

docket via <http://www.regulations.gov> on or before December 10, 2012, or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2011–1024 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section in the notice of proposed rulemaking published in the **Federal Register** on September 10, 2012 (77 FR 55439) for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Commander Patricia Springer, CG–7413, U.S. Coast Guard, telephone 202–372–2576; email [Patricia.J.Springer@uscg.mil](mailto:Patricia.J.Springer@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 10, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) (77 FR 55439) which proposes to revise certain Vessel Traffic Service (VTS) regulations in 33 CFR part 161. The proposed revisions include adding the Maritime Mobile Service Identifiers (MMSI) for Louisville and Los Angeles/Long Beach.

In the Regulatory Analysis of the NPRM, we said that we do not expect these revisions to result in additional costs to the public or industry (77 FR 55441). After publication of that NPRM, however, the Coast Guard realized that revising Table 161.12(c) for the purpose of adding an MMSI number for VTS Louisville and Los Angeles/Long Beach would impose Automatic Identification System (AIS) equipment costs for owners and operators of the vessel type identified in § 164.46(a)(3) and that operate in either of these two VTS areas. That action was not intended, and is the

subject of a separate rulemaking project.<sup>1</sup>

**Need for Correction**

Although the Coast Guard highly encourages the use of AIS in U.S. navigable waters, it was not the Coast Guard’s intention, through this proposed rulemaking, to apply the AIS carriage requirements that are set forth in § 164.46 to vessels operating within VTS Louisville and Los Angeles/Long Beach waters. Currently, under existing Part 161, Note 1 to Table 161.12(c), the AIS broadcast and carriage requirements set forth in §§ 161.21 and 164.46 apply to each VTS location identified in Table 161.12(c) that are denoted with an MMSI number. Because the addition of VTS Louisville’s and Los Angeles/Long Beach MMSI numbers to Table 161.12(c) would inadvertently impose AIS carriage requirements to certain categories of vessels operating in these VTS areas, the Coast Guard is making a conforming correction to Note 1 to Table 161.12(c) by adding, at the end of Note 1, the words “except for Louisville and Los Angeles/Long Beach.”

The following correction is issued based on authority under 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70119; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

*Correction*

The proposed regulatory text of the notice of proposed rulemaking entitled “Vessel Traffic Service Updates, Including Establishment of Vessel Traffic Service Requirements for Port Arthur, TX and Expansion of VTS Special Operating Area in Puget Sound,” published September 10, 2012, is corrected as follows:

**§ 161.12 [Corrected]**

In proposed rule FR Doc. 2012–22164 published on September 10, 2012 (77 FR 55439), make the following correction: On page 55446, in the last sentence of Note 1 of Table 161.12(c), remove the period, and add, in its place, the words “except for Louisville and Los Angeles/Long Beach.”

Dated: October 9, 2012.

**Kathryn A. Sinniger,**

*Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.*

[FR Doc. 2012–25239 Filed 10–17–12; 8:45 am]

**BILLING CODE 9110–04–P**

<sup>1</sup> On December 16, 2008, the Coast Guard published a Notice of Proposed Rulemaking entitled “Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System.” In this NPRM, the Coast Guard proposes to expand AIS applicability to all U.S. navigable waters. (73 FR 76295).

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 234**

[Docket No. FRA–2011–0007, Notice No. 1]

RIN 2130–AC26

**National Highway-Rail Crossing Inventory Reporting Requirements**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FRA is proposing to require railroads to submit information to the U.S. DOT National Highway-Rail Crossing Inventory about highway-rail crossings and pathway crossings over which they operate. These amendments, which are required by the Rail Safety Improvement Act of 2008 (RSIA), would require railroads to submit information about previously unreported and new public and private highway-rail crossings and pathway crossings to the U.S. DOT National Highway-Rail Crossing Inventory and to periodically update the Inventory.

**DATES:** Written comments must be received by December 17, 2012.

Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA anticipates being able to resolve this rulemaking without a public hearing. However, if FRA receives a specific request for a public hearing prior to November 19, 2012, a hearing will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

FRA intends to hold a technical symposium during this comment period, in order to facilitate discussion on the technical implications associated with the electronic submission of data to the Crossing Inventory. The date and location of the technical symposium will be announced through issuance of a separate notice in the **Federal Register**.

**ADDRESSES:** Interested parties may submit comments identified by docket number FRA–2011–0007 by any of the following methods:

• *Fax:* 202–493–2251;

• *Mail:* U.S. Department of

Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590;

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or

- *Online:* Comments may be filed through the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name, docket name and docket number or Regulatory Identifier Number (RIN) for this rulemaking (2130-AC26). Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ronald Ries, Staff Director, Grade Crossing Safety and Trespass Prevention, Office of Safety Analysis, FRA, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: 202-493-6299), [ronald.ries@dot.gov](mailto:ronald.ries@dot.gov); or Kathryn Shelton, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 13, Washington, DC 20590 (telephone: 202-493-6063), [kathryn.shelton@dot.gov](mailto:kathryn.shelton@dot.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Executive Summary**

FRA is proposing amendments to 49 CFR Part 234 which would require railroads to submit information to the U.S. DOT National Highway-Rail Crossing Inventory (Crossing Inventory) about both public and private highway-rail crossings and pathway crossings over which they operate. These proposed amendments are intended to further FRA's efforts to improve existing data on the characteristics of the Nation's public, private, and pathway crossings and are intended to implement section 204(a) of the RSIA. Consistent with the statute, FRA is proposing to require that railroads submit initial reports to the Crossing Inventory, including current information about warning devices and signage, for each previously unreported and new public and private highway-rail crossing and pathway crossing, and that railroads periodically update that information, including the submission of updated ownership information after the sale of a crossing.

FRA has estimated the costs of this rule, evaluated over a 20-year period and using a discount rate of 7 percent. For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals \$2.1 million with a present value (PV, 7 percent) of \$1.5 million. FRA considered the industry costs associated with requiring railroads to establish and maintain an inventory for all public and private highway-rail crossings and pathway crossings. Many railroads have already implemented components of the proposed rule. FRA estimates that as many as 50 percent of all highway-rail crossings are currently updated in the Crossing Inventory. The requirements that are expected to impose the largest burdens relate to the collection of recent information and to the periodic update of the inventory.

The table below presents the estimated costs associated with the proposed rulemaking.

**20-YEAR COST FOR PROPOSED RULE**

Initial Update of Inventory .....	\$874,280
Periodic Update of Inventory ....	646,856
<b>Total .....</b>	<b>1,521,136</b>

Future costs are discounted to present value using a 7 percent discount rate.

