



US Department
Of Transportation
Federal Motor Carrier
Safety Administration

#2745

PENNSYLVANIA DIVISION

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March 27, 2009

Lt. Raymond Cook
Pennsylvania State Police
Bureau of Patrol
Commercial Vehicle Safety Section
1850 Arsenal Blvd.
Harrisburg, PA 17103-1213

Dear Lieutenant Cook:

This correspondence is in reference to the recently proposed rulemaking changes published in the February 21, 2009 Pennsylvania Bulletin. The proposed rulemaking changes found in this edition of the Bulletin are intended to address the current MCSAP incompatible regulatory findings.

Subsequent to this publication the Chief Counsel's Office for FMCSA conducted a legal review of the proposed rulemaking changes. Our Chief Counsel's Office determined there are two aspects of the proposed changes that are not in accordance with the requirements of 49 C.F.R. § 350.341 which specifies what variances from the FMCSRs are allowed for State laws and regulations for intrastate commerce.

The two aspects of the proposed changes deemed not to be in accordance with the requirements of 49 C.F.R. § 350.341 are:

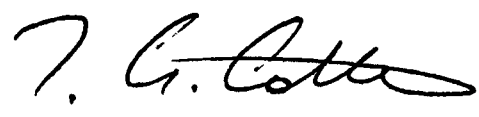
- 1) Pennsylvania proposes to modify 49 C.F.R. § 391.67 to change the referenced age from "18 years of age or older" to "16 years of age or older." This modification violates part (f) under 49 C.F.R. 391.341 which states that all CMV drivers must be at least 18. This regulation should be changed to "18 years of age or older."
- 2) Pennsylvania proposes to modify 49 C.F.R. § 385.1 by adding an exemption for farmers from the requirements of Part 385. This exemption violates 49 C.F.R. § 350.341(a)(1) because farmers may transport hazardous materials requiring a placard. Therefore, farmers would still be subject to Subpart E of Part 385 and this regulation should reflect this requirement.

Based on the proposed wording of these two findings Pennsylvania will not be in full compliance with 49 C.F.R. § 350.

I want to thank you again for the effort the Pennsylvania State Police and the Department of Transportation have put forth to address the regulatory incompatibilities.

If you have any questions, please let me know.

Sincerely,

Handwritten signature of Timothy A. Cotter in black ink.

Timothy A. Cotter
Division Administrator

cc: Captain Patrick - PSP