

# **EXHIBIT B**



**U.S. Department  
of Transportation**

**Federal Motor Carrier  
Safety Administration**

Mr. Ronald G. Dunn  
Gleason, Dunn, Walsh & O'Shea  
40 Beaver Street  
Albany, New York 12207

Dear Mr. Dunn:

Thank you for your June 9 letter (your file number 10-154) requesting an opinion from my office. I apologize for the delay in responding.

Your question is whether a mechanic who performs maintenance and repairs on “package vehicles” at a motor carrier terminal in New York State and also test drives these vehicles for short distances without leaving the State, is “transport[ing] property . . . in interstate commerce” within the meaning of the applicability statement in 49 CFR 390.3(a).

As you noted, Question 6 in the Agency’s guidance to 49 CFR 390.3, posted on our website, restates the standard jurisdictional formula:

- Interstate commerce is determined by the essential character of the movement, manifested by the shipper’s fixed and persistent intent at the time of the shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs [Federal Motor Carrier Safety Regulations].

Although intrastate trips by package carriers are often in interstate commerce because of the intent of the package shippers, your letter stated that “[t]he package vehicle test driven by the mechanic is never loaded with any package or freight.” In that case, the shipper is the mechanic and the shipment is the vehicle itself; the mechanic’s intent is simply to drive the empty truck on a short test loop to ensure that it works properly.

Based on the information provided in your letter, I conclude that a package vehicle carrying no cargo that is test driven by a mechanic for a few miles within the State of New York is operating

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**Chief Counsel**

**JUL 29 2011**

in intrastate, not interstate, commerce. Any material change in the facts presented, however, especially with regard to cargo, may require a different answer.

I hope this information is helpful.

Yours truly,

A handwritten signature in black ink, appearing to read 'Alais L. M. Griffin', with a long horizontal flourish extending to the right.

Alais L. M. Griffin