FRA anticipates that this rulemaking will increase the accuracy, precision, completeness, and utility of railroad

records and will improve the Crossing Inventory. This would allow FRA to identify highway-rail crossings and pathway crossings not currently recorded in the existing voluntary crossing inventory. FRA believes that such clarification in the inventory would help offset costs associated with the rulemaking by simplifying the reporting process. FRA conducted a break-even analysis of the rule and believes that potential benefits from the proposal would likely equal or exceed total costs.

**II. Statutory Background**

The proposed rule is intended specifically to implement Section 204(a) of RSIA, Public Law 110-432, Division A, which was enacted October 16, 2008, and generally to increase safety at highway-rail crossings and pathway crossings. See 49 U.S.C. 20160. (National crossing inventory). Section 20160 of title 49 of the United States Code (Section 20160) requires the Secretary of Transportation (Secretary) to establish reporting requirements for railroad carriers related to public and private highway-rail grade crossings and pathway crossings. Specifically, Section 20160 mandates that the Secretary issue regulations requiring railroad carriers to report certain information, including current information about warning devices and signage, related to new and previously unreported public, private, and pathway crossings to the Crossing Inventory. In addition, Section 20160 mandates that the Secretary issue regulations requiring railroad carriers to periodically update certain information submitted to the Secretary about public, private, and pathway crossings through which they operate or public, private, and pathway crossings that are located on trackage over which they operate. In accordance with Section 20160, additional updates would also be required, pursuant to such regulations, whenever a railroad carrier sells all, or a portion of, a public, private, or pathway crossing. However, until these implementing regulations are issued, Section 20160 provides that the Secretary may enforce the Crossing Inventory policy, procedures, and instructions that were in effect on October 16, 2008. The Secretary delegated the responsibility for carrying out the mandates of Section 20160 to the FRA Administrator. 49 CFR 1.49(o).

**III. History of the Crossing Inventory Program**

In August 1972, the U.S. Department of Transportation (DOT) submitted a Report to Congress entitled, "Railroad-

*Highway Safety Part II: Recommendations for Resolving the Problem.*” The primary goal of this report was to provide recommendations for actions that would lead to a significant reduction in accidents, fatalities, personal injuries, and property damage at highway-rail crossings. In this Report to Congress, DOT recommended the establishment of an information system consisting of a national database of all highway-rail crossings in the Nation. Although various local, State, and Federal agencies had collected and maintained information about highway-rail crossings, most information systems or databases were fragmented and incomplete because all information was submitted on a voluntary basis. However, site-specific information was needed to provide for a systematic approach for the planning and evaluation of highway-rail crossing safety improvement programs at both the State and Federal level.

Therefore, DOT recommended that the FRA: (1) Issue requirements for the railroads to assign and display identification numbers at all highway-rail crossings based on a uniform national standard to be prescribed by DOT, (2) arrange with the railroads to provide site-specific inventory data for all crossings on their respective lines, and (3) update the inventory periodically by following the procedures and standards established jointly by FRA and the Federal Highway Administration (FHWA) in conjunction with railroad and State representatives.

In accordance with these recommendations, the Crossing Inventory was developed in the early 1970s through the cooperative efforts of FHWA, FRA, the Association of American Railroads, individual States, and individual railroads. Each highway-rail crossing was surveyed—public and private, grade-separated and at-grade—and data was recorded on an inventory form. The resulting inventory contained data on the location of the crossing, the amount and type of highway and train traffic, traffic control devices, and other physical elements of the crossing.

As a result of these efforts, the Crossing Inventory has become a national database of highway-rail crossings, both at-grade and grade-separated, that is used by railroads, States, and others to obtain information about the physical and operating characteristics of individual crossings. The Crossing Inventory is intended to provide a uniform inventory database which can be merged with highway-rail crossing collision files and used to analyze information for planning and

implementation of crossing improvement programs by public and private agencies responsible for highway-rail crossing safety, as well as the railroad industry and academia. However, in order for the Crossing Inventory to serve as an effective database, States and railroads need to exchange information with each other and promptly update the crossing data records as changes occur. Therefore, FRA has historically acted as a clearinghouse for the exchange of crossing data between these entities.

The Crossing Inventory receives information from individual railroads and States to form a composite record for each crossing. This composite record has many purposes, as it can be used to predict the likelihood of an accident at a specific crossing. Armed with this information, States, law enforcement organizations, the Federal Government, and others can focus their efforts on crossings that have a high risk of collisions and implement measures, such as improved warning systems, enhanced enforcement, and community awareness.

As with any information system from which decisions are made, the incorporation of accurate and timely data into the Crossing Inventory is key. If the data is suspect, then verification is usually required before resources may be committed. Verification requires additional resources and may delay the implementation of improvements that could reduce the probability of a collision. Therefore, an instructions and procedures manual (commonly referred to as the “Inventory Guide”) was issued and then revised over the years, as changes were made to the inventory form, in order to establish procedures for submitting data to the Crossing Inventory.

#### **IV. Proposed Revisions to Inventory Guide and Inventory Form**

As part of this rulemaking, FRA proposes to make certain revisions to the existing Inventory Guide and to the existing Form FRA F 6180.71, which is used to report data to the Crossing Inventory (and is commonly referred to as the “Inventory Form”). The Inventory Guide and the Inventory Form have been placed in the docket for public review. For example, FRA proposes to require railroads to complete the entire Inventory Form for previously unreported and new public crossings, in order to satisfy the legislative intent of Section 20160 to improve the Crossing Inventory by obtaining critical data for public crossings. Most of the remaining changes proposed have, however, resulted from ongoing discussions with

Crossing Inventory subject matter experts representing a wide array of crossing safety stakeholders over several years. Nonetheless, FRA seeks comments on the draft revised Inventory Form (Draft Inventory Form) and draft revised Inventory Guide (Draft Guide), both of which have been placed in the docket, from all interested parties.

FRA proposes to pare down the Inventory Guide to focus primarily on providing instructions for completing the Inventory Form. With respect to the Draft Guide, FRA specifically seeks comment on the following items:

- With respect to the Instructions provided in the Header of the Draft Inventory Form, FRA seeks comment on whether the proposed Instructions are helpful and should be retained. It should be noted, however, that FRA intends to remove the incorrect mailing address that is provided in the proposed Instructions.

- With respect to item C in the Header of the Draft Inventory Form, Reason for Update, FRA seeks comment on whether railroads and States should be given the option to select more than one reason for submitting data to the Crossing Inventory. With respect to this item, FRA also seeks comment on whether a separate category should be retained for crossings that are located on an abandoned segment of track since the abandoned status of the underlying track segment may not necessarily determine whether the crossing is still in use.

