

rerouted under paragraph (b)(2) of this section, the railroad shall also establish that the remaining risk arising from rail operations on the track segment—pertaining to events that can be prevented or mitigated in severity by a PTC system—is less than the average equivalent risk per route mile on track segments required to be equipped with PTC because of annual gross tonnage and the presence of PIH materials traffic (excluding track segments also carrying passenger traffic). Such average equivalent risk shall be determined as of a time prior to installation of PTC on the line segments. This provision of the rule requires a future rulemaking to finalize and implement a risk evaluation methodology. Lines identified for removal subject to this provision will not be required to be equipped with PTC prior to the issuance of a final rule detailing the methodology.

(i) FRA will develop a risk evaluation methodology for the purpose of conducting the analysis required pursuant to paragraph (b)(3) of this section. The risk evaluation methodology will be finalized through a separate rulemaking proceeding that will permit all interested parties to provide input on the specific methodology and, whether that methodology should be employed. If in the rulemaking proceeding FRA determines that a risk methodology should not be employed, then FRA will amend this final rule to eliminate the residual risk provisions.

(ii) Any track segment qualifying for consideration under paragraph (b)(3) of this section and identified by the railroad for requested removal from the PTCIP shall be considered to be “pending for decision” until such time as FRA has published the risk evaluation methodology identified in paragraph (b)(3)(i) of this section. If a final risk evaluation methodology is employed, the railroad may be requested to provide supplemental information related to its request for removal of specific lines. The railroad is not required to commence installation of PTC on any track segment “pending for decision” under this paragraph, until a final FRA determination is made.

(c) If a track segment qualifies for removal from the PTCIP under paragraphs (b)(1) and (b)(2) of this section but does not meet the test of paragraph (b)(3) of this section, the railroad may nevertheless request that the PTCIP be amended to remove the track segment based upon compensating reductions in the risk related to PTC-preventable accidents based on installation of PTC technology on one or more track segments not otherwise required to be equipped. Upon a proper showing that the increment of risk reduction is at least as great on the substitute line as it would be on the line sought to be excluded from the PTCIP, FRA may approve the substitution.

Issued in Washington, DC, on September 15, 2010.

Joseph C. Szabo,
Administrator.

[FR Doc. 2010-24102 Filed 9-24-10; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

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

[Docket No. FMCSA-2009-0370]

RIN 2126-AB22

Limiting the Use of Wireless Communication Devices

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) prohibits texting by commercial motor vehicle (CMV) drivers while operating in interstate commerce and imposes sanctions, including civil penalties and disqualification from operating CMVs in interstate commerce, for drivers who fail to comply with this rule. Additionally, motor carriers are prohibited from requiring or allowing their drivers to engage in texting while driving. FMCSA amends its commercial driver's license (CDL) regulations to add to the list of disqualifying offenses a conviction

under State or local traffic laws or ordinances that prohibit texting by CDL drivers while operating a CMV, including school bus drivers. Recent research commissioned by FMCSA shows that the odds of being involved in a safety-critical event (e.g., crash, near-crash, unintentional lane deviation) is 23.2 times greater for CMV drivers who engage in texting while driving than for those who do not. This rulemaking increases safety on the Nation's highways by reducing the prevalence of or preventing certain truck- and bus-related crashes, fatalities, and injuries associated with distracted driving.

DATES: The final rule is effective October 27, 2010.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to <http://www.regulations.gov> at any time and insert FMCSA-2009-0370 in the “Keyword” box, and then click “Search.” You may also view the docket online by visiting the Docket Management Facility 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.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact the Federal Motor Carrier Safety Administration, Vehicle and Roadside Operation Division, at 202-366-1225 or FMCSA_MCPSV@dot.gov.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

AAMVA	American Association of Motor Vehicle Administrators.
Advocates	Advocates for Highway and Auto Safety.
AIA	American Insurance Association.
APTA	American Public Transportation Association.
ATA	American Trucking Associations, Inc.
ATU	Amalgamated Transit Union.
CDL	Commercial Driver's License.
CeRI	Cornell eRulemaking Initiative.
CMV	Commercial Motor Vehicle.
CTA	Chicago Transit Authority.

CVSA	Commercial Vehicle Safety Alliance.
DOT	U.S. Department of Transportation.
FARS	Fatality Analysis Reporting System.
FMCSA	Federal Motor Carrier Safety Administration.
FMCSRs	Federal Motor Carrier Safety Regulations.
FR	Federal Register.
FRA	Federal Railroad Administration.
GES	General Estimates System.
MCSAC	Motor Carrier Safety Advisory Committee.
MCSAP	Motor Carrier Safety Assistance Program.
NAICS	North American Industry Classification System.
NCSL	National Conference of State Legislators.
NGA	National Governors Association.
NHTSA	National Highway Traffic Safety Administration.
NMVCCS	National Motor Vehicle Crash Causation Survey.
NPRM	Notice of Proposed Rulemaking.
NSC	National Safety Council.
NTSB	National Transportation Safety Board.
OMB	Office of Management and Budget.
OOIDA	Owner-Operator Independent Drivers Association, Inc.
PAR	Population Attributable Risk.
TTD	Transportation Trades Department, AFL-CIO.
TWU	Transportation Workers Union of America, AFL-CIO.
UMA	United Motorcoach Association.
VTTI	Virginia Tech Transportation Institute.

II. Background

On April 1, 2010, FMCSA published a notice of proposed rulemaking in the **Federal Register** (75 FR 16391). FMCSA reviewed the over 400 public comments and made some changes in the final rule in response. These changes are described in part IV, Discussion of the Final Rule, Section-by-Section, of the preamble.

A. Legal Authority

FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs): (1) To prohibit texting using electronic devices by certain drivers while operating CMVs in interstate commerce; (2) to provide sanctions for certain drivers convicted of texting while operating a CMV in interstate commerce, including civil penalties and/or disqualification from driving CMVs, as defined in 49 CFR 390.5, for a specified period of time; and (3) to provide sanctions for CDL drivers convicted of violating a State or local traffic law or ordinance prohibiting texting while operating a CMV, specifically, a disqualification for a specified period of time from operating any CMV. The authority for this rule derives from the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984), 49 U.S.C. chapter 311 (1984 Act), and the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99–570, 100 Stat. 3207–170, Oct. 27, 1986), 49 U.S.C. chapter 313 (1986 Act).

The 1984 Act provides authority to regulate the safety of operations of CMV drivers and motor carriers and vehicle equipment. It requires the Secretary of

Transportation to “prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles” (49 U.S.C. 31136(a)). Although this authority is very broad, the 1984 Act also includes specific requirements:

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. *Id.*

This 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’ texting activities might impact their ability to operate CMVs safely. The changes improve the safety of drivers operating CMVs. This rule 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 applicability to CMV drivers of the relevant provisions of the FMCSRs (49 CFR subtitle B, chapter III, subchapter B), is governed by whether the drivers involved are employees operating a CMV. 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 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 (including the driver), 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 employees operating CMVs are subject to the FMCSRs, except those who are employed by Federal, State, or local governments (49 U.S.C. 31132(2)).

In addition to the statutory exemption of government employees, there are several other 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 (3)–(7)). The school bus operations exemption only applies to interstate transportation of school children and/or school personnel between home and school. This 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)).¹ Likewise, FMCSA has authority to modify the non-statutory exemption for small passenger-carrying CMVs not for direct compensation; however, FMCSA is not required to make a finding that such action is “necessary for public safety.”² Other than transportation covered by statutory exemptions, FMCSA has authority to prohibit texting by drivers operating CMVs, as defined above.

For any violations by CMV drivers or employers of the requirements adopted in this final rule, civil penalties may be 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). In summary, both a texting prohibition 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. However, 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, which authorized creation of the CDL program, is the basis for State 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), (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 26,000 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: active duty 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)). Certain other drivers could be issued restricted CDLs under 49 CFR 383.3(e)–(g), such drivers may be covered by a texting disqualification under the 1986 Act.

The 1986 Act does not expressly authorize the Agency to adopt regulations governing the safety of operations of CMVs by drivers required to obtain a CDL. Most of these drivers are subject to safety regulations under the 1984 Act, as described above. The 1986 Act, however, specifically authorizes the disqualification of CDL drivers for various types of offenses. This is true even if drivers have not obtained a CDL and are therefore operating a CMV illegally. Related rulemaking authority exists to include serious traffic violations as grounds for such disqualifications (49 U.S.C. 31301(12) and 31310).

Further, in addition to specifically enumerated “serious traffic violations,” the 1986 Act allows FMCSA to designate 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, in a 3-year period, commits 2 serious traffic violations involving a CMV operated by the individual must be disqualified from operating a CMV for at least 60 days. A driver who, in a 3-year period, commits 3 or more serious traffic violations involving a CMV operated by the individual must be disqualified from operating a CMV for at least 120 days (49 U.S.C. 31310(e)(1)–(2)). FMCSA determined that violations by CDL drivers of State motor vehicle traffic control laws prohibiting texting while driving CMVs should result in a disqualification under this provision, because texting results in distracted driving and increases the risk of CMV crashes, fatalities, and injuries. Consequently, under its statutory authority to find that the violation of a State texting law constitutes a serious traffic violation for CMV drivers, FMCSA may exercise its rulemaking authority to address this major safety risk by requiring the States to disqualify CDL drivers who violate such laws.

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

B. Overview of Driver Distraction and Texting

This rulemaking addresses one type of driver distraction. 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 that shifts the attention away from the fundamental driving task. The diversion reduces a driver’s situational awareness, decision making, or performance; and it may result in a crash, near-crash, or unintended lane departure by the driver.

In an effort to understand and mitigate crashes associated with driver distraction, the U.S. Department of Transportation (DOT) has been studying the distracted driving issue with respect to both behavioral and vehicle safety countermeasures. Researchers and writers classify distraction into various categories, depending on the nature of their work. In work involving equipment such as vehicles, one distraction classification system includes three categories: visual (taking

¹ 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), Pub. L. 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).

