

**SUPPORTING JUSTIFICATION  
RAILROAD COMMUNICATIONS  
OMB No. 2130-0524; RIN 2130-AC21**

Summary of Submission

- This Notice of Proposed Rulemaking (NPRM) is a revision to the previously approved submission cleared by OMB on January 24, 2008.
- FRA is publishing a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** regarding its Restrictions on Railroad Operating Employees' Use of Cellular Telephones and Other Electronic Devices on May 18, 2010. See 75 FR 27672. The published NPRM adds new Subpart C to 49 CFR 220.
- Total number of burden hours requested for this submission is **372,004 hours**.
- Total number of burden hours previously approved is **238,704 hours**.
- The increase in burden from the last approved submission is **133,300 hours**.
- Total **program changes** amount to/increased the burden by **122,795 hours**.
- Total **adjustments** increased the burden by **10,505 hours**.
- **\*\*The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 12-25).**
- **\*\*The answer to question number 15 itemizes all adjustments and program changes.**

**1. Circumstances that make collection of the information necessary.**

Over the past few years, distracted driving has gone from a dangerous practice to a deadly epidemic. Each day, drivers are distracted by cellphones, eating, conversations with passengers, portable electronic devices, or some other type of multitasking. This type of behavior results in vehicle accidents and significant costs to our nation's economy. DOT recognizes that the problem is growing worse, especially among younger drivers, as noted in a Pew Research Center report, *Teens and Distracted Driving* (Madden and Lenhart, 2009).

In response to this growing problem, DOT hosted a Distracted Driving Summit in Washington D.C. ([http://www.rita.dot.gov/distracted\\_driving\\_summit/](http://www.rita.dot.gov/distracted_driving_summit/)). At the Summit, DOT brought together safety and law enforcement experts as well as young adults whose

distracted driving had tragic consequences. Attendees heard the testimony of families who lost loved ones because someone else had chosen to send a text, dial a phone or become occupied with another activity while driving. In addition to hosting the Summit, DOT has reviewed recent research and has decided to take a more systematic look at the issue and its many dimensions.

FRA has discovered numerous examples proving the danger of distracting electronic devices. These examples indicate the necessity of restrictions on the use of such electronic devices. Some are listed below, though all of these and more can be found in the full text of FRA Emergency Order 26.

1. On June 8, 2008, a UP brakeman was struck and killed by the train to which he was assigned. FRA's investigation indicated that 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. The brakeman was talking on his cell phone at the time of the accident.
2. On July 1, 2006, a northward BNSF 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 indication and was moving at 20 mph. FRA determined that the collision was caused by the failure by the locomotive engineer on the striking train to comply with restricted speed and that he was engaged in cell phone conversations immediately prior to the accident.
3. On December 21, 2005, a contractor working on property of The Kansas City Southern Railway Company 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.
4. One locomotive engineer died and a train conductor suffered serious burns when two BNSF freight trains collided head on near Gunter, Texas, on May 19, 2004. The collision resulted in the derailment of 5 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 a fire. NTSB 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, approximately 5:46 p.m. During this time, a total of 25 cell phone calls were made and/or received by the five crewmembers on both trains while the trains were in motion. Only three of these calls were related to railroad business.
5. At 8:57 a.m. on May 28, 2002, an eastbound BNSF coal train collided head on with a westbound BNSF intermodal train near Clarendon, Texas. The conductor and engineer

of the coal train received critical injuries. The engineer of the intermodal train was killed. The cost of the damages exceeded \$8,000,000.

The NTSB found that all four crewmembers involved in this accident had personal cell phones. It also 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.

On April 7, 2007, a UP westbound freight train, proceeding at 20 mph, struck the rear unattended distributive power locomotive of a stopped westbound UP empty unit coal. The 2-man crew of the coal train was located in the lead locomotive. The accident occurred at milepost 269.1, near Independence, Missouri, and caused a derailment. Total reportable damages for this accident were \$117,129. The cause of the accident was the crew's failure to comply with interlocking signal displaying a stop indication. The inattentiveness on the part of the crew of westbound freight train resulted in it passing a signal displaying stop indication.

On October 7, 2008, FRA issued Emergency Order No. 26 ("Order") restricting the on-duty use of cellular telephones and other electronic devices (*See* 73 **Federal Register** 58702, October 7, 2008). This FRA action was in part a response to the September 12, 2008, head-on collision between a Southern California Regional rail authority (Metrolink) commuter train and a Union Pacific Railroad Company (UP) freight train in Chatsworth, California. This accident resulted in 25 deaths, numerous injuries, and more than \$7 million in damages. Information discovered during the NTSB investigation indicates that the locomotive engineer of the Metrolink commuter train passed a stop signal. NTSB stated that a cell phone owned by the commuter train engineer was being used to send a text message within 30 seconds of the time of the accident.

In the period from the effective date of Emergency Order No. 26, October 27, 2008, through December 7, 2009, FRA inspectors discovered approximately 200 instances in which the Order may have been violated. FRA's Office of Railroad Safety recommended enforcement action against the employee or railroad in 36 of these instances. All 36 of these actions were based on a railroad employee's using an electronic device, failing to have its earpiece removed from the employee's ear, or failing to have the device turned off in a potentially unsafe situation. Of these 36 instances, approximately half of them involved an employee using or failing to have a cell phone turned off while in the cab of a locomotive during a potentially hazardous time. In addition, 33 of the incidents recommended for enforcement action involved personal, as opposed to railroad-supplied, devices. The hazard of distracting electronic devices has been made abundantly and, at times, tragically clear. FRA inspectors have noticed a decrease in the unsafe use of electronic devices within locomotives cabs since the Order became effective, but the problem still exists.

Congress required the Secretary of Transportation (Secretary) to complete a study on the

safety impact of the use of personal electronic devices by safety-related railroad employees by October 16, 2009, and to report to Congress on the results of the study within six months after its completion. See section 405(a) and (c) of the Rail Safety Improvement Act of 2008 (RSIA), Pub. L. 110-432, Div. A, 122 Stat. 4848, Oct. 16, 2008 (122 Stat. 4885, 49 U.S.C. 20103 note). Section 405(d) of the RSIA authorizes the Secretary to prohibit the use of personal electronic devices that may distract employees from safely performing their duties based on the conclusions of the required study. The Secretary, in turn, has delegated the responsibility to carry out these duties and this authority to the Administrator of FRA. 49 CFR 1.49 (oo).