- With respect to item D in the Header of the Draft Inventory Form, DOT Crossing Inventory Number, FRA seeks comment on whether the current practice of allowing railroads to assign a single Inventory Number to a group of crossings in a railroad yard or an area belonging to a private company, a port, or a dock area should be retained.

- With respect to items 17 and 18 in Part I of the Draft Inventory Form, box 17 (Crossing Type) has been revised by removing the category for pedestrian crossings, in order to draw a clear distinction between public and private crossings. However, box 18 (Crossing Purpose) has been added to the Draft Inventory Form, so that railroads and States can identify highway-rail crossings, pedestrian crossings located within railway stations and other pedestrian/pathway crossings. FRA seeks comment on the proposed change to box 17, and the addition of box 18, on the Draft Inventory Form.

- With respect to item 4 in Part II of the Draft Inventory Form, Type and Number of Tracks, FRA seeks comment on the definitions provided for the various types of track listed, including

the definition for “spur/lead” track. Are spur/lead tracks generally used for storage purposes?

- With respect to item 5 in Part II of the Draft Inventory Form, Train Detection, FRA seeks comment on whether it would be advisable to collect data on the number of tracks that are equipped with the various types of train detection.

- With respect to item 2D in Part III of the Draft Inventory Form, Advance Warning Signs, FRA seeks comment on whether the Inventory Form should reflect the actual number of signs posted at the crossing, as opposed to the number of posts or masts bearing advance warning signs.

- With respect to the various types of train-activated warning devices listed in item 3 in Part III of the Draft Inventory Form, FRA seeks comment on whether railroads should be required to submit interim updates to the Crossing Inventory after implementation of one or more of each type of warning device.

- With respect to item 3A in Part III of the Draft Inventory Form, Gate Arms, FRA seeks comment from all interested parties on whether States should be assigned the responsibility for updating this data field.

- With respect to item 3D in Part III of the Draft Inventory Form, Post-Mounted Flashing Light Assemblies, FRA seeks comment on whether the Inventory Form should be revised to reflect the presence of side lights that might also have been installed on the post-mounted flashing light assemblies for the benefit of highway users on an approaching parallel roadway.

- With respect to item 3F in Part III of the Draft Inventory Form, Original Installation Date of Current Active Warning Devices, FRA seeks comment from all interested parties on whether the Crossing Inventory should collect data on the installation date of active warning devices that will be installed after the effective date of any regulation that may be issued through this rulemaking effort.

- With respect to item 2 in Part V of the Draft Inventory Form, Functional Classification of Road at Crossing, FRA seeks comment on whether the “Local Access” functional classification code should be changed to “Local”, in order to be consistent with the official functional classification codes that are contained in the FHWA’s Highway Performance Monitoring System (HPMS) Manual.

- With respect to item 10 in Part V of the Draft Inventory Form, Regularly used by Hazard Vehicles, FRA seeks comment on how to define “regular use” of crossings by vehicles

transporting hazardous materials in commerce.

- With respect to item 11 in Part V of the Draft Inventory Form, Regular Emergency Services Route, FRA seeks comment on how the term “regular emergency services route” should be defined.

A copy of the Draft Guide and a Draft Inventory Form have been placed in the docket for this rulemaking and FRA seeks comment on their content. With respect to the Draft Guide, FRA specifically seeks comment on the proposed Crossing Inventory Responsibility Table in Appendix B, which assigns responsibility for updating specific data fields on the Draft Inventory Form to either the State or Railroad.

## V. Section-by-Section Analysis

### Section 234.1 Scope

FRA proposes to expand part 234 to include a new subpart F, entitled: Highway-Rail Crossing Inventory Reporting. For this reason, FRA proposes to revise paragraph (a) of this section by including a reference to the proposed Crossing Inventory reporting and updating requirements for railroads.

### Subpart F—Highway-Rail Crossing Inventory Reporting

#### Section 234.401 Definitions

This section contains proposed definitions of terms used in this subpart, listed alphabetically. Additional explanation for some of the proposed definitions is provided below.

“Class I” would have the meaning assigned by regulations of the Surface Transportation Board (STB), which may be found at 49 CFR part 1201, General Instructions 1–1, Classification of carriers. To ensure that the definition of “Class I” as used in this proposed subpart incorporates any changes that the STB may make after the publication of this subpart, this definition would include any revision to the regulations as applied by the STB, which would include modifications in the class threshold based on revenue deflator adjustments.

Consistent with Section 20160’s definition of “crossing”, “highway-rail crossing” would be defined to mean the location where one or more railroad tracks intersect with a public highway, road, street, or private roadway, including associated sidewalks and pathways, either at-grade or grade-separated. For purposes of the Crossing Inventory, railroad tracks that lie within the same pair of crossing warning devices will be considered a single highway-rail crossing. For example, an

intersection of a roadway with three tracks (e.g., two mainline and one spur) where the mainline tracks are equipped with flashing lights and the spur track is equipped with crossbucks would be considered, for purposes of the Crossing Inventory, two crossings with two separate crossing inventory numbers. One highway-rail crossing would consist of the mainline tracks that lie between the flashing lights, while the other highway-rail crossing would consist of the spur track which is equipped with crossbucks.

“Operating railroad” would be defined to mean any railroad that operates one or more trains through a highway-rail crossing or pathway crossing. Thus, for purposes of this subpart, a railroad would be considered an operating railroad even if the railroad does not own the highway-rail crossing or pathway crossing through which it travels, or the railroad is not responsible for maintaining the warning devices at the highway-rail or pathway crossing. As this definition implies, there may be multiple operating railroads for a single highway-rail crossing or pathway crossing.

Consistent with Section 20160, a “pathway crossing” would be defined to mean a pathway that has all of the following characteristics: (1) Is explicitly authorized by a public authority or an operating 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) that crosses one or more railroad tracks either at grade or grade-separated. However, an area where pedestrians trespass, even routinely, is not considered to be a pathway crossing.

Pathways that are contiguous with, or separate but adjacent to, highway-rail crossings are presumed to be part of the highway-rail crossing and are not considered separate crossings. However, pathways that are located at least 25 feet from the location where a highway, road, or street intersects with one or more railroad tracks are generally considered to be separate pathway crossings. Accordingly, separate Inventory Numbers should be assigned to such crossings. (The proposed rule defines “Inventory Number” as “the number assigned to a highway-rail crossing or pathway crossing in the Crossing Inventory”).

