

Rec. IR4: Eliminate FAR section on texting while driving.

Texting While Driving from Interim Report p. 25

Problem

The FAR encourages policies to ban text messaging by government contractor employees while driving on government business. This policy may no longer be needed due to changes in state laws and may be implemented by agencies through means other than contract clauses, such as DoD installation driving rules. This policy requires an unnecessary contract clause.

Background

On October 1, 2009, President Barack Obama issued EO 13513, Federal Leadership on Reducing Text Messaging While Driving, which includes language to encourage contractors to employ practices and policies to ban texting while driving and resulted in the addition to the FAR of Subpart 23.11, Encouraging Contractor Policies to Ban Text Messaging While Driving. This amendment also was added to FAR Clause 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving, which must be included in all solicitations and contracts and in all subcontracts exceeding the micro-purchase threshold.

Findings

Since EO 13513 was issued, the norms surrounding cell phone use while driving have evolved, making the provisions of Subpart 23.11 and Clause 52.223-18 no longer necessary.

- DoD issued directives to prohibit the use of cell phones while driving (with the exception of hands-free use) on all military installations.¹
- Installation rules and regulations governing cell phone use are posted at installation entry points.²
- Forty-six states; Washington, D.C.; Puerto Rico; Guam; and the U.S. Virgin Islands ban text messaging for all drivers.³

Conclusions

Because most states and DoD now ban cell phone usage and/or texting while driving, FAR Clause 52.223-18 is no longer necessary, and should be deleted. Federal agencies have means of encouraging behavior to meet the requirements of the EO (as is the case at DoD installations as noted above) without a contract clause requirement. Although many acquisition regulations, including this one, are designed to further arguably laudable public policy objectives, the Section 809 Panel wishes to emphasize that the aggregate effect of hundreds of similar regulations is costly for DoD.

¹ DoD Traffic Safety Program, DODI 6055.04, Enclosure 3 paragraph 6(d)(2) (2013) <http://dtic.mil/whs/directives/corres/pdf/605504p.pdf>.

² "DoD to Restrict Cell Phone Use on Military Bases," Department of Defense, accessed May 8, 2017, <http://archive.defense.gov/news/newsarticle.aspx?id=14689>

³ "Cellphones and Texting," Insurance Institute Highway Safety Highway Loss Data Institute, accessed May 8, 2017, <http://www.iihs.org/iihs/topics/laws/cellphonelaws>.

TEXTING WHILE DRIVING OPTION 1: MAKE CHANGE FOR DoD ONLY

Recommendations

Legislative Branch

- None required.

Executive Branch

- Exempt DoD from FAR Subpart 23.11 and FAR Clause 52.223-18.

Implications for Other Agencies

- None.

TEXTING WHILE DRIVING OPTION 2: MAKE CHANGE GOVERNMENTWIDE

Recommendations

Legislative Branch

- None required.

Executive Branch

- Delete FAR Subpart 23.11 and FAR Clause 52.223-18.

Implications for Other Agencies

- All agencies would be relieved of an unnecessary contract clause requirement.