



# **TEAMSTERS** **Safety & Health** **FACTS**

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## **Restricting the Use of Cellular Phones**

On November 23<sup>rd</sup>, 2011 the Federal Motor Carrier Safety Administration (FMCSA) and Pipeline Hazardous Materials Safety Administration (PHMSA) issued a final rule amending the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs). This rule was issued to improve safety by reducing the frequency of distracted driving-related crashes, fatalities, and injuries involving drivers of commercial motor vehicles (CMVs). The Agencies also amended their regulations to implement new driver disqualification sanctions for drivers of CMVs who fail to comply with the Federal restriction and new driver disqualification sanctions for commercial driver's license (CDL) holders who have multiple convictions for violating a State or local law ordinance on motor vehicle traffic control that restricts the use of hand-held mobile telephones. Additionally, motor carriers are prohibited from requiring or allowing drivers of CMVs to use mobile, hand-held telephones while operating CMVs. The Final Rule becomes effective January 3<sup>rd</sup>, 2012.

### **OVERVIEW OF NEW REGULATION**

This rulemaking restricts a CMV driver from holding a mobile telephone to conduct a voice communication, dialing a mobile telephone by pressing more than a single button, or reaching for a mobile phone in an unacceptable and unsafe manner (e.g. reaching for any mobile telephone on the passenger seat, under the driver's seat, or into the sleeper berth). A driver of a CMV who desires to use a mobile phone while driving will need to use a compliant mobile telephone (such as hands-free) located in close proximity to the driver that can be operated in compliance with this rule. Thus, the ease of "reach" or accessibility of the phone is relevant only when a driver chooses to have access to a mobile telephone while driving. Essentially, the CMV driver must be ready to conduct a voice communication on a compliant mobile telephone, before driving the vehicle.

The rule adds a driver disqualification provision for: (1) interstate CMV drivers convicted of using a hand-held mobile telephone, and (2) CDL holders convicted of two or more serious traffic violations of State or local laws or ordinances on motor vehicle traffic control, including using a hand-held mobile telephone. The rule also requires interstate motor carriers to ensure

compliance by their drivers with the restrictions on use of a hand-held mobile telephone while driving a CMV. Finally, the rule prohibits motor carriers and employers from requiring or allowing a CMV driver to use a hand-held mobile telephone while operating in interstate commerce.

## **APPLICABILITY**

*Amendments to §177.804; §390.3; §392.82*

The new rule will apply to operators of all CMVs as defined in 49 CFR Part 390 of the Federal Motor Carrier Safety Regulations, i.e., a vehicle that “has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 10,001 pounds or more; is designed or used to transport more than 8 passengers (including the driver) for compensation; or is designed or used to transport more than 15 passengers (including the driver), and is not used to transport passengers for compensation; or is used in transporting material found by the Secretary of Transportation to be hazardous and is transported in a quantity that requires placarding.

## **DEFINITIONS**

*Amendments to §383.5; §390.3; §390.5; §392.82*

FMCSA adds a new definition for the term “mobile telephone.” The Agency adopts a definition of “mobile telephone” based on the FCC regulations. “Mobile telephone” could include, for example, a satellite telephone service or a broadband radio service. FCC classifies these services as “commercial mobile radio services,” which are incorporated into the definition of mobile telephone. The FCC definition for mobile telephone does not include two-way or Citizens Band radio services.

FMCSA defines “use a hand-held mobile telephone” to clarify that certain uses of a hand-held mobile telephone are restricted, including holding, dialing, and reaching in a proscribed manner for the mobile telephone to conduct voice communication. That is, if a compliant mobile telephone is close to the driver and operable by the driver while restrained by properly installed and adjusted seat belts, then the driver would not be considered to be reaching. Reaching for any mobile telephone on the passenger seat, under the driver’s seat, or into the sleeper berth are not acceptable actions.

FMCSA modified the existing definition of “texting” in 49 CFR 390.5 to reflect the Agency’s restriction on a driver’s use of a hand-held mobile telephone in this rule. FMCSA eliminated the dialing exception, as it would now be considered texting. Under the provisions implemented in this rule, the driver can press a single button to initiate or terminate a call.

Driving, for the purpose of a disqualification, States must disqualify a CDL driver whenever that driver is convicted of a number of violations (see Disqualifications Section) while operating in

any State where such conduct is restricted or prohibited by a State or local law or ordinance on motor vehicle traffic control. This means operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

The Agency modified the definition of “driving” removing the phrase “with the motor running” and replacing it with “on the highway” to clarify the scope of the restriction. The modified definition now reflects the use of hybrid vehicles on the highways, which can be operated without the motor running.