“Primary operating railroad” would be defined to mean the operating railroad responsible for submitting data to, and/or updating data in, the Crossing Inventory for a particular highway-rail crossing or pathway crossing. Generally,

the primary operating railroad would be the operating railroad that owns the highway-rail crossing (or pathway crossing) or maintains the warning devices at the highway-rail crossing (or pathway crossing). In the event that there is more than one operating railroad that owns the highway-rail crossing (or pathway crossing) or maintains the warning devices at the highway-rail crossing (or pathway crossing), the largest operating railroad with the most rail traffic over the crossing at issue should accept the primary operating railroad designation. Absent an agreement between or among operating railroads delineating each railroad's respective reporting and/or updating responsibilities pursuant to the requirements set forth in proposed § 234.405, FRA proposes to hold each operating railroad liable for the reporting and updating requirements set forth in this subpart.

"Private crossing" would be defined to mean a highway-rail crossing that is not a public crossing. Therefore, private crossings would include intersections of roadways and railroads that are not open to public travel or not maintained by a public authority. Typical types of private crossings include farm crossings, industrial plant crossings, and residential access crossings.

"Public crossing" would be defined to mean a highway-rail crossing where the roadway is under the jurisdiction of and maintained by a public authority and open to public travel. All roadway approaches must be under the jurisdiction of the public roadway authority and no roadway approach may be on private property. FRA acknowledges that this proposed definition contains different criteria for determining the public nature of a highway-rail crossing than the existing definition of "public highway-rail grade crossing", contained in 49 CFR part 222 related to the use of locomotive horns and quiet zones. However, this proposed definition is consistent with the definition of the term "public grade crossing" in 23 CFR 924.3, which is widely used by States for Highway Safety Improvement Program planning and funding purposes. Based on the generally accepted usage of this definition by States, FRA believes it is logical to use this definition for Crossing Inventory reporting purposes as well.

With respect to crossings in States where a State agency (such as a State Department of Transportation, State Highway Department, Public Utility Commission, or State Commerce Commission) has been empowered to make determinations as to whether individual crossings are public or

private, the determinations of that State agency will govern the public/private classification of highway-rail crossings in the State for purposes of the Crossing Inventory.

"Temporary crossing" would be defined to mean a highway-rail crossing created to serve a specific activity for a temporary time period not to exceed six months. For example, highway-rail crossings that provide access to construction sites would fall into this category. Given their temporary nature, Inventory Numbers are not assigned to temporary crossings and FRA is not proposing to require railroads to report such crossings to the Crossing Inventory.

#### *Section 234.403 Submission of Data to the Crossing Inventory, Generally*

Proposed paragraph (a) of this section would require use of the Inventory Form to submit data to the Crossing Inventory, in accordance with the requirements of proposed § 234.405. Prior to the effective date of this subpart, FRA will continue to accept hard copy submissions of the current Inventory Form from all railroads and States. However, as of the effective date of any final rule issued as a result of this rulemaking effort, FRA proposes to allow only Class II and Class III railroads, as well as States, to either use the Draft Inventory Form (a draft form has been placed in the docket for review and comment) or to submit data electronically to the Crossing Inventory. Proposed instructions for submitting hard copies of the Inventory Form can be found in the Draft Guide, while proposed instructions for submitting data electronically to the Crossing Inventory can be found in the draft Electronic Submission Instructions. The Draft Guide and the draft Electronic Submission Instructions have been placed in the public docket for this rulemaking. FRA seeks comment on the content of both of these documents.

As explained in the Draft Guide, FRA intends to discontinue use of the GX32 software program for submitting electronic data to the Crossing Inventory. FRA proposes to replace the GX32 software program with a secure web-based application. FRA also proposes to allow railroads and states to use multiple submission formats (.xml, .mdb, .xls, and .xlsx), in addition to the web-based application. (Please refer to the draft Electronic Submission Instructions that have been placed in the public docket for more information.) Since FRA proposes to require that Class I railroads submit crossing data to the Crossing Inventory electronically, Class I railroads would need to make the

necessary adjustments to their existing electronic data systems in order to facilitate compatibility with the proposed electronic file formats and data specifications contained in the draft Electronic Submission Instructions. Therefore, FRA intends to hold a technical symposium during this NPRM's comment period for all interested parties, particularly those involved in the technical aspects of the actual electronic submission of data to the Crossing Inventory, to discuss the technical implications of using only these formats (.xml, .mdb, .xls, and .xlsx). FRA will publish a separate notice in the **Federal Register** providing the logistics of such a meeting once the details are finalized. The proposed changes include changes to the content of the form (new field and expanded codes) and to the specified type of file allowed for submission.

Proposed paragraph (b) of this section would require completion of the Inventory Form, in accordance with the instructions contained within the Draft Guide. As explained in the Draft Guide, one Inventory Form should be submitted to the Crossing Inventory for each public, private or pathway crossing. The Draft Guide contains exceptions to this general rule related to crossings located in railroad yards or areas belonging to private companies, ports, or dock areas and crossings located within railroad stations. Where there is more than one crossing in a railroad yard or a private railroad yard belonging to a private company, a port, or a dock area, the primary operating railroad may choose to submit one Inventory Form that would assign one Inventory Number to all (or a group) of the crossings within the private property limits. Alternatively, the primary operating railroad may submit one Inventory Form that would assign one Inventory Number to each individual crossing located within private property limits. (See Draft Guide discussion of item D in the Header of the Draft Inventory Form, DOT Crossing Inventory Number.) FRA believes this approach is consistent with current generally accepted practice in the industry, but seeks comment on whether this exception should be retained, as the decision to assign one Inventory Number to a group of crossings instead of a single crossing cannot be revised once the Inventory Number has been assigned.

The Draft Guide contains a similar exception for multiple pathway crossings that are contained within a railroad station. Therefore, the primary operating railroad may choose to submit one Inventory Form that would assign

one Inventory Number to all (or a group) of the pathway crossings at a railway station. Alternately, the primary operating railroad may submit one Inventory Form that would assign one Inventory Number to each individual pathway crossing located within a railroad station. FRA also seeks comment on this proposed exception.

Paragraph (c) proposes to require Class I railroads to submit all crossing data to the Crossing Inventory electronically. Since most Class I railroads already submit crossing data to the Crossing Inventory electronically, FRA does not believe that this proposed requirement would be unduly burdensome. In accordance with paragraph (a) of this section, Class II and Class III railroads, as well as States, may choose to submit their crossing data to the Crossing Inventory electronically or submit hard copies of the Inventory Form. An explanation of the proposed file formats and data specifications can be found in the draft Electronic Submission Instructions, a copy of which has been placed in the docket for review and comment by all interested parties. FRA seeks comment as to whether additional railroads should be required to submit crossing data to the Crossing Inventory electronically.

