

# “In Brief”

## FMCSA Announces Rule Restricting the Use of Cellular Phones by Commercial Drivers

Attorney John F. Fatino and Law Clerk Mickie M. Damstetter

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### Background and Rationale:

On December 30, 2011, the Federal Motor Carrier Safety Administration's (FMCSA) new rule went into effect which restricted the use of hand-held mobile telephones by interstate Commercial Motor Vehicle (CMV) drivers.

The main rationale for this rule, as advanced by the FMCSA, is to maintain safety by minimizing driver distraction that occurs when a driver reaches and dials a hand-held mobile telephone. The agency claims using a hand-held mobile telephone may reduce a driver's situational awareness, performance, and decision making. Research purports to reflect that cell phones may pose a higher safety risk than other

activities while driving such as eating or adjusting an instrument.

### Discussion of Rule:

The new rule amends regulations in certain provisions of Title 49 of the Code of Federal Regulations. The new rule restricts a CMV driver from holding a mobile telephone to conduct a voice communication, dialing by pressing more than one button, or reaching in an unsafe manner for a mobile telephone. For example, a driver may not reach for a mobile telephone that is in the passenger seat or under the driver's seat. Therefore, if a driver of a CMV wants to use a mobile telephone, the driver needs to be able to comply with the rules, such as using a hands-free device or a single button located in close proximity to the driver.

The rule also adds a driver disqualification provision for: (1) interstate CMV drivers convicted of using a hand-held mobile telephone, and (2) Commercial Drivers License (CMD) holders convicted of two or more serious

traffic violation of State or local laws or ordinances on motor vehicle traffic control, including using a hand held mobile telephone. In addition, the rule requires interstate motor carriers to ensure their drivers are complying with the rule and prohibits motor carriers and employers from allowing or requiring CMV drivers to use hand-held mobile telephones. A limited exception allows CMV drivers to use a hand-held mobile telephone if it necessary to communicate with law enforcement officials or other emergency services. The rule does not apply to CB radios, fleet management system, or GPS devices.

For further information about this rule and other transportation issues, contact John F. Fatino, [fatino@whitfieldlaw.com](mailto:fatino@whitfieldlaw.com), Chair, Transportation Practice Group.

For more information or to speak with the Whitfield & Eddy attorney author or law clerk author, please contact:

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