## **DISQUALIFICATIONS**

*Amendments to §383.51; §391.15*

The final rule prohibits commercial drivers from using a hand-held mobile telephone while operating a commercial truck or bus. Drivers who violate the restriction will face federal civil penalties of up to \$2,750 for each offense and disqualification from operating a commercial motor vehicle for multiple offenses.

FMCSA adds a new serious traffic violation that would result in a CDL driver being disqualified. This serious traffic violation is a conviction for violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting hand-held mobile telephone use while driving a CMV. The disqualifications are as follows:

- For a second conviction of any combination of offenses in this Table [Table 2 Section 383.51] in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for 60 days.
- For a third or subsequent conviction of any combination of offenses in this Table [Table 2 Section 383.51] in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for 120 days.

## **EXCEPTIONS**

*Amendment to §391.2*

There is a limited exception to the hand-held mobile telephone restriction. This exception allows CMV drivers to use their hand-held mobile telephones if necessary to communicate with law enforcement officials or other emergency services.

## FREQUENTLY ASKED QUESTIONS FROM FMCSA

1 **Q: What is the effective date of the Mobile Telephone rule?**

A: The effective date of the rule is January 3, 2012.

2 **Q: Are wired or wireless earpieces allowed?**

A: Yes. Hands-free use of a mobile telephone is allowed using either a wired or wireless earpiece, or the speakerphone function of the mobile telephone. Wireless connection of the mobile telephone to the vehicle for hands-free operation of the telephone, which would allow the use of single-button controls on the steering wheel or dashboard, would also be allowed.

3 **Q: Is Push-to-Talk allowed?**

A: No. A driver's use of the Push-to-Talk function on a mobile telephone violates the prohibition against holding the phone. This includes the continuous holding of a button that is necessary to use a Push-to-Talk feature through a mobile telephone, even when the driver is using a connected microphone or wireless earphone.

4 **Q: Are holders of a commercial driver's license (CDL) subject to the regulation only when driving a CMV, as defined in 49 CFR 383.5, or any vehicle?**

A: CDL holders are subject to the Federal rule only when driving a CMV.

5 **Q: What drivers are covered by the Federal rule: intrastate or interstate? CDL holders? All CMVs?**

A: The rule covers both drivers of CMVs in interstate commerce and intrastate drivers who operate CMVs transporting a quantity of hazardous materials requiring placarding under 49 CFR Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

If a CMV driver is employed by a State or a political subdivision of a State (e.g. county, city, township, etc.), FMCSA safety regulations do not apply, even if the driver is engaged in interstate transportation. But if a CMV driver employed by a State or a political subdivision of a State is operating a vehicle that requires a CDL, the applicable State traffic laws would govern (e.g., Maryland's prohibition on the use of hand-held phones). The States have three years to implement by State law the disqualification provision.

6 **Q: What is required of the employer in terms of company policy or training?**

A: The rule does not require motor carriers to establish written policies in terms of company policy or training programs for their drivers. However, employers are prohibited from allowing or requiring their drivers to use hand-held mobile phones. A motor carrier may establish policies or practices that make it clear that the employer does not require or allow hand-held mobile telephone use while driving a CMV in interstate commerce. The carrier is responsible for its drivers' conduct.

7 **Q: Is dialing a phone number allowed under this rule?**

A: No. Dialing a mobile telephone while operating a CMV in interstate commerce is prohibited by the rule. A driver can initiate, answer, or terminate a call by touching a single button on a mobile telephone, earpiece, steering wheel, or instrument panel – comparable to using vehicle controls or instrument panel functions, such as the radio or climate control system.

8 **Q: Can a driver reach for a mobile telephone even if he/she intends to use the hands-free function?**

A: No. In order to comply with this rule, a driver must have his or her mobile telephone located where the driver is able to initiate, answer, or terminate a call by touching a single button while the driver is in the seated driving position and properly restrained by a seat belt. If the mobile telephone is not close to the driver and operable while the driver is restrained by properly installed and adjusted seat belts, then the driver is considered to be reaching for the mobile phone, which is prohibited by the rule.

9 **Q: Are tow trucks exempt?**

A: No. The interstate operation of tow trucks that meet the definition of a CMV are not exempt. Tow trucks, however, are exempt when responding to police emergencies in accordance with 49 CFR 390.23(a)(3).