List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 17, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–7319 Filed 3–31–10; 8:45 am]

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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: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to prohibit texting by commercial motor vehicle (CMV) drivers while operating in interstate commerce and to impose sanctions, including civil penalties and disqualification from operating CMVs in interstate commerce, for drivers who fail to comply with this rule. Additionally, motor carriers would be prohibited from requiring or allowing their drivers to engage in texting while driving. FMCSA also proposes amendments to its commercial driver's license (CDL) regulations to add to the list of disqualifying offenses a conviction under State or local laws, regulations, 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 ratio of being involved in a safety-critical event (*e.g.,* crash, near-crash, lane departure) is 23.2 times greater for drivers who engage in texting while driving than for those who do not. This rulemaking would increase 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: Comments and related material must be received on or before May 3, 2010.

ADDRESSES: You may submit comments identified by docket number FMCSA–2009–0370 using any one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact Mr. Brian Routhier, Transportation Specialist, Federal Motor Carrier Safety Administration, Vehicle and Roadside Operation Division, at 202–366–1225 or *Brian.Routhier@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

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

Pilot Project on Open Government and the Rulemaking Process

On January 21st, 2009, President Obama issued a Memorandum on Transparency and Open Government in which he described how: "public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge."

To support the President's open government initiative, DOT has partnered with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) Alert the public, including those who sometimes may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. Over the course of several rulemaking initiatives, CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area.

DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit the Regulation Room Web site, *http://www.regulationroom.org,* to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. In this rulemaking, CeRI will submit to the rulemaking docket a Summary of the discussion that occurs on the Regulation Room site; participants will have the chance to review a draft and suggest changes before the Summary is submitted. Participants who want to further develop ideas contained in the Summary, or raise additional points, will have the opportunity to collaboratively draft joint comments that will be also be submitted to the rulemaking docket before the comment period closes.

Note that Regulation Room is not an official DOT Web site, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments

prepared collaboratively on the site will become comments in the docket when they are submitted to DOT by CeRI. At any time during the comment period, anyone using Regulation Room can also submit individual views to the rulemaking docket through the Federal rulemaking portal Regulations.gov, or by any of the other methods identified at the beginning of this Notice.

For questions about this project, please contact Brett Jortland in the DOT Office of General Counsel at 202–421–9216 or *brett.jortland@dot.gov.*

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2009–0370), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rules," insert "FMCSA–2009–0370" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

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

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the "read comments" box in the upper right hand side of the screen. Then, in the "Keyword" box insert "FMCSA–2009–0370" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone may search the electronic form of 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** notice published on April 11, 2000 (65 FR 19476).

II. Abbreviations

AAMVA	American Association of Motor Vehicle Administrators.
ATA	American Trucking Association.
CDL	Commercial Driver's License.
CFR	Code of Federal Regulations.
CMV	Commercial Motor Vehicle.
CTA	Chicago Transit Authority.
DOT	Department of Transportation.
FARS	Fatality Analysis Reporting System.
FMCSA	Federal Motor Carrier Safety Administration.
FMCSRs	Federal Motor Carrier Safety Regulations.
FR	FEDERAL REGISTER.
GES	General Estimates System.
MCSAC	Motor Carrier Safety Advisory Committee.
MCSAP	Motor Carrier Safety Assistance Program.
MCSIA	Motor Carrier Safety Improvement Act of 1999.
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.
NSC	National Safety Council.
NTSB	National Transportation Safety Board.
OMB	Office of Management and Budget.
PDA	Personal Digital Assistant.
s	seconds.
§	Section symbol.
TCA	Truckload Carriers Association.
U.S.C	United States Code.
VTTI	Virginia Tech Transportation Institute.

III. Background

A. Legal Authority

FMCSA proposes: (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 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 proposed rule derives from the Motor Carrier Safety Act of 1984 (1984 Act), 49 U.S.C. chapter 311, and the Commercial Motor Vehicle

Safety Act of 1986 (1986 Act), 49 U.S.C. chapter 313.

