

Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting

SOURCE: 80 FR 786, Jan. 6, 2015, unless otherwise noted.

§ 234.401 Definitions.

As used in this subpart—

Class I has the meaning assigned by regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1), as those regulations may be revised and applied by order of the Board (including modifications in class threshold based on revenue deflator adjustments).

Closed crossing means a location where a previous crossing no longer exists because either the railroad tracks have been physically removed, or each pathway or roadway approach to the crossing has been physically removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A grade-separated highway-rail or pathway crossing that has been physically removed is also considered a closed crossing.

Crossing Inventory means the U.S. DOT National Highway-Rail Crossing Inventory.

FRA Associate Administrator means the FRA Associate Administrator for Railroad Safety/Chief Safety Officer.

General railroad system of transportation means the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.

General system railroad means a railroad that operates on track which is part of the general railroad system of transportation.

Highway-rail crossing means the location where one or more railroad tracks intersect with a public highway, road, street, or private roadway, either at-grade or grade-separated, including associated sidewalks.

Inventory Form means the U.S. DOT Crossing Inventory Form (Form FRA F 6180.71).

Inventory Guide means the FRA Guide for Preparing Highway-Rail Crossing Inventory Forms in effect at

the time of the submission of data to the Crossing Inventory.

Inventory Number means the number assigned to a highway-rail crossing or pathway crossing in the Crossing Inventory.

Operating railroad means any railroad or urban rapid transit operator that operates one or more trains through a highway-rail or pathway crossing on, or connected to, the general railroad system of transportation.

Pathway crossing means a pathway that:

- (1) Is explicitly authorized by a public authority or a railroad;
- (2) Is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others;
- (3) Is not associated with a public highway, road, or street, or a private roadway; and
- (4) Crosses one or more railroad tracks either at grade or grade-separated.

Primary operating railroad means the operating railroad that either owns or maintains the track through the highway-rail or pathway crossing, unless the crossing is located within a private company, port, or dock area. If more than one operating railroad either owns or maintains the track through the highway-rail or pathway crossing, or if no operating railroad owns or maintains the track through the highway-rail or pathway crossing, then the operating railroad that operates the highest number of trains through the crossing is the primary operating railroad. In the event that there is only one operating railroad that operates one or more trains through a highway-rail or pathway crossing, that operating railroad is the primary operating railroad. For highway-rail and pathway crossings that are located within a private company, port, or dock area (“private area”), each railroad that owns track leading to the private company, port, or dock area will be considered a primary operating railroad for all crossings within the private area if a general system railroad operates over the railroad’s track leading to the private area and through at least one crossing within that area.

Private crossing means a highway-rail or pathway crossing that is not a public crossing.

Public crossing means a highway-rail or pathway crossing where the approaches are under the jurisdiction of and maintained by a public authority and open to public travel. All approaches must be under the jurisdiction of the public authority and no approach may be on private property, unless State law or regulation provides otherwise.

Temporary crossing means a highway-rail or pathway crossing created to serve a specific activity for a temporary time period not to exceed six months.

[80 FR 786, Jan. 6, 2015, as amended at 81 FR 37532, June 10, 2015]

§ 234.403 Submission of data to the Crossing Inventory, generally.

(a) Highway-rail and pathway crossing data shall be submitted to the Crossing Inventory on the Inventory Form. Except as provided in paragraph (c) of this section, the Inventory Form may be submitted in hard copy or electronically.

(b) The Inventory Form, or its electronic equivalent, shall be completed in accordance with the Inventory Guide. A copy of this guide may be obtained from the Office of Railroad Safety, RRS-23, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. A copy of this guide can also be viewed or downloaded from FRA's Safety Data Web site under the Forms/Publications tab.

(c) Each Class I railroad shall submit the data required by paragraph (a) of this section to the Crossing Inventory electronically.

(d) *Reporting by State agencies on behalf of operating railroads.* A State agency may submit crossing data to the Crossing Inventory on behalf of an operating railroad. The State agency and the operating railroad shall provide written notice to the FRA Associate Administrator that the State agency has agreed to submit and update crossing data for all of the operating railroad's highway-rail and pathway crossings within the state.

