

**INFORMATION COLLECTION
SUPPORTING JUSTIFICATION
FRA Emergency Order No. 26**

- 1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION. ATTACH A COPY OF THE APPROPRIATE SECTION OF EACH STATUTE AND REGULATION MANDATING OR AUTHORIZING THE COLLECTION OF INFORMATION.**

Although most railroads have rules or procedures in place that prohibit or restrict the use of electronic devices such as cell phones and personal digital assistants (PDAs), these company rules and procedures have not proven effective in preventing serious train accidents caused by the unsafe use of such devices.

When FRA amended 49 CFR 220, Radio Standards and Procedures on January 4, 1999, it was re-titled to “Railroad Communications” to reflect its coverage of other means of wireless communications such as cell phones, data radio terminals, and other forms of wireless communications used to convey emergency and need-to-know information. The revisions to Part 220 were the result of recommendations by the Railroad Safety Advisory Committee (RSAC) Working Group, which consisted of a diverse group of subject matter experts representing a wide a wide array of railroad industry stakeholders. In its deliberations, the Working Group examined extensive safety data, discussed how to improve compliance with existing Federal regulations on radio standards and procedures, and considered whether to mandate radios and other forms of wireless communications to convey emergency and need-to-know information. FRA sought comments on whether non-radio wireless communications procedures paralleling the radio procedures in Part 220 should be adopted for cell phones and other wireless devices. Particularly, FRA wanted to know whether on-radio wireless communications had the same opportunities for misunderstanding as radio transmissions and how such procedures should be enforced. After reviewing the comments, FRA decided, at that time, not to promulgate non-radio wireless communications procedures, based primarily on the fact that the Working Group did not consider in depth how to ensure the accuracy and completeness of non-radio wireless communications. Accordingly, in the final rule, FRA addressed only the testing and failure of non-radio wireless communications equipment (See 49 CFR 220.37 and 220.38, respectively).

However, FRA emphasized in the preamble to the final rule that the procedures in section 220.61 (radio transmission of mandatory directives) should be followed even when a cell phone or other form of wireless communication is used to transmit mandatory directives. FRA stated, at the time, that it reserved the right to revisit the issue of non-radio wireless communications procedures, if necessary.

On March 7, 2004, FRA met with the National Transportation Safety Board (NTSB or Safety Board) at what they termed a “Safety with A Team” (SWAT) meeting. As a result of Safety Recommendation R-03-1, FRA told the Safety Board that it had instructed its inspectors to increase their monitoring of unauthorized use of cell phones, but that enforcement of any regulation in this area would be challenging. FRA stated that it was in the process of gathering copies of enhanced railroad operating rules that strengthened the restrictions railroads placed on the use of cell phones and that it would review all of these rules and procedures governing cell phone use to look for gaps, and consider options, to include the issuance of an FRA Safety Advisory.

In a letter to the NTSB, dated May 26, 2004, FRA subsequently provided copies of all relevant railroad operating rules and procedures relating to the use of cell phones and other wireless communication devices. FRA’s initial review of this material indicated that, while there is some disparity with respect to the detail of prohibitions concerning cell phone use, all railroads canvassed did have a rule that prevented and/or limited cell phone use.

At a meeting of the Operating Rules Working Group on September 27-28, 2007, held in Forth Worth, Texas, also attended by a representative of the NTSB, it was discussed and agreed that the railroad industry, with a representative to facilitate the process from the FRA, a “best practices” operating rule would be developed, and that, if the industry as a whole could adopt and enforce it, that approach would be considered by the Board in lieu of Federal intervention.

At a meeting of the Operating Rules Working Group held in Washington, D.C., on January 17-18, 2008, a draft of the “best practices” operating rule that was developed by the industry, was shared with Working Group and discussed at length. It was decided at that meeting that, while the proposed rule was acceptable, it needed further enhancements. The suggestion was made that FRA develop a Safety Advisory which would contain these additional enhancements, some of which were proposed at the meeting. FRA accepted this task and subsequently developed a proposed Safety Advisory on the use of cell phones and similar wireless communication devices by railroad operating employees. At a meeting of the Operating Rules Working Group held in Grapevine, Texas, on May 21-22, 2008, the proposed Safety Advisory on cell phone use was discussed and the document was further refined and enhanced to include many valuable suggestions. A final draft was then prepared for discussion at the next Working Group meeting. In the meantime, the course of events cited below was developing into the emergency situation FRA now addresses, persuading FRA to change its view of the necessity of immediate action.

