

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

Summary of Submission

- The collection of information entirely associated with this Final Rule is a revision to the previous approval granted for the propose rule (NPRM) submission. In this Final Rule submission, there is one **program change** under section 220.307(a), which increased the burden by **50 hours** from the NPRM submission. There are no other changes in this submission.
- It should be noted that publication of the NPRM added new Subpart C and new information collection requirements under section 220.307 and 220.313. The **program changes** from this submission increased the burden by 122,795 hours [and **adjustments** increased the burden by 10,505 hours] for a total increase of **133,300 hours** from the previously approved submission 238,704 hours for the current rule.
- The FRA NPRM information collection submission was electronically transmitted in ROCIS on May 18, 2010, the same day the proposed rule was published in the Federal Register (See 75 FR 27672) and approved by OMB on September 14, 2010. The information collection associated with the NPRM submission was approved under the above control number with a total burden of **372,004 hours** and a total of **14,451,008 responses**.
- FRA is publishing the Final Rule regarding its Restrictions on Railroad Operating Employees' Use of Cellular Telephones and Other Electronic Devices in the **Federal Register** on September 27, 2010. See 75 FR 59580.
- Total number of burden hours requested for in this submission is **372,054 hours**.
- Total number of responses for this Final Rule submission is **14,451,058**.
- **\*\*The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 18-31).**

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

The increasing number of distractions for drivers has led to increasing safety risks. The distractions caused by cell phones (mobile phones/cellular phones) have been a concern for years. In addition, each day, drivers are distracted by eating, conversations with passengers, using 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. Parallels are easily drawn between distracted driving and the operation of trains while using distracting electronic devices, as evidenced by the examples discussed below.

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. Five of these accidents are described 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. The National Transportation Safety Board (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 22 personal cell phone calls were

made and/or received by the five crewmembers on both trains while the trains were in motion.

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 October 1, 2008, FRA issued Emergency Order No. 26 ("Order") restricting the on-duty use of cellular telephones and other electronic devices. (73 FR 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 56 of these instances. Forty-nine 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. In addition, 48 of the incidents recommended for enforcement action involved personal, as opposed to railroad-supplied, devices. These incidents begin to illustrate the hazards using distracting electronic devices while on duty. For this reason, FRA is compelled to promulgate enforceable regulations to prevent the unsafe use of electronic devices by on-duty railroad employees.

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 exercise

this authority to the Federal Railroad Administrator. 49 CFR 1.49 (oo).

The required study, titled “The Impact of Distracting Electronic Devices on the Safe Performance of Duties by Railroad Operating Employees” was completed and submitted to Congress on May 27, 2010. The study stated that FRA has found that railroad operating employees were increasingly using distracting electronic devices in a manner that created hazards. As such, FRA intervention was warranted. FRA will continue to monitor compliance regarding the use of electronic devices by railroad employees.

FRA is amending its railroad communications regulations by restricting use of cellular telephones and other distracting electronic by railroad operating employees. This rule codifies most of the requirements of FRA Emergency Order No. 26, which is supplanted by this final rule on the date that it becomes effective. FRA has revised some of the substantive requirements of that Emergency Order as well as its scope to accommodate changes that FRA believes are appropriate based upon its experience with the Emergency Order and in response to public comments submitted on the proposed rule.

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

The information is used by FRA and its inspectors to ensure and monitor compliance with this rule to prevent improper use of cell phones by covered employees while on duty and to promote safety in rail operations. During the course of its routine safety audits, FRA inspectors will review the information collected under new § 220.302 to ensure that railroads amend their code of operating rules so that they comply with all the requirements of new Subpart C of Part 220. Railroads will need to amend their operating rules so that they minimally meet the requirements of this final rule, and have the option to impose more stringent requirements on the use of cell phones by their employees, if they so choose. FRA inspectors will verify that operating rule amendments. [Note: This burden is accounted for under OMB No. 2130-0035 (section 217.7) and that burden will be updated upon the effective date of this final rule.]

