

## PMAA Regulatory Report - November 29, 2011

**SUBJECT:** U.S. DOT - CDL Drivers  
**ISSUE:** Final Rule Restricting Use of Hand-Held Mobile Cell Phones by CDL Drivers  
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**EXECUTIVE SUMMARY:** The U.S. DOT issued a final rule that significantly restricts the use of hand-held mobile cell phones by CDL drivers while operating a commercial motor vehicle (CMV). The rule applies to both intrastate and interstate drivers who haul petroleum products. In addition, the rule amends the regulations to impose severe penalties on both drivers and employers for violations of the new restrictions including driver disqualification and civil penalties. The rule does not establish an outright ban on hand-held mobile cell phones but imposes severe restrictions on their use while operating a CMV. The National Transportation Safety Board recommended the new restrictions in order to reduce the number of distracted driving accidents involving CMV's. PMAA submitted comments on the rule and opposed an outright ban on cell-phone use by CDL drivers as initially proposed by the U.S. DOT.

### **U.S.DOT RESTRICTS USE OF HAND-HELD MOBILE CELL PHONES BY CDL/HAZMAT DRIVERS:**

The U.S. DOT's Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Material Safety Administration (PHMSA) amended the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMR) to **restrict** the use of **hand-held** mobile cell phones by drivers of commercial motor vehicles (CMVs). This rule is important to petroleum marketers because dispatchers typically communicate with cargo tank drivers in the field by cell phone. The final rule does not **ban** hand held mobile cell phones but restricts their use. The new requirements apply to both intrastate and interstate CDL drivers hauling hazardous materials requiring a DOT placard. The bottom line for compliance is that if the phone is mobile and must be held in the driver's hand when used, then it is prohibited when operating (driving) a CMV on a public highway or street.

The new rule imposes the following restrictions and penalties:

#### **HAND-HELD MOBILE CELL PHONE USE PROHIBITION:**

- **Hand-held** mobile cell phone use by a CDL HAZMAT driver operating (driving) a CMV on a public highway or street is **prohibited**.
- **Hand-held** mobile cell phone use by a CDL HAZMAT driver operating a CMV that is stopped in traffic on a public highway or street is **prohibited**. The prohibition **includes** periods when the CMV is stationary at traffic lights, stop signs or heavy traffic, etc. on a public highway or street.
- **Push-to-Talk** mobile radio/cell phone use by a CDL HAZMAT driver operating a CMV on a public highway or street is **prohibited**.
- **Hand-held** mobile cell phone use by a CDL HAZMAT driver operating a CMV is **permitted** when the CMV is pulled off or to the side of a public highway or street and becomes stationary. The CMV engine may remain idling. For example, drivers waiting in line at a terminal with engines idling are permitted to use hand held phones so long as the CMV is stationary. Drivers stopped at a traffic light or in stop-and-go traffic are prohibited from using a hand-held mobile cell phone.

- **Hand-held** mobile cell phone use by a CDL HAZMAT driver while operating a CMV on a public highway or street is permitted when necessary to contact law enforcement officers or other emergency responders.

#### **HANDS-FREE MOBILE CELL PHONE USE PERMITTED:**

- **Hands-free** mobile cell phone use by a CDL HAZMAT driver while operating a CMV is **permitted** provided: the device is not held in the driver's hand when in use; the device does not require pressing more than a single button to initiate or terminate a call; the driver is not required to reach for the device in an unsafe manner. Reaching in an unsafe manner includes reaching to the passenger side seat, reaching under the seat or reaching in any direction that requires unsafe adjustment or removal of seat belts or removal of eyes from the road (device must be within easy reach).
- **Two-Way Radios/CB** use by a CDL driver while operating a CMV is **permitted** at all times. Two way radio communication is unaffected by the new rule because the DOT lacks jurisdiction to regulate such devices.

**Important!** Use of a push-to-talk mobile cell phone with a two-way radio by a CDL HAZMAT driver while operating a CDL is **prohibited** because such devices are defined as hand-held mobile cell phones under both Federal Communications Commission and U.S. DOT regulations.

#### **PENALTIES FOR VIOLATION OF HAND-HELD MOBILE CELL PHONE PROHIBITION:**

- **Driver Disqualification** – The new rule provides for the disqualification from operating a CMV of any driver convicted of two or more violations within a three-year period. If a driver is convicted of committing a second violation within three years, he or she would be disqualified for 60 days. For three or more convictions for violations committed within three years, a driver would be disqualified for 120 days.
- **Civil Penalties Assessed on Driver** - In addition, the first and each subsequent violation of the prohibition against hand-held mobile cell phone use by a driver are subject to civil penalties in an amount up to \$2,750.
- **Civil Penalties Assessed on Employer** -This final rule also requires that employers must not allow or require CMV drivers to use a hand-held mobile cell phone while driving. Any violation by an employer would subject the employer to civil penalties in an amount up to \$11,000.

#### **COMPLIANCE:**

- The new restrictions on hand-held mobile cell phone use goes into effect 30 days after the final rule is published in the Federal Register. Publication is expected to take place within the next week.

**GOT QUESTIONS? CONTACT Mark S. Morgan, Esq., PMAA Regulatory Counsel**  
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