

FOR IMMEDIATE RELEASE

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Safety advocates file petition to initiate U.S. action to curb use of electronic devices by truck and bus drivers

WASHINGTON, D.C. (September 24, 2009) – Advocates for Highway and Auto Safety (Advocates) today filed a petition with the U.S. Department of Transportation to initiate federal rulemaking to prohibit or restrict the use of unsafe electronic devices, for talking, texting and other purposes, by operators of commercial motor vehicles, such as tractor trailers, motorcoach buses, and large vans.

Advocates filed the petition for rulemaking with the Federal Motor Carrier Safety Administration (FMCSA), calling on the agency to:

- Immediately open a rulemaking proceeding to determine the safety of electronic devices used by drivers operating a CMV;
- Evaluate all wireless electronic devices used for telecommunications, telematics, entertainment and driver assistance (regardless of whether they are mobile or installed into the vehicle electronics platform) that can be used by drivers while operating a CMV;
- Determine which devices interfere with the safe operation of CMVs;
- Permit exceptions only in emergency situations, and exempt law enforcement and emergency responders who operate CMVs in the conduct of their official duties;
- Make the violation of using a prohibited or restricted device while operating a CMV a safety violation that automatically triggers the issuance of an Out-of-Service (OOS) order;
- Apply the rule to all CMV drivers under FMCSA jurisdiction;
- Issue a rule to prohibit or restrict the use of devices that interfere with the safe operation of CMVs, and explain the conditions under which devices that are restricted can be used.

“Driver distraction is a serious and growing safety problem,” said Advocates vice president Jacqueline Gillan, “If safety is indeed our nation’s number one transportation priority, now is the time for FMCSA to act to stem the rising tide of distracted driving crashes, deaths and injuries.”

Nearly 5,000 people are killed and 100,000 more are injured each year in crashes with large trucks. Trucks are only 3 percent of registered vehicles, but are involved in 12 percent of all traffic fatalities.

Gillan cited a growing number of scientific studies that have repeatedly verified the serious, adverse impact on driver and passenger safety as a consequence of using one or more types of electronic devices.

For example, a Virginia Tech study issued this year, which was the first to investigate the effects on crash risk of reading and sending text messages, found that texting increased the risk of a safety-critical driving event for truck drivers by 23.2 times. Another study conducted in 2006 found that drivers using cell phones failed to stop at stop signs 10 times more often than drivers not using cell phones.

In 2006, the National Transportation Safety Board (NTSB) issued a safety recommendation urging FMCSA to ban cell phone use by commercial drivers license (CDL) holders who operate motorcoaches or school buses.

In July of this year, the Washington Area Metropolitan Transit Authority in the District of Columbia (DC) issued a zero-tolerance policy for Metro bus and rail operators using mobile devices while on the job,

while one year ago the Federal Railroad Administration issued an Emergency Order restricting the use of electronic devices by railroad employees after a commuter/freight train head-on collision.

According to the National Highway Traffic Safety Administration, at any given moment 11 percent of all motorists are using cell phones while driving, and 25 percent of all police-reported crashes may involve distracted driving.

Participating in today's news announcement were Elissa and Jamie Schee of Ocala, Florida, whose daughter Frances "Margay" Schee, age 13, was killed on September, 23, 2008, when a tractor trailer rammed into the back of her school bus that was stopped with its lights flashing. The truck driver's cell phone use was a contributing factor in the fiery fatal crash.

"One year and one day later, we want to express our strong support for this safety petition that is asking our federal government to finally do something to keep commercial vehicle drivers off the phone and to stay focused on the road in front of them," said Elissa Schee. "What happened to our daughter Margay was not an isolated incident. These tragedies are increasingly occurring on our nation's roadways – and they are preventable."

A recent national survey by Nationwide Insurance found that 81 percent of persons interviewed admit to talking on a cell phone while driving, 45 percent claim they were hit or nearly hit by someone talking on a cell phone, and 80 percent support legislation banning cell phone use while driving.

Earlier this year, the National Safety Council called for a complete ban on cell phones and messaging devices while driving, and urged each state and DC to enact such laws.

Some states have already taken action for passenger vehicles:

- Text messaging – 18 states and DC ban all drivers from using cell phones for text messaging while driving, 9 states ban teen drivers specifically, and 1 state bans school bus drivers specifically;
- Cell Phones – 21 states and DC ban teen drivers from using both hand-held and hands-free cell phones while driving, while school bus drivers are prohibited in 17 states and DC; 9 states and DC prohibit the use of hand-held cell phones by drivers 18 years and older.
- More than 52 countries ban or restrict cell phone use while driving (www.cellular-news.com/car_bans)

"Given the dramatic, highly disproportionate impact on public safety that results from large truck and motorcoach crashes, it is clearly in the public interest for FMCSA to initiate rulemaking that will lead to the establishment of appropriate controls over the use of distracting electronic devices and to adopt enforcement sanctions for CMV drivers who violate the regulations," said Advocates senior research director Gerald Donaldson.

