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# Capitol Motor Carrier Compliance

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Dear Colleagues,

As you are all well aware the Federal Motor Carrier Safety Administration recently announced its final rulemaking that bans all hand held cell phone use by drivers of commercial motor vehicles. This rule includes 19 pages of research, data and an explanation of the new regulations that will be added to title 49 of the Code of Federal Regulations that defines commercial motor vehicles regulations for interstate carriers.

During the past week I have received many phone calls asking how this new ban impacts various companies. In this document I will try to answer some questions that will help you gain a better understanding of this new regulation. The first misconception is many people believe that this regulation does not include their company because they only operate in Massachusetts and do not cross state lines. Unfortunately this regulation does include all commercial motor vehicles in Massachusetts because in 1986 the Commonwealth of Massachusetts accepted as state law Title 49 of the Code of Federal Regulations as state law. As Title 49 of the Code of Federal Regulations updates, those changes automatically become Massachusetts Law and are enforced by the Massachusetts Commercial Vehicle Enforcement Section. For your review I have added the sections of that Massachusetts law below for your review.

#### **49 CFR 390.5 Definition of a Commercial Motor Vehicle**

*Commercial motor vehicle means 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 4,536 kg (10,001 pounds) or more, whichever is greater; or*
- (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or*
- (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or*
- (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.*

#### **Massachusetts Adoption of Federal Motor Carrier Regulations**

*Effective August 21, 1986, Parts 390–397 and Parts 171–179 of the Code of Federal Regulations were adopted. The adopted regulations apply to vehicles having a gross vehicle weight rating over 10,000 lbs. and vehicles transporting hazardous materials found to be hazardous under parts 171-179 of the code of Federal Regulations. Intrastate drivers are exempt from 391.11(b)(1), (2) (10) and (11), 391.31, 391.35 and 391.49. The Massachusetts State Police Commercial Vehicle Enforcement Section is responsible for motor carrier safety in Massachusetts.*

#### **Massachusetts Exemptions**

*Transportation provided by federal, State, and local government are exempt from the FMCSA regulations. Occasional transportation of personal property by individuals for noncommercial purposes, school bus operations, and the transportation of human corpses, or sick and injured people are also exempt. In addition to the exemptions allowed under the FMCSR, Massachusetts also provides exemptions pertaining to the 21-year age requirement to operate commercial motor vehicle (CMV) and to the requirement for waivers to certain physical defects. Massachusetts's exemptions apply only to operation of commercial motor vehicles solely within the Commonwealth.*

In this rulemaking the Federal Motor Carrier Safety Administration has updated several regulations for motor carriers who operate in interstate commerce and those who operate a commercial motor vehicle that transports any quantity of hazardous materials requiring a placard. These updates affect companies that operate commercial motor vehicles in Massachusetts because the Commonwealth of Massachusetts accepted all Federal Motor Carrier Safety Administration regulations as state law.

They include;

- Part 383.5 that defines mobile telephone.
- Part 383.51 that adds a new section of serious traffic violation that would result in a CDL driver being disqualified.
- Part 384.301 that requires all states that issue CDL's to implement the new provisions in part 383.3 that relate to disqualifying CDL drivers for violating the new serious traffic violation of using a hand held mobile telephone while driving a commercial motor vehicle.
- Part 390.5 that includes a new definition for the terms of mobile telephone and use of a handheld mobile telephone for general application.
- Part 392.82 adds a new restriction on use of hand-held mobile telephones while driving commercial motor vehicles. This section also states that motor carriers must not allow or require commercial motor vehicle drivers to use a handheld mobile telephone while driving. Any violation by an employer would subject the employer to civil penalties in an amount up to \$11,000.

