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**Visual-Manual NHTSA Driver Distraction
Guidelines for In-Vehicle Electronic Devices
77 FR 11200, February 24, 2012**

Advocates for Highway and Auto Safety (Advocates) files these comments in response to the notice (notice) issued by the National Highway Traffic Safety Administration (NHTSA) proposing Federal guidelines for original equipment manufacturers that install in-vehicle electronic devices operated by the driver through visual-manual means. 77 FR 11200 (Feb. 24, 2012). The notice presents: a) a list of secondary, non-driving related tasks which the agency believes inherently interfere with the driver's ability to safely operate a vehicle, and thus should be designed such that the driver cannot perform those tasks while driving, and b) test methods and performance criteria for the evaluation of all other secondary, non-driving related visual-manual tasks which should be designed to either meet the proposed criteria or be designed such that the driver cannot perform those tasks while driving.¹ The agency hopes that by providing a set of voluntary principles around which to organize the structure for driver interactions with the human-machine interface for secondary, non-driving related tasks, i.e., non-safety communications and entertainment features, driver distractions will be limited to a manageable level.

Advocates appreciates and supports NHTSA's goal to limit access by drivers to secondary, non-driving tasks while operating a motor vehicle. However, because the use of built-in electronic devices and applications could have grave implications for safety, Advocates is concerned that issuing open-ended, non-enforceable guidelines is the wrong approach. NHTSA is the lead federal safety agency charged with protecting the public in regard to motor vehicle and traffic safety. The agency must send a clear and unequivocal message to the public and the manufacturing industry that safety is the highest priority,

¹ Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices, 77 FR 11200 (Feb. 24, 2012).

and that drivers must have their focus on the driving task when operating a motor vehicle. The proposed guidelines essentially permit all types of non-safety related electronic devices to be built into motor vehicles, so long as they can be accessed in repeated diversions of attention of two seconds or less. This approach sends a confusing message to the public about what drivers should be doing with their time and attention when operating motor vehicles. In addition, the proposed guidelines merely “recommend” that clearly unsafe electronic devices should not be installed in motor vehicles, but does not prohibit manufacturers from installing highly distracting electronic features. There are a number of devices and applications that pose such a substantial danger of distracted driving that the agency should not merely be suggesting that manufacturers not install these devices, but should prohibit their installation in vehicles or their use by the driver while operating a motor vehicle.

NHTSA Should Adopt a Safety-First Approach to In-Vehicle Distractions

Advocates is concerned that the agency, in issuing “nonbinding, voluntary” guidelines, has fallen short of its stated mission to “save lives, prevent injuries and reduce economic costs due to road traffic crashes, through education, research, safety standards and enforcement activity.”² NHTSA has repeatedly stated that “[t]he primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus.”³ These statements indicate that the goal of distraction related regulation should be to minimize non-driving related distraction to ensure drivers focus on the task of operating the vehicle. While Advocates acknowledges that it may not be possible to eliminate every driver distraction, the goal of the agency should be to strictly limit any form of distraction that is built into motor vehicles. The proposed guidelines, however, appear to permit all forms of existing electronic devices and communications to be packaged for use by drivers while operating motor vehicles. This is a misjudgment that may have serious consequences for the traveling public.

In the eleven decades since the first crash fatality, more than three and one-half million Americans have been killed in motor vehicle crashes in the United States, a total that far surpasses the number of combat deaths experienced by our armed forces in all U.S. combat engagements and wars combined.⁴ Moreover, the agency estimates that distracted driving was involved in about 3,092 fatalities in 2010.⁵ Operating a motor vehicle, especially on busy streets and crowded roads or at highway speeds is an

² NHTSA’s Core Values website, retrieved from <http://www.nhtsa.gov/About+NHTSA/NHTSA%27s+Core+Values> on Apr. 10, 2012

³ NHTSA Distracted Driving Policy Statement website, retrieved on Apr. 19, 2012 from <http://www.nhtsa.gov/Driving+Safety/Distracted+Driving/ci.Policy+Statement+and+Compiled+FAQs+on+Distracted+Driving.print>.

⁴ “Occupant Protection and Automobile Safety in the U.S. since 1900,” Roger F. Wells, SAE International (2012). See also *Breithaupt v. Abram*, 352 U.S. 432, 439 (1957) (“The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield.”).

