Federal Ban on Hand-Held Mobile Telephone Use: Implications for Commercial Motor Vehicles

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FMCSA’s New Rule
The Department of Transportation (DOT), focused the federal government’s attention on distracted driving in September 2009, at the first National Distracted Driving Summit hosted by U.S. Transportation Secretary Ray LaHood in Washington, D.C. Shortly thereafter, President Obama signed Executive Order 13513, prohibiting federal employees from texting while driving government vehicles. Secretary LaHood issued new federal guidelines banning commercial bus and truck drivers from texting while driving, and Department of Labor Secretary Hilda Solis announced that the Occupational Safety and Health Administration (OSHA) will partner with the DOT on a new initiative combating work-related distracted driving. As a result of these initiatives, on December 2, 2011, the Federal Motor Carrier Safety Administration (FMCSA or the Agency) published in the Federal Register a new ban on the use of hand-held mobile telephones, which took effect January 3, 2012.

Who Is Covered?
The new federal rule restricts the use of hand-held mobile telephones by drivers of commercial motor vehicles (CMVs) pursuant to the authority given to the FMCSA under the Motor Carrier Safety Act of 1984, and the Commercial Motor Vehicle Safety Act of 1986. The rule specifically restricts a CMV driver from three activities: (1) holding a mobile telephone to conduct a voice communication, (2) dialing a mobile telephone by pressing more than a single button, and (3) reaching for a mobile telephone in an unacceptable and unsafe manner. The rule does not, however, proscribe the use of mobile telephones for purposes other than conducting a voice communication, such as synchronizing mobile telephones with other electronic devices or using a phone’s GPS system.

In the interest of public safety, FMCSA modified several discretionary regulatory exemptions to this rule by making it applicable to school bus operations and CMVs designed or used to transport between nine and 15 passengers.

Definition of Mobile Telephone and Hands-Free Operation
In its rule, the FMCSA uses the FCC’s definition of “mobile telephone,” which encompasses devices with push-to-talk features, such as Nextel/Push to Talk Phones, as they use commercial mobile radio services to transmit and receive voice communications. The definition does not include two-way radios or citizens’ band (CB) radios.

• Dialing
The prohibition of “dialing” in the rule refers to initiating, answering or terminating a call by pressing more than a single button on a mobile telephone. Initiating, answering or terminating a call by pressing a single button is allowed, as these actions should not require the driver to take his eyes off the road.

• Reaching
“Reaching” for a mobile telephone encompasses reaching for the device on the passenger seat, under the driver’s seat or in the sleeper berth. It is acceptable for a driver, while in the normal seated position with the seat belt fastened, to retrieve a compliant mobile telephone (hands-free) if it is located within an easy arm’s reach. To avoid committing a violation of this rule, a driver could use either a hands-free earpiece or the speaker function of a mobile telephone if it is located close to the driver.

• Driving
“Driving” consists of operating a CMV on a highway, including while temporarily stationary because of traffic, a traffic control device or other momentary delays. It does not include operating a CMV 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 rule also provides an exception for communicating with law enforcement officials or other emergency services.
Penalties
The new rule implements new-driver disqualification sanctions for both CMV drivers and holders of a commercial driver’s license (CDL). Drivers who violate the restrictions under the rule may be penalized up to $2,750 for a first conviction. Subsequent penalties for additional violations would include:
• A 60-day disqualification if a CMV driver is convicted of two hand-held mobile telephone use violations within a three-year period
• A minimum 120-day disqualification if any additional convictions occur during the same time frame

FMCSA may also disqualify a CDL driver who, while driving a CMV, violates a state or local law or ordinance that restricts or prohibits hand-held mobile telephone use.

Furthermore, motor carriers must not allow or require CMV drivers to use hand-held mobile telephones while driving. Violating this provision could result in a carrier incurring a civil penalty of up to $11,000. While the FMCSA realizes it is impossible for employers to monitor all of their employees’ activities, they generally will be held accountable if a violation occurs while an employee is doing his job, carrying out company business or otherwise acting on the employer’s behalf. States may choose to impose a fine that is comparable to or less than the one imposed by the FMCSA, but they must adopt these regulations within three years of the rule’s enactment to receive full Motor Carrier Safety Assistance Program (MCSAP) funding.

Will It Make a Difference?
A study released by the DOT in September 2010 found that reaching for a headset or earpiece increased the likelihood of being involved in a safety-critical event (i.e., crashes, near-crashes and crash-related conflicts) by 3.4 times; reaching for a cell phone increased the likelihood by 3.8 times; and dialing a cell phone increased the likelihood by 3.1 times. Even though the Agency declined to prescribe enforcement procedures and methodology in its new rule, it nonetheless suggested that the law would be enforced, and noted that after the new texting rule was implemented in October 2010, FMCSA had more than 300 roadside violations.

What Does This Mean for Motor Carriers and Their Drivers?
Due to the steep penalties imposed on motor carriers, employers should closely monitor their driver qualification files and records. Motor carriers should establish procedures to ensure that they do not use drivers who are disqualified from driving as a result of these prohibitions. Although the Agency does not require motor carriers to implement specific policies and procedures, having a policy in place and including it in new-hire and annual training programs, with an agenda focused on FMCSA’s restrictions related to hand-held mobile telephone usage, could help motor carriers avoid penalties. Those carriers that do have a cell phone policy should review it periodically to ensure that it remains compliant with the new restrictions.

The FMCSA final ban on hand-held mobile telephone use can be accessed here.