistant Administrator

Federal Motor Carrier Safety Administration

12-19-08  
Date

**CERTIFICATE OF SERVICE**

This is to certify that on this 23 day of December, 2008, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Inderbir Singh, President Rapid Logistics LLC 195 Village Circle Sacramento, CA 95838	One Copy U.S. Mail
Nancy Jackson, Esq. Trial Attorney Office of Chief Counsel (MC-CCE) Federal Motor Carrier Safety Administration Golden Hills Office Centre 12600 West Colfax Avenue, Suite B-300 Lakewood, CO 80215	One Copy U.S. Mail
William Paden, Field Administrator Western Service Center Federal Motor Carrier Safety Administration Golden Hills Office Centre 12600 West Colfax Avenue, Suite B-300 Lakewood, CO 80215	One Copy U.S. Mail
Terry D. Wolf California Division Administrator Federal Motor Carrier Safety Administration 1325 J Street, Room 1540 Sacramento, CA 95814	One Copy U.S. Mail
U.S. Department of Transportation Docket Operations, M-30 West Building Ground Floor Room W12-140 1200 New Jersey Avenue, S.E. Washington, D.C. 20590	Original Personal Delivery

  
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