

**Subject**

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 91, Charts.

**Unsafe Condition**

(e) This AD was prompted by an error that was discovered in the take-off speeds and field lengths published in the FAA-approved flight manual. We are proposing this AD to correct the published data in the airplane flight manual and the pilot's operating handbook and ensure it corresponds with the published data in the pilot's checklist. This condition, if not corrected, could result in taking off from shorter runways than required by the airplane if the airplane loses an engine after takeoff decision speed ( $V_1$ ). This could result in the airplane running out of runway before take-off can be accomplished.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Action**

(g) Within 14 days after the effective date of this AD, insert Hawker Beechcraft Corporation Log of Temporary Changes, dated February 2011; and Hawker Beechcraft Corporation Temporary Change to the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, Part Number (P/N) 130-590031-245TC5, dated February 2011; into the airplanes Pilot's Operating Handbook and FAA Approved Flight Manual, P/N 130-590031-245. The actions required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)-(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**Related Information**

(i) For more information about this AD, contact Jason Brys, Flight Test Engineer, FAA, Wichita ACO, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; *telephone*: (316) 946-4100; *fax*: (316) 946-4107.

(j) For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; *telephone*: (316) 676-5034; *fax*: (316) 676-

6614; *Internet*: [https://www.hawkerbeechcraft.com/service\\_support/pubs/](https://www.hawkerbeechcraft.com/service_support/pubs/). You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued in Kansas City, Missouri, on April 22, 2011.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011-10387 Filed 4-28-11; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Part 177**

**[Docket No. PHMSA-2010-0227 (HM-256A)]**

**RIN 2137-AE65**

**Hazardous Materials: Restricting the Use of Cellular Phones by Drivers of Commercial Motor Vehicles in Intrastate Commerce**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to restrict the use of hand-held mobile telephones, including hand-held cell phones, by drivers during the operation of a motor vehicle containing a quantity of hazardous materials requiring placarding under Part 172 of the 49 CFR or any quantity of a select agent or toxin listed in 42 CFR Part 73. Additionally, in accordance with requirements proposed by the Federal Motor Carrier Safety Administration (FMCSA), motor carriers are prohibited from requiring or allowing drivers of covered motor vehicles to engage in the use of hand-held mobile telephones while driving. This rulemaking would improve health and safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of commercial motor vehicles.

**DATES:** Comments must be received by June 28, 2011.

**ADDRESSES:** You may submit comments identified by the docket number PHMSA-2010-0227 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

- *Fax:* (202) 493-2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations; Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number for this rule. Note that all comments received will be posted without change, including any personal information provided. Please see the discussion of the Privacy Act below.

*Docket:* For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> at any time or DOT's Docket Operations Office (*see ADDRESSES*).

**FOR FURTHER INFORMATION CONTACT:** Delmer Billings, Office of Hazardous Materials Safety, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background****A. US DOT Strategy**

The United States Department of Transportation (US DOT) is leading the effort to end the dangerous practice of distracted driving on our nation's roadways and in other modes of transportation. 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 US DOT has identified three main types of distraction that occur while operating a motor vehicle:

1. Visual—taking your eyes off of the road;
2. Manual—taking your hands off of the wheel; and
3. Cognitive—taking your mind off of driving.

The US DOT is working across the spectrum with private and public entities to tackle distracted driving, and will lead by example. The individual agencies of the US DOT are working together to share knowledge, promote a

greater understanding of the issue, and identify additional strategies to end distracted driving. Additionally, several states have forbidden the operation of many types of electronic devices, including cellular phones, while driving any motor vehicle. See US DOT Distracted Driving Web site, <http://www.distracted.gov>; see also Insurance Institute for Highway Safety Web site, <http://www.iihs.org/>.

#### B. PHMSA Distracted Driving Safety Advisory Notice and Texting Restriction

In support of the US DOT strategy to end distracted driving PHMSA issued "Safety Advisory Notice: Personal Electronic Device Related Distractions (Safety Advisory Notice No.10-5)" on August 3, 2010 (75 FR 45697) to alert the hazardous materials community to the dangers associated with the use of cellular (mobile) phones and electronic devices while operating a commercial motor vehicle (CMV; 49 CFR 383.5).