For cause stated, FRA may disapprove of a railroad’s operating rules implementing the requirements of this subpart. If the Associate Administrator for Railroad Safety/Chief Safety Officer disapproves the operating rules, a railroad must respond within 35 days (unless granted an extension), by either providing submissions in support of its operating rules or by amending its operating rules and submitting those proposed amendments. Failure to submit operating rules with the necessary revisions to the Associate Administrator for Railroad Safety/Chief Safety Officer will be considered by FRA to be a failure to implement a program under this Part. Upon receipt of either the supportive or revised document, FRA’s Associate Administrator for Railroad Safety/Chief Safety Officer will render a final decision in writing informing the railroad of FRA’s decision. By amending their operating rules to meet this rule’s minimum requirements and then receiving FRA approval, railroad employees -- railroad officers, supervisors, and every day operating employees – will have to meet both Federal standards and its employer’s

standards regarding cell phone use and will be subject to penalties for any violations of the requirements of this subpart and of its employer's operating rules. This should greatly enhance safety by reducing distractions caused by improper cell phone use when railroad employees are performing their important and safety-critical duties.

In § 220.307(a), FRA addresses the use of electronic devices that are supplied by the railroad to employees and are currently being used for business purposes. Railroads must provide written instructions for their employees (most likely in their operating rules) that clearly define the authorized business purposes for using a railroad-supplied electronic device. This information will be used by FRA to ascertain compliance and will be used by railroad employees to gain a clear understanding of what is permissible and what is not regarding such devices and aid them in being fully attentive to their job duties. 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.

The safety briefings mandated by § 220.307(c) and (d) that involve locomotive train crewmembers on freight/passenger trains and railroad operating employees (not in deadhead status) who are outside the cab of a controlling locomotive relating to the use of railroad-supplied electronic devices will be used by these employees to clearly communicate to one another the circumstances where all agree that it is safe to use these devices 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 new § 220.313 to ensure that railroads develop and implement a program addressing the requirements of this Part. The written program may be consolidated with the program of instruction required under 49 CFR 217.11. The program must include instruction on both the requirements of this subpart as well as consequences of non-compliance, must include instructions on specific provisions of this rule, and must include instruction on the distinction between the requirements of this regulation and more stringent railroad operating rules. 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 and have been qualified on the requirements of this subpart.

Under new § 220.315, each railroad's program of operational tests and inspection under Part 217 must be revised, as necessary, to include this subpart and must specifically include a minimum number of operational tests and inspections (subject to adjustments as appropriate). FRA will review these amendments to the code of operating rules, new

timetables, and new timetable special instructions by Class I, Class II, and railroads to ensure that railroads comply with the requirements of Subpart C of Part 220 and to ensure that they have developed safe operating rules and practices that conform to applicable Federal laws and regulations.

FRA reviews waiver petitions to determine whether it is appropriate, safe, 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 impact 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 safe 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, accurate, 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 keeping with the requirements of the Paperwork Reduction Act (PRA) and the Government Paperwork Elimination Act (GPEA), requirements under § 220.25 (employee periodic operational tests/records) and § 220.37 (testing/records of radios and other wireless communication equipment) involve or permit electronic responses where railroads can create and store an electronic record. Also, requirements under § 220.307 and § 220.313 involve or permit electronic responses.

In this final rule submission, FRA lists zero percent of responses collected electronically. This percentage pertains both to the final rule’s requirements under new Subpart C (which have not yet gone into effect) and the fact that most of the current requirements and corresponding burden pertain to instructions and briefings which are done verbally. Section 220.307 (p. 28) describes the required safety briefings and details the number of responses and associated burden hours. Approximately 38 percent of total responses (5,460,000) involve oral safety briefings under § 220.307 and do not lend themselves to advanced information technology techniques.