The 1984 Act (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984) provides authority to regulate the safety of operations of CMV drivers and motor carriers and vehicle equipment. It requires the Secretary of Transportation 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 proposed rule is based primarily on 49 U.S.C. 31136(a)(1), which requires regulations that ensure that CMVs are operated safely, and secondarily on section 31136(a)(2), to the extent that drivers' texting activities might impact their ability to operate CMVs safely. The changes proposed in this NPRM would improve the safety of drivers operating CMVs. This NPRM does not address the physical condition of drivers (49 U.S.C. 31136(a)(3)), nor does it impact possible physical effects caused by driving CMVs (49 U.S.C. 31136(a)(4)).

The applicability to CMV drivers of the relevant provisions of the Federal Motor Carrier Safety Regulations (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; and that either: (1) Has a gross vehicle weight/gross vehicle weight rating of 10,001 pounds or greater; (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; (3) is designed or used to transport more than 15 passengers, not for compensation; or (4) is transporting any quantity of hazardous materials requiring placards to be displayed on the vehicle (49 U.S.C. 31132(1)). All 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 one for school bus operations (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] Other than transportation covered by statutory exemptions, FMCSA has authority to prohibit texting by drivers operating CMVs, as defined above.

Violations of such a prohibition may include civil penalties imposed on 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)). 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 (Title XII of Pub. L. 99–570, 100 Stat. 3207–170, Oct. 27, 1986), which authorized creation of the CDL program, is primarily the basis for licensing programs for certain large CMVs. There are several key distinctions between the authority conferred under the 1984 Act and that under the 1986 Act. First, the CMV for which a CDL is required is defined under the 1986 Act, in part, as a motor vehicle operating "in commerce," a term separately defined to cover broadly both interstate commerce and operations that "affect" interstate commerce (49 U.S.C. 31301(2), (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 no statutory exceptions from coverage under the 1986 Act. There are several regulatory exceptions, 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, and 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 would 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. However, the 1986 Act does authorize disqualification of CDL drivers. Specific authority exists for disqualification for various types of offenses by CDL drivers. This is true even if they are operating a CMV illegally because they have not obtained a CDL. Related rulemaking authority exists to include serious traffic violations as grounds for

[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), Public Law 103–272, 108 Stat 1003 (July 5, 1994)). Therefore, any action by FMCSA affecting the school bus operations exemption would require the Agency to comply with former section 31136(e)(1).

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 additional 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 has 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 National Highway Traffic Safety Administration (NHTSA) has been researching driver distraction 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 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 is a relatively new phenomenon, growing dramatically among cell phone and personal digital assistant (PDA) users. The Department recognizes that the problem is growing worse, especially with young drivers on our roadways, as noted in a Pew Research Center Report, "Teens and Distracted Driving."[2] According to the CTIA, The Wireless Association, the 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, the Agency does not have, at this time, data on the prevalence of texting by motorists in general or CMV drivers specifically. FMCSA requests that commenters share with the Agency any data and studies on texting by CMV drivers.

Considering the alarming increase in texting, FMCSA believes 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 and that this inherently unsafe practice should be prohibited to reduce the risks of crashes, injuries, and fatalities.

FMCSA solicits comments on definition, causes, and prevalence of "distracted driving".

C. Support for a Texting Prohibition

There is an overwhelming amount of public support for a ban on texting, or other distracting behaviors, while operating a motor vehicle. It is likely that most Americans have either had first hand experience with or know someone who has had a motor vehicle near-crash event involving a distracted driver. FMCSA and other U.S. Department of Transportation (DOT) operating administrations have been studying the distracted driving issue for decades. With the exponentially increasing use of electronic devices, and numerous crashes and other incidents related to distracted driving in recent years, expedited Federal action is required. Because of the safety risks, FMCSA is addressing the issue of texting through a rulemaking as quickly as possible, which will include a review of the comments received in response to this NPRM.

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," the MCSAC recommended that FMCSA adopt new Federal rules concerning distracted driving, including texting.[3] The 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.

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[2] Madden, M. & Lenhart, A. (November 2009). Teens and distracted driving. Pew Research Center's Pew Internet and American Lifer Project. Retrieved January 24, 2010 from: *http://www.pewinternet.org//media//Files/Reports/2009/PIP_Teens_and_Distracted_Driving.pdf.*

[3] Parker, 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 January 11, 2010, from: *http://mcsac.fmcsa.dot.gov/documents/MCSACTask09-01FinalReportandLetterto Administrator090428.pdf.*

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.