² The exemption in 49 CFR 390.3(f)(6) was not adopted until 2003, after the enactment of TEA–21. See *Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used In Interstate Commerce*, at 68 FR 47860 (Aug. 12, 2003).

one's eyes off the road), physical (taking one's hands off the wheel), and cognitive (thinking about something other than the road/driving). Texting while driving applies to these three types of driver distraction (visual, physical, and cognitive), and thus may pose a considerably higher safety risk than other sources of driver distraction.

Prevalence of Texting

Texting while driving is a relatively new phenomenon among cell phone and personal digital assistant (PDA) users. DOT acknowledges that the potential for the problem is increasing, especially with young drivers on our roadways, as noted in a Pew Research Center Report, "Teens and Distracted Driving."³ According to the CTIA—The Wireless Association, the overall number of text messages transmitted by its members' customers increased from 32.6 billion in the first 6 months of 2005 to 740 billion in the first 6 months of 2009. This represents a 2,200 percent increase in 5 years. While FMCSA's research reveals significant insight into the safety risks associated with texting while driving, the Agency does not have, at this time, data on the prevalence of texting by motorists in general or CMV drivers specifically. Considering the increase in texting, FMCSA maintains that texting by CMV drivers while operating on public roads has the potential of becoming a widespread safety problem in the absence of an explicit Federal prohibition. FMCSA prohibits this inherently unsafe practice to reduce the risks of crashes, injuries, and fatalities.

C. Support for a Texting Prohibition

Based on the response to the Distracted Driving Summit, the Secretary's appearances on national television and this rulemaking, FMCSA determined there is a considerable amount of public support for a ban on texting while operating a motor vehicle. It is likely that most Americans either had firsthand experience with or know someone who had a motor vehicle crash or near-crash event involving a distracted driver. With the exponentially increasing use of electronic devices, numerous crashes, and other incidents related to distracted driving in recent years, expedited Federal action is required.

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 of Transportation 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 its March 27, 2009, report to FMCSA, "Developing a National Agenda for Motor Carrier Safety," MCSAC recommended that FMCSA adopt new Federal rules concerning distracted driving, including texting.⁴ MCSAC believed the available research shows that cognitive distractions pose a safety risk and that there will be increases in crashes from cell phone use and texting unless the problem is addressed. Therefore, one of MCSAC's recommendations for the National Agenda for Motor Carrier Safety was that FMCSA initiate a rulemaking to prohibit texting while driving.

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 a need and widespread support for a ban against texting while driving. Attendees included safety experts; researchers; elected officials, including four United States Senators and several State legislators; safety advocacy groups; senior law enforcement officials; the telecommunications industry; and the transportation industry. At the conclusion of the Summit, Secretary 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."⁵ In addition, the Secretary pledged to work with Congress to ensure that the issue of distracted driving is appropriately addressed.

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. At the conclusion of the Summit, U.S. Transportation Secretary Ray LaHood announced a series of concrete actions that the Obama Administration and DOT are taking to address distracted driving. On October 1, 2009, the President issued Executive Order 13513 entitled "Federal Leadership on Reducing Text Messaging While Driving" (74 FR 51225; October 6, 2009), which prohibited texting by Federal employees (details are discussed later in this preamble).

Actions following the Summit included DOT's plan to immediately start rulemakings that would ban texting and restrict, to the extent possible, the use of cell phones 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 result of the Summit, and based on data from studies on distracted driving, FMCSA is considering a number of actions to combat distracted driving by CMV drivers.

General Public

Several surveys show that there is public support for a texting prohibition. For example, a survey in December 2008 by the AAA Foundation for Traffic Safety determined that 94.1 percent of drivers consider it unacceptable for a driver to send text messages or e-mail while driving; 86.7 percent consider text messaging and e-mailing by drivers to be a very serious threat to their personal safety.⁶ A CBS News/New York Times poll reported that 90 percent of Americans think texting behind the wheel should be outlawed. Over 94 percent of those who admit to texting or e-mailing while driving acknowledge that it makes them at least a little bit more likely to be involved in a crash.⁷ Finally, a nationally representative survey by Nationwide Insurance, conducted in August 2009, found that 80 percent of Americans support laws

³Madden, M. & Lenhart, A. (November 2009). Teens and distracted driving. Pew Research Center's Pew Internet and American Life Project. Available in the docket: FMCSA–2009–0370–0004.

⁴Parker, David R., Chair, Motor Carrier Safety Advisory Committee (March 27, 2009). Letter to Rose A. McMurray on MCSAC national agenda for motor vehicle safety. Retrieved August 24, 2010, from: <http://mcsac.fmcsa.dot.gov/documents/MCSACTask09-01FinalReportandLettertoAdministrator090428.pdf>.

⁵DOT press release 156–09, Thursday, October 1, 2009.

⁶AAA Foundation for Traffic Safety (October 12, 2009). Safety culture: text messaging and cell phone use while driving. Retrieved August 24, 2010, from: <http://www.aaafoundation.org/pdf/TextingFS091012.pdf>.

⁷Connelly, M. (November 1, 2009). Many in U.S. want texting at the wheel to be illegal. NYTimes.com. Retrieved August 24, 2010, from: <http://www.nytimes.com/2009/11/02/technology/02textingside.html>.

prohibiting text messaging or e-mailing while driving.⁸

Safety Advocacy Organizations

Many safety advocacy groups have voiced support for a prohibition on texting while driving. In January 2009, the National Safety Council (NSC) called for a nationwide prohibition on all cell phone use while driving.⁹ NSC is focused on alerting the American public to the fact that different distractions have different levels of crash risk. NSC stated that sending text messages has a much higher risk than most other actions that drivers take while driving. Additionally, Advocates for Highway and Auto Safety (Advocates) applauded DOT's effort to ban texting by truck and motor coach drivers.¹⁰

Transportation Industry Associations

The American Trucking Associations (ATA) believe 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.¹¹ In 2009, ATA's executive committee voted overwhelmingly to support S.1536, the "Avoiding Life-Endangering and Reckless Texting by Drivers Act of 2009 (the "ALERT Drivers Act") a pending bill introduced by Senator Schumer on July 29, 2009, that seeks to prohibit texting while driving by all motorists.¹² The ALERT Drivers Act also amends title 23, of the U.S. Code, to reduce the amount of Federal highway funding available to

States that do not enact a law prohibiting an individual from writing, sending, or reading text messages while operating a motor vehicle.

ATA also conducted an opinion survey of its safety committees on the use of "non-integrated electronic devices" and found that many motor carriers do not allow drivers to operate any electronic devices at all while the vehicle is moving, including dispatching equipment. 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.¹³ Additionally, ExxonMobil and Shell are examples of large companies that prohibit employees' use of any type of cell phone while driving during work hours.¹⁴ Because numerous large commercial trucking operations already have policies that prohibit the use of electronic devices while driving, which would presumably include texting, a prohibition on texting is not expected to have an adverse impact on a majority of trucking fleets.

School Bus Operations

School bus operations have been the focus of distracted driving policies; many cities, towns, and counties prohibit cell phone use or texting by school bus operators. The National Association of State Directors of Pupil Transportation Services, in a letter to the U.S. Senate dated August 7, 2009, stated that it supports the ALERT Drivers Act (S. 1536).¹⁵

Transit Agencies

The importance of the distracted driving issue has led virtually all transit agencies to ban the use of cell phones and electronic devices or specifically to ban texting while operating a vehicle in passenger service. For example, the

Chicago Transit Authority (CTA) prohibits texting by employees and discharges offenders. Furthermore, several large transit agencies (Massachusetts Bay Transportation Authority, CTA, and Greater Cleveland Region Transit Authority) have prohibited operators from carrying cell phones or other electronic devices in the cab, presumably prohibiting texting.

D. Investigations and Studies on Driver Distraction

On November 14, 2004, a motorcoach crashed into a bridge overpass on the George Washington Memorial Parkway in Alexandria, Virginia. This crash was the impetus for a National Transportation Safety Board (NTSB) investigation and subsequent recommendation (Safety Recommendation H-06-27) to FMCSA regarding cell phone use by passenger-carrying CMVs. The 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.

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" was published on October 1, 2009.

Driver Distraction in Commercial Vehicle Operations ("the VTTI Study")—Olson *et al.*, 2009¹⁶

Under contract with FMCSA, the Virginia Tech Transportation Institute (VTTI) completed its "Driver Distraction in Commercial Vehicle Operations" study¹⁷ and released the final report on October 1, 2009. The purpose of the study was to investigate the prevalence

⁸ Gillespie, C. (August 31, 2009). New Nationwide Insurance survey shows overwhelming support for laws banning texting while driving: Data suggests legislation alone will not solve the problem. Nationwide.com. Retrieved January 11, 2010, from: <http://www.nationwide.com/newsroom/twd-survey-results.jsp>.

⁹ National Safety Council, (n.d.). Distracted driving. Retrieved August 24, 2010, from: http://www.nsc.org/safety_road/Distracted_Driving/Pages/distracted_driving.aspx.

¹⁰ 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 August 24, 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>.

¹¹ 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 August 24, 2010, from: <http://www.truckline.com/Newsroom/Testimony1/Randy%20Mullett%20—%20Distracted%20Driving%20testimony.pdf>.

¹² American Trucking Associations (October 14, 2009). ATA leaders vote overwhelmingly to support anti-texting bill. Retrieved August 24, 2010, from: <http://www.truckline.com/pages/article.aspx?id=52%20F0599B3C5-1DA2-463F-8FE5-AF9814303C64>.

¹³ Halsey, A. (October 2, 2009). Obama Bans Federal Employees From Texting While Driving. Washingtonpost.com. Retrieved August 24, 2010, from: http://www.washingtonpost.com/wp-dyn/content/article/2009/10/01/AR2009100103447_pf.html.

