



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

ORDER

DOT 3902.10

Effective Date: December 30, 2009

Subject: Text Messaging While Driving

1. PURPOSE. This Order implements the requirements of Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," by establishing the policy of the U.S. Department of Transportation (DOT) on text messaging by employees while driving Government-owned, -leased or -rented vehicles (GOV), while driving privately-owned vehicles (POV) on official Government business or when using electronic equipment supplied by the Government while driving. This Order also implements the requirements of the Executive Order to encourage Federal contractors and subcontractors and recipients and subrecipients of grants and cooperative agreements to adopt and enforce policies that ban text messaging while driving.

2. REFERENCES.

(a) Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

(b) 5 U.S.C. 7902(d) "Safety Programs."

(c) Highway Safety Act of 1966, 23 U.S.C. 402 and 403, as amended.

(d) DOT Manual M 4440.3C, "Motor Vehicle Management Manual," April 3, 1995.

3. SCOPE. This Order applies to:

(a) all DOT employees (i) driving a GOV; (ii) driving a POV while on official Government business or while performing work for or on behalf of the Government; or (iii) using any electronic equipment supplied by the Government while driving any vehicle at any time; and

(b) Midshipmen of the U.S. Merchant Marine Academy of the Maritime Administration (MARAD) driving a GOV or POV while on or off duty.

DISTRIBUTION: All Secretarial Offices
All Operating Administrations

OPI: General Counsel

Voluntary compliance with this Order is encouraged even when a Federal employee is utilizing a personal electronic device and driving a POV while off-duty.

4. DEFINITIONS. For purpose of this Order, the following definitions shall apply:

Motor Vehicles: means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

Texting or Text Messaging: means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

Driving: means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

5. BACKGROUND. Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," establishes a Federal Government-wide prohibition on the use of text messaging when driving a GOV, when driving a POV on official Government business, or when using Government-supplied equipment when driving any vehicle. Implementation of the Executive Order will help save lives, reduce injuries, and set an example for State and local governments, private employers, and individual drivers. Extending this policy to cover Federal contractors and grantees is designed to promote economy and efficiency in Federal procurement and grant implementation.

6. POLICY. It is DOT policy to:

(a) ban any and all text messaging by all DOT employees and Midshipmen (i) while driving a GOV; (ii) while driving a POV while on official Government business or while performing work for or on behalf of the Government; and (iii) when using electronic equipment supplied by the Government while driving any vehicle (even during off-duty hours).

(b) take appropriate disciplinary action for violation of this mandatory ban on texting, up to and including removal from Federal Service, as outlined in Section 9 of the Order; and

(c) encourage DOT employees, contractors, grantees and Midshipmen of the U.S. Merchant Marine Academy of MARAD and their families to refrain from texting or from engaging in any behavior that distracts attention from driving safely, at any time.

7. OBJECTIVES. The objectives of the DOT mandatory ban on text messaging are to:

(a) reduce injuries and fatalities resulting from traffic crashes involving DOT employees, Midshipmen, contractors, grantees, and their families;

(b) require Operating Administrations (OA) and encourage Federal contractors, subcontractors, and recipients and subrecipients of grants and cooperative agreements to establish workplace safety policies to decrease crashes caused by distracted drivers; and

(c) encourage DOT employees, Midshipmen, contractors, grantees, and their families to voluntarily comply with the text messaging policy while off duty.

8. RESPONSIBILITIES.

(a) The National Highway Traffic Safety Administration (NHTSA) in coordination with the Research and Innovative Technology Administration and the DOT Chief Human Capital Officer shall develop educational and training programs on the dangers of texting while driving.

(b) The DOT Office of the Senior Procurement Executive shall within 30 days of the effective date of this Order, disseminate to relevant OA offices Department-wide language to include in future contracts, grants, and cooperative agreements, encouraging contractor personnel and grantees to comply with the policies contained in this Order.

