

DISTRACTED DRIVERS:

A DISCUSSION OF COMMERCIAL CELLULAR USE RESTRICTIONS

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DISTRACTED DRIVER STATISTICS

- Cell phone distractions cause 600,000 crashes, 330,000 injuries, and 3,000 deaths /year (1,643 crashes, 904 injuries, and 8 deaths ***per day***).
- 25% of automobile crashes are caused by driver distraction due to mobile phone usage.
- Drivers dialing phone are 2.8 to 5.9 times more likely to crash/near miss; drivers texting are 23 times more likely to crash/near miss.
- *New England Journal of Medicine* study: risk of accident caused by cell phone use is equal to risk caused by legal intoxication. Distracted driving fatalities now far surpasses the number of drunk driving fatalities.
- On-the-job crashes cost employers over \$24,500 per crash, \$150,000 per injury, and \$3.6 million per fatality.

DISTRACTED DRIVER CRITICAL ISSUE

The Critical Issue for Employers ...

... Respondent Superior

Commonly referred to as ***vicarious responsibility***, an employer is liable for the actions of an employee if the employee was acting within the scope of his or her employment at the time of the accident.

Thus, if an employee acting within the scope of employment causes some injury through negligent conduct, the victim is entitled to sue the employer directly for damages.

FEDERAL REGULATIONS IN EFFECT

Federal Motor Carrier Safety Regulations

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

§ 392.80 Prohibitions against texting

§ 392.82 Using a hand-held mobile telephone

Drivers of CMVs: Restricting the Use of Cellular Phones

- AGENCY: The Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT
- ACTION: Final Rule
- SUMMARY: FMCSA and PHMSA are amending the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMR) to restrict the use of hand-held mobile telephones by drivers of commercial motor vehicles (CMVs)
- Issued on: November 22, 2011



TWO-WAY RADIOS FALL OUTSIDE OF REGULATION

FMCSA Response

The Agency defined a **mobile telephone** as “a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission (FCC), 47 CFR 20.3.”



FMCSA used the FCC’s definition for “**mobile telephone**” in order to ensure consistency between the terms used in the FCC and FMCSA rules and to address emerging technologies.

Because the [Nextel] 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 CMV is the same as that of a hand-held mobile telephone and is prohibited.

The push-to-talk feature of a mobile telephone can be replaced with the use of two-way radios, or walkie-talkies:

The use of CB and two-way radios and other electronic devices by CMV drivers is outside the scope of consideration in this rulemaking.



TWO-WAY RADIOS FALL OUTSIDE OF REGULATION

FMCSA Response

§ 383.5 Definitions

* * * * *

Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service [CMRS], as defined in regulations of the Federal Communications Commission, 47 CFR 20.3. It does not include two-way or Citizens Band Radio services.

FCC Definitions:

Commercial mobile radio service. [CMRS]

A mobile service that is:

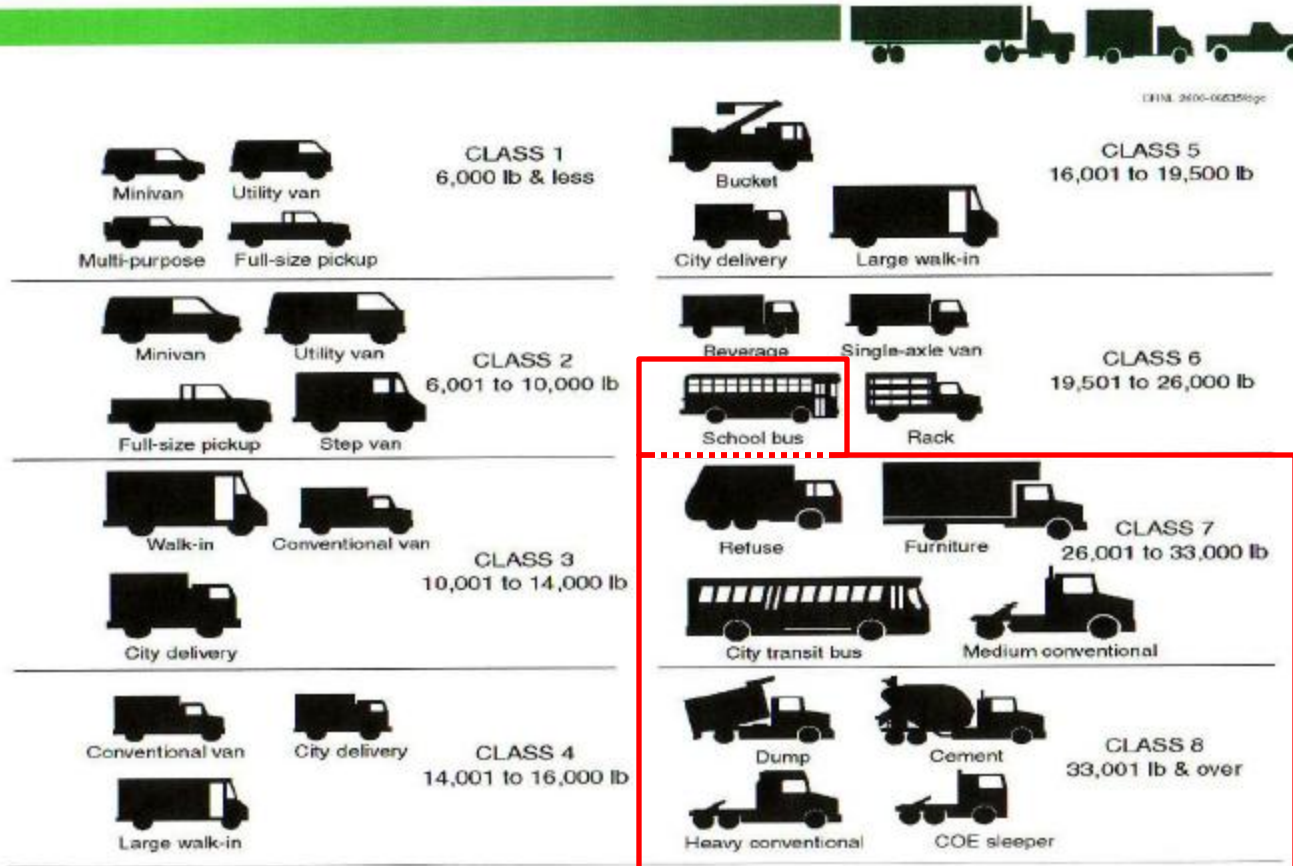
(a)(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain;