As noted above, FRA intends to discontinue use of the GX32 software product, which currently allows States and railroads to submit revised data to the Crossing Inventory electronically through use of a computer disk or the Internet. FRA intends to discontinue use of the GX32 software and replace it with a secure web-based application that provides similar functionality, yet facilitates instantaneous updates to crossing data. Therefore, any pending changes using GX32 software would need to be submitted prior to implementation of the web-based system. FRA also intends to transition the official Crossing Inventory database to the new web-based application. Therefore, railroads that are currently using the GX32 software product to submit crossing data electronically to the Crossing Inventory or who are submitting data electronically via other means would be required to make adjustments to their existing electronic data systems to ensure such systems will work with the revised Crossing Inventory database. Accordingly, FRA seeks comment as to the feasibility of Class I railroads being able to make the necessary adjustments to their existing electronic data systems (or to develop new electronic data systems) that would allow for compliance with the draft Electronic Submission Instructions, as well as compliance with the timeframes

proposed in § 234.405 for reporting previously unreported and new highway-rail crossings and pathway crossings.

As noted above, FRA intends to hold a technical symposium during this NPRM's comment period for all interested parties, particularly those involved in the actual electronic submission of data to the Crossing Inventory, to discuss the technical implications of using only certain specified submission formats (.xml, .mdb, .xls, and .xlsx). FRA will publish a separate notice in the **Federal Register** providing the logistics of such a meeting once the details are finalized.

*Section 234.405 Submission of Initial Data and Periodic Updates to the Crossing Inventory*

Proposed paragraph (a) of this section would require the submission of data to the Crossing Inventory for previously unreported crossings. Specifically, proposed paragraph (a)(1) is intended to implement paragraph (a)(1) of Section 20160, which requires railroad carriers to report to the Secretary "current information, including information about warning devices and signage \* \* \* concerning each previously unreported crossing through which it operates or with respect to the trackage over which it operates." Proposed paragraph (a)(1) would require that each primary operating railroad submit a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory, in accordance with proposed § 234.403, for each previously unreported public, private, and pathway crossing through which it operates no later than six months after the effective date of any final rule implementing this requirement. This requirement would apply to previously unreported at-grade and grade-separated crossings, but would not apply to temporary crossings. For purposes of proposed paragraph (a) of this section, "previously unreported" crossings would be public, private, and pathway crossings that have not been reported to the Crossing Inventory as of the effective date of any final rule implementing this requirement.

Proposed paragraph (a)(1) would further require that the completed Inventory Form (or its electronic equivalent) reference the assigned Inventory Number for the crossing. If the primary operating railroad does not already have an Inventory Number that can be assigned to a previously unreported crossing, an Inventory Number will need to be obtained for the crossing. Instructions for obtaining an Inventory Number can be found in the Draft Guide. Once an Inventory Number

has been placed on an Inventory Form (or its electronic equivalent) and submitted to the Crossing Inventory, the Inventory Number will be permanently assigned to the crossing.

Historically, since submission of crossing information to the Crossing Inventory was voluntary, the primary operating railroad would submit a partially completed copy of the Inventory Form to the applicable State authority, so that the State authority could provide the remaining data and submit the completed Inventory Form to the Crossing Inventory for processing. Given existing constraints on the scope of FRA's statutory authority, this NPRM does not propose to require States to submit crossing information to the Crossing Inventory. While FRA would encourage State agencies to participate fully in the submission of updated information to the Crossing Inventory, FRA has refrained from proposing regulatory language that would require railroads to submit copies of their Inventory Forms to the applicable State authorities for completion. However, this proposed rule would require railroads to complete data fields on the Inventory Form that have historically been completed by State authorities for each previously unreported public highway-rail at-grade crossing in order to satisfy the legislative intent of Section 20160 to improve the Crossing Inventory by obtaining critical data for public crossings. FRA expects that railroads will seek input from State authorities with respect to certain data fields. FRA seeks comment on this proposal.

Therefore, as stated in proposed paragraph (a) of this section, as well as the Draft Guide, railroads would be required to obtain Inventory Numbers from FRA and to assign a specific Inventory Number to each previously unreported public, private, or pathway crossing (unless the proposed exception for multiple crossings located in railroad yards, within railway stations, or areas belonging to private companies, ports, or dock areas would be applicable). Railroads would then be required to provide information for all of the data fields on the Inventory Form for each previously unreported public highway-rail at-grade crossing and to submit the completed Inventory Form (or its electronic equivalent) to the Crossing Inventory no later than six months after the effective date of any final rule that may be issued as a result of this rulemaking. In accordance with generally accepted practice, however, railroads would only be required to provide information for the data fields in the Header and Part I of the Draft

Inventory Form for previously unreported private highway-rail crossings, pathway crossings, and grade-separated crossings. FRA has not historically collected data associated with Parts II–V of the Inventory Form for these crossings.

Proposed paragraph (a)(2) of this section would require operating railroads, other than the primary operating railroad, to confirm that a completed Inventory Form (or its electronic equivalent) was timely submitted to the Crossing Inventory in accordance with proposed paragraph (a)(1) of this section. If the operating railroad discovers that one or more previously unreported public, private or pathway crossings (except a temporary crossing) over which it operates was not timely reported to the Crossing Inventory, proposed paragraph (a)(2) of this section would require that the operating railroad provide written notification of the unreported crossing to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator). This provision is being proposed in order to implement 49 U.S.C. 20160(a)(2), which requires railroad carriers to “ensure that the [current information, including information about warning devices and signage, concerning each previously unreported crossing] has been reported to the Secretary by another railroad carrier that operates through the crossing.”

At a minimum, the proposed written notification requirement contained in paragraph (a)(2) of this section would require operating railroads to provide the latitudinal and longitudinal coordinates for each previously unreported public, private, or pathway crossing for which a completed Inventory Form (or its electronic equivalent) was not timely submitted to the Crossing Inventory. While State agencies have historically submitted latitudinal and longitudinal coordinates to the Crossing Inventory, railroads provide this data to FRA for rail-equipment train accident reporting purposes. Therefore, FRA believes that this proposed requirement will not be unduly burdensome. FRA seeks comment on this proposal.

FRA proposes to hold each operating railroad liable, including the primary operating railroad, for each unreported public, private, and pathway crossing for which written notification was not timely provided to the FRA Associate Administrator, in accordance with proposed paragraph (a)(2) of this section. However, in order to facilitate compliance with this proposed requirement, FRA proposes to establish

an automated FRA email notification system that would notify participating States and railroads whenever public, private, or pathway crossings are added to the Crossing Inventory. FRA seeks comment from all interested parties on whether this proposed notification system would be useful.

Proposed paragraph (a)(3) of this section would allow an entity other than the primary operating railroad to submit a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for one or more previously unreported public, private, or pathway crossings, in order to satisfy the proposed reporting requirements contained in paragraph (a)(1) of this section. This proposed provision is intended for use by State agencies with jurisdiction over the previously unreported crossings that may wish to submit crossing data to the Crossing Inventory on behalf of the primary operating railroad.