(c) Department officials and Heads of OAs shall:

(1) require all employees to comply with the DOT text messaging ban imposed by this Order and encourage them to refrain from text messaging while driving in other circumstances not covered by the Order;

(2) direct heads of procurement offices and other relevant offices to (i) comply with provisions developed by the DOT Office of the Senior Procurement Executive to implement this Order; (ii) require contractors and subcontractors and recipients and subrecipients of grants and cooperative agreements to comply with applicable Federal procurement or grant requirements that may be adopted to ban text messaging; and (iii) encourage contractors and subcontractors and recipients and subrecipients of grants and cooperative agreements to adopt and enforce on-the-job policies banning text messaging while driving;

- (3) participate in and support DOT promotional programs and activities on the safety risks associated with distracted drivers and ensure that all employees take required training on this subject on an annual basis;
- (4) issue a broadcast announcement to all employees and contractors reminding them of the provisions of this Order at least annually;
- (5) assign adequate personnel and resources to satisfy the requirements of this Order;
- (6) beginning on January 31, 2011, file an annual report with NHTSA identifying all violations of this Order that occurred during the previous 12-month period and the disciplinary or corrective action imposed for each such violation;
- (7) determine whether to exempt from the requirements of this Order, in whole or in part, certain employees, devices, or vehicles that are engaged in or used for protective, law enforcement, or national security responsibilities, or on the basis of other emergency conditions; and
- (8) notify the Secretary of Transportation of measures taken to implement this Order within 30 days of its effective date.

(d) DOT Managers and Supervisors shall:

- (1) implement the requirements of this Order;
- (2) take prompt disciplinary or other appropriate action in accordance with Agency policy and in consultation with their human resources office for violations of this Order and report all violations to a designated point of contact;
- (3) ensure that newly assigned personnel take required training and receive orientation briefings or educational information within 30 working days of employment with DOT outlining the provisions of this Order;
- (4) periodically remind employees and contractors of this Order and the ramifications and consequences of text messaging while driving GOVs, while driving a POV while on official business, or when using electronic equipment supplied by the Government while driving; and
- (5) provide suggestions to their designated safety official, as appropriate, to promote and encourage employee, contractor, and grantee compliance with this Order.

(e) DOT employees and Midshipmen shall be familiar and comply with Federal, State, local, and DOT motor vehicle safety requirements, including DOT's mandatory ban on text messaging as outlined in this Order.

(f) Procurement Offices shall, upon receipt of applicable requirements, include contractual language as provided by the Office of Senior Procurement Executive in future contracts, grants, and cooperative agreements that encourage contractors and grantees to comply with the policies contained in this Order and Executive Order 13513.

9. DISCIPLINARY AND CORRECTIVE ACTION.

(a) Failure to comply with this Order may result in disciplinary action. Applicable consequences may include official reprimand, suspension from pay and duty, removal from Federal service, or other actions in accordance with law and agency policy. As appropriate, a progressive approach to discipline may be used to correct the behavior. Depending on the nature and seriousness of the specific instance of misconduct, a first offense may result in, for example, a written reprimand. For a second or third offense, a more severe penalty may be necessary to correct the behavior, such as a suspension or removal. As with any disciplinary action, the particular facts and circumstances will be considered in taking action. Such actions must be consistent with law, regulation, and any relevant collective bargaining agreement requirements.

(b) Potential aggravating factors in determining an appropriate penalty for failure to comply with this Order may include, but are not limited to, whether the offense:

- (1) resulted in the injury or death of others, such as, the driver, passengers, or other motorists;
- (2) resulted in the loss and/or damage of Government property or equipment;
- (3) occurred in a State or local jurisdiction, or on a military installation that prohibits text messaging while driving;
- (4) included any other violations of rules governing the operation of a GOV or operation of a POV while on official Government business; or
- (5) included any violations of State or local traffic laws or resulted in a citation of the operator by local or State authorities.

(c) As applicable, the minimum consequence to be considered when individuals demonstrate egregious misconduct or a pattern of behavior that is inconsistent with this Order is prompt suspension of authority to drive a GOV or to use the relevant Government issued electronic equipment.

(d) Alternative discipline may be used if it is determined this approach is sufficient to correct the behavior and prevent its reoccurrence, including, for example, attendance at training on the dangers of text messaging when driving.

10. GENERAL PROVISIONS.

(a) This Order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) This Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the DOT, its agencies or entities, its officers, employees or agents, or any other person.