

FRA EMERGENCY ORDER #26



Pursuant to the authority of 49 U.S.C.20104, delegated to me by the Secretary of Transportation (49 CFR 1.49), it is hereby ORDERED that, on and after [insert date 20 days following publication in the Federal Register **{anticipated implementation effective date is October 27, 2008 }**], the prohibitions and restrictions described below shall be observed by railroad operating employees and railroads.

(a) Scope.

This order sets forth prohibitions and restrictions that apply to railroad operating employees' use of mobile telephones (commonly called cell telephones or cell phones), other electronic devices or electrical devices, and other portable electronic devices (such as portable digital video disc (DVD) players, radio receivers, and audio players) capable of distracting a railroad operating employee from a safety-critical duty (by railroad operating employees either while in the cab of a moving locomotive, while working on the ground in proximity to a live track) or while another employee of the railroad is assisting in preparation of the train (e.g., during an air brake test). This order does not restrict use of the railroad radio nor does it affect the use of working wireless communications under 49 CFR Part 220.

(b) Definitions. In this [Emergency] Order-

- (1) Fouling a track means the placement of an individual in such proximity to a track that the individual could be struck by a moving train or other on-track equipment, or in any case is within four feet of the nearest rail.
- **(2) Personal electronic or electrical device means an electronic or electrical device that was not provided to the railroad operating employee by the employing railroad for one or more business purposes.**
- (3) Railroad operating employee means a person performing duties subject to 49U.S.C. 21103, "Limitation on duty hours of train employees," an individual engaged in or connected with the movement of a train, including a hostler.
- (4) Railroad-supplied electronic or electrical device means an electronic or electrical device provided to a railroad operating employee by the employing railroad for one or more business purposes.
- (5) Switching operation means the classification of freight cars according to commodity or destination; assembling of cars for train movements, changing the position of cars for purposes of loading, unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a train movement.
- (6) means (i) a single locomotive, (ii) multiple locomotives coupled together, or (iii) one or more locomotives coupled with one or more cars.
- **(7) Use of an electronic or electrical device means use of a mobile telephone or another electronic or electrical device to conduct an oral communication; place or receive a telephone call; send or read an electronic mail message or text message; play a game; navigate the Internet; play, view, or listen to a video; play, view, or listen to a television broadcast; play or listen to a radio broadcast other than a radio broadcast**

by a railroad; play or listen to music; to execute a computational function, or to perform any other function that is not necessary for the health or safety of the person and that entails the risk of distracting the employee from a safety-critical task. An electronic or electrical device that enhances the individual's physical ability to perform these tasks, such as a hearing aid, is not covered by this order.

- (8) Wireless communication device means an electronic device capable of communicating remotely. Examples include cell phones, personal digital assistants(PDAs) and portable computers (commonly called laptop computers). References to use of a wireless communication device include oral conversations, text messaging, electronic mail, and transmission or receipt of a file and one or more media.

(c) Personal electronic and electrical devices.

- (1) Each personal electronic or electrical device must be turned off with any earpieces removed from the ear while on a moving train, except that, when radio failure occurs, a wireless communication device maybe used in accordance with railroad rules and instructions.
- (2) Each personal electronic or electrical device must be turned off with any earpieces removed from the ear when a duty requires any railroad operating employee to be on the ground or to ride rolling equipment during a switching operation and during any period when another employee of the railroad is assisting in preparation of the train (e.g., during an air brake test).
- (3) Use of a personal electronic or electrical device to perform any function other than voice communication while on duty is prohibited. In no instance may a personal electronic or electrical device interfere with the railroad operating employee's performance of safety-related duties.

(d) Railroad-supplied electronic and electrical devices.

- (1) The use of a railroad supplied electronic or electrical device by a locomotive engineer (including a remote control locomotive operator) is prohibited while on a moving train, or when a duty requires any member of the crew to be on the ground or to ride rolling equipment during a switching operation, or during any period when another employee of the railroad is assisting in preparation of the train (e.g., during an air brake test).
- (2) A railroad operating employee other than a locomotive engineer operating the controls of a moving train may use a railroad-supplied mobile telephone or remote computing device in the cab of a moving locomotive for an authorized business purpose, after a safety briefing, provided that all assigned personnel on the crew agree that it is safe to do so. Any other use is prohibited in the cab.
- (3) A railroad operating employee may use a railroad-supplied electronic or electrical device for an approved business purpose while on duty within the body of a passenger train or railroad business car. Use of the device shall not excuse the individual using the device from the responsibility to call or acknowledge any signal, inspect any passing train, or

perform any other safety-sensitive duty assigned under the railroad's operating rules and special instructions,

- **(4) For freight train crewmembers, a railroad operating employee may not use a railroad-supplied electronic or electrical device for an approved business purpose while on duty outside the cab unless the following conditions are met: (1) the employee is not fouling a track; (2) no switching operation is underway; (3) no other safety duties are presently required; and (4) all members of the crew have been briefed that operations are suspended.**

(e) Operational testing.

- (1) The railroad's program of operational tests and inspections under 49 CFR Part 21.7 shall be revised as necessary to include the requirements of this order and shall specifically include a minimum number of operational tests and inspections, subject to adjustment as appropriate.
- **(2) When conducting tests and inspections under 49 CFR Part 217, a railroad officer, manager or supervisor is prohibited from calling the personal electronic or electrical device or the railroad-supplied electronic or electrical device used by a locomotive engineer while the train to which the locomotive engineer is assigned is moving.**
- (3) When an operational test involves stopping a train, interrupting a switching operation, or interrupting an activity involving other employees of the railroad (e.g., through use of a banner, signal, or radio communication), the limitations set forth in this order regarding use of electronic and electrical devices shall continue to be in effect even though the train movement, switching operation, or other activity is temporarily suspended.

(f) Exceptions. Notwithstanding any other provision of this order--

- (1) A railroad operating employee may use the digital storage and display function of a personal or railroad-supplied electronic device to refer to a railroad rule, special instruction, timetable or other directive, if such use is authorized under a railroad operating rule or instruction;
- **(2) Railroad operating employees may use a personal or railroad-supplied wireless communication device as necessary to respond to an emergency situation involving the operation of the railroad or encountered while performing a duty for the railroad;**
- (3) A locomotive engineer (including a remote-control locomotive operator) may use electronic control systems and informational displays presented to the locomotive engineer within the locomotive cab or on a remote control transmitter to operate a train or conduct a switching operation, including functions associated with controlling switches;
- (4) Under conditions authorized under 49 CFR Part 220, a railroad operating employee may use a railroad-supplied or railroad-authorized working wireless communication device, in lieu of the railroad radio, to conduct train or switching operations;
- (5) A railroad employee may refer to a digital timepiece to ascertain the time of day or to verify the accuracy of speed indicators.

(g) Training.

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

(h) Sanctions.

- **(1) Any individual who willfully violates a prohibition stated in this order or uses any of the described devices without observing any of the restrictions stated in this order is subject to civil penalties under 49 U.S.C. 21301.**
- **(2) In addition, such an individual whose violation of this order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under 49 U.S.C. 201 11.**
- (3) A railroad that violates this order may be subject to civil penalties under 49U.S.C. 21301.
- (4) FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 201 12.