

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**Driver of CMVs: Restricting the Use of Cellular Phones**

**SUBMITTED BY:  
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*Introduction*

The American Trucking Associations (ATA)<sup>1</sup> submits these comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) titled "Drivers of CMVs: Restricting the Use of Cellular Phones."<sup>2</sup>

ATA supports FMCSA's proposal to prohibit drivers of commercial motor vehicles from holding a mobile telephone for the purposes of engaging in a conversation while driving.<sup>3</sup> In fact, ATA supports laws and regulations that ban a driver of *any* vehicle from holding a wireless communication device to conduct a conversation while driving.

However, ATA favors allowing the use of technologies that enable the driver to conduct a conversation without holding the device (e.g., hands-free). As discussed later in this document, ATA also believes drivers should be prohibited from dialing a telephone number while driving, but should be permitted to push a limited number of buttons (e.g., three or fewer) in order to initiate a hands-free call. Finally, ATA strongly objects to the proposed provision that would impose serious penalties against employers who do not somehow prevent their drivers from violating mobile phone prohibitions.

ATA agrees with FMCSA's proposal to make compliance with cell phone prohibitions a condition of State Motor Carrier Safety Assistance Program (MCSAP) funding. Since only nine states presently have state-wide bans on hand-held mobile telephone use, tying

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<sup>1</sup> ATA is a united federation of motor carrier, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

<sup>2</sup> 75 Federal Register 80014 (December 21, 2010).

<sup>3</sup> Olson, R. L., Hanowski, R.J., Hickman, J.S., & Bocanegra, J. (2009), "Driver Distraction in Commercial Vehicle Operations," Washington, DC: Federal Motor Carrier Safety Administration, July 2009.

MCSAP funding to this regulation is needed to ensure that the regulations are enforced nationwide. In addition, it will help meet the mutual objective of uniformity.

ATA also supports FMCSA's proposal to add hand-held mobile telephone violations to the list of disqualifying offenses. Making hand-held mobile telephone use a disqualifying offense would serve as an additional deterrent and would send a clear message to commercial motor vehicle (CMV) drivers that hand-held phone use cannot be tolerated.

### Discussion

Although generally supportive of the NPRM's restrictions on *hand-held* phone use, ATA urges FMCSA to continue to allow the use of *hands-free* technology for mobile telephones in the final rule. Prohibiting hands-free use would offer little, if any, safety value while severely hamstringing efficiency and negatively impacting driver morale. FMCSA should allow CMV drivers to use hand-free technology while driving for three main reasons.

First, FMCSA currently has no justification to ban the use of hands-free technology. The Virginia Tech Transportation Institute (VTTI) study referenced in the NPRM found that talking or listening on a hands-free phone had the lowest odds ratio (0.44) of moderate tertiary tasks<sup>4</sup>. In the study's methodology, any result below one represents a crash risk that is less than that of an average CMV driver. Thus, this low odds ratio shows that using hands-free technology presents very little safety risk and may even present a safety benefit.

Second, hands-free devices are an important communication tool for truck drivers. Not all trucks are equipped with fleet management systems that help drivers communicate with their dispatchers and others. Being able to engage in a short conversation while on the road could help a driver avoid the safety risks of getting lost or encountering congestion.

Finally, it is important that, in the context of this rule, FMCSA be sensitive to drivers' lifestyles. Commercial truck drivers may be out on the road and unable to be with their friends and family for weeks at a time. Having the ability to communicate via a mobile telephone using a hands-free device would help truck drivers maintain personal relationships, handle personal matters and deal with other situations which, ultimately, would help relieve stress.