Advocates for Highway and Auto Safety is an alliance of consumer, health, law enforcement and safety groups and insurance companies and agents working together to make America's roads safer.

For a copy of Advocates' "Distracted Driving Petition for Rulemaking" and other press kit materials, please go to: www.saferoads.org

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September 24, 2009

Honorable Rose McMurray, Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
West Building, Suite W60-300
Washington, DC 20590

Distracted Driving Petition for Rulemaking:

Requesting Issuance of a Rule to Consider Prohibiting or Restricting the Use of Electronic Devices During the Operation of Commercial Motor Vehicles

PETITIONER, Advocates for Highway and Auto Safety (Advocates or Petitioner), files this petition for rulemaking with the Administrator of the Federal Motor Carrier Safety Administration (FMCSA), pursuant to 49 CFR § 389.31, requesting the issuance of a safety rule that considers prohibiting or restricting the use of electronic devices that are demonstrated to produce commercial motor vehicle (CMV) driver distraction or inattention to the driving task. Advocates is an alliance of consumer, health, law enforcement and safety groups and insurance companies and agents working together to make America's roads safer. Advocates has been involved in safety issues affecting CMVs and operating safety and is concerned about the growing use of electronic devices by drivers while operating motor vehicles. The burgeoning use of an increasing variety of electronic devices that can divert the attention of drivers from the safe operation of their vehicle poses an ever increasing risk to highway users. The FMCSA is the appropriate authority to determine the extent to which the use of electronic devices by CMV operators should be curtailed in order to ensure the safe operation of CMVs. 49 U.S.C. § 31136(a). The Petition requests that the FMCSA Administrator initiate a rulemaking proceeding for the purpose of reviewing research, data and information in order to determine which electronic devices and technologies, including but not limited to devices used for telecommunication, telematics,¹ entertainment, and driver assistance,² have been demonstrated to produce CMV driver distraction or inattention to the driving task. Following such review, Petitioners request that the Administrator consider the need to prohibit or restrict the use of devices that impair the ability of CMV drivers to safely operate CMVs.

¹ 'Telematics' is a term that includes telecommunications and other, and often also includes "informatics" and "infotainment" devices, as used by the Intelligent Transportation Systems Society of America (ITS Society). See, the varying scope of the term 'telematics' at <http://www.itsa.org>.

² See, *Driver Distraction: A Review of the Current State-of-Knowledge*, DOT HS 810 704, NHTSA (Apr. 2008), at 1.

Petitioner further requests that in issuing the safety rule for this purpose the FMCSA Administrator also consider:

- Prohibiting or restricting wireless electronic devices regardless of whether they are mobile or fixed, that is, installed into the vehicle electronics platform;
- Providing explicit conditions for the use of devices that are restricted but not entirely prohibited from use during CMV operations;
- Exempting law enforcement and other emergency responders who operate CMVs while conducting official duties;
- Defining the circumstances for an emergency situation exception to permit the use of devices to contact police, fire and emergency response entities;
- Deeming the use of restricted or prohibited devices while operating a CMV (when use is not permitted) a safety violation that automatically triggers the issuance of an Out of Service (OOS) order; and,
- Applying the rule to cover all CMV drivers under FMCSA jurisdiction, including trucks, both private and common carriers, operating in interstate commerce at 10,001 pounds and greater gross vehicle weight rating (GVWR), over-the-road buses, or motorcoaches, in interstate commerce, school buses operated by drivers with a Commercial Driver License (CDL) school bus endorsement, and motor carriers of passengers transporting between 8 and 15 passengers including a driver in interstate commerce for compensation.

Background

Driver distraction induced by the use of a wide range of electronic devices, including telecommunications, telematics and entertainment devices, is widely acknowledged to be a major contributing factor increasing traffic safety risk. The National Transportation Safety Board (NTSB) recognized the serious, adverse safety effects of electronic device use by CMV drivers in adopting as one of its 2009 Federal Most Wanted List of safety improvements a 2006 recommendation sent to FMCSA that it restrict the use of cellular telephones (cell phones).³ In addition, the new Chair of NTSB announced a policy that prohibits NTSB employees from using cell phones, including

³ Safety Recommendation H-06-27, Federal Motor Carrier Safety Administration, Issued November 30, 2006. Also, *see*, *NTSB News*, SB-08-49, Oct. 28, 2008:

Research shows that using a cellular telephone while driving degrades performances, resulting in slower reaction times, slower driving speeds, and increased instances of attention lapses. In 2006, the Board recommended that the Federal Motor Carrier Safety Administration (FMCSA) prohibit cellular telephone use by commercial driver's license holders with a passenger-carrying or school bus endorsement, while driving under the authority of that endorsement, except in emergencies.

