DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, 390, 391, and 392

[Docket No. FMCSA–2010–0096]

RIN 2126–AB29

Drivers of CMVs: Restricting the Use of Cellular Phones

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to restrict the use of hand-held mobile telephones, including hand-held cell phones, by drivers of commercial motor vehicles (CMVs) while operating in interstate commerce. The Agency proposes new driver disqualification sanctions for interstate drivers of CMVs who fail to comply with this Federal restriction and new driver disqualification sanctions for commercial driver's license (CDL) holders who have multiple convictions for violating a State or local law or ordinance on motor vehicle traffic control that restricts the use of hand-held mobile telephones. Additionally, interstate motor carriers would be prohibited from requiring or allowing drivers of CMVs to engage in the use of a hand-held mobile telephone while operating in interstate commerce. This rulemaking would improve safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of CMVs.

DATES: FMCSA will be accepting both initial comments and reply comments in response to this Notice of Proposed Rulemaking (NPRM). Send your initial comments on or before February 22, 2011 and reply comments on or before March 21, 2011. Initial comments may address any issue raised in the NPRM and the background documents in the docket (*e.g.,* regulatory evaluation, studies, environmental assessment, etc.). Initial comments will be made available promptly electronically, online on *http://www.regulations.gov,* or for public inspection in room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. In order to allow sufficient opportunity for interested parties to prepare and submit any reply comments, late-filed initial comments will not be considered. Reply comments must address only matters raised in initial comments and must not be used to present new arguments, contentions, or factual material that is not responsive to the initial comments.

ADDRESSES: You may submit comments and reply comments identified by docket number FMCSA–2010–0096 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact Mr. Brian Routhier, Transportation Specialist, Federal Motor Carrier Safety Administration, Vehicle and Roadside Operation Division, at 202–366–4325 or *FMCSA_MCPSV@dot.gov.*

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I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments, reply comments, and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

If you submit a comment or a reply comment, please include the docket number for this rulemaking (FMCSA–2010–0096), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment or reply comments online, go to *http://www.regulations.gov* and click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rules," insert "FMCSA–2010–0096" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments or reply comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and click on the "read comments" box in the upper right hand side of the screen. Then, in the "Keyword" box insert "FMCSA–2010–0096" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316).

II. Abbreviations

AAMVA	American Association of Motor Vehicle Administrators
ABA	American Bus Association
Advocates	Advocates for Highway and Auto Safety
ATA	American Trucking Associations, Inc.
APTA	American Public Transportation Association
CDL	Commercial Driver's License
CMV	Commercial Motor Vehicle
CTA	Chicago Transit Authority
DOT	United States Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
FCC	Federal Communications Commission
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FONSI	Finding of No Significant Impact
FR	**Federal Register**
FRA	Federal Railroad Administration
GCRTA	Greater Cleveland Regional Transit Authority
MBTA	Massachusetts Bay Transportation Authority
MCSAC	Motor Carrier Safety Advisory Committee
MCSAP	Motor Carrier Safety Assistance Program
NAICS	North American Industry Classification System
NCSL	National Conference of State Legislatures
NGA	National Governors Association
NPRM	Notice of Proposed Rulemaking
NSC	National Safety Council
NTSB	National Transportation Safety Board
OOIDA	Owner-Operator Independent Drivers Association
OMB	Office of Management and Budget
PAR	Population Attributable Risk
PDA	Personal Digital Assistant
TCA	Truckload Carriers Association
VTTI	Virginia Tech Transportation Institute

III. Background

A. Rationale for the Scope of the Proposed Rule

Driver distraction can be defined as the voluntary or involuntary diversion of attention from the primary driving tasks due to an object, event, or person. Researchers classify distraction into several categories: Visual (taking one's eyes off the road), manual (taking one's hands off the wheel), cognitive (thinking about something other than the road/driving), and auditory (listening to someone talking). Research shows that using a hand-held mobile telephone while driving may pose a higher safety risk than other activities (*e.g.* eating and writing on a pad) because it involves all four types of driver distraction. For example, reaching for and dialing a mobile telephone are both visual and manual distractions. Using a hand-held mobile telephone may reduce a driver's situational awareness, decision making, or performance; and it may result in a crash, near-crash, unintended lane departure by the driver, or other unsafe driving action. This rulemaking proposes to restrict the use of hand-held mobile telephones because our research indicates that they are a source of driver distraction that could pose a safety risk. Specifically it would prohibit a CMV driver from reaching for, holding, or dialing a mobile telephone in order to conduct a voice communication while driving. Essentially, the CMV driver must be ready to conduct a voice communication in compliance with the proposed rule the moment he begins driving the vehicle.

In an effort to understand and mitigate crashes associated with driver distraction, the U.S. Department of Transportation (DOT) conducted research concerning behavioral and vehicle safety countermeasures to driver distraction. Data from studies [1] indicate that both reaching for and dialing a mobile telephone increase the odds of involvement in a safety-critical event such as a crash, near crash, or unintended lane departure.[2] Both reaching for and dialing a hand-held mobile telephone are manual distractions (*i.e.,* hands-off wheel) and require substantial visual distraction (*i.e.,* eyes off forward roadway) to complete the task; therefore the driver may not be capable of safely operating the vehicle.

According to a VTTI study, the odds of being involved in a safety-critical event are three times greater when the driver is reaching for an object than when the driver is not reaching for an object. The odds of being involved in a safety-critical event are six times greater while the driver is dialing a cell phone than when the driver is not dialing a cell phone. These increases in risk are primarily attributable to the driver's eyes being off the forward roadway. Additionally, these activities have high population attributable risk (PAR) percentages (*i.e.,* an activity, which if not undertaken, would increase safety most).[3] The PAR percentage for reaching for an object was the highest in the study at 7.6 percent. Because of the physical, manual, and visual distractions and the data indicating a safety risk associated with the use of hand-held mobile telephones, FMCSA believes it is in the interest of public safety to propose, at a minimum, a restriction on hand-held mobile telephone use while driving a CMV.

Other governmental entities have made recommendations on mobile telephone use that go beyond our proposed rule. The National Transportation Safety Board (NTSB) determined that one probable cause of a November 2004 bus crash was the use of a hands-free cell phone. This crash was the impetus for an NTSB investigation (NTSB/HAR–06/04 PB2007–916201) and a subsequent recommendation to FMCSA that the Agency prohibit cell phone use by all passenger-carrying CMVs.[4] FMCSA also received recommendations on cell phone use from its Motor Carrier Safety Advisory Committee (MCSAC). One of MCSAC's recommendations for the National Agenda for Motor Carrier Safety was that FMCSA initiate a rulemaking to ban the use of hand-held and hands-free mobile telephones while driving.

However, it is not clear if simply talking on a mobile telephone presents a significant risk. For example, the same VTTI study that detailed the risks of reaching and dialing found that "talking

[1] Olson, R. L., Hanowski, R.J., Hickman, J.S., & Bocanegra, J. (2009) Driver distraction in commercial vehicle operations. (Document No. FMCSA–RRR–09–042) Washington, DC: Federal Motor Carrier Safety Administration, July 2009. Retrieved October 20, 2009, from *http://www.fmcsa.dot.gov/facts-research/art-public-reports.aspx?* Hickman, J., Hanowski, R. & Bocanegra, J. (2010). Distraction in Commercial Trucks and Buses: Assessing Prevalence and Risk in Conjunction with Crashes and Near-Crashes. Washington, DC: Federal Motor Carrier Safety Administration.

[2] In popular usage, mobile telephones are often referred to as "cell phones." As explained later in the NPRM, a variety of different technologies are licensed by the Federal Communications Commission (FCC) (47 CFR 20.3) to provide mobile telephone services; thus, the proposed rules here would apply to the range of technologies used to provide wireless telephone communications and the rule uses the broader term "mobile telephones." However, some of the materials discussed in this preamble use the popular term "cell phone," and the discussion continues that usage in such cases.

[3] *See* Section D. Studies of Mobile Telephone Use While Driving for a full discussion.

[4] National Transportation Safety Board (2006) *Motorcoach Collision with the Alexandria Avenue Bridge Overpass, George Washington Memorial Parkway, Alexandria, Virginia, November 14, 2004* (Highway Accident Report NTSB/HAR–06/04; NTIS report number PB2007–916201). Retrieved July 22, 2010, from: *http://www.ntsb.gov/Publictn/2006/HAR0604.pdf.*

or listening to a hands-free phone" and "talking or listening to a hand-held phone" were relatively low risk activities and had only brief periods of eyes off forward roadway. It is the action of taking one's eyes off the forward roadway to reach for and dial the mobile telephone that is highly risky. Therefore, our proposal does not go as far as the NTSB and MCSAC recommendations.

While some States have gone further than this proposed restriction on hand-held mobile telephones, no State has completely banned mobile telephone use. Nine States and the District of Columbia have traffic laws prohibiting all motor vehicle drivers from using a hand-held mobile telephone while driving. Some States have gone further for certain categories of drivers. Nineteen States and the District of Columbia prohibit the use of all mobile telephones while driving a school bus. Transit bus and motorcoach drivers are the focus of stricter mobile telephone rules in some States and local jurisdictions.[5] This NPRM, which proposes to restrict hand-held mobile telephone use by all CMV drivers, is in line with existing regulations that hold CMV drivers to higher standards.

This rulemaking would improve safety on the Nation's highways by reducing the prevalence of, or preventing, certain truck- and bus-related crashes, injuries, and fatalities associated with distracted driving. Our proposal would restrict hand-held mobile telephone use, but the Agency requests comment on whether we should implement in full the NTSB and MCSAC recommendations. The Agency requests public comment on the feasibility, operational impact, and safety benefits of prohibiting hands-free mobile telephone technology by drivers of CMVs as well. Because the Agency does not intend that this rulemaking preclude the use of innovative technologies that could be safely used by CMV drivers to facilitate mobile telephone use, the Agency will consider, through this rulemaking process, all information from interested parties, as it assesses the risks, feasibility, and safety of adopting an approach in the final rule. Public comment on these issues should also recognize our responsibility to ensure that CMV drivers are held to the highest degree of safety.

B. Legal Authority

The authority for this proposed rule derives from the Motor Carrier Safety Act of 1984 (1984 Act), 49 U.S.C. chapter 311, and the Commercial Motor Vehicle Safety Act of 1986 (1986 Act), 49 U.S.C. chapter 313. The 1984 Act (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984) provides authority to regulate the safety of operations of CMV drivers and motor carriers and vehicle equipment. It requires the Secretary of Transportation (Secretary) to "prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles." Although this authority is very broad, the 1984 Act also includes specific requirements in 49 U.S.C. 31136(a):

> At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

This proposed rule is based primarily on 49 U.S.C. 31136(a)(1), which requires regulations that ensure that CMVs are operated safely, and secondarily on section 31136(a)(2), to the extent that drivers' use of mobile telephones might impact their ability to operate CMVs safely. This NPRM does not address the physical condition of drivers (49 U.S.C. 31136(a)(3)), nor does it impact possible physical effects caused by driving CMVs (49 U.S.C. 31136(a)(4)).

The relevant provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR subtitle B, chapter III, subchapter B) apply to CMV drivers and employers operating a CMV included in the statutory authority of the 1984 Act. The 1984 Act defines a CMV as a self-propelled or towed vehicle used on the highways to transport persons or property in interstate commerce; and that either: (1) Has a gross vehicle weight/gross vehicle weight rating of 10,001 pounds or greater; (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; (3) is designed or used to transport more than 15 passengers, not for compensation; or (4) is transporting any quantity of hazardous materials requiring placards to be displayed on the vehicle (49 U.S.C. 31132(1)). All drivers operating CMVs are subject to the FMCSRs, except those who are employed by Federal, State, or local governments (49 U.S.C. 31132(2)). The proposed rule would also require employers to ensure their drivers comply with the restrictions on use of hand-held mobile telephones while driving CMVs.