The fatal railroad accidents listed below, *all involving the use of cell phones*, occurred between 2000 and 2008. The first two occurred during 2008, and are currently under investigation by the NTSB, FRA, or both.

- \$ September 12, 2008 – a head-on collision between a Southern California Regional Rail Authority (Metrolink) commuter train and a Union Pacific (UP) freight train which *resulted in the deaths of 25 people, the injury of numerous others, and more than \$7,105,500 in damages* occurred in Chatsworth, California. Both the NTSB and FRA are currently investigating this accident. Although NTSB has not yet determined the probable cause of the accident, preliminary information indicates the locomotive engineer of the Metrolink commuter train may have passed a stop signal. NTSB stated that a cell phone owned by the locomotive engineer was being used to send a text message within 30 seconds of the time of the accident.
- \$ June 8, 2008 – a *Union Pacific (UP) brakeman was struck and killed* by the train to which he was assigned. FRA’s investigation, which has not yet been completed, indicates the brakeman instructed the locomotive engineer via radio to back the train up and subsequently walked across the track into the path of the moving train. Information indicates that the brakeman was talking on his cell phone at the time of the accident.
- \$ July 1, 2006 – a northward Burlington Northern Santa Fe Railway Company (BNSF) freight train collided with the rear of a standing BNSF freight train at Marshall, Texas. Although there were no injuries, *damages were estimated at \$413,194*. Both trains had two person crews. The striking train had passed a “Stop and Proceed at Restricted Speed” signal and was moving at 20 mph. FRA determined (1) that the collision was caused by the failure of the locomotive engineer of the striking train to comply with the restricted speed and (2) that the locomotive engineer of the striking train was engaged in cell phone conversations immediately prior to the accident.
- \$ May 27, 2006 – an eastward Union Pacific Railroad (UP) freight train collided head on with a westward UP freight train at San Antonio, Texas. *There were four injuries, and damages were estimated at \$401,779*. Both trains had two-person crews. FRA determined that the collision was caused by the eastward train locomotive engineer’s inattentiveness because he was engaged in a cell phone conversation and by the conductor’s failure to supervise safe operations.
- \$ May 19, 2004 – one locomotive engineer died, and a train conductor suffered serious burns when two BNSF freight trains collided head on near Gunter, Texas. The southbound train was traveling approximately 37 mph and the northbound train was traveling at 40 mph when the collision occurred. The trains were being operated under track warrant control rules on non-signalized single track territory. *The collision resulted in the derailment of five locomotives and 28 cars, with damages estimated at \$2,615,016. Approximately 3,000 gallons of diesel fuel were released from the locomotives, which resulted in fire.*

The General Code of Operating Rules and the BNSF System General Order Number 37 dated March 7, 2004, restricted the use of cell phones and other electronic devices. Cell phones were not to be used by crewmembers while the train or engine was moving. However, cell phone use was allowed while the train or engine was stopped, providing that such use did not interfere with required duties. Safety Board investigators obtained records that showed the number and duration of cell phone calls made by crewmembers on both trains between 1:50 p.m. and the time of the accident. During this time, a total of 25 cell phone calls were made or received by the five crewmembers on both trains while the trains were in motion. Three of these calls were related to railroad business. The southbound engineer made two of the business related calls, and the northbound conductor made the third. The southbound engineer's cell phone records showed activity between 3:12 p.m. and 3:16 p.m. This time period coincides with the time that track warrant authority was being received by the conductor on the southbound train. (Track warrant No. 3583 was made effective at 3:17 p.m.) BNSF track warrant procedures required the receiver (the conductor on the southbound train in this case) to repeat back verbatim certain critical portions of the track warrant. In this instance, the track warrant had to be repeated back to the dispatcher several times before it was considered correct.