Also *see*, http://www.nts.gov/recs/mostwanted/restrict_useof_cellular_telephones.html.

NTSB-issued cell phones, and sending text messages even when employees are operating personal motor vehicles.⁴

Another recent governmental action to curtail the use of distracting devices in transportation was the issuance by the Washington Metropolitan Area Transit Authority (WMATA) of a zero-tolerance policy “for all Metro operators caught using mobile devices while on the job.”⁵ Similarly, the Federal Railroad Administration (FRA) issued an Emergency Order on Oct. 7, 2008, “restricting the improper use of railroad operating employees of certain electronic and electrical devices” that was compelled by a severe train incident involving a head-on collision on September 12, 2008, between a Southern California Regional Rail Authority commuter train and a Union Pacific Company freight train in Chatsworth, California⁶ that resulted in the deaths of 25 people on board.⁷ The FRA Emergency Order prohibits or restricts use of several mobile devices, including cell phones, DVD players, audio players, and radio receivers “capable of distracting a railroad operating employee from a safety-critical duty . . . either while in the cab of a moving locomotive, while working on the ground in proximity to a live track[]. . . or while another employee of the railroad is assisting in preparation of the train * * *.”⁸

In further recognition of the dangerous increase in distracted driving due to the expanding use of electronic devices, Transportation Secretary Ray LaHood has announced a two-day national summit on distracted driving.⁹ The Secretary has subsequently stated that “As we become a more mobile and wireless nation, we can’t afford to ignore new technology’s impact on roadway safety.”¹⁰ Accordingly, it would be particularly appropriate for FMCSA to grant this petition and to open rulemaking to consider restricting the use of distracting electronic devices contemporaneously with the convocation of the national summit on distracted driving¹¹ because of the highly disproportionate impact that large CMVs impose on public safety.

⁴ Chairmanship induction of Deborah Hersman, NTSB Board Room, Washington, D.C., Sept. 8, 2009.

⁵ “Metro Adopts Zero Tolerance Policy on Operator Use of Cell Phones, Texting Devices,” News Release, Washington Area Metropolitan Transit Authority (July 9, 2009), last accessed on September 11, 2009 at http://www.wmata.com/about_metro/news/PressReleaseDetail.cfm?ReleaseID=2661.

⁶ FRA Emergency Order No. 26, Notice 1. 73 FR 58702 (Oct. 7, 2008). The Emergency Order also recounts other collisions over the past several years in which cell phone use was involved, with some incidents resulting in deaths and injuries. *See, id.*, at 58704-58705.

⁷ *Id.* at 58703. FRA’s Emergency Order was a belated response to the 2003 NTSB Safety Recommendation R-03-1.

⁸ *Id.* at 58707. There follows a detailed list of exactly which devices are prohibited and the conditions under which they are prohibited. *Id.* at 58707-58708.

⁹ Transportation Secretary Ray LaHood Announces Distracted Driving Summit, DOT Press Release, DOT 114-09 (Aug. 4, 2009).

¹⁰ Transportation Secretary Ray LaHood Announces New Details on Distracted Driving Summit, DOT Press Release, DOT 124-09 (Aug. 18, 2009).

¹¹ Summit scheduled to be held on September 30, 2009 and October 1, 2009. *Id.*

Congress has also taken notice of the issue and introduced legislation to prohibit the use of hand-held cell phones and other portable (mobile) electronic communication devices to text message while operating a motor vehicle. Avoiding Life-Endangering and Reckless Texting by Drivers (ALERT Drivers) Act of 2009, S. 1536 and H.R. 3535. Many states have also moved to prohibit or restrict the use of cell phones in passenger vehicles, by teenage drivers and by school bus drivers.

Large trucks annually contribute to traffic deaths and injuries at a rate and a level that is highly disproportionate to their numbers and their percentage in the nation's motor vehicle fleet. Although only about three (3) percent of motor vehicle registrations, large trucks are involved in about eight (8) percent of all fatal motor vehicle crashes and 12 percent of all traffic fatalities annually. One of every nine (9) motor vehicle fatalities in the U.S. each year is the result of a large truck crash.¹² In addition, motorcoaches and buses can transport scores of passengers who are simultaneously exposed to death and severe injury in a single incident. Several major motorcoach crashes taking scores of lives have occurred in just the last few years, and many other catastrophic motorcoach fatal crashes have been investigated and documented in NTSB crash reports since 1968.¹³

