



Regulatory Summary: Federal Restriction on Use of Hand-Held Mobile Phones by Commercial Motor Vehicle Drivers

Many commercial motor vehicle drivers in the transportation construction industry will be subject to new federal restrictions on the use of cell phones while driving.

On November 23, 2011, the U.S. Department of Transportation (USDOT) announced a final rule restricting the use of hand-held mobile telephones by drivers of commercial motor vehicles (CMVs). Two USDOT agencies, the Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline & Hazardous Materials Safety Administration (PHMSA), issued the rule jointly. The new rule takes effect on January 3, 2012.

While the rule is not specifically targeted to transportation construction industry drivers, many of those drivers will come under its purview. They include:

- Interstate commercial motor vehicle drivers (as regulated by FMCSA); and
- Intrastate commercial motor vehicle drivers hauling hazardous materials (as regulated by PHMSA).

The longstanding definition of “commercial motor vehicle” for federal regulation includes vehicles with a gross vehicle weight/gross vehicle weight rating of 26,001 pounds or greater, and vehicles used to transportation certain quantities of hazardous materials.

States have up to three years (i.e. January 2015) to come into compliance with the new rule. However, some state motor carrier safety laws trigger immediate adoption of federal rules such as this one. Moreover, many states – by law or their common practice – will likely extend the ban to include intrastate commercial motor vehicle drivers in their respective states. Therefore, industry firms should check with state regulators as to the timing and content of this rule change at the state level.

The rule prohibits affected drivers from using “a hand-held mobile telephone while driving a CMV.” Similarly, the rule prohibits a motor carrier (i.e. employer of the driver) from allowing or requiring its drivers to use such a phone while driving.

Both federal agencies previously issued a ban on texting by drivers it regulates.

Definition of “Hand-Held Mobile Telephone”

Drivers are prohibited from:

1. using at least one hand to hold a mobile telephone to conduct a call;
2. dialing or answering a mobile telephone by pressing more than a single button; and/or
3. reaching for a mobile telephone so he/she is no longer in a seated driving position, properly restrained by a seat belt.

A prohibited “mobile telephone:”

- is one that requires the driver or user to hold it while operating it
- includes “push-to-talk” devices used as phones
- is intended to be consistent with the definition of “mobile telephone” found in Federal Communications Commission (FCC) regulations

Drivers may legally use a “hands-free” mobile phone while driving by:

1. utilizing its speaker phone function or a wired or wireless earphone, and
2. using “one-touch dialing,” and
3. keeping it close enough that the driver need not “reach” for it while properly wearing seat belts.

The rule does not cover the use of a CB radio, two-way radio, or walkie-talkie.

Drivers may use any mobile telephone (compliant or not) to contact law enforcement in case of emergency or for security purposes

To minimize driver distraction, the agencies note that a compliant mobile phone can be mounted near the driver, although this is not required.

Definition of “Driving”

A CMV driver may not use a prohibited phone while “driving.” The rule defines this as “operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays.”

The rule states that “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 agencies state that “driving” is independent of whether or not the CMV’s motor is running.

Penalties

Drivers in violation of this rule are subject to civil penalties of up to \$2,750, as well as a period of disqualification from holding his/her commercial drivers license (CDL) that increases with each offense.

Employers who allow or require their CMV drivers to use cell phones illegally are subject to civil penalties of up to \$11,000.

For more information, visit this web page for the full text of the new rule and the agencies’ commentary:

http://fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/Mobile_phone_NFRM.pdf

The docket numbers for the rule are FMCSA-2010-0096 and PHMSA-2010-0227 (HM-256A).

ARTBA staff contact: Rich Juliano at 202-289-4434 or rjuliano@artba.org