

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 8:35 a.m. on February 2, 2010, in Room 152-S of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Cindy Shepard, Committee Assistant

Others attending:

See attached list.

The Chairman opened the hearing on **SB 276 - Providing for separate United States army, navy, air force, marine corps and coast guard or merchant marine license plates.**

Bruce Kinzie, staff revisor, explained the history of current veterans license plates and that the individual requesting this bill wanted embossed plates for each branch of the military. He noted that military plates are not subject to the distinguished license plates requirements and fees.

Chairman Umbarger referred to the discussion at the January 26 committee meeting in regard to the Department of Revenue and Division of Vehicle's computer system overhaul. A question was directed to the Division of Vehicles asking why they could not accommodate any license plate designs with the current system. Mr. Roy Wilkland, Title Manager of Titles and Registration, Division of Motor Vehicles, responded that there wasn't enough manpower; all of their programmers are assigned to the new project.

There being no conferees, the hearing on **SB 276** was closed.

The Chairman indicated that he did not intend to take action on the bill. Senator Huntington moved, Senator Schmidt seconded, to table SB 276. Motion carried.

Jill Shelley, Kansas Legislative Research Department, provided an update on Federal legislation relating to **SB 295 - Blind and visually impaired persons, establishing the motor vehicle and safe mobility committee.** She stated that there are two bills in the US Senate that would address this issue, neither bill has received any action for about a year.

Following discussion that this issue would be best addressed at the federal level, Senator Apple moved, Senator Huntington seconded, to table SB 295. Motion carried.

Chairman Umbarger requested a briefing on **SB 480 - Regulating traffic; license plates.** Bruce Kinzie explained the intent of the bill is to address the problem of plastic license plate covers, or anything that obscures the reading of the license plate. Discussion followed and the Chairman announced there would be a hearing for this bill next week.

Jill Shelley presented an update on U.S. Department of Transportation's ban on texting by truck and bus drivers (Attachment 1). She also provided bill comparisons for the texting legislation that is currently up for consideration before the 2010 State and Federal Legislatures (Attachment 2).

The meeting was adjourned at 9:15 a.m. The next meeting is scheduled for February 3, 2010.

SENATE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2-2-10

NAME	REPRESENTING
Ray Will	KDOT - DOTV
Mark Boranyak	CAPITOL STRATEGISTS
Woody Moses	KPM
Cynthia	Sen Health
Randy Spitzer	City of Toledo

Transportation Watch: All Issues > 2010 > January > 01/27/2010 > News > Transportation:
DOT Bans Texting by Truck, Bus Drivers; Formal Rules to Follow Immediate Prohibition

DOT Bans Texting by Truck, Bus Drivers; Formal Rules to Follow Immediate Prohibition

Commercial truck and bus drivers will be barred from sending text messages from cellular devices while driving under a new Department of Transportation edict issued Jan. 26. A notice of regulatory guidance, the formal name for a new interpretation stemming from existing law, will be published in the Jan. 27 Federal Register. It becomes effective that same day.

The new policy does not apply to talking on cellular phones or affect civilian motorists. Truck and bus drivers that text while driving their commercial vehicles will be subject to civil or criminal penalties up to \$2,750.

The immediate ban stems from a new interpretation of existing law that gives the Federal Motor Carrier Safety Administration authority to regulate the safety of trucks and their drivers. DOT will undergo separate rulemaking processes to both codify the immediate ban on texting by truckers and bus drivers and to look into regulation of other forms of distracted driving.

In a study on distracted driving released in October, the Federal Motor Carrier Safety Administration found that texting was the single riskiest action that affected driving ability. The agency found that those texting were 23.2 times more likely to have a safety problem, such as an accident, than those driving without distractions.

"We want the drivers of big rigs and buses and those who share the roads with them to be safe," Transportation Secretary Ray LaHood said at a Jan. 26 press conference to announce the ban. "This is an important safety step and we will be taking more to eliminate the threat of distracted driving."

ATA Supports Ban for All Drivers

The American Trucking Associations, the country's largest trucking group, came out in full support of the immediate ban, which the group has vocally supported over the past few months. ATA President and Chief Executive Officer Bill Graves joined LaHood at the announcement.