FRA is proposing to amend its railroad communications regulations by restricting use of cellular telephones and other distracting electronic by railroad operating employees. This proposed rulemaking would codify most of the requirements of FRA Emergency Order No. 26 (Order). FRA, however, proposes that some of the substantive requirements of that Order, as well as its scope, be changed by this rulemaking to accommodate changes previously recommended by a Petition for Review of that Order and a number of amendments that FRA believes are appropriate.

**2. How, by whom, and for what purpose the information is to be used.**

The information is used by FRA to promote safety in rail operations and to ensure compliance by railroads and their employees with the requirements of this Part. FRA will review the information collected under proposed new Subpart C (§ 220.307) to ensure that railroads amend their code of operating rules to clearly define for their employees the authorized business purposes for using a railroad-supplied electronic device. It is imperative that railroad employees be completely focused on performing their assigned duties and that they understand all restrictions on the use of cell phones and other electronic devices – both the requirements of this Part and any more stringent railroad operating rule requirements. In proposed section § 220.307(b), FRA spells out the restrictions on the use of railroad-supplied electronic devices for locomotive engineers.

The safety briefings mandated by § 220.307(c) that involve all locomotive crewmembers on freight and passenger locomotives relating to the exception for use of a mobile telephone or remote computing device will be used by these employees to clearly communicate to one another the circumstances where all agree that it is safe to use the railroad-supplied mobile telephone or remote computing device without endangering cargo, passengers, or themselves. The experience and wisdom of the group through complete unanimity on use of mobile telephone or other electronic device will help to ensure the safety of all.

FRA will review railroad required written programs of instruction, training, and examination of their operating employees/supervisors of operating employees on the application of the railroad's operating rules implementing this subpart under proposed

§ 220.313 to ensure that railroads develop and implement a program addressing the requirements of this Part. FRA inspectors will review the required records to verify that operating employees are actually trained to understand the proper and improper use of mobile telephones and other electronic devices.

FRA reviews waiver petitions to determine whether it is appropriate and in the public interest to grant exceptions to any of the requirements of this regulation. The instruction, re-instruction, and operational testing of railroad employees is used by FRA and railroads to ensure that employees are thoroughly familiar with the proper use of radio communication/electronic devices and the railroad's operating rules governing the use of radio communication/electronic devices in daily railroad operations, and to ensure that these employees are not needlessly distracted and can quickly and effectively respond to any situation, particularly emergencies that might arise, which would jeopardize the health and safety of train crews, roadway workers, passengers, and others working/traveling in the rail environment.

FRA's Office of Safety personnel have reviewed and continue to review railroads operating rules records concerning radio communications to determine that the minimum standards established by the regulation are being met. The information collected enables both the railroads and FRA to focus attention on and improve those procedures which are unique to radio-train operations. FRA's analysis of the information collected is used to identify unsafe operating practices in the use of radio communications in railroad operations, and to ensure that railroads take corrective measures concerning any unsafe operating practices. If the information were not collected, accidents would then be the primary method of identifying unsafe practices, and prevention efforts would be severely hampered.

Radio and all primary and redundant wireless communication equipment are required to be tested by railroad employees to ensure that they are functioning properly. The information is used by railroads to repair or replace malfunctioning equipment and to ensure that railroad employees – train crews, dispatchers, roadway workers, signalmen, flagmen, etc. – can communicate with one another and railroad management regarding daily railroad operations, work assignments, and other issues that may arise impacting train movements.

Mandatory directives transmitted by radio, which are required to be copied down in writing and then immediately repeated after receipt by the receiving employee, are used by railroads and railroad employees to ensure the safe operation of trains and other on-track equipment, as well to enhance on-track safety for roadway workers and other railroad employees. In particular, before a mandatory directive is acted upon by a train crew, the conductor and locomotive engineer must have a written copy of the mandatory directive and make certain that the mandatory directive is read and understood by all members of the crew who are responsible for the operation of the train. Thus, all train crew members will have a clear understanding of the nature of the train movement and

will act accordingly. Mandatory directives, which have been fulfilled or cancelled, must be marked with an “X” or in accordance with the railroad’s operating rules, and retained for the duration of the train crew’s work assignment. Train crews execute these markings to ensure that they are not operating with a track warrant or mandatory directive that is no longer in effect. Train crews use this information or follow this operating procedure to ensure that only current mandatory directives are carried out and trains are moved in an authorized, appropriate, and safe manner. Thus, by reducing the likelihood of movement errors, railroad safety is considerably enhanced.

**3. Extent of automated information collection.**

Over the years, FRA has strongly encouraged and highly endorsed the use of advanced information technology, wherever possible, to reduce burden. In particular, FRA has greatly encouraged electronic recordkeeping by railroads for many years. Proposed § 220.307, and proposed § 220.313 involve or permit electronic responses.

In keeping with the requirements of the Paperwork Reduction Act (PRA) and the Government Paperwork Elimination Act (GPEA), the minimum standards imposed by this regulation are sufficiently broad to permit a railroad to comply through the use of improved technology, represented by closed circuit television or other advances in micro-circuitry transmission in the communication of train orders.

Given the current state of radio and wireless communication, it should be noted that the information collection requirements presented by this rule involve the minimal use of paper. Where written paper requirements are specified, such as the manual copying of mandatory directives, FRA has done so to improve safety in the daily railroad environment by reducing the likelihood of misunderstandings or miscommunication between dispatchers/operators and train crews, and dispatchers/operators and other railroad employees before a mandatory directive is acted upon.

Finally, it should be noted that requirements under § 220.25, and § 220.37 involve or permit electronic responses, and thus approximately 46 percent of all responses can be kept electronically.

**4. Efforts to identify duplication.**

The information collection requirements to our knowledge are not duplicated anywhere.