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 the Obama Administration and DOT are taking to address distracted driving. On October 1, 2009, the President issued Executive Order 13513, which prohibited texting by Federal employees (details are discussed later in this preamble).

Actions following the Summit included the 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 Rail 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. Specifically, in addition to this rulemaking, FMCSA is considering future rulemaking actions that would address whether to limit the use of cell phones and other interactive devices in CMVs.

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." In addition, the Secretary pledged to work with Congress to ensure that the issue of distracted driving is appropriately addressed.

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 while 86.7 percent consider text messaging and e-mailing by drivers to be a very serious threat to their personal safety.[4] 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.[5] Finally, a nationally representative survey by Nationwide Insurance,[6] conducted in August 2009, found that 80 percent of Americans support laws prohibiting text messaging or e-mailing while driving.

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.[7] The 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 applauded DOT's effort to ban texting by truck and motor coach drivers.[8]

Transportation Industry Associations

The American Trucking Association's (ATA) executive committee voted overwhelmingly to support S. 1536 to prohibit texting (while driving by all motorists).[9] ATA believes that the use of hand-held electronic devices and the act of texting with such devices while a motor vehicle is in motion should be prohibited.[10]

Many fleets do not allow drivers to operate any electronic devices at all while the vehicle is moving, including dispatching equipment. ATA conducted an opinion survey of its safety committees on the use of "non-integrated electronic devices." From the responses of these industry leaders, ATA found that 67 percent of respondents had a policy restricting or limiting the use of portable electronic devices while driving. United Parcel Service, Inc. has an existing policy of no distractions while behind the wheel (*e.g.,* two hands on the wheel and no two-way communication) and FedEx does not allow drivers to use any electronic device while operating FedEx vehicles.[11] Additionally, ExxonMobil and Shell are examples of large companies that prohibit employees' use of any type of cell phone while driving during work hours.[12] Because numerous large commercial trucking operations already have policies that prohibit the use of portable electronic devices while driving, which would presumably include texting, a prohibition on texting is not expected to have an adverse impact on trucking fleets.

FMCSA solicits comments on whether and how companies have implemented policies on drivers' use of portable electronic devices while driving.

School Bus Operations

School bus operations have been the focus of distracted driving policies; and 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 S. 1536, which would require States to prohibit all

[4] AAA Foundation for Traffic Safety (October 12, 2009). Safety culture: text messaging and cell phone use while driving. Retrieved January 11, 2010, from: *http://www.aaafoundation.org/pdf/TextingFS091012.pdf.*

[5] Connelly, M. (November 1, 2009). Many in U.S. want texting at the wheel to be illegal. NYTimes.com. Retrieved January 11, 2010, from: *http://www.nytimes.com/2009/11/02/technology/02textingside.html.*

[6] 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.*

[7] National Safety Council, (n.d.). Distracted driving. Retrieved January 11, 2010, from: *http://www.nsc.org/safety_road/Distracted_Driving/Pages/distracted_driving.aspx.*

[8] 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 January 11, 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.*

[9] American Trucking Associations (October 14, 2009). ATA leaders vote overwhelmingly to support anti-texting bill. Retrieved January 11, 2010, from: *http://www.truckline.com/pages/article.aspx?id=52%2F0599B3C5-1DA2-463F-8FE5-AF9814303C64.*

[10] 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 January 11, 2010, from: *http://www.truckline.com/Newsroom/Testimony1/Randy%20Mullett%20--%20Distracted%20Driving%20testimony.pdf.*

[11] Halsey, A. (October 2, 2009). Obama to Federal employees: Don't text and drive. Washingtonpost.com. Retrieved January 11, 2010, from: *http://www.washingtonpost.com/wp-dyn/content/article/2009/10/01/AR2009100103447_pf.html.*

[12] Insurance Information Institute (December 2009). Cellphones and driving. Retrieved January 11, 2010, from: *http://www.iii.org/IU/Cellphone-and-driving/.*

motorists from writing, sending, or reading text messages while driving.[13]

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, Greater Cleveland Region Transit Authority) have prohibited operators from carrying cell phones or other electronic devices in the cab, presumably eliminating texting.