Following the 3:17 p.m. effective time on Track Warrant No. 3583, the dispatcher asked the engineer on the southbound train to use his cell phone to call him at the Network Operations Center. The engineer had to call the dispatcher twice because of poor transmission or reception during the first call. The first call to the dispatcher was made at 3:22 p.m., and the second call was made at 4:02 p.m. Both calls were recorded. The dispatcher asked the engineer to provide additional assistance to the conductor in future track warrant communications. Event recorder data indicate that both calls were made while the train was in motion. The conductor on the northbound train's cell phone records showed a call to BNSF work order reporting line 27 at 5:04 p.m. Event recorder data indicate that the train was in motion at the time. The last cell phone activity for the southbound crew was recorded at 5:31 p.m. The call lasted about two minutes while the train was stopped. The last cell phone activity for the northbound crew before the collision was recorded at 5:24 p.m. The call lasted about three minutes while the train was moving. A 911 call was originated from the BNSF 6351 brakeman's cell phone at 5:48 p.m.; the accident took place at approximately 5:46 p.m.

\$ May 28, 2002 – an eastbound BNSF coal train collided head on with a westbound BNSF intermodal train near Clarendon, Texas. Both trains had two-member crews, and all crewmembers jumped from the trains before their impact. *The conductor and engineer of the coal train received critical injuries. The conductor of the intermodal train received minor injuries; the engineer of the intermodal train was fatally injured.* The collision resulted in a fire that damaged or destroyed several of the locomotives and other railroad equipment. The cost of

the damages exceeded \$8,000,000.

The NTSB found that all four crewmembers involved in this accident had personal cell phones. According to cell phone records obtained by the Safety Board, the conductor of the coal train used his cell phone for brief calls before the train departed Amarillo. The cell phone belonging to the engineer of the coal train was used for two calls during the morning of the accident. At 8:05 a.m., a 23-minute call originated from the engineer's cell phone. After the completion of this call and after about 16-minutes of non-use, another call originated from the engineer's phone at 8:44 a.m. This time corresponds to the end of the last track warrant, which was given to the coal train at 8:43 a.m. This call, which lasted about 10 minutes, was to the same number as the previous call. The engineer said, and telephone company records confirm, that the number called was that of a family member. The engineer said that he could not recall the substance of the telephone call that day. He added that he usually called this family member, who was in failing health, each morning. The coal train passed the east end of Ashtola Siding, the location at which it should have waited for the arrival of the intermodal train, at about at 8:47 a.m. The engineer said he did not remember specifically being on the phone at the time his train passed the east end of Ashtola Siding.

In its investigation of the Clarendon accident, the NTSB found that the use of a cell phone by the engineer of one of the trains may have distracted him to the extent that he was unaware of the dispatcher's instructions that he stop his train at a designated point. The NTSB consequently issued recommendation R-03-01 to FRA: "Promulgate new or amended regulations that will control the use of cell telephones and similar wireless communication devices by railroad operating rule employees while on duty so that such use does not affect operational safety."

After the Clarendon accident and as a result of two additional collisions, BNSF, on June 18, 2002, issued instructions to operating employees that specifically prohibited the use of cell phones and laptop computers while on duty, with certain exceptions. Under these instructions, locomotive engineers are prohibited from using cell phones or laptop computers while operating the controls of a locomotive.

The following fatal train incidents occurred between 2000 and 2005 and are linked with cell phone usage:

- \$ December 21, 2005 – *a conductor working on The Kansas City Southern Railway Company (KCS) property at Copeville, Texas, was struck and killed when he stepped into the path of an approaching freight train. FRA's investigation disclosed that the contractor was talking on a cell phone at the time of the accident.*

\$ December 29, 2000, a BNSF freight train operating on the UP was stopped on a siding at Gillette, Wyoming, to allow another train to pass. *The conductor of the stopped train exited the leading locomotive and crossed over the track immediately in front of the passing train and was struck and killed.* The FRA investigation revealed the strong possibility that the conductor may have been distracted by his cell phone use.

During the course of regular inspection and enforcement activities, FRA railroad safety inspectors have observed railroad employees using cell phones in an unsafe manner, often in contravention of existing railroad rules and instructions. The inspectors took action to prevent an accident from occurring, but did so under FRA's general railroad safety authority, not pursuant to any Federal order, rule, standard, or regulation.