Similar data are not available from any other source.

**5. Efforts to minimize the burden on small businesses.**

The U.S. Small Business Administration (SBA) stipulates in its “Size Standards” that the largest a railroad business firm that is “for-profit” may be, and still be classified as a

“small entity,” is 1,500 employees for “Line-Haul Operating Railroads,” and 500 employees for “Switching and Terminal Establishments.” “Small entity” is defined in the Act as a small business that is not independently owned and operated, and is not dominant in its field of operation. SBA’s “Size Standards” may be altered by Federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes “small entities” as railroads which meet the line haulage revenue requirements of a Class III railroad. The revenue requirements are currently \$20 million or less in annual operating revenue. The \$20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board’s (STB) threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

Small entities that are not subject to this rule include railroads that do not operate on the “general railroad system of transportation” due to FRA’s current exercise of its jurisdiction (*See* 49 CFR Part 209, Appendix A). FRA’s jurisdictional approach greatly reduces the number of tourist, scenic, historic, and excursion railroads which are subject to this rule and its associated burdens. FRA estimates that approximately 180 small entities will be exempted from the requirements of this regulation, since they do not operate on the general system of transportation.

FRA believes that there will not be significant impact on a substantial number of small entities both cost wise and paperwork wise.

## **6. Impact of less frequent collection of information.**

If FRA did not collect this information or collected it less frequently, railroad safety would be directly and adversely impacted. Without the information collected, FRA would be significantly hindered in detecting unsafe or undesirable trends in railroad operations and in taking the necessary timely action to correct/eliminate actual or potential problems. Such hindrance could lead to increased numbers of accidents/incidents with corresponding casualties – injuries and deaths – to train crews, railroad passengers, roadway workers, and others operating on or near the rail environment.

Without this collection of information, FRA would have no way of determining whether it is safe, appropriate, and in the public interest to grant exceptions to railroads concerning any of the requirements of this part. By having the ability to review and evaluate waiver petitions, FRA can make informed decisions and thus ensure that railroads adhere to and maintain high levels of safety.

Clear and accurate communication -- without needless distractions of cell phones and other unnecessary electronic devices -- is critical for the safe movement of trains in this country. Based on recent railroad accident history, it is imperative that railroads conform

to the requirements of this Part and include in their operating rules restrictions on the use of mobile telephones and other electronic devices. It is essential that railroad employees be instructed and understand the basic restrictions imposed on the use of cell phones and other electronic devices by this Part and restrictions imposed by their railroad employers (which may be more stringent).

Without this collection of information, mandatory directives might not be copied down in writing and repeated in their entirety to train dispatchers or operators. Without this method of verifying the accuracy and completeness of a mandatory directive, train crews might engage in improper, unauthorized, or unsafe train movements leading to increased numbers of accidents/incidents and corresponding casualties.

Clear communication will not occur if the equipment is not working properly. Without this collection of information and the requirement that each radio, and all primary and redundant wireless communication used under § 220.9 and § 220.11 be tested prior to the commencement of the work assignment to ensure proper functioning, FRA would have no way to verify that these tests were completed and no way to know that the equipment works as intended. Malfunctioning radios could lead to improper, unsafe, or unauthorized train movements, which could result in increased numbers of accidents/incidents and greater numbers of train crew and roadway worker injuries and fatalities.

Without this collection of information, FRA would have no means of assuring that railroad employees were properly trained in the use of radios and wireless communications. Such initial training and periodic re-training serve to enhance rail safety by fostering more knowledgeable and better trained railroad employees on their railroads' current operating practices. More knowledgeable and better trained railroad employees will promote reliable, high quality radio communications. These improved communications will help ensure that movement authorities are clearly understood and implemented, and will also facilitate the transmission of emergency and security warnings, thereby helping to expedite emergency assistance in the event of a serious accident/incident. The overall net result is likely to be the authorized, appropriate, and safe movement of trains as well as a reduction in the number and severity of rail accidents/incidents and corresponding casualties experienced by train crews, railroad workers, motor vehicle operators, and the traveling public.

In sum, this collection of information assists FRA in fulfilling its primary mission, which is to promote and enhance national rail safety throughout the United States.

7. **Special circumstances.**

All information collection requirements are in compliance with this section.

8. **Compliance with 5 CFR 1320.8.**



FRA is publishing a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** regarding its Restrictions on Railroad Operating Employees' Use of Cellular Telephones and Other Electronic Devices on May 18, 2010. See 75 FR 27672. In this publication, FRA is soliciting public comments on the proposed rule and its accompanying information collection requirements. FRA will respond to any comments it receives in the agency final rulemaking and accompanying Supporting Justification.

### Background

FRA has already received significant input from an RSAC working group on the issue of railroad operating employees using electronic devices. At the time that FRA decided to issue an Emergency Order, FRA had already been working within the RSAC's Operating Rules Working Group to create an FRA Safety Advisory and was near a final draft. That proposed Safety Advisory and the suggestions and concerns voiced by members of the RSAC were instrumental in FRA's development of the Order.

Despite these previous consultations and discussions with stakeholders, there was still concern about some of the requirements of the Order. On November 14, 2008, the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers and Trainmen (BLET) (collectively, "Unions") jointly filed a Petition for Review (Petition) of the Order. The Petition cited four concerns:

- (1) The Order did not exempt deadheading employees who were in the body of a passenger train or railroad business car, or inside of the cab of locomotive that was not the lead locomotive of the train;
- (2) The Order prohibited employees from taking a picture or video of a safety hazard with an electronic cameras;
- (3) The Order prohibited the use of calculators;
- (4) The Order prohibited the use of Global Positioning System (GPS) tracking devices, even to verify the accuracy of the speed indicator in a controlling locomotive.

This proposed rule addresses the Unions' concerns and adopts the substance of many of their suggestions.

The Petition recommended adding an exception for deadheading employees to use cell phones. The specific language proposed was as follows:

A railroad operating employee who is deadheading may use a cell phone while within the body of a passenger train or railroad business car, or while inside the cab of a locomotive that is not the lead locomotive of the train on which the employee is deadheading.