⁵ NHTSA press release U.S. Transportation Secretary LaHood Announces Lowest Level Of Annual Traffic Fatalities In More Than Six Decades available at *Updated 2010 FARS data includes new measure of ‘distraction-affected’ fatalities; national attitude survey offers additional insight into problem of distracted driving* <http://www.distraction.gov/content/press-release/2011/12-8.html>.

inherently dangerous activity. Rather than adopting non-binding guidelines that essentially approve and facilitate the use of multiple types of electronic devices, the agency should limit the number and types of distractions allowed and emphasize that the overriding concern of the person driving a motor vehicle should be to keep their eyes on the road, their hands on the wheel, and their focus on the driving task.

While any type of distraction may be potentially dangerous, the use of electronic devices and communications applications often involve repeated exchanges of information and the need for manual input or verbal response to commands or signals that necessitate close visual, manual or cognitive attention by the driver. This is cause for concern especially when repeated actions, such as eye glances away from the road, are required by the driver to access a device or engage a specific application. Allowing numerous and different types of electronic communications that provide information, entertainment and access to social media website applications to be available to drivers when operating a motor vehicle raises the stakes on existing forms of distraction. In-vehicle electronic devices, if not carefully limited, have the potential to become an attractive nuisance that may actually encourage increased use of distracting technologies because they are available to drivers and may result in more crashes, deaths and injuries.

Advocates believes that the current approach to address technological sources of distraction in vehicles through voluntary, nonbinding guidelines is not the proactive, safety-first, oversight that is to be expected of a regulatory agency that has safety as its primary mission.⁶ Because safety is directly impacted by distracted driving, the agency has a responsibility to carefully screen any new electronic devices and applications that could divert attention from the driving task and diminish traffic safety. The burden must be on the industry and manufacturers to ensure that electronic devices and applications can be used safely under all operating conditions before it can be installed in motor vehicles.

While Advocates realizes that drivers will engage in activities that distract them from the driving task, we are concerned that adopting guidelines that allow non safety-related, or secondary, electronic devices will encourage increased use of distracting technology while driving. Only the least complex devices and applications, those that are readily accessible with a minimum of diverted attention, should be permitted under the proposed agency guidelines. For this reason, we commend the agency's adoption of "manual radio tuning as a reference task for indicating a driver distraction magnitude beyond which new devices, functions, features, and tasks should not exceed."⁷ No device or application that is more complicated than a standard radio should be incorporated as a built-in device.

Limiting the need for repeated diversion of attention to operate or access an electronic feature should be a performance requirement for all built-in electronics.

⁶ Although the NHTSA notice presents a review of varying voluntary industry and national guidelines, the agency does not at any point indicate the degree to which manufacturers are complying with these voluntary, non-binding guidelines.

⁷ 77 FR 11226.

However, the agency's recommendation that tasks be accessible while driving if they can be performed within 12.0 seconds of "total eyes-off-road time"⁸ is too long and will allow features that require too great a diversion of attention from the driving task. A test procedure limit of up to 12.0 seconds⁹ permits too many repeated eye glances away from the road and traffic. The performance test proposed by the agency essentially condones at least 6 separate eye glances, and possibly more depending on the duration of each eye glance, to operate a non-safety electronic function. This allows the use and operation of complex electronic features that take considerable attention away from the driving task.

Equally important, the guidelines make no mention of the duration of glances towards the roadway between the two-second glances needed to operate built-in electronic devices. Since the agency does not address this issue, it must be assumed that the agency has confirmed that glances back to the roadway are sufficient to allow drivers to continue to safely operate the vehicle. However, such glances toward the roadway while attempting to operate vehicle electronic systems may be of inordinately short duration. The repeated diversions of attention sanctioned by the guidelines can and will occur over a short period of time, for example, possibly as little as just 14.5 seconds if the driver takes only a half-second to check traffic and road conditions between each of the successive 2.0 second glance away from the road. Advocates is concerned that permitting operation of electronic devices that may require six or more repeated distractions from the driving task within a short time span is not in the best interest of public safety. Moreover, since it is impossible to control behavior to ensure that drivers will return their gaze and attention to the roadway, it is imperative that any or built-in distraction be kept to an absolute minimum.

Advocates realizes that NHTSA's guideline of 12.0 seconds for diversion of driver attention from the roadway to operate built-in electronic devices is shorter than the current 20.0 second limit contained in the voluntary industry standard officially adopted by many manufacturers in the U.S.¹⁰ However, the Japan Automobile Manufacturers Association (JAMA) has its own guidelines that limit repeated diversions of driver attention to only 8.0 seconds in order to operate in-vehicle electronics.¹¹ Advocates believes that JAMA is taking a more prudent approach to safety by limiting the complexity of built-in electronics that can be accessed by drivers while operating a motor vehicle. For these reasons, Advocates opposes the proposed NHTSA guidelines to the extent that they would allow non-safety electronic devices and applications that require considerable glances and manipulations to access, select or engage while operating a motor vehicle, and we recommend that a limit of no more than the JAMA specification of 8.0 seconds be adopted by the agency.