¹⁴ Insurance Information Institute (December 2009). Cellphones and driving. Retrieved August 24, 2010, from: <http://www.iii.org/IU/Cellphone-and-driving/>.

¹⁵ Hood, C., President of the National Association of State Directors of Pupil Transportation Services (August 7, 2009). Letter to Senators Schumer, Menendez, Hagan and Landrieu. Retrieved August 24, 2010, from: http://www.nasdpts.org/documents/alert_act-nasdpts-support.pdf.

¹⁶ 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. Available in the docket: FMCSA-2009-0370-0005.

¹⁷ The formal peer review of the "Driver Distraction in Commercial Vehicle Operations Draft Final Report" was completed by a team of three technically qualified peer reviewers who are qualified (via their experience and educational background) to critically review driver distraction-related research.

of driver distraction in CMV safety-critical events (*i.e.*, crashes, near-crashes, lane departures, as explained in the VTTI study) recorded in a naturalistic data set that included over 200 truck drivers and 3 million miles of data. The dataset was obtained by placing monitoring instruments on vehicles and recording the behavior of drivers conducting real-world revenue-producing operations. The study found that drivers were engaged in non-driving related tasks in 71 percent of crashes, 46 percent of near-crashes, and 60 percent of all safety-critical events. Tasks that significantly increased risk included texting, looking at a map, writing on a notepad, or reading.

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 it was 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,"¹⁸ with an odds ratio of 23.2. This means that the odds of being involved in a safety-critical event are 23.2 times greater for drivers who text message 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 surrounding 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.

Other tasks that drew drivers' eyes away from the forward roadway in the study involved the driver interacting

with technology: Calculator (4.4 seconds), dispatching device (4.1 seconds), and cell phone dialing (3.8 seconds). Technology-related tasks were not the only ones with high visual demands. Non-technology tasks with high visual demands, including some common activities, were: reading (4.3 seconds), writing (4.2 seconds), looking at a map (3.9 seconds), and reaching for an object (2.9 seconds).

The study further analyzed population attributable risk (PAR), which incorporates the frequency of engaging in a task. If a task is done more frequently by a driver or a group of drivers, it will have a greater PAR percentage. Safety could be improved the most if a driver or group of drivers were to stop performing a task with a high PAR. The PAR percentage for texting is 0.7 percent, which means that 0.7 percent of the incidence of safety-critical events is attributable to texting, and thus, could be avoided by not texting.

TABLE 1—ODDS RATIO AND POPULATION ATTRIBUTABLE RISK PERCENTAGE BY SELECTED TASK

Task	Odds ratio	Population attributable risk percentage*
Complex Tertiary** Task:		
Text message on cell phone	23.2	0.7
Other—Complex (e.g., clean side mirror)	10.1	0.2
Interact with/look at dispatching device	9.9	3.1
Write on pad, notebook, etc.	9.0	0.6
Use calculator	8.2	0.2
Look at map	7.0	1.1
Dial cell phone	5.9	2.5
Read book, newspaper, paperwork, etc.	4.0	1.7
Moderate Tertiary** Task:		
Use/reach for other electronic device	6.7	0.2
Other—Moderate (e.g., open medicine bottle)	5.9	0.3
Personal grooming	4.5	0.2
Reach for object in vehicle	3.1	7.6
Look back in sleeper berth	2.3	0.2
Talk or listen to hand-held phone	1.0	0.2
Eating	1.0	0
Talk or listen to CB radio	0.6	*
Talk or listen to hand-free phone	0.4	*

* Calculated for tasks where the odds ratio is greater than one.

** Non-driving related tasks.

A complete copy of the final report for this study is included in the docket referenced at the beginning of this rulemaking notice.

In addition to FMCSA-sponsored research, the Agency considered other research reports and studies that highlight the safety risks of distracted driving, in general, or of texting, specifically. These studies conclude that

texting is extremely risky and that it impairs a driver's ability to respond to driving situations. Most of these studies were small simulator studies, involving young automobile drivers. However, they provide support for the conclusions of the comprehensive study of CMV operations commissioned by FMCSA and conducted by VTTI. One limitation of the VTTI study was that

the data used were collected naturalistically, and not in a controlled environment; the "cognitive distraction" effects of driver behaviors could not easily be determined. This information, which includes ongoing research, is summarized below.

¹⁸ Although the final report does not elaborate on texting, the drivers were engaged in the review,

preparation, and transmission of typed messages via wireless phones.

Text Messaging During Simulated Driving—Drews, *et al.*, 2009¹⁹

This research was designed to identify the impact of text messaging on simulated driving performance. Using a high fidelity driving simulator, researchers measured the performance of 20 pairs of participants while: (1) Only driving, and (2) driving and text messaging. Participants followed a pace car in the right lane, which braked 42 times, intermittently. Participants were 0.2 seconds slower in responding to the brake onset when driving and text messaging, compared to driving-only. When drivers are concentrating on texting, either reading or entering, their reaction times to braking events are significantly longer.

Driver Workload Effects of Cell Phone, Music Player, and Text Messaging Tasks With the Ford SYNC Voice Interface Versus Handheld Visual-Manual Interfaces (“The Ford Study”)—Shutko, *et al.*, 2009²⁰

A recent study by Ford Motor Company,²¹ involving 25 participants, compared using a hands-free voice interface to complete a task while driving with using personal handheld devices (cell phone and music player) to complete the same task while driving. Of particular interest were the results of this study with regard to total eyes-off-road time when texting while driving. The study found that texting, both sending and reviewing a text, was extremely risky. The median total eyes-off-road time when reviewing a text message on a handheld cell phone while driving was 11 seconds. The median total eyes-off-road time when sending a text message using a handheld cell phone while driving was 20 seconds.

¹⁹ Drews, F.A., Yazdani, H., Godfrey, C.N., Cooper, J.M., & Strayer, D.L. (Dec. 16, 2009). Text messaging during simulated driving. Salt Lake City, Utah: *The Journal of Human Factors and Ergonomics Society Online First*. Published as doi:10.1177/0018720809353319. Available in the docket: FMCSA–2009–0370–0006.

²⁰ Shutko, J., Mayer, J., Laansoo, E., & Tijerina, L. (2009). Driver workload effects of cell phone, music player, and text messaging tasks with the Ford SYNC voice interface versus handheld visual-manual interfaces (paper presented at SAE World Congress & Exhibition, April 2009, Detroit, MI). Warrendale, PA: Society of Automotive Engineers International. Available in the docket: FMCSA–2009–0370–0007.

²¹ The Engineering Meetings Board has approved this paper for publication. It has successfully completed SAE’s peer review process under the supervision of the session organizer. This process requires a minimum of three (3) reviews by industry experts.

The Effects of Text Messaging on Young Novice Driver Performance—Hosking, *et al.*, 2006²²

Hosking studied a very different driver population, but obtained similar results. This study used an advanced driving simulator to evaluate the effects of text messaging on 20 young, novice Australian drivers. The participants were between 18 and 21 years old, and they had been driving 6 months or less. Legislation in Australia prohibits handheld phones, but a large proportion of the participants said that they use them anyway.

The young drivers took their eyes off the road while texting, and they had a harder time detecting hazards and safety signs, as well as maintaining the simulated vehicle’s position on the road than they did when not texting. While the participants did not reduce their speed, they did try to compensate for the distraction of texting by increasing their following distance. Nonetheless, retrieving and particularly sending text messages had the following effects on driving:

- Difficulty maintaining the vehicle’s lateral position on the road.
- Harder time detecting hazards.
- Harder time detecting and responding to safety signs.
- Up to 400 percent more time with drivers’ eyes off the road than when not texting.

The Effect of Text Messaging on Driver Behavior: A Simulator Study — Reed and Robbins, 2008²³

The RAC Foundation commissioned this report²⁴ to assess the impact of text messaging on driver performance and the attitudes surrounding that activity in the 17 to 24-year old driver category. There were 17 participants in the study. The results demonstrated that driving was impaired by texting. Researchers reported that “failure to detect hazards, increased response times to hazards, and exposure time to that risk have clear implications for safety.” They reported an increased stopping distance of 12.5

²² Hosking, S., Young, K., & Regan, M. (February 2006). The effects of text messaging on young novice driver performance. Victoria, Australia: Monash University Accident Research Centre. Available in the docket: FMCSA–2009–0370–0008.

²³ Reed, N. & Robbins, R. (2008). The effect of text messaging on driver behaviour: A simulator study. Report prepared for the RAC Foundation by Transport Research Laboratory. Available in the docket: FMCSA–2009–0370–0009.

²⁴ The work described in this report was carried out in the Human Factors and Simulation group of the Transport Research Laboratory. Andrew Parkes carried out the technical review and auditing of this report.

meters, or three car lengths, and increased variability of lane position.

Cell Phone Distraction in Commercial Trucks and Buses: Assessing Prevalence in Conjunction With Crashes and Near-Crashes—Hickman²⁵

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 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; it 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 dataset.

Odds ratios were calculated to show a measure of association between involvement in a safety-critical event and performing non-driving related tasks, such as dialing or texting. The odds ratios show the odds of being involved in a safety-critical event when a non-driving related task is present compared to situations when there is no non-driving related task. The odds ratios for text/e-mail/accessing the Internet tasks were very high, indicating a strong relationship between text/e-mail/accessing the Internet while driving and involvement in a safety-critical event. Very few instances of this behavior were observed during safety-critical events in the current study and even fewer during control events. Although truck and bus drivers do not text frequently, the data

²⁵ 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, September 2010. <http://www.fmcsa.dot.gov/facts-research/art-public-reports.aspx>.

suggest that truck and bus drivers who use their cell phone to text, e-mail, or access the Internet are very likely to be involved in a safety-critical event.

