

# BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

---

EDWARD W. RODZWICZ  
National President

1370 Ontario Street  
Standard Building, Mezzanine  
Cleveland, Ohio 44113-1702



Phone: 216.241.2630  
Fax: 216.241.6516  
[www.ble-t.org](http://www.ble-t.org)

## VIA ELECTRONIC AND FIRST-CLASS MAIL

October 22, 2008

All General Chairmen

Re: Federal Railroad Administration Emergency Order No. 26

Dear Sirs and Brothers:

This follows up on our previous conversations with respect to the above-referenced matter. As you may recall, Emergency Order No. 26 (“EO 26”) will become effective on Sunday, October 27, 2008. During discussions concerning the provisions of EO 26, a question arose as to the potential for a carrier official to ask a member to (1) take his/her personal cell phone from his/her grip, (2) turn it on, and (3) perhaps allow the official to examine the phone. I informed you at that time that we would take the question under advisement and provide a response as soon as possible.

After review and consultation with counsel concerning this issue, I have concluded that there is no basis for viable legal action to prevent such an incident from occurring. Since the Federal Railroad Administration (“FRA”) has published the Emergency Order, it is the FRA who will be responsible for its enforcement, including determining what forms of enforcement are not appropriate. Indeed, FRA already has done so, to a limited extent, by ruling in Section (e)(2) of EO 26 that — when checking for compliance with — “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.” *See* 73 FR 58708.

That being said, we already have expressed our concern verbally with FRA Headquarters, and we intend to raise the issue in a Petition for Review that we will file. In the interim, and with FRA now aware of this potential problem, I would suggest that you reach out to your respective carriers at once and attempt to engage them in a discussion to head off such mischief by field supervisors. In that discussion, you should make the following points:

- In the abstract, the carrier has no more right to demand that a member remove his/her personal cell phone from his/her grip than it can demand to inspect the member’s lunch, or extra pair of socks, or any other personal item, for that matter.

**All General Chairmen**

**October 22, 2008**

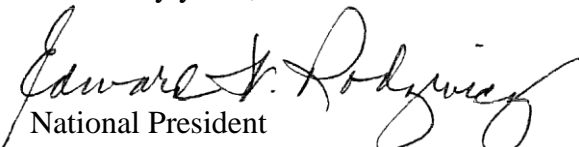
**Page 2**

- FRA's overarching safety interest in publishing EO 26 is to remove the distraction caused by electronic devices. That intent is betrayed by having someone rummaging through their grip, fumbling with the phone, and paging through a call log instead of paying attention to their job.
- Since the permissible use of cell phones is limited to voice communication, requiring someone to turn on their cell phone actually could cause a violation of EO 26 if the member was sent text messages after having turned off the phone, because those messages will automatically be downloaded and displayed when the phone connects with the wireless system.

If you succeed in reaching an understanding that is acceptable to you, it is important that the understanding be memorialized in writing and communicated to the carrier's field supervisors and our members, alike. The last thing we need is some hard-headed supervisor triggering a confrontation, or a member putting himself/herself on the road to an insubordination charge. I share your concern about this issue, and we will continue to work toward a resolution of this potential problem that is uniform throughout the industry. I want to underscore again, however, that the best approach our membership can take is to turn off their cell phones when reporting for duty, store them in their grips, and leave them there until they are off duty.

Lastly, enclosed for your information are: (1) a FRA-prepared summary of EO 26; (2) a FRA-prepared flowchart summarizing the requirements of EO 26; and (3) a series of questions we have received concerning EO 26 and the answers to the best of our knowledge at this point. While the FRA does permit limited use of cell phones in certain, specifically-defined situations, I continue to believe that turning the phones off and leaving them in the grip is the best way to avoid a violation or other problems. Please feel free to distribute this letter and the enclosure in any manner that suits your needs. With warmest personal regards, I remain

Fraternally yours,

  
National President

enclosures (3)

cc: BLET Advisory Board (w/encl.)  
All State Legislative Board Chairmen (w/encl.)  
BLET National Division Executive Staff (w/encl.)  
BLET National Legislative Office Staff (w/encl.)  
Harold A. Ross, Esquire, Interim General Counsel (w/encl.)

## EO-26 Summary

(Applies only to railroad operating employees)

(c) Personal electronic and electrical devices.