In addition to the statutory exemption for government employees, there are several regulatory exemptions in the FMCSRs that are authorized under the 1984 Act, including, among others, one for school bus operations and one for CMVs designed or used to transport between 9 and 15 passengers (including the driver) not for direct compensation (49 CFR 390.3(f)(1) and (6)). The school bus operations exemption only applies to interstate transportation of school children and/or school personnel between home and school. This particular exemption is not based on any statutory provisions, but is instead a discretionary rule promulgated by the Agency. Therefore, FMCSA has authority to modify the exemption. Modification of the school bus operations exemption requires the Agency to find that such action "is necessary for public safety, considering all laws of the United States and States applicable to school buses" (former 49 U.S.C. 31136(e)(1)).[6] Likewise, FMCSA has authority to modify the non-statutory exemption for small, passenger-carrying vehicles not for direct compensation, but is not required to comply with former 49 U.S.C. 31136(e).[7] FMCSA is proposing to apply restrictions on hand-held mobile telephone use to both school bus operations by private operators in interstate commerce and small passenger-carrying vehicles not for direct compensation, although they would continue to be exempt from the rest of the FMCSRs. Other than transportation covered by statutory

[5] IIHS list of cellphone laws. *http://www.iihs.org/laws/cellphonelaws.aspx*

[6] Former section 31136(e)(1) was amended by section 4007(c) of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 107, 403 (June 9, 1998) (TEA–21). However, TEA–21 also provides that the amendments made by section 4007(c) "shall not apply to or otherwise affect a waiver, exemption, or pilot program in effect on the day before the date of enactment of [TEA–21] under * * * section 31136(e) of title 49, United States Code." (Section 4007(d), TEA–21, 112 Stat. 404 (set out as a note under 49 U.S.C. 31136).) The exemption for school bus operations in 49 CFR 390.3(f)(1) became effective on November 15, 1988, and was adopted pursuant to section 206(f) of the 1984 Act, later codified as section 31136(e) (*Federal Motor Carrier Safety Regulations; General,* 53 FR 18042–18043, 18053 (May 19, 1988) and section 1(e), Public Law 103–272, 108 Stat 1003 (July 5, 1994)). Therefore, any action by FMCSA affecting the school bus operations exemption would require the Agency to comply with former section 31136(e)(1).

[7] The exemption in 49 CFR 390.3(f)(6) was not adopted until 2003, after the enactment of TEA–21, in a final rule titled, "*Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used In Interstate Commerce*" *(68 FR 47860, August 12, 2003).*

exemptions, FMCSA has authority to restrict the use of mobile telephones by drivers operating CMVs.

For any violation, such a restriction may be subject to civil penalties imposed on drivers, in an amount up to $2,750, and on employers, in an amount up to $11,000 (49 U.S.C. 521(b)(2)(A), 49 CFR 386.81 and Appendix B, paragraphs (a)(3) and (4)). Disqualification of a CMV driver for violations of the Act and its regulations is also within the scope of the Agency's authority under the 1984 Act. Such disqualifications are specified by regulation for other violations (49 CFR 391.15), and were recently adopted by the Agency in its final rule prohibiting texting by CMV drivers while operating in interstate commerce (49 CFR 391.15(e); 75 FR 59118, September 27, 2010). In summary, both a restriction on the use of hand-held mobile telephones and associated sanctions, including civil penalties and disqualifications, are authorized by statute and regulation for operators of CMVs, as defined above, in interstate commerce, with limited exceptions. But before prescribing any regulations under the 1984 Act, FMCSA must consider their costs and benefits (49 U.S.C. 31136(c)(2)(A)).

The 1986 Act (Title XII of Pub. L. 99–570, 100 Stat. 3207–170, Oct. 27, 1986), which authorized creation of the CDL program, is the primary basis for licensing programs for certain large CMVs. There are several key distinctions between the authority conferred under the 1984 Act and that under the 1986 Act. First, the CMV for which a CDL is required is defined under the 1986 Act, in part, as a motor vehicle operating "in commerce," a term separately defined to cover broadly both interstate commerce and operations that "affect" interstate commerce (49 U.S.C. 31301(2) and (4)). Also under the 1986 Act, a CMV means a motor vehicle used in commerce to transport passengers or property that: (1) Has a gross vehicle weight/gross vehicle weight rating of 26,001 pounds or greater; (2) is designed to transport 16 or more passengers including the driver; or (3) is used to transport certain quantities of "hazardous materials," as defined in 49 CFR 383.5 (49 U.S.C. 31301(4)). In addition, a provision in the FMCSRs implementing the 1986 Act recognizes that all school bus drivers (whether government employees or not) and other government employees operating vehicles requiring a CDL (i.e., vehicles above 26,000 pounds, in most States, or designed to transport 16 or more passengers) are subject to the CDL standards set forth in 49 CFR 383.3(b).

There are several statutory and regulatory exceptions from the CDL requirements, which include the following individuals: Military service members who operate a CMV for military purposes (a mandatory exemption for the States to follow) (49 CFR 383.3(c)); farmers; firefighters; CMV drivers employed by a unit of local government for the purpose of snow/ice removal; and persons operating a CMV for emergency response activities (all of which are permissive exemptions for the States to implement at their discretion) (49 CFR 383.3(d)). States may also issue certain restricted CDLs to other categories of drivers under 49 CFR 383.3(e)-(g). Drivers with such restricted CDLs may still be covered by a disqualification under the 1986 Act arising from the use of hand-held mobile telephones while driving CMVs.

The 1986 Act does not expressly authorize the Agency to adopt regulations governing the safety of CMVs operated by drivers required to obtain a CDL. Most of these drivers (those involved in interstate trade, traffic, or transportation) are subject to safety regulations under the 1984 Act, as described above. The 1986 Act, however, does authorize disqualification of CDL drivers by the Secretary. It contains specific authority to disqualify CDL drivers for various types of offenses, whether those offenses occur in interstate or intrastate commerce. This authority exists even if drivers are operating a CMV illegally because they did not obtain a CDL.

In general, the 1986 Act explicitly identifies several "serious traffic violations" as grounds for disqualification (49 U.S.C. 31301(12) and 31310). In addition to the specifically enumerated "serious traffic violations," the 1986 Act provides related authority that allows FMCSA to designate additional serious traffic violations by rulemaking if the underlying offense is based on the CDL driver committing a violation of a "State or local law on motor vehicle traffic control" (49 U.S.C. 31301(12)(G)). The FMCSRs state, however, that unless and until a CDL driver is convicted of the requisite number of specified offenses within a certain time frame (described below), the required disqualification may not be applied (49 CFR 383.5 (defining "conviction" and "serious traffic violation") and 383.51(c)).

Under the statute, a driver who commits two serious traffic violations in a 3-year period while operating a CMV must be disqualified from operating a CMV that requires a CDL for at least 60 days (49 U.S.C. 31310(e)(1)). A driver who commits three or more serious traffic violations in a 3-year period while operating a CMV must be disqualified from operating a CMV that requires a CDL for at least 120 days (49 U.S.C. 31310(e)(2)). Because use of hand-held mobile telephones results in distracted driving and increases the risk of CMV crashes, fatalities, and injuries, FMCSA is now proposing that violations by a CDL driver of State or local law or ordinance on motor vehicle traffic control that restricts the use of such mobile telephones while driving CMVs should result in a disqualification under this provision.

FMCSA is authorized to carry out these statutory provisions by delegation from the Secretary as provided in 49 CFR 1.73(e) and (g).

C. Support for a Restriction on Mobile Telephones

There is an overwhelming amount of public support for reducing distracted driving, including hand-held mobile telephone use, while operating a CMV. It is likely that most motorists either have first-hand experience with or know someone who had a motor vehicle crash or near-crash event involving a distracted driver. There appears to be a steady increase in the use of electronic devices. Moreover, as outlined in the examples below, there is some evidence that CMV crashes and other incidents have been caused by the use of electronic devices.

FMCSA is aware of several recent CMV crashes in which the use of a mobile telephone may have contributed to the crash. In one case, according to media reports, a truck driver from Arkansas told police she was talking on her cell phone when she became involved in a crash that killed two boys on May 9, 2010. In another media report, on March 26, 2010, a tractor trailer crossed the median strip of Interstate 65 in central Kentucky and collided with a van transporting 9 adults, two children, and an infant. All the adults and the infant in the van and the truck driver were killed. The NTSB is conducting an investigation into the crash, including attempting to determine if a mobile telephone was a factor in the crash.[8] According to media reports, in February 2010, a Montgomery County, Pennsylvania, school bus driver was allegedly talking on his cell phone before a deadly crash.[9]

In light of these incidents and the potential for more crashes due to

[8] *http://www.ntsb.gov/Pressrel/2010/100514.html.*

[9] *Driver To Stand Trial In Fatal School Bus Crash.* (April 20, 2010) Philadephia, PA: KYW–TV. Retrieved from the CBS3 Web site, July 21, 2010, from: *http://cbs3.com/local/montgomery.county.school.2.1645628.html.*

distracted driving, FMCSA proposes restrictions on the use of hand-held mobile telephones. We are requesting comments on whether to propose a complete prohibition on mobile telephone use by drivers of CMVs. We have included in this NPRM information on research studies as well as the positions of safety organizations and industry on the use of mobile telephones by CMV drivers.

National Transportation Safety Board Recommendation

On November 14, 2004, a motorcoach crashed into a bridge overpass on the George Washington Memorial Parkway in Alexandria, Virginia. The National Transportation Safety Board (NTSB) determined that one probable cause of the crash was the use of a hands-free cell phone, resulting in cognitive distraction; therefore, the driver did not "see" the low bridge warning signs. This crash was the impetus for an NTSB investigation (NTSB/HAR–06/04 PB2007–916201) and a subsequent recommendation to FMCSA regarding cell phone use by passenger-carrying CMVs.[10] This rulemaking addresses part of this outstanding recommendation.

In a letter to NTSB, dated March 5, 2007, the Agency agreed to initiate a study to assess:

- The potential safety benefits of restricting cell phone use by drivers of passenger-carrying CMVs,
- The applicability of an NTSB recommendation to property-carrying CMV drivers,
- Whether adequate data existed to warrant a rulemaking, and
- The availability of statistically meaningful data regarding cell phone distraction. Subsequently, the report "Driver Distraction in Commercial Vehicle Operations" (VTTI Study (2009)) was published on October 1, 2009. This report is summarized in section D.

Also in 2004, the NTSB investigated a truck-tractor median crossover crash in Sherman, Texas, that resulted in a collision and fire. The NTSB's report cited one probable cause as the driver's attempted or imminent use of a wireless device as a distraction from his driving duties.

The Agency will post in the rulemaking docket any additional information it obtains about these investigations that might not be generally available to the public.

FMCSA's Motor Carrier Safety Advisory Committee's Recommendation

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144, 1748 (Aug. 10, 2005), required the Secretary to establish a Motor Carrier Safety Advisory Committee (MCSAC). The committee provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations and operates in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2).

In MCSAC's March 27, 2009, report to FMCSA titled "Developing a National Agenda for Motor Carrier Safety," MCSAC recommended that FMCSA adopt new Federal rules concerning distracted driving.[11] MCSAC reported, "Documented research shows that there are cognitive distractions and increases in crashes from cellular phone use and text messaging." Therefore, one of MCSAC's recommendations for the National Agenda for Motor Carrier Safety was that FMCSA initiate a rulemaking to ban the use of hand-held and hands-free mobile telephones while driving.