⁸ *Id.* at 11231.

⁹ *Id.*, *Eye Glance Testing Using a Driver Simulator*, an alternative Occlusion Test is limited to 9.0 seconds.

¹⁰ "Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems," June 26, 2006 version, Driver Focus-Telematics Working Group, Alliance of Automobile Manufacturers, Washington, D.C. (Alliance Guidelines), *see* 77 FR 11213.

¹¹ 77 FR 11213.

Regulatory Action Is Necessary

Advocates' other major concern is that the proposed guidelines are not a sufficient substitute for regulations to curb clearly unsafe practices and activities from being built-in to motor vehicles. By issuing only voluntary guidelines, NHTSA has retreated from its mission to ensure the safety of the driving public. Instead, the agency should issue regulations to prohibit those actions, tasks and devices that the agency acknowledges are inherently dangerous for a driver to perform while operating a motor vehicle.

For more than a decade, the problem of in-vehicle and portable (or nomadic) electronic devices has been evident. Research has confirmed that actions such as texting and, cell phone use while driving are so distracting that the potential for crash risk increases substantially. More than six years ago, motor vehicle manufacturers developed voluntary industry standards for in-vehicle electronic secondary tasks.¹² The dangers of distracting devices have led Secretary of Transportation Ray LaHood to urge enactment of state and federal laws to curb the use of distracting devices by drivers. While the Secretary is exhorting the states to control driver behavior, NHTSA should at the same time issue regulations to improve safety in this area and, at the very least, prohibit secondary electronic devices and features that the agency acknowledges pose a clear risk to public safety.

In the notice, the agency states that “the proposed NHTSA Guidelines list certain secondary, non-driving related tasks that, based on NHTSA’s research, are believed by the agency to interfere inherently with a driver’s ability to safely control the vehicle.”¹³ The notice specifies the items which the agency has identified as unsafe actions, including, “displaying images or video not related to driving; displaying automatically scrolling text; requiring manual text entry of more than six button or key presses during a single task; or requiring reading more than 30 characters of text (not counting punctuation marks).”¹⁴ This list of items is addressed specifically by section V.5 of the guidelines, *Per se Lock Outs*, which the agency states “are intended to specifically prohibit a driver from performing the following while driving: watching video footage, visual-manual text messaging, visual-manual internet browsing, visual-manual social media browsing.”¹⁵ But the guidelines only suggest that these unsafe functions should not be made available to drivers, it does not prohibit the installation of these electronic features in locations where they are visible to drivers while operating motor vehicles.

For such critical safety related issue, Advocates supports regulation rather than voluntary non-binding unenforceable guidelines. As NHTSA points out in the notice, voluntary manufacturer guidelines have been in place for at least five years,¹⁶ including many elements that are similar to those included in the proposed agency guidelines.¹⁷ Since the agency fully expects manufacturers “will take the initiative to implement these

¹² Alliance Guidelines.

¹³ 77 FR 11200.

¹⁴ *Id.* at 11202.

¹⁵ *Id.* at 11238, section V.5.h.

¹⁶ *Id.* at 11232.

¹⁷ *Id.*

guidelines in an effort to improve safety[.]”¹⁸ there is no reason to delay ensuring that the most distracting elements of in-vehicle electronics are kept out of the reach, and gaze, of drivers while operating motor vehicles. Advocates recommends that the agency promulgate a regulation to prohibit the visual and visual-manual tasks that the agency has already identified as dangerously distracting and that drivers should not be permitted to engage in while driving.

NHTSA’s Reasons for Delaying Regulation Are Not Convincing

NHTSA provides three reasons for issuing voluntary guidelines in lieu of mandatory regulations, but Advocates does not find the agency’s rationale convincing. First, the agency states that “at this time, continued research is both necessary and important.”¹⁹ Advocates concurs that continued research and learning is always necessary with any regulation and new technology, both prior to and after implementation, to ensure that the regulation meets the needs of the motoring public and safety. However, convincing and compelling research has already been conducted on the subject of distracted driving. The research, cited in this and other related notices regarding distractions due to electronic devices in motor vehicles, shows that distracted driving has an increased association with visual distractions that divert driver vision from the road, manual distractions that reduce the physical ability of drivers to control the vehicle, and cognitive distractions that reduce attention and mental focus to the driving task.²⁰ By their very nature these types of distractions interfere with or reduce the ability of the driver to operate a vehicle safely and warrant regulation.