ATA strenuously objects to the provision of the proposal that would require employers to ensure that their drivers comply with restrictions on the use of hand-held mobile telephones. ATA certainly agrees that motor carriers should neither permit nor require such activity. However, we are concerned that, under the terms of the proposed rule,

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<sup>4</sup> Olson,, Hanowski, Hickman, & Bocanegra, pg 44.

motor carriers could be held accountable for violations they neither condoned nor actively permitted. This element of the proposal represents an unrealistic and inappropriate shifting of the law enforcement burden to motor carrier management. As FMCSA is well-aware, drivers are not always under direct supervision and it would be extremely difficult, and in-fact unrealistic, for a carrier to enforce such a requirement. This is especially true when drivers use their own phones that are neither provided by nor paid for by their motor carrier employers.

Instead, ATA encourages the agency to modify the term “allow” in section 392.82 to “knowingly allow.” In other words, the carrier should not be held culpable unless they required or knew of the violation and permitted it to occur. In addition, a motor carrier should not be deemed to have allowed a hand-held phone use, or be penalized for the offense, if the motor carrier has taken reasonable, good-faith steps to ensure compliance. For instance, if the motor carrier has a policy that prohibits hand-held phone use and has evidence that it has imposed progressive discipline on drivers found in violation of that policy, the motor carrier should not be held in violation of the proposed section 392.82.

ATA is concerned about the proposed prohibition on dialing a phone because the term “dialing” is not defined in the proposed rule. We recognize the visual and manual risks of dialing demonstrated by the VTTI study. However, the study did not clearly define dialing. Arguably, dialing a ten digit number is far riskier than dialing a two digit “speed dial” code to initiate a call. The authors of the study did not distinguish between the two when identifying dialing events.

ATA proposes that FMCSA define dialing as entering a seven or ten digit phone number for the purposes of initiating a phone call. Doing so would allow drivers to push a digit or two to initiate an otherwise hands-free phone conversation. For instance, drivers should be permitted to press the “receive” button to accept an in-bound call or to press a couple of digits to initiate a speed dial sequence. In ATA’s view, this would be logical since: 1) intuitively, dialing a single digit is far less risky than dialing ten; and 2) it would permit drivers to quickly initiate hands-free conversations which, as mentioned earlier, can yield safety benefits.

ATA believes FMCSA’s proposal to ban reaching for a mobile telephone is problematic, inconsistent, and, for all practical purposes, unenforceable. For instance, the agency proposes to allow drivers to reach for a citizen’s band radio, but not a mobile telephone. It is hard to imagine that the safety risks of these two activities are markedly different. It simply seems illogical to allow drivers to reach for just about any object (e.g., a C.B., a radio dial) but specifically prohibit reaching for a cell phone. This restriction would set up law enforcement to fail since it would be practically unenforceable. Further, a prohibition on reaching would prevent drivers from initiating hands-free conversations which can have safety benefits, as discussed above. ATA recognizes that reaching for any object within a vehicle poses a possible safety risk, but the safety risks associated with reaching can be mitigated by educating all drivers on the importance of placing hands-free devices and mobile telephones within close proximity.

### Conclusion

ATA has consistently advocated distracted driving laws and regulations as a means to further improve highway safety. As an example, ATA supported FMCSA's recent ban on texting by CMV operators. In keeping with our tradition of highway safety advocacy, ATA supports FMCSA's proposal to prohibit drivers from using a hand-held device to conduct a phone conversation - or from dialing a phone number - while operating a commercial motor vehicle. However, ATA encourages the agency to allow drivers to push a limited number of keys to initiate hands-free conversations, recognizing their safety benefits.

### **Questions FMCSA Posed in the NPRM**

#### ***1. Should the Agency completely restrict all mobile telephone use, both hand-held and hands-free, by CMV drivers while driving in interstate commerce?***