When the final rule becomes effective, approximately seven (7) percent of all responses will be able to/can be kept electronically by railroads (if they so choose) – again because most of the requirements pertain to oral instructions, briefings, or radio transmissions. It should be pointed out that under § 220.61, mandatory directives must be copied on paper and marked with an “X” upon completion so that train crews can know what part(s) of the mandatory directive have been accomplished to prevent accidents/incidents resulting from omission of essential tasks. Copying mandatory directives and marking these directives under § 220.61 account for a total of 7,824,000 responses or 54 percent of the total responses.

It should be noted that 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 mis-

communication between dispatchers/operators and train crews, and dispatchers/operators and other railroad employees before a mandatory directive is acted upon.

**4. Efforts to identify duplication.**

The information collection requirements to our knowledge are not duplicated anywhere. These requirements apply solely to railroads on the general system of transportation and are rule specific. Hence, there exists no possibility of duplication.

Similar data are not available from any other source.

*NOTE: To eliminate any duplication, FRA will discontinue the approval associated with Emergency Order No. 26 (OMB No. 2130-0579) upon OMB approval of the information collection associated with this final rule and upon the effective date of this final rule. This final rule will supplant Emergency Order No. 26 (EO 26).*

**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 5 U.S.C. § 601. Section 601(3) defines a “small entity” as having the same meaning as “small business concern” under § 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, § 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy that formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirement is \$20 million or less in annual operating revenue, adjusted annually for inflation (\$32,113,449 for 2008). This threshold is based on the Surface Transportation Board’s (STB) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. FRA is using the STB’s threshold in its definition of “small entities” for this rule.

Approximately 700 railroads meet the criteria for small entities and report operational data to FRA. FRA is using this as our estimate of the universe of small entities that could



be directly impacted by this rule. Many of these railroads rely on cell phones for train operations.

Like EO 26, this rule contains exceptions that would allow railroads that have less than 400,000 annual employee hours and that rely on wireless communication devices for certain train operations to continue to do so, with the same restriction that such usage be limited to performing the employees' railroad duties. The primary benefactors of this flexibility are small railroads. FRA is clarifying that the exception in the Order for railroad operating employees to use railroad-supplied or railroad-authorized electronic devices to conduct train or switching operations "under conditions authorized under 49 CFR Part 220" was intended to accommodate small railroad operations. The locomotives of the trains exempt from the requirement to have a working radio on the lead locomotive do not operate at high speeds, do not handle regular passenger traffic, are only permitted to operate over joint territory in specific low-speed circumstances, and must have working wireless communications aboard the controlling locomotive of trains containing placarded hazardous material loads.

In general, small railroad costs associated with compliance with EO 26 would continue to accrue under FRA's rule. Additional burden to such railroads would come from the requirement to provide instruction to its operating employees on the substance of the regulation as well as the need to update their written programs to qualify its operating employees for compliance with operating rules implementing the new requirements. FRA anticipates that this instruction will be achieved through means such as distribution of written materials to employees, job briefings by supervisors or roving instructors, and question-and-answer services. As noted in answer to question 12 of this document, FRA estimates that the time cost of such instruction will come to about 15 minutes per employee in the first year of the rule. Approximately 91,000 train and engine employees will be impacted, and about 20 percent of these will be small railroad employees. Revision of programs is not expected to entail more than one labor hour per railroad. These two costs – that of additional instruction and that of revising programs – will likely not significantly burden any small railroads.

Additional railroad costs transferred from EO 26 include the costs associated with performing operational tests and conducting periodic training. Given that operational tests and training associated with this regulation will be conducted with other required operational testing and training, the additional annual cost will total about as much as the cost in the first year for instruction and program revision. Again, this cost will likely not significantly burden small railroads.

Because this rule will apply to all small railroads, FRA has concluded that a substantial number of small entities will be impacted. However, the overall impact on small railroads is not expected to be significant. FRA believes that the costs to small railroads associated with this rule are not significant and are very similar to those currently incurred under EO 26.

In this final rule then, FRA is certifying that there will not be a significant economic impact on a substantial number of small entities.