On February 28, 2011 PHMSA issued a final rule (HM-256; PHMSA-2010-0221 (76 FR 10771)) to prohibit texting on electronic devices by drivers during the operation of a motor vehicle containing a quantity of hazardous materials requiring placarding or any quantity of a select agent or toxin listed in the Department of Health and Human Services "Select Agents and Toxins" regulations. The final rule stresses the heightened risk of transportation incidents involving hazardous materials when CMV drivers are distracted by electronic devices. Accordingly, both the February 28, 2011 final rule and this notice of proposed rulemaking (NPRM) urge motor carriers that transport hazardous materials to institute policies and provide awareness training to discourage the use of mobile telephones and electronic devices by CMV drivers.

#### C. FMCSA Rulemaking and Definitions

##### 1. FMCSA Rulemaking

On December 21, 2010 (Docket FMCSA-2010-0096 (75 FR 80014)) FMCSA published an NPRM proposed to restrict the use of hand-held mobile telephone use, including cell phone use, by CMV drivers as a necessary component of an overall strategy to reduce the number of crashes caused by distracted driving. The FMCSA NPRM focuses on all interstate CMV drivers, including those drivers of CMVs that do not require a CDL. In general, the FMCSA proposal would cover all CMV drivers subject to FMCSA's safe driving rules under 49 CFR part 392.

Additionally, on September 27, 2010, the Federal Motor Carrier Safety Administration (FMCSA) published a

final rule limiting the use of wireless communication devices by CMV drivers (Docket FMCSA-2009-0370 (75 FR 59118)). The FMCSA final rule prohibits texting by CMV drivers operating in interstate commerce and imposes sanctions for drivers that fail to comply. In the final rule FMCSA cites numerous studies evaluating the dangers of various forms of distracted driving.

##### 2. Definitions

In existing Federal Motor Carrier Safety Regulations (FMCSRs; 49 CFR Parts 350-399) FMCSA defines a "CMV" in § 383.5 of the 49 CFR as follows:

*Commercial motor vehicle* means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds);

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more);

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section.

In its December 21, 2010 NPRM addressing the use of hand-held mobile telephones by CMV drivers, FMCSA proposed to define the terms "mobile telephone" and "using a hand-held mobile telephone" in § 390.5 as follows:

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

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

In addition, in its NPRM FMCSA proposes to define the term "driving" in § 392.82 as follows:

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

#### D. Studies, Data, and Analysis on Driver Distractions

Distracted driving 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 US 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 its NPRM, FMCSA states:

FMCSA is aware of several recent CMV crashes in which the use of a mobile telephone may have contributed to the crash. In one case, according to media reports, a truck driver from Arkansas told police she was talking on her cell phone when she became involved in a crash that killed two boys on May 9, 2010. In another media report, on March 26, 2010, a tractor trailer crossed the median strip of Interstate 65 in central Kentucky and collided with a van transporting 9 adults, two children, and an infant. All the adults and the infant in the van and the truck driver were killed. The NTSB is conducting an investigation into the crash, including attempting to determine if a mobile telephone was a factor in the crash. According to media reports, in February 2010, a Montgomery County, Pennsylvania, school bus driver was allegedly talking on his cell phone before a deadly crash.<sup>1</sup>

Below we summarize studies, data, and analysis that provide the foundation for this NPRM.

##### 1. NTSB Safety Recommendation H-06-27

On November 14, 2004, a motor coach 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, FMCSA agreed to initiate a study to assess:

- The potential safety benefits of restricting cell phone use by drivers of passenger-carrying CMVs;

<sup>1</sup> *Driver To Stand Trial In Fatal School Bus Crash.* (April 20, 2010) Philadelphia, PA: KYW-TV. Retrieved from the CBS3 Web site, July 21, 2010, from: <http://cbs3.com/local/montgomery.county.school.2.1645628.html>.

- 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.