Moreover, NHTSA’s argument on this point is weak in light of the fact that largely similar industry voluntary guidance was issued six years ago.²¹ The agency should have been able to develop a more advanced protocol or proposed rules in the intervening years. In any event, initial regulations to address a safety issue can be revisited and revised as the body of knowledge on the subject increases. By delaying regulatory action the agency may lose the opportunity to ensure that reasonable safety strictures are adopted before unsafe distractions in vehicles and unsafe behavior by drivers become too widespread to control.

NHTSA has previously acknowledged that it may regulate in order to ensure safety even when more research may be necessary. That all possible research has not been completed should not be a deterrent to regulation. NHTSA has stated that regulatory action is appropriate so long as sufficient information and data are available to indicate a safety problem exists, even where overwhelming data or substantiation is not available. For example, in another context the agency stated that:

¹⁸ *Id.*

¹⁹ *Id.* at 11202.

²⁰ Federal Motor Carrier Safety Administration Final Rule, Limiting the Use of Wireless Communication Devices, 75 FR 59118, 59120-121 (Sept. 27, 2010) (“In work involving equipment such as vehicles, one distraction classification system includes three categories: visual (taking one’s eyes off the road), physical (taking one’s hands off the wheel), and cognitive (thinking about something other than the road/driving).”)

²¹ *See supra* note 7.

NHTSA wants to emphasize that it does not accept the proposition advanced by some commenters that the agency cannot regulate in this area without numerically linking crash data to specific light transmittance values.

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Although NHTSA attempts, within its capabilities, to quantify the benefits of its actions, it still has a duty to regulate when such regulations would meet the need for motor vehicle safety, even in areas with inherent uncertainty.”²²

Advocates is convinced that driver distraction related to electronic and communications devices that are built into vehicles is another area in which regulation is needed sooner rather than later.

Second, the agency cites the rapidly changing technology as an impediment to the issuing of a “static rule.”²³ Again, Advocates must disagree with this reasoning. Technology is constantly changing, in every aspect of safety, but that cannot be used as an excuse to avoid establishing minimum levels of safe operation for motor vehicles. The fact that future technological advances are likely should not prevent the need for minimum safety requirements. NHTSA has clearly identified the problem as distraction from the driving task, a safety problem that is independent of the specific distracting technology. While future technologies may involve different levels of driver distraction, the problem of driver focus being diverted from the task of operating a motor vehicle safely remains a constant. It makes no sense to avoid regulating current technologies that are overly distracting because future developments may present additional technological distractions. Assuming that the NHTSA guidelines embody the proper limitations on secondary tasks, they could apply to future as well as current technologies. Moreover, establishing regulations that prohibit the installation of new devices unless research clearly indicates that the device does not impair a driver’s ability to operate a motor vehicle safely would apply equally to all new electronic devices regardless of technology.

Advocates acknowledges NHTSA’s concern regarding the “possibility of drivers increasing their use of portable devices due to restrictions being placed on integrated devices”²⁴ however this concern should not prevent the agency from establishing clear rules for distracting in-vehicle technology. If anything, federal regulations prohibiting some devices and regulating the use of other distracting devices should bolster efforts in the states to ban the use of similarly distracting nomadic or portable devices. While elimination of all distraction is the optimal solution from a safety perspective, Advocates supports bans on the use of portable devices coupled with regulation of in-vehicle technologies as the most effective strategy to minimize distraction and provides the best practical approach until a technology-based solution is developed.

²² 63 FR 37820, 37826 (July 14, 1998).

²³ 77 FR 11202

²⁴ *Id.* at 11215.

In line with the Center for Auto Safety's 2007 Petition for Rulemaking on distracted driving,²⁵ Advocates believes that regulation of these devices could and should be used by NHTSA and the industry to support efforts at the state and federal level to ban the use of distracting portable electronic devices by drivers when operating vehicles. Advocates commends the agency for indicating its intent to develop similar guidelines for portable devices, however this does not justify delaying regulation of in-vehicle devices which are clearly within the scope of the agency's jurisdiction.