No. FMCSA should allow CMV drivers to use of hands-free technology while driving in interstate commerce for three main reasons. First, FMCSA currently has no justification to ban the use of hands-free technology. The Virginia Tech Transportation Institute (VTTI) study referenced in the NPRM found that talking or listening on a hand-free phone had the lowest odds ratio, 0.44, for moderate tertiary tasks<sup>5</sup>. In the study's methodology, any result below one represents a crash risk that is less than that of an average CMV driver. Thus, this low odd ratio shows that using hands-free technology presents very little safety risk and may even present a safety benefit. Second, hands-free devices are an important communication tool for truck drivers. Not all trucks are equipped with fleet management systems that help drivers communicate with their dispatchers and others. Being able to engage in a short conversation while on the road could help a driver avoid the safety risks of getting lost or encountering congestion. Finally, it is important that, in the context of this rule, FMCSA be sensitive to drivers' lifestyles. Commercial truck drivers may be out on the road and unable to be with their friends and family for weeks at a time. Having the ability to communicate via a mobile telephone using a hands-free technology would help truck drivers maintain personal relationships, handle personal matters, and deal with other situations which, ultimately, would help relieve stress.

#### ***2. Should some CMV drivers, for example, drivers of passenger-carrying vehicles or of vehicles carrying hazardous materials, be more restricted than other CMV drivers?***

No. The research presented by FMCSA does not suggest that drivers of passenger-carrying vehicles or vehicles carrying hazardous material pose a greater safety risk than other CMV drivers. Also, as mentioned above, hands-free use can actually generate safety benefits. Accordingly, it would be inappropriate to impose greater restrictions on drivers of these vehicles.

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<sup>5</sup> Olson,, Hanowski, Hickman, & Bocanegra, pg 44.

***3. Some motor vehicle design guidelines suggest limiting the time that a visual or a visual-manual task takes the driver's eyes off of the forward roadway when designing vehicle controls. Should the Agency define a time limit for CMV drivers' interaction with mobile telephones (either hand-held, hands-free, or both)?***

No. There should not be a time limit associated with CMV driver interaction with a mobile telephone. Enforcing a time limit would be completely impractical. Further, the pressure of managing compliance with such a limit (e.g., watching a timer) could actually present the driver with an additional distraction. However ATA does recommend limiting the number of times a driver may press a button in order to initiate or receive a telephone call.

***4. Should the Agency propose limiting the number of keystrokes or button pushes that a CMV driver is allowed within a certain time frame when using a mobile telephone (either hand-held, hands-free, or both)? Should dialing be defined as a specific number of keystrokes or button pushes such as at least seven keystrokes or button pushes?***

Yes. ATA recommends that FMCSA limit drivers to pressing a limited number of buttons (e.g., three or fewer) in order to initiate or receive an otherwise hands-free phone conversation. For instance, drivers should be permitted to press the "receive" button to accept an in-bound call or to press a few digits to initiate a speed dial sequence. This would be logical since: 1) intuitively, dialing a single digit is far less risky than dialing ten; and 2) it would permit drivers to quickly initiate hands-free conversations which, as mentioned earlier, can yield safety benefits.

***5. Are there technologies available or soon to be available that would allow completely hands-free mobile telephone operation by CMV drivers? Please provide any information on the availability and costs of such technologies. The Agency also requests comments regarding the amount of time and steps that are required by the driver to initiate and then conduct a hands-free mobile telephone conversation with such devices.***

Voice activated mobile telephone and integrated vehicle systems are currently available on the market today. These systems allow drivers to initiate, receive, and conduct phone conversations by pushing as little as a single button. The amount of time and the number of steps that are required by a driver to initiate and then conduct a hands-free conversation are all dependent upon the type of phone and how a driver has programmed it for his particular use. These devices are often more costly and are not yet widely prevalent. Accordingly, it is not appropriate at this time to restrict phone conversations to only those drivers and motor carriers who have made the investment in this technology.

***6. The Agency has proposed a definition for “use of a hand-held mobile telephone” in the regulatory text. The Agency requests comments on this definition as well as the public’s views on whether to include a description of allowable alternatives to “use of a hand-held mobile telephone,” such as hands-free technologies.***

For the aforementioned reasons, ATA urges FMCSA to remove the term “reach” from the definition “use of a hand-held mobile telephone.” Further, if the definition is to include the term “dialing,” the agency should further define dialing so as to allow drivers to push a button or two in order to initiate a hands-free conversation.