Scientific Basis for the Petition

Driver error resulting from inattention and distraction is an area of vehicle operations that has been cited as a growing factor in large CMV traffic safety. That distraction-involved CMV crashes will increase has been predicted over the last decade in several major driver distraction studies and has also been the conclusion reached in forums conducted by the National Highway Traffic Safety Administration (NHTSA). Given the dramatic, highly disproportionate impact on public safety that results from large truck and motorcoach crashes, it is clearly in the public interest for FMCSA to initiate rulemaking that will lead to the establishment of appropriate controls over the use of distracting electronic devices and to adopt enforcement sanctions for CMV drivers who violate the regulations. FMCSA regulatory action to determine what controls to impose on the presence and use of these devices is, in fact, long overdue, because of the explosive growth in a wide variety of electronic devices that increasingly distract CMV drivers from safely operating their vehicles.¹⁴

Numerous studies have verified the serious, adverse impact on driver and passenger safety as a consequence of using one or more types of electronic devices, or engaging in other distracting tasks, that produce visual, manual, auditory, and cognitive

¹² *Fatality Facts 2007: Large Trucks*, Insurance Institute for Highway Safety 2008.

¹³ A list of severe motorcoach crashes is attached.

¹⁴ According to NHTSA: "[A]s the proliferation of wireless communication, entertainment and driver assistance systems continues, it is likely that the rate of distraction-related crashes will escalate." "Driver Distraction: A Review of the Current State-of-Knowledge," *op. cit.*, at 1.

diversion from the moment-to-moment driving task.¹⁵ The National Safety Council (NSC) has emphasized for several years the severe impairment of safe driving when drivers use cell phones and has reviewed research studies that support the NSC policy of curtailing drivers' use of cell phones while operating their motor vehicles.¹⁶ The FRA Emergency Order cited above provides a substantial compendium of research and study findings, including three NTSB highway crash investigations, that demonstrate the visual, manual, and cognitive distractions of drivers on highways.¹⁷ Similar studies and research compendia cited later in this petition also have documented the serious effect on safe driver performance that result from the use of electronic devices producing manual, visual, auditory, and cognitive distraction of motor vehicle operators from the task of safely operating their vehicles.

Most recently, a study conducted for FMCSA by the Virginia Tech University Transportation Research Institute (VA Tech Study)¹⁸ found, overall, that driver distraction was involved in 81 percent of "safety-critical events." Specifically, the findings were 100 percent distraction-related fatal crashes, 79.1 percent distraction-related near-crashes, 78.7 percent "crash-relevant conflicts," and 87.7 percent "unintentional" lane deviations. The VA Tech Study, the first to investigate the effects on crash risk of reading and sending text messages, found that texting increased the risk of a safety-critical driving event by 23.2 times, and that compared with non-distracted drivers, drivers dialing a cell phone had a 5.9 times greater risk of crashing or nearly crashing, while those using or reaching for any electronic device were 6.7 times more likely to have a crash or a near miss. The VA Tech Study concluded that distraction played a major role in heavy vehicle critical incidents, especially text-messaging, which was found to increase crash or near crash risk more than 20 percent.

¹⁵ The Center for Auto Safety has previously documented the safety impact of electronic communications in light passenger vehicles in a petition for rulemaking filed with the NHTSA dated, Jan. 21, 2007, that requested issuance of a regulation to prohibit the use of cell phones by drivers while operating light passenger vehicles. The petition is available at

http://www.autosafety.org/uploads/phpwmd6vH_CellPhonePetitionFinal.pdf.

Also see, *Motorcoach Collision with the Alexandria Avenue Bridge Overpass, Alexandria, Virginia, November 14, 2004* (Report No. NTSB/HAR-06/04). Washington, D.C., NTSB (2006); and *Ford Explorer Sport Collision with Ford Windstar Minivan and Jeep Grand Cherokee on Interstate 95/495 near Largo, Maryland, February 1, 2002* (Report No. NTSB/HAR-03/02) Washington, D.C., NTSB (2003).

¹⁶ See, http://www.nsc.org/resources/issues/distracted_driving.aspx;
http://www.nsc.org/resources/issues/dd_qas.aspx.

¹⁷ 73 FR at 58706, note 1. The FRA Emergency order references the two NTSB investigations cited above in note 15, as well as, *Collision of two Burlington Northern Santa Fe Freight Trains near Clarendon, Texas. May 28, 2002* (Report No. PB2003-916301). Washington, DC: NTSB (2003).

¹⁸ R. Hanowski, R. Olson, and J. Bocanegra, *Driver Distraction in Commercial Vehicle Operations*, FMCSA Webinar, Jun 3, 2009 (VA Tech Study). This study was conducted to determine the proportions of the commercial driver distraction problem due to the fact that "[p]olice accident reports are limited because data is retrieved after the fact," and "[d]rivers may not remember details or may be hesitant to report; therefore, distraction-related crashes are thought to be under-reported." *Id.* at 7.

