

U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250

<b>DEPARTMENTAL REGULATION</b>		Number: 5400-007
SUBJECT:  Text Messaging While Driving	DATE: September 7, 2010	
	OPI: Office of Procurement and Property Management, Property Management Division	

1. PURPOSE

This regulation establishes, as required by Executive Order (EO) 13513, “Federal Leadership on Reducing Text Messaging While Driving,” the policy of the Department of Agriculture (USDA) on text messaging by employees when driving Government owned, leased or rented vehicles (GOVs), when driving privately owned vehicles (POVs) on official Government business or when using electronic equipment supplied by the Government while driving. This regulation also implements the requirements of the EO that directs USDA to encourage federal contractors and subcontractors and recipients and subrecipients of grants and cooperative agreements to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles or GOVs, or when driving personally owned, leased or rented vehicles while on official Government business or when performing any work for or on behalf of the Government.

2. SPECIAL INSTRUCTIONS

This regulation is effective upon issuance. For frequently asked questions regarding the EO, please see Appendix A.

Implementation of this order with respect to employees represented by a labor organization is contingent upon completion of appropriate labor relations obligations.

3. REFERENCES

- a. Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving,” dated October 1, 2009.
- b. 5 U.S.C. 7902(d) “Safety Programs.”

4. SCOPE

This regulation applies to all USDA employees:

- a. driving a GOV, or driving a POV while on official Government business;  
or
- b. using any electronic equipment supplied by the Government while operating any vehicle at any time.

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

## 5. DEFINITIONS

Motor vehicle 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 102-34.20.

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.

## 6. 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 business or

when using Government-supplied equipment while driving any vehicle. Implementation of the EO 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.

## 7. POLICY

It is USDA policy to:

- a. ban any and all text messaging by all USDA employees and encourage contractors to adopt policies that ban text messaging (1) when driving a GOV, (2) when driving a POV while on official Government business; and (3) using electronic equipment supplied by the Government when 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 this regulation; and
- c. encourage USDA employees and contractors and their families to refrain from texting, or from engaging in any behavior that distracts attention from driving safely, at any time.

## 8. OBJECTIVES

The objectives of the mandatory ban on text messaging are to:

- a. reduce injuries and fatalities resulting from traffic crashes involving employees;
- b. encourage Federal contractors and subcontractors and recipients and sub-recipients of grants and cooperative agreements to establish workplace safety policies to decrease crashes caused by distracted drivers; and
- c. encourage agency employees and their families to voluntarily comply with the text messaging policy while off duty.

## 9. RESPONSIBILITIES

- a. All USDA departmental and agency procurement offices shall, within 30 days of the effective date of this regulation, establish and disseminate to

all procurement offices, headquarters and field level contractual language to include in future contracts encouraging contractors and subcontractors to comply with the policies contained in this regulation.

- b. Each USDA agency head or appropriate designee shall, within 30 days of the effective date of this regulation, establish and disseminate to all relevant employees USDA-wide language to include in future grants and cooperative agreements encouraging recipients and subrecipients to comply with the policies contained in this regulation.
- c. USDA agency/office heads shall:
  - (1) require all employees to comply with the text messaging ban imposed by this regulation and encourage them to refrain from text messaging while driving in other circumstances not covered by the regulation;
  - (2) direct heads of procurement offices to:
    - (a) comply with requirements to implement the regulation and encourage contractors and recipients and subrecipients of grants and cooperative agreements to adopt and enforce on-the-job policies banning text messaging for their employees when driving GOVs, or when driving POVs while on official Government business; and
    - (b) to comply with applicable federal procurement or grant regulations that may be adopted to ban texting messaging;
  - (3) participate in and support promotional programs and activities on the safety risks associated with distracted driving 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 regulation at least annually;
  - (5) assign adequate personnel and resources to satisfy the requirements of this regulation;
  - (6) beginning on January 31, 2011, submit an annual report identifying all violations of this regulation that occurred during the previous 12-month period and the disciplinary or corrective action imposed for each such violation to the Director, Office of Procurement and Property Management; and

- (7) determine whether there is any reason to exempt from the requirements of this regulation, 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. If so, agencies must follow the process identified in Appendix B.
- d. USDA Managers and Supervisors shall:
- (1) implement the requirements of this regulation;
  - (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 regulation 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 USDA outlining the provisions of this regulation;
  - (4) periodically remind employees of this regulation and the ramifications and consequences of text messaging when driving a GOV, or when 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 and contractor compliance with this regulation.
- e. USDA employees shall be familiar and comply with Federal, State, local and USDA motor vehicle safety requirements and policies, including USDA's mandatory ban on text messaging as outlined in this regulation.
- f. Procurement Offices shall, upon receipt of Federal Acquisition Regulation, Agriculture Acquisition Regulation, and applicable grant regulations, include contractual language as provided by the Federal procurement and grant regulations in future contracts, grants and cooperative agreements that require contractor and grantee personnel to comply with the policies contained in this regulation. Until such regulations banning text messaging are adopted, Procurement Offices shall encourage contractors and grantees to adopt text messaging bans substantively comparable to Executive Order 13513.

