



May 3, 2010

Administrator Anne S. Ferro
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Docket Number FMCSA-2009-0370

Dear Administrator Ferro:

On behalf of the over 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) concerning Limiting the Use of Wireless Communications Devices, published April 1, 2010, at 75 FR 16391.

About APTA

APTA is a non-profit international trade association of approximately 1,500 public and private member organizations, including public transit systems; high-speed rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

General Comment

Safety is the top priority of the public transportation industry. APTA strongly supports your efforts and those of Secretary LaHood to increase safety and reduce distracted driving through this rulemaking and the Administration's broader campaign. Texting, talking on handheld telephones, and other activities that draw drivers' attention from the road lead to completely preventable, tragic consequences and must be eliminated. The proposed rule is a necessary step in making our transportation network safer for everyone.

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Public Transportation Has Acted Decisively to Eliminate Distracted Driving

While the NPRM notes several public transportation agencies that have banned their employees from using cell phones or texting while operating vehicles, many have done that and more. On December 31, 2009, APTA published the attached recommended practice, *Reducing Driver-Controlled Distractions While Operating a Vehicle on Agency Time*, as well as a companion practice limiting agency-controlled distractions, as part of our standards development program. Consistent with the standards development process, this recommended practice has been reviewed throughout the public transit industry and subjected to public comment prior to publication. It represents the consensus view of the public transportation industry. The APTA recommended practice applies to all personal electronic devices, as well as other common distractions such as reading material and food. We believe reducing distracted driving is a key aspect of safe transportation.

APTA Supports Efforts to Ban Texting While Driving for All Motorists

The use of handheld communications devices while driving is anathema to safety. We support both legislative and regulatory efforts to eliminate unnecessary distractions for operators of all vehicles.

We appreciate this opportunity to work with FMCSA on this very important initiative, and we look forward to supporting your continued efforts to promote transportation safety. For additional information, please contact James LaRusch of my staff at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,



William Millar
President

WM/rk
Enclosures



Reducing Driver-Controlled Distractions While Operating a Vehicle on Agency Time

Abstract: There are many driver-controlled devices, conditions and activities that might distract from safely operating a vehicle. This *Recommended Practice* establishes best practices to assist agencies with guidance concerning mitigating or minimizing these driver-controlled distractions while operating a vehicle on company business.

Keywords: alertness, awareness, distraction, electronics, phones, texting

Summary: Since January 2008, more than 100 bills in approximately 30 states have proposed to limit distracted driving, from cell phones, in some capacity at the state or local level, according to the Denver-based National Conference of State Legislatures. The number of wireless subscribers in the June 2008 was 262.7 million, up from 230 million in December 2006, according to the Cellular Communications and Internet Association, based in Washington D.C. Recognizing distracted driving as a serious public safety issue and as a civil liability toward organizations, the APTA Standards Bus Safety Working Group was convened to study and recommend mitigations to reduce transit operator distractions. A separate *Recommended Practice* has been developed with recommendations for reducing operator distractions that are under management's control.

Scope and purpose: Reducing operator distractions and improving safety is a shared responsibility of both the operator and the transit agency. This *Recommended Practice* contains best practices for reducing driver-controlled distractions. A separate *Recommended Practice* has been developed with recommendations for reducing operator distractions that are under management's control.

Summary of Recommendations:

- Educate employees about the industry wide issues of operator distraction
- Develop training programs to include driver distractions training
- Ensure policies and procedures include enforcement and disciplinary actions
- Analyze data to determine effectiveness of agency policies and training

This Recommended Practice represents a common viewpoint of those parties concerned with its provisions, namely, transit operating/planning agencies, manufacturers, consultants, engineers and general interest groups. The application of any standards, practices or guidelines contained herein is voluntary. In some cases, federal and/or state regulations govern portions of a rail transit system's operations. In those cases, the government regulations take precedence over this standard. APTA recognizes that for certain applications, the standards or practices, as implemented by individual transit agencies, may be either more or less restrictive than those given in this document.

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Participants

The American Public Transportation Association greatly appreciates the contributions of the APTA Bus Safety Working Group and the following individuals, who provided the primary effort in the drafting of this *Recommended Practice*:

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Reducing Driver-Controlled Distractions While Operating a Vehicle on Agency Time

1. Driver-controlled distractions

There are many types of driver-controlled devices, conditions and activities that might distract an operator from safely operating a vehicle. This *Recommended Practice* addresses common distractions and makes recommendations for dealing with the distractions.