The Owner-Operator Independent Drivers Association, the largest advocacy group for independent and small-business truckers, supports the ban but expressed concern over the immediate implementation that preceded a formal rulemaking, which involves soliciting comments from the public. Both OOIDA and ATA support banning texting for all drivers, not just truckers.

"We support where they are going, but not how they got there," said Todd Spencer, OOIDA executive vice president. "Making their action effective immediately bypasses normal regulatory rulemaking processes. Those processes allow actions to be vetted for unintended consequences, as well as potential implementation and enforcement problems."

The move is the latest in DOT's recent crusade against distracted driving, which has won the support of ATA and safety advocate groups. LaHood spearheaded a two-day summit on the issue several months ago. President Obama signed an executive order several months ago that bars federal employees from texting while driving government-issued vehicles.

By Adam Snider

The Federal Register entry can be found at
http://www.federalregister.gov/OFRUpload/OFRData/2010-01573_PI.pdf. DOT information on

http://www.distraction.gov

Senate Transportation
2-2-10
Attachment 1

[Federal Register: January 27, 2010 (Volume 75, Number 17)]
[Rules and Regulations]
[Page 4305-4307]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr27ja10-21]

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DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration
49 CFR Chapter III

Regulatory Guidance Concerning the Applicability of the Federal
Motor Carrier Safety Regulations to Texting by Commercial Motor Vehicle
Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: The FMCSA announces regulatory guidance concerning texting
while driving a commercial motor vehicle (CMV). The guidance is
applicable to all interstate drivers of CMVs subject to the Federal
Motor Carrier Safety Regulations (FMCSRs).

DATES: Effective Date: This regulatory guidance is effective on January
27, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and
Carrier Operations Division, Office of Bus and Truck Standards and
Operations, Federal Motor Carrier Safety Administration, 1200 New
Jersey Ave., SE., Washington, DC 20590.
E-mail: MCPSD@dot.gov. Phone (202) 366-4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98
Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to
regulate drivers, motor carriers, and vehicle equipment. It requires
the Secretary of Transportation to prescribe regulations which ensure
that: (1) CMVs are maintained, equipped, loaded, and operated safely;
(2) the responsibilities imposed on operators of CMVs do not impair
their ability to operate the vehicles safely; (3) the physical
condition of operators of CMVs is adequate to enable them to operate
the vehicles safely; and (4) the operation of CMVs does not have a
deleterious effect on the physical condition of the operators. (49
U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary
broad power in carrying out motor carrier safety statutes and
regulations to "prescribe recordkeeping and reporting requirements"
and to "perform other acts the Secretary considers appropriate." (49
U.S.C. 31133(a)(8) and (10), respectively).

The Administrator of FMCSA has been delegated authority under 49
CFR 1.73(g) to carry out the functions vested in the Secretary of
Transportation by 49 U.S.C. chapter 311, subchapters I and III,

relating to commercial motor vehicle programs and safety regulation.

Background

This document provides regulatory guidance concerning the applicability of 49 CFR 390.17, "Additional equipment and accessories," to CMV operators engaged in "texting" on an electronic device while driving a CMV in interstate commerce.

Currently, 49 CFR 390.17 states, "Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the commercial motor vehicles on which they are used." [Emphasis added]. As used in Sec. 390.17, "this subchapter" means Subchapter B [49 CFR parts 350-399] of Chapter III of Subtitle B of Title 49, Code of Federal Regulations (CFRs).

CMVs are defined in 49 CFR 390.5 as "any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle--

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed

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by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C."

Section 390.17 is therefore applicable to drivers of CMVs, as defined by Sec. 390.5, when the CMV is being used by a motor carrier operation subject to the FMCSRs. The general applicability of Parts 390 through 399 [49 CFR Parts 390 through 399] of the FMCSRs is prescribed by Sec. 390.3.

Basis for This Notice

FMCSA recently completed its "Driver Distraction in Commercial Vehicle Operations" study 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 (e.g., crashes, near-crashes, lane departures) 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 operations.

This report is available at FMCSA's Research Web page at:
<http://www.fmcsa.dot.gov/facts-research/art-research.aspx?>

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 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," with an odds ratio of 23.2. This means that the odds of being involved in a safety-critical event is 23.2 times greater for drivers who are texting 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 immediately preceding 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.

Although the final report does not elaborate on text messaging, the drivers were engaged in the review of, or preparation and transmission of, typed messages via wireless phones.