Finally, the agency cites the limitation of data to accurately estimate "the benefits and costs of a mandatory rule in this area."²⁶ However, the agency indicates that "17 percent (an estimated 899,000) of all police reported crashes involved some type of driver distraction in 2010. Of those 899,000 crashes, distraction by a device/control integral to the vehicle was reported in 26,000 crashes (3% of the distraction-related police reported crashes)."²⁷ By that account, a police-reported distracted driving crash occurs every 20 minutes involving a device/control integral to the vehicle. Furthermore, this is likely a conservative estimate of distraction-related collisions given the current difficulties in identifying distraction as a cause in crashes, the ability of law enforcement to discern distraction from in-vehicle devices for inclusion on police accident reports and the recording capability of current crash databases. NHTSA acknowledges as much in the notice and even highlights the changes being made to the Fatality Analysis Reporting System (FARS) and the Model Minimum Uniform Crash Criteria (MMUCC) to capture the impact of distraction more accurately. Again, Advocates commends the agency for recognizing this shortcoming and adapting the database accordingly, however, given the significant volume of crashes already recognized as linked to distraction, time spent waiting for new data amounts to unacceptable delay while people are needlessly injured or killed in these very preventable collisions.

Requests for Comments

Advocates responds to two of the specific requests for comment included in the notice that sought input on the benefits and costs that would result from voluntary compliance, and the agency's monitoring of voluntary compliance.

In regard to the benefits and cost, as stated earlier, currently available data indicates that distraction is contributing to collisions on America's roads and estimates presented by the agency are likely conservative. That being said, Advocates does not believe it would require a significant effort to arrive at an estimate of benefits. According to data from the Cellular Telecommunications Industry Association (CTIA-The Wireless Association), wireless subscriber connections have increased by 47% from 219.6 million to 322.8 million between June of 2006 and June of 2011.²⁸ Considering the ever

²⁵ Petition for Rulemaking, dated Jan. 21, 2007, Center for Auto Safety, filed in docket NHTSA-2007-28442-0003; *see also* Denial of Petition for Rulemaking, Jun. 3, 2008, NHTSA, 73 FR 31663, NHTSA-2007-28442-0006.

²⁶ 77 FR 11202

²⁷ *Id.*

²⁸ Wireless Quick Facts: Mid-Year Figures, CTIA-The Wireless Association, retrieved on April 11, 2012 from <http://www.ctia.org/advocacy/research/index.cfm/aid/10323>.

increasing use of mobile devices and demand of consumers to remain connected at all times, it is likely that the number of distraction related collisions will increase along with this expansion of wireless capability, thus increasing the potential benefits through reductions in crashes by addressing this ongoing situation through regulation now rather than at a future date.

On the topic of the agency's monitoring voluntary compliance with the guidelines, Advocates is supportive of the need for the agency to do so, and sees this as an opportunity for the agency to examine the effectiveness of this alternative to regulation. However, Advocates recommends that the agency sample current vehicles and their compliance with the industry guidelines in order to provide an understanding of their current effectiveness. It would seem logical that due to the significant similarity between the industry voluntary standards already issued and the agency's proposed guidelines, the agency would expect compliance rates to be fairly high and costs for compliance very low. Further, reinforcing the need for regulation, the agency should consider the limited benefit of essentially reissuing the industry voluntary standard as agency guidelines when driver distraction has continued to be the subject of safety concern despite the existence of industry standards over the past six years.

Conclusion

The Department of Transportation's website on distraction cites the Secretary as stating, "[e]very single time you take your eyes off the road or talk on the phone while you're driving - even for just a few seconds - you put yourself and others in danger."²⁹ Secretary LaHood is to be commended for being at the forefront of combating the rapidly increasing danger of distracted driving. The nation expects leadership from NHTSA on distractions and the establishment of clear regulations that emphasize the importance of devoting one's full attention and focus on the driving task.

Advocates believes that the Secretary's statement should shape NHTSA's approach toward built-in vehicle electronic devices. Diversions from the driving task for non-safety functions should be restricted only to simple operations that do not require long or repeated distraction of the driver's attention from the roadway and the driving task. While Advocates commends the agency for undertaking the significant body of research it has conducted and the effort put forth in establishing the proposed guidelines, the issuance of voluntary, non-binding guidelines is not sufficient to ensure public safety. Guidelines are best left to situations where regulations are not tenable and clarity is required to explain the implementation of a rule. In order to ensure safety, regulations that embody safety performance principles and standards are essential.

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²⁹ A Message from Secretary Lahood, Department of Transportation, last retrieved on April 23, 2012 from <http://www.distraction.gov/content/about-us/message-from-secretary-LaHood.html>.