The following are just a few examples of the many unsafe behaviors cited in E.O. 26 that FRA inspectors observed and corrected:

\$ An FRA operating practices specialist observed a locomotive engineer at the controls of a moving passenger train answer a cell phone from his conductor. The conductor asked the locomotive engineer to order a taxi cab for the crew and the locomotive engineer placed the call.

\$ Two FRA operating practices inspectors observed a remote-control locomotive operator walking across the tracks with his head down and talking on a cell phone. The inspectors approached him, and he admitted that the call was not work-related.

\$ An FRA operating practices inspector observed a locomotive engineer receive a call on a cell phone while operating the train. The engineer answered the call and told the caller he would return his call later. When the inspector questioned the locomotive engineer about his actions, the engineer stated that he was a union representative and he needed to be available to his constituents.

\$ Three days after the head-on collision in Chatsworth, California, an FRA operating practices inspector observed a commuter rail engineer on another railroad answer a cell phone while awaiting a signal to depart the initial passenger station for his trip. The locomotive engineer answered the phone after the FRA inspector had identified himself.

The incidents noted above occurred in various parts of the country and involved both freight and passenger trains.

Based on the evidence cited above, the FRA Administrator finds that railroad operating employees are increasingly using cell phones and other electronic and electrical devices during railroad operations, in violation of railroad operating rules, in a manner and to an extent that these practices constitute an emergency situation involving a hazard of death or personal injury because use of these devices distracts the users' attention from safety critical duties. These obviously unsafe practices reflect the powerful influence of pervasive private use of cell phone and other electronic and electrical devices. Consequently, powerful intervention, in the form of Emergency Order 26 – and associated collection of information – is necessary to counteract that influence and to eliminate this source of extremely dangerous distraction in the railroad operating environment.

Pursuant to the authority of 49 U.S.C. 20104, delegated to the Federal Railroad Administrator by the Secretary of Transportation, FRA issued Emergency Order (E.O.) 26 on October 7, 2008 (see 73 FR 58702) to take effect on and after **October 27, 2008**. FRA is authorized to issue emergency orders when an unsafe condition or practice “causes an emergency situation involving a hazard of death or personal injury. These orders may immediately impose such “restrictions and prohibitions . . . that may be necessary to abate the situation.” Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. See 49 CFR 1.49. Railroads are subject to FRA’s safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101; 49 U.S.C. 20103.

2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.

This is a new collection of information. The proposed collection of information will be used by FRA to ensure that railroads and their employees fulfill the requirements that are set out in Emergency Order (E.O.) 26. Specifically, FRA will use the information collected to verify that railroads’ programs of operational tests and inspections, required under 49 CFR 217, are revised as necessary to include the requirements of E.O. 26 and that these program include a minimal number of operational tests and inspections (subject to adjustment as appropriate).

FRA will also use the proposed collection of information to ensure that railroads instruct (train) their operating employees and supervisors of operating employees concerning the requirements of E.O. 26 and implementing railroad rules and instructions. Such instruction must be sufficient to ensure that the requirements of E.O. 26 are understood, including any relevant distinctions between the minimum requirements of this rule and any more stringent requirements implemented by the railroad.

FRA will review any petitions for Relief from E.O. 26 to determine whether railroads have adopted other means of ensuring that their operating employees are not distracted from their duties by use of electronic or electrical devices or by implementing technology that will prevent inappropriate acts and omissions resulting in injury (and fatalities) to persons. Relief may be obtained only if such other means have been adopted by railroads.

Finally, the proposed collection of information will be used by railroads to ensure that their operating practices employees and supervisors of operating practices employees understand and follow the safety practices specified both in E.O. 26 and their own operating rules and instructions.

3. **DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G. PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION TECHNOLOGY TO REDUCE BURDEN.**

FRA strongly endorses and highly encourages the use of the latest information technology, wherever feasible, by the railroad industry to reduce burden. For many years, FRA has encouraged the use of advanced information technology, particularly electronic recordkeeping. However, it should be pointed out that all the burden for this information collection results from requirements that do not lend themselves to adoption of advanced information technology.