Because of the safety risks associated with texting, FMCSA will address the problem of texting in an expedited, stand-alone rulemaking to be completed in 2010. In addition to studies documenting the safety risks associated with texting while driving, the feedback the Department received during its Distracted Driving Summit, held September 30-October 1, 2009, in Washington, DC, from four United States Senators, several State legislators, safety advocacy groups, senior law enforcement officials, the telecommunications industry, and the transportation industry suggest there is widespread support for a ban against texting while driving. However, until the Agency has the opportunity to complete a notice-and-comment rulemaking proceeding to adopt an explicit prohibition against texting, the regulatory guidance below informs motor carriers and drivers about the applicability of the existing regulations to the use of electronic devices for texting.

Other Electronic Devices

FMCSA acknowledges the concerns of motor carriers that have invested significant resources in electronic dispatching tools and fleet management systems; this regulatory guidance should not be construed to prohibit the use of such technology. The regulatory guidance below should also not be construed to prohibit the use of cell phones for purposes other than text messaging.

The Agency will address the use of other electronic devices while driving in a notice-and-comment rulemaking proceeding rather than through regulatory guidance.

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.

Compliance With State and Local Laws, Ordinances and Regulations

In addition to announcing regulatory guidance on CMV drivers' use of electronic devices to engage in texting while driving, FMCSA reminds motor carriers and drivers subject to the FMCSRs that the Federal regulations require compliance with the laws, ordinances, and regulations of the jurisdiction in which the CMV is being operated. Section 392.2, "Applicable operating rules," requires that "Every

*must obey
whichever
is more restrictive*

commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with.'" Thus, in the States and localities having laws, ordinances, and regulations related to "texting" while driving, non-texting cell phone use, or any other similar traffic offenses, a violation of the State or local provision is also a violation of Sec. 392.2 for those CMV drivers to whom it applies.

Summary

Based on the clear consensus that emerged from the Distracted Driving Summit, FMCSA's top priority is to initiate a rulemaking to address the safety risks associated with texting by prohibiting all truck and bus drivers from texting while they are operating on public roads. The regulatory guidance issued today clarifies the applicability of the Agency's current safety regulations and serves as an interim measure to deter texting while driving.

Regulatory Guidance

Part 390--Federal Motor Carrier Safety Regulations; General

Sections Interpreted

Section 390.17 Additional equipment and accessories:

Question 1: Do the Federal Motor Carrier Safety Regulations prohibit "texting" while driving a commercial motor vehicle in interstate commerce?

Guidance: Yes. Although the current safety regulations do not include an explicit prohibition against texting while driving by truck and bus drivers, the general restriction against the use of additional equipment and accessories that decrease the safety of operation of commercial motor vehicles applies to the use of electronic devices for texting. Handheld or other wireless electronic devices that are brought into a CMV are considered "additional equipment and accessories" within the context of Sec. 390.17. "Texting" is the review of, or preparation and transmission of, typed messages through any such device or the engagement in any form of electronic data retrieval or electronic data communication through any such device. Texting on electronic devices while driving decreases the safety of operation of the commercial vehicles on which the devices are used because the

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activity involves a combination of visual, cognitive and manual distraction from the driving task. Research has shown that during 6-second intervals immediately preceding safety-critical events (e.g., crashes, near crashes, lane departure), texting drivers took their eyes off the forward roadway an average of 4.6 seconds. Therefore, the use of electronic devices for texting by CMV operators while driving on public roads in interstate commerce decreases safety and is prohibited by 49 CFR 390.17.

Issued on: January 22, 2010.
Anne S. Ferro,
Administrator.
[FR Doc. 2010-1573 Filed 1-22-10; 4:15 pm]
BILLING CODE 4910-EX-P