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

D. 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 to FMCSA regarding cell phone use by passenger-carrying CMVs. 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.

Driver Distraction in Commercial Vehicle Operations ("the VTTI Study")—Olson *et al.,* 2009 [14]

Under contract with FMCSA, the Virginia Tech Transportation Institute (VTTI) recently completed its "Driver Distraction in Commercial Vehicle Operations" study [15] 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. Key findings were that drivers were engaged in tertiary (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," [16] 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 s), dispatching device (4.1 s), and cell phone dialing (3.8 s). Technology-related tasks were not the only ones with high visual demands. Non-technology tasks with high visual demands, including some mundane or common activities, were: writing (4.2 s), reading (4.3 s), looking at a map (3.9 s), and reaching for an object (2.9 s).

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 are 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

[13] 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 January 11, 2010, from: *http://www.nasdpts.org/documents/alert_act-nasdpts-support.pdf.*

[14] 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?*

[15] 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.

[16] 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.

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

Task	Odds ratio	Population attributable risk percentage*
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.

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 has 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. But they provide support for the conclusions of the comprehensive study of CMV operations commissioned by FMCSA and conducted by VTTI. This information, which includes ongoing research, is summarized below and FMCSA welcomes additional studies or data that commenters may provide.

Text Messaging During Simulated Driving—Drews, *et al.,* 2009 [17]

This research aimed 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. There was no significant difference in responding to the brake onset between entering and reading text messages, however. When drivers are concentrating on texting of any sort, 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.,* 2009 [18]

A recent study by Ford Motor Company [19] 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 was 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.

The Effects of Text Messaging on Young Novice Driver Performance—Hosking, *et al.,* 2006 [20]

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 hand-held 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 a detrimental effect on driving:

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

[17] 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. Retrieved December 22, 2009, from *http://hfs.sagepub.com/cgi/rapidpdf/0018720809353319?ijkey=gRQOLrGlYnBfc&keytype=ref&siteid=sphfs.*

[18] 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 from SAE International at: *http://www.sae.org/technical/papers/2009–01–0786.*

[19] 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.

[20] 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. Retrieved October 15, 2009, from: *http://www.monash.edu.au/muarc/reports/muarc246.pdf.*

The Effect of Text Messaging on Driver Behavior: A Simulator Study—Reed and Robbins, 2008 [21]

The RAC Foundation commissioned this report [22] to assess the impact of text messaging on driver performance and the attitudes surrounding that activity in the 17 to 25-year old driver category. There were 17 participants in the study, aged 17 to 24. 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 meters, or three car lengths, and increased variability of lane position.

Synthesis of Literature and Operating Safety Practices Relating to Cell Phone/Personal Data Assistant Use in Commercial Truck and Bus Operations—Bergoffen [23]

The objectives of this ongoing research project are threefold. First, the project will synthesize findings related to cell phone use in automobiles and CMVs. Second, the project will identify current cell phone practices, PDA use, including texting, and the magnitude of the use in the motor carrier industry. FMCSA will consider how these car-driver findings apply to truck and bus drivers and what led fleet managers to restrict or manage cell phone and PDA use. Finally, the project will identify the scope and objectives of ongoing related studies, and any significant knowledge gaps that might influence a regulatory approach.

Cell Phone Distraction in Commercial Trucks and Buses: Assessing Prevalence in Conjunction With Crashes and Near-Crashes—Hickman [24]

The purpose of this ongoing research is to conduct an analysis of naturalistic data collected by DriveCam over a 1-year period. Commercial trucks (3-axle and tractor-trailer) and buses will be the target vehicles in the analyses. This will provide FMCSA with descriptive data on the adverse consequences of cell phone use and other distractions while driving, including texting. In addition, DriveCam will re-review all valid cell phone events within the last 90 days to determine the frequency of the following cell phone variables: dial cell phone, reach for cell phone, reach for Bluetooth/headset/earpiece, talk/listen on hands-free cell phone, talk/listen on hand-held cell phone, and text/e-mail/surf Web on cell phone. The results of these analyses will provide information on the scope of cell phone use, and other distractions, during valid safety events and crashes. FMCSA will carefully review the applicability of any findings to the current proposed rule.