## 2. FMCSA’s Motor Carrier Safety Advisory Committee’s Recommendation

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

In MCSAC’s March 27, 2009, report to FMCSA titled “Developing a National Agenda for Motor Carrier Safety,” MCSAC recommended that FMCSA adopt new Federal rules concerning distracted driving.<sup>2</sup> MCSAC believed that 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 problems are addressed.

Therefore, one of MCSAC’s recommendations for the National Agenda for Motor Carrier Safety was that FMCSA initiate a rulemaking to ban the use of hand-held and hands-free mobile telephones while driving.

## 3. Driver Distraction in Commercial Vehicle Operations (“the VTTI Study”)—Olson *et al.*, 2009<sup>3</sup>

Under contract with FMCSA, the Virginia Tech Transportation Institute (VTTI) completed its “Driver Distraction in Commercial Vehicle Operations” study<sup>4</sup> and released the final report on October 1, 2009. The purpose of the study was to investigate the prevalence 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. According to this research, drivers dialing a cell phone took their eyes off the forward roadway for an average of 3.8 seconds and for 1.3 seconds when talking/listening to a hand-held phone. Drivers took their eyes off the forward roadway a combined total of 5.1 seconds. At 55 mph (or 80.7 feet per second), this equates to a driver traveling 411 feet. At 65 mph (or 95.3 feet per second), the driver would have traveled 486 feet without looking at the roadway. This clearly creates a significant risk to the safe operation of the CMV.

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 dialing a cell phone is 2.5 and for talking/listening to a hand-held phone is 0.2, which means that a combined 2.7 percent of the incidence of safety-critical events is attributable to dialing and talking/listening to a hand-held phone, and thus, could be avoided by not performing these activities.

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

Task	Odds ratio	Population attributable risk percentage*
<b>Complex Tertiary** Task</b>		
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
<b>Moderate Tertiary** Task</b>		
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

<sup>2</sup> Parker, David R., Chair, Motor Carrier Safety Advisory Committee (March 27, 2009). Letter to Rose A. McMurray, Acting Deputy Administrator, FMCSA, on MCSAC National Agenda for Motor Vehicle Safety. Retrieved July 23, 2010, from: <http://mcsac.fmcsa.dot.gov/documents/MCSACTask09-01FinalReportandLettertoAdministrator090428.pdf>.

<sup>3</sup> Olson, R. L., Hanowski, R.J., Hickman, J.S., & Bocanegra, J. (2009) Driver distraction in commercial vehicle operations. (Document No. FMCSA–RRR–09–042) Washington, DC: Federal Motor Carrier Safety Administration, July 2009. Retrieved October 20, 2009, from <http://www.fmcsa.dot.gov/facts-research/art-public-reports.aspx?>

<sup>4</sup> 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.

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

Task	Odds ratio	Population attributable risk percentage *
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 hands-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 FMCSA Docket FMCSA–2009–0370, available at <http://www.regulations.gov>.

4. Cell Phone Distraction in Commercial Trucks and Buses: Assessing Prevalence in Conjunction With Crashes and Near-Crashes—Hickman <sup>5</sup>

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

Additional research and data are specifically identified in FMCSA’s NPRM on restricting cell phone use by CMV drivers.

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

1. 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.

2. 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. FMCSA

In light of the available studies, the NTSB recommendation, and MCSAC’s recommendations, FMCSA has proposed a restriction on the use of mobile (cellular) telephones by CMV

drivers operating in interstate commerce. The proposed rule would include definitions related to the restriction. It also would add a driver disqualification provision for interstate CMV drivers. A driver disqualification provision would also be included for CDL holders convicted of two or more violations of State or local traffic laws or ordinances on motor vehicle traffic control concerning mobile telephone use.

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

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

3. 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

<sup>5</sup>Hickman, J., Hanowski, R., & Bocanegra, J. (2010). *Distraction in Commercial Trucks and Buses: Assessing Prevalence and Risk in Conjunction with Crashes and Near-Crashes*. Washington, DC: Federal Motor Carrier Safety Administration. (Final Report due Spring 2010).

order and a rulemaking that seeks to codify the order. In a 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).