Comparison of Bills Prohibiting Texting While Driving

Bill numbers	351 hearing 1/28, Judiciary		2441		2439 hearing 1/19, Transportation		2556		Proposed federal legislation (1)			
									ALERT Drivers Act, S 1536 & HR 3535 (Sen. Schumer) (2)	FOCUS Act, HR 3829 (Rep. Brady, PA) (3)	Distracted Driving Prevention Act, S. 1938, HR 3994 (Sen. Rockefeller)	
Bill features		Sec.		Sec.		Sec.		Sec.				
Definitions												
handheld wireless communication device	X, same as 2441	1(a)(1)	X, same as 351	1(a)(1)						hand-held mobile telephone		
wireless communication device					X, same as 2556	1(a)(1)	X, same as 2439	1(a)(1)			communication device	personal wireless communications device; excludes navigation system
hands-free wireless communication device (does not "preclude use of either hand to activate, deactivate, or initiate a function of the device")							X	1(a)(2)				
hands-free accessory							X	1(a)(3)				hands-free device
text messaging	X, same as 2441	1(a)(2)	X, same as 351	1(a)(2)						text message		texting
write, send or read a written communication					X	1(a)(2)				writing, sending, reading		
data communication ("addressing the communication to the person's telephone number")							X	1(a)(4)				
conviction	X, same as 2441	1(a)(3)	X, same as 351	1(a)(3)								
involuntary manslaughter while driving and texting driving	X, same as 2441	2	X, same as 351	2								X, excludes vehicle pulled off the road
Prohibited actions												
Using which type of device	handheld wireless communication device (same as 2441)	1(b)	handheld wireless communication device (same as 351)	1(b)	wireless communication device (same as 2556)	1(b)	wireless communication device (same as 2439)	1(b)		hand-held mobile telephone	communication device	personal wireless communications device
For which type of communication	text messaging or electronic mail communication (same as 2441)	1(b)	text messaging or electronic mail communication (same as 351)	1(b)	write, send or read a written communication	1(b)	voice or data communications	1(b)		writing, sending, or reading a text message	utilizing any communication device if the operator is < 21, utilizing a hand-held device if 21 or older	texting; phone call if hand-held (allows hands-free device for a phone call if > 18)
During what action	driving a moving motor vehicle	1(b)	driving a moving motor vehicle	1(b)	operating a motor vehicle	1(b)	driving a moving motor vehicle	1(b)		operating a moving motor vehicle	operating a moving motor vehicle	driving a motor vehicle

Bill numbers	351 hearing 1/28, Judiciary		2441		2439 hearing 1/19, Transportation		2556		ALERT Drivers Act, S 1536 & HR 3535 (Sen. Schumer) (2)	FOCUS Act, HR 3829 (Rep. Brady, PA) (3)	Distracted Driving Prevention Act, S. 1938, HR 3994 (Sen. Rockefeller)
Bill features	highway	Sec. 1(b)	highway	Sec. 1(b)	public road or highway	Sec. 1(b)	public road or highway	Sec. 1(b)	(not specified)	(not specified)	"public road" - any road under the jurisdiction of and maintained by a public authority and open to public travel
Exceptions											
medical emergency	X, same as 2441	1(c)(1)	X, same as 351	1(c)(1)			X	1(c)(2)(A)	"emergency" (not otherwise defined)	"emergency" (not otherwise defined)	"to contact emergency services"
reporting a safety hazard or requesting assistance relating to a safety hazard	X, same as 2441, 2556	1(c)(2)	X, same as 351, 2556	1(c)(2)	X ("prevent imminent injury")	1(d)(2)	X, same as 351, 2441	1(c)(2)(B)			
reporting criminal activity or requesting assistance relating to criminal activity	X, same as 2441, 2556	1(c)(3)	X, same as 351, 2556	1(c)(3)	X, report illegal activity to law enforcement	1(d)(1)	X, same as 351, 2441	1(c)(2)(C)			
providing roadside or medical assistance	X, same as 2441, 2556	1(c)(4)	X, same as 351, 2556	1(c)(4)			X, same as 351, 2441	1(c)(2)(D)			
use by law enforcement officers or emergency service personnel acting within their employment	X, same as 2441, 2556	1(c)(5)	X, same as 351, 2556	1(c)(5)	X ("authorized emergency vehicle")	1(c)(1)	X, same as 351, 2441	1(c)(2)(E)			use by emergency services personnel in performing those duties
while the vehicle is stopped off the regular traveled portion of the roadway					X	1(c)(2)					
when reading, selecting, or entering a telephone number or name to make or receive a phone call					X	1(c)(3)					to activate a hands-free device
using a global positioning or navigational system					X	1(c)(4)					(excluded by definition)
relay information between transit or for-hire operator and the operator's dispatcher, if the device is permanently affixed to the motor vehicle					X	1(d)(3)					by an employed CMV driver within scope of employment if allowed under USDOT regulations
using a hands-free wireless communication device or accessory							X	(c)(1)			for phone call only if > 18
							with the exception of the last, the exceptions apply to use of hand- held devices				
Penalties											
Fine					\$100	2(c) (p. 5)	\$100	2(c)((p. 6)	requires graduated penalties; minimum penalties to be set by regulation within 6 months after passage	same as ALERT Drivers Act	requires violation be a primary offense minimum fine for first violation; increased for subsequent
Criminal penalty											"increased civil and criminal penalties than would otherwise apply if a
- 1st conviction, class C misdemeanor	X, same as 2441	1(d)(1)	X, same as 351	1(d)(1)							