1. Turned off with any earpiece removed from the ear while on a moving train (except in accordance with railroad rules and instructions for radio failure or in an emergency).
2. Turned off with any earpiece removed from the ear when a duty requires any railroad operating employee to:
  - be on the ground;
  - ride rolling equipment during a switching operation; or
  - when another employee of the railroad is assisting in the preparation of the train (e.g. during an air brake test).
3. Is authorized only for voice communication and only when such use does not interfere with the railroad operating employee's performance of safety related duties.

(d) Railroad-supplied electronic and electrical devices.

1. Use is prohibited by a locomotive engineer or RCO:
  - (a) while on a moving train.
  - (b) when a duty requires any member of the crew to:
    - be on the ground;
    - ride rolling equipment during a switching operation; or
    - when another railroad employee of the railroad is assisting in preparation of the train (e.g. during an air brake test).
2. Use is authorized in the cab of a moving locomotive for a railroad operating employee, other than a locomotive engineer operating the controls of a moving train,
  - for an authorized business purpose.
  - after a safety briefing provided that all assigned personnel on the crew agree it is safe to do so.Any other use is prohibited in the cab.
3. Use is authorized within the body of a passenger train or railroad business car for:
  - an approved business purpose; and
  - provided that such use does not inhibit the railroad operating employee's responsibility to perform any assigned safety sensitive duty.
4. Use is authorized for freight train crew members for an approved business purpose while on duty outside the locomotive cab when:
  - the employee is not fouling a track;
  - no switching operation is underway;
  - no safety duties are presently required; and
  - all members of the crew have been briefed that operations are suspended.

(e) Operational Testing.

1. Must include requirements of EO-26 and specifically include a minimum number of operational tests and inspections.
2. Railroad officers, managers or supervisors may not call the personal or railroad-supplied electronic or electrical device used by a locomotive engineer while the train to which the locomotive engineer is assigned is moving.
3. Limitations of EO-26 continue in effect even though the train movement, switching operation or other activity is temporarily suspended during an operational test.

(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 an RCO) 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.

1. Each railroad shall instruct each of its railroad operating employees and supervisors of railroad operating employees concerning the requirements of EO-26 and implementing rules and instructions.
2. Instruction must be sufficient to ensure understanding of EO-26 including distinctions between this rule and any more stringent requirements implemented by the railroad.

###



# FRA EO 26 – Electronic and Electrical Device Flow Chart

Use of Personal or RR supplied electronic/electrical devices may NOT interfere with RR operating employees performance of safety related duties

**Use of RR supplied electronic/electrical devices PROHIBITED when:**

**Personal electronic/electrical devices MUST BE TURNED OFF with earpiece removed when: (other than a hearing aid device)**

**Other RR Operating Employee\***

**Locomotive Engineer/ RCO**

**All RR Operating Employees\***

**On a moving train unless:**

Authorized for business purpose

A safety briefing is held

Crew agrees it is safe to do so

or

Authorized business purpose within the body of a passenger train or RR business car

**Outside the cab unless:**

Not fouling a track

No Switching Operation is underway

No other safety related duties

All crew members have been briefed that operations are suspended

**On a moving train**

or

When a duty requires any crew member to be on the ground

or

When a crew member is riding rolling equipment during a switching operation

and

During any period when another employee of the RR is assisting in preparation of the train

**On a moving train**

or

When a duty requires any crew member to be on the ground

or

When a crew member is riding rolling equipment during a switching operation

and

During any period when another employee of the RR is assisting in preparation of the train

### Exceptions:

(1) May use digital storage and display function of personal or RR supplied device to refer to RR rule, SI, TT, other directive, if authorized by RR operating rule or instruction:

(2) May use Personal or RR supplied device as necessary to respond to an emergency involving the operation of the RR;

(3) Engineer/RCO may use electronic control systems and information displays presented within locomotive cab or on RCO transmitter including functions associated with controlling switches:

(4) Under authorized conditions of 49 CFR 220, may use a RR supplied/authorized device in lieu of RR radio, to conduct train or switching operations:

(5) May refer to a digital timepiece to ascertain time of day or verify accuracy of speed indicators.