E. Existing Texting Prohibitions and Restrictions by Federal, State, and Local Governments

Executive Order 13513

The President immediately used the feedback from the DOT Summit on Distracted Driving and issued Executive Order 13513, which ordered that:

Federal employees shall not engage in text messaging (a) when driving a Government Owned Vehicle, or when driving a Privately Owned Vehicle while on official Government business, or (b) when using electronic equipment supplied by the Government while driving.

The Executive Order is applicable to the operation of CMVs by Federal government employees carrying out their duties and responsibilities, or using electronic equipment supplied by the government. This order also encourages contractors to comply while operating CMVs on behalf of the Federal government.

Regulatory Guidance

On January 27, 2010, FMCSA published regulatory guidance concerning the applicability of 49 CFR 390.17, Additional equipment and accessories, to any CMV operator engaged in "texting" on an electronic device while driving a CMV in interstate commerce (75 FR 4305). The guidance interpreted § 390.17 as prohibiting texting on electronic devices while driving because it decreases the safety of operations. As of the effective date of this final rule, the guidance will be withdrawn because this final rule makes the guidance on texting no longer necessary. The Agency does not intend to remove the authority to cite drivers under § 390.17 for unsafe operation of a CMV. Section 390.17 still applies to any use of additional equipment and accessories that decreases the safety of operation of the CMVs on which they are used.

Federal Railroad Administration

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 1, 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 cell phones and texting. FRA cited numerous examples of the adverse impact that electronic devices can have

on safe operations. These examples included fatal accidents that involved operators who were distracted while texting or talking on a cell phone. In light of these incidents, FRA is imposing restrictions on the use of such electronic devices, both through its order and a rulemaking that seeks to codify the order. In a notice of proposed rulemaking (NPRM) published May 18, 2010, FRA proposed to amend its railroad communications regulations by restricting the use of mobile telephones and other distracting electronic devices by railroad operating employees (75 FR 27672).

State Restrictions

Texting while driving is prohibited in 30 States, the District of Columbia, the Virgin Islands, and Guam. A list of States and Territories that have taken such actions can be found at the following DOT Web site: <http://www.distraction.gov/state-laws>. Generally, the State requirements are applicable to all drivers operating motor vehicles within those jurisdictions, including CMV operators. Because some States do not currently prohibit texting while driving, there is a need for a Federal regulation to address the safety risks associated with texting by CMV drivers. This final rule restriction provides uniform language applicable to CMV drivers engaged in interstate commerce, regardless of the presence or absence of a State law or regulation. Generally, State laws and regulations remain in effect and could continue to be enforced with regard to CMV drivers, provided those laws and regulations are compatible with the Federal requirements. This rule does not affect the ability of States to institute new prohibitions on texting while driving. For more information see the **Federalism** section later in this document.

III. Discussion of Comments

FMCSA received approximately 400 comments in response to the NPRM.²⁶ The commenters included associations representing trucking, motorcoaches, public transportation, highway safety, the legal and law enforcement communities, the insurance industry, and bicyclists. Three unions representing drivers submitted comments, as well as representatives of State governments. Commenters from the general public included motorists and bicyclists concerned with their safety when operating around CMVs. In addition, FMCSA received comments from the new Cornell eRulemaking

Initiative (CeRI), summarizing the points raised by participants in a pilot project called Regulation Room (<http://www.regulationroom.com>).

Most commenters supported the proposal because of the potential safety benefits for all vehicle and pedestrian traffic sharing the roadway with CMVs. Commenters felt that texting while driving, especially while driving a CMV, is dangerous and should be prohibited. Many commenters cited crashes or near-crashes with a distracted driver in which they, or someone they knew, were involved; in some cases a fatality occurred. Many commenters felt that the use of mobile telephones has become so much a part of people's lives that it will be difficult to get people to stop using these devices in vehicles. A few commenters suggested that, just as with seat belts, airbags, and driving while impaired, the government must establish regulations concerning texting to protect public health and safety.

Only a few commenters did not support a ban on texting. Some commenters said that the responsibility should be addressed by the States, with guidance from the Federal government. Several commenters suggested that the Agency mandate outreach, education, and company policies in lieu of a prohibition.

The Agency approached the distracted driving issue by taking action on the riskiest issue first, by initiating rulemaking to prohibit texting by CMV drivers. The use of mobile telephones, including texting, is occurring increasingly. By approaching this complex subject with a focus, on the unsafe behavior regardless of the technology, FMCSA received the support of its stakeholders to act quickly to stop texting in CMVs. Subsequently, FMCSA will evaluate other aspects of distracted driving and consider future actions.

Dispatching Devices and Fleet Management Systems

Many commenters were concerned that FMCSA excepted texting on dispatching devices from this rulemaking. The American Association for Justice believed that FMCSA should go further and prohibit CMV operators from using on-board computers while driving. The Commercial Vehicle Safety Alliance (CVSA) commented that FMCSA should prohibit not only dispatching devices, but many other technologies that cause distractions. NSC held that fleet management devices and on-board and laptop systems should not be exempt from the rule. Advocates noted that it interpreted the NPRM to prohibit all texting while driving, even

²⁶ See 75 FR 16391 (April 1, 2010).

when using such systems as dispatch devices and laptop computers. The Owner-Operator Independent Drivers Association (OOIDA) also stated that small-business motor carriers use different electronic devices, such as laptops, to perform many of the same functions served by fleet management systems. OOIDA believed that it was not fair to ban these devices and not other dispatch or fleet management devices.

Some commenters agreed with the proposed exception for other electronic devices in this rulemaking. ATA supported the exclusion of in-cab fleet management systems, global positioning systems, and navigation systems, while noting that potential safety risks of using these other systems are not fully known. The American Moving and Storage Association and the National Solid Wastes Management Association agreed that the prohibition should not include the use of electronic dispatching tools and fleet management equipment.

FMCSA Response:

Notwithstanding the position of industry associations, the blanket exception to the texting ban has been revised to prohibit texting on a dispatching device or a device that is part of a fleet management system. However, it does not prohibit use of the other functions of such devices for purposes other than texting, as defined in the final rule. Texting on a dispatching device is indistinguishable from texting on another text-capable device and is, therefore, prohibited in this final rule. Texting is risky because it causes the driver to remove his or her eyes from the forward roadway, regardless of the device used to text. The Agency does not see any necessity for drivers to read text messages or type text responses on any device while the vehicle is being operated on public roads. Using a device, including a dispatch device or in-cab fleet management system, for functions other than texting is not prohibited by this rule. Consequently, the Agency is revising the definition of texting and clarifying the regulatory text to make it clear that the rule prohibits texting on any device.

Other Texting Exceptions

Several commenters requested clarification of the definition of texting and other activities that could be considered a form of texting. Advocates and the American Insurance Association (AIA) were concerned with the exception for “entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device.

* * * They believe that the physical actions required to enter a telephone number and perform other excepted tasks involve at least visual and physical distraction, if not cognitive as well. They appear to differ from text messaging only in terms of duration. In addition, AIA was concerned that these exceptions, if not carefully provided for, might undercut the ability of law enforcement to effectively enforce the ban. AHAS also stated that the Agency should use the definition of texting contained in E.O. 13513.

FMCSA Response:

The Agency agrees that drivers should always concentrate on the road and, therefore, does not condone any unsafe activity while driving a CMV. In order to respond quickly to an unsafe driving behavior by CMV drivers on our Nation’s highways, FMCSA chose to address the texting issue first because research indicates that it is a very dangerous activity based on the VTTI study.

Small Passenger-Carrying Vehicles

Advocates commented that texting by drivers operating small buses, transporting 9 to 15 passengers including a driver, who are not required to have a CDL, would not be prohibited by this regulation. Advocates also stated that, given the serious safety problems involving small buses and 15 passenger vans used in interstate commerce, leaving non-school bus passenger-carrying CMVs without Federal protection from texting while driving is inappropriate.

FMCSA Response:

FMCSA agrees that these drivers should be included in the final rule; and, in fact, most would have been covered. On February 1, 2010, in response to section 4136 of SAFETEA-LU, FMCSA published a final rule that removed the regulatory exception for small vehicles transporting passengers for direct compensation operated within 75 miles of the driver’s starting location (Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce, 75 FR 4996). Drivers employed by such carriers were covered by the proposed texting rule, and are still covered by this final rule. Beyond that, however, the final rule will also now cover drivers of small-passenger carrying vehicles (designed or used to transport 9–15 passengers), not receiving direct compensation, that are otherwise exempt from most of the FMCSRs under 49 CFR 390.3(f)(6), for example hotel and rental car shuttle services. The Agency includes this driver group in the final rule to cover as

many vehicle drivers as possible, within its statutory authority.

Enforcement Mechanisms

The Transportation Trades Department, AFL CIO (TTD) and the Amalgamated Transit Union (ATU) expressed concern that, although proposed § 392.80 states that “no motor carrier shall allow or require its drivers to engage in texting while driving,” the NPRM does not articulate any enforcement mechanism to hold employers responsible for violations of the provision.

ATA also asked the Agency to modify the regulatory text to more clearly define the term “allow” in proposed § 392.80. For example, if the motor carrier has a policy that prohibits texting and has evidence that it has imposed progressive discipline on drivers found in violation of the policy, the motor carrier should not be held accountable for texting violations. The United Motorcoach Association (UMA) and the National Association of Motorcoach Operators had similar comments on part 392. UMA stated a preference for language that directs carriers to develop policy and training that instructs drivers to comply with Federal laws pertaining to texting while driving.

FMCSA Response:

FMCSA believes that enforcement mechanisms are already in place. Many commenters may not realize that motor carriers and employers that allow or require their drivers to text would be subject to civil penalties of up to \$11,000, as already provided in 49 U.S.C. 521(b)(2)(A), 49 CFR 386.81, and Appendix B to 49 CFR part 386, paragraph (a)(3). The prohibition as it applies to motor carriers, to not “allow or require its drivers to engage in texting while driving,” is similar to other regulations applicable to carriers and employers, which have been in effect for many decades (49 CFR 390.11). Therefore, FMCSA does not believe a clearer definition of “allow” is necessary. FMCSA notes that neither the industry nor unions have expressed difficulty achieving compliance with similar, if not identical, regulatory language elsewhere in the FMCSRs.