In the event that an entity other than the primary operating railroad would like to submit crossing data to the Crossing Inventory on behalf of the primary operating railroad, proposed paragraph (a)(3) of this section would require that the reporting entity and the primary operating railroad provide written notification to the Associate Administrator of the entity assuming reporting responsibility. Proposed paragraph (a)(3) of this section would further require that any such notification must contain positive identification of the locations that will be covered.

Proposed paragraph (a)(3) of this section is not, however, intended to allow the primary operating railroad to completely transfer its responsibility for timely compliance with the proposed reporting requirements of paragraph (a)(1) of this section to the reporting entity. Therefore, FRA reserves the right to hold the primary operating railroad, as well as the reporting entity liable, as appropriate, for failure to timely comply with the reporting requirements of paragraph (a)(1) of this section. Other operating railroads could potentially also be held liable for the failure to comply with the reporting requirements of paragraph (a)(1) of this section, if they fail to provide written notification of the unreported crossing in accordance with paragraph (a)(2) of this section.

Proposed paragraph (b) of this section would require the submission of data to the Crossing Inventory for new public and private highway-rail crossings and pathway crossings, including new grade-separated crossings. For purposes of this paragraph, “new” crossings would be public, private, and pathway

crossings that were not in existence prior to the effective date of any final rule implementing this proposal. Proposed paragraph (b) of this section would not, however, apply to temporary crossings.

Proposed paragraph (b)(1) of this section would require that each primary operating railroad submit a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for each new public, private, or pathway crossing (except a temporary crossing) through which it operates no later than six months after the crossing becomes operational. If the primary operating railroad does not already have an Inventory Number that can be assigned to the new crossing, an Inventory Number will need to be obtained for the crossing. Instructions for obtaining Inventory Numbers can be found in the Draft Guide. Once an Inventory Number has been assigned to the crossing, proposed paragraph (b)(1) of this section would require that the primary operating railroad submit a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory, in accordance with § 234.403, which references the assigned Inventory Number.

Paragraph (b)(1) of this section has been proposed to implement 49 U.S.C. 20160(a)(1), which states that “[n]ot later than \* \* \* 6 months after a new crossing becomes operational, \* \* \* each railroad carrier shall—(1) report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates or with respect to the trackage over which it operates.”

Proposed paragraph (b)(2) of this section would require operating railroads, other than the primary operating railroad, which operate through a new crossing for which a completed Inventory Form (or its electronic equivalent) has not been submitted to the Crossing Inventory within six months after the crossing becomes operational, to provide written notification of this oversight to the FRA Associate Administrator. This provision has been proposed in order to implement 49 U.S.C. 20160(a)(2), which states that, “[n]ot later than \* \* \* 6 months after a new crossing becomes operational, \* \* \* each railroad carrier shall—(2) ensure that the [current information, including information about warning devices and signage, concerning each previously unreported crossing] has been reported to the

Secretary by another railroad carrier that operates through the crossing.”

At a minimum, the proposed written notification requirement contained in paragraph (b)(2) of this section would require railroads to provide the latitudinal and longitudinal coordinates for each new public, private, or pathway crossing that was not timely reported to the Crossing Inventory in accordance with paragraph (b)(1) of this section. While State agencies have historically submitted latitudinal and longitudinal coordinates to the Crossing Inventory, railroads provide this data to FRA for rail-equipment train accident reporting purposes. Therefore, FRA believes that this proposed requirement would not be unduly burdensome. FRA seeks comment on this proposal.

FRA proposes to hold each operating railroad, including the primary operating railroad, liable for each new public, private, and pathway crossing (including grade-separated crossings, but excluding temporary crossings) that was not timely reported to the Crossing Inventory, in accordance with paragraph (b)(1) of this section, unless the operating railroad provides written notification to the Associate Administrator of the unreported crossing. In order to facilitate compliance with this proposed requirement, FRA proposes to establish an automated FRA email notification system that would notify participating States and railroads whenever public, private, or pathway crossings are added to the Crossing Inventory. FRA seeks comment on this proposal.

Proposed paragraph (b)(3) of this section would allow multiple operating railroads to assume joint responsibility for submitting data to the Crossing Inventory for new public, private, or pathway crossings, in accordance with the Draft Guide. As stated in the Draft Guide, two or more railroads that have agreed to file their own separate inventory information for the same public, private, or pathway crossing would need to check the box labeled “Multiple Forms Filed” in Item no. 7 of Part I of the Draft Inventory Form, in order to notify FRA of their agreement.

Proposed paragraph (b)(4) of this section would allow an entity other than the primary operating railroad to submit a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory, in order to satisfy the proposed reporting requirements contained in paragraph (b)(1) of this section. This proposed provision is intended for use by State agencies with jurisdiction over the new public, private, or pathway crossings that may wish to submit crossing data to the

Crossing Inventory on behalf of the primary operating railroad.

In the event that an entity other than the primary operating railroad would like to submit crossing data to the Crossing Inventory on behalf of the primary operating railroad, proposed paragraph (b)(4) would require that the reporting entity and the primary operating railroad provide written notification to the Associate Administrator of the entity assuming reporting responsibility. Proposed paragraph (b)(4) of this section would further require that any such notification include positive identification of the locations that will be covered.

Proposed paragraph (b)(4) of this section is not, however, intended to allow the primary operating railroad to completely transfer its responsibility for timely compliance with the proposed reporting requirements of paragraph (b)(1) of this section to the reporting entity. Therefore, FRA reserves the right to hold the primary operating railroad and the reporting entity, as appropriate, liable for failure to timely comply with the reporting requirements of paragraph (b)(1) of this section. Other operating railroads might also be held liable if they fail to provide written notification of an unreported crossing in accordance with paragraph (b)(2) of this section.

Proposed paragraph (c) of this section would require that the primary operating railroad periodically submit up-to-date and accurate data to the Crossing Inventory for each public, private, and pathway crossing through which it operates, in accordance with the Draft Guide. Submission of these periodic updates would not, however, be required for temporary crossings, since FRA is not proposing to require the reporting of temporary crossings to the Crossing Inventory, or to require periodic updating for grade-separated crossings since changes in crossing characteristics do not appear to have a significant impact on existing risk levels at grade-separated crossings.

Proposed paragraph (c)(1) of this section sets forth a proposed timeframe within which the primary operating railroad would be required to submit updated crossing data for each public, private, and pathway crossing to the Crossing Inventory. This provision has been proposed in order to implement 49 U.S.C. 20160(b)(1)(A), which mandates that railroads periodically “report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing through which it operates or with respect to the trackage over which it operates.”