E. Existing Texting Bans by Federal, State, and Local Governments

Executive Order 13513

The President immediately used the feedback from the DOT Summit on Distracted Driving and issued an Executive Order titled "Federal Leadership on Reducing Text Messaging While Driving" (74 FR 51225) on October 1, 2009, 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 issued regulatory guidance in the **Federal Register** (75 FR 4305) concerning texting while driving a CMV in interstate commerce. Specifically, it clarified that while there is not an explicit prohibition on "texting" in § 390.17, *Additional equipment and accessories,* there is a general restriction against the use of equipment and accessories that decrease the safety of operation of a CMV. Because handheld or electronic devices brought into the CMV are considered "additional equipment and accessories" and because texting decreases safety through visual, cognitive, and manual distraction, the use of electronic devices for texting by CMV operators while driving in interstate commerce is prohibited by 49 CFR 390.17. The guidance document was not intended as a substitute for notice-and-comment rulemaking but rather, interpreted and explained the effect of existing regulations on texting while driving. This NPRM, if adopted as a final rule, would take the guidance a step further by establishing more detailed, binding requirements on industry. Accordingly, we encourage active participation and input from the public in this rulemaking through the notice-and-comment process.

Federal Railroad Administration

On October 7, 2008, the Federal Railroad Administration (FRA) published Emergency Order 26 (73 FR 58702). Pursuant to FRA's authority under 49 U.S.C. 20102, 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.

State Restrictions

Texting while driving is prohibited in 19 States, the District of Columbia, and Guam. A list 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. The Federal restriction would provide uniform language applicable to CMV drivers engaged in interstate commerce, regardless of the presence or absence of a State law or regulation. Generally, State laws and regulations would 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 rulemaking would not affect the ability of States to institute new prohibitions on texting while driving. For more information *see*

[21] 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. Retrieved January 12, 2010, *http://www.racfoundation.org/files/textingwhiledrivingreport.pdf.*

[22] The work described in this report was carried out in the Human Factors and Simulation group of the Transport Research Laboratory. The authors are grateful to Andrew Parkes who carried out the technical review and auditing of this report.

[23] Bergoffen, G. (Final Report due Spring 2010). Synthesis of literature and operating safety practices relating to cell phone/personal data assistant use in commercial truck and bus operations. Ongoing FMCSA Study.

[24] Hickman, J. (Preliminary results available Spring 2010). Cell phone distraction in commercial trucks and buses: Assessing prevalence in conjunction with crashes and near-crashes. Ongoing FMCSA study.

the Federalism section later in this document.

IV. Discussion of Proposed Rule

Federal Prohibition Against Texting by Interstate CMV Drivers

FMCSA proposes to prohibit CMV drivers who are operating in interstate commerce from texting while driving. The Agency would include definitions and add a driver disqualification provision for interstate drivers convicted of violating the Federal rule.

This proposed rule would amend regulations in 49 CFR parts 390, 391, and 392. Generally, for CMV drivers subject to Parts 390, 391, and 392 of the FMCSRs, it would reduce the risks of distracted driving by prohibiting texting by CMV drivers who are operating in interstate commerce and impose sanctions, including civil penalties and disqualification from operating CMVs in interstate commerce, for drivers who fail to comply with this rule.

FMCSA acknowledges the concerns of motor carriers that have invested significant resources in electronic dispatching tools and fleet management systems; this rulemaking should not be construed as a proposal to prohibit the use of such technology. The rulemaking should also not be construed as a proposal to prohibit the use of cell phones for purposes other than texting. The Agency will address the use of these and other electronic devices while driving in separate notice-and-comment rulemaking proceedings.

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

FMCSA recognizes that the proposed amendments to its CDL regulations would be applicable to Federal, State, or local government-employed school bus drivers who are required to possess a CDL. The explicit prohibition of texting while driving that would apply to CMV drivers under 49 CFR Part 392 would not be applicable to Federal, State, or local government-employed school bus drivers. The amendment to the CDL disqualifying offenses, however, would apply to them if they are convicted, while driving a school bus, of violating a State or local law or ordinance concerning texting.