The VA Tech Study involved naturalistic data collection in which data were collected for 18 months from 100 commercial drivers operating trucks for 735,000 miles of driving. The drivers engaged in a variety of distracting tasks, including text messaging on a cell phone; interacting with dispatching devices; writing and laptop computer use; using calculators; reading maps; dialing cell phones; and multiple actions involving eating, drinking, miscellaneous adjustments of equipment, and other tasks. The VA Tech Study recommended that distracting tasks involving the use of such fixed and mobile devices as well as activities such as reading, writing, manual cell phone dialing, and viewing maps should, as a matter of policy, be curtailed.¹⁹

Mounting evidence from both experimental and naturalistic studies supports the inference that cell phone use,²⁰ including texting, degrades driving performance by diverting attention and cognitive processing from the moment-to-moment driving task, which, in turn, increases crash risk.²¹ In addition to Secretary LaHood's summit on distracted driving, public concern over driver distraction has prompted proposed Congressional legislation to prohibit drivers from writing, sending, or reading text messages while operating a motor vehicle. The pending congressional bills to prohibit text messaging by drivers cite the 2008 study conducted by Nationwide Mutual Insurance Company (Nationwide Insurance) that found that 20 percent of drivers in the U.S. send

¹⁹ An anomaly of the VA Tech Study findings was the apparent recommendation that cell phone conversations conducted with hands-free dialing is acceptable. This judgment and recommendation runs counter to all other credible studies showing that cell phone conversations, whether hands-held or hands-free, multiply crash risk, and this inference by the authors of the Study may be a product of a research design relying preponderantly on length of glances which cannot adequately identify cognitive deterioration during cell phone conversations. As pointed out by NHTSA in 2008, there is always a question, which is not eliminated in naturalistic studies, whether, the experiments recreate the real-world challenges of phone use while driving. This area of research has been criticized for using artificial phone tasks and has had considerable difficulty characterizing the content and level of driver involvement in phone conversation. Clearly, the level of distraction and corresponding primary task degradation area likely to be much higher when a driver is heavily engaged in a meaningful, serious conversation than when engaged in a superficial[,] meaningless conversation. The same is true for complex versus simple conversations. These two dimensions, the level of driver engagement and conversation complexity, combine to influence the amount of mental workload or effort that a driver devotes to a phone conversation while driving. This level of effort translates directly into the level of cognitive distraction. The inability to characterize the dynamics of naturalistic phone conversations is one problem that has raise concerns about the ecological validity of this research. "Driver Distraction: A Review of the Current State-of-Knowledge," *op. cit.*, at 15 (citation omitted).

²⁰ NHTSA in 2008 found that cell phone use alone had risen again in 2007 and that in any given daylight hour over one million motor vehicles are being operated by drivers using just hand-held cell phones. NHTSA inferred from its observational data collected through the National Occupant Protection Use Survey that about 11 percent of all drivers in daylight hours were using either a hands-free or hand-held cell phone. NHTSA emphasized that it is more difficult to detect a driver engaging in a hands-free cell phone conversation, acknowledging that its figures almost certainly represent substantial underestimation of the prevalence of driver electronic device use. *Driver Electronic Device Use in 2007*, Traffic Safety Facts Research Note, DOT HS 810 963, June 2008.

²¹ See, e.g., *The Relationship between On-Road Wireless Phone Use and Crashes*, NHTSA, July 7, 2003; "Status Summary: Using Wireless Communication Devices while Driving," *op. cit.*

text messages while operating motor vehicles.²² Just as important is the growth in supporting evidence that other tasks engaged in by drivers while operating their vehicles, including the use of laptop computers, personal digital assistants (PDAs), e-mail and faxes, citizens band (CB) radios, and playing compact disc (CD) and digital video disc (DVD) players, reduce a driver's attention to safely operating a motor vehicle because of visual, manual, auditory, and cognitive diversion from the driving task²³ and are correlated with varying levels of increased crash risk. The deleterious effects of driver inattention to safely operating a motor vehicle also vary with the difficulty and the length of the distracting task or diverted cognition, how the task or cognitive diversion relates to more difficult or dangerous driving conditions, and the age of the driver.²⁴

One of the key distractions quickly growing in use by both passenger vehicle and commercial drivers is route-guidance or navigation systems, whether mobile (portable global positioning system (GPS) unit, GPS-enabled cell phone, or PDAs with GPS/earth maps applications that are either mobile or hard-wired into a vehicle's electronics platform. NHTSA stresses that these systems can distract drivers in several ways, including manual interaction with navigation systems, visual distraction to look at the screen display, aural distraction by listening to turn-by-turn instructions, and cognitive distraction because the driver is processing, sometimes simultaneously, both visual and auditory information.²⁵ Similarly, driver internet access and use while operating a CMV,

²² See, *Driving while Distracted*, Nationwide Insurance (May 2008). The findings included:

- More than 80 percent of drivers admitted to talking on their cell phones while driving vehicles.
- More than half of drivers have been hit or nearly hit by another vehicle by whose driver was talking on a cell phone while driving.
- Almost half of drivers agreed that cell phones are the most dangerous distraction while driving.
- More than 70 percent of drivers felt pressure to be available by cell phone or other electronic devices at all times.