**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 under new § 220.302 and § 220.307, FRA would have no way of knowing whether railroads were complying with new Subpart C of Part 220, including whether they revised or modified their operating rules to conform to this rule's requirements regarding restrictions on the use of cell phones and other electronic devices. Without the records required under § 220.313, FRA would have no way of knowing whether railroads actually provided this essential training for their operating employees on this rule's requirements and their own operating rules regarding use of electronic devices and whether employees successfully completed this training. Without this information, railroad operating employees might engage in unsafe practices by being distracted through the improper or unauthorized use of electronic devices while performing their highly sensitive safety functions. This could lead to increased numbers of accidents/incidents and corresponding injuries, fatalities, and property damage similar to the ones cited above in answer to question one and throughout FRA's Emergency Order No. 26.

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, FRA would be significantly hindered in detecting unsafe or undesirable trends in railroad operations and in taking 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.

Without this collection of information, safe train movements might be jeopardized if mandatory directives were not copied down in writing, repeated in their entirety to train dispatchers or operators, and then marked off when executed. Without this method of verifying the accuracy and completeness of a mandatory directive, train crews might engage in improper, unauthorized, inaccurate or unsafe train movements leading to increased numbers of accidents/incidents and corresponding casualties and property damage.

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. It also further the Department's top goal (safety), and fulfills one of the Secretary's prime priorities related to distracted drivers/operators in all public modes of transportation.

7. **Special circumstances.**

All information collection requirements are in compliance with this section.

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

On May 18, 2010, FRA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register proposing to restrict the use of mobile telephones and other distracting electronic devices by railroad operating employees. *See* 75 FR 27672. The NPRM proposed to codify many of the requirements of Emergency Order 26 (Order or EO 26, 73 FR 58702) (Oct. 7, 2008), but proposed certain changes to it in response to a letter challenging certain provisions of the Order. FRA asked for public comment on the NPRM, and received 14 comments in response. FRA received no specific comments on burden estimates and burden costs. As described below, FRA did receive comments regarding various information collection requirements (e.g., comments pertaining to the required instruction of employees).

FRA received 14 comments in response to the NPRM. Comments were submitted by a wide variety of affected parties, including: the American Association for Justice (“AAJ”); the Association of American Railroads (“AAR”); a joint comment submitted by five labor organizations, including the United Transportation Union, Brotherhood of Locomotive Engineers and Trainmen, Brotherhood of Railroad Signalmen, Brotherhood of Maintenance of Way Employees, and the American Train Dispatchers Association (collectively referred to as the “Labor Organizations”); The National Railroad Passenger Corporation (“Amtrak”); The National Transportation Safety Board (“NTSB”); the National Safety Council; the Peninsula Corridor Joint Powers Board (“Caltrain”); and the Utah Transit Authority, and six individuals. In addition, New Jersey Transit (“NJT”) contacted FRA and had a brief conversation which was summarized and documented in a memorandum, which is posted in the public docket for this rule. FRA staff extensively reviewed and evaluated the comments. There were no comments pertaining to the burden hour estimates provided in the NPRM publication.

In response to the NPRM, the Association of American Railroads (“AAR”) submitted a comment to FRA that requested adequate time for railroads to implement their programs of instruction and to then provide that required instruction to their operating employees. This final rule allows railroads 90 days to implement a program of instruction, and then an additional 90 days to actually instruct their employees. Allowing railroads this period of time to implement the instruction requirements of this final rule will result in reduced implementation and training costs. As AAR’s comment indicated, the industry practice is for railroads to finalize their annual rules training programs in the fourth quarter of the calendar year, and then to actually begin instructing their employees on those annual rules training programs in the first quarter of the next calendar year. Thus, based on the implementation date FRA has chosen, railroads should not have to alter the timing of their training programs or require their employees to attend additional training sessions outside of those already planned during the first quarter of 2011.

As EO 26 will remain in effect until this final rule becomes effective, railroad operating employees will not be subject to this final rule until they have already been instructed on

its requirements. This implementation schedule also ensures there will be no gap in time where a new railroad operating employee will perform work subject to the requirements of this final rule, but will not have yet been trained on its requirements or the requirements of a supplanted EO 26.

