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## Who Must Comply with the New Cell Phone Ban for Operators of Commercial Motor Vehicles?

**Legal Alert:** I am still receiving a significant amount of inquiries from trucking clients asking for clarification on the new cell phone ban for operators of commercial motor vehicles ("CMV's). This newsletter should provide some clarification on who must comply with the rule.

The ban does not apply to all vehicles regardless of size. Vehicles must meet the definition of "CMV" set out below. Therefore, it applies to both CDL and non-CDL drivers if they are operating a "CMV" as defined below.

The regulation applies to operators of CMV's in *interstate commerce* as defined in the FMCSA regulations. For example, if you have a CDL, you are not obligated to comply with the regulation unless you are operating a "CMV" as defined.

The ban also applies to *any driver* who operates 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 regardless of whether it is interstate commerce of local travel inside a particular state. Therefore, if you are *not* hauling hazardous materials requiring placarding or other select agents or toxins, then it only applies if you are operating a "CMV" in *interstate commerce*. Accordingly, smaller companies, who do not fall within the exception above, and only operate within a state are not obligated to comply with the regulation at this time *unless it has been adopted by your particular state*.

Trucking companies should be aware that under the regulation, the federal government is forcing the states to adopt similar, if not identical rules, by threatening to withhold highway monies. States are being given 3 years to adopt such rules. And, it is unknown how each state will define "CMV" for purposes of the state regulations. Therefore, even if you are only operating a CMV inside a particular state, you should check your individual state law to see if a similar ban has been adopted. At this time, Kentucky has not adopted a similar ban for operators of CMV's engaged only in intrastate commerce.

There is also an exception to the ban for those who are employed by Federal, State, or local governments (49 U.S.C. 31132(2)). Therefore, it does *not* apply to those entities since federal law exempts governmental entities and their employees from regulations promulgated by the FMCSA.

A "commercial motor vehicle" is defined in the regulations as:

A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

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

***For additional information on legal issues in the Trucking Industry, please contact TAMMY MEADE ENSSLIN at 859-963-9049.***

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