Finally, the proposed amendments to the Agency's CDL regulations would be applicable to transit employees who are required to possess a CDL. Because of the statutory exception, the explicit prohibition against CMV drivers under 49 CFR Part 392 would not be applicable to these transit employees, the amendment to the CDL disqualifying offences would apply to them if they are convicted, while operating their transit vehicle, of violating a State or local law or ordinance concerning texting.

Section 390.5

The Agency proposes to add new definitions for the terms "electronic device" and "texting," for general application. The definition of "driving" would be incorporated into the prohibition of texting while driving a CMV in the proposed 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. Furthermore, the proposed texting definition clarifies that non-texting functions, which smart phones and similar "multi-function" devices can perform (*e.g.,* Global Positioning System capabilities and music playing), would not be prohibited by this rulemaking.

Section 391.2

FMCSA would amend 49 CFR 391.2, which provides certain exceptions to the requirements of Part 391 for custom farm operations, apiarian industries, and specific farm vehicle drivers, to enable the Agency to make violations of the Federal texting prohibition proposed today a disqualifying offense for such drivers. While the explicit Federal prohibition against texting would apply 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 would add a new paragraph (e) to this section to provide for the disqualification of any driver convicted of 2 or more violations of the new prohibition set forth in § 392.80 from operating a CMV in interstate commerce. The proposed change would mirror the corresponding proposed 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 would be the same: at least 60 days for the second offense within 3 years and at least 120 days for 3 or more offenses within 3 years. In addition, the first and each subsequent violation of such a prohibition would be subject to civil penalties imposed on such drivers, in an amount up to $2,750 (49 U.S.C. 521(b)(2)(A), 49 CFR 386.81 and App. B, ¶ A(4)).)

Section 392.80

In this section the Agency proposes a new prohibition against texting while driving a CMV, as defined in 49 CFR 390.5. Furthermore, this proposed rule states that motor carriers will not allow nor require drivers to text while driving. FMCSA also includes a provision in this proposed 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 would be subject to the proposed prohibition. FMCSA has determined this proposed rule is necessary for public safety regarding school bus transportation by interstate motor carriers. A definition of driving is included in the proposed rule.

FMCSA also proposes a provision in 49 CFR 390.3(f)(1) to clarify that this new prohibition is not subject to the general exception for "school bus operations" (49 CFR 390.5). It thus makes it clear that drivers engaged in school bus operations would be subject to both the new prohibition and the new disqualification provisions.

The Agency proposes a limited exception to the texting 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

FMCSA proposes that any CDL driver operating a CMV (as defined in § 383.5) who is convicted of violating a State prohibition against texting would be disqualified after his or her second conviction for the texting offense or any serious traffic violation (as defined by § 383.51(c)). The CDL disqualifying offense would be applicable to all persons who are required to possess a CDL, in accordance with the requirements of 49 CFR part 383, and who are subject to a State or local law or ordinance prohibiting texting. Therefore, the amendment to the CDL rules would be applicable to drivers employed by Federal, State, or local

government agencies, transit authorities, and school districts.

To assist in the enforcement of a texting prohibition for CMVs and the application of the provisions for disqualification, the proposed regulations would include definitions of the words "driving," "electronic devices," and "texting." These definitions would provide clarity so that, for example, the operation of in-vehicle controls or other portable devices while the vehicle is operating would not be a texting violation.

Section 383.5

FMCSA proposes to add new definitions for the terms "electronic device" and "texting" for application in part 383. The Agency proposes 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 does not propose to prohibit the use of such devices by CMV drivers when used for purposes other than texting. The definition of texting would identify the type of activity that would be construed to be prohibited by this rule.

Section 383.51

In Table 2, FMCSA would add a new serious traffic violation that would result in a CDL driver being disqualified. This serious traffic violation would be a conviction for violating a State or local law or ordinance prohibiting texting while driving a CMV. FMCSA proposes to add 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 would limit the types of violations that could result in a disqualification accordingly.

As proposed, every State that issues CDLs would be required to impose this disqualification on a driver required to have a CDL issued by that State whenever that CDL driver was convicted of the necessary number of violations while operating in States where such conduct is prohibited. This would be the case even if the issuing State did 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

A new paragraph (e) is proposed for addition to § 384.301. It would require all States that issue CDLs to implement the new provisions proposed in § 383.51(c) that relate to disqualifying CDL drivers for violating the new serious traffic violation of texting while driving a CMV.

