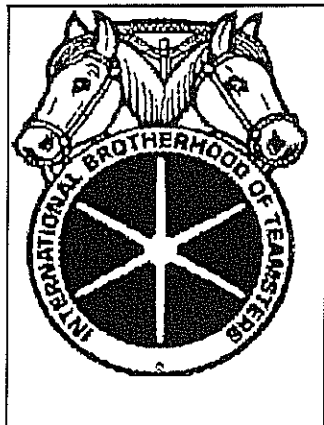


MEMORANDUM

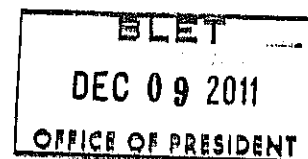


TO: U.S. Local Unions

FROM: LaMont Byrd, Director  
Safety and Health Department

DATE: December 8, 2011

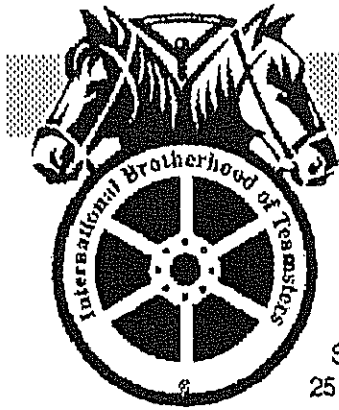
RE: Cell Phone Rulemaking



Please be advised that the Federal Motor Carrier Safety Administration (FMCSA) promulgated a final rule that essentially bans the use of hand-held mobile telephones while operating a commercial motor vehicle. Enclosed you will find a copy of a fact sheet that provides a detailed summary of the final rule. This rule becomes effective on December 23, 2011.

If you have questions concerning this final rule, please contact the Safety and Health Department at (202) 624-6960.

LB/knb  
Encl.



# TEAMSTERS Safety & Health FACTS

Safety and Health Department, International Brotherhood of Teamsters  
25 Louisiana Avenue, NW, Washington, DC 20001 • 202/624-6960 • [ibtsafety@teamster.org](mailto:ibtsafety@teamster.org)

## 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 December 23<sup>rd</sup>, 2011.

### 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.

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.