

1FEDERAL RAILROAD ADMINISTRATION
Railroad Communications
(Title 49 Code of Federal Regulations Part 220)
SUPPORTING JUSTIFICATION
OMB Control No. 2130-0524

Summary of Submission

- This submission is a request for an extension without change (with changes in estimates) of the last three-year approval granted by the Office of Management and Budget (OMB) on October 14, 2020, which expires October 31, 2023.
- The Federal Railroad Administration (hereafter “FRA” or “the Agency”) published the required 60-day Notice in the Federal Register on July 5, 2023. See 88 43001. FRA received no comments in response to this Notice.
- The total number of burden hours requested for this information collection submission is 95,902, which is unchanged from the last submission.
- The total number of responses requested for this information collection submission is 4,119,004, which is unchanged from the last submission.
- The answer to question number 12 itemizes all information collection requirements.

1. Circumstances that make collection of the information necessary.

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.

On October 1, 2008, FRA issued Emergency Order No. 26 (EO 26 or “Order”) restricting the on-duty use of cellular telephones and other electronic devices.¹ In the period from the effective date of EO 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 use of an electronic device, failing to have its earpiece removed from the employee’s ear, or failing to have the device turned

¹ 73 FR 58702, Oct. 7, 2008.

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 was 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, and to report to Congress on the results of the study.² Section 405(d) of the RSIA authorized 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, delegated the responsibility to carry out these duties and exercise this authority to the Federal Railroad Administrator. 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.

In 2010, FRA amended its railroad communications regulations, codifying most of the requirements in EO 26, by restricting the use of cellular telephones and other distracting electronics by railroad operating employees.³

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

The railroad communications regulations in 49 CFR part 220 set forth the minimum requirements governing the use of wireless communications in connection with railroad operations. In addition, this part sets forth prohibitions, restrictions, and requirements that apply to the use of personal and railroad-supplied cellular telephones and other electronic devices. FRA inspectors review the information collected under § 220.302 during routine safety audits to help ensure that railroads amend their code of operating rules so that they comply with all the requirements of subpart C of Part 220.⁴

The details of each paperwork requirement are covered under question 12 of this document.

3. Extent of automated information collection.

Over the years, FRA has strongly supported and highly encouraged the use of advanced automated technology, particularly electronic recordkeeping, to reduce the burden on

² 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).

³ 75 FR 59602, Sept. 27, 2010.

⁴ 75 FR at 59602.

railroads and other entities that submit or retain information required by the agency. 49 CFR § 220.313(c), *Records*, permits all documents to be retained by electronic recordkeeping.⁵

At least 80% of all responses will be kept electronically, and information collection requirements outlined in this rule involve the minimal use of paper. Where written paper requirements are specified in part 220, 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.

4. Efforts to identify duplication.

To FRA's knowledge, this information is not duplicated elsewhere. Similar data is not available from any other approved source.

5. Efforts to minimize the burden on small businesses.

"Small entity" is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses and stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line-haul railroad" that has fewer than 1,500 employees, a "short-line railroad" with fewer than 1,500 employees, a "commuter rail system" with annual receipts of less than \$47.0 million dollars, or a contractor that performs support activities for railroads with annual receipts of less than \$34.0 million. Additionally, 5 U.S.C. 601 defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Additionally, in consultation with SBA, FRA has published a final statement of agency policy that formally establishes small entities as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad. Approximately 730 railroads meet the criteria for small entities.

Because many of these small railroads rely on cell phones for train operations, part 220 provides exceptions 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." However, where small railroads are not excepted from part 220 requirements, such as from the requirements to provide written rules of instruction, training, and testing to its operating employees on the substance of the regulation, FRA has determined that the paperwork requirements are not burdensome to

⁵ 49 CFR § 217.9(g) and 49 CFR § 217.11(c).

small railroads. For example, program revisions are not expected to entail more than one labor hour per railroad.

6. Impact of less frequent collection of information.

If FRA did not collect this information, or collected it less frequently, railroad safety in the United States would be directly and adversely impacted. Clear and accurate communication without the needless distractions of cell phones and other electronic devices is critical for the safe movement of trains. Based on recent railroad accident history, it is imperative that railroads comply with part 220 requirements and include in their operating rules restrictions and required training on the use of mobile telephones, radios, and other electronic communication devices.

Specifically, §§ 220.9 and 220.11 require that each radio and wireless communication be tested before the beginning of a work assignment to ensure proper functioning. Without this information collection, FRA would have no way to verify that these tests were completed, and that the equipment worked as intended. Malfunctioning radios may lead to improper, unsafe, or unauthorized train movements resulting in an increase in the numbers of accidents/incidents, injuries, and fatalities.

The written program of instruction and recordkeeping requirements under § 220.313 allow FRA to confirm that railroads are providing their operational employees with essential training and periodic re-training on part 220 requirements and their own operating rules, including the prohibition of the use of personal electronic devices while performing highly sensitive safety functions. More knowledgeable and better trained railroad employees promote reliable, high-quality radio communications. These improved communications help ensure that movement authorities are clearly understood and implemented and 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 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.

This collection of information allows FRA to detect unsafe or undesirable trends in railroad operations and take timely action to correct/eliminate actual or potential problems. Without this information, increased numbers of accidents/incidents resulting in injuries and deaths to train crews, railroad passengers, roadway workers, and others operating on or near the rail may occur. Additionally, the ability to review and evaluate waiver petitions under § 220.8 means FRA can make informed decisions and ensure that railroads adhere to and maintain high levels of safety.

7. Special circumstances.

There are no special circumstances.