See, the detailed fact sheet on distracted driving produced by Nationwide Insurance at http://www.nationwide.com/pdf/2008-DWD-Fact_Sheet-final-version.pdf.

See also, *Driving While Distracted – Cell Phone Ban*, Nationwide Insurance (Aug. 2009), indicating a high percentage of the American public support laws banning cell phone use while driving. Available at <http://www.nationwide.com/pdf/NW-Cell-Phone-Ban-final-survey-results.pdf>.

²³ See, *The Relationship between On-Road Wireless Phone Use and Crashes: Summary*, NHTSA, July 2003. Also see, e.g., M. Regan, J. Lee, K. Young (eds.), *Driver Distraction: Theory, Effects, and Mitigation*, c2009.

²⁴ See, e.g., D. Shinar, N. Tractinsky, and R. Compton, "Effects of Practice, Age, and Task Demands on Interference from a Phone Task while Driving," *Accident Analysis and Prevention* (2005), 37:315–326; D. Strayer et al. "Why Do Cell Phone Conversations Interfere with Driving?," *Cognitive Technology: Transforming Thought and Society* (eds. W. Walker, D. Herrmann), 2005.

²⁵ *Id.* at 15. It is apparent that FMCSA's proposed rule on electronic on-board recorders (EOBRs), 72 FR 2340 (Jan. 18, 2007), which would allow the use of GPS-enabled cell phones to qualify as EOBRs, disregards the prevailing driver distraction research findings and would actually facilitate high levels of driver manual, visual, and cognitive distraction that would elevate CMV crash risk. Navigation systems, especially those that have manual interaction and require visual engagement by the driver, have been identified in several reports and articles as degrading driver attention and safe driving. See, e.g., "Measuring the Effect of Driver Distraction: Driving Performance Methods and Measures," Chap. 7, "Driver Distraction: Theory, Effects, and Mitigation," *op. cit.*

including access with laptop computers, and distractions related to the access and use of e-mail, also provide additional visual, manual, auditory, and cognitive distraction that can degrade driver attention and performance. Entertainment systems, especially DVD and CD players, are also occasions for driver diversion of attention from the driving task and arguably increase crash risk.²⁶

Finally, these electronic devices, both mobile and fixed, may also interfere with timely, appropriate driver responses to in-vehicle, safety-related warning signals that require immediate attention and proper responsive action. These safety-related applications include crash avoidance technologies such as collision warning systems, navigation systems, and automated vehicle responses such as maintained trailing distance and braking (e.g., “smart” cruise control) systems.

Action by FMCSA

This Petition seeks FMCSA review of the myriad devices,²⁷ both mobile and fixed, and technologies that are now capable of being used by drivers while operating CMVs.²⁸ Many of these devices are unrelated to the driving task and degrade driver performance in unacceptable ways. FMCSA has an obligation to ensure the safe operation of CMVs. 49 U.S.C. § 31136(a). It is therefore incumbent on the agency to open a rulemaking proceeding in order to weigh the research studies, including human-factors research conducted by other agencies and institutions with respect to similar devices and technologies, and other available data and information. Petitioners request that the agency grant this Petition and consider issuing a rule that prohibits or restricts the

²⁶ *Id.* at 16-17.

²⁷ It is virtually impossible to provide an exhaustive list of all types and varieties of distracting devices used and activities engaged in by drivers, but among those that should be considered are: cell phones, PDAs, calculators, laptop computers, e-mail machines, fax machines, interactive navigation devices such as global positioning systems with screens and driver command requirements for operation, “smart” cruise control, collision warning systems, DVD and CD players, personal audio listening devices, driver dispatch devices including screened information, CB radios, and other emerging telematics devices. *See, e.g.,* <http://www.navmanwirelessus.com/>. Vehicle and telematics manufacturers have increasingly attempted to address the issue of reduced driver attention, including cognitive diversion, by using voice interfaces that supposedly permit more driver secondary task performance without attendant driver performance deterioration. However, a 2007 NHTSA study

indicated significant deterioration of driving performance associated with all secondary tasks. Specifically, drivers exhibited higher levels of steering entropy, which measures the number and magnitude of steering corrections relative to a baseline drive, and slower car-following responses. They also had higher levels of target detection errors, slower target detection response times, and higher levels of subjective workload while performing secondary tasks relative to a baseline condition with no secondary task.

“Characteristics of Voice-Based Interfaces for In-Vehicle Systems and Their Effects on Driving Performance,” *op. cit.*, at iv.

²⁸ The agency should also anticipate the introduction and use of new or future devices that may increase the adverse safety impacts produced by drivers using these devices while operating CMVs.