(e) *Reporting by the parent corporation on behalf of subsidiary railroads.* (1) To

satisfy the reporting requirements of this section, a parent corporation may submit crossing data to the Crossing Inventory on behalf of one or more of its subsidiary railroads. The parent corporation shall provide written notice to the FRA Associate Administrator that it has assumed reporting and updating responsibility for all of the subsidiary railroad's highway-rail and pathway crossings. The written notification shall include the following:

(i) A list of all subsidiary railroads for which the parent corporation will submit and update highway-rail and pathway crossing data;

(ii) A statement signed by an official of the parent corporation affirming that the parent corporation agrees to submit and update all of the highway-rail and pathway crossing data for the named subsidiary railroad(s); and

(iii) A statement that the parent corporation agrees to be subject to enforcement action for noncompliance with the reporting or updating requirements of this subpart.

(2) The parent corporation shall provide immediate written notification to the FRA Associate Administrator of any change in the list of subsidiary operating railroads for which it has assumed reporting and updating responsibility.

(3) The parent corporation shall submit the data required by paragraph (a) of this section to the Crossing Inventory electronically.

[80 FR 786, Jan. 6, 2015, as amended at 81 FR 37532, June 10, 2015]

§ 234.405 Submission of initial data to the Crossing Inventory for previously unreported crossings.

(a) *Duty of primary operating railroad.* (1)(i) With the exception of highway-rail and pathway crossings located in a railroad yard, passenger station, or within a private company, port, or dock area, each primary operating railroad shall assign an Inventory Number to each previously unreported highway-rail and pathway crossing through which it operates.

(ii) A primary operating railroad shall assign one or more Inventory Numbers to previously unreported highway-rail and pathway crossings through which it operates, which are

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located in a railroad yard, passenger station, or within a private company, port, or dock area.

(2) With the exception of highway-rail and pathway crossings that are located within a private company, port, or dock area, the primary operating railroad shall provide the assigned Inventory Number to each operating railroad that operates one or more trains through the previously unreported highway-rail or pathway crossing no later than January 6, 2016.

(3) Each primary operating railroad shall submit accurate Inventory Forms, or their electronic equivalent, to the Crossing Inventory for the previously unreported highway-rail and pathway crossings through which it operates, no later than August 9, 2016. The Inventory Form, or its electronic equivalent, shall reference the assigned Inventory Number for the crossing(s) and shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

(b) *Duty of operating railroad when operating railroads operate on separate tracks.* For each previously unreported highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad (other than the primary operating railroad) shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than August 9, 2016. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted in accordance with § 234.403.

(c) *Duty of all operating railroads.* Unless a written certification statement has been provided by the primary operating railroad in accordance with paragraph (d) of this section, each operating railroad, other than the primary operating railroad, that operates through a previously unreported highway-rail or pathway crossing (except a temporary crossing) for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section shall notify the FRA Associate

Administrator in writing of this oversight. Written notification provided by the operating railroad shall include, at a minimum, the latitudinal and longitudinal coordinates for each previously unreported highway-rail or pathway crossing for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section.

(d) *State-maintained crossing data.* If a primary operating railroad requests State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data, the primary operating railroad may send a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing. FRA will consider the written request to be an affirmative defense to potential liability for failure to timely submit an accurate Inventory Form, or its electronic equivalent, as required by paragraph (a)(3) of this section if the primary operating railroad:

(1) Provides a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing; and

(2) Submits the requested State-maintained crossing data to the Crossing Inventory within 60 days of receipt.

[80 FR 786, Jan. 6, 2015, as amended at 81 FR 37532, June 10, 2015]

§ 234.407 Submission of initial data to the Crossing Inventory for new crossings.

(a) *Duty of primary operating railroad.*

(1)(i) With the exception of highway-rail and pathway crossings that are located in a railroad yard, a passenger station, or within a private company, port, or dock area, each primary operating railroad shall assign an Inventory Number to each new highway-rail and pathway crossing through which it operates.