In sum, this implementation schedule does not allow for any gap in safety regulation, as employees have been trained on the requirements of EO 26 and will be subject to its requirements until the final rule takes effect. Upon the final rule taking effect, all new and current railroad employees will have already been instructed on the rule's requirements. Finally, this schedule also accommodates a large segment of the railroad industry's traditional rules training practices.

Section 220.313 of the NPRM contained the proposed instruction requirements for this regulation. AAR commented that the proposed schedule in that section was impractical and that the training requirements were unnecessary. AAR stated that, because EO 26 has been in place since October 2008, railroads and their employees have experience with prohibitions on electronic devices and thus do not need any further training. The comment stated that there has not been a showing that employees do not understand the existing prohibitions, and also that a formal approval process for training programs is not needed. AAR also commented that it was counterproductive to train employees on both relevant railroad operating rules and on the requirements of this new subpart, stating that this could lead to confusion among employees. AAR stated that, because of this potential confusion, that proposed § 220.313(a)(2)(iii) is unnecessary. AAR's comment proposed an alternate § 220.313 for FRA to consider adopting.

After reviewing AAR's comment, FRA continues to believe that the proposed instruction section for this regulation is necessary. This final rule is substantively different from that found in EO 26, and thus railroad operating employees should be properly apprised of its updated provisions and of the consequences for noncompliance. If employees are going to be operationally tested on the requirements of this subpart as § 220.315 requires, then FRA must also require that employees be instructed on these requirements. The instruction requirements found in § 220.313(a)(2) are minimal, as FRA only specifically requires that employees be instructed on when personal devices must be turned off, when railroad-supplied devices may be used, and the distinction between possible penalties for violations of this new subpart and corresponding railroad operating rules. FRA specifically mentioned these three points to emphasize their urgent importance. As discussed in the NPRM, employees need to be made aware of the distinction between the consequences of violating railroad operating rules and the consequences of violating FRA's regulation, as the potential consequences of violation of this regulation, in terms of liability, are quite different from those of the railroad's system of sanctions. Other than these listed minimal requirements, railroads are free to use their discretion in instructing their employees on the requirements of this subpart. AAR's comment did not elaborate why it believes that no further instruction is necessary on this subject, other than that EO 26 has been in place since October 2008 and railroads already have rules in

place regarding electronic device use. FRA's response is that it continues to find that violations of EO 26 are occurring, and, more troubling, that accidents continue to occur where electronic device use is a contributing factor. FRA believes that instruction on the requirements of this subpart could help to alleviate some future incidents, especially when the consequences of non-compliance with FRA regulations are explained. In the future, should FRA add violations of this subpart as revocable violations for locomotive engineers and conductors, as it is contemplating, it is critical that employees have been instructed on these distinctions.

Additionally, FRA received two comments from individuals who are generally opposed to this regulation. One commenter did not believe this regulation would be effective, stating railroads already have operating rules in place prohibiting the use of electronic devices, and that this will be a more monetarily costly rule than predicted. The commenter also stated that certain electronic devices have utility in the railroad setting. In response, although railroad's have operating rules in place regarding the use of electronic devices, the incidents referenced above and in the NPRM have shown those rules are not an effective deterrent to keep railroad employees from using distracting devices in a manner that severely impacts safety. Thus, FRA views this regulation as necessary. Further, FRA has built in exceptions to this rule that the commenter discusses in order to accommodate technologies that are beneficial to railroad operating environments and do not detract from safety. The second individual commenter states the regulation should only apply to employees on moving trains, and that cell phones can help save lives in an emergency if left on. FRA disagrees, as there are other safety-critical times when operating employees are on the ground where electronic device distraction can have severe consequences, such as when performing an inspection. Illustrating such is a December 2, 2009, Norfolk Southern train derailment. The train stopped after a detector alerted the crew to a problem, and while inspecting the train the conductor failed to notice a car that his inspection was supposed to have included that had already derailed. The conductor's cell phone records indicated substantial personal cell phone use occurred during the period of time he was supposed to be inspecting the train. The train then continued on its route and a large-scale derailment occurred a short distance later.