In response to UMA and NAMO comments, due to the serious nature of texting while driving, FMCSA believes a regulatory duty should be imposed on the carrier directly. Carriers may institute internal policies and programs, including educational programs, to meet this duty.

School Bus Operations

ATU believed it is unnecessary to extend the ban to public school bus drivers.

FMCSA Response:

FMCSA is precluded by statute from applying the FMCSRs to employees of Federal, State and local governments, even when they are engaged in transportation in interstate commerce (49 U.S.C. 31132(2) and (3)). This would include drivers of school buses employed by such government entities. However, drivers employed by private entities providing school bus transportation under contract to government entities will be covered, if they are engaged in interstate transportation. In addition, both government and private drivers of school buses requiring a CDL would be subject to the CDL disqualification if they are convicted of 2 or more serious traffic violations, which can include a conviction for violating a State traffic law prohibiting texting while driving.

Transit Agencies

In response to a request in the NPRM, comments were received from representatives of several transit industry interests (*i.e.*, the American Public Transportation Association (APTA), ATU, Simi Valley Transit) outlining existing policies that include the prohibition of texting on any device, personal or transit agency-specific, while operating transit vehicles. APTA expressed its support for the rule, and provided its recommended practice that outlines distractions that should be prohibited, including personal electronic devices, as well as other common distractions such as reading print material and consuming food.

ATU stated that it is unnecessary to extend the ban on texting to transit employees because virtually all transit agencies already have a ban on the use of cell phones and electronic devices while operating a vehicle. ATU commented that it is important to recognize the differences between a long-haul bus system and a local transit system, and allow exceptions for transit agencies, whether operated by Federal, State, or local government. Simi Valley Transit supports the prohibition and notes that its operators are prohibited from texting on any type of communication systems in their vehicles.

FMCSA Response:

It is unsafe to text while operating a CMV regardless of the operating differences among motorcoach, school bus, or local transit system vehicles. There have been instances where transit

vehicles were involved in an incident or crash while the driver was using a mobile phone or electronic device and that activity was noted as a possible contributing factor. In June 2008, a video of a San Antonio bus crash was aired on major news networks. The video shows a city bus driver texting at the wheel moments before crashing into a sport utility vehicle.

However, FMCSA acknowledges that the government exemption applies to many transit and school bus operations and their drivers. These drivers are only subject to the CDL disqualification if the violation occurs in a State that has State or local traffic laws prohibiting texting while driving as a serious traffic offense. However, the Agency included as many passenger-carrying drivers as possible, within the scope of its statutory authority.

Preemption of State and Local Laws

In response to a request for comments on both texting policies and their enforcement and on the applicability of State laws and local ordinances to school bus drivers, the Transportation Workers Union of America, AFL-CIO (TWU) stated that "this proposal needs to minimize the preemption and keep guidelines leveled," citing the provisions of 49 U.S.C. 31136(c)(2)(B). CVSA commented that the rules should not preempt the States' ability to take additional measures with respect to non-CDL commercial drivers operating in intrastate commerce. They were concerned that the proposed rules might directly or indirectly require the States to "categorize" all currently exempted non-CDL drivers operating in intrastate commerce into the regulations. CVSA suggested that such actions should be left to the States through their individual laws as they deem appropriate. Any intent to bring these drivers into the regulations should be accomplished through a separate rulemaking.

FMCSA Response:

In the most general sense, under long-standing principles, the FMCSRs establish minimum safety regulations that may be supplemented by the States, as long as they are consistent with the regulations. The NPRM described the effect of the proposed rules in accordance with provisions already in the FMCSRs, which establish the basis for the scope of any preemption (75 FR at 16398). Specifically, 49 CFR 390.9 states:

Except as otherwise specifically indicated, subchapter B of this chapter [III of Title 49, CFR] is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to

safety, the compliance with which would not prevent full compliance with these regulations by the persons subject thereto.

This provision allows the States and their subdivisions to enforce their laws and regulations relating to safety, as long as that would not preclude persons subject to the FMCSRs from fully complying with them. This provision satisfies the requirements of 49 U.S.C. 31136(c)(2)(B) by minimizing unnecessary preemption and allowing the States to establish additional regulations that do not prevent full compliance with the FMCSRs. (*See also* 49 U.S.C. 31141(c).)

In the case of States receiving grants under the Motor Carrier Safety Assistance Program (MCSAP), however, there has been a continuous progression towards uniform CMV safety standards for both interstate and intrastate transportation since MCSAP was first enacted as part of the Surface Transportation Assistance Act of 1982, §§ 401–404, Public Law 97–424, 96 Stat. 2097, 2154 (Jan. 6, 1983). The statute directs the Agency to provide grants to the States for, among other things, "the enforcement of regulations, standards, and orders of the [Federal] Government on commercial motor vehicle safety * * * and compatible State regulations, standards and orders" (49 U.S.C. 31102(a)).

Following the enactment of section 4002(l) of Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 105 Stat. 1914, 2144 (Dec. 19, 1991) (ISTEA), the Agency utilized that statutory authority to establish conditions for States that received MCSAP grants to preempt incompatible State regulation of CMV safety (Motor Carrier Safety Assistance Program, 57 FR 13572, 13579–81 (Apr. 16, 1992) (NPRM) and 57 FR 40946, 40951–52 (Sep. 8, 1992) (final rule)). The Agency noted (at 57 FR 13580) that:

Section 4002(l) of the ISTEA directs the Secretary to issue final regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with the Federal motor carrier safety regulations under the MCSAP. The [Agency] has always administered the MCSAP in a way that would promote the enforcement by State agencies regardless whether the inspected commercial motor vehicles, drivers or motor carriers were involved in interstate or intrastate commerce. The [Agency] has consistently taken the position that this was the intent of MCSAP as originally enacted in the STAA of 1982, and this provision confirms that position.

The Agency has issued tolerance guidelines that allow certain limited departures from the Federal standards

by intrastate CMV regulations, and those guidelines were first codified, along with procedures for periodic State and Agency review of compatibility, in the 1992 MCSAP final rule. (See 57 FR 40951–52, 40957–58 (former 49 CFR 350.11) and 40961–62 (49 CFR part 350, former App. C).) In addition, the process for determining compatibility of State laws with Federal regulations and standards under the authority of 49 U.S.C. 31141 was combined with the process for reviewing State funding under MCSAP (57 FR 40952).

More recently, FMCSA reiterated that:

[T]he congressional intent and purpose of the MCSAP [is] to ensure uniformity of regulations and enforcement among the States. Since the inception of the program, the agency has required each State to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. Safety standards in one State must be compatible with the requirements in another State in order to foster a uniform national safety environment.

(Motor Carrier Safety Assistance Program, 65 FR 15092, 15098 (Mar. 21, 2000)). The MCSAP rules adopted in 2000 recodified and strengthened the tolerance guidelines, which are now found at 49 CFR 350.339–350.345.

With regard to CVSA's comments on the preemption of State safety regulation of intrastate CMV drivers, FMCSA did not propose in this rulemaking any departure from the compatibility requirements for intrastate CMVs and drivers that are an essential element of MCSAP. As explained in the NPRM, the States receiving MCSAP grants will be required, as a condition of receiving the grants, to adopt compatible regulations with regard to texting by CMV drivers in accordance with the requirements of 49 CFR part 350. At the same time, those States have the ability, at their discretion, to utilize the limited variances from MCSAP compatibility allowed by 49 CFR 350.341, which FMCSA is not modifying in this rulemaking. Section 350.341 sets the boundaries for the allowable variances from the uniform Federal standard governing texting by CMV drivers for intrastate motor carrier operations in the States receiving MCSAP grants.

State Adoption

The National Conference of State Legislators (NCSL) requested that DOT provide States with more than 3 years to adopt the necessary laws and regulations. NCSL recommended that these new requirements be “excluded from the sanctions and withholds that exist in the underlying statute and regulations.”

FMCSA Response:

The Agency does not believe the request is appropriate given the safety risks of texting while driving. Three years is more than enough time to adopt this regulation, even if a State legislature meets every other year to pass new legislation. The Agency has consistently allowed a maximum of 3 years for adoption of MCSAP compatible regulations (49 CFR 350.331(d)). With regard to CDL regulations, FMCSA is only adding a new offense to an existing category of “Serious Traffic Violations.” No new penalties have to be created by State legislatures; they already exist in State statutes and laws for existing serious traffic violations set forth in § 383.51. Furthermore, States have consistently demonstrated their ability to implement more complex and expansive regulations in the past in fewer than 3 years.

Enforcement

Several commenters noted that enforcement will be difficult and highlighted the current lack of enforcement of existing laws. Some commenters were concerned that enforcement may take place only after there is a crash. To the extent possible, CVSA felt that regulations should not be prescriptive, but rather performance-based, and efforts should be made to use existing authorities for enforcement. Several commenters worried about the mechanics of enforcement.

In addition, OOIDA commented that an enforcement plan is necessary to ensure that enforcement of a restriction on texting conforms to the requirements of the Fourth Amendment's provisions governing searches and seizures. OOIDA is most concerned about explaining what, if any, access enforcement personnel would have to electronic devices present in a CMV and to the information stored on the devices.