FRA inspectors will review in person railroads programs of operational tests and inspections to verify that they have been revised to incorporate the requirements of E.O. 26. Training of railroad operating employees and supervisors of operational employees in the requirements of E.O. 26 will take place on a face-to-face basis. Railroad petitions for relief from E.O. 26 are governed by the requirements in 49 CFR 211.47. Petitions for review of an Emergency Order must be submitted in writing to FRA. Upon receipt of a petition, FRA will immediately contact the petitioner and make the necessary arrangements for a conference to be held at the earliest date acceptable to the petitioner. At this conference, the petitioner will be afforded an opportunity to submit facts, arguments and proposals for modification or withdrawal of the Emergency Order.

It should be further noted that the burden for the proposed collection of information is relatively small.

4. **DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE**

USED OR MODIFIED FOR USE FOR THE PURPOSES DESCRIBED IN ITEM 2 ABOVE.

The proposed collection of information pertains to railroad workplace safety, specifically to the necessity of eliminating distractions caused by the use of cell phones and other electronic/electrical devices. In conjunction with 49 CFR 217 and the railroads' own operating rules and instructions, this Emergency Order – and its associated information collection – seeks to abate the recent rash of rail accidents/incidents that resulted in numerous fatalities, injuries, and significant monetary damages to railroad equipment. Similar data are not available from any other source.

This information to our knowledge is not duplicated anywhere.

5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF OMB FORM 83-I), DESCRIBE ANY METHODS USED TO MINIMIZE BURDEN.

This proposed collection of information will have a minimal impact on small businesses/small railroads because the majority of railroad employees affected by the Emergency Order work for the large Class I or Class II railroads, and it is these railroads and their employees who will be primarily incurring almost all of the burden hours resulting from the requirements of this Order.

Again, it bears mentioning that the estimated total burden for the proposed collection of information is relatively small.

6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

If this information is not collected, rail safety in this country will be considerably jeopardized. In particular, there are likely to be more rail accidents similar to the one in Chatsworth, California, and the other accidents/incidents cited above in answer question number one. Such accidents most likely will result in additional serious injuries and more fatalities to train crews, railroad workers, and members of the general public, as well as significant additional economic damages to railroad equipment.

Without the collection of information necessitated by this Emergency Order, FRA would have no way to enforce compliance with the requirements of E.O.26. Specifically, without this collection of information, it is unlikely that railroads will take the prescribed extra safety measure to revise their programs of operational tests and instructions (as necessary) to conform to the requirements of E.O. 26. Without these necessary revisions to their programs, railroads will not have a means or mechanism to change the unsafe

behavior of their operating practices employees that have resulted in so many injuries and fatalities already.

Also, without this collection of information, it unlikely that the nation's railroads will properly train their operational practices employees and supervisor of operational employees regarding the requirements of E.O. 26 and implementing railroad rules and instructions. Without this training, such railroad employees will not have the heightened awareness of the distractions and dangers of using cell phones and other electronic/electrical devices while on-duty present. Without this raised awareness and full compliance with the requirements of E.O. 26, more injuries to train crews, railroad operating employees, and members of the public and more economic damages to railroad equipment will result.

Finally, without this collection of information, railroads would have no way to seek relief from the requirements of E.O. 26 and FRA would have no way to evaluate whether railroads are able to adopt other means of ensuring that their operating practices employees are not distracted from their duties by use of cell phones and other electronic/electrical devices. FRA is willing to provide relief from this Emergency Order as long as equivalent levels of safety, required by the agency, are maintained.

In sum, this collection of information assists FRA in its primary mission of promoting and enhancing rail safety throughout the United States.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:

- **REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;**
- **REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;**
- **REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**
- **REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN THREE YEARS;**
- **IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**

- **REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;**
- **THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUTE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR**
- **REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.**

All other information collection requirements relating to E.O. 26 are in compliance with this section.

- 8. IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THOSE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORDKEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.

CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS--EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.