### 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.

In the NPRM, FRA requested comment on whether railroads should require access to personal cell phone records if the employee was involved in an accident. FRA has

decided that a provision mandating that railroads require operating employees to provide access to personal cell phone records in the event of an accident is unnecessary for FRA purposes. As noted in the NPRM, FRA currently uses its investigative authority under 49 U.S.C. 20902 to obtain personal cell phone records, when appropriate. FRA recognizes that there are constitutional concerns regarding the privacy of personal cell phones and thus will avail itself of this investigative tool only when FRA has information that improper use of electronic devices may have contributed to or caused an accident.

**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 that make up the respondent universe for this one information collection having many requirements. Each requirement and corresponding burden is listed below.*

**§ 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
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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

**Calculation:** 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)**

#### **§ 220.302 Operating rules implementing the requirements of this subpart.**

Each railroad shall adopt and comply with operating rules which comply with the requirements of this subpart, and have them approved by FRA. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this subpart, that person shall be considered to have violated the requirements of this subpart.

*Currently, the burden for this requirement is included under that for Part 217(OMB No. 2130-0035; see section 217.7). However, the burden will need to be updated once this*

*final rule becomes effective (180 days after publication in the Federal Register). FRA will be submitting a revised submission for Part 217 early next year after publishing the required 60-day and 30-day Notices that will account for the additional burden resulting from this provision.*

**§ 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

An authorized business purpose involving the taking of a photograph or video must be approved by FRA. A railroad subject to this subpart must submit to FRA's Associate Administrator for Railroad Safety/Chief Safety Officer a document specifying in writing the authorized business purpose(s) involving the taking of a photograph or video for which a railroad-supplied electronic device may be used by the carrier's railroad operating employees. **(New Requirement from NPRM)**

FRA estimates that approximately 50 written documents will be submitted to FRA each year under the above requirement. It is estimated that it will each railroad approximately 60 minutes to complete each written document and send it to FRA. Total annual burden due to this requirement is 50 hours.

Respondent Universe:	728 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 written documents
Annual Burden:	50 hours

**Calculation:** 50 written documents x 60 min. = 50 hours

(B) Use in freight and passenger locomotive cabs generally. In addition to the restrictions on locomotive engineers described in paragraph (b) of this section, 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 unless —

(i) A safety briefing that includes all crewmembers is held; and

(ii) All crewmembers agree that it is safe to use the 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; and

(2) All crewmembers agree that is safe to do so.

*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 91,778 hours (728 + 50 + 91,000).

**§ 220.313 Instruction.**

(a) Program. Beginning [INSERT DATE 90 DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], each railroad

must maintain a written program of instruction, and examination of each railroad operating employee and each supervisor of the railroad operating employee on the 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, or examination required by this subpart with the program of instruction required under § 217.11 of this chapter.

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

(2) The written program of instruction 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 instructed 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 the Federal Railroad Administration (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 must be initially trained prior to [INSERT DATE 180 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(1) Beginning [INSERT DATE 180 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], no employee shall perform work requiring compliance with the requirements of this subpart unless the employee has been instructed on requirements of this subpart within the previous three years.

(2) The records of successful completion of instruction and examination required by this section must 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 instructed employees
Annual Burden:	22,750 hours

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

(c) Records. Written records documenting successful completion of instruction 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 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.

*Currently, the burden for this requirement is included under that for Part 217(OMB No. 2130-0035; see section 217.11) and OMB No. 2130-0579. However, the burden will need to be updated once this final rule becomes effective (180 days after publication in*

*the Federal Register) and Emergency Order No. 26 and its associated information collection are discontinued. FRA will be submitting a revised submission for Part 217 early next year after publishing the required 60-day and 30-day Notices that will account for the additional burden resulting from this provision.*

Total annual burden for this entire information collection is 372,054 hours.

