



NLBMDA Issue Briefing: DOT Final Rule Restricting the Use of Cellular Phones by Commercial Motor Vehicle (CMV) Drivers

This rule is effective January 3, 2012

1. What does the rule ban?

The rule restricts a covered CMV driver from: 1) **holding** a mobile telephone to conduct a voice communication, 2) **dialing** a mobile telephone by pressing more than a single button, or 3) **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 may **not** use the "push-to-talk" feature of a mobile phone because it requires the user to **hold** the device.

Note: This rule does not apply to the use of CBs, two-way radios, or walkie-talkie devices; however, you should check for any state or local restrictions for the use of these and other types of equipment while driving.

2. What use of cellular phones does the rule allow?

The rule allows the use of a "compliant" mobile telephone – one that allows the driver to avoid the three specific activities prohibited: holding, dialing, and reaching.

To avoid holding the mobile phone, a driver may use either a **hands-free** earpiece or the speaker function of a mobile telephone.

To avoid dialing, a driver may initiate, answer, or terminate a call by touching a **single button** on a mobile telephone or on a headset. The driver may also initiate and terminate by utilizing **voice command** features.

To avoid reaching, the phone must be readily accessible so that the driver does not have to reach for it in an unsafe manner.

Therefore, in order to comply with this rule: a driver must have his or her compliant mobile telephone located where the driver is able to initiate, answer, or terminate a call by touching a single button, for example, on the compliant mobile telephone or on a headset, when the driver is in the seated driving position and properly restrained by a seat belt. The CMV driver must be ready to conduct a voice

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communication on a compliant mobile telephone, before driving the vehicle. Ease of “reach” or accessibility of the phone is relevant only when a driver chooses to have access to a mobile telephone while driving.

Covered drivers may use their hand-held mobile telephones if necessary **to communicate with law enforcement officials or other emergency services.**

The rule is also limited to driving, so if the driver pulls off the road, he or she does not have to shut down the vehicle or get out of the vehicle. “Driving, for the purpose of this disqualification, 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.”

FMCSA recognizes that mobile telephones often have multi-functional capability and is not prohibiting the **use of mobile telephones for other uses.** Of course, other types of activities using a mobile telephone might be covered by other rules, such as those addressing texting while driving a CMV.

3. What drivers are covered?

The rule applies to drivers of commercial motor vehicles (CMVs) involved in interstate commerce.

Under the applicable 49 CFR Part 390, a CMV is defined to include:

“any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle: 1) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 10,001 pounds (4,536 kg) or more, whichever is greater.” *See Definitions (49 CFR 390.5).*

The rule also applies to CDL holders driving a CMV in either interstate or intrastate commerce.

Under applicable 49 CFR Part 383, the rules and penalties established for the Commercial Driver’s License, a CMV is defined to include:

“as a motor vehicle used in commerce to transport property if it 1) Has a gross combination weight rating of 26,001 pounds or more (11,794 kilograms or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds (4,536 kilograms); or 2) Has a gross vehicle weight rating of 26,001 pounds or more (11,794 kilograms or more).”

Under 49 CFR Section 383.3, the CDL rules applies to “every person who operates a CMV in **interstate or intrastate commerce.**”

Because the CDL is a State-issued license, there may be state-specific requirements or exemptions.

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4. How do I know if I am involved in interstate commerce?

Because of the applicable definition of “interstate commerce”, the rule applies to CMV drivers on all roads, if they are involved in interstate commerce.*

49 CFR Part 390.5 defines “Interstate Commerce” to include “trade, traffic, or transportation in the United States 1) Between a place in a State and a place outside of such State (including a place outside of the United States); 2) Between two places in a State through another State or a place outside of the United States; or 3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.”

Examples:

Company A has yards in State X and State Y. Material is moved from State X to State Y. FMCSA considers the movement of material between the yard in State X and the yard in State Y to be a part of interstate commerce.

Company A has yards in State X and State Y. Material is moved from State X to State Y. At a later time, the material that is now in State Y is delivered to a customer in State Y. If the shipment from the yard in State X was originally intended to be delivered to the customer in State Y, as shown on the shipment manifest, and the shipment merely stopped in Company A’s yard in State Y, the delivery to the customer in State Y could be considered to be the last leg of Company A’s haul that originated in State X, and therefore the delivery to the customer in State Y would be considered a part of interstate commerce.

Company A has yards in State X and State Y. Material is moved from State X to State Y. At the time of the shipment, the shipment manifest shows that the intent was to end the delivery of the material in the yard in State Y. At a later time, the material that is now in State Y is delivered to a customer in State Y. Because the original shipment from State X to State Y was not part of a continuous shipment of goods across state lines, the subsequent delivery of the material (originally shipped from the yard in State X) to a customer in State Y would not be considered a part of interstate commerce.

Company B has a yard in State X and takes delivery of materials at that yard from its vendors. Some vendors are delivering material to Company B from across state lines. Those vendors will be considered a part of interstate commerce; however, if Company B has taken delivery of the material in its yard and then subsequently delivers material to its customers within State X, Company B is not involved in interstate commerce.

5. What if my state already has a law on the use of cellular phones?

If your state already bans handheld phones, you must comply with those laws as well as the federal rule, if the federal rule is broader in application. 49 CFR Part 390 states that –

* It is important to remember that the new rules also apply to CDL drivers in both interstate and intrastate commerce. It is necessary to determine if you are involved in interstate commerce only as it applies to CMV drivers who are not required to hold CDLs.

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“Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes **a higher standard of care** than that law, ordinance or regulation, the Federal Motor Carrier Safety Regulation must be complied with.” See *Applicability (49 CFR 392.2)*.

6. What penalties are imposed?

A violation of this new restriction on the use of handheld cellular devices may result in a civil penalty imposed on drivers in an amount up to \$2,750. Also, a civil penalty may be imposed on employers who fail to require their drivers to comply with the new restriction.

The rule also adds new driver disqualification sanctions for: (1) interstate drivers of CMVs who fail to comply with this Federal restriction and (2) CDL holders who have multiple convictions for violating a State or local law or ordinance on motor vehicle traffic control that restricts the use of hand-held mobile telephones.

Under a new provision, states must disqualify a CDL driver whenever that driver is convicted of the triggering number of violations 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. Another new provision provides for the **disqualification from operating a CMV, in interstate commerce, of any driver convicted of two or more violations within a 3-year period** of the new hand-held mobile telephone use restriction while operating a CMV. For the driver’s first violation, the Agency could assess a civil penalty against the driver; for a second violation within 3 years, the driver would be disqualified for 60 days, in addition to being subject to the applicable civil penalty; and for the third (or more) violation within 3 years, a driver would be disqualified for 120 days, in addition to being subject to the applicable civil penalty.

Additionally, motor carriers operating CMVs are prohibited from requiring or allowing a CMV driver to engage in the use of a hand-held mobile telephone. **Any violation by an employer would subject the employer to civil penalties in an amount up to \$11,000.** This provision does allow the employer to allow or require compliant activity, as described in the answer to Question 2 above.