

May 3, 2010

Via e-mail

Federal Motor Carrier Safety Administration
c/o 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

Re: Limiting the Use of Wireless Communication Devices

The American Trucking Associations (ATA)¹ submits these comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) on limiting the use of wireless communication devices.²

ATA strongly supports this proposal to prohibit drivers of commercial motor vehicle drivers from text messaging on handheld devices while driving. We recognize that texting acutely distracts an individual's attention from the primary driving tasks. A distraction of this magnitude can have a profound impact on a driver's situational awareness, decision making and performance. For these reasons, ATA has called on the current administration and Congress³ to expand the ban on texting to drivers of all vehicles, in the interest of improving highway safety.

In addition, ATA supports FMCSA's efforts to codify this prohibition into regulation. While we are supportive of FMCSA's position on texting, we had some concerns with respect to FMCSA's decision to issue regulatory guidance on this matter.⁴ In particular, we were concerned that it would be difficult for states agencies to enforce the guidance as written. Further, we generally discourage the agency from attempting to regulate by issuing guidance when rulemakings are appropriate.

ATA also supports adding texting to the list of disqualifying offenses; doing so will trigger consequences for drivers who receive a second conviction for a texting offense or any other serious traffic violation. Making texting a disqualifying offense increases the deterrence effect of the prohibition and sends drivers a clear message about the severity of the offense.

¹ ATA is a federation of motor carriers, state trucking associations, and national trucking conferences that promotes and protects the interests of the trucking industry. Directly, and through its affiliated organizations, ATA represents more than 37,000 motor carriers of every size, type, and class in the U.S., Canada and Mexico.

² 75 Federal Register, No. 62, pp. 16391, April 1, 2010.

³ ATA supports the *Avoiding Life-Endangering and Reckless Texting by Drivers Act* (S. 1536), which would withhold federal funds from states that do not ban texting by all drivers.

⁴ 75 Federal Register, page 4305, January 27, 2010.

FMCSA may already be aware that ATA has adopted a policy supporting the safe use of technologies and encourages drivers and/or motor carriers to consider a range of policies and safeguards intended to reduce, minimize and/or eliminate driver distractions that may be caused by the increased use of electronic technologies. ATA's policy recommends that manufacturers and others adopt awareness, training, and safety policies on the use of such technologies—unless they are already regulated—during the operation of a motor vehicle. In fact, many ATA member fleets have already adopted company policies designed to reduce distractions while driving and manufacturers of in-cab communication devices include mechanisms that “lock out” the device or system while the vehicle is in motion.

While ATA supports this proposed ban on texting, we also applaud the agency for specifically excluding the use of in-cab fleet management systems, global positioning systems and navigation systems. It is important to distinguish these systems from handheld devices. While the potential safety risks (if any) of using these systems are not fully known, we do know that they offer many safety benefits. Accordingly, the net safety impact of limiting the use of these devices may not be positive, especially in team operations where co-drivers may use these devices to aid the driver when lost or needing to communicate with dispatchers.

Though we agree with the content of the proposed rule, we are somewhat concerned with FMCSA's approach to this issue. Specifically, the NPRM points to public opinion and anecdotal experiences as some of the reasons to propose a ban on texting. Naturally, ATA believes regulations should be based on research and facts. Drafting rules based on public perception is poor public policy and, moreover, will likely yield disappointing results.

In this NPRM, the agency stated their intent to consider future rulemakings to limit the use of cell phones and other interactive devices in commercial motor vehicles. If this is the case, we urge the agency to ensure that future rules on driver distractions are based on known, quantifiable safety risks, not merely perceived safety risks.

We are also concerned that FMCSA proposes to add a new section, 392.80, that prohibits motor carriers from allowing or requiring individuals to engage in texting while driving. ATA certainly agrees that motor carriers should neither permit nor require such activity. However, we are concerned that motor carriers will be held accountable for texting violations committed by drivers when the motor carrier neither condoned nor required these acts and could not have prevented them. As FMCSA is well-aware, drivers are not always under direct supervision.

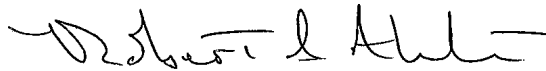
ATA encourages the agency to modify its enforcement policy to more clearly define the term “allow” in 392.80. Specifically, a motor carrier should not be deemed to have allowed a texting offense, or penalized for the offense, if the motor carrier has taken reasonable, good-faith steps to keep its drivers from texting. For instance, if the motor carrier has a policy that prohibits texting and has evidence that it has imposed progressive discipline to drivers found in violation of the policy, the motor carrier should not be held accountable for texting violations.

Conclusion

ATA strongly supports this proposal to prohibit drivers of commercial motor vehicle drivers from text messaging on handheld devices while driving. In fact, to further improve highway safety, such a restriction should be imposed on drivers of all vehicles. Any future rules that address driver distractions must be based on known, quantifiable safety risks, not perceived risks.

Should you have any questions, please contact the undersigned at 703-838-8852 or rabbott@trucking.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rob Abbott", with a horizontal line extending to the right.

Rob Abbott
Vice President
Safety Policy
American Trucking Associations