FMCSA Response:

FMCSA does not believe that questions about specific enforcement procedures are a basis for not taking action to restrict texting while driving. Enforcement of this rule will involve a period of familiarization for both Federal and State enforcement agencies. If FMCSA were considering a rule allowing texting under certain circumstances, performance-based standards might be suitable; they are not a viable option for this rule, which requires specific restriction concerning an activity that compromises safety. 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 lead distracted drivers to put down their cell phones and focus on the road. During one week of the pilot program in Hartford, police cited more than 2,000 drivers for talking on mobile phones and 200 more for texting while driving. With regard to the Fourth Amendment issues raised by OOIDA, enforcement activities related to the implementation of the final rule that involve acquisition of evidence will be governed by the principles established in judicial precedents interpreting and applying the Fourth Amendment and related statutory provisions, such as the Electronic Communications Privacy Act of 1986, Public Law No. 99–508, 100 Stat. 1848 (1986). It is FMCSA's view that these principles should address the concerns raised by OOIDA.

Penalties

Several commenters said that the proposed penalties are not harsh enough. AIA stated that, since research shows that texting while driving can have an effect that is the same as or worse than severely intoxicated driving, the CDL penalties for texting should be identical to those applicable to intoxicated driving. On the other hand, TTD and ATU stated the proposal correctly sanctions CDL holders for texting while driving only when they are “operating a CMV” and not “while operating a vehicle for which a CDL is not required.”

FMCSA Response:

FMCSA, to a degree, is constrained by the applicable statutes in establishing new CDL qualifications. Under 49 U.S.C. 31310(e), a CDL driver may only be disqualified for committing multiple violations of “serious traffic violations involving a commercial motor vehicle operated by the” CDL driver. This has always been interpreted as requiring that the offense be committed while operating a CMV (see 49 CFR 383.51, Table 2). This is the statutory authority that FMCSA must rely on to add texting while operating a CMV to the list of serious traffic violations to provide the basis for a possible disqualification of a CDL driver. On the other hand, a different statutory provision, 49 U.S.C. 31310(g), requires longer disqualifications of a CDL driver with multiple convictions involving a motor vehicle (other than a CMV) of either: (1) A serious offense “that has resulted in the revocation, cancellation, or suspension of the individual's license”; or (2) a “drug or alcohol related offense” (Cf. 49 CFR 383.51, Table 2).

FMCSA is unaware of any State law that provides for the revocation, cancellation, or suspension of a driver's

license when the driver is convicted of texting while driving a non-CMV. Therefore, the longer disqualification period provided in Section 31310(g) is not available for application to texting in violation of State or local traffic laws.

Section 31310(e) does allow FMCSA to specify that the period of disqualification should be “at least 60 days” for obtaining two convictions within a 3-year period and “at least 120 days” for obtaining three or more convictions within a 3-year period. However, the Agency decided that the penalties for texting should be similar to the disqualification periods for other traffic violations already in place for CMV drivers. The Agency considered the severity of the penalties in the development of the NPRM. FMCSA based its decision on the level of severity of the current penalty for other serious violations such as reckless driving and speeding, as provided by 49 U.S.C. 31310(e) and 49 CFR 383.51(c).

Use of Federal Civil Penalties and State Fines

Some commenters, including the League of American Bicyclists, suggested that any fines collected be routed toward awareness programs, marketing campaigns, street safety, and targeted traffic enforcement. Others suggested providing the funds to infrastructure programs for other modes of transportation such as walking, cycling, and public transportation.

FMCSA Response:

While the Agency agrees with the view that bicyclists and pedestrians are vulnerable to distracted driving behaviors, the Agency does not have discretion in the use of Federal civil penalties. The Agency cannot control the use of funds collected by local enforcement agencies through fines received from traffic violations. Its authority to direct the use of fines and penalties collected by State and local enforcement agencies receiving MCSAP grants is limited to ensuring that the States provide “satisfactory assurances the [State] has or will have the legal authority * * * necessary to enforce” CMV safety regulations (49 U.S.C. 31102(b)(1)(C)). FMCSA is required by statute to deposit all civil penalties it collects in the Highway Trust Fund (49 U.S.C. 521(b)(10)).

Data and Research on Texting by CMV Drivers

While commenters generally agreed that existing research shows that texting may seriously compromise safety, some commenters found the existing research to be inadequate. Though ATA supported the NPRM, it commented that

regulations should be based solely on research and facts. CVSA believed that there needs to be more research on the issue of distracted driving, especially as it relates to crashes and the different types of distractions—both technology- and non-technology-related. TWU noted that the basis for this rule has been overall statistics, but not specific data on texting by CMV drivers.

FMCSA Response:

In response to the NPRM, the Agency did not receive any additional research data on texting from the public. The Agency reviewed existing research and other data and concluded that texting while driving is a dangerous activity. FMCSA has data on texting by CMV drivers, included in the VTTI study that FMCSA published in 2009, “Driver Distraction in Commercial Vehicle Operations.” FMCSA finds that the results from that study provide sufficient data to justify a prohibition against texting. The data demonstrate safety-critical events that occurred while texting by CMV drivers.

There is no basis for deferring a ban against texting until additional research is completed. If the industry believes texting should be allowed under certain circumstances, the Agency welcomes the opportunity to engage in an open forum to identify those circumstances and the research which indicates that safety would not be compromised by the visual, cognitive, and manual distraction associated with texting. FMCSA notes that the VTTI study was peer reviewed. The study data highlighted the need for action rather than the need for additional research. Because limited CMV-specific data is available, the rule is based in part, but not entirely, on research studies of all driver types, as described extensively in both the NPRM and previously in this final rule. FMCSA supports further research that examines distracted driving by CMV drivers and DOT continues to conduct research on distracted driving.

Outreach

FMCSA received multiple comments on the necessity of public education, outreach, and awareness campaigns. CVSA commented that safety efforts on distracted driving need to include enforcement, engineering, and education initiatives. CVSA stated that DOT and the appropriate modal administrations, as well as Transport Canada, will need to make adequate resources available to the States and other jurisdictions for enforcement and education activities. NSC urged FMCSA to support the rule’s effectiveness with high-visibility enforcement campaigns,

proven to reduce unsafe driver behaviors and boost compliance, in order to raise awareness, a necessary step with new rules and laws. Several commenters suggested that the Agency mandate certain training curricula and company policies in lieu of a prohibition.

FMCSA Response:

The Agency agrees that enforcement and outreach efforts are essential to increase public awareness. DOT campaigns, such as those addressing seat belt use and drunk driving, have proven to reduce injuries and fatalities. DOT already has in place campaigns to educate all vehicle drivers on distracted driving. Platforms for sharing information include the Web site <http://www.Distracted.gov>, as well as outreach on radio and television, which have proven to reduce unsafe driver behaviors and boost compliance awareness.

For more information on research, outreach, and education, the reader may reference the National Highway Traffic Safety Administration (NHTSA) Driver Distraction Program. This program is a plan to communicate NHTSA’s priorities to the public with regard to driver distraction safety challenges, focusing on the long-term goal of eliminating crashes that are attributable to distraction. The complete overview can be found at http://www.distracted.gov/files/dot/6835_DriverDistractionPlan_4-14_v6_tag.pdf. The Secretary considers preventing distracted driving a priority for the Department and has put \$50 million into his Fiscal Year 2011 Budget for education, awareness, and outreach.

Effect of a Texting Ban on Small Businesses

OOIDA stated that FMCSA did not identify nor analyze the effect of the proposed rule on small businesses under the Regulatory Flexibility Act.

FMCSA Response:

As required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Agency conducted an economic analysis of the impact of this rule on small entities and certified that a Regulatory Flexibility Analysis is not necessary because the rule will not have a significant economic impact on a substantial number of small entities subject to the requirements of this rule (See the Final Regulatory Evaluation in the docket for this rulemaking).

Non-CMV Drivers

Many commenters, including unions, trade associations and bicyclists suggested that this texting prohibition be applied to all vehicle drivers,

including passenger car drivers, motorcyclists, and bicyclists.

FMCSA Response:

While FMCSA agrees that no vehicle driver should text while driving, FMCSA is limited by its statutory authority in its ability to regulate distracted driving. The Agency's direct authority is limited to drivers of CMVs in interstate commerce (49 U.S.C. 31136(a)). The Agency cannot address any aspects of distracted driving by non-CMV drivers, motorcyclists, pedestrians, or bicyclists.

Limiting the Use of Cell Phones and Other Interactive Devices in CMVs

Approximately 50 commenters requested a complete ban on cell phones while driving CMVs. Many commenters believed that other electronic devices should be limited in the current rule or recommended such a course for future rulemaking. There was also concern that the proposed rule might not go far enough in addressing broader issues related to distracted driving. While NTSB acknowledged that FMCSA views the prohibition of texting as a first step and plans to proceed with additional rulemaking on this issue in the near future, NTSB wanted to ensure that the larger issue of cell phone use by drivers of CMVs is adequately addressed.

A number of comments addressed other electronic devices generally found in CMVs, such as citizens band radios, GPS devices, and laptop computers, and stated that they should be prohibited by FMCSA. TTD noted that FMCSA plans to address the use of other electronic devices in separate rulemaking proceedings, although they had concerns regarding motor vehicle operators who, they say, "are often required to be dispatched by citizens band radio, global position devices, and other electronic technologies."

FMCSA Response:

FMCSA acknowledges there are safety concerns about the level of distraction associated with cell phone use. Also, it is the subject of both an NTSB (H-06-27) and a MCSAC recommendation. The use of cell phones and other electronic devices by CMV drivers for functions other than texting, however, is outside the scope of consideration in this rulemaking. In order to address expeditiously the dangers of texting while driving and prevent future crashes, injuries, and fatalities, the Agency chose to first focus on texting, as an especially risky behavior that can cause physical, visual, and cognitive distraction. FMCSA will evaluate other aspects of distracted driving and consider future actions.

Disabling Cell Phones

Many commenters suggested using technology to limit a driver's ability to operate a mobile telephone when driving by having the phone automatically disabled in a moving vehicle. CVSA stated that electronic devices, whether they are built into the dash or nomadic devices, need to have an "in-motion" mode to prevent their use (unless in emergency situations) during vehicle movement. CeRI commenters suggested requiring all cell phones to be programmed to shut down texting, e-mail, and internet functions whenever the phone travels faster than 5 or 10 miles per hour (mph) and stated that manufacturers should be required to add such functionality to all cell phones.