(ii) A primary operating railroad shall assign one or more Inventory Numbers to new highway-rail and pathway crossings through which it operates, which are located in a railroad

yard, passenger station, or within a private company, port, or dock area.

(iii) An Inventory Number shall not be assigned to a temporary crossing, nor shall an Inventory Form be submitted to the Crossing Inventory for a temporary crossing.

(2) With the exception of highway-rail and pathway crossings that are located within a private company, port, or dock area, the primary operating railroad shall provide the assigned Inventory Number to each operating railroad that operates one or more trains through the new highway-rail or pathway crossing no later than four (4) months after the crossing becomes operational or January 6, 2016, whichever occurs later.

(3) Each primary operating railroad shall submit accurate Inventory Forms, or their electronic equivalent, to the Crossing Inventory for new highway-rail and pathway crossings through which it operates, no later than six (6) months after the crossing becomes operational. The Inventory Form, or its electronic equivalent, shall reference the assigned Inventory Number for the crossing(s) and shall be completed and submitted in accordance with § 234.403.

(b) *Duty of Operating Railroad when operating railroads operate on separate tracks.* For each new highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than six (6) months after the crossing becomes operational. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

(c) *Duty of all operating railroads.* Unless a written certification statement has been provided by the primary operating railroad in accordance with paragraph (d) of this section, each operating railroad, other than the primary operating railroad, that operates through a new highway-rail or pathway crossing (except a temporary crossing)

for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section shall notify the FRA Associate Administrator in writing of this oversight. Written notification provided by the operating railroad shall include, at a minimum, the latitudinal and longitudinal coordinates for each new and unreported highway-rail or pathway crossing for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section.

(d) *State-maintained crossing data.* If a primary operating railroad requests State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data, the primary operating railroad may send a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing. FRA will consider the written request to be an affirmative defense to potential liability for failure to timely submit an accurate Inventory Form, or its electronic equivalent, as required by paragraph (a)(3) of this section if the primary operating railroad:

(1) Provides a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing no later than six (6) months after the crossing becomes operational; and

(2) Submits the requested State-maintained crossing data to the Crossing Inventory within 60 days of receipt.

[80 FR 786, Jan. 6, 2015, as amended at 81 FR 37533, June 10, 2015]

§ 234.409 Submission of periodic updates to the Crossing Inventory.

(a) *Duty of primary operating railroad.* Each primary operating railroad shall submit up-to-date and accurate crossing data to the Crossing Inventory for each highway-rail and pathway crossing (except for a grade-separated or

closed highway-rail or pathway crossing) through which it operates, consistent with the Inventory Guide. Updated crossing data shall be submitted to the Crossing Inventory at least every three (3) years from the date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad) for the crossing or August 9, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad).

(b) *Duty of operating railroad when operating railroads operate on separate tracks.* For each highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad shall submit up-to-date and accurate crossing data for certain specified data fields on the Inventory Form, or its electronic equivalent, to the Crossing Inventory at least every three (3) years from the date of the most recent submission of data by that operating railroad (or on behalf of that operating railroad) for the crossing or August 9, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the operating railroad (or on behalf of the operating railroad). The Inventory Form, or its electronic equivalent, shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

[81 FR 37533, June 10, 2016]

§ 234.411 Changes requiring submission of updated information to the Crossing Inventory.

(a) *Crossing sale.* (1) If a railroad that is not a primary operating railroad sells all or part of a highway-rail or pathway crossing on or after June 10, 2016, it shall report the crossing sale to the primary operating railroad within three (3) months of the date of sale.

(2) If the primary operating railroad:

(i) Sells all or part of a highway-rail or pathway crossing on or after June 10, 2016 for which it has reporting and

updating responsibility under this subpart; or

(ii) Is notified of the sale of all or part of a highway-rail or pathway crossing on or after June 10, 2016 under paragraph (a)(1) of this section, then the primary operating railroad shall submit an Inventory Form, or its electronic equivalent, which reflects the crossing sale to the Crossing Inventory consistent with § 234.403 and the Inventory Guide within three (3) months of the date of sale or three months of notification, respectively.