(2) An interconnected service; and

(3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(b) The functional equivalent of such a mobile service described in paragraph (a) of this section.

Truck Classifications



Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

- (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or
- (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of *hazardous materials* as defined in this section.

FAQ: Ban on Hand Held Cellular Phones

1Q: What is the effective date of the Mobile Telephone rule?

1A: *The effective date of the rule is January 3, 2012.*

2Q: Are wired or wireless earpieces allowed?

2A: *Yes. Hands-free use of a mobile telephone is allowed using either a wired or wireless earpiece, or the speakerphone function of the mobile telephone. Wireless connection of the mobile telephone to the vehicle for hands-free operation of the telephone, which would allow the use of single-button controls on the steering wheel or dashboard, would also be allowed.*

3Q: Are commercial motor vehicle (CMV) drivers allowed to use push-to-talk mobile communications equipment while driving?

3A: *Yes, provided the driver does not reach for, dial, or hold the actual mobile telephone in his/her hand while driving and the driver is able to touch the button needed to operate the push-to-talk feature from the normal seated position with the safety belt fastened. Generally, the use of this type of communications equipment does not require drivers to take their eyes off of the forward roadway because the button used to enable the driver to communicate can be operated from the normal seated position with the safety belt fastened. For example, if the mobile phone is mounted in a cradle or similar device near the driver, or there is a remote push-to-talk button near the vehicle controls to allow the driver to communicate without reaching for, dialing, or holding the actual mobile telephone in his/her hands while driving, the equipment may be used.*

FAQ: Ban on Hand Held Cellular Phones

4Q: Are holders of a commercial driver's license (CDL) subject to the regulation only when driving a CMV, as defined in 49 CFR 383.5, or any vehicle?

4A: *CDL holders are subject to the Federal rule only when driving a CMV.*

5Q: What drivers are covered by the Federal rule: intrastate or interstate? CDL holders? All CMVs?

5A: *This Federal rule covers both, **drivers of CMVs in interstate commerce**, and also any **drivers who operate a vehicle transporting a quantity of hazardous materials** requiring placarding under 49 CFR Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73. If a CMV driver is employed by a State or a political subdivision of a State (e.g. county, city, township, etc.), FMCSA safety regulations do not apply, even if the driver is engaged in interstate transportation. But if a CMV driver employed by a State or a political subdivision of a State is operating a vehicle that requires a CDL, **the applicable State traffic laws would govern** (e.g., Maryland's prohibition on the use of hand-held phones). The States have 3 years to implement by State law the disqualification provision.*

6Q: What is required of the employer in terms of company policy or training?

6A: *The rule does not require motor carriers to establish written policies in terms of company policy or training programs for their drivers. However, **employers are prohibited from allowing or requiring their drivers to use hand-held mobile phones**. A motor carrier may establish policies or practices that make it clear that the employer does not require or allow hand-held mobile telephone use while driving a CMV in interstate commerce. **The carrier is responsible for its drivers' conduct.***

FAQ: Ban on Hand Held Cellular Phones

7Q: Is dialing a phone number allowed under this rule?

7A: No. *Dialing a mobile telephone while operating a CMV in interstate commerce is prohibited by the rule. A **driver can initiate, answer, or terminate a call by touching a single button on a mobile telephone, earpiece, steering wheel, or instrument panel** – comparable to using vehicle controls or instrument panel functions, such as the radio or climate control system.*

8Q: Can a driver reach for a mobile telephone even if he/she intends to use the hands-free function?

8A: No. *In order to comply with this rule, a driver must have his or her mobile telephone located where the **driver is able to initiate, answer, or terminate a call by touching a single button** while the driver is in the seated driving position and properly restrained by a seat belt. If the mobile telephone is not close to the driver and operable while the driver is restrained by properly installed and adjusted seat belts, then the driver is considered to be reaching for the mobile phone, which is prohibited by the rule.*

9Q: Are tow trucks exempt?

9A: No. *The interstate operation of tow trucks that meet the definition of a CMV are not exempt. Tow trucks, however, are exempt when responding to police emergencies in accordance with 49 CFR 390.23(a)(3).*