Proposed paragraph (c)(1) would require that the primary operating railroad submit up-to-date and accurate crossing data for each public, private, and pathway crossing (other than a temporary crossing or a grade-separated crossing) through which it operates at least every three years from the date of the most recent railroad submission (or submission on behalf of a railroad) to the Crossing Inventory or within six months of the effective date of any final rule implementing this requirement, whichever occurs later.

Appendix B to the Draft Guide contains a proposed Crossing Inventory Responsibility Table that assigns responsibility for updating data fields on the proposed Inventory Form to the operating railroad and/or the applicable State agency. In accordance with paragraphs (a)(1) and (b)(1) of proposed § 234.405, railroads would be required to complete all of the data fields on the Inventory Form when initially reporting previously unreported and new public highway-rail at-grade crossings. However, a primary operating railroad would only be required to submit up-to-date and accurate information for the data fields on the Inventory Form that are assigned to the operating railroads by the Crossing Inventory Responsibility Table in Appendix B to the Draft Guide. (All remaining data fields on the Inventory Form would be updated by State authorities on a voluntary basis.) Similarly, even though the primary operating railroad would be required to submit up-to-date and accurate information for all of the data fields in the Header and Part I of the Draft Inventory Form for previously unreported private crossings, previously unreported pathway crossings, new private crossings, and new pathway crossings, the primary operating railroad would only be required to submit up-to-date and accurate information for the data fields in the Header and Part I of the Draft Inventory Form that are assigned to the operating railroad by the Crossing Inventory Responsibility Table in Appendix B to the Draft Guide. FRA seeks comment on the proposed assignment of responsibility for updating data fields on the Inventory Form.

If each applicable railroad-assigned data field in the Crossing Inventory is accurate and up-to-date when the periodic update becomes due, the primary operating railroad should simply update the information contained in the data fields in the Header portion of the Draft Inventory Form (or its electronic equivalent) for the affected crossing, in accordance with the Draft Guide.

Proposed paragraph (c)(2) of this section would require operating railroads, other than the primary operating railroad, that operate through any at-grade public, private, or pathway crossing (other than a temporary crossing or a grade-separated crossing) for which up-to-date and accurate information has not been submitted to the Crossing Inventory in accordance with paragraph (c)(1) of this section to provide written notification of this oversight to the Associate Administrator. This provision proposes to implement 49 U.S.C. 20160(b)(1)(B), which mandates that railroads periodically “ensure that [current information, including information about warning devices and signage] has been reported to the Secretary by another railroad carrier that operates through the crossing.”

As was the case with proposed paragraph (c)(1) of this section, FRA proposes to exercise the discretion granted to the Secretary to determine the intervals by which periodic updates must be submitted to the Crossing Inventory. Accordingly, the proposed written notification requirement contained in paragraph (c)(1) of this section would not take effect unless up-to-date and accurate information was not submitted to the Crossing Inventory for a public, private, or pathway crossing (other than a temporary crossing or a grade-separated crossing) at least three years from the date of the most recent railroad submission or within six months after the effective date of any final rule implementing this requirement, whichever occurs later.

At a minimum, the written notification that would be required by proposed paragraph (c)(2) of this section must include the Inventory Number for each public, private, or pathway crossing that has not been updated. FRA proposes to hold each operating railroad, including the primary operating railroad, liable for each Crossing Inventory record, for public, private, or pathway crossings (other than a temporary crossing or a grade-separated crossing) over which the railroad operates, that has not been updated in accordance with paragraph (c)(1) of this section, unless written notification of the outdated record is provided to the Associate Administrator by the operating railroad in accordance with proposed paragraph (c)(2) of this section. However, in order to facilitate compliance with this proposed requirement, FRA proposes to establish an automated FRA email notification system that would notify participating States and railroads whenever changes have been made to the Crossing

Inventory data associated with certain specified public, private, or pathway crossings. FRA seeks comment on whether this proposed notification system would be useful.

Proposed paragraph (c)(3) of this section would allow two or more operating railroads to assume joint responsibility for submitting periodic updates to the Crossing Inventory in accordance with the Draft Guide. As stated in the Draft Guide, two or more operating railroads that have agreed to file their own separate inventory information for the same public, private, or pathway crossing would need to check the box labeled “Multiple Forms Filed” in Item no. 7 of Part I of the Draft Inventory Form, in order to notify FRA of their agreement.

Proposed paragraph (c)(4) of this section would allow an entity other than the primary operating railroad to submit up-to-date and accurate crossing data to the Crossing Inventory, in order to satisfy the proposed periodic updating requirements contained in paragraph (c)(1) of this section. In the event that an entity other than the primary operating railroad assumes responsibility for submitting the required updates for a particular crossing, proposed paragraph (c)(4) would require that the reporting entity and the primary operating railroad provide written notification to the FRA Associate Administrator of the entity assuming the periodic updating responsibility. This paragraph would further require that any such notification must contain positive identification of the locations that will be covered.

Proposed paragraph (c)(4) of this section is not, however, intended to allow the primary operating railroad to completely transfer its responsibility for timely compliance with the proposed periodic updating requirements in paragraph (c)(1) of this section. Therefore, FRA reserves the right to hold the primary operating railroad and the reporting entity, as appropriate, liable for failure to timely comply with the periodic updating requirements of paragraph (c)(1) of this section. Other operating railroads might also be held liable if they fail to provide written notification of outdated Inventory records for public, private, or pathway crossings over which they operate, in accordance with paragraph (c)(2) of this section.

Paragraph (d) of this section contains proposed updating requirements related to the sale of a public, private, or pathway crossing. With respect to the sale of all or part of any public, private, or pathway crossing, proposed paragraph (d) of this section would

require the selling railroad to submit an Inventory Form (or its electronic equivalent) that reflects the crossing sale to the Crossing Inventory. This proposed provision is intended to implement 49 U.S.C. 20160(b)(2), which requires that railroads that sell a crossing report to the Secretary, within three months of such sale, current information, concerning the change in ownership of the crossing or part of the crossing.

Accordingly, proposed paragraph (d) of this section would require the submission of updated crossing data to the Crossing Inventory, no later than three months after the date of sale, in accordance with proposed § 234.403 and the Draft Guide. Pursuant to the Draft Guide, the selling railroad would simply be required to update the Crossing Inventory by revising either the Primary Operating Railroad data field (item one in Part I of the Draft Inventory Form) or the Operating Railroad data field (item 8 in Part I of the Draft Inventory Form) to reflect the change in ownership. The selling railroad should not, however, attempt to close the crossing record in the Crossing Inventory, since the crossing will remain in use and its assigned Inventory Number will remain the same.