### Note:

**WHILE ON DUTY** use of personal electronic/electrical devices for other than voice communication is prohibited except as noted above

\*Means a person performing duties subject to 49 U.S.C. 21103, "limitation on duty hours of train employees."

## **Emergency Order No. 26 — BLET Frequently Asked Questions (as of 10/22/08)**

### **1. What is the best way to avoid violating the Emergency Order?**

Regardless of the circumstances in which the Emergency Order permits the use of cell phones and other personal electronic devices, the surest way to avoid violating the Emergency Order or associated railroad rules is to turn off all such devices when you register for duty, stow them in your grip, and do not retrieve and activate them until you have been relieved from duty.

### **2. Can we use our cell phones (business or personal) while stopped and not operating the controls of the train?**

The Emergency Order does not prohibit the use of cell phones for voice communication, provided that (1) the train is stopped, and (2) an operating employee is not required to ride rolling equipment during switching operations, and (3) no railroad employees are required to be on the ground, including any situation where other are assisting in preparation of the train (e.g., during an air brake test). Such use in this circumstance would be governed by railroad operating rules.

### **3. Can we use our cell phones (business or personal) while being deadheaded in any type of mode of transportation?**

Personal electronic devices must be turned off, with earpiece removed, 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). A railroad-supplied mobile telephone or remote computing device may be used by a crew deadheading in the cab of a moving locomotive for an authorized business purpose, but only after a safety briefing is conducted and all assigned personnel agree that it is safe to do so. A deadheading crew also may use a railroad-supplied mobile telephone or remote computing device for an authorized business purpose within the body of a passenger train or a railroad business car. When the use of a cell phone is permitted, it may be used for voice communications only. The Emergency Order is silent with respect to the use of electronic devices by crews deadheading in trailing locomotives, and we are preparing a Petition for Review in order to obtain a clarification from FRA concerning this issue. The scope of the Emergency Order does not extend to modes of deadhead transportation other than trains.

### **4. While moving on a train, if there is someone else in the cab of the locomotive with you, can they use their cell phone?**

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 — including the use of a personal cell phone — is prohibited in the cab of a moving train.

**5. Does the emergency order prohibit the use of a camera while on duty to document a safety hazard?**

The Emergency Order specifically states that the use of a personal electronic or electrical device to perform any function other than voice communication while on duty is prohibited. This would prohibit the use of cell phones with photographic capabilities for that purpose. However, it is unclear that a disposable camera — which is not an electronic or electrical device — falls within the scope of the Emergency Order, and the prohibition against use of an electronic camera only seems arbitrary, particularly when it would be used to improve safety. We are preparing a Petition for Review in order to obtain a clarification from FRA concerning this issue.

**6. Is it permissible to use your cell phone while the train is not moving and you are on the locomotive clear of all tracks and not performing any safety sensitive duties under this Emergency Order?**

The Emergency Order does not prohibit such use, provided (1) no operating employee is required to ride rolling equipment during switching operations, and (2) no railroad employees are required to be on the ground, including any situation where other are assisting in preparation of the train (e.g., during an air brake test). Such use in this circumstance would be governed by railroad operating rules.

**7. Is the use of calculators for such things as managing correct horsepower per ton, calculating tons per operative brake, dynamic brake and tractive effort compliance, and correcting train length permissible?**

Since the Emergency Order includes “execut[ing] a computational function” in the definition of “use of an electronic or electrical device,” and also specifically states that the use of a personal electronic or electrical device to perform any function other than voice communication while on duty is prohibited, it appears that — at least — the use of a calculator portion of a cell phone is prohibited. Because of the safety implications raised in this question, we are preparing a Petition for Review in order to obtain a clarification from FRA concerning this issue.

**8. Apparently, some of our members are using a GPS device to check their speed. The reason being that the ... speed mile markers, out of some terminals, are located at 10 mph zones. We are working through the BLE&T safety committees to get that changed. In the meantime, is this a violation of the FRA Emergency Order?**

Since the Emergency Order includes “execut[ing] a computational function” in the definition of “use of an electronic or electrical device,” and also specifically states that the use of a personal electronic or electrical device to perform any function other than voice communication while on duty is prohibited, it appears that the use of a personal GPS device is prohibited. Because of the safety implications raised in this question, we are preparing a Petition for Review in order to obtain a clarification from FRA concerning this issue.