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Rose McMurray, Acting Administrator
Federal Motor Carrier Safety Administration
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use by CMV drivers of any device or technology that the agency determines may interfere with the safe operation of a CMV.

WHEREFORE, Petitioner requests that the FMCSA grant the Petition and take further actions necessary to issue the requested rule.

A handwritten signature in cursive script that reads "Judith L. Stone".

Judith L. Stone
President
Advocates for Highway and Auto Safety



DISTRACTED DRIVER PETITION FOR RULEMAKING

Requests the Federal Motor Carrier Safety Administration (FMCSA), an agency of the U.S. Department of Transportation (DOT), to restrict the use of electronic devices by commercial motor vehicle (CMV) operators while driving

About 5,000 people are killed and 100,000 more are injured each year in crashes with large trucks - trucks are only 3% of registered vehicles but are involved in 12% of all traffic fatalities.

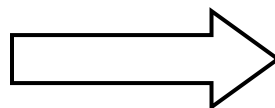
Driver Distraction: A Serious and Growing Safety Problem –

- **2006 National Transportation Safety Board (NTSB) safety recommendation** told FMCSA to ban cell phone use by commercial drivers license (CDL) holders with passenger-carrying or school bus endorsements while operating a motorcoach or bus.
- **25 percent of all police-reported crashes may involve distracted driving** according to a National Highway Traffic Safety Administration (NHTSA) estimate. (June 2006).
- **Washington Area Metropolitan Transit Authority issued a zero-tolerance policy** for Metro operators (train and bus) using mobile devices while on the job (July 2009).
- **Federal Railroad Administration, another DOT agency, issued an Emergency Order** restricting the use electronic devices by railroad employees after a commuter/freight train head-on collision (Oct. 2008).
- **At any given moment 11 percent of all motorists are using cell phones while driving** according to the NHTSA (June 2008).
- **National survey finds that 81 percent of persons interviewed admit to talking on a cell phone while driving**, nearly half, 45 percent, claim that they were hit or nearly hit by someone who was talking on cell phone, and 80 percent support legislation banning cell phone use while driving. *Driving While Distracted*, Nationwide Insurance (Aug. 2009).
- **Some states have already taken action for passenger vehicles –**
 - **Text messaging** –18 states and the District of Columbia (DC) ban all drivers from using cell phones for text messaging while driving, 9 states ban teen drivers specifically, and 1 state bans school bus drivers specifically;
 - **Cell Phones** –21 states and DC ban teen drivers from using both hand-held and hands-free cell phones while driving, while school bus drivers are prohibited in 17 states and DC; 9 states and the District of Columbia prohibit the use of hand-held cell phones by drivers 18 years and older.
- **More than 52 countries ban or restrict cell phone use while driving.** (http://www.cellular-news.com/car_bans/)

The Petition asks FMCSA to:

- ✓ Immediately open a rulemaking proceeding to determine the safety of electronic devices used by drivers operating a CMV;
- ✓ Evaluate all wireless electronic devices used for telecommunications, telematics, entertainment and driver assistance (regardless of whether they are mobile or installed into the vehicle electronics platform) that can be used by drivers while operating a CMV;
- ✓ Determine which devices interfere with the safe operation of CMVs;
- ✓ Permit exceptions only in emergency situations, and exempt law enforcement and emergency responders who operate CMVs in the conduct of their official duties;
- ✓ Make the violation of using a prohibited or restricted device while operating a CMV a safety violation that automatically triggers the issuance of an Out-of-Service (OOS) order;
- ✓ Apply the rule to all CMV drivers under FMCSA jurisdiction;
- ✓ Issue a rule to prohibit or restrict the use of devices that interfere with the safe operation of CMVs, and explain the conditions under which devices that are restricted can be used.

Click on the movie to watch a crash involving a bus driver who was texting while driving



Representative Research Findings on Safety Risks Involving Cellular Telephone Use While Driving

The following list is only a few of several hundred studies demonstrating the dangers of distracted driving due to cellular telephone use, including text messaging:

- **McCartt AT, Hellinga LA, Braitman KA. Cell Phones and Driving: Review of Research.** *Traffic Injury Prevention* 2006; 7:89–106. This evaluation of 125 studies addressing distracted driving concluded that the preponderance of experimental evidence shows that cell phone use, whether hands-free or handheld, substantially and negatively impacts safe driving.
- **Brookhuis KA, De Vries G, DeWaard D. The Effects of Mobile Telephoning on Driving Performance,** *Accident Analysis and Prevention* 1991; 23:309–316. One of the earliest studies finding substantial crash risk increase when drivers use cell phones, and that there is no substantial difference in crash risk between hands-free and handheld phones.
- **Strayer DL and Drews FA. Multitasking in the Automobile. In: Kramer A, Wiegmann D, and Kirlik A (eds.), Applied Attention: From Theory to Practice,** Oxford U. Press 2006. This observational study found that drivers using cell phones failed to stop at stop signs 10 times more often than drivers who were not observed to be using cell phones, but this finding probably underestimates the increased risk of violating traffic control devices by cell phone users because the observers could not determine whether some drivers who were categorized as not using a cell phone were actually using a hands-free cell phone.
- **Redelmeier DA, Tibshirani RJ. Association between Cellular-Telephone Calls and Motor Vehicle Collisions,** *The New England Journal of Medicine* 1997; 336(7):453–58. One of the most frequently cited articles as a baseline research study demonstrating that crash risk is dramatically elevated when using cell phones, by as much as 4 times, without significant safety differences between handheld and hands-free units.
- **McEvoy SP, et al. Role of Mobile Phones in Motor Vehicle Crashes Resulting in Hospital Attendance: A Case-Crossover Study,** *British Medical Journal*, July 2005:428-432. This study found that people using a mobile phone up to 10 minutes before a crash were 4 times more likely to be involved in a crash than non-phone users, and the risk was still elevated when hands-free phones were used. The study helps to confirm the Redelmeier 1997 study and is highly regarded.
- **Strayer DL, Drews FA, Crouch DJ. A Comparison of the Cell Phone Driver and the Drunk Driver,** *Human Factors* 2006; 48:381-391. Widely cited research article demonstrating that driver behavior when using cell phones is equivalent to driving drunk at the threshold of the legal limit (0.08 percent).
- **Cooper PJ, et al. The Impact of Hands-Free Message Reception/Response on Driving Task Performance.** *Accident Analysis and Prevention* 2003; 35:23–35. The authors found that complex hands-free phone conversation tasks degraded driving performance on gauging gap space for left turns, and drivers on wet pavement had a twofold increase in the number of potential collisions.

- **Hanowski R, Olson R, and Bocanegra J. *Driver Distraction in Commercial Vehicle Operations*, Virginia Tech University Transportation Research Institute (VA Tech Study), FMCSA Webinar, Jun 3, 2009. (Full study will be released later in 2009).** The VA Tech Study, the first to investigate the effects on crash risk of reading and sending text messages, found that texting increased the risk of a safety-critical driving event by 23.2 times, and that compared with non-distracted drivers, drivers dialing a cell phone had a 5.9 times greater risk of crashing or nearly crashing, while those using or reaching for any electronic device were 6.7 times more likely to have a crash or a near miss. However, the study concluded that talking on a cell phone was safe, a conclusion that is countered by virtually every other credible research study. The naturalistic study design used in VA Tech Study has been criticized by the National Highway Traffic Safety Administration for several shortcomings. Among other things, this type of field investigation cannot detect the mental or cognitive distraction that is caused by talking on cell phones.

Statement of Elissa and Jamie Schee
Parents of Frances “Margay” Schee
Ocala, Florida

News Conference to Announce Petition for Federal Rulemaking
to Address Commercial Motor Vehicle Driver Distractions

September 24, 2009

“One year and one day ago our 13-year-old daughter, Margay Schee, died in a horrendous crash caused by a fatigued truck driver who was – by his own admission – distracted by a cell phone conversation.

“Margay was riding home in her school bus that was stopped – with its flashers on – on US-301 in Marion County, Florida. The truck driver said he never even saw the bus. His semi slammed into the back of the bus, which then caught on fire. Our precious and beautiful Margay was trapped in the crushed school bus, and that is where she died.

“Today, we want to express our strong support for Advocates for Highway and Auto Safety’s petition that asks our federal government to finally do something to keep commercial vehicle drivers off the phone and to stay focused on the road in front of them. What happened to Margay and the children on her bus was not an isolated incident. These tragedies are increasingly occurring on our nation’s roadways – and they are preventable.

“We said a year ago and feel even more strongly today that we want to change the system so this unspeakable tragedy will not happen again to another family. This is why we are strongly supporting the petition for rulemaking filed today with the federal truck safety agency by Advocates for Highway and Auto Safety.

“We are encouraged by the words of our nation’s Transportation Secretary who has said that safety is his number one transportation priority. In the end, it is our deeds, not just our words, that count. So, we hope that means that the Department of Transportation will quickly move ahead with this petition for a safety rule to finally address distracted driving by truck and bus drivers.

“We did not realize until one year ago just how many people are dying on our highways year in and year out. Just one loss is dramatically life-changing and it is not worth wasting one moment of debate about whether or not to adopt a policy that will protect our children and keep our families whole.

“We appreciate the opportunity to speak in support of this safety petition on behalf of Margay Schee and others who no longer have a voice. Margay will not have died in vain if our heart-breaking loss results in our federal government finally taking action to prevent these kinds of tragedies in the future.”

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