

BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

DEPT. OF TRANSPORTATION  
DOCKETS

2009 MAY 11 P 2:14

**In the Matter of:**

**D-J WARP, INC.,  
(U.S. DOT No. 715943)**

**Petitioner.**

**Docket No. FMCSA-2009-0070  
(Western Service Center)**

**ORDER ON PETITION FOR REVIEW OF SAFETY RATING**

**1. Background**

This matter comes before the Federal Motor Carrier Safety Administration (FMCSA) on a petition by D-J Warp, Inc. (Petitioner) for administrative review of a conditional safety rating pursuant to 49 CFR 385.15. The conditional rating was assigned following a compliance review (CR) of Petitioner completed February 12, 2009.

The procedures for assigning a safety rating at the conclusion of a CR are set out in Appendix B to part 385. Ratings are assigned for each of six factors, if applicable. The ratings for these individual factors then determine a carrier's overall safety rating according to a Safety Rating Table.<sup>1</sup> The ratings for factors one through five are assigned based on violations of acute regulations and patterns of noncompliance with critical regulations.<sup>2</sup> The rating for factor six, recordable accident rate, is determined by the number of recordable crashes per million vehicle miles traveled by the carrier. Petitioner received an unsatisfactory rating for false reports of records of duty status (RODS), which are critical violations of 49 CFR 395.8(e) within factor 3.

<sup>1</sup> Appendix B to 49 CFR part 385, section III A(b).

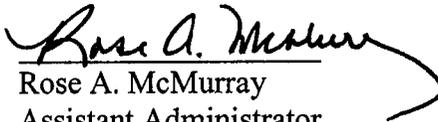
<sup>2</sup> These regulations are identified in Appendix B to 49 CFR part 385, section VII.

Petitioner alleged that the safety inspector took driver logs totaling 150 days, of which he found 20 to be verifiable. Of those 20, Petitioner contended that the inspector found only one false ROD. Petitioner averred that the inspector found three other false RODS based on the remaining 130 logs, which were not verifiable. Although Petitioner did not dispute the violations, it argued that the number of documents checked should be listed as 150, not 20, because three violations were pulled from the additional 130 logs that were reviewed. If 150 logs were to be used, the number of violations would be considerably less than the 10% threshold necessary to establish a pattern of noncompliance.<sup>3</sup>

## 2. Discussion

It is necessary to hear from the Field Administrator for the Western Service Center, FMCSA, before deciding this matter. Accordingly, within 30 days of the service date of this Order, the Field Administrator shall address all issues raised by Petitioner. Petitioner may respond within 30 days of the service date of the Field Administrator's submission.

*It Is So Ordered.*

  
Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

5-8-09  
Date

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<sup>3</sup> Petitioner also asked how a motor carrier can improve its safety rating if voluntary level-one inspections are not provided at the weigh scales.

**CERTIFICATE OF SERVICE**

This is to certify that on this 11 day of May, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Douglas Warp Jane Warp D-J Warp, Inc. 6280 2 <sup>nd</sup> Street, N.W. Havre, MT 59501	One Copy U.S. Mail
Nancy Jackson, Esq. Trial Attorney Office of Chief Counsel (MC-CCE) Federal Motor Carrier Safety Administration 12600 W. Colfax Ave., Suite B-300 Lakewood, CO 80215	One Copy U.S. Mail
William Paden Western Field Administrator Federal Motor Carrier Safety Administration 12600 W. Colfax Ave., Suite B-300 Lakewood, CO 80215	One Copy U.S. Mail
Bruce D. Holmes Montana Division Administrator Federal Motor Carrier Safety Administration 2880 Skyway Drive Helena, MT 59602	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

Jennie Miller