FMCSA Response:

Requiring that such capabilities be installed is beyond the scope of this rulemaking. However, carriers are free to explore and implement such capabilities as they see fit.

IV. Discussion of Rule

The general structure of this final rule follows the outline contained in the NPRM (75 FR 16399). Any changes from the NPRM are described below.

Section-by-Section Analysis

Federal Prohibition Against Texting by Interstate CMV Drivers

Section 390.3

The Agency determined that it has the authority to modify several regulatory exemptions in the 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(f)(1) and (6)). This action is necessary for public safety regarding school bus transportation by interstate motor carriers. In addition, the Agency determined that the rule should apply to the operation by drivers of small-passenger carrying vehicles (designed to transport 9–15 passengers) that are not receiving direct compensation that are otherwise exempt from most of the FMCSRs under 49 CFR 390.3(f)(6).

Section 390.5

The Agency adds new definitions for the terms "electronic device" and "texting," for general application. The definition of "driving" is incorporated into the prohibition of texting while driving a CMV in new § 392.80, in order to restrict the use of the term to texting activities and to avoid limiting the scope of the term as used in other provisions of the FMCSRs.

The Agency did not incorporate explanatory adjectives such as "handheld," "portable," and "personal" that had been included in other documents because the Agency wanted to focus on the behavior—not the device. After consideration of the comments, the texting definition clarifies that any non-texting functions, which include functions on dispatching devices, fleet management systems, smart phones, and similar "multi-function" devices (e.g., Global Positioning System, hours of service tracking capabilities, and music playing), are not prohibited by this rulemaking.

Section 391.2

FMCSA amends 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 texting prohibition a disqualifying offense for such drivers. While the explicit Federal prohibition against texting applies directly to these drivers, the disqualification provision would not apply without this amendment to the current exception under 49 CFR 391.2.

Section 391.15

The Agency adds a new paragraph (e) to this section to provide for the disqualification of any driver convicted of two or more violations of the new prohibition set forth in § 392.80 from operating a CMV in interstate commerce. The change mirrors the corresponding new provisions governing the disqualification of CDL drivers in § 383.51(c). The required number of convictions to cause a disqualification and the period of disqualification are 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 prohibition are 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 App. B, ¶ A(4)).

Section 392.80

In this section the Agency prohibits texting while driving a CMV, as defined in 49 CFR 390.5. In addition, the first and each subsequent violation of such a prohibition are 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 App. B, ¶ A(4)). Furthermore, this rule states that motor carriers must not allow nor require drivers to text while driving. Employers

may also 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 Appendix B, paragraphs (a)(3) and (4)). FMCSA also includes a provision in this section to apply this new prohibition to "school bus operations notwithstanding the general exception in 49 CFR 390.3(f)(1)." Therefore, 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 are subject to the prohibition. FMCSA determined this rule is necessary for public safety regarding school bus transportation by interstate motor carriers. A definition of driving is included in the rule. In addition, the Agency applies the rule to the operation by drivers of small-passenger carrying vehicles (designed to transport 9–15 passengers) that are not receiving direct compensation that are otherwise exempt from most of the FMCSRs under 49 CFR 390.3(f)(6).

The rule provides for a limited exception to the texting while driving prohibition to allow CMV drivers to text if necessary to communicate with law enforcement officials or other emergency services.

Federal Disqualification Standard for CDL Drivers

Section 383.5

FMCSA adds new definitions for the terms "electronic device" and "texting" for application in part 383. The Agency adds a broad definition of electronic device in order to cover the multitude of devices that allow users to enter and read text messages. However, the Agency is not prohibiting the use of such devices by CMV drivers for purposes other than texting. The definition of texting identifies the type of activity that is covered by this rule.

Section 383.51

In Table 2, FMCSA adds a new serious traffic violation that will result in a CDL driver being disqualified. This serious traffic violation is a conviction for violating a State or local law or ordinance prohibiting texting while driving a CMV. FMCSA adds a description of what is considered "driving" for the purpose of this disqualification. FMCSA notes that the conviction must involve "texting" while operating a CMV and excludes convictions for texting by a CDL driver while operating a vehicle for which 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 limit the types of violations that could result in a disqualification accordingly.

Every State that issues CDLs is required to impose this disqualification on a driver required to have a CDL issued by that State whenever that CDL driver is convicted of the necessary number of violations (for 60 days for the second offense within 3 years and for 120 days for 3 or more offenses within 3 years) while operating in States where such conduct is prohibited. This is the case even if the State issuing the disqualification does not have its own law on motor vehicle traffic control prohibiting texting while operating a CMV. (See 49 U.S.C. 31310(e) and 31311(a)(15), and 49 CFR 384.218 and 384.219.)

Section 384.301

New paragraph (e) of § 384.301 requires all States that issue CDLs to implement the new provisions in § 383.51(c) that relate to disqualifying CDL drivers for committing the new serious traffic violation of texting while driving a CMV as soon as practicable, but not later than 3 years after the effective date of this regulation.

State Compatibility

Motor Carrier Safety Assistance Program (MCSAP)

States that receive MCSAP grant funds are required, as a condition of receiving the grants, to adopt regulations on texting that are compatible with these final regulations (49 U.S.C. 31102(a) and 49 CFR 350.201(a)). States under MCSAP will have to adopt regulations compatible with the prohibition on texting (in § 392.80) and the related disqualification (in § 391.15(e)) applicable to both interstate and intrastate transportation as soon as practicable, but not later than 3 years after the effective date of this regulation (49 CFR 350.331(d)). If States do not adopt compatible regulations prohibiting texting while driving a CMV and related disqualifications, they may not receive full MCSAP grant funding.

Because States perform the overwhelming majority of commercial vehicle roadside inspections and perform all traffic stops, enforcement of the final rule would be carried out primarily by the States. The requirement for States to adopt and enforce compatible rules does not, in and of itself, establish enforcement priorities for States. Each year, States submit to FMCSA a Commercial Vehicle Safety

Plan (CVSP) in which the States set safety performance goals and priorities. Therefore, FMCSA assumes that the adoption of compatible State rules would not necessarily result in increased enforcement costs. The States would include enforcement of a texting ban in their CVSPs as warranted by their analysis of truck and bus crash data, but they would not be required to prioritize enforcement based solely on the issuance of this rule. States that currently have texting prohibitions may not incur much in costs, whereas states that do not may have to allocate new resources and undertake new expenses. FMCSA did not quantify additional costs that these states might bear as a result of this rule. Participating States may use MCSAP grant money for enforcement of this rule.

CDL Program

States that issue CDLs are required to adopt and implement the CDL disqualification provisions that require disqualification for two or more convictions of violating a State or local traffic law or ordinance prohibiting texting while driving a CMV. States should be in compliance as soon as practicable, but not later than 3 years after the effective date of these regulations. If they do not comply, 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).

V. Regulatory Analyses

FMCSA amends the FMCSRs to restrict texting, including texting while using dispatching devices and fleet management systems, by certain drivers while operating CMVs in interstate commerce. The Agency also amends the FMCSRs to impose sanctions, including civil penalties and disqualification, on such drivers who do not comply with this final rule. The goal of the regulatory revision is to prevent or reduce the prevalence of truck and bus crashes, fatalities, and injuries on our Nation's highways due to texting while driving. In addition, the revisions will reduce the financial and environmental burdens associated with these crashes, and promote the efficient movement of traffic and commerce on interstate highways.

Recent studies, including one commissioned by FMCSA, show that texting is among the riskiest behaviors of the distracting activities that are undertaken by CMV drivers. Because texting while driving is a fairly recent phenomenon, empirical research on its

impact on safety is limited. FMCSA carefully evaluated all available national-level crash data and found the data do show that distracted driving often results in crashes. While these data do not identify the number of fatalities or crashes attributable to texting, there are numerous studies on driver distraction in general. FMCSA analyzed those studies and found that many of their findings can be applied as a supplementary explanation to a texting prohibition. With regard to the current data on texting, the regulatory analysis focuses on one particular study—"Driver Distraction in Commercial Vehicle Operations" (VTTI Study)—which, though limited in scope and application, does shed light on the potential harm of texting while driving CMVs.

Currently, FMCSA does not have sufficient data that show an explicit empirical link between texting and CMV crashes. Therefore, the Agency exercised its professional judgment consistent with Office of Management and Budget Circular A-4 ("Regulatory Analysis") and conducted a threshold analysis. A threshold or break-even analysis is called for when it is impossible, or difficult, to express in monetary units all of the important benefits and costs of a rule. The most efficient alternative will not necessarily be the one with the largest quantified and monetized net-benefit estimate. In such cases, the Agency is required to make a determination of how important the non-quantified benefits or costs may be in the context of the overall analysis. The threshold analysis approach therefore answers the question: How small does the value of the non-quantified benefits (safety benefits in terms of crash prevention) have to be in order for the rule to yield zero net benefits (*i.e.*, break even)?

This regulatory evaluation considers the following potential costs: (a) Loss in carrier productivity due to time spent while parking or pulling over to the side of the roadway to perform texting

activities; (b) increased fuel usage due to idling as well as exiting and entering the travel lanes of the roadway; (c) increased crash risk due to CMVs that are parked on the side of the roadway and exiting and entering the travel lanes of the roadway; and (d) costs to the States.

The Agency estimates that this rule will cost \$3.8 million annually. Current guidance from the Office of the Secretary of Transportation (OST) places the value of a statistical life at \$6.0 million. Consequently, the texting restriction would have to eliminate at most one fatality every year in order for the benefits of this rule to at least equal the costs. Given the unchecked expansion of texting, FMCSA believes the rule will save lives and prevent a substantial number of crashes. Therefore, the rule is justified based on the safety benefits. The table below presents a summary of the estimated costs of this rule and a threshold analysis of the number of fatalities that would need to be avoided in order to break even.

