



US Dept. of Transportation Issues New Restrictions on the Use of Mobile/Cellular Phones by Drivers of Commercial Motor Vehicles

Dear NAMA Members:

The US Department of Transportation (USDOT) has recently amended the Federal Motor Carrier Safety Regulations (FMCRs) regarding the use of mobile/cellular phones by truck drivers. The USDOT states that these amended regulations are designed to “improve safety on the Nation’s highways by reducing the prevalence of distracted driving related crashes, fatalities, and injuries involving drivers of CMVs” (commercial motor vehicles). Effective on January 3, 2012, **the amended regulations require drivers to use a compliant telephone, such as a “hands-free” mobile phone while driving.** If violated, the regulations impose costly fines for both CMV drivers ***and*** their employers.

WHAT ARE THE AMENDED REGULATIONS?

Specifically, drivers are restricted from using a “hand-held” mobile (cellular) phone while operating a CMV. Hand-held mobile phone use includes “using at least one hand to hold a mobile telephone to conduct a voice communication,” texting or dialing a mobile telephone by pressing more than a single button, or reaching for a mobile phone in an unacceptable and unsafe manner (i.e., reaching for any mobile telephone on the passenger seat, under the driver’s seat, or into the sleeper berth).

Accordingly, if a driver of a CMV who wishes to use a mobile telephone while driving, he/she will need to use a “compliant mobile telephone” (such as a hands-free unit) that is within the driver’s “ease of reach or accessibility”.

A limited “Emergency Exception” permits CMV drivers to use a hand-held mobile telephone **only when necessary to communicate with law enforcement officials or other emergency services.**

WHO IS COVERED BY THE AMENDED REGULATIONS?

The amended regulations apply to drivers of CMVs. According to the Motor Carrier Safety Act of 1984, a CMV is defined as a vehicle “used on the highways to transport persons or property in interstate commerce,” and among other things “has a gross vehicle weight (GVW)/gross vehicle weight rating (GVWR) of 10,001 pounds or greater”. All drivers operating CMVs in the course of interstate commerce are subject to the amended regulations; thus drivers of CMVs who transport products across state lines on behalf of vending companies, operators, suppliers, etc. are subject to the regulations. This means those CMV drivers who are carrying goods on interstates are arguably covered by this law too even if their routes do not cross state lines. Lastly, commercial drivers’ license (CDL) holders who operate CMVs (even if just *intrastate*) are covered drivers as well.

The regulations do not apply to CMV drivers who are employed by federal, state, or local governments.

WHAT ARE THE PENALTIES?

Drivers of CMVs who fail to comply with the regulations may be subject to a general civil penalty in the amount of \$2,750, and could be subject to additional driver “disqualification” sanctions. The driver disqualification sanctions may also apply to CDL holders who have multiple convictions for violating a State or local law or ordinance on motor vehicle traffic controls that restricts the use of hand-held mobile telephones.

Further, the USDOT states that employers may be held responsible for the actions of their CMV drivers, especially when the employers *allow or require* the drivers to use hand held mobile phones. **Employers who fail to require their drivers to comply with the amended regulations may be subject to a civil penalty of up to \$11,000.** Accordingly, the USDOT states that employers should implement company policies and/or practices to prohibit drivers’ use of hand held mobile phones of any kind while driving.

WHERE CAN I GET MORE INFORMATION?

A list of Frequently Asked Questions (FAQs) as well as a copy of the USDOT’s Final Rule on the restricted use of mobile phones by CMV drivers can be found by visiting the following links:

- FAQs:
<http://www.fmcsa.dot.gov/about/other/fag/cellphone-ban-faqs.aspx>
- USDOT Final Rules:
http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/Mobile_phone_NFRM.pdf

The USDOT Federal Motor Carrier Safety Administration can be reached directly at (800) 832-5660. For additional assistance with employer liability related questions, you may contact attorney **Heather Bailey** of the firm **Smith Amundsen, LLC** at (312) 894-3266 or hbailey@salawus.com.

Thank you for your support of NAMA and making a difference for all.