

■ 2. Section 723.250 is amended by adding the definitions below in alphabetical order to paragraph (b) and by adding a new paragraph (d)(6) to read as follows:

§ 723.250 Polymers.

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(b) * * *

Fluorotelomers means the products of telomerization, which is the reaction of a telogen (such as pentafluoroethyl iodide) with an ethylenic compound (such as tetrafluoroethylene) to form low molecular weight polymeric compounds, which contain an array of saturated carbon atoms covalently bonded to each other (C-C bonds) and to fluorine atoms (C-F bonds). This array is predominantly a straight chain, and depending on the telogen used produces a compound having an even number of carbon atoms. However, the carbon chain length of the fluorotelomer varies widely. The perfluoroalkyl groups formed by this process are usually, but do not have to be, connected to the polymer through a functionalized ethylene group as indicated by the following structural diagram: (Rf-CH₂CH₂-Anything).

* * * * *

Perfluoroalkyl carboxylate (PFAC) means a group of saturated carbon atoms covalently bonded to each other in a linear, branched, or cyclic array and covalently bonded to a carbonyl moiety and where all carbon-hydrogen (C-H) bonds have been replaced with carbon-fluorine (C-F) bonds. The carbonyl moiety is also covalently bonded to a hetero atom, typically, but not necessarily oxygen (O) or nitrogen (N).

Perfluoroalkyl sulfonate (PFAS) means a group of saturated carbon atoms covalently bonded to each other in a linear, branched, or cyclic array and covalently bonded to a sulfonyl moiety and where all carbon - hydrogen (C-H) bonds have been replaced with carbon - fluorine (C-F) bonds. The sulfonyl moiety is also covalently bonded to a hetero atom, typically, but not necessarily oxygen (O) or nitrogen (N).

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(d) * * *

(6) *Polymers which contain certain perfluoroalkyl moieties consisting of a CF₃- or longer chain length.* Except as provided in paragraph (d)(6)(i), after February 26, 2010, a polymer cannot be manufactured under this section if the polymer contains as an integral part of its composition, except as impurities, one or more of the following perfluoroalkyl moieties consisting of a CF₃- or longer chain length: Perfluoroalkyl sulfonates (PFAS),

perfluoroalkyl carboxylates (PFAC), fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule.

(i) Any polymer that has been manufactured previously in full compliance with the requirements of this section prior to February 26, 2010 may no longer be manufactured under this section after January 27, 2012.

(ii) [Reserved]

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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 § 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

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 § 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 § 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, 2009.¹ 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.

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,”² 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.

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 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 § 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 § 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

¹ This report is available at FMCSA’s Research Web page at: <http://www.fmcsa.dot.gov/facts-research/art-research.aspx>

² 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.

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.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XU01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, January 23, 2010, through 6 a.m., local time, January 18, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305, fax: 727-824-5308, e-mail: Susan.Gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero,

cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(2)(i)).

The southern subzone is that part of the Florida west coast subzone, which from November 1 through March 31, extends south and west from 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary) to 25°20.4' N. lat. (a line directly east from the Monroe/Miami-Dade County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL, boundary) and 25°48' N. lat. (a line directly west from the Collier/Monroe Counties, FL, boundary), i.e., the area off Collier County (50 CFR 622.42(c)(1)(i)(A)(3)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the

king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the southern Florida west coast subzone will be reached on January 23, 2010. Accordingly, the commercial fishery for king mackerel for such vessels in the southern Florida west coast subzone is closed at 6 a.m., local time, January 23, 2010, through 6 a.m., local time, January 18, 2011, the beginning of the next fishing season, i.e., the day after the 2011 Martin Luther King Jr. Federal holiday.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 21, 2010.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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