Bill numbers	351 hearing 1/28, Judiciary		2441		2439 hearing 1/19, Transportation		2556		ALERT Drivers Act, S 1536 & HR 3535 (Sen. Schumer) (2)	FOCUS Act, HR 3829 (Rep. Brady, PA) (3)	Distracted Driving Prevention Act, S. 1938, HR 3994 (Sen. Rockefeller)
Bill features		Sec. 1(d)(2)		Sec. 1(d)(2)		Sec.		Sec.			
- 2nd or subsequent conviction, class B misdemeanor	X, same as 2441		X, same as 351								vehicle accident is caused by a driver who is using such a device in violation of the statute"
- if 2nd or subsequent and serious bodily injury as a result of the violation, class A misdemeanor	X, same as 2441	1(d)(3)	X, same as 351	1(d)(3)							
- for involuntary manslaughter while driving and texting, severity level 4, person felony	X, same as 2441	2	X, same as 351	2							
- for any conviction, court may suspend driving privileges for 90 days	X, same as 2441	1(e)	X, same as 351	1(e)							
Applicability											
"no city, county, subdivision or local authority shall enact or enforce any law, ordinance, ... in conflict with, in addition to or supplemental to the provisions of this section"	X, same as 2441, 2556	1(f)	X, same as 351, 2556	1(f)			X, same as 351, 2441	1(d)			
Effective date											
statute book publication	X	5	X	5	X	4	X	4	no hearing yet scheduled	no hearing yet scheduled	no hearing yet scheduled
warning citation to be issued for the first year					X	1(e)					
Notes on criminal penalties:											
Maximum penalties: - Class A misdemeanor - a fine of no more than \$2,500 and up to a year in county jail - Class B misdemeanor - a fine of no more than \$1,000 and up to 6 months in the county jail - Class C misdemeanor - a fine no more than \$500 and up to 30 days in county jail - severity level 4, person felony - depends on criminal history, but 38-172 months, presumptive prison									would withhold 25% of certain highway funds without state passage of conforming law; FFIS estimates possible risk of \$62M	same as ALERT Drivers Act	primarily a safety education bill; would make safety grants based on same funding formula as most other transportation grants (% of population, % of road miles)
(1) Status of the federal bills, from THOMAS.gov:											
SB 1536: 7/29/2009: Read twice and referred to the Committee on Environment and Public Works.											
H.R. 3535: 9/8/2009: Referred to the House Committee on Transportation and Infrastructure. 9/9/2009: Referred to the Subcommittee on Highways and Transit.											
H.R. 3829: 10/15/2009: Referred to the House Committee on Transportation and Infrastructure. 10/16/2009: Referred to the Subcommittee on Highways and Transit.											
S. 1938 10/27/2009: Sponsor introductory remarks on measure. (CR S10785-10786). 10/27/2009: Read twice and referred to the Committee on Environment and Public Works. 10/29/2009: Senate Committee on Environment and Public Works discharged by Unanimous Consent. 10/29/2009: Referred to the Committee on Commerce, Science, and Transportation.											
H.R. 3994: 11/3/2009: Referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. 11/3/2009: Referred to House Transportation and Infrastructure. 11/4/2009: Referred to the Subcommittee on Highways and Transit. 11/3/2009: Referred to House Energy and Commerce											
(2) the Avoiding Life-Endangering and Reckless Texting by Drivers Act of 2009											
(3) Fighting Occupied Cell Use So Everyone Drives More Safely Act of 2009											
produced by KLRD, 2/1/10											