FRA recognizes that the scope of the Order is far-reaching and, in some cases, covers employees in situations in which the safety hazards that the Order was designed to prevent do not arise. The Order currently states, “Use of a personal electronic or electrical device to perform any function other than voice communication while on duty is prohibited.” A railroad operating employee is on duty even when he or she is simply deadheading to a duty station, even if the deadheading takes place in a motor vehicle. He or she is not, however, on duty or off duty, but in limbo, if deadheading from a duty station to the point of final release and so is not currently covered by the Order even if he or she is distracting a locomotive engineer operating a train by talking on a cell phone right next to him or her. FRA has decided to address the issues in deadheading directly to guard against the hazards of distractions by electronic devices in a more focused and consistent manner.

The proposed rule allows deadheading railroad operating employees who are not in the cab of a controlling locomotive to use electronic devices if that use does not interfere with an employee’s personal safety or performance of safety-related duties. The proposed rule would require deadheading employees within the cab of a controlling locomotive to have electronic devices turned off when the train is moving or in other situations in which the crewmembers responsible for operating the train need to be able to focus. FRA believes that these proposed changes would restrict the use of electronic devices in a more appropriate manner to address safety concerns.

The Petition also recommended that cameras be permitted to document safety hazards. Specifically, it recommended the following language to be added as an exception:

An electronic still or video camera may be used to document a safety hazard or a violation of a rail safety law, regulation, order or standard; provided, that (1) the use of a camera in the cab of a moving train may only be by a crew member other than the locomotive engineer, and (2) the use of a camera by a train employee on the ground is permissible only when (a) the employee is not fouling a track, (b) no switching operation is underway, (c) no other safety duties are presently required, and (d) all members of the crew have been briefed that operations are suspended. The use of the photographic function of a cell phone is permitted under these same conditions.

FRA believes that allowing employees to document safety hazards could be useful in certain situations, but realizes that cameras can be exceptionally distracting. To that end, FRA is proposing the following: the camera may only be used to document a safety hazard or safety violation; the camera must be a stand-alone device and turned off immediately after the picture is taken; and locomotive engineers must not take pictures in the cab of the controlling locomotive of a moving train.

The use of calculators was another desired exception contained within the Petition. In particular, the Petition requested the following exemption:

When mathematical calculations are required for safe train movement (e.g., managing correct horsepower per ton, calculating tons per operative brake, dynamic brake and tractive effort compliance, and correcting train length), it is permissible to perform such calculations by using an electronic calculator, or by using the calculator function of a cell phone or electronic timepiece.

FRA agrees that train crews can have a legitimate need for a calculator in some instances. To that end, FRA has decided to exclude stand-alone calculators from all restrictions within this subpart as long as the calculator is used for an authorized business purpose and does not interfere with the performance of any employee's safety-related duties. The proposed rule, however, does not permit the use of a calculator function of a cell phone or electronic timepiece. Enforcement of restrictions on electronic devices is already difficult because the prohibited use often has to be witnessed first-hand for a violation to be discovered. If the exception existed as recommended by the Petition, railroad operating employees caught using their cell phones for texting might allege that they were using the calculator functions instead. Requiring that the calculator be a stand-alone device prevents this enforcement problem.

Noting that FRA regulations require speed indicators of most locomotives to be checked as soon as possible after departure, the Petition requested that the use of Global Positioning System (GPS) devices be excluded from the Order for that purpose. The Petition requested an exception that stated, "A Global Positioning Satellite (GPS) tracking device may be used in order to verify the accuracy of the speed indicator in a controlling locomotive."

FRA is concerned that these devices could distract operating employees and potentially create an unsafe situation. We do not believe that any potential advantage of allowing these devices outweighs the safety hazard involved and accordingly such use is proposed to be prohibited.

Beyond the suggestions and concerns formally addressed in the Petition, FRA has realized that the Order, in some instances, covered more situations and devices than was intended or desired. For example, some diabetics use electronic devices to monitor glucose. These devices arguably do not fall under the Order's exception for devices that enhance an individual's ability to perform safety-related tasks. FRA is proposing an exception for medical devices to encompass both devices that enhance an ability to perform safety-related tasks, such as hearing aid, and other devices that protect an employee's health and well-being.

The Order has an exception for railroad operating employees to use a railroad-supplied or railroad-authorized electronic device to conduct train or switching operations "under conditions authorized under 49 CFR Part 220." This exception was included to reflect the reality that many small railroads use cell phones or similar devices instead of a

working radio and to allow those railroads to continue to do so. The proposed rule clarifies that this exception was only intended for small railroads.

FRA is considering amending 49 CFR Part 240, Qualification and Certification of Locomotive Engineers, to add violations of this subpart as a basis for revoking a locomotive engineer's certification. See 49 CFR 240.117(e). In this Notice of Proposed Rulemaking, FRA specifically invites comments on this issue and, based on the comments received, may include a revision of part 240 in the final rule issued in this rulemaking.

**9. Payments or gifts to respondents.**

There are no monetary payments or gifts made to respondents associated with the information collection requirements contained in this regulation.

**10. Assurance of confidentiality.**

Information collected is not of a confidential nature, and FRA pledges no confidentiality.

**11. Justification for any questions of a sensitive nature.**

There are no questions of a sensitive or private nature involving this regulation.

**12. Estimate of burden hours for information collected.**

*Note: Based on the latest FRA data, there are approximately 728 railroads currently operating in the United States.*

**§ 220.8 Waivers**

Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered. Each petition for waiver must be filed in the manner and contain the information required by Part 211 of this chapter.

FRA estimates that approximately six (6) waiver petitions will be filed each year due to this requirement. It is estimated that it will take approximately one (1) hour to complete and mail each petition. Total annual burden for this requirement is six (6) hours.

Respondent Universe:

728  
railroads

Burden time per response:	1 hour
Frequency of Response:	annually
Annual number of Responses:	6 petition letters
Annual Burden:	6 hours

**Calculation:** 6 petition letters x 1 hr. = 6 hours

**§ 220.13 Reporting emergencies.**

Employees must immediately report by the quickest means available derailments, collisions, storms, wash-outs, fires, obstructions to tracks, and other hazardous conditions which could result in death or injury, damage to property or serious disruption of railroad operations.