Motorcoach Safety Action Plan

In the November 2009 DOT Motorcoach Safety Action Plan, DOT identified seven priority action items that will have the greatest impact in reducing motorcoach crashes, injuries, and fatalities. One of these is a recommendation to initiate rulemaking to propose prohibiting texting and limiting the use of mobile telephones and other devices by motorcoach drivers.[12]

Distracted Driving Summit

The information and feedback DOT received during its Distracted Driving Summit, held September 30–October 1, 2009, in Washington, DC, demonstrated both the need and widespread support for a ban against texting and mobile telephone use while driving. Attendees included safety experts; researchers; elected officials, including four U.S. Senators and several State legislators; safety advocacy groups; senior law enforcement officials; and representatives of the telecommunications and transportation industries. Summit participants shared their expertise, experiences, and ideas for reducing distracted driving behaviors. They addressed the safety risk posed by this growing problem across all modes of surface transportation.

U.S. Transportation Secretary Ray LaHood stated: "Keeping Americans safe is without question the Federal government's highest priority—and that includes safety on the road, as well as on mass transit and rail." In addition, the Secretary pledged to work with Congress to ensure that the issue of distracted driving is appropriately addressed.[13] At the conclusion of the Summit, the Secretary announced a series of concrete actions that the Obama Administration and DOT are taking to address distracted driving, including immediately starting rulemakings that would ban texting and restrict, to the extent possible, the use of mobile telephones by truck and interstate bus operators, as well as to initiate rulemaking by the Federal Railroad Administration (FRA) to codify provisions of the FRA's Emergency Order No. 26 regarding restricting distracting electronic devices (see discussion below in Part E).

As a follow-up to the Summit, and based on data from studies on distracted driving, FMCSA initiated a number of actions to combat distracted driving by CMV drivers. Specifically, FMCSA issued Regulatory Guidance (75 FR 4305, January 27, 2010) that addressed texting by CMV drivers and issued a final rule (75 FR 59118, September 27, 2010) that prohibits texting by CMV drivers. Finally, DOT held a second Distracted Driving Summit on September 21, 2010,

Safety Advocacy Organizations

Numerous safety advocacy groups voiced support for a prohibition on mobile telephone use while driving. In January 2009, the National Safety Council (NSC) called for a nationwide prohibition on all cell phone use while driving.[14] The NSC is focused on

[10] National Transportation Safety Board (2006) *Motorcoach Collision with the Alexandria Avenue Bridge Overpass, George Washington Memorial Parkway, Alexandria, Virginia, November 14, 2004* (Highway Accident Report NTSB/HAR–06/04; NTIS report number PB2007–916201). Retrieved July 22, 2010, from: *http://www.ntsb.gov/Publictn/2006/HAR0604.pdf.*

[11] Parker, David R., Chair, Motor Carrier Safety Advisory Committee (March 27, 2009). Letter to Rose A. McMurray, Acting Deputy Administrator, FMCSA, on MCSAC National Agenda for Motor Vehicle Safety. Retrieved July 23, 2010, from: *http://mcsac.fmcsa.dot.gov/documents/MCSACTask09-01FinalReportandLetterto Administrator090428.pdf.*

[12] U.S. Department of Transportation (November 2009). *Motorcoach Safety Action Plan. (DOT HS 811 177). Retrieved July 23, 2010, from: http://www.fmcsa.dot.gov/documents/safety-security/MotorcoachSafetyActionPlan_finalreport-508.pdf.*

[13] U.S. Department of Transportation (October 1, 2009). *U.S. Transportation Secretary Ray LaHood Announces Administration-Wide Effort to Combat Distracted Driving* (DOT 156–09). Retrieved July 23, 2010, from: *http://www.dot.gov/affairs/2009/dot15609.htm.*

[14] National Safety Council, (n.d.). *Distracted Driving.* Retrieved July 21, 2010, from: *http://*

alerting the American public to the fact that different distractions have different levels of crash risk. Additionally, Advocates for Highway and Auto Safety (Advocates) applauded DOT's effort to consider banning texting and restricting cell phone use by operators of CMVs. Advocates recently filed a petition for rulemaking requesting consideration of such action on the use of a wide array of electronic devices used by commercial drivers.[15]

Transportation Industry Associations

Trucking Industry

The American Trucking Associations, Inc. (ATA) adopted a policy supporting the safe use of technologies and encourages drivers and/or motor carriers to consider a range of policies and safeguards intended to reduce, minimize, and/or eliminate driver distractions that may be caused by the increased use of electronic technologies. ATA's policy recommends that manufacturers and others adopt awareness, training, and safety policies on the use of such technologies—unless they are already regulated—while operating a motor vehicle. ATA believes that the use of hand-held electronic devices and the act of texting with such devices while a motor vehicle is in motion should be prohibited.[16] Another one of the initiatives on ATA's safety agenda is their policy on the use of non-integrated technologies while the vehicle is in motion.[17]

In fact, many ATA member fleets have already adopted company policies designed to reduce distractions while operating CMVs. Many of these fleets do not allow drivers to operate any electronic devices at all, including dispatching equipment, while the vehicle is moving. ATA conducted an opinion survey of its safety committees on the use of "non-integrated electronic devices." From the responses of these industry leaders, ATA found that 67 percent of respondents had a policy restricting or limiting the use of portable electronic devices while driving. United Parcel Service, Inc. has an existing policy of no distractions while behind the wheel (*e.g.,* two hands on the wheel and no two-way communication); and FedEx does not allow drivers to use any electronic device while operating FedEx vehicles.[18] Additionally, ExxonMobil and Shell are examples of large companies that prohibit employees' use of any type of cell phone while driving during work hours.[19] Because numerous large commercial trucking operations already have policies that prohibit the use of portable electronic devices while driving, a restriction on hand-held mobile telephone use is not expected to have a significant adverse impact on trucking fleets.

The Owner-Operators Independent Drivers Association (OOIDA) called upon government entities to aggressively pursue opportunities to educate the motoring public on safe driving practices and encourages law enforcement agencies to fully enforce existing laws pertaining to inattentive or negligent driving.[20] The Truckload Carriers Association (TCA) supports the safe use of technologies and encourages drivers and/or motor carriers to consider a range of policies and safeguards intended to reduce, minimize, and/or eliminate driver distractions caused by the increased use of electronic technologies (*e.g.,* global positioning systems, cellular phones, etc.) during the operation of all types of motor vehicles.[21]

Motorcoach Operators

A spokesman for the United Motorcoach Association, which represents tour bus operators, stated that motorcoach operators should not tolerate drivers using mobile telephones unless there is an emergency. The American Bus Association (ABA) supports safety initiatives, and the safety culture of ABA and its member operators support such bans. ABA's pre-trip passenger safety messaging video instructs passengers, not drivers, to dial 911 in case of emergency. Only in extreme emergencies should drivers ever use a cell phone while operating motorcoaches. Furthermore, ABA asserted that hands-free use of cell phones is no better than hand-held cell phone use, as cognitive distraction is the safety issue in question.[22] The ABA also drafted a model policy for members that states in part: "Cell phones and regulated electronic devices (REDs) are not to be used while the vehicle is in motion. Incoming calls or transmissions received on company-provided or authorized cell phones or REDs should go into voicemail and may be checked only when the bus is parked in a safe location."[23] Numerous large motorcoach and bus operations have already adopted policies that restrict the use of portable electronic devices while driving (many of them are more restrictive than the ABA model policy).

School Bus Operations

School bus operations are the focus of many States and local governments that have implemented distracted driving policies and laws; currently, 19 States and the District of Columbia[24] ban school bus drivers from using a mobile telephone while driving. Many cities, towns, and counties prohibit mobile telephone use or texting by school bus operators. The American School Bus Council, whose membership includes: National Association for Pupil Transportation, National Association of State Directors of Pupil Transportation Services, National School Transportation Association, Blue Bird Corporation, IC Corporation, and Thomas Built Buses, recommends prohibiting the use of cell phones or other portable electronic devices—even those equipped with hands-free features—while driving and banning the use of cell phones while supervising the loading and unloading of students.[25]

www.nsc.org/safety_road/Distracted_Driving/Pages/distracted_driving.aspx.

[15] Gillan, J.S. (October 1, 2009). *Safety Advocates Respond to U.S. DOT Secretary's Announcement on Measures to Reduce Distracted Driving by Commercial Operators.* Retrieved July 21, 2010, from the Advocates for Highway and Auto Safety Web site: *http://www.saferoads.org/files/file/Distracted%20Driving%20Statement%20by%20Judith%20Stone%20October%201,%202009.pdf.*

[16] American Trucking Associations (October 29, 2009). Addressing the Problem of Distracted Driving. Written testimony to the Subcommittee on Highways and Transit, U.S. House of Representatives' Transportation and Infrastructure Committee. Retrieved July 21, 2010, from: *http://www.truckline.com/Newsroom/Testimony1/Randy%20Mullett%20—%20Distracted%20Driving%20testimony.pdf.*

[17] Boyce, C. (June 9, 2009) *ATA Unveils Progressive New Highway Safety Agenda.* Retrieved July 21, 2010, from: *http://www.truckline.com/pages/article.aspx?id=541%2F%7b8E1C7279-ED27-4C03-B189-CEEEE26BBB12%7d*

[18] Halsey, A. (October 2, 2009). Obama to Federal Employees: Don't Text and Drive. *Washingtonpost.com.* Retrieved July 21, 2010, from: *http://www.washingtonpost.com/wp-dyn/content/article/2009/10/01/AR2009100103447_pf.html.*

[19] Insurance Information Institute (December 2009). *Cellphones and Driving.* Retrieved July 21, 2010, from: *http://www.iii.org/IU/Cellphone-and-driving/.*

[20] OOIDA (n.d.). *Distracted Driving.* Retrieved from the OOIDA Web site, July 22, 2010, from: *http://ooida.com/Issues&Actions/Issues/DistractedDriving/distracted-driving.htm.*

[21] Truckload Carriers Association (March 8, 2009). *Safe Use of Technology.* Retrieved July 21, 2010, from: *http://www.truckload.org/Safe-Use-of-Technology.*

[22] Pantuso, P. (October 6, 2009). *Government Seeks Tougher Laws on Distracted Driving.* Retrieved July 21, 2010, from the American Bus Association Web site: *http://www.buses.org/files/MemberAlertTextingCellPhones100509[1].pdf.*

[23] ABA Strategic Safety Committee (2010). *Recommended Model Company Policy: Cell Phones and Electronic Devices (REDs).* Available in the docket for this rulemaking.

[24] Vermette, E. (2010). *Curbing Distracted Driving 2010 Survey of State Safety Programs.* Retrieved July 21, 2010, from: *http://www.distraction.gov/files/research/GHSA-2010_distraction.pdf.*

[25] American School Bus Council (February 14, 2007). *American School Bus Council Exceeds NTSB's Recommendation on Cell Phone Use by School Bus Drivers.* Retrieved July 23, 2010, from:

Continued

American Public Transportation Association (APTA)

On December 31, 2009, the APTA Bus Safety Working Group published a Recommended Practice regarding employee-controlled distractions while operating a vehicle on agency time. The intent of the voluntary standard is to provide transit agencies with a guideline to develop policies and standard operating procedures regarding operator controlled distractions.[26]

FMCSA solicits comments about companies' or organizations' policies on drivers' use of mobile telephones and other portable electronic devices while driving CMVs on our Nation's highways.