#### 4. State Restrictions

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

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

## II. Applicability of this NPRM

PHMSA's Office of Hazardous Materials Safety is the Federal safety authority for the transportation of hazardous materials by air, rail, highway, and water. Under the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), the Secretary of Transportation is charged with protecting the nation against the risks to life, property, and the environment that are inherent in the commercial transportation of hazardous materials. The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) are promulgated under the mandate in § 5103(b) of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) that the Secretary of Transportation “prescribe regulations for the safe transportation, including security, of hazardous material in

intrastate, interstate, and foreign commerce.” Section 5103(b)(1)(B) provides that the HMR “shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate.” As such, PHMSA strives to reduce the risks inherent to the transportation of hazardous materials in both intrastate and interstate commerce.<sup>6</sup>

The texting restrictions adopted by FMCSA in under Docket FMCSA–2009–0370 have been incorporated into § 392.80 of the FMCSRs and apply to CMV motor carriers and drivers in interstate commerce. During the coordination process for PHMSA's August 3, 2010 safety advisory notice on distracted driving, PHMSA and FMCSA representatives expressed concern that changes to the FMCSRs regarding distracted driving would only apply to motor carriers and drivers of CMVs that operate in interstate commerce.<sup>7</sup> As such, any requirements adopted by FMCSA regarding distracted driving would not apply to motor carriers and drivers that transport covered hazardous materials in intrastate commerce.

PHMSA developed this NPRM to expand the limitations on the use of hand-held mobile telephones proposed by FMCSA's NPRM to the transportation of a quantity of hazardous materials requiring placarding under Part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73 in intrastate commerce. The safety benefits associated with limiting the distractions caused by electronic devices, including cell phones, are equally applicable to drivers transporting covered hazardous materials via intrastate as they are to interstate commerce. The use of a hand-held mobile telephone while driving constitutes a safety risk to the motor vehicle driver, other motorists, and bystanders. As proposed in the FMCSA NPRM, the consequences of using hand-

<sup>6</sup> The term “intrastate commerce” is trade, traffic, or transportation within a single state. The term “interstate commerce” is trade, traffic, or transportation involving the crossing of a state boundary. Additionally, “interstate commerce” includes transportation originating or terminating outside the state of United States. (See 49 CFR 390.5)

<sup>7</sup> In accordance with § 390.3(a) the rules in Subchapter B, including Parts 350–399, of the 49 CFR are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce. The only FMCSA regulations that are applicable to intrastate operations are: The commercial driver's license (CDL) requirement, for drivers operating commercial motor vehicles as defined in 49 CFR 383.5; controlled substances and alcohol testing for all persons required to possess a CDL; and minimum levels of financial responsibility for the intrastate transportation of certain quantities of hazardous materials and substances.

held mobile telephones while driving can include state and local sanctions, fines, and possible revocation of commercial driver's licenses.

PHMSA has determined that the use of hand-held mobile phones presents a hazard equally, whether the motor carrier is involved in interstate or intrastate commerce. PHMSA estimates that there are approximately 1,490 intrastate motor carriers that could be affected by this rulemaking. Studies performed on behalf FMCSA have estimated that the cost of a property damage only crash is \$17,000. Crashes involving a fatality are estimated to be approximately \$6 million. Based on estimates outlined in the Preliminary Regulatory Impact Assessment PHMSA estimates the costs as follows:

### SUMMARY OF COSTS AND THRESHOLD ANALYSIS

Cost of Lost Carrier Productivity .....	\$5,148
Cost of Increased Fuel Consumption .....	\$9,535
Cost of Parking, Entering and Exiting Roadway Crashes .....	\$10,335
<b>Total Costs .....</b>	<b>\$25,018</b>
<b>Benefit of Eliminating One Fatality .....</b>	<b>1 \$6</b>
<b>Break-even Number of Lives Saved .....</b>	<b>&lt; 1</b>
<b>Benefit of Eliminating One Crash .....</b>	<b>\$17,000</b>
<b>Break-even of Number of Crashes Prevented .....</b>	<b>&lt; 2</b>

<sup>1</sup> In millions.