In accordance with the Paperwork Reduction Act of 1995 and 5 CFR 1320 (§1320.13), FRA is publishing a notice in the Federal Register on October 27, 2008, (see 73 FR 63764) requesting Emergency Clearance processing of the proposed collection of information associated with FRA Emergency Order (E.O.) 26, which takes effect on October 27, 2008, by **October 31, 2008**. Under the circumstances cited in answer to question number one of this Supporting Justification, FRA cannot reasonably comply with the normal clearance procedures specified in 5 CFR 1320 (regarding the two Federal Register Notices and normal Clearance time frames) because public harm is likely to result if normal clearance procedures are followed. Consequently, FRA asks OMB to waive them.

FRA has determined that public safety requires the issuance of E.O. 26 requiring railroads to restrict their operating practices employees use of cellular telephones and other distracting electronic/electrical devices to prevent further injuries and fatalities (similar to the ones previously detailed) while they are on-duty. FRA intends E.O. 26 – and associated collection of information collection – to reduce the risk of serious injury or death both to railroad employees and the general public, as well as to reduce the risk of additional railroad economic losses, caused by inappropriate use of cell phones and other electronic/electrical devices.

FRA anticipates that it will utilize the existing Railroad Safety Advisory Committee Operating Practices Working Group in the formulation of an amendment to 49 CFR Part 220 to address comprehensively the safety implications of the use of electronic devices by railroad employees. FRA will follow normal rulemaking and OMB Clearance procedures at that time. Once this subsequent rulemaking goes into effect, FRA will discontinue the Clearance associated with E.O. 26.

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEES.

There are no monetary payments or gifts made to respondents regarding the proposed information collection requirements resulting from this emergency order.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.

No assurances of confidentiality were made by the Federal Railroad Administration (FRA).

Information collected is not of a private nature.

- 11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.**

There are no questions of a sensitive or private nature involving the proposed collection of information associated with E.O. 26.

- 12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION. THE STATEMENT SHOULD:**
- **INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCES IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOURS FOR CUSTOMARY AND USUAL BUSINESS PRACTICES**
 - **IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEMS 13 OF OMB FORM 83-I.**
 - **PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES. THE COST OF CONTRACTING OUT OR PAYING OUTSIDE PARTIES FOR INFORMATION COLLECTION ACTIVITIES SHOULD NOT BE INCLUDED HERE. INSTEAD, THIS COST SHOULD BE INCLUDED IN ITEM 14.**

Note: Based on the latest information contained in FRA's database, there are 718 railroads in existence and approximately 130,000 railroad operating employees.

FRA Emergency Order No. 26, Notice No. 1

(1) Operational Testing.

- (i) The railroad's program of operational tests and inspections under 49 CFR 217 shall be revised as necessary to include the requirements of this Order (E.O. 26) and shall specifically include a minimum number of operational tests and inspections, subject to adjustment as appropriate.
- (ii) When conducting tests and inspections under 49 CFR 217, a railroad officer, manager or supervisor is prohibited from calling the personal electronic or electrical device or the railroad-supplied electronic or electrical device used by a locomotive engineer while the train to which the locomotive engineer is assigned is moving.
- (iii) When an operational test involves stopping a trains, interrupting a switching operation, or interrupting an activity involving employees of the railroad (e.g., through use of a banner, signal, or radio communication), the limitations set forth in this Order regarding the use of electronic and electrical devices shall continue to be in effect even though the train movement, switching movement, or other activity is temporarily suspended.

FRA estimates that all 718 railroads will revise their programs of operational tests and inspections under the above requirement. It is estimated that it will take approximately one (1) hour to complete the required revision. Total annual burden for this requirement is 718 hours.

	Respondent Universe:
	718 Railroads
Burden time per response:	1 hour
Frequency of Response:	One-time
Annual number of Responses:	718 revised programs
Annual Burden:	718 hours

Calculation: 718 programs x 1 hr. = 718 hours

Additionally, FRA estimates that there are approximately 20 new railroads formed every year that will also need to revise their programs of operational tests and inspections under the above requirement. It is estimated that it will take approximately one (1) hour to complete the required revision. Total annual burden for this requirement is 20 hours.

		Respondent Universe: 20 New
	Railroads	
Burden time per response:	1 hour	
Frequency of Response:	One-time	
Annual number of Responses:	20 revised programs	
Annual Burden:	20 hours	

Calculation: 20 programs x 1 hr. = 20 hours

Total annual burden for this entire requirement is 738 hours (718 + 20).