D. Studies of Mobile Telephone Use While Driving

There are a number of studies from both government and private sources related to distracted driving. However, there are few studies of distracted driving that focus on the CMV driver. The following peer-reviewed studies were considered while developing this NPRM. These studies use different methodologies to analyze driver distraction. There are advantages and disadvantages to each methodology as follows:

- *Simulator studies,* and to some extent test-track studies, allow for experimental control over and measurement of the cognitive distractions, such as the type of phone conversation. These studies may have unrealistic driving and cell phone use conditions because they are not conducted on public roadways and therefore lack many of the risks associated with real world driving;
- *Naturalistic driving studies* use cameras and instrumentation in participants' vehicles to provide a clear picture of driver distraction under real-world driving conditions. However, these studies may have a small sample size of some of the individual distractions.

Overall, it is important to keep these differences in mind while comparing the results from different research methods. Regardless, these studies illustrate degradations in driver performance due to the effects of driver distraction.

Driver Distraction in Commercial Vehicle Operations [27]

Under contract with FMCSA, the Virginia Tech Transportation Institute (VTTI) completed the study titled, "Driver Distraction in Commercial Vehicle Operations," and released the final report on October 1, 2009. The purpose of the VTTI Study (2009) was to investigate the prevalence of driver distraction in CMV safety-critical events recorded in a naturalistic data set that included over 200 truck drivers and data from 3 million miles of operations. Of the 4,452 safety-critical events noted in the combined data, 60 percent had some type of non-driving related task listed as a potential contributing factor. Safety-critical events are crashes, near-crashes, crash-relevant conflicts, and unintentional lane deviations.

http://www.americanschoolbuscouncil.org/uploads/pdf/Guidelines_Release.pdf.

[26] APTA Bus Safety Working Group (December 31, 2009). *Reducing Driver-Controlled Distractions While Operating a Vehicle on Agency Time.* Retrieved from the American Public Transportation Association Web site, July 23, 2010, from: *http://www.aptastandards.com/Portals/0/Bus_Published/APTA-BTS-BS-RP-005-09_employee_controlled_distractions.pdf.*

[27] Olson, R.L., Hanowski, R.J., Hickman, J.S., & Bocanegra, J. (2009). *Driver Distraction in Commercial Vehicle Operations.* (Document No. FMCSA–RRR–09–042) Washington, DC: FMCSA, July 2009. Retrieved July 26, 2010, from: *http://www.fmcsa.dot.gov/facts-research/research-technology/report/FMCSA-RRR-09-042.pdf.*

Table 1

Odds Ratio, Population Attributable Risk Percentage, and Eyes Off Forward Roadway by Selected Task

Task	Odds Ratio	Population Attributable Risk Percentage*	Eyes Off Forward Roadway**
Complex Non-Driving Related Task			
Text message on cell phone	23.2	0.7	4.6
Other – Complex (e.g., clean side mirror)	10.1	0.2	4.4
Interact with/look at dispatching device	9.9	3.1	4.1
Write on pad, notebook, etc.	9.0	0.6	4.2
Use calculator	8.2	0.2	4.4
Look at map	7.0	1.1	3.9
Dial cell phone	5.9	2.5	3.8
Read book, newspaper, paperwork, etc.	4.0	1.7	4.3
Moderate Non-Driving Related Task			
Use/reach for other electronic device	6.7	0.2	4.1
Other – Moderate (e.g., open medicine bottle)	5.9	0.3	3.3
Personal grooming	4.5	0.2	3.7
Reach for object in vehicle	3.1	7.6	2.9
Look back in sleeper berth	2.3	0.2	3.4
Talk or listen to hand-held phone	1.0	0.2	1.3
Eating	1.0	0	2.4
Talk or listen to CB radio	0.6	*	1.3
Talk or listen to hands-free phone	0.4	*	1.6

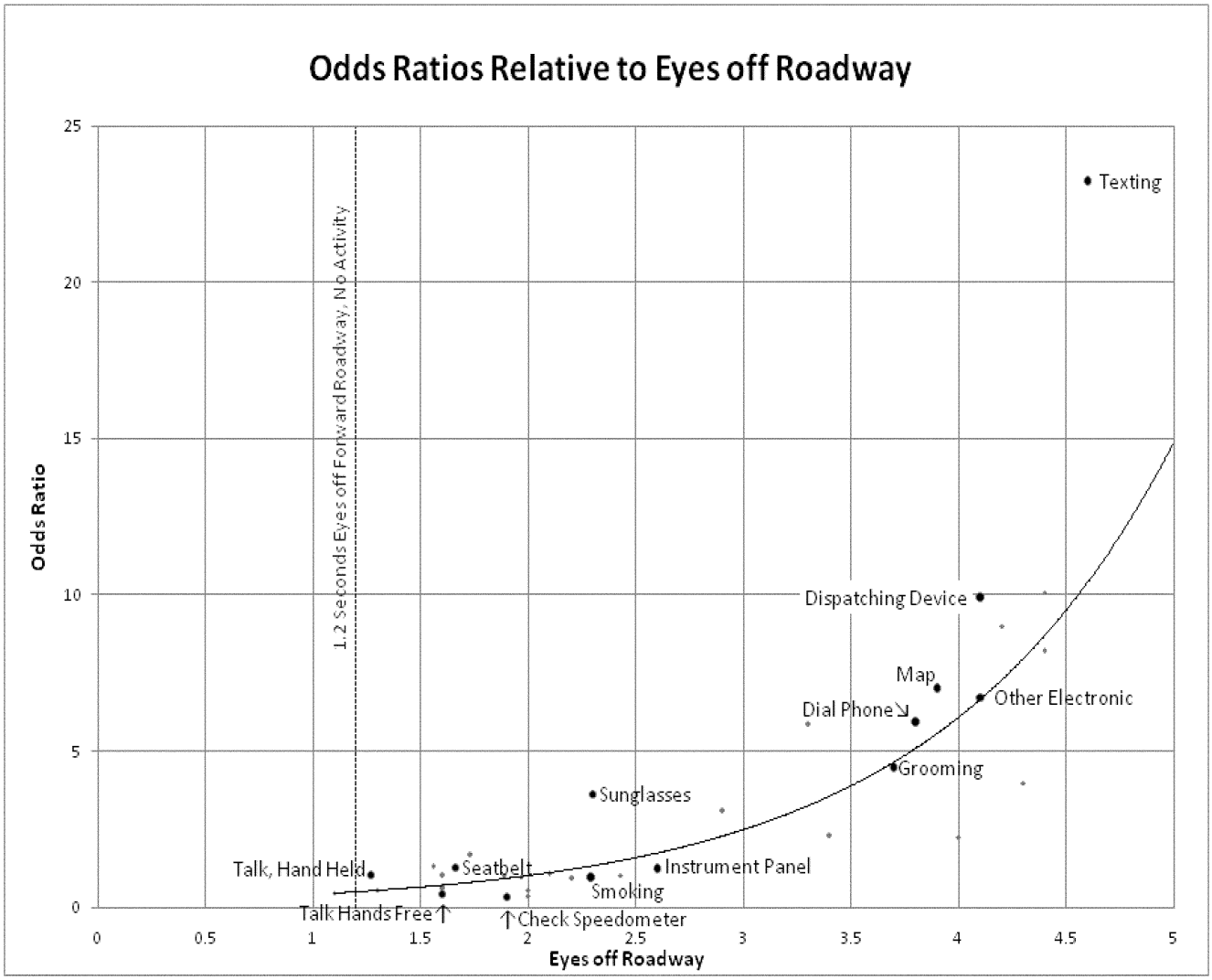
* Calculated for tasks where the odds ratio is greater than one.
** Number of seconds out of a 6 second interval.

The VTTI Study (2009) separately examined the different sub-tasks associated with cell phone use. Although talking on the cell phone did not show an increased risk, as seen in Table 1, a driver must take several risk-increasing steps in order to use the electronic device for conversation. In particular, as also shown in Table 1, the use of a cell phone involves a variety of sub-tasks, including reaching for and holding the phone, performing the visually complex process of manually dialing the phone, and then carrying out the conversation. In FMCSA's view, the risk associated with cell phone use should be viewed as a series of related sub-tasks, not all having equal risk. The odds of being involved in a safety-critical event are three times greater while the driver is reaching for an object than when the driver is not reaching for an object. The odds of being involved in a safety- critical event are six times greater while the driver is dialing a cell phone than when the driver is not dialing a cell phone. But, according to the VTTI study, the odds of being involved in a safety critical event while talking or listening to a hand-held or hands-free phone do not show an increased risk.

In addition, the population attributable risk (PAR) incorporates the frequency of engaging in a non-driving related task by the population of drivers. If a task is done more frequently by a large population of drivers, it will have a greater PAR percentage. High PAR percentages occurred for commonly performed tasks (*i.e.,* a task, which if removed, would increase safety most). The PAR percentage for reaching for an object was the highest in the study at 7.6 percent. In other words, there would be 7.6 percent fewer safety- critical events, if reaching for an object while driving never occurred. The risk of being involved in a safety-critical event was greater for other distracting activities, but the prevalence of the distractions was greatest for reaching for an object. In contrast, the PAR for talking on a hand-held phone was relatively low, at 0.2 percent, and the PAR was not calculated for talking on a hands-free cell phone.

FMCSA constructed a diagram that shows the relationship between the odds ratios of various activities conducted while driving and their associated eyes-off-roadway times. As seen in Diagram 1 (constructed from data in the VTTI study), those tasks that drew the driver's eyes away from the forward road led to a significant increase in risk. For example, texting, dialing, using other electronic devices, reading a map or grooming stand out as risky tasks.

Diagram 1- Odds Ratios Relative to Eyes off Roadway



Source: FMCSA-constructed. Based on VTTI Study (2009).

During the 3.8 seconds the driver has his eyes off the forward roadway while dialing his mobile telephone, at 55 miles per hour, the CMV travels about the length of a football field, 306 feet.

A complete copy of the final report for the VTTI Study (2009) is included in the docket referenced in the beginning of this rulemaking notice.

Distraction in Commercial Trucks and Buses: Assessing Prevalence and Risk in Conjunction With Crashes and Near-Crashes[28]

The purpose of this research was to conduct an analysis of naturalistic data collected by DriveCam®. The introduction of naturalistic driving studies that record drivers (through video and kinematic[29] vehicle sensors) in actual driving situations created a scientific method to study driver behavior under the daily pressures of real-world driving conditions.

The research documented the prevalence of distractions while driving a CMV, including both trucks and buses, using an existing naturalistic data set. This data set came from 183 truck and bus fleets comprising a total of 13,306 vehicles captured during a 90-day period. There were 8,509 buses and 4,797 trucks. The data sets in the current study did not include continuous data; they only included recorded events that met or exceeded a kinematic threshold (a minimum g-force setting that triggers the event recorder). These recorded events included safety-critical events (*e.g.,* hard braking in response to another vehicle) and baseline events (*i.e.,* an event that was not related to a safety-critical event, such as a vehicle that traveled over train tracks and exceeded the kinematic threshold). A total of 1,085 crashes, 8,375 near-crashes, 30,661 crash-relevant conflicts, and 211,171 baselines were captured in the data set.

Odds ratios were calculated to show a measure of association between involvement in a safety-critical event, which includes crashes, and performing a non-driving related task. The odds ratios show the odds of being involved in a safety critical event when a non-driving related task is present compared

[28] Hickman, J., Hanowski, R., & Bocanegra, J. (2010). *Distraction in Commercial Trucks and Buses: Assessing Prevalence and Risk in Conjunction with Crashes and Near-Crashes.* Washington, DC: FMCSA.

[29] Kinematics is a branch of physics that deals with the motion of a body or system without reference to force and mass.

to when there is no non-driving related task. The non-driving related task, "any cell phone usage," includes all the specific cell phone sub-tasks, such as reaching for, dialing, talking or listening to a hand-held or hands-free cell phone.