The Notice of final rulemaking quotes research that concludes the odds of being involved in a safety critical event of three times greater when the driver is reaching for an object than when the driver is not reaching for an object. The odds of being involved in safety critical event are six times greater when the driver is dialing a cell phone than when the driver is not dialing a cell phone. The reaching for a cell phone while operating a commercial motor vehicle creates a distraction that the FMCSA believes is in the best interest of public safety to restrict a commercial motor vehicle driver's use of such devices (**Page 75472 of the Notice of Final Rulemaking**).

The final rulemaking also states that reaching for any mobile telephone on the passenger seat under the driver's seat or into the sleeper berth are not acceptable actions. To avoid committing a violation of this rule the driver could use either a hands-free earpiece or the speaker function of a mobile telephone that is located close to the driver. The Federal Motor Carrier Safety Administration addressed mounted or stationary mobile telephones in the following manner "although the agency did not address the option of mounting the mobile telephone in the notice of proposed rulemaking a compliant mobile telephone mounted close to the driver is an acceptable option, but is not, however, required in order to in order to be in compliance with the final rule". If a compliant mobile telephone is operated in accordance with this rule, mounted phones are no more distracting than operating the radio, climate control system, or other dash mounted accessory in the vehicle. 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 seatbelt.

## **FINANCIAL PENALTIES**

Most everybody I spoke to over the past week has read I about the financial penalties associated with violating this new regulation. **Page 75477** of the Notice of Final Rulemaking states; "driver and motor carrier fines (\$2,750.00 and \$11,000.00 respectively) in the rule are the recommended maximum that the agency can assess on any violator. States however may choose to set the amount of refined at or below those levels". I contacted the Massachusetts State Police Commercial Vehicle Enforcement Section who stated any violation of the cell phone ban for commercial motor vehicle drivers while in operation would be cited under Chapter 90 at a fine of approximately \$35.00 per offense. The problem arises when these violations are documented in your company's CSA Score maintained by the Federal Motor Carrier Safety Administration. A driver cited with violating the new cell phone ban would be documented in the "Unsafe Driving" section of the CSA program. If a carrier exceeds the threshold of the "Unsafe Driving" category it could expose them to a compliance review by state or federal enforcement agencies. Any company with a drivers who have received multiple violations of the cell phone ban could then have the maximum fine imposed on that driver and the company for allowing the cell phone use to continue.

## **CREATE A WRITTEN POLICY REGARDING THIS NEW REGULATION**

I encourage all companies to establish a written policy informing your of drivers of the company's intent to fully comply with the new ban on cell phone use and they are not allowed while operating company vehicles at any time.

## **NEXTEL PUSH TO TALK VERSUS TRADITIONAL MOBILE TELEPHONES**

Many have asked if there is a difference between Nextel push to talk and traditional mobile cell phones. The Federal Motor Carrier Safety Administration utilizes the Federal Communications Commission definition of a mobile telephone in this rulemaking to ensure consistency between the terms used in the FCC and FMCSA rules and to address emerging technologies. Because the push to talk features use commercial mobile radio services to transmit and receive voice communications, the device is a mobile telephone; and it also requires the driver or user to hold it. Therefore its use while driving a commercial motor vehicle is the same as that of a handheld mobile telephone and is prohibited.

*(Page 75475 of the NFRM)*

Because this rulemaking states a driver must be able to initiate, answer, or terminate a call by touching a single button on a mobile telephone or on a headset it creates a problem for companies using Nextel Communications because a driver must use one button to identify who they are calling and another to initiate the push to talk feature every time they speak. This would be a violation of the regulation.

Many companies have asked me how they can use their mobile telephones or push to talk service in their vehicles and be in compliance with this new regulation. Unfortunately other than using a mobile device that is in reach of the driver while seated in the driving position and properly restrained by a seat belt and equipped with voice recognition coupled with a wired headset or Bluetooth device the options are limited.

Although this is probably not the conclusion most of you were looking for but I hope it gives you a better understanding of this new regulation and how it affects your company.

I'm available at any time if you have any questions or like to further discuss this new regulation and various avenues available to you to aid in compliance.

Sincerely,

*Joe Mokrisky*

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