(b) *Crossing closure.* The primary operating railroad shall report the closure of any highway-rail or pathway crossing that occurs on or after June 10, 2016 to the Crossing Inventory within three (3) months of the date on which the crossing is closed. The primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects closure of the crossing to the Crossing Inventory consistent with § 234.403 and the Inventory Guide.

(c) *Changes in crossing characteristics.*

(1) The primary operating railroad shall report any change in crossing surface or change in warning device at a public highway-rail grade crossing that occurs on or after June 10, 2016 to the Crossing Inventory within three (3) months of the date of the change. The primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects up-to-date and accurate crossing data for the crossing (including the change in crossing surface or change in warning device) to the Crossing Inventory consistent with § 234.403 and the Inventory Guide.

(2) For purposes of this subpart, a “change in warning device” means the addition or removal of a crossbuck, yield or stop sign, flashing lights, or gates at a public highway-rail grade crossing. The installation of a crossbuck, yield or stop sign, flashing lights, or gates that will be in place for less than six months does not constitute a “change in warning device” for purposes of this subpart.

[81 FR 37533, June 10, 2016]

§ 234.413 Recordkeeping.

(a) Each railroad subject to this subpart shall keep records in accordance with this section. Records may be kept either on paper or by electronic means in a manner that conforms with § 234.415.

(b) Each operating railroad, including the primary operating railroad, responsible for submitting information to the Crossing Inventory in accordance with this subpart shall, at a minimum, maintain the following information for each required Inventory Form:

(1) A duplicate copy of each Inventory Form submitted in hard copy to the Crossing Inventory; or

(2) A copy of the electronic confirmation received from FRA after electronic submission of crossing data to the Crossing Inventory.

(c) Each railroad shall identify the locations where a copy of any record required to be retained by this subpart is accessible for inspection and photocopying by maintaining a list of such establishment locations at the office where the railroad's reporting officer conducts his or her official business.

(d) Each operating railroad shall retain for at least four (4) years from the date of submission to the Crossing Inventory all records referred to in paragraphs (a) and (b) of this section. Records required to be kept under this subpart shall be made available to FRA as provided by 49 U.S.C. 20107.

§ 234.415 Electronic recordkeeping.

(a) If a railroad subject to this subpart maintains records required by this subpart in electronic format in lieu of

paper, the system for keeping the electronic records must meet all of the following conditions:

(1) The railroad adequately limits and controls accessibility to the records retained in its electronic database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the office where the railroad's reporting officer conducts his or her official business and at each location designated by the railroad as having a copy of any record required to be retained by this subpart that is accessible for inspection and photocopying;

(3) Each such terminal has a computer and either a facsimile machine or a printer connected to a computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as a true and accurate copy of the electronically kept record; and

(5) The railroad provides FRA representatives with immediate access to the record(s) for inspection and copying during normal business hours and provides a printout of such record(s) upon request.

(b) If a record required by this subpart is in the form of an electronic record kept by an electronic recordkeeping system that does not comply with paragraph (a) of this section, then the record must be kept on paper in accordance with the recordkeeping requirements contained in § 234.413.

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES¹

| Section | Violation | Willful violation |
|--|-----------|-------------------|
| Subpart B—Reports | | |
| 234.7 Accidents involving grade crossing signal failure | \$5,000 | \$7,500 |
| 234.9 Grade crossing signal system failure reports | 2,500 | 5,000 |
| Subpart C—Response to Reports of Warning System Malfunction | | |
| Sec. | | |
| 234.101 Employee notification rules | 2,500 | 5,000 |
| 234.103 Timely response to report of malfunction | 2,500 | 5,000 |
| 234.105 Activation failure | | |
| (a) Failure to notify—train crews | 5,000 | 7,500 |
| Other railroads | 5,000 | 7,500 |
| (b) Failure to notify law enforcement agency | 2,500 | 5,000 |
| (c) Failure to comply with—flagging requirements | 5,000 | 5,000 |