1.1 Personal electronic devices

Personal electronic devices such as cell phone, pagers, MP3 players and video games should be turned off, stowed off of the driver's person and out of sight. These devices should never be used while the vehicle is in motion. Use of these devices should be restricted to times when the vehicle is in parked condition.

1.2 Non-electronic driver-controlled distractions

There are many other distractions, besides electronic devices, that can divert attention from safe driving. The driver should have both hands free to control the vehicle at all times. The following are some common distractions that may impact a driver's attention and should be avoided anytime the vehicle is in motion:

- food or drink
- grooming
- personal reading material
- paperwork

2. Other distractions

The driver should avoid activities that will distract from operating the vehicle in a safe, defensive manner.

2.1 Inherent distractions

2.1.1 Passengers

Drivers should avoid unnecessary communications. When conversing with passengers, a driver's focus should remain on safe, defensive operation of the vehicle. Anytime conversation impacts safe driving, the driver should pull the vehicle off the road to finish the conversation.

2.1.2 Agency-authorized or required reference material

Drivers may need to refer to maps, directions, instructions, etc. to perform their job duties. These actions should be performed while the vehicle is stopped in a safe location.

3. Agency implementation

3.1 Communication

Agencies should educate all employees about the industry-wide issue of operator distraction. Joint labor and management recognition of the safety and liability implications is essential to establishing effective mitigation

measures. Agencies should develop policies and procedures that are well documented and thoroughly communicated providing for feedback from operators and other employees.

3.2 Training

Training programs should be developed or revamped to include driver distraction training, focusing on policies and mitigation initiatives. All levels of the organization should be included in the implementation of the training.

Accident investigation training should incorporate the recognition of operator distractions as a potential contributor to the incident.

3.3 Enforcement

Agency-developed policies and procedures should include enforcement and disciplinary steps or actions in accordance with applicable agency standards. Enforcement tools may include the use of onboard observation, video and audio, black box technology, field personnel, customer reports, service audits, etc.

3.4 Analysis of data

It is important to collect, measure and analyze data to determine the effectiveness of the agency's policy, training and enforcement program.

Annex A

Excerpt from *Traffic Safety Facts Research Note* on driver cell phone use

Driver hand-held cell phone use decreased to 5 percent in 2006 compared to 6 percent in 2005. This downturn in handheld cell phone use is the first since the National Highway Traffic Safety Administration began estimating driver cell phone use in 2000 through its National Occupant Protection Use Survey (NOPUS). The 2006 NOPUS also found that the incidence of drivers speaking with observable headsets on remained unchanged, while the incidence of observable hand-held device manipulation while driving increased to 0.4 percent in 2006 from 0.2 percent in the previous year.

However, the lack of up-to-date data to extrapolate NOPUS observed data to total cell phone use precludes an accurate estimation of overall driver cell phone use. In the past, we had projected the total hands-free use and total cell phone use among all drivers based on 2003 cell phone use data from other sources. This research note will not make such a projection for the year of 2006 with the outdated data but we will do it in the future as updated data become available.

The 2006 hand-held phone use rate translates into 745,000 vehicles on the road at any given daylight moment being driven by someone talking on a hand-held phone. The decline in use occurred in a number of driver categories, including female drivers, drivers in the Midwest, drivers age 25 to 69, drivers of passenger cars, drivers in both urban and suburban areas, drivers on weekdays, and drivers driving alone.

The NOPUS is conducted annually by NHTSA's National Center for Statistics and Analysis. It provides the only probability-based observed data on driver cell phone use in the United States.

References

American Public Transportation Association, *Recommended Practice*, "Reducing Agency-Controlled Distractions while Operating a Vehicle on Agency Time," APTA BTS-BS-RP-006-09, 2009.

Definitions

agency authorized device: Any device or activity, whether personal or agency-issued, used for agency business at the request or authorization of the agency.

driver: A person operating a vehicle.

driver-controlled distractions (DCD): Anything within the driver's power that diverts attention away from safely operating a vehicle.

electronic device: Any device that has an on/off switch.

personal electronic device: Any non-agency authorized or distributed electronic device.

vehicle: Any powered bus, car, railcar or truck used by the agency for agency business.

Abbreviations and acronyms

APTA American Public Transportation Association

DCD driver-controlled distractions