State Compatibility

Motor Carrier Safety Assistance Program (MCSAP)

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

CDL Program

States that issue CDLs would be required to adopt and implement the proposed CDL disqualification provisions that require disqualification for two or more convictions of violating a State or local law or ordinance prohibiting texting while driving a CMV. States should be in compliance as soon as practicable, but not later than 3 years after FMCSA adopts the disqualification provisions. 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

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

This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review because of the level of public interest in distracted driving in general and texting while driving in particular. The Office of Management and Budget (OMB) has reviewed the NPRM in accordance with that Order. Section 6(a)(3) of the Executive Order requires an assessment of potential costs and benefits. Accordingly, a draft Regulatory Evaluation has been prepared and is available in the docket referenced at the beginning of this rulemaking notice. A summary of the Regulatory Analysis (RA) follows:

FMCSA proposes amendments to the FMCSRs in order to reduce the prevalence of driver distraction-related crashes involving CMV drivers through a prohibition against texting by CMV drivers and the imposition of related disqualification sanctions. The goal of the proposed revisions is to reduce or prevent truck and bus crashes, fatalities, and injuries due to texting while driving.

Texting while driving is a recent phenomenon, so quantitative safety analyses concerning its specific impact on safety are limited. There are, however, numerous studies on driver distraction in general that provide a compelling safety argument for taking this action at this time. FMCSA analyzed those studies and found that many of their findings provide relevant information in support of a texting prohibition. With regard to the recent data that provides an assessment of the safety risks of texting, the regulatory analysis focuses on one particular study—"the VTTI Study" [25]—which, though limited in sample size, sheds light on the potential harm of texting while driving CMVs through data gathered from a naturalistic driving study in which there was real-world video monitoring of drivers' activities during the work day. The odds of being in a safety critical event are 23 times greater when a CMV driver is texting while driving.

Because current empirical literature lacks specific findings on the safety benefits of prohibiting texting while driving a CMV, FMCSA conducted a threshold analysis of the impact of the proposed rule. A threshold analysis 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's benefits to equal its costs. In this case, the proposed rule has minimal costs and presently yields unquantifiable (though potentially considerable) benefits.

The regulatory evaluation considers the following potential costs: (a) Value of time lost due to texting while not

[25] Olson, R. L. *et al.* (2009). "Driver distraction."

driving during on-duty time; (b) increased crash risk due to trucks that are parked on the shoulder of the road; (c) increased fuel cost due to idling and exiting and entering the travel lanes of the roadway; and (d) increased crash risk due to trucks exiting and entering the travel lanes of the roadway. The regulatory evaluation also considers potential costs to States. Because the analysis does not yield appreciable costs, further analysis pursuant to the Unfunded Mandates Reform Act of 1995 was deemed unnecessary.

The Agency estimates that, at most, CMV drivers will bear a cost of approximately $ 2.7 million annually. This cost consists of the value of driver time lost due to choosing to pull off the roadway to perform texting activities, increased fuel usage due to choosing to pull over to the side of the roadway, and the increased risk of a possible rear-end collision for CMVs being parked off the roadway and pulling into and out of the roadway. Current guidance from the Office of the Secretary of Transportation places the value of a statistical life at $6.0 million. (This guidance is available in the docket for this rulemaking.) Consequently, the proposed texting prohibition would have to eliminate only one fatal CMV crash for the benefits of this rule to exceed the costs.

SUMMARY OF COSTS AND THRESHOLD ANALYSIS

Lost Driver Time (millions)	$2.2
Increased Fuel Consumption (millions)	0.3
Entering and Exiting Roadway Crashes (millions)	0.2
Total Costs	2.7
Benefit of Eliminating One Fatality (millions)	6.0
Break-even Number of Lives Saved	1

FMCSA solicits comment on State compliance costs and other cost estimates (*e.g.* those relating to delayed communication) not addressed in this NPRM or its associated Regulatory Evaluation. Additionally, the Agency solicits comments and data addressing fatality, injury, and property damage only crashes caused by texting while driving a CMV.

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.