In reporting emergencies, employees must follow:

- (1) the procedures of § 220.47 of this part when using a radio; or
  - (2) the procedures specified for reporting emergencies in the railroad’s timetables or timetable special instructions, when using another means of wireless communications.
- (c) Employees must describe as completely as possible the nature, degree, and location of the hazard.

*NOTE: The requirements resulting from the provisions of this section are the usual and customary practice as well as the railroad’s legal obligation under “common law.” Consequently, there is no burden associated with these requirements.*

**§ 220.21 Railroad operating rules; radio communications; recordkeeping.**

The operating rules of each railroad with respect to radio communications must conform with the requirements of this part.

Thirty days before commencing to use radio communications in connection with railroad operations, each railroad must retain one copy of its current operating rules with respect to radio communications at the locations prescribed in paragraphs (1) and (2) below.

Each amendment to these operating rules must be filed at such locations within 30 days after it is issued. These records must be made available to representatives of the Federal Railroad Administration (FRA) for inspection and copying during normal business hours.

- (1) Each Class I railroad, each Class II railroad, each railroad providing intercity rail

passenger service, and each railroad providing commuter service in a metropolitan or suburban area must retain such rules at each of its division headquarters and at its system headquarters; and

- (2) Each Class III railroad and any other railroad subject to this part but not subject to paragraph (1) above must retain such rules at the system headquarters of the railroad.

*NOTE: The burden hours associated with these requirements are currently approved under paperwork package OMB No. 2130-0035. Consequently, there is no additional or other burden associated with these requirements.*

**§ 220.23 Publication of radio information.**

Each railroad must designate where radio base stations are installed, where wayside stations may be contacted, and the appropriate radio channels used by these stations in connection with railroad operations by publishing them in a timetable or special instruction. The publication must indicate the periods during which base and wayside radio stations are operational.

*NOTE: The requirements resulting from the provision of this section are the usual and customary procedure. Consequently, there is no burden associated with these requirements.*

**§ 220.25 Instruction and operational testing of employees.**

Each employee who a railroad authorizes to use a radio in connection with a railroad operation must be:

- (a) Provided with a copy of the railroad's operating rules governing the use of radio communication in a railroad operation;
- (b) Instructed in the proper use of radio communication as part of the program of instruction prescribed in § 217.11 of this chapter; and
- (c) Periodically tested under the operational testing requirements in § 217.9 of this chapter.

*(A) NOTE: The burden hours associated with provision (a) of this section are currently approved under OMB No. 2130-0035. Consequently, there is no additional or other burden associated with this requirement.*

*(B) FRA estimates that approximately 91,000 railroad employees will be re-instructed annually as a result of the requirement of provision (b) of this section. It is estimated that*

it will take approximately 30 minutes to instruct each employee. Total annual burden for this requirement is 45,500 hours.

Respondent Universe:	728 railroads
Burden time per response:	30 minutes
Frequency of Response:	Annually
Annual number of Responses:	91,000 instructed employees
Annual Burden:	45,500 hours
<b>Calculation:</b>	91,000 instructed employees x 30 min. = 45,500 hours

### Subsequent Years

In subsequent years, FRA estimates that there will be approximately an additional 12,540 roadway workers trained as a result of the requirement of provision (b) of this section. It is estimated that each instruction session will take approximately 30 minutes. Total annual burden for this requirement is 6,270 hours.

Respondent Universe:	728 railroads
Burden time per response:	30 minutes
Frequency of Response:	Annually
Annual number of Responses:	12,540 instructed roadway workers/instruction sessions
Annual Burden:	6,270 hours

**Calculation:** 12,540 instructed roadway workers x 30 min. = 6,270 hours

(c) FRA estimates that periodic operational tests will affect approximately 100,000 railroad employees every year. It is estimated that each test will take approximately five (5) minutes. Total annual burden for this requirement is 8,333 hours.

Respondent Universe:	728 railroads
Burden time per response:	5 minutes
Frequency of Response:	Annually
Annual number of Responses:	100,000 tests/records
Annual Burden:	8,333 hours

**Calculation:** 100,000 tests/records x 5 min. = 8,333 hours

Total annual burden for this entire requirement is 60,103 hours.  
(45,500 + 6,270 + 8,333)

### **§ 220.27 Identification.**

(a) Except as provided in paragraph (c) of this section (below), the identification of

each wayside, base or yard station must include at least the following minimum elements, stated in the order listed:

(1) *Name of railroad.* An abbreviated name or initial letters of the railroad may be used where the name or initials are in general usage and are understood in the railroad industry; and

(2) Name and location of office or other unique designation.

(b) Except as provided in paragraph (c) of this section (below), the identification of each mobile station must consist of the following elements, stated in the order listed:

(1) *Name of railroad.* An abbreviated name or initial letters of the railroad may be used where the name or initial letters are in general usage and are understood in the railroad industry;

(2) Train name (number), if one has been assigned, or other appropriate unit designation; and

(3) When necessary, the word "locomotive", "motorcar", or other unique identifier which indicates to the listener the precise mobile transmitting station.

(c) If positive identification is achieved in connection with switching, classification, and similar operations wholly within a yard, fixed and mobile units may use short identification after the initial transmission and acknowledgment consistent with applicable Federal Communications Commission regulations governing "Station Identification".

*NOTE: The requirements resulting from the provisions of this section are the usual and customary procedure. Consequently, there is no burden connected with these requirements.*

### **§ 220.31 Initiating a radio transmission.**

Before transmitting by radio, an employee must: (a) Listen to ensure that the channel on which the employee intends to transmit is not already in use; (b) Identify the employee's station in accordance with the requirements of § 220.27; and (c) Verify that the employee has made radio contact with the person or station with whom the employee intends to communicate by listening for an acknowledgment. If the station acknowledging the employee's transmission fails to identify itself properly, the employee shall require a proper identification before proceeding with the transmission.