8. Compliance with Title 5 Code of Federal Regulations § 1320.8.

As required by the Paperwork Reduction Act of 1995 (PRA) and 5 CFR 1320, FRA published a notice in the *Federal Register* on July 5, 2023,⁶ soliciting comment from the public, railroads, and other interested parties on these information collection requirements. FRA received no comments from the public.

Consultations with representatives of the affected population:

As a part of FRA's oversight and enforcement, individuals from the railroad industry are generally in direct contact with FRA's inspectors at the time of site inspections and can provide any comments or concerns to them.

9. Payments or gifts to respondents.

There are no monetary payments provided or gifts made to respondents in connection with this information collection.

10. Assurance of confidentiality.

The information collected is not of a confidential nature, and FRA pledges no assurance of confidentiality.

11. Justification for any questions of a sensitive nature.

There are no questions, information, or data of a sensitive nature in this information collection.

⁶ 88 FR 43001.

12. Estimate of burden hours for information collected.

The estimates for the respondent universe, annual responses, and average time per responses are based on the experience and expertise of FRA’s Office of Railroad Systems and Technology, Operating Practices Division.

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) ⁷	PRA Analyses and Estimates
220.8—Waivers petitions	746 railroads	2 petition letters	1 hour	2 hours	\$126.14	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. FRA estimates, after careful review, that it will take approximately 1 hour for a RR to prepare and submit a waiver petition.
220.13—Reporting emergencies	<i>The requirements for this section are routine and covered by FRA’s estimate of the economic cost.</i>					
220.21—Railroad operating rules—radio communications—recordkeeping	<i>The burden for this requirement is included under § 217.7 and § 218.22, OMB Control No. 2130-0035.</i>					
220.23—Publication of radio information	<i>The requirements for this section are routine and covered by FRA’s estimate of the economic cost.</i>					
220.31—Initiating a radio transmission	<i>The requirements for this section are routine and covered by FRA’s estimate of the economic cost.</i>					
220.33—Receiving a radio transmission	<i>The requirements for this section are routine and covered by FRA’s estimate of the economic cost.</i>					

⁷ The dollar equivalent cost is derived from the 2022 Surface Transportation Board Full Year Wage A&B data series using the employee group 600 (Transportation, Train & Engine) hourly wage rate of \$36.04. The total burden wage rate (Straight time plus 75%) used in the table is \$63.07 (\$36.04 x 1.75 = \$63.07).

220.35—Ending a radio transmission	<i>The requirements for this section are routine and covered by FRA's estimate of the economic cost.</i>					
220.38—Communication equipment failure	<i>The requirements for this section are routine and covered by FRA's estimate of the economic cost.</i>					
220.47—Emergency radio transmissions	<i>The requirements for this section are routine and covered by FRA's estimate of the economic cost.</i>					
220.61(b)(3)—Transmission of mandatory directive	746 railroads	3,800,000 directives	90 seconds	95,000 hours	\$5,991,650.00	<p>A mandatory directive shall be copied in writing by the receiving employee in the format prescribed in the railroad's operating rules.</p> <p>FRA estimates, after careful review, that it will take approximately 90 seconds for each transmission of a mandatory directive.</p>
(b)(5)—Marking of fulfilled or canceled mandatory directives	746 railroads	317,000 marks	10 seconds	881 hours	\$55,564.67	<p>For train crews, before a mandatory directive is acted upon, the conductor and engineer shall 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 shall 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.</p> <p>FRA estimates, after careful review, that it will take approximately 10 seconds to mark the mandatory directives that were fulfilled or canceled.</p>
220.302—Operating rules implementing the requirements of this subpart	<i>The burden for this requirement is included under § 217.7, OMB Control No. 2130-0035.</i>					
220.313(a)—Railroad written program of instruction and examination on part 220 requirements	2 new railroads	2 Amended written Instruction Programs	1 hour	2 hours	\$126.14	Beginning December 27, 2010, each railroad shall maintain a written program of instruction 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

						<p>these requirements are pertinent to the employee's duties.</p> <p>FRA estimates, after careful review, that it will take approximately 1 hour to maintain each written program of instruction and examination.</p>
220.313(c)—Employee training records	746 railroads	2,000 records	30 seconds	17 hours	\$1,072.19	<p>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 3 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.</p> <p>FRA estimates, after careful review, that it will take approximately 30 seconds for each record to comply with the recordkeeping requirements and to be available, upon request.</p>
220.315—Operational Tests and Inspections	<i>The burden for this requirement is included under § 217.11 and § 238.503, OMB No. 2130-0035 and OMB No. 2130-0576, respectively.</i>					
Total	746 railroads	4,119,004 responses		95,902 hours	\$6,048,539.14	

13. Estimate of total annual costs to respondents.

FRA estimates that some respondents may need supplies (such as paper) to comply with this information collection request. FRA estimates one ream of paper (500 sheets) costs approximately \$8.43.⁸ FRA assumes approximately \$3,793.50, or 450⁹ reams of paper, will be needed for railroads that provide hard copy responses to FRA.

14. Estimate of cost to Federal Government.

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

15. Explanation of program changes and adjustments.

This is an extension without change (with changes in estimates) to a current collection of information. The railroads use of new technology such as supplied electronic devices, Positive Train Control and handheld electronic devices has assisted in keeping the estimated paperwork burdens substantially the same. Thus, there are no adjustments at this time with respect to the hourly burden for this proposed 3-year collection period.

16. Publication of results of data collection.

FRA does not plan to publish the results of the data collection.

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

FRA is not seeking approval to not display the expiration date.

18. Exception to certification statement.

No exceptions are taken at this time.

⁸ FRA averaged the costs of paper reams from large retailers, Walmart, Staples, Amazon, and OfficeSupply.com

⁹ \$8.43 x 450 = \$3,793.50.