## III. Summary of Changes

In accordance with the comments received and public meeting discussion this NPRM proposes the following changes by section:

*Section 177.804.* We propose to add a new paragraph (b) to prohibit the use of hand-held mobile telephones by any CMV driver transporting a quantity of hazardous materials requiring placarding under Part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73. As such, motor carriers and drivers who engage in the transportation of covered materials must comply with the distracted driving requirements in § 392.82 of the FMCSR.

## IV. Regulatory Analysis and Notices

### A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), which authorizes the

Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in interstate, intrastate, and foreign commerce.

*B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

PHMSA 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 proposed rule do not exceed the \$100 million annual threshold.

Executive Order 12866 requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” As discussed throughout this rulemaking, the intent of this NPRM is to expand upon the applicability of the FMCSA NPRM to prohibit use of cell phones by drivers of motor vehicles that contain a quantity of hazardous materials requiring placarding under Part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73. As a result, the population of motor carriers covered by this proposed rule is comprised of a very small portion of motor carriers operating in intrastate commerce.

PHMSA calculated its affected population by assessing hazmat registration data from the 2010–2011 registration year. This data is collected on DOT form F 5800.2 in accordance with § 107.608(a) of the 49 CFR. Generally, the registration requirements apply to any person who offers for transportation or transports a quantity of hazardous materials requiring placarding under Part 172 of the 49 CFR. Additional data collected on form F 5800.2 verify that the registrant is indeed a carrier, the mode of transportation used, and the US DOT Number.<sup>8</sup> Using this key data from the

<sup>8</sup> The FMCSRs require certain commercial carriers to obtain a US DOT number. Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with the FMCSA and must have a US DOT Number. The US DOT Number serves as a unique identifier when collecting and monitoring a company’s safety information acquired during audits, compliance reviews, crash investigations, and inspections. FMCSA provides two services for people who need to obtain a U.S. DOT number. The MC–150 form can be downloaded from the FMCSA Web site in PDF form and mailed in; or, they may

registration form submissions we can make some assumptions to estimate the number of motor carriers subject to this NPRM. Based on our analysis of form 5800.2–18,841 persons have registered as motor carriers of hazardous materials. Of those 18,841 registrants 17,599 included a US DOT Number. Therefore, based on the registration data 1,242 motor carriers are considered intrastate carriers. We compared these numbers with the FMCSA Motor Carrier Management Information System (MCMIS).<sup>9</sup> Based on MCMIS data we verified that the 1,242 carriers identified through registration data have not been issued a US DOT Number by FMCSA.

To better define the population of intrastate carriers subject to this rulemaking we assessed the data further. Generally, registration data is limited to persons that offer or transport placarded quantities of hazardous materials. Registration data does not include persons that transport a material listed as a select agent or toxin in 42 CFR Part 73. In addition, the data includes those carriers that are required to obtain a US DOT Number through their state even if they operate solely in intrastate commerce. In select states, all registrants of commercial motor vehicles, even intrastate and non-motor carrier registrants, are required to obtain a US DOT Number as a necessary condition for commercial vehicle registration. FMCSA indicates that 28 states currently require motor carriers to obtain a US DOT Number, regardless if they operate in interstate or intrastate commerce.<sup>10</sup> Based on these assumptions, the number of intrastate carriers identified through hazmat registration data may be under estimated by up to 60% to 70%.

Based on the assumptions outlined above and PHMSA’s desire to take a conservative approach to the affected population we will multiply the number of intrastate carriers identified through registration data by a 20% under reporting factor. This will result in a total population affected by this rulemaking of 1,490 intrastate carriers (1,242 × 1.20 = 1,490). This conservative estimate ensures that PHMSA is fully considering the impacts of expanding applicability of the FMCSA NPRM to

file electronically via the web site. Both options are found at the following URL: <http://www.fmcsa.dot.gov/factsfigs/formspubs.htm>.