*NOTE: The requirements resulting from the provisions of this section are the usual and*



*customary procedure. Consequently, there is no burden associated with these requirements.*

**§ 220.33 Receiving a radio transmission.**

Upon receiving a radio call, an employee must promptly acknowledge the call, identifying the employee's station in accordance with the requirements of § 220.27, and stand by to receive. An employee need not attend the radio during the time that this would interfere with other immediate duties relating to the safety of railroad operations.

An employee who receives a transmission must repeat it to the transmitting party unless the communication: (1) relates to yard switching operations; (2) is a recorded message from an automatic alarm device; or (3) is general in nature and does not contain any information, instruction or advice which could affect the safety of a railroad operation.

*NOTE: The requirements resulting from the provisions of this section are the usual and customary procedure. Consequently, there is no burden affiliated with these requirements.*

**§ 220.35 Ending a radio transmission.**

(a) Except for transmissions relating to yard switching operations, at the close of each transmission to which a response is expected, the transmitting employee must say "over" to indicate to the receiving employee that the transmission is ended.

(b) Except for transmissions relating to yard switching operations, at the close of each transmission to which no response is expected, the transmitting employee must state the employee's identification followed by the word "out" to indicate to the receiving employee that the exchange of transmissions is complete.

*NOTE: The requirements resulting from the provisions of this section are the usual and customary procedure. Consequently, there is no burden connected with these requirements.*

**§ 220.37 Testing radio and wireless communication equipment.**

Each radio, and all primary and redundant wireless communication equipment used under §§ 220.9 and 220.11, must be tested as soon as practicable to ensure that the equipment functions as intended prior to the commencement of the work assignment.

The test of a radio must consist of an exchange of voice transmissions with another radio. The employee receiving the transmission shall advise the employee conducting the test of the clarity of the transmission.

FRA estimates that approximately 3,000 devices will be tested an average of five times per week as a result of this requirement. As a result, approximately 780,000 tests (15,000 tests p/week x 52 weeks) will be conducted annually. It is estimated that each test will take approximately 30 seconds. Total annual burden for this requirement is 6,500 hours.

Respondent Universe:	728 railroads
Burden time per response:	30 seconds
Frequency of Response:	Annually
Annual number of Responses:	780,000 tests
Annual Burden:	6,500 hours

**Calculation:** 780,000 tests x 30 sec. = 6,500 hours

**§ 220.38 Communication equipment failure.**

Any radio or wireless communication device found not to be functioning as intended when tested pursuant to § 220.37 must be removed from service and the dispatcher or other employee designated by the railroad must be so notified as soon as practicable.

*NOTE: The requirements resulting from the provision of this section are the usual and customary procedure. Consequently, there is no burden linked to these requirements.*

**§ 220.47 Emergency radio transmissions.**

An initial emergency radio transmission must be preceded by the word “emergency,” repeated three times. An emergency transmission shall have priority over all other transmissions and the frequency or channel shall be kept clear of non-emergency traffic for the duration of the emergency communication.

*NOTE: The requirements resulting from the provision of this section are the usual and customary procedure. Consequently, there is no burden associated with these requirements.*

**§ 220.61 Transmission of mandatory directives.**

- (a) Each mandatory directive may be transmitted by radio only when authorized by the railroad's operating rules. The directive must be transmitted in accordance with the railroad's operating rules and the requirements of this part.
- (b) The procedure for transmission of a mandatory directive by radio is as follows:
  - (1) The train dispatcher or operator must call the addressees of the mandatory directive and state the intention to transmit the mandatory directive.

(2) Before the mandatory directive is transmitted, the employee to receive and copy must state the employee's name, identification, location, and readiness to receive and copy. An employee operating the controls of moving equipment must not receive and copy mandatory directives. A mandatory directive must not be transmitted to employees on moving equipment, if such directive cannot be received and copied without impairing safe operation of the equipment.

(3) A mandatory directive must be copied in writing by the receiving employee in the format prescribed in the railroad's operating rules.

(4) After the mandatory directive has been received and copied, it must be immediately repeated in its entirety. After verifying the accuracy of the repeated mandatory directive, the train dispatcher or operator must then state the time and name of the employee designated by the railroad who is authorized to issue mandatory directives. An employee copying a mandatory directive must then acknowledge by repeating the time and name of the employee so designated by the railroad.

(5) (i) For train crews, before a mandatory directive is acted upon, the conductor and engineer must each have a written copy of the mandatory directive and make certain that the mandatory directive is read and understood by all members of the crew who are responsible for the operation of the train. Mandatory directives which have been fulfilled or canceled must be marked with an "X", or in accordance with the railroad's operating rules, and retained for the duration of the train crew's work assignment.

(ii) For on-track equipment, before a mandatory directive is acted upon, the employee responsible for on-track safety must have a written copy of the mandatory directive and make certain that the mandatory directive is acknowledged by all employees who are responsible for executing that mandatory directive. The employee responsible for on-track safety must retain a copy of the mandatory directive while it is in effect.

(6) A mandatory directive, which has not been completed or which does not comply with the requirements of the railroad's operating rules and this part, may not be acted upon and must be treated as though not sent. Information contained in a mandatory directive may not be acted upon by persons other than those to whom the mandatory directive is addressed.

(A) In order to comply with Part 220.61 requiring the manual copying of mandatory directives, FRA estimates that, approximately 600,000 mandatory directives will be copied each month by the Nation's railroads for a total of 7,200,000 mandatory directives per year (600,000 mandatory directives x 12 months). It is estimated that it will take an average of 1.5 minutes to copy each directive. Total annual burden due to this requirement is 180,000 hours.

Respondent Universe:	728 railroads
Burden time per response:	1.5 minutes
Frequency of Response:	Annually
Annual number of Responses:	7,200,000 copied directives
Annual Burden:	180,000 hours

**Calculation:** 7,200,000 copied directives x 1.5 min. = 180,000 hours

(B) FRA estimates that approximately 624,000 fulfilled or canceled mandatory directives will be marked annually with an "X" by train crews. This is because railroad operating rules specify a great number of directives only have to be retained until the end of the trip, permitting directives pertaining to parts or "legs" of the trip to be discarded. Also, many railroads have unique forms that account for multiple directives with one mark. It is estimated that it will take an average of 15 seconds to mark each directive. Total annual burden due to this requirement is 2,600 hours.