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

As illustrated below, the direct costs associated this information collection amount to \$10,000. The other costs listed here of \$157,300 are costs of information technology associated with the use of railroad supplied electronic devices, most notably cameras, under section 220.307. FRA includes this cost to cover all costs associated with the information collection requirements. Thus, both direct and indirect costs are included.

**Cameras**

As noted in the regulatory impact analysis accompanying this rule, the rule prohibits the utilization of personal electronic devices whose primary function is not for taking photographs or videos, such as cell phones with camera functions, to document safety hazards or violations of rail safety laws, regulations, orders, or standards. Only electronic devices whose primary function is as a camera for taking still pictures or videos would be allowed to be used to document safety hazards or violations.

FRA has entertained the possibility that railroads or crewmembers would want to be able to supplement their documentation of safety hazards or violations of rail safety laws, regulations, orders, or standards with a photograph or video. For purposes of this analysis, FRA has assumed the cost of providing cameras for 50 percent of the fleet of locomotives. Assuming that no locomotives currently have cameras, the total initial cost of providing a camera for each locomotive in operation would equal the number of locomotives in operation multiplied by the average cost of cameras. Furthermore, there would be some ongoing costs as cameras require replacement.

FRA estimates that the number of cameras purchased would equal half of the existing fleet of approximately 28,500 after this rule goes into effect. Thus, approximately 14,250 cameras would be purchased.

FRA estimates the average cost to purchase cameras at \$3 per camera. The film from these cameras documenting safety hazards would also have to be developed. FRA estimates this cost to average \$3 per film. Cameras will also have to be replaced periodically, and FRA estimates that approximately 50 cameras per year will need to be purchased for this purposed and the film developed.



Costs are as follows:

INITIAL PURCHASE	14,250 cameras x \$3 = \$42,750
FILM DEVELOPMENT	14,250 films x \$3 = \$42,750
REPLACEMENT PURCHASE	50 cameras x \$3 = \$ 150
FILM DEVELOPMENT	50 films x \$3 = \$ 150
<b>TOTAL</b>	<hr/> \$85,800

### **Calculators**

Similar to the exception for cameras, this rule makes an exception for using an electronic device for an authorized business purpose if the device is a calculator that is not part of another electronic device. In other words, railroad operating employees would be permitted to use calculators and only calculators for performing calculations, if those calculations are required for authorized business purposes.

Assuming that no locomotives currently have calculators, the total initial cost of providing a calculator for each locomotive in operation would equal the number of locomotives in operation (28,500) multiplied by the average cost of a calculator. Also, there would be ongoing costs for replacement calculators.

FRA estimates the average cost of a calculator at \$2.50, and estimates that 100 calculators per year will need to be replaced. Costs are as follows:

INITIAL PURCHASE	28,500 calculators x \$2.50 = \$71,250
REPLACEMENT PURCHASE	100 calculators x \$2.50 = \$ 250
<b>TOTAL</b>	<hr/> \$71,500

Other additional costs to respondents outside besides those included above are as follows:

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

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**TOTAL** \$ 10,000

**GRAND TOTAL** \$167,300

**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 of 50 hours from the previously approved NPRM submission. The increase in burden is due to a **program change**.

The following reflects the program change:

(1) Under § 220.307(a), FRA added a new requirement that railroads must submit document specifying in writing the authorized business purpose(s) involving the taking of a photograph or video for which a railroad-supplied electronic device may be used by the carrier's railroad operating employees. This **program change** *increased* the burden by 50 *hours*.

The current OMB inventory shows a total burden of 372,004 hours, while this revised submission exhibits a total burden of 372,054 hours. Hence, there is a burden increase of 50 hours.

There has been a change in costs to respondents from the previous submission. This is an **adjustment** that includes the cost of cameras and calculators that was not included earlier. This cost comes to \$157,300. Previously, FRA had only included \$10,000 for miscellaneous costs. Hence, there is an increase in cost to respondents of \$157,300.

**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.