Drivers increased their odds of involvement in a safety-critical event by 1.14 times for "any cell phone usage" while driving. However, when the cell phone task was disaggregated into sub-tasks, the study results show that the sub-tasks involved with using a cell phone have different risks, some increasing and some decreasing the odds of involvement in a safety-critical event. The odds of involvement in a safety critical event increased significantly when truck and bus drivers performed certain non-driving related tasks:

- Reaching for a cell phone while driving increased the odds by 3.7 times;
- Dialing a cell phone while driving increased the odds by 3.5 times;
- Reaching for a headset/earpiece increased the odds by 3.4 times.

Drivers decreased the odds of being involved in a safety-critical event by .65 times while talking or listening on a hands-free cell phone. However, the odds ratio for talking/listening should not ignore the fact that a person usually has to reach for and dial a cell phone in order to talk or listen. Both consuming food/drink and talking/listening on a hand-held cell phone (odds ratios = 1.11 and 0.89, respectively) had non-significant odds ratios (*i.e.,* no increase or decrease in risk).

The Impact of Cognitive Distraction on Driver Visual Behavior and Vehicle Control

While conclusive evidence is still lacking, several studies focused on cognitive distraction and its influence on driver performance. Harbluk, Noy, and Eizenman (2002) examined the impact of cognitive distraction on drivers' visual behavior and vehicle control.[30] This instrumented-vehicle study examined changes in drivers' visual scanning driving patterns under three tasks varying in cognitive complexity: no distraction, an easy cognitive task (*i.e.,* simple addition), and a difficult cognitive task (*i.e.,* difficult addition). As predicted, drivers had significantly increased hard-braking events under distracted driving conditions. Interestingly, under distracted driving conditions, drivers made fewer eye movements, spent more time focusing on the central visual field, and spent less time scanning the right periphery. This suggests that visual scanning collapses to a minimal level under distracted driving conditions, increasing the risk that a driver will miss a critical event.

A Decrease in Brain Activation Associated With Driving When Listening to Someone Speak

Just, Keller, and Cynkar (2008) used functional magnetic resonance imaging (MRI) to investigate the impact of concurrent auditory language comprehension on the brain activity associated with a simulated driving task.[31] Participants steered a vehicle along a curving virtual road, either undisturbed or while listening to spoken sentences that they judged as true or false. The study was designed to assess the neural effect of listening while driving, similar to listening to a cell phone while driving. The central findings were that the sentence listening task reliably degraded driving performance. The behavioral measures indicated reliably more road-maintenance errors and larger deviation from an ideal path in the driving with listening condition. The findings show that language comprehension performed concurrently with driving draws mental resources away from the driving and produces deterioration in driving performance, even when it is not accompanied by holding or dialing a phone.

The Distraction Effects of Phone Use During a Crucial Driving Maneuver

A study by Hancock, Lesch, and Simmons (2003)[32] examined the effect of drivers on a test track responding to an in-vehicle phone at the same time they were faced with making a crucial stopping decision. The most crucial finding was the variation in stopping accuracy in the presence of the phone distraction task, from 95 percent accuracy without distraction to 80 percent with distraction, a significant 15 percentage point reduction. The study shows there is a detrimental impact of a coincident in-vehicle phone task on a critical driving maneuver.

Passenger and Cell Phone Conversations in Simulated Driving

Drews, Pasupathi, and Strayer (2008) examined in a simulator study how conversing with passengers in a vehicle differs from conversing on a cell phone while driving.[33] The results show that the number of driving errors was highest when the driver was conversing on a cell phone while driving. Passenger conversations made more references to traffic. In addition, drivers' speech production rate (measured in syllables per second) and the drivers' and passengers' speech complexity rate (measured in syllables per word of speech) dropped in response to an increase in the demand of the traffic. Overall, the study found that cell phone use negatively impacts lane keeping, increases the following distance, and leads to impairment of a navigation task, while passenger conversations have little effect on all of the three measures.

Request for Additional Research or Data

Overall, these studies illustrate degradations in driver performance due to the effects of driver distraction. The studies do not necessarily break down the individual components of mobile telephone use like the VTTI study does. However, they suggest certain risks when using a mobile telephone. Commenters are encouraged to provide other research or data that would enable the Agency to better assess the risk associated with mobile telephone use by CMV drivers while operating their vehicles.

E. Existing Mobile Telephone Bans by Federal, State, and Local Governments

Federal

On October 7, 2008, FRA published Emergency Order 26 (73 FR 58702). Pursuant to FRA's authority under 49 U.S.C. 20102 and 20103, the order, which took effect on October 27, 2008, restricts railroad operating employees from using distracting electronic and electrical devices while on duty. Among other things, the order prohibits both the use of mobile telephones and texting by railroad operating employees. FRA cited numerous examples of the adverse impact that electronic devices can have

[30] Harbluk, J. L., Noy, Y. I., & Eizenman, M. (2002). *The Impact of Cognitive Distraction on Driver Visual Behavior and Vehicle Control* (Report No. TP 13889E). Ottawa: Transport Canada. Retrieved July 26, 2010, from: *http://people.usd.edu/~schieber/materials/trans-canada-13889.pdf.*

[31] Just, M.A., Keller, T.A., & Cynkar, J. (2008). A Decrease in Brain Activation Associated With Driving When Listening to Someone Speak. *Brain Research*. Retrieved July 26, 2010, from: *http://www.distraction.gov/files/research/carnegie-mellon.pdf.*

[32] Hancock, P. A., Lesch, M., & Simmons, L. (2003). The Distraction Effects of Phone Use During a Crucial Driving Maneuver. *Accident Analysis and Prevention,* 35(4), 501–514. Retrieved July 26, 2010, from: *http://www.sciencedirect.com/science?_ob=MImg&_imagekey=B6V5S–45SH77V-1-20&_cdi=5794&_user=3928936&_pii=S0001457502000283&_orig=search&_coverDate=07%2F31%2F2003&_sk=999649995&view=c&wchp=dGLzVtb-zSkWb&md5=b40e15505a9c7b04bd3c6aa3c42a5777&ie=/sdarticle.pdf.*

[33] Drews, F.A., Pasupathi, M., & Strayer, D.L. (2008). Passenger and Cell Phone Conversations in Simulated Driving. *Journal of Experimental Psychology: Applied,* 14(4). Retrieved July 26, 2010, from: *http://www.psych.utah.edu/lab/appliedcognition/publications/passenger.pdf.*

on safe operations. These examples included fatal crashes that involved operators who were distracted while texting or talking on a mobile telephone. In light of these incidents, FRA proposed to amend its railroad communications regulations by restricting use of mobile telephones and other distracting electronic devices by railroad operating employees. FRA published its final rule in the **Federal Register** on September 27, 2010 (75 FR 59580).

On September 27, 2010, FMCSA also published a final rule (75 FR 59118) that prohibits texting on electronic devices, including mobile telephones, while driving a CMV. This rulemaking action addressed one of the riskiest distracted driving behaviors. Furthermore, on September 27, 2010, the Pipeline and Hazardous Materials Safety Administration published a notice of proposed rulemaking (75 FR 59197) that addressed distracted activities by drivers under its authority.

States

Nine States and the District of Columbia have traffic laws prohibiting all motor vehicle drivers from using a hand-held mobile telephone while driving. School bus drivers are currently prohibited from any mobile telephone use in 19 States and the District of Columbia. A list of these States can be found at the following Web site: *http://www.iihs.org/laws/cellphonelaws.aspx.* Generally, the State traffic laws are applicable to all drivers operating motor vehicles within those jurisdictions, including CMV operators. Some States are already tracking enforcement. For example, since March of 2008, when New Jersey's wireless hand-held telephone and electronic communication device ban became effective, more than 224,000 citations—an average of almost 10,000 a month—were issued to motorists violating this cell phone law.

Additionally, as part of its continuing effort to combat distracted driving, DOT kicked off pilot programs in Hartford, Connecticut, and Syracuse, New York, to test whether increased law enforcement efforts can get distracted drivers to put down their mobile telephones and focus on the road. During 1 week of the pilot program in Hartford, police cited more than 2,000 drivers for talking on mobile telephones and 200 more for texting while driving.

Public Transportation Agencies

The severity of the problem of distracted driving led public transportation agencies to ban the use of mobile telephones/electronic devices while an operator is driving a vehicle in passenger service. In the period from May 2008 to May 2009, after the Massachusetts Bay Transportation Authority (MBTA) issued its cell phone ban, 12 bus drivers employed by the MBTA were suspended and one bus driver was fired for using a cell phone while on duty.

Most transit agencies allow operators to carry cell phones or other electronic devices in backpacks, purses, or bags, and to use them outside the vehicle during breaks and layovers and during emergencies. However, many large transit agencies prohibit operators from carrying cell phones or other electronic devices in the cab. Examples of policies at public transportation agencies include the following:

- *MBTA.* The MBTA banned cell phone use by drivers while on the job, with penalties escalating from a 3-day suspension after one offense, to a 10-day suspension after two, and dismissal for the third offense. Engineers on commuter-rail trains operated by a private contractor are also prohibited from having a cell phone or other device on their person.[34]
- *Chicago Transit Authority (CTA).* The CTA's zero tolerance policy prohibits employee use of electronic devices while operating buses and trains. This policy prohibits the use of cell phones, smart phones, personal digital assistants (PDAs), MP3/music players, wireless headsets, or any other appliance or device. Having possession of an electronic device results in probation and a 3-day suspension. Use of the device while on duty may lead to discharge.[35]
- *Greater Cleveland Regional Transit Authority (GCRTA).* All employees are prohibited from having a cell phone on their person while operating a bus or train at the GCRTA. The prohibition includes: Cell phones; smart phones; PDAs, electronic music devices; wireless headsets; or any other electronic communication or listening devices. While on duty, operators must keep cell phones and other devices separate from their person. They may be stored on-board in personal bags or purses. Cell phones may only be used when the operator is on layover, the vehicle is stopped, the parking brake is set, and he/she has left the driver's seat. Employees will be terminated for a first offense.[36]

[34] Massachusetts Bay Transportation Authority (June 7, 2009). Cell Phone Ban Expanded. Retrieved July 26, 2010, from the MBTA Web site: *http://www.mbta.com/about_the_mbta/news_events/?id=17461&month=&year=.*

[35] Chicago Transit Authority (August 5, 2009). CTA Adopts Zero Tolerance Policy on Employee Use of Electronic Devices While On-Duty. Retrieved July 26, 2010, from the CTA Web site: *http://www.transitchicago.com/news/default.aspx?Archive=y&ArticleId=2427.*

[36] Greater Cleveland Regional Transit Authority (September 18, 2009) RTA Strengthens Cell Phone Policy. Retrieved July 26, 2010, from the GCRTA Web site: *http://www.riderta.com/nu_newsroom_releases.asp?listingid=1345.*

While FMCSA is aware that many organizations have policies on mobile telephone use, FMCSA solicits further comments on mobile telephone use policy and enforcement and on the applicability of State laws and local ordinances to school bus drivers and transit employees.

IV. Discussion of Proposed Rule

Federal Restriction of Mobile Telephone Use by Interstate CMV Drivers

In light of the available studies, and to partially address the NTSB and MCSAC recommendations, the Agency proposes a restriction on the use of hand-held mobile telephones by CMV drivers operating in interstate commerce. This rulemaking would prohibit a CMV driver from reaching for, holding, and dialing a mobile telephone in order to conduct a voice communication while driving. Essentially, the CMV driver must be ready to conduct a voice communication in compliance with the proposed rule the moment he begins driving the vehicle. The proposed rule would include definitions related to the restriction. It also would add a driver disqualification provision for interstate CMV drivers. A driver disqualification provision would also be included for CDL holders convicted of two or more violations of State or local traffic laws or ordinances on motor vehicle traffic control concerning hand-held mobile telephone use.

This NPRM would amend regulations in 49 CFR parts 383 and 384 concerning the Agency's CDL regulations, part 390 concerning general applicability of the FMCSRs, part 391 concerning driver qualifications and disqualifications, and part 392 concerning driving rules. In general, the proposed requirements are intended to reduce the risks of distracted driving by restricting hand-held mobile telephone use by a driver who is operating a CMV in interstate commerce.

For CMV drivers operating in interstate commerce, the proposed rule would: (1) Restrict the use of hand-held mobile telephones; and (2) provide sanctions for those drivers convicted of using a hand-held mobile telephone while operating a CMV in interstate commerce, including civil penalties and/or disqualification from driving a CMV for a specified period of time. In addition, the proposed rule would provide sanctions for CDL holders convicted of violating a State or local law or ordinance on motor vehicle traffic control restricting the use of a hand-held mobile telephone while operating any CMV— specifically, a

disqualification for a specified period of time from operating any CMV requiring a CDL.

The proposed rule would also require interstate motor carriers to ensure compliance by their drivers with the restrictions on use of a hand-held mobile telephone while driving a CMV. Motor carriers would be prohibited from requiring or allowing drivers of CMVs to use a hand-held mobile telephone while operating in interstate commerce.

As indicated above, FMCSA proposes that any CDL holder operating a CMV (as defined in § 383.5) who is convicted of violating a State or local traffic law or ordinance on motor vehicle traffic control restricting or prohibiting hand-held mobile telephone use while driving a CMV would be disqualified for 60 days after a second conviction and 120 days after a third or subsequent conviction within a 3-year period.[37] State or local laws or ordinances restricting or prohibiting hand-held mobile telephone use would be added to the list of "serious" traffic offenses under § 383.51(c). The disqualifying serious traffic offense would be applicable to all persons who are required to possess a CDL, in accordance with the requirements of 49 CFR part 383, and who are subject to a State or local law or ordinance restricting or prohibiting hand-held mobile telephone use while driving. Therefore, the amendment to the CDL rules would be applicable to CMV drivers employed by Federal, State, or local government agencies, transit authorities, and school districts.

Other Technologies

It is not FMCSA's intention to limit current or future innovative technologies that could allow safe and effective, completely hands-free, voice communication. Because of the lack of information about the availability of completely hands-free technology for CMV drivers' work environment, FMCSA is unable to analyze their safety and economic or environmental impacts. The Agency is proposing to allow hands-free mobile telephone use as long as it does not require the driver to reach for, dial, or hold a mobile telephone, taking the driver's eyes off the forward roadway and a hand off the wheel. We request comments on this rationale as well as whether true hands-free mobile telephones exist for use in the CMV operating environment, whether they are safe to use while driving a CMV, or whether they should be banned as well. The Agency is also interested in receiving public comments and acquiring further knowledge about innovative technologies, either those that exist today or that are under development, including the practicability of their application and use in CMVs and their safety and economic or environmental impact. FMCSA notes that the use of Citizens Band (CB) radios is not restricted in this proposed rule. CB radios are not included in this proposed rule because they do not fall under the definition of "commercial mobile radio services" as defined by the FCC. The NPRM should not be construed as a proposal to restrict the use of mobile telephones by drivers when they are not driving.

With significant national awareness now focused on the issue of distracted driving, the Agency hopes that important safety gains can be achieved as a result of this increased attention on the use of mobile telephones by drivers operating CMVs. Although fleet management systems and electronic dispatching tools are used by many of the Nation's largest CMV fleets, the Agency believes safety-conscious fleet managers would neither allow nor require their drivers operating CMVs to use these devices or hand-held mobile telephones while driving.

Applicability to Federal, State, or Local Government Employees

FMCSA's proposed explicit restriction on using a hand-held mobile telephone while driving a CMV would apply to CMV drivers covered under 49 CFR Part 392, but the requirements of Part 392 would not be applicable to Federal, State, or local government-employed drivers of CMVs in interstate commerce. Those drivers are statutorily exempt from nearly all of FMCSA's safety regulations. However, the Agency proposes to make amendments to its disqualifying offenses for such CDL drivers if they are convicted, while driving a CMV, of violating a State or local law or ordinance on motor vehicle traffic control that restricts or prohibits the use of hand-held mobile telephones while driving. The Agency's amendments to the CDL regulations would be applicable to Federal, State, or local government-employed drivers of CMVs who are required to possess a CDL.

The proposed rule would also be applicable to transit employees employed by Federal, State, and local governments who are required to possess a CDL.

Section-by-Section Analysis

Section 390.3 [38]

The Agency proposes to modify several discretionary regulatory exemptions concerning the applicability of the existing FMCSRs, including one for school bus operations and one for CMVs designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation (49 CFR 390.3(f)(1) and (6)). The Agency finds that this action is necessary for public safety regarding school bus transportation by interstate motor carriers, a finding required by the applicable statutory provisions, as explained above in the legal authority section. In addition, the Agency determined that in order to enhance public safety to the greatest extent possible, the rule should apply to the operation by drivers of small-passenger carrying vehicles (designed to transport 9–15 passengers) who are not receiving direct compensation, which are otherwise exempt from most of the FMCSRs under 49 CFR 390.3(f)(6).

Section 390.5

The Agency proposes to amend 49 CFR 390.5 by adding new definitions for the terms "mobile telephone" and "using a hand-held mobile telephone," for general application. A broad definition of the term mobile telephone is proposed because of the wide variety of radio telephone services, in addition to cell phone services, that are licensed by the Federal Communications Commission (FCC) and might be available for use in a CMV. "Mobile telephone" could include, for example, a satellite telephone service, a broadband radio service, or a personal communications system. Using such wireless communication services is just as distracting to a CMV driver as using a cell phone. The FCC classifies these services as "commercial mobile radio services," which are incorporated into the definition of mobile telephone. It does not include two-way or Citizens Band radio.

In this rulemaking, FMCSA proposes to define "using a hand-held mobile telephone" to clarify that certain uses of a hand-held mobile telephone are restricted, including reaching for,

[37] Although the statute (in 49 U.S.C. 31310(e)) authorizes disqualifications of "at least" 60 or 120 days, the proposed rule follows the existing structure in the FMCSRs and provides for disqualifications of exactly 60 or 120 days.

[38] The proposed rules in this NPRM are numbered and placed in relation to the rules currently in effect and published in the Code of Federal Regulations (CFR). The Agency has issued an NPRM addressing texting while driving a CMV, which proposes similar definitions, and analogous prohibitions and disqualifications (75 FR 16391, April 1, 2010). The numbering and placement of any final regulations that result from this rulemaking will be adjusted appropriately to reflect any final rules adopted in other rulemakings.

dialing, and holding the mobile telephone to conduct voice communication. The Agency recognizes that mobile telephones often have multi-functional capability and is not prohibiting the use of mobile telephones for other uses. Of course, other types of activities using a mobile telephone might be covered by other rules proposed by FMCSA, such as those addressing texting while driving a CMV. To be consistent with these new definitions, FMCSA proposes removing exception (2)(i) from the existing definition of "texting" in this section.

Section 391.2

FMCSA proposes to amend 49 CFR 391.2, which provides certain exceptions to the requirements of part 391 for custom farm operations, apiarian industries, and specific farm vehicle drivers, to enable the Agency to make violations of the Federal mobile telephone restriction a disqualifying offense for such drivers. While the proposed explicit Federal restriction against hand-held mobile telephone use applies directly to these drivers, the disqualification provision in proposed § 391.15(f) below would not apply without this amendment to the current exceptions under 49 CFR 391.2.

Section 391.15

FMCSA proposes to add a new paragraph (f) to 49 CFR 391.15 entitled "Disqualification for violation of restriction on using a hand-held mobile telephone while driving a commercial motor vehicle." [39] This provision would provide for the disqualification from operating a CMV in interstate commerce of any driver convicted of two or more violations within a 3-year period of the new hand-held mobile telephone use restriction while operating a CMV as set forth in proposed § 392.82. For the driver's first hand-held mobile telephone use conviction, the Agency could assess a civil penalty against the driver. If a driver is convicted of committing a second hand-held mobile telephone use violation within 3 years, he or she would be disqualified for 60 days, in addition to being subject to the applicable civil penalty. For three or more hand-held mobile telephone use convictions for violations committed within 3 years, a driver would be disqualified for 120 days, in addition to being subject to the applicable civil penalty. This proposed change to the disqualifying offenses for interstate drivers would mirror the Agency's corresponding proposed new provisions governing the disqualification offenses for CDL drivers in § 383.51(c). The required number of convictions to cause a disqualification by FMCSA and the period of disqualification would be the same: 60 days for the second offense within 3 years and 120 days for three or more offenses within 3 years. In addition, the first and each subsequent violation of such a restriction or prohibition by a driver would be subject to civil penalties imposed on such drivers, in an amount up to $2,750 (49 U.S.C. 521(b)(2)(A), 49 CFR 386.81 and Appendix B, A(4)).

Section 392.82

In this section, the Agency proposes a new restriction on using a hand-held mobile telephone while driving a CMV. Furthermore, this proposed section states that motor carriers must not allow or require CMV drivers to use a hand-held mobile telephone while driving. The Agency would also include a provision in this proposed section to apply this new hand-held mobile telephone restriction to "school bus operations notwithstanding the general exception in 49 CFR 390.3(f)(1)." Thus, school bus drivers who are employed by non-government entities and who transport school children and/or school personnel between home and school in interstate commerce would be subject to this proposed section. The Agency determined that this proposed section is necessary for public safety regarding school bus transportation by interstate motor carriers. In addition, the proposed rule would apply to the operation of CMVs designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, notwithstanding the exception in 49 CFR 390.3(f)(6). The proposed section would also require employers to ensure compliance by their drivers with the restrictions on use of a hand-held mobile telephone while driving a CMV. Any violation by an employer would be subject to civil penalties in an amount up to $11,000 (49 U.S.C. 521(b)(2)(A), 49 CFR 386.81 and part 386 Appendix B, paragraph (a)(3)).

A definition of "driving a commercial motor vehicle" would be incorporated into the restriction on using a hand-held mobile telephone while driving, in the proposed new § 392.82, in order to confine the use of that term to the restriction and the related disqualification and to avoid limiting the scope of the same term as used in other provisions of the FMCSRs.

The Agency proposes to add a limited exception to the hand-held mobile telephone restriction to allow CMV drivers to use their hand-held mobile telephones if necessary to communicate with law enforcement officials or other emergency services.

Federal Disqualification Standard for CDL Drivers

Any CDL driver operating a CMV (as defined in § 383.5) who is convicted of violating a State or local motor vehicle law or ordinance that prohibits or restricts the use of a hand-held mobile telephone while driving a CMV would be disqualified after his or her second conviction for the hand-held mobile telephone offense or any other serious traffic violation (as defined by § 383.51(c)). The CDL disqualifying offense would be applicable to all persons who are required to possess a CDL, in accordance with the requirements of 49 CFR part 383, and who are subject to a State or local law or ordinance prohibiting or restricting the use of a hand-held mobile telephone while driving, when the offense occurs during the operation of a CMV. Therefore, the amendment to the CDL rules is applicable to drivers employed by Federal, State, or local government agencies, transit authorities, and school districts. To assist in the application of the provisions for disqualification, the regulations include definitions of the words "mobile telephone" and "using a hand-held mobile telephone."

Section 383.5

The Agency proposes to add new definitions for the terms "mobile telephone" and "using a hand-held mobile telephone." The Agency proposes a broad definition of mobile telephones based on the FCC regulations to cover the multitude of devices that allow users to send or receive voice communication while driving. The definitions of "mobile telephone" and "using a hand-held mobile telephone" would identify the type of activity that would be restricted by this proposed rule. To be consistent with these new definitions, FMCSA proposes removing exception (2)(i) from the definition of "texting" in this section.

Section 383.51

In Table 2 of 49 CFR 383.51(c), FMCSA would add a new serious traffic violation that would result in a CDL driver being disqualified. This serious traffic violation would be a conviction for violating a State or local law or ordinance restricting hand-held mobile telephone use while driving a CMV. For the purpose of this disqualification, the Agency proposes to use the same description of "driving" that is already

[39] The texting NPRM, cited above, proposed to add a new paragraph (e) to this section. Therefore, paragraph (e); is reserved in this NPRM for possible use by this Agency for another rulemaking.

in the table for the texting disqualification (§ 383.51(c)(9)). FMCSA notes that the conviction must involve "using a hand-held mobile telephone" while operating a CMV and excludes convictions for hand-held mobile telephone use by a CDL driver while operating a vehicle for which such a CDL is not required. The Agency's decision is consistent with the provisions of 49 U.S.C. 31310(e), which indicates the serious traffic violation must occur while the driver is operating a CMV that requires a CDL; the operative provisions in the revised table would limit the types of violations that could result in a disqualification accordingly.

As proposed, every State that issues CDLs would be required to impose this disqualification on a driver required to have a CDL issued by that State whenever that CDL driver was convicted of the necessary number of violations while operating in States where such conduct is restricted or prohibited by a State or local traffic law.

Section 384.301

A new paragraph (f) is proposed to be added to § 384.301. It would require all States that issue CDLs to implement the new provisions proposed in part 383 that relate to disqualifying CDL drivers for violating the new serious traffic violation of using a hand-held mobile telephone while driving a CMV as soon as practical, but not later than 3 years after this proposed rule is implemented.

Impact on States

Motor Carrier Safety Assistance Program (MCSAP)

Under MCSAP, States that receive grant funds would be required, as a condition of receiving the grants, to adopt regulations on the hand-held mobile telephone restriction that are compatible with final Federal regulations issued as a result of this rulemaking (49 U.S.C. 31102(a) and 49 CFR 350.201(a)). If a restriction of hand-held mobile telephone use (such as proposed in § 392.82) and the related disqualification (such as proposed in § 391.15(f)) are adopted by FMCSA, States under MCSAP would need to adopt compatible regulations applicable to both interstate and intrastate transportation as soon as practicable, but not later than 3 years thereafter (49 CFR 350.331(d)). If States do not adopt compatible regulations restricting hand-held mobile telephone use while driving a CMV and related disqualifications, they may not receive full MCSAP grant funding.

CDL Program

States that issue CDLs to CMV drivers would be required to adopt and implement the proposed CDL disqualification provisions that require disqualification for two or more convictions of violating a State or local law or ordinance restricting or prohibiting hand-held mobile telephone use while driving a CMV. States should be in compliance with this hand-held mobile telephone disqualification as soon as practicable, but not later than 3 years after the Agency adopts the disqualification provisions. If they do not comply with this provision, they may be subject to the loss of up to 5 percent in the first year of substantial non-compliance and up to 10 percent in subsequent years of certain Federal-aid highway amounts apportioned to the State (49 U.S.C. 31311(a) and 31314).

Impact on Other State Laws—Preemption

At present, only nine States and the District of Columbia restrict or prohibit hand-held mobile telephone use while driving a motor vehicle within their jurisdictions. FMCSA believes that there is a need for a Federal regulation to address the safety risks associated with hand-held mobile telephone use by CMV drivers nation-wide. The Federal restriction would provide uniform language applicable to CMV drivers engaged in interstate commerce, regardless of the presence or absence of a State law or regulation. State laws and regulations that are compatible with the Federal requirements we are proposing today, or that have a safety benefit or do not create an undue burden upon interstate commerce in conformity with 49 U.S.C. 31141 and 49 CFR 350.333, would remain in effect and could continue to be enforced with regard to CMV drivers. Future actions by the States to institute new restrictions or prohibitions on any form of mobile telephone use while driving CMVs in interstate commerce would be governed by the same principles. For more information see the Federalism section later in this document.

The States receiving MCSAP grants would be required, as a condition of receiving the grants, to adopt, at a minimum, regulations compatible with any adopted Federal restriction on use of a hand-held mobile telephone while driving CMVs in interstate commerce, in accordance with the requirements of 49 CFR 350.333.

Questions and Request for Comments

In order to make an informed decision on all of these issues related to mobile telephone use, the Agency requests review and comment on some specific questions:

1. Should the Agency completely restrict all mobile telephone use, both hand-held and hands-free, by CMV drivers while driving in interstate commerce?

2. Should some CMV drivers, for example, drivers of passenger-carrying vehicles or of vehicles carrying hazardous materials, be more restricted than other CMV drivers?

3. Some motor vehicle design guidelines suggest limiting the time that a visual or a visual-manual task takes the driver's eyes off of the forward roadway when designing vehicle controls. Should the Agency define a time limit for CMV drivers' interaction with mobile telephones (either hand-held, hands-free, or both)?

4. Should the Agency propose limiting the number of keystrokes or button pushes that a CMV driver is allowed within a certain time frame when using a mobile telephone (either hand-held, hands-free, or both)? Should dialing be defined as a specific number of keystrokes or button pushes such as at least seven keystrokes or button pushes?

5. Are there technologies available or soon to be available that would allow completely hands-free mobile telephone operation by CMV drivers? Please provide any information on the availability and costs of such technologies. The Agency also requests comments regarding the amount of time and steps that are required by the driver to initiate and then conduct a hands-free mobile telephone conversation with such devices.

6. The Agency has proposed a definition for "use of a hand-held mobile telephone" in the regulatory text. The Agency requests comments on this definition as well as the public's views on whether to include a description of allowable alternatives to "use of a hand-held mobile telephone," such as hands-free technologies.

7. FMCSA seeks comment on its assumptions on States' costs, any increase in enforcement costs to the States, or any other costs or increases borne by the States.

V. Regulatory Analyses

FMCSA proposes to restrict the use of hand-held mobile telephones by drivers of CMVs while operating in interstate commerce.[40] The Agency proposes new

[40] In popular usage, mobile telephones are often referred to as "cell phones." As explained in the NPRM, however, a variety of different technologies

Continued

driver disqualification sanctions for interstate drivers of CMVs who fail to comply with this Federal restriction and new driver disqualification sanctions for CDL holders who have multiple convictions for violating a State or local law or ordinance on motor vehicle traffic control that restricts the use of hand-held mobile telephones. Additionally, motor carriers operating CMVs would be prohibited from requiring or allowing drivers of CMVs to engage in the use of a hand-held mobile telephone while operating in interstate commerce. This rulemaking would improve health and safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of CMVs. In addition, the proposed rulemaking would reduce the financial and environmental burden associated with these crashes and promote the efficient movement of traffic and commerce on the Nation's highways.

Distraction-related crashes impose a substantial cost on society. Two studies estimate that mobile telephone related crashes are responsible for $43 billion in costs each year in the United States.[41] Other studies, including two commissioned by the FMCSA, show that research findings are inconsistent regarding the risks associated with talking. But reaching for and dialing the device while driving is a risky activity.[42] In the regulatory evaluation (in the docket for this proposed rule), FMCSA estimates the benefits and costs of implementing a restriction on the use of hand-held mobile telephones while driving a CMV.

The Agency considered four regulatory options: (1) No action, (2) a restriction on the use of all mobile telephones while operating a CMV for all interstate CMV drivers, (3) a restriction on the use of all mobile telephones while operating a passenger-carrying CMV for all interstate drivers, and (4) a restriction on the use of hand-held mobile telephones by all interstate CMV drivers, which is the preferred option in this proposed rule. The first option serves as a baseline for this analysis. For the second option, the Agency conducted a cost-benefit analysis and estimates that this option would potentially lead to an annual net benefit of $4 million (Table 2(b)).

Because specific data that would allow the Agency to quantify benefits are unavailable, for the third and fourth options the Agency conducted threshold analyses. Analysis predicts that the third option would lead to an estimated annual cost of approximately $6.4 million. Current guidance from DOT's Office of the Secretary places the value of a statistical life at $6.0 million (Table 2(c)). Consequently, this option would have to eliminate any combination of crash types equivalent in cost to approximately one fatality in order for the benefits of this proposed rule to equal the costs. The analysis further predicts that the preferred fourth option would lead to an estimated 1-year cost of $12.1 million (Table 2(a)). Consequently, this option would have to eliminate any combination of crash types equivalent to two fatalities per year in order for the benefits of this proposed rule to equal the costs. These results are summarized below in Table 2.

TABLE 2(A)—THRESHOLD ANALYSIS RESULTS—OPTION FOUR (PREFERRED OPTION)

	Total estimated annual costs *	Annual break-even number of fatalities prevented **
Option Four—Restriction on Use of Hand-Held Mobile Telephones—All CMV Drivers.	$12.1 Million ***	Approximately 2 Fatalities.

TABLE 2(B)—COST-BENEFIT ANALYSIS RESULTS—OPTION TWO (RESTRICTION ON USE OF ALL MOBILE TELEPHONES—ALL CMV DRIVERS)

Estimated annual benefit	Estimated annual cost	Estimated annual net benefit
$84 Million	$80 Million	$4 Million.

TABLE 2(C)—THRESHOLD ANALYSIS RESULTS—OPTION THREE

	Total estimated annual costs *	Annual break-even number of fatalities prevented **
Option Three—Restriction on Use of All Mobile Telephones—All Passenger-Carrying CMV Drivers.	$6.4 Million	Approximately 1 Fatality.

* This cost estimate does not include a one-time cost to the States of $2.2 million.
** A statistical life is valued at $6 million.
*** This is a worst case annual cost as it would apply only if 100% of CMV drivers were theoretically replaced every year.

Because FMCSA is addressing two of the risky activities cited in the VTTI study, the Agency expects the proposed rule would prevent more than two fatalities and that the benefits justify the cost.

The regulatory evaluation also finds the potential costs to the States and private entities do not require further

are licensed by the Federal Communications Commission (FCC) (47 CFR 20.3) to provide mobile telephone services; thus, these proposed rules would apply to the range of technologies used to provide wireless telephone communications. But some of the materials and research studies discussed in this evaluation use the popular term "cell phone," and the discussion continues that usage in such cases.

[41] Cohen, J.T. and Graham, J.D., A revised economic analysis of restrictions on the use of cell phones while driving, *Risk Analysis* 23(1) 1–14, 2003.

[42] Olson, R. L., Hanowski, R.J., Hickman, J.S., & Bocanegra, J. (2009) Driver distraction in commercial vehicle operations. (Document No. FMCSA–RRR–09–042) Washington, DC: Federal Motor Carrier Safety Administration, July 2009. Retrieved October 20, 2009, from *http://www.fmcsa.dot.gov/facts-research/art-public-reports.aspx?* Hickman, J., Hanowski, R. & Bocanegra, J. (2010). Distraction in Commercial Trucks and Buses: Assessing Prevalence and Risk in Conjunction with Crashes and Near-Crashes. Washington, DC: Federal Motor Carrier Safety Administration.

analysis pursuant to the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) because they are less than $140.8 million per year. I also certify, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed rule will not have a significant economic impact on a substantial number of small entities because the average cost to carriers subject to the preferred option would be approximately $24.50.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this rulemaking action is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, and that it is significant under DOT regulatory policies and procedures because of the substantial Congressional and public interest concerning the crash risks associated with distracted driving. However, the estimated economic costs of the preferred option of the proposed rule do not exceed the $100 million annual threshold.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Carriers are not required to report revenue to the Agency, but are required to provide the Agency with the number of power units (PU) they operate, when they register with the Agency, and to update this figure biennially. Because FMCSA does not have direct revenue figures, PUs serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a PU.

With regard to truck PUs, the Agency determined in the 2003 Hours of Service Rulemaking RIA [43] that a PU produces about $172,000 in revenue annually (adjusted for inflation).[44] According to the SBA, motor carriers with annual revenue of $25.5 million are considered small businesses.[45] This equates to 148 PUs (25,500,000/172,000). Thus, FMCSA considers motor carriers of property with 148 PUs or fewer to be small businesses for purposes of this analysis. The Agency then looked at the number and percentage of property carriers with recent activity that would fall under that definition (of having 148 PUs or fewer). The results show that at least 99 percent of all interstate property carriers with recent activity have 148 PUs or fewer.[46] This amounts to 481,788 carriers. Therefore, the overwhelming majority of interstate carriers of property would be considered small entities.

With regard to passenger carriers, the Agency conducted a preliminary analysis to estimate the average number of PUs for a small entity earning $7 million annually, based on an assumption that a passenger-carrying PU generates annual revenues of $150,000. This estimate compares reasonably to the estimated average annual revenue per PU for the trucking industry ($172,000). The Agency used a lower estimate because passenger carriers generally do not accumulate as many VMT per PU as carriers of property; [47] and it is assumed, therefore, that they would generate less revenue on average. The analysis concluded that passenger carriers with 47 PUs or fewer ($7,000,000 divided by $150,000/PU = 46.7 PU) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that would fall under that definition (of having 47 PUs or fewer). The results show that at least 96 percent of all interstate passenger carriers with recent activity have 47 PUs or fewer.[48] This amounts to 11,338 carriers. Therefore, the overwhelming majority of interstate passenger carriers would be considered small entities.

In order to estimate the economic impact of the proposed rule on small entities, FMCSA computed a total annual cost per carrier for each industry segment. First, FMCSA allocated the total cost [49] of the proposed rule in the first year among property and passenger carriers according to their respective shares of total carrier population.[50] Interstate property carriers constitute 98 percent of the total of interstate carriers, whereas interstate passenger carriers constitute 2 percent. The total annual cost of the proposed rule's preferred option ($12,095,948) [51] was thus weighted by 98 percent for property carriers leading to a total cost of $11,854,036, and by 2 percent for passenger carriers, leading to a total cost of $241,919. Next, FMCSA divided the two weighted costs by their respective number of small carriers, as described above, arriving at a cost-per-carrier for each segment: $11,854,029/481,788 = $24.60 for property carriers; and $241,919/11,338 = $21.33 for passenger carriers, for a weighted average of $24.50 per small entity.

While the preferred option of this proposed rule would clearly impact a substantial number of small entities, the Agency does not consider a weighted average cost of approximately $24.50 per entity per year to be economically significant in light of the estimated average annual revenue of $172,000.[52] [53] Accordingly, I certify that a regulatory flexibility analysis is not necessary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the proposed rule. FMCSA will not retaliate against small entities that question or complain about

[43] FMCSA Regulatory Analysis, "Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations," Final Rule (68 FR 22456, April 23, 2003).

[44] The 2000 *TTS Blue Book of Trucking Companies,* number adjusted to 2008 dollars for inflation.

[45] U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective August 22, 2008. *See* NAIC subsector 484, Truck Transportation.

[46] MCMIS, as of June 17, 2010.

[47] FMCSA Large Truck and Bus Crash Facts 2008, Tables 1 and 20; *http://fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008.*

[48] MCMIS, as of June 17, 2010.

[49] The total cost in this section does not include costs to the States.

[50] The actual cost burden may not necessarily be proportionate to the carrier segment's share in the industry. Absent information on this distribution, FMCSA applied the above assumption.

[51] Excluding costs to the States.

[52] Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule—Federal Motor Carrier Safety Administration. 68 FR 22456—Published April 23, 2003.

[53] The 2000 TTS Blue Book of Trucking Companies, number adjusted to 2008 dollars for inflation.

this proposed rule or any policy or action of the Agency.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $140.8 million (which is the value of $100 million in 2009 after adjusting for inflation) or more in any 1 year. Though this proposed rule would not result in such expenditure, FMCSA discusses the effects of this rule elsewhere in this preamble.

Paperwork Reduction Act

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Privacy Impact Assessment

FMCSA conducted a Privacy Threshold Analysis for the proposed rule on restricting the use of hand-held mobile telephones by drivers of passenger-carrying CMVs and determined that it is not a privacy-sensitive rulemaking because the rule would not require any collection, maintenance, or dissemination of Personally Identifiable Information from or about members of the public.

Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments, on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government.

FMCSA recognizes that, as a practical matter, this proposed rule may have some impact on the States. Accordingly, the Agency sought advice from the National Governors Association (NGA), National Conference of State Legislatures (NCSL), and the American Association of Motor Vehicle Administrators (AAMVA) on the topic of mobile telephone use, by letters to each organization, dated April 6, 2010. (Copies of these letters are available in the docket for this rulemaking.) FMCSA offered NGA, NCSL, and AAMVA officials the opportunity to meet and discuss issues of concern to the States. As a result of these consultation efforts with State and local governments, they would also be able to raise Federalism issues during the comment period for this NPRM. For a further discussion, *see* the previous section in this NPRM entitled "Impact on other State Laws—Preemption."

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA preliminarily determined that it is not a "significant energy action" under that order. Though it is nonetheless a potentially "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

The Agency is not aware of any technical standards used to address mobile telephone use and therefore did not consider any such standards.

National Environmental Policy Act

The Agency analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), determined under our environmental procedures Order 5610.1, published March 1, 2004, in the **Federal Register** (69 FR 9680), and preliminarily assessed that this proposed action requires an Environmental Assessment (EA) to determine if a more extensive Environmental Impact Statement (EIS) is required. In the event that FMCSA finds the environmental impacts do not warrant an EIS, FMCSA will issue a Finding of No Significant Impact (FONSI). The findings in the draft EA indicate there are no *significant* positive or negative impacts to the environment expected from the various options in the proposed rule. There could be minor impacts on emissions, hazardous materials spills, solid waste, socioeconomics, and public health and safety. FMCSA requests comments on the draft EA.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this proposed action is exempt from the CAA's general conformity requirement since it would not result in any potential increase in emissions that are above the general conformity rule's *de minimis* emission threshold levels (40 CFR 93.153(c)(2)). Moreover, based on our analysis, it is reasonably foreseeable that the proposed

rule would not significantly increase total CMV mileage, nor would it significantly change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. The proposed action merely would establish requirements to restrict hand-held mobile telephone use while driving CMVs.

FMCSA seeks comment on these preliminary determinations.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

For the reasons discussed in the preamble, FMCSA proposes to amend 49 CFR parts 383, 384, 390, 391, and 392 as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

2. Amend § 383.5 by adding the definitions "mobile telephone" and "using a hand-held mobile telephone" in alphabetical order and revising the definition of "texting" to read as follows:

§ 383.5 Definitions.

* * * * *

Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission, 47 CFR 20.3. It does not include two-way or Citizens Band Radio services.

* * * * *

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Inputting, selecting, or reading information on a global positioning system or navigation system; or

(ii) Using a device capable of performing multiple functions (*e.g.,* fleet management systems, dispatching devices, smart phones, citizens band radios, music players, etc.) for a purpose that is not otherwise prohibited in this part.

* * * * *

Using a hand-held mobile telephone means using at least one hand to hold a mobile telephone to conduct a voice communication or to reach for or dial a mobile telephone.

* * * * *

3. Amend § 383.51 by adding a new paragraph (c)(10) to Table 2 to read as follows:

§ 383.51 Disqualifications of drivers.

* * * * *

(c)* * *

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .
*	*	*	*	*
(10) Violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a CMV.[2]	60 days	Not applicable	120 days	Not applicable.

[2] Driving, for the purpose of this disqualification, means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway, as defined in 49 CFR 390.5, and has halted in a location where the vehicle can safely remain stationary.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

4. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

5. Amend § 384.301 by adding a new paragraph (f) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(f) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of [*INSERT EFFECTIVE DATE*] as soon as practical, but not later than [*INSERT DATE 3 YEARS AFTER THE EFFECTIVE DATE*].

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

6. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1767, 1773; and 49 CFR 1.73.

7. Amend § 390.3 by revising paragraphs (f)(1) and (f)(6) to read as follows: § 390.3 General applicability.

* * * * *

(f) * * *

(1) All school bus operations as defined in § 390.5, except for the provisions of §§ 391.15(f), 392.80 and 392.82 of this chapter.

* * * * *

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers and drivers operating such vehicles are required to comply with §§ 390.15, 390.19, 390.21(a) and (b)(2), 391.15(f), 392.80 and 392.82.

* * * * *

8. Amend § 390.5 by adding the definitions "mobile telephone" and "using a hand-held mobile telephone" in alphabetical order and revising the definition of "texting" to read as follows:.

§ 390.5 Definitions.

* * * * *

Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission, 47 CFR 20.3. It does not include two-way or Citizens Band Radio services.

* * * * *

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Inputting, selecting, or reading information on a global positioning system or navigation system; or

(ii) Using a device capable of performing multiple functions (*e.g.,* fleet management systems, dispatching devices, smart phones, citizens band radios, music players, etc.) for a purpose that is not otherwise prohibited in this part.

* * * * *

Using a hand-held mobile telephone means using at least one hand to hold a mobile telephone to conduct a voice communication or to reach for or dial a mobile telephone.

PART 391—QUALIFICATION OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTIONS

9. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

10. Revise § 391.2 to read as follows:

§ 391.2 General exceptions.

(a) *Farm custom operation.* The rules in this part, except for § 391.15 (e) and (f), do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(b) *Apiarian industries.* The rules in this part, except for § 391.15 (e) and (f), do not apply to a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(c) *Certain farm vehicle drivers.* The rules in this part, except for § 391.15 (e) and (f), do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in § 390.5. For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, see § 391.67.

11. Amend § 391.15 by adding a new paragraph (f) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(f) Disqualification for violation of a restriction on using a hand-held mobile telephone while driving a commercial motor vehicle—

(1) *General rule.* A driver who is convicted of violating the restriction on using a hand-held mobile telephone in § 392.82(a) of this chapter is disqualified from driving a commercial motor vehicle for the period of time specified in paragraph (f)(2) of this section.

(2) *Duration.* Disqualification for violation of a restriction on using a hand-held mobile telephone while driving a commercial motor vehicle—

(i) *Second violation.* A driver is disqualified for 60 days if the driver is convicted of two violations of § 392.82(a) of this chapter in separate incidents committed during any 3-year period.

(ii) *Third or subsequent violation.* A driver is disqualified for 120 days if the driver is convicted of three or more violations of § 392.82(a) of this chapter in separate incidents committed during any 3-year period.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

12. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

13. Add a new § 392.82 to subpart H to read as follows:

§ 392.82 Restriction on using a hand-held mobile telephone.

(a) *Restriction.* (1) *Drivers.* No driver shall use a hand-held mobile telephone mobile while driving a CMV.

(2) *Motor Carriers.* No motor carrier shall allow or require its drivers to use a hand-held mobile telephone while driving a CMV.

(b) *Definitions.* For the purpose of this section only, *driving* means operating a commercial motor vehicle, with the motor running, including while

temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

(c) *Exceptions.* (1) *School bus operations and vehicles designed or used to transport 9 to 15 passengers, including the driver, not for direct compensation.* The provisions of § 390.3(f)(1) and (6) of this chapter are not applicable to this section.

(2) *Emergencies.* Using a hand-held mobile telephone is permissible by drivers of a CMV when necessary to communicate with law enforcement officials or other emergency services.

Issued on: December 13, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–31736 Filed 12–20–10; 8:45 am]

BILLING CODE 4910–EX–P