Respondent Universe:	728 railroads
Burden time per response:	15 seconds
Frequency of Response:	Annually
Annual number of Responses:	624,000 marks
Annual Burden:	2,600 hours

**Calculation:** 624,000 marks x 15 sec. = 2,600 hours

Total annual burden for this entire requirement is 182,600 hours (180,000 + 2,600).

### **Subpart C (New Requirements)**

#### **§ 220.307 Use of railroad-supplied electronic devices.**

(A) General restriction. A railroad operating employee may use a railroad-supplied electronic device only for an authorized business purpose as specified by the railroad in writing.

FRA estimates that approximately 728 railroads will need to amend their code of

operating rules program to conform to the above requirement. It is estimated that it will each railroad approximately one (1) hour to complete each code amendment. Total annual burden due to this requirement is 728 hours.

Respondent Universe:	728 railroads
Burden time per response:	1 hour
Frequency of Response:	One-time
Annual number of Responses:	728 amended codes
Annual Burden:	728 hours

**Calculation:** 728 amended codes x 1 hr. = 728 hours

(B) Use in freight and passenger locomotive cabs generally. In addition to the restrictions on locomotive engineers described in paragraph (b), a railroad operating employee who is not in deadhead status shall not use a railroad-supplied electronic device in the cab of a controlling locomotive except for a mobile telephone or remote computing device which the employee may use only if, before use —

- (i) A safety briefing that includes all crewmembers is held; and
- (ii) All crewmembers agree that it is safe to use the railroad-supplied mobile telephone or remote computing device.

FRA estimates that approximately 5,460,000 briefings will be held each year at which all crewmembers agree that it is safe to use the under the railroad supplied mobile phone or remote computing device. It is estimated that each briefing will take an average of approximately one (1) minutes to complete. Total annual burden due to this requirement is 91,000 hours.

Respondent Universe:	91,000 railroad employees
Burden time per response:	1 minute
Frequency of Response:	Annually
Annual number of Responses:	5,460,000 briefings
Annual Burden:	91,000 hours

**Calculation:** 5,460,000 briefings x 1 min. = 91,000 hours

(C) Use outside freight locomotive cabs. A freight train crewmember who is not in deadhead status may use a railroad-supplied electronic device outside the cab of a controlling freight locomotive only if all of the following conditions are met:

- (1) The crewmember is not fouling a track;

(2) Operations are suspended; and

(3) All members of the crew have been briefed that operations are suspended.

*The burden for this requirement is included under that of B above. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this entire requirement is 91,728 hours (728 + 91,000).

**§ 220.313 Instruction.**

(a) Program. Beginning [INSERT DATE 90 DAYS FROM THE EFFECTIVE DATE OF THE RULE], each railroad shall maintain a written program of instruction, training, and examination of each railroad operating employee and each supervisor of the railroad operating employee on the meaning and application of the railroad's operating rules implementing the requirements of this subpart if these requirements are pertinent to the employee's duties. If all requirements of this subpart are satisfied, a railroad may consolidate any portion of the instruction, training, or examination required by this subpart with the program of instruction required under § 217.11 of this chapter.

(1) The written program of instruction, training, and examination shall address the requirements of this subpart, as well as consequences of noncompliance.

(2) The written program of instruction, training, and examination shall include, but is not limited to, an explanation of the following:

(i) When a railroad operating employee must have personal electronic devices turned off with the earpiece removed from the ear as required by this subpart.

(ii) If a railroad supplies an electronic device to its railroad operating employees, when a railroad operating employee may use such a device. The employee must be trained on what constitutes an authorized business purpose.

(iii) The potential penalties and other consequences of committing a violation of this subpart, both those imposed by FRA and those imposed by the railroad, as well as any distinction between the requirements of this subpart and any more stringent requirements imposed by the railroad and the related distinction between the two sets of potential consequences.

FRA estimates that approximately 728 written programs instruction, training, and examination will be developed, maintained, and consolidated with the railroad's program of instruction required under § 217.11 of this chapter. It is estimated that it will take approximately one (1) hour to develop each written program to meet the above requirement. Total annual burden due to this requirement is 728 hours.

Respondent Universe:	728 railroads
Burden time per response:	1 hour
Frequency of Response:	One-time
Annual number of Responses:	728 amended written instruction programs/codes of rules
Annual Burden:	728 hours

**Calculation:** 728 written instruction programs x 1 hr. = 728 hours

(b) Implementation schedule. Each employee performing duties subject to the requirements in this subpart shall be initially trained prior to [INSERT DATE 120 DAYS FROM THE EFFECTIVE DATE OF THE RULE].

(1) Beginning [INSERT DATE 120 DAYS FROM THE EFFECTIVE DATE OF THE RULE], no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless the employee has been trained on these rules within the previous three years.

(2) The records of successful completion of instruction, examination and training required by this section shall document the instruction of each employee under this subpart

FRA estimates that approximately 91,000 employees will receive training on the appropriate operating rules under the above requirement. It is estimated that it will take approximately 15 minutes to train each employee. Total annual burden due to this requirement is 22,750 hours.

Respondent Universe:	91,000 Employees
Burden time per response:	15 minutes
Frequency of Response:	One-time
Annual number of Responses:	91,000 trained employees
Annual Burden:	22,750 hours

**Calculation:** 91,000 trained employees x 15 min. = 22,750 hours

(c) Records. Written records documenting successful completion of instruction, training, and examination of each employee and of his or her supervisors shall be made and shall be retained at the railroad's system headquarters and at the division headquarters for each division where the employee is assigned for three calendar years after the end of the calendar year to which they relate and made available to representatives of FRA for inspection and copying during normal business hours. Each railroad to which this part applies is authorized to retain a program, or any records maintained to prove compliance with such a program, by electronic recordkeeping in accordance with §§ 217.9(g) and 217.11(c) of this chapter.