## 10. DISCIPLINARY AND CORRECTIVE ACTION

- a. Failure to comply with this regulation 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. For example, depending on the nature and seriousness of the specific instance of misconduct, a first offense may result in 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, regulations, and any relevant collective bargaining agreement requirements.
- b. Potential aggravating factors in determining an appropriate penalty for failure to comply with this regulation may include, but are not limited to, whether the offense:
  - (1) resulted in the injury or death of persons, 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 regulation is prompt suspension of authority to drive a GOV, or to drive a POV on official business and/or to use 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.

11. GENERAL PROVISIONS

- a. This regulation shall be implemented consistent with applicable law and subject to the availability of appropriations.
- b. This regulation 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 USDA, its agencies or entities, its officers, employees or agents, or any other person.

-END-

## APPENDIX A

### FREQUENTLY ASKED QUESTIONS ON E.O. 13513 “FEDERAL LEADERSHIP ON REDUCING TEXT MESSAGING WHILE DRIVING”

#### FAQs

- 1) What is texting or text messaging?
- 2) Is entering a telephone number into a cell phone covered by the text messaging prohibition?
- 3) Does the text messaging prohibition apply to the use of GPS car navigation systems?
- 4) Does the text messaging prohibition apply to employees driving Government owned, leased or rented vehicles (GOVs) at all times?
- 5) Does the text messaging prohibition apply when an employee is driving his/her privately owned vehicle (POV)?
- 6) Does the text messaging prohibition apply when a vehicle is temporarily stopped at a traffic signal or stop sign?
- 7) Does the text messaging prohibition apply when a vehicle is stopped in a safe location off the roadway?
- 8) Does the E.O. cover Federal employees who are working overseas?
- 9) Are Federal contractors and grantees bound by the E.O.?

#### **1. What is texting or text messaging?**

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.

#### **2. Is entering a telephone number into a cell phone covered by the text messaging prohibition?**

No, entering a telephone number into a cell phone is not covered by the text messaging prohibition.

#### **3. Does the text messaging prohibition apply to the use of GPS car navigation systems?**

The texting ban applies to navigational capabilities built into cell phones or other hand-held devices including hand-held GPS navigation systems. The ban does not apply, however, to glancing at or listening to a navigation 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.

**4. Does the text messaging prohibition apply to employees driving Government owned, leased or rented vehicles (GOVs) at all times?**

Yes, the text messaging prohibition applies to employees driving GOVs at any time.

**5. Does the text messaging prohibition apply when an employee is driving his/her privately owned vehicle (POV)?**

The text messaging prohibition applies to an employee driving his/her POV (i) when the employee is traveling on official Government business; (ii) when the employee is performing work for or on behalf of the Government; or (iii) when the employee is driving during off-duty hours but using electronic equipment supplied by the Government.

**6. Does the text messaging prohibition apply when a vehicle is temporarily stopped at a traffic signal or stop sign?**

Yes, the text messaging prohibition applies to the operation of a vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise.

**7. Does the text messaging prohibition apply when a vehicle is stopped in a safe location off the roadway?**

No, the text messaging prohibition does not apply when a vehicle (with or without the motor running) is stopped in a location off the roadway where it is safe and legal to remain stationary.

**8. Does the E.O. cover Federal employees who are working overseas?**

Yes, the E.O. covers such employees.

**9. Are Federal contractors and grantees bound by the E.O.?**

While contractors and grantees are not bound by the E.O., they are strongly encouraged to adopt and enforce policies that ban text messaging while driving. In addition, Federal contractors and grantees are required to comply with all Federal requirements contained in Federal contracts, grants or cooperative agreements, including any text messaging prohibition, as well as agency requirements for use of Government vehicles or equipment.

## APPENDIX B

### TEXTING WHILE DRIVING WAIVER PROCESS

If it has been determined that certain employees, devices or vehicles that are engaged in or used for protective operations, law enforcement, or national security responsibilities or on the basis of other emergency conditions, the process below will be used.

a. Agency Heads will:

- (1) Designate officials to sign requests for any waiver when it is determined that certain employees, devices, or vehicles are engaged in protective operations, law enforcement, national security, or other emergency needs and are exempt from the requirements of this DR.
- (2) Ensure that requests are justified and submitted to the Director, Office of Procurement and Property Management for review prior to submission to the Assistant Secretary for Administration for final approval. The waiver shall stipulate that the use of texting while driving is a tool of last resort.
- (3) Ensure that appropriate records, logs, and reports are maintained to substantiate the necessity for the waiver from texting while driving.

b. Office of Procurement and Property Management (OPPM) will:

- (1) Coordinate, review and provide recommendations for approval to the Assistant Secretary for Administration for final approval.
- (2) Ensure that requests are adequately justified.
- (3) Return a signed copy of each approved waiver authorization to the requesting agency.