To: All Safety Risk Staff and Human Resource Staff  
Subject: Alert One! New Commercial Motor Vehicle driver requirements  
From: Pat Testa, Senior Consultant  

Many of us think of a commercial Motor vehicle as the following: **Commercial Motor Vehicle** – any 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 of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

2. Has a gross vehicle weight rating of 26,001 pounds or more: 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 materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

The reality is there are another group of commercial motor vehicles and thus another set of drivers of such vehicles. The other definition is in section 390.5 of the Federal Safety regulations. In this section it defines a commercial motor vehicle as: **Commercial motor vehicle** means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

1. Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

2. Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

3. Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

4. Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, and subchapter C.
It is the second group of commercial motor vehicles we need to address. If your company employs staff that on occasion fall under the 10,001 pound or more and are not Commercial Drivers License holders (CDL) which is perfectly acceptable they too fall under this new regulation. However even these same non-CDL employees must have several things in place such as medical card, driver’s qualification files etc.. It also puts this same class of employees in the new regulations pertaining to cell phone ban. I recently sent you the updates on this new regulation. An immediate revision to your existing policy and policy addendums should be signed reference both the texting ban and the new cell phone ban that took place January 3\textsuperscript{rd} of this year. The policy change for the texting and new cell phone ban is extremely urgent as it would show proof to any investigating agent for the Department of Transportation (DOT) or state agency that your company had informed their CDL and Non-CDL employees who operate commercial motor vehicles in your fleet of such ban. It would help your company defend its position against the up to $11,000 fine per incident in relationship to a company allowing employees to continue cell phone use in commercial motor vehicles.

Another immediate policy change needed is reference to both the CDL driver as well as those drivers that operate a commercial vehicle in the 10,001 and over category. Many know the DOT alcohol levels for CDL driver’s i.e. .002 to .0039 is a 24 hour detox period and .004 and above is a violation of the alcohol regulations under CFR40 part 382. The change should reflect 392.5 of the Federal Motor Carrier Safety regulations. It states that \textbf{392.5 Alcohol prohibition.}

(a) No driver shall—(1) Use alcohol, as defined in § 382.107 of this subchapter, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or (2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or (3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer \textit{as defined in} 26 U.S.C. 5052(a), \textit{of} the Internal Revenue Code \textit{of} 1954, and distilled spirits \textit{as defined in section}5002(a)(8), \textit{of such Code}. However, this does not apply to possession of wine, beer, or distilled spirits which are:(i) Manifested and transported as part of a shipment; or (ii) Possessed or used by bus passengers.(b) No motor carrier shall require or permit a driver to—

(1) Violate any provision of paragraph(a) of this section; or (2) be on duty or operate a commercial motor vehicle if, by the driver’s general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding four
hours.
(c) Any driver who is found to be in violation of the provisions of paragraph (a) or (b) of this section shall be placed out-of-service immediately for a period of 24 hours. (1) The 24-hour out-of-service period will commence upon issuance of an out-of-service order. This will show up under the new CSA basic for drug and alcohol and could prompt interventions, audits and fines (2) No driver shall violate the terms of an out-of-service order issued under this section. (d) Any driver who is issued an out-of-service order under this section shall: (1) Report such issuance to his/her employer within 24 hours; and (2) Report such issuance to a State official, designated by the State which issued his/her driver’s license, within 30 days unless the driver chooses to request