With respect to certain specified changes in crossing characteristics, involving crossing closure, change in crossing surface, or change in warning device at a public, private, or pathway crossing, proposed paragraph (e)(1) of this section would require that the primary operating railroad submit an Inventory Form (or its electronic equivalent), which reflects updated information in all applicable data fields, to the Crossing Inventory, in accordance with the Draft Guide and § 234.403 of this part, within three months after the implementation date of the change. For purposes of this provision, a “change in warning device” means a change in the type of warning device installed at the crossing, as opposed to the modification of an existing crossing warning device. Therefore, upgrades from crossbuck signs to crossbuck and STOP signs would be considered a “change in warning device” that would trigger the update requirements contained in this section. Another example of a “change in warning device” that would trigger the proposed updating requirements would be the addition of cantilevered lights to a crossing that is already equipped with post-mounted flashing lights. Other changes in warning devices that would trigger the proposed updating requirement would include the installation of a crossbuck, yield, or stop sign, flashing lights, conventional

gates, and 4-quadrant gates at a grade crossing. FRA seeks comment on whether the 3-month period for reporting these changes in crossing characteristics should be shortened. Also, FRA seeks comment on whether this list of changes to crossing characteristics, which would trigger a requirement to submit updated data to the Crossing Inventory, adequately reflects the spectrum of significant changes to crossing characteristics that should be reported to the Crossing Inventory shortly after implementation, or whether this list of changes to crossing characteristics should be expanded to include significant changes to train counts and train speed as well, or other relevant factors.

Proposed paragraph (e)(2) of this section would allow an entity other than the primary operating railroad to submit updated crossing data to the Crossing Inventory, in order to satisfy the proposed reporting requirements contained in paragraph (e)(1) of this section. In the event that an entity other than the primary operating railroad assumes responsibility for submitting the required updates for a particular crossing to the Crossing Inventory, proposed paragraph (e)(2) of this section would require that the reporting entity and the primary operating railroad provide written notification to the Associate Administrator of the entity assuming the reporting responsibility. Proposed paragraph (e)(2) of this section would further require that any such notification contain positive identification of the location(s) that will be covered.

Proposed paragraph (e)(2) is not, however, intended to allow the primary operating railroad to completely transfer its responsibility for timely compliance with updating requirements of paragraph (e)(2) of this section. Therefore, FRA reserves the right to hold the primary operating railroad and the reporting entity liable for failure to timely submit updated crossing data to the Crossing Inventory in accordance with the proposed updating requirements of paragraph (e)(1) of this section.

#### *Section 234.407 Recordkeeping*

Proposed § 234.407 sets forth the recordkeeping requirements for this subpart that would apply to each railroad subject to this subpart. Proposed paragraph (a) of this section would require each railroad to keep certain records pertaining to its compliance with this subpart. Records may be kept on paper or electronically in a manner that conforms with proposed § 234.409.

Proposed paragraph (b) of this section would require operating railroads, including the primary operating railroad, to keep either a duplicate copy of each Inventory Form that was submitted in hard copy to the Crossing Inventory, or a copy of the electronic confirmation received from FRA after new or updated crossing data has been electronically submitted to the Crossing Inventory.

Proposed paragraph (c) of this section would require that the railroad maintain a list of locations where a copy of any record required to be retained by this subpart is accessible for inspection and photocopying. Proposed paragraph (c) would further require that this list of locations be kept at the office where the railroad's reporting officer conducts his or her official business.

Proposed paragraph (d) of this section would require that each operating railroad retain for at least four years (from the date of submission to the Crossing Inventory) either a duplicate copy of the Inventory Form that was submitted in hard copy by the railroad to the Crossing Inventory or a copy of the email confirmation received from FRA after new or updated crossing data has been electronically submitted to the Crossing Inventory. Records required to be kept must be made available to FRA as provided by statute (49 U.S.C. 20107).

#### *Section 234.409 Electronic Recordkeeping*

Proposed § 234.409 contains requirements that would apply to the electronic retention of records required by this subpart.

If a railroad chooses to conduct electronic recordkeeping of records required by this subpart, proposed paragraph (a)(1) of this section would require that the railroad adopt adequate security measures to limit employee access to its electronic data processing system and prescribe which employees will be allowed to create, modify, or delete data from the database.

Proposed paragraph (a)(2) of this section would require the railroad to have a terminal at the office where the railroad 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. In addition, proposed paragraph (a)(3) of this section would require the railroad to have a computer and a facsimile or printer connected to the computer to retrieve and produce records for immediate review.

Proposed paragraph (a)(4) of this section would require the railroad to

designate someone who will be authorized to authenticate hard copies produced from the electronic format.

Proposed paragraph (a)(5) would require the railroad to make electronic documents available for FRA inspection during "normal business hours" which FRA interprets as the time, any day of the week, when railroads conduct their regular business transactions. Nevertheless, FRA would reserve the right to review and examine the documents prepared in accordance with this subpart at any reasonable time if situations warrant. In addition, in the event that an electronic record kept by the railroad pursuant to this subpart does not comply with the proposed requirements contained in paragraph (a) of this section, proposed paragraph (b) of this section would require that the record be kept on paper in accordance with the recordkeeping requirements contained in § 234.407. In short, each railroad electing to retain its records electronically would be required to ensure the integrity of the information and prevent possible tampering of data, thus ensuring the overall integrity of the inventory.

#### *Appendix A to Part 234—Schedule of Civil Penalties*

Appendix A to part 234 contains a schedule of civil penalties for use in connection with this part. FRA intends to revise the schedule of civil penalties when issuing the final rule to reflect revisions made to part 234. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative severity of each type of violation.

#### **VI. Regulatory Impact and Notices**

##### *A. Executive Order 12866 and 13563 and DOT Regulatory Review Policies and Procedures*

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 12866 and 13563 and DOT policies and procedures. See 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a Regulatory Evaluation addressing the economic impact of this proposed rule.

As part of the regulatory evaluation, FRA has assessed quantitative estimates of the cost streams expected to result from the implementation of this proposed rule. For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals \$2.1 million with a present value (PV, 7 percent) of \$1.5 million. FRA conducted a break-even analysis of the rule and believes that potential benefits from the proposal would likely equal or exceed total costs.

FRA considered the industry costs associated with requiring railroads to establish and maintain an inventory for all public and private highway-rail crossings and pathway crossings. Many railroads have already implemented components of the proposed rule. FRA estimates that as many as 50 percent of all highway-rail crossings currently have up-to-date information in the National Inventory. For more details on the costing, please see the Regulatory Evaluation found in the docket. The requirements that are expected to impose the largest burdens relate to the collection of recent information and to the periodic update of the inventory. The table below presents the estimated costs associated with the proposed rulemaking.

#### 20-YEAR COST FