

DEPARTMENT OF TRANSPORTATION

4910-EX-P

Federal Motor Carrier Safety Administration

Regulatory Guidance Concerning the Applicability of the Federal Motor Carrier Safety Regulations to Texting by Commercial Motor Vehicle Drivers

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

ACTION: Notice of regulatory guidance.

SUMMARY: The FMCSA announces regulatory guidance concerning texting while driving a commercial motor vehicle (CMV). The guidance is applicable to all interstate drivers of CMVs subject to the Federal Motor Carrier Safety Regulations (FMCSRs).

EFFECTIVE DATE: This regulatory guidance is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Public Law 98-554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations which ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs

does not have a deleterious effect on the physical condition of the operators. (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate." (49 U.S.C. 31133(a)(8) and (10), respectively).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

This document provides regulatory guidance concerning the applicability of 49 CFR 390.17, "Additional equipment and accessories," to CMV operators engaged in "texting" on an electronic device while driving a CMV in interstate commerce.

Currently, 49 CFR 390.17 states, "Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, *provided such equipment and accessories do not decrease the safety of operation* of the commercial motor vehicles on which they are used."

[Emphasis added]. As used in § 390.17, "this subchapter" means Subchapter B [49 CFR parts 350-399] of Chapter III of Subtitle B of Title 49, Code of Federal Regulations (CFRs).

CMVs are defined in 49 CFR 390.5 as "any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.”

Section 390.17 is therefore applicable to drivers of CMVs, as defined by § 390.5, when the CMV is being used by a motor carrier operation subject to the FMCSRs. The general applicability of Parts 390 through 399 [49 CFR Parts 390 through 399] of the FMCSRs is prescribed by § 390.3.

Basis for This Notice

FMCSA recently completed its “Driver Distraction in Commercial Vehicle Operations” study and released the final report on October 1, 2009.¹ The purpose of the study was to investigate the prevalence of driver distraction in CMV safety-critical events (e.g., crashes, near-crashes, lane departures) recorded in a naturalistic data set that included over 200 truck drivers and 3 million miles of data. The dataset was obtained by

¹ This report is available at FMCSA’s Research webpage at: <http://www.fmcsa.dot.gov/facts-research/art-research.aspx?>

placing monitoring instruments on vehicles and recording the behavior of drivers conducting real-world revenue operations.

Odds ratios (OR) were calculated to identify tasks that were high risk. For a given task, an odds ratio of "1.0" indicated the task or activity was equally likely to result in a safety-critical event as a non-event or baseline driving scenario. An odds ratio greater than "1.0" indicated a safety-critical event was more likely to occur, and odds ratios of less than "1.0" indicated a safety-critical event was less likely to occur. The most risky behavior identified by the research was "text message on cell phone,"² with an odds ratio of 23.2. This means that the odds of being involved in a safety-critical event is 23.2 times greater for drivers who are texting while driving than for those who do not. Texting drivers took their eyes off the forward roadway for an average of 4.6 seconds during the 6-second interval immediately preceding a safety-critical event. At 55 mph (or 80.7 feet per second), this equates to a driver traveling 371 feet, the approximate length of a football field, including the end zones, without looking at the roadway. At 65 mph (or 95.3 feet per second), the driver would have traveled approximately 439 feet without looking at the roadway. This clearly creates a significant risk to the safe operation of the CMV.

Because of the safety risks associated with texting, FMCSA will address the problem of texting in an expedited, stand-alone rulemaking to be completed in 2010. In addition to studies documenting the safety risks associated with texting while driving, the feedback the Department received during its Distracted Driving Summit, held September 30 – October 1, 2009, in Washington, DC., from four United States Senators, several

² Although the final report does not elaborate on text messaging, the drivers were engaged in the review of, or preparation and transmission of, typed messages via wireless phones.

State legislators, safety advocacy groups, senior law enforcement officials, the telecommunications industry, and the transportation industry suggest there is widespread support for a ban against texting while driving. However, until the Agency has the opportunity to complete a notice-and-comment rulemaking proceeding to adopt an explicit prohibition against texting, the regulatory guidance below informs motor carriers and drivers about the applicability of the existing regulations to the use of electronic devices for texting.

Other Electronic Devices

FMCSA acknowledges the concerns of motor carriers that have invested significant resources in electronic dispatching tools and fleet management systems; this regulatory guidance should not be construed to prohibit the use of such technology. The regulatory guidance below should also not be construed to prohibit the use of cell phones for purposes other than text messaging.

The Agency will address the use of other electronic devices while driving in a notice-and-comment rulemaking proceeding rather than through regulatory guidance.

It is worth noting, however, that while fleet management systems and electronic dispatching tools are used by many of the Nation's largest trucking fleets, the Department believes safety-conscious fleet managers would neither allow nor require their drivers to type or read messages while driving. To the extent that there are fleets that require drivers to type and read messages while they are driving, the Agency will consider appropriate regulatory action to address the safety problem.

Compliance with State and Local Laws, Ordinances and Regulations

In addition to announcing regulatory guidance on CMV drivers' use of electronic devices to engage in texting while driving, FMCSA reminds motor carriers and drivers subject to the FMCSRs that the Federal regulations require compliance with the laws, ordinances, and regulations of the jurisdiction in which the CMV is being operated. Section 392.2, "Applicable operating rules," requires that "Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with." Thus, in the States and localities having laws, ordinances, and regulations related to "texting" while driving, non-texting cell phone use, or any other similar traffic offenses, a violation of the State or local provision is also a violation of § 392.2 for those CMV drivers to whom it applies.

Summary

Based on the clear consensus that emerged from the Distracted Driving Summit, FMCSA's top priority is to initiate a rulemaking to address the safety risks associated with texting by prohibiting all truck and bus drivers from texting while they are operating on public roads. The regulatory guidance issued today clarifies the applicability of the Agency's current safety regulations and serves as an interim measure to deter texting while driving.

Regulatory Guidance

PART 390 – FEDERAL MOTOR CARRIER SAFETY REGULATIONS;

GENERAL

Sections Interpreted

Section 390.17 Additional equipment and accessories.

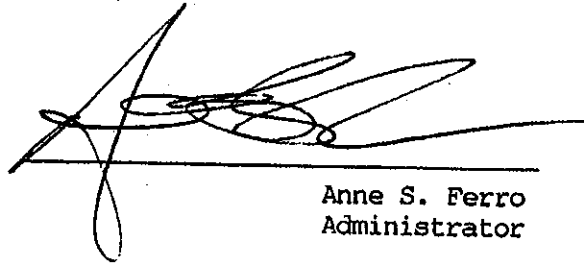
Question 1: Do the Federal Motor Carrier Safety Regulations prohibit “texting” while driving a commercial motor vehicle in interstate commerce?

Guidance: Yes. Although the current safety regulations do not include an explicit prohibition against texting while driving by truck and bus drivers, the general restriction against the use of additional equipment and accessories that decrease the safety of operation of commercial motor vehicles applies to the use of electronic devices for texting. Handheld or other wireless electronic devices that are brought into a CMV are considered “additional equipment and accessories” within the context of § 390.17.

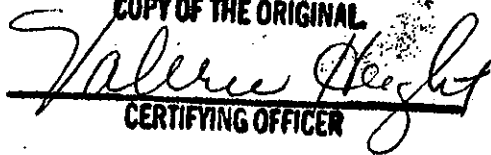
“Texting” is the review of, or preparation and transmission of, typed messages through any such device or the engagement in any form of electronic data retrieval or electronic data communication through any such device. Texting on electronic devices while driving decreases the safety of operation of the commercial vehicles on which the devices are used because the activity involves a combination of visual, cognitive and manual

distraction from the driving task. Research has shown that during 6-second intervals immediately preceding safety-critical events (e.g., crashes, near crashes, lane departure), texting drivers took their eyes off the forward roadway an average of 4.6 seconds. Therefore, the use of electronic devices for texting by CMV operators while driving on public roads in interstate commerce decreases safety and is prohibited by 49 CFR 390.17.

Issued on: January 22, 2010



Anne S. Ferro
Administrator

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COPY OF THE ORIGINAL.**

CERTIFYING OFFICER