

FRA proposes permanent restriction on personal electronic devices

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CLEVELAND, May 18 - In a Proposed Rule published in today's Federal Register, the Federal Railroad Administration (FRA) is seeking to codify Emergency Order No. 26 (EO 26), the cell phone ban, into a federal regulation.

EO 26 was published on August 7, 2008, after the tragic Metrolink accident in Chatsworth, Calif., which claimed the lives of 25 people. The National Transportation Safety Board has since concluded that the engineer of the Metrolink passenger train likely was distracted by use of a personal cellular phone to send text messages seconds before his train collided head-on with a Union Pacific freight train.

The proposed federal rule would largely reflect EO 26 by significantly limiting railroad operating employees' use of personal electronic devices. It would apply to any electronic device that was not provided to the employee by the railroad for business purposes. Railroad operating employees would be permitted to use cell phones or similar electronic devices under strictly limited circumstances.

The Proposed Rule does not apply to the locomotive radio or an electronic device used to substitute for a non-operative locomotive radio. It also does not apply to electronic control systems and information displays within the locomotive cab or on a remote control transmitter necessary for a locomotive engineer to operate a train or conduct switching operations. Nor does it apply to a digital watch whose only purpose is as a timepiece.

There is a general prohibition against using an electronic device whenever that use would interfere with any employee's performance of safety-related duties. Railroad operating employees in the cab of a controlling locomotive would continue to be required to have each personal electronic device turned off with any earpiece removed from the ear when on a moving train, when any member of the crew is either on the ground or riding rolling equipment during a switching operation, or when any railroad employee is assisting in preparation of the train for movement.

While in the cab of a moving train, the locomotive engineer would be prohibited from using an electronic device under any circumstances. Other crew members, or employees deadheading in the lead locomotive, may use a mobile telephone or remote computing device for an approved business purpose only if a safety briefing that includes all crewmembers is held before use, and all crewmembers agree that it is safe to use the mobile telephone or remote computing device.

In addition, a freight train crewmember who is not in deadhead status may use a railroad-supplied electronic device outside the cab of a controlling freight locomotive only if all of the following conditions are met: (1) the crewmember is not fouling a track; (2) operations are suspended; and (3) all members of the crew have been briefed that operations are suspended.

In response to EO 26, the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU) filed a joint Petition

for Review on November 14, 2008, requesting that the FRA make specific exceptions to the Emergency Order to further promote safety.

Specifically, BLET and UTU requested that FRA: (1) provide an exception for deadheading employees who were in the body of a passenger train or railroad business car, or inside the cab of a locomotive that was not the controlling locomotive of the train; (2) permit the use of a camera to document safety violations and hazards; (3) permit the use of calculators when necessary for train handling purposes; and (4) permit the use of GPS tracking devices to verify the accuracy of the speed indicator in a controlling locomotive.

The FRA denied the request regarding GPS devices, after concluding that they present a high risk of distraction. However, the unions' request concerning deadheading operating employees would be granted under FRA's Proposed Rule, subject to the limitations above when a deadheading employee is in the cab of the controlling locomotive. Further, the use of a stand-alone calculator would be permitted if used for an authorized business purpose.

FRA also proposes to permit the use of an electronic device to take a photograph or video to document a safety hazard or a violation of a rail safety law, regulation, order, or standard, provided that (1) the device's primary function is as a camera for taking still pictures or videos (a camera that is part of a cell phone or other multi-functional electronic device is not included in this exception), (2) the camera, unless otherwise permitted, is turned off immediately after the documentation has been made, and (3) if the camera is used in the cab of a moving train, the use is only by a crewmember other than the locomotive engineer.

Moreover, FRA proposes that a railroad operating employee - other than a locomotive engineer at the controls of a moving train - be permitted to use the following, if that use does not interfere with any employee's performance of safety-related duties:

The digital storage and display function of an 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.

An electronic device as necessary to respond to an emergency situation involving the operation of the railroad or encountered while performing duty for the railroad.

A medical device that is consistent with the railroad's standards for medical fitness for duty, such as a hearing aid or a glucose monitor.

The Proposed Rule also would continue in effect an exemption for some short line railroads, under which the use of wireless communication devices to conduct train or switching operations is permitted if the railroad operating employee is part of a crew assigned to a train that is exempt from the requirement of a working radio under Section 220.9(b) when the employing railroad has fewer than 400,000 annual employee work hours.

BLET National President Sorrow praised publication of the Proposed Rule. "We have consistently supported strict control of electronic devices that

are known to cause distraction to operating crew members because this is a life and death issue for BLET members," Sorrow said. "We applaud the FRA for hearing and addressing our concerns, and we are in the process of preparing further comments on the Proposed Rule."

The deadline for submitting public comments is June 17, 2010, and the Proposed Rule may be viewed at or downloaded from:
http://www.ble-t.org/pr/pdf/PED_FR_20100518.pdf .