<sup>9</sup> MCMIS contains information on the safety fitness of commercial motor carriers (truck & bus) and hazardous material shippers subject to both the FMCSRs and the HMR. This information is available to the general public through the MCMIS Data Dissemination Program.

<sup>10</sup> “What is a USDOT Number?” See: <http://www.fmcsa.dot.gov/registration-licensing/registration-USDOT.htm>.

prohibit cell phone by drivers of motor vehicles that contain a quantity of hazardous materials requiring placarding under Part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73.

The regulatory evaluation prepared in support of this rulemaking 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 make cell phone calls; (b) increased fuel usage due to idling as well as exiting and entering the travel lanes of the roadway; and (c) increased crash risk due to covered CMVs that are parked on the side of the roadway and exiting and entering the travel lanes of the roadway. The regulatory evaluation also considers potential costs to the states. However, since the analysis does not yield appreciable costs to the states, further analysis pursuant to the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) was deemed unnecessary.

PHMSA estimates that this proposed rule will cost \$ 25,018 annually. Additionally, PHMSA has not identified a significant increase in crash risk associated with drivers’ strategies for complying with this proposed rule. As indicated in the regulatory evaluation, a crash resulting in property damage only (PDO) averages approximately \$17,000 in damages. Consequently, the cell phone use restriction would have to eliminate just two PDO crash every year for the benefits of this proposed rule to exceed the costs. A summary of the costs and threshold analysis is provided in the following table:

**SUMMARY OF COSTS AND THRESHOLD ANALYSIS**

Cost of Lost Carrier Productivity .....	\$5,148
Cost of Increased Fuel Consumption .....	\$9,535
Cost of Parking, Entering and Exiting Roadway Crashes .....	\$10,335
<b>Total Costs .....</b>	<b>\$25,018</b>
Benefit of Eliminating One Fatality .....	1 \$6
Break-even Number of Lives Saved .....	< 1

<sup>1</sup> In millions.

*C. Executive Order 13132*

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national

government and the states, or on the distribution of power and responsibilities among the various levels of government. A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on state or local governments and would either preempt state law or impose a substantial direct cost of compliance on them. We invite state and local governments to comment on the effect that the adoption of this rule may have on state or local safety or environmental protection programs.

#### D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### E. Regulatory Flexibility Act

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

PHMSA has conducted an economic analysis of the impact of this proposed 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 proposed rule. We assume that all of the 1,490 motor carriers identified by this proposed rule are 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 cell phone use while on-duty and fuel usage costs for pulling to the side of the road to idle the truck or passenger-carrying vehicle and making a cell phone call. The majority of motor

carriers are small entities. Therefore, PHMSA will use the total cost of this proposed rule (\$25,018) applied to the number of small entities (1,490) as a worse case evaluation which would average \$16.79 annually per carrier.

#### F. Executive Order 13272 and DOT Regulatory Policies and Procedures

This notice has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### G. 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).

#### H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### I. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates, under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

#### J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.dot.gov>. This proposed rule 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.

#### K. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. PHMSA assessment did not reveal any 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. Interested parties are invited to address the potential environmental impacts of regulations applicable to the storage of explosives transported in commerce. We are particularly interested in comments about safety and security measures that would provide greater benefit to the human environment or on alternative actions the agency could take that would provide beneficial impacts.

#### List of Subjects in 49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapters I and III are proposed to be amended as follows:

#### PART 177—CARRIAGE BY PUBLIC HIGHWAY

1. The authority citation for part 177 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. Section 177.804 is amended by adding a new paragraph (c) to read as follows:

#### § 177.804 Compliance with Federal Motor Carrier Safety Regulations.

\* \* \* \* \*

(c) *Prohibition against hand-held mobile telephones.* In accordance with § 392.82 of the FMCSRs a person transporting a quantity of hazardous materials requiring placarding under Part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73 may not engage in, allow, or require use of a hand-held mobile telephone while driving.

Issued in Washington, DC, on April 21, 2011, under authority delegated in 49 CFR Part 106.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety.*

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