SUMMARY OF COSTS AND THRESHOLD ANALYSIS (FIRST YEAR)

Lost Carrier Productivity (millions) ...	\$0.3
Increased Fuel Consumption (millions)	\$1.1
Parking, Entering, and Exiting Roadway Crashes (millions)	\$0.2
Costs to the States	*\$2.2
Total Costs	\$3.8
Benefit of Eliminating One Fatality (millions)	\$6.0
Break-even Number of Lives Saved	<1

* One-time cost.

The productivity losses, as well as other costs, were estimated for only one year, as the entire threshold analysis was performed as an undiscounted annual estimation. The loss of productivity is expected to diminish, (but not necessarily vanish within one year), as the motor carrier industry

adjusts to the texting restriction and as new (permissible) technologies arise that compensate for the loss of the texting functionality. FMCSA is unaware of the specific future technologies that might arise, but we continue to research and monitor technological changes in the market.

States are responsible for adopting compatible State rules within three years of the date of the final rule. Because States perform the overwhelming majority of commercial vehicle roadside inspections and perform all traffic stops, enforcement of the final rule would be carried out primarily by the States. The requirement for States to adopt and enforce compatible rules does not, in and of itself, establish enforcement priorities for States. Each year, States submit to FMCSA a Commercial Vehicle Safety Plan (CVSP) in which the States set safety performance goals and priorities. Therefore, FMCSA assumes that the adoption of compatible State rules would not necessarily result in increased enforcement costs. The States would include enforcement of a texting ban in their CVSPs as warranted by their analysis of truck and bus crash data, but they would not be required to prioritize enforcement based solely on the issuance of this rule. States that currently have texting prohibitions may not incur much in costs, whereas states that do not may have to allocate new resources and undertake new expenses. FMCSA did not quantify additional costs that these states might bear as a result of this rule. Participating States may use MCSAP grant money for enforcement of this rule.

FMCSA also conducted a 10-year annualized projection of the discounted costs and benefits of the rule, in which the benefits are simply the value of statistical life saved (*i.e.*, \$6 million). The results, summarized below, show that the net benefits, under both a 3% discount rate and a 7% discount rate, are positive.

SUMMARY OF ESTIMATED NET BENEFITS

10-Year discounting	3% discount rate (millions)	7% discount rate (millions)
Total Costs	\$15.7	\$14.0
Total Benefits*	52.7	45.0
Net Benefits	37.0	31.0

* \$6 million VSL.

FMCSA also conducted a sensitivity analysis (the details of which are contained in Appendix A of the regulatory evaluation) whereby the

extent of texting while using a dispatching device or fleet management system is varied. The results of that analysis show an estimated minimum

total cost of this rule of approximately \$1.4 million and an estimated maximum total cost of approximately \$2.0 million.

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

FMCSA has determined that this rulemaking action is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, and significant under DOT regulatory policies and procedures because of the substantial Congressional and public interest concerning the crash risks associated with distracted driving, even though the economic costs of the 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. DOT policy also 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.

FMCSA has conducted an economic analysis of the impact of this rule on small entities and certifies that a Regulatory Flexibility Analysis is not necessary because the rule will not have a significant economic impact on a substantial number of small entities subject to the requirements of this rule. This rulemaking will affect all of the approximately 493,480²⁷ small entities. However, the direct costs of this rule that small entities may incur are only expected to be minimal. They consist of the costs of lost productivity from foregoing texting while on duty and fuel usage costs for pulling to the side of the road to idle the truck or passenger-carrying vehicle and send or receive a text message. The majority of motor carriers are small entities. Therefore, FMCSA will use the total cost of the rule in the first year (\$3.8 million) applied to the number of small entities (493,480) as a worst case evaluation which would average \$7.70 per carrier. In subsequent years, the cost of the rule per carrier is estimated to be \$3.30.

²⁷ This number represents 99% of 498,465, the current number of interstate motor carriers with recent activity (source: MCMIS data 6/17/2010).

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the 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 this rule. FMCSA will not retaliate against small entities that question or complain about this rule or any policy or action of FMCSA.

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 rule would not result in such expenditure, FMCSA discusses the effects of this rule elsewhere in this preamble.

Paperwork Reduction Act

This 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 (PTA) for the rule on limiting the use of wireless communication devices and determined that it is not a privacy-sensitive rulemaking because the rule will not require any collection, maintenance, or dissemination of Personally Identifiable Information (PII) 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 rule may have an impact on the States. Accordingly, the Agency sought advice from the National Governors Association (NGA), NCSL, and the American Association of Motor Vehicle Administrators (AAMVA) on the topic of texting by letters dated December 18, 2009. (A copy of these letters is available in the docket for this rulemaking). In addition, FMCSA met with representatives from NGA, NCSL, and AAMVA on February 3, 2010, to discuss FMCSA’s rulemaking initiatives. The State interests that met with FMCSA did not express any concerns, then or later, with the proposed course of action, and did not file any comments.

For a full discussion of any preemption issues, see section III. Discussion of Comments, Preemption of State and Local Laws.

Executive Order 12630 (Taking of Private Property)

This 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA

determined that it is not a "significant energy action" under that order. Though it is a "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 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 texting and therefore did not consider any standards.

National Environmental Policy Act

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

FMCSA has also analyzed this rule under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it would not result in any potential increase in emissions that is 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 rule would not significantly increase total CMV mileage, nor would it change the routing of CMVs, how CMVs operate, or the CMV fleet mix of motor carriers. This action merely establishes requirements to prohibit texting while driving for CMV drivers and establishes a procedure for disqualification.

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 amends 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 following definitions in alphabetical order.

§ 383.5 Definitions.

* * * * *

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

* * * * *

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) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

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

(iii) 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.

* * * * *

■ 3. Amend § 383.51 by adding a new paragraph (c)(9) 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 . . .
(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving. 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 (e) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * *

(e) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of October 27, 2010 as soon as practical, but not later than October 28, 2013.

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 paragraph (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(e) and 392.80;

* * * *

(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 for the texting provisions of §§ 391.15(e) and 392.80, and except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

* * * *

■ 8. Amend § 390.5 by adding the following definitions in alphabetical order.

§ 390.5 Definitions.

* * * *

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

* * * *

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 electronic text entry for present or future communication.

(2) Texting does not include:

(i) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

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

(iii) 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 part 392.

* * * *

PART 391—QUALIFICATIONS 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) 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) 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) 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 (e) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(e) Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(1) *General rule.* A driver who is convicted of violating the prohibition of texting in § 392.80(a) of this chapter is disqualified for the period of time specified in paragraph (e)(2) of this section.

(2) *Duration.* Disqualification for violation of prohibition of texting 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 § 392.80(a) of this chapter in separate incidents 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 § 392.80(a) of this chapter in separate incidents 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. Amend part 392 by adding a new subpart H to read as follows:

Subpart H—Limiting the Use of Electronic Devices

§ 392.80 Prohibition against texting.

(a) *Prohibition.* No driver shall engage in texting while driving.

(b) *Motor Carriers.* No motor carrier shall allow or require its drivers to engage in texting while driving.

(c) *Definition.* 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 moved the vehicle to the side of, or off, a highway,

as defined in 49 CFR 390.5, and halted in a location where the vehicle can safely remain stationary.

(d) *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) are not applicable to this section.

(2) *Emergency Use.* Texting while driving is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

Issued on: September 17, 2010.

Anne S. Ferro,
Administrator.

[FR Doc. 2010–23861 Filed 9–24–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 080228336–0435–02]

RIN 0648–AW09

Implementation of Regional Fishery Management Organizations' Measures Pertaining to Vessels That Engaged in Illegal, Unreported, or Unregulated Fishing Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement international conservation and management measures that pertain to vessels that have been identified by any one of several regional fishery management organizations (RFMOs), identified below, as having engaged in illegal, unreported, and unregulated (IUU) fishing activities and added to IUU vessel lists. The United States is a member of, and obligated to implement measures adopted by, the International Commission for the Conservation of Atlantic Tunas (ICCAT), Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), Northwest Atlantic Fisheries Organization (NAFO), Western and Central Pacific Fisheries Commission (WCPFC), Inter-American Tropical Tuna Commission (IATTC), and the Agreement on the International Dolphin Conservation Program (AIDCP).

This rule provides the NOAA Assistant Administrator for Fisheries (Assistant Administrator) with authority to restrict entry into any port or place of the United States of, and access to port services by, foreign vessels on the IUU vessel lists of the aforementioned RFMOs. It also gives the Assistant Administrator authority to prohibit such vessels from engaging in commercial transactions, including, but not limited to, landing and transshipping products. Furthermore, the rule prohibits persons and business entities subject to U.S. jurisdiction from providing certain services to, or engaging in commercial transactions with, such vessels.

DATES: Effective October 27, 2010.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, such as the proposed rule, are available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>. These documents are also available from the Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS ((phone) 301–713–9090, (fax) 301–713–9106, or (e-mail) mi.ae.kim@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2010, NMFS published a proposed rule in the **Federal Register** (75 FR 1324) to address vessels that are on the IUU vessel lists maintained by RFMOs to which the United States is a party. As mentioned in the proposed rule, the effective management of certain marine resources is dependent on compliance with conservation and management measures of RFMOs. The vessels that are included on the IUU vessels lists were identified by RFMOs as having engaged in activities that undermine the effectiveness of conservation and management measures. Examples of such IUU fishing activity include:

- Fishing in an RFMO's management (or convention) area without authorization;
- Failing to record or declare their catches, or making false reports;
- Using prohibited fishing gear in contravention of conservation measures; or
- Transshipping with, or participating in joint operations with, re-supplying, or re-fueling vessels included in IUU vessel lists.

The proposed rule was open for public comment through February 25,