

## **US DOT Issues Final Rule Banning Cell Phone Use by CMV Drivers**

FMCSA and PHMSA issued a final rule that restricts the use of hand-held mobile telephones by interstate commercial motor vehicle drivers (CMV) and intrastate hazmat drivers. The rule does not restrict or prohibit the use of hands-free devices. The final rule was published in the Federal Register on December 2nd, 2011 and will take effect on January 2nd, 2012.

The final rule prohibits CMV drivers from holding, dialing, or reaching for a hand-held cellular phone. This includes all push-to-talk functions. Hands-free use of a cellular phone is allowed. The ban does not prohibit or restrict the use of Citizen Band Radios, GPS, or fleet management systems.

***Dialing*** - As defined by FMCSA, a driver is allowed to initiate, answer, or terminate a call by touching a single button on a mobile telephone or on a headset. This action should not require the driver to take his or her eyes off the road.

***Reaching*** - FMCSA banned reaching for a cellular phone or hands-free device that is done in "an unacceptable and unsafe manner." Examples of this behavior would be reaching for a cellular phone on the passenger seat, under the driver's seat, or into the sleeper berth. To be in compliance with the rule, a driver must have a cellular phone and/or hands-free device within "close proximity" to his or her person.

***Driver and Motor Carrier Penalties*** - Under the final rule, CMV drivers who are convicted of a hand-held cell violation twice within a three year period will be disqualified for 60 days. If convicted for a third violation within three years the driver will be disqualified for 120 days. Drivers will be subject to federal civil penalties of up to \$2,750 for each offense. Motor carriers that allow their drivers to use hand-held cell phones while operating a commercial motor vehicle face a maximum civil penalty of \$11,000 per violation.

***Employer Liability*** - Within the language of the rule, FMCSA states that "no motor carrier shall allow or require its drivers to use a hand-held mobile telephone while driving a CMV." In the preamble, FMCSA interprets the regulatory language to mean that motor carriers are responsible for the actions of its drivers, regardless of whether or not such actions are sanctioned by the motor carrier. FMCSA will hold employers accountable if the employee was doing his or her job, carrying out company business, or otherwise acting on the employer's behalf when a violation occurs.

***State Requirement*** - States will be required to adopt the final regulations within three years of enactment as a condition of receiving full Motor Carrier Safety Assistance Program (MCSAP) funding. Once states adopt the federal regulatory language, the rule will become applicable to intrastate non-hazmat CMV drivers.

***Exemptions*** - The proposal also allows hand-held cell phone use by drivers for emergency purposes.