(2) Training

Each railroad shall instruct each of its railroad operating employees and supervisors of railroad operating employees concerning the requirements of this Order and implementing railroad operating rules and instructions. Such instruction shall be sufficient to ensure that the requirements of this Order are understood, including any relevant distinctions between the minimum requirements of this rule and any more stringent requirements implemented by the railroad.

FRA estimates that all 130,000 railroad operating employees will be instructed in accordance with the above requirement. It is estimated that it will take approximately 15 minutes to instruct each railroad operating employee. Total annual burden for this requirement is 32,500 hours.

		Respondent Universe: 130,000 RR
	Operating Employees	
Burden time per response:	15 minutes	
Frequency of Response:	One-time	
Annual number of Responses:	130,000 trained employees	
Annual Burden:	32,500 hours	

Calculation: 130,000 trained employees x 15 min. = 32,500 hours

(3) Relief

A railroad may obtain relief from this Order by adopting other means of ensuring that railroad operating employees are not distracted from their duties by use of electronic or electrical devices or by implementing technology that will prevent inappropriate acts and omissions from resulting in injury to persons. Such relief may be obtained by petition to

the Associate Administrator for Safety establishing that the alternative means provide equivalent safety.

FRA estimates that it will receive zero (0) petitions under the above provision. Consequently, there is no burden associated with this requirement.

Total annual burden for this entire information collection is 33,238 hours (738 + 32,500).

13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COSTS OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).

- **THE COST ESTIMATES SHOULD BE SPLIT INTO TWO COMPONENTS: (A) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER ITS EXPECTED USEFUL LIFE); AND (B) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COSTS FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.**

- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.**

- **GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEP RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.**

FRA does not anticipate any extra costs to respondents, since fulfilling the requirements of E.O. 26 will occur during the course of railroad operating employees and supervisors' railroad operating employees of normal duties.

14. **PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COSTS, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATIONAL EXPENSES SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF, AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.**

There is no extra cost to the Federal Government since FRA's Associate Administrator for Safety and the agency's safety inspectors will review petitions and railroad programs of operational tests and inspections, respectively, during the course of their routine duties.

15. **EXPLAIN THE REASONS FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-I.**

These are new information collection requirements. Hence, there are no program changes or adjustments to report in items 13 or 14 of the OMB Form 83-I.

16. **FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.**

FRA does not have any plans to publish the results of this collection of information.

17. **IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE**

REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register.

18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-I.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. Specifically, this collection of information seeks to improve safety by imposing requirements that will serve to heighten awareness on the part of railroads and their operating employees and supervisors of railroad operating employees of the distractions and dangers of using cell phones and other electronic/electrical devices while on-duty present. Without this raised awareness and full compliance with the requirements of E.O. 26, more injuries to train crews, railroad operating employees, and members of the public and more economic damages to railroad equipment will result. FRA believes this collection of information will help prevent accidents similar to the recent spate of train accidents cited earlier in this document, which resulted from employees failing to follow proper railroad operating rules and instructions. In such a dangerous every day environment, attention to detail and adherence to proper operating practices is critical to ensuring safety for all.

Without the collection of information necessitated by this Emergency Order, FRA would have no way to enforce compliance with the requirements of E.O.26. Specifically, without this collection of information, it is unlikely that railroads will take the prescribed extra safety measure to revise their programs of operational tests and instructions (as necessary) to conform to the requirements of E.O. 26. Without these necessary revisions to their programs, railroads will not have a means or mechanism to change the unsafe behavior of their operating practices employees that have resulted in so many injuries and fatalities already.

Finally, without this collection of information, railroads would have no way to seek relief from the requirements of E.O. 26, and FRA would have no way to evaluate whether railroads are able to adopt other means of ensuring that their operating practices employees are not distracted from their duties by use of cell phones and other electronic/electrical devices. FRA is willing to provide relief from this Emergency Order as long as equivalent levels of safety, required by the agency, are maintained.

In sum, this collection of information enhances rail safety. In this information collection and indeed in its other information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.