FMCSA 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 proposed 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 357,000 small entities covered by the rule; however, the direct costs of this rule to small entities are only expected to be the costs for lost driver time from foregoing texting while on-duty and costs for pulling to the side of the road to idle the truck and send a text message. The majority of motor carriers are small entities. Therefore, FMCSA will use the total cost of the proposed rule ($2.7 million) applied to the number of small entities (357,000) as a worse case evaluation which would average less than $8 per carrier. This is well below DOT's threshold for a substantial economic impact on a small entity. FMCSA requests comments on this certification.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the proposed rule. FMCSA will not retaliate against small entities that question or complain about 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 $141.3 million (which is the value of $100 million in 2008 after adjusting for inflation) or more in any 1 year. Though this proposed rule would not result in such expenditure, FMCSA discusses the effects of this rule elsewhere in this preamble.

Paperwork Reduction Act

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

Privacy Impact Assessment

FMCSA conducted a Privacy Threshold Analysis (PTA) for the proposed 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 and would either preempt State law or impose a substantial direct cost of compliance on them.

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), National Conference of State Legislators (NCSL), and the American Association of Motor Vehicle Administrators (AAMVA) on the topic of texting by a letter dated December 18, 2009. (A copy of these letters is available in the docket for this rulemaking.) FMCSA offered NGA, NCSL, and AAMVA officials the opportunity to meet and discuss issues of concern to the States. State and local governments will also be able to raise Federalism issues during the comment period for this NPRM.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

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

FMCSA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA 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 NPRM 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. In the event that FMCSA finds the impacts to the environment do not warrant the more extensive EIS, FMCSA will issue a Finding of No Significant Impact (FONSI). The findings of the draft 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 requests comments on this draft environmental assessment.

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

FMCSA seeks comment on these determinations.

Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this NPRM in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact that could result from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on minority or low-income populations. None of the alternatives analyzed in the Agency's EA, discussed under NEPA, would result in high and adverse environmental impacts.

List of Subjects

49 CFR Part 383

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

49 CFR Part 384

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

49 CFR Part 390

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

49 CFR Part 391

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

49 CFR Part 392

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

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

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

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

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

2. Amend § 383.5 by adding the definitions for "Electronic device," and "Texting" in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or 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) Using an in-cab fleet management system or citizens band radio;

(iii) Inputting or selecting information on a global positioning system or navigation system; or

(iv) Using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this rule.

* * * * *

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 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 follow:

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 [*EFFECTIVE DATE OF FINAL RULE*] as soon as practical, but not later than [*DATE 3 YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE*].

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) 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);

* * * * *

8. Amend § 390.5 by adding the definitions for "Electronic device," and "Texting" in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or 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) Using an in-cab fleet management system or citizens band radio;

(iii) Inputting or selecting information on a global positioning system or navigation system; or

(iv) Using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this rule.

* * * * *

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

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

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

10. Revise § 391.2 to read as follows:

§ 391.2 General exceptions.

(a) *Farm custom operation.* The rules in this part (except for § 391.15(e)) 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 not less than 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 not less than 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 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) *Exceptions.* (1) The provisions of § 390.3(f)(1) of this chapter (school bus operations) are not applicable to this section.

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

Issued on: March 29, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–7367 Filed 3–31–10; 4:15 pm]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2009-0078]
[MO 99210-0-0009-B4]

50 CFR Part 17

RIN 1018-AW53

Endangered and Threatened Wildlife and Plants; Proposed Revised Designation of Critical Habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch).

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for the Lane Mountain milk-vetch (*Astragalus jaegerianus*) under the Endangered Species Act of 1973, as amended (Act). The previous final rule designated 0 acres (ac) (0 hectares (ha)) of critical habitat and was published in the **Federal Register** on April 8, 2005. We now propose to designate approximately 16,156 ac (6,538 ha) of land located in the Mojave Desert in San Bernardino County, California, which, if finalized as proposed, would result in an increase of approximately 16,156 ac (6,538 ha).

DATES: We will accept comments until June 1, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by May 17, 2010.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. [FWS-R8-ES-2009-0078].
- U.S. mail or hand-delivery: Public Comments Processing, Attn: [FWS-R8-ES-2009-0078]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone (805) 644-1766; facsimile (805) 644-3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877-8339.