FRA estimates that approximately 91,000 records will be kept under the above requirement. It is estimated that it will take approximately five (5) minutes to keep each record. Total annual burden due to this requirement is 7,583 hours.

Respondent Universe:	728 railroads
Burden time per response:	5 minutes
Frequency of Response:	One-time
Annual number of Responses:	91,000 employee records
Annual Burden:	7,583 hours

**Calculation:** 91,000 employee records x 5 min. = 7,583 hours

(d) Approval process. Upon review of the program of instruction, training, and examination required by this section, the Associate Administrator for Railroad Safety/Chief Safety Officer may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval.

(1) If the Associate Administrator for Railroad Safety/Chief Safety Officer disapproves the program, the railroad has 35 days from the date of the written notification of such disapproval to -- (i) Amend its program and submit it to the Associate Administrator for Railroad Safety/Chief Safety Officer for approval; or (ii) Provide a written response in support of the program to the Associate Administrator for Railroad Safety/Chief Safety Officer, who informs the railroad of FRA's final decision in writing.

(2) A failure to submit the program with the necessary revisions to the Associate Administrator for Railroad Safety/Chief Safety Officer in accordance with this paragraph is considered a failure to implement a program under this subpart.

FRA estimates that approximately six (6) programs of instruction, training, and examination required by this section will be disapproved and will require further amendment or will require a written response in support of the program. It is estimated that it will take approximately 60 minutes to complete the further program revision or written response and send it to FRA. Total annual burden due to this requirement is six (6) hours.

Respondent Universe:	728 railroads
Burden time per response:	60 minutes
Frequency of Response:	One-time
Annual number of Responses:	6 revised program/written responses
Annual Burden:	6 hours

**Calculation:** 6 revised prog./written responses x 60 min. = 6 hours



Total annual burden for this entire requirement is 31,067 hours (728 + 22,750 + 7,583 + 6).

**§ 220.315 Operational Tests and Inspections.**

(a) The railroad's program of operational tests and inspections under Part 217 of this chapter shall be revised as necessary to include this subpart and shall specifically include a minimum number of operational tests and inspections, subject to adjustment as appropriate.

*The burden for this requirement is included under that of OMB No. 2130-0035 (§ 217.7). Consequently, there is no other or additional burden associated with this requirement.*

Total annual burden for this entire information collection is 372,004 hours.

**13. Estimate of total annual costs to respondents.**

Additional costs to respondents outside of the burden hour costs above are as follows:

\$ 2,000	Supplies (paper, etc.)	
8,000	Miscellaneous (batteries, chargers, training materials, etc.)	
		\$ 10,000
		Total

**14. Estimate of Cost to Federal Government.**

There is no cost to the Federal Government in connection with these information collection requirements. The carrier records are examined by FRA inspectors on a routine basis as part of their regular enforcement activities that monitor carrier compliance.

**15. Explanation of program changes and adjustments.**

This information collection submission reflects an increase in burden of 133,300 hours from the previously approved submission. The increase in burden is due to both **program changes** and **adjustments**. **Program changes** resulting from the new requirements under added **Subpart C** of this rule (i.e., § 220.307 and § 220.313) *increased* the burden by 122,795 hours.

There were also two **adjustments** that increased the burden. They are:

(1) Under § 220.8, although the estimate of the burden time per response remained the same, FRA increased its estimate of the number of waiver petitions (from one (1) to six (6)). This change in estimate *increased* the burden by five (5) *hours* (from one (1) hour

to six (6) hours).

(2) Under § 220.25B, although the estimate of the burden time per response remained the same, FRA increased its estimate of the number of employees receiving instruction (from 70,000 employees to 91,000 employees). This change in estimate *increased* the burden by *10,500 hours* (from 35,000 hours to 45,500 hours).

**Adjustments** then *increased* the burden by *10,505 hours*.

The current OMB inventory shows a total burden of 238,704 hours, while this revised submission exhibits a total burden of 372,004 hours. Hence, there is a burden increase of 133,300 hours.

There is no change in costs to respondents from the previous submission.

**16. Publication of results of data collection.**

FRA has no plans to publish this information.

**17. Approval for not displaying the expiration date for OMB approval.**

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

**18. Exception to certification statement.**

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. FRA's rules and resulting information collections are designed to promote and enhance national rail safety. This collection of information furthers national rail safety by reducing the likelihood of accidents/incidents – and corresponding injuries/deaths – involving train movements due to mis-communication or poor communication between railroad companies and their employees. Specifically, this collection of information enables FRA to monitor the railroad environment to ensure that railroad employees are familiar with their railroad's operating rules governing radio communication in railroad operations, and that they have been instructed in the proper use of radio communication and restrictions on the use of mobile telephones and other electronic devices. As a result of this collection of information, FRA can confirm that railroad employees authorized to use radios have undergone periodic operational testing, instruction and examination regarding their railroads operating rules and restriction imposed by this Part and by their railroad concerning the use of cell phone and other electronic devices, and can confirm that train crews have read, understood, and marked mandatory directives. By careful and continuing review of the information collected, FRA can take timely corrective action before an accident/incident occurs if it detects an unsafe/undesirable trend developing.

This collection of information also promotes safety by ensuring that railroad employees immediately report to FRA (by the quickest means available) derailments, collisions, storms, wash-outs, fires, obstructions to tracks, and other hazardous conditions which could result in death or injury, damage to property, or serious disruption of railroad operations. Upon receipt of the report, FRA can then coordinate an appropriate response to the emergency so as to mitigate the harm that might come to railroad employees, train crews, passengers, and surrounding communities.

This collection of information also promotes rail safety by providing a record of mandatory directives. In the event of an accident/incident, these records can be used by FRA, the National Transportation Safety Board (NTSB), and railroads to ascertain

whether the directive was properly communicated and received and fully complied with. These records can assist FRA and NTSB investigators in determining the cause(s) of the accident/incident and help prevent similar accidents/incidents from occurring in the future. This collection of information is another tool which helps FRA to fulfill its mission, which is to promote and enhance rail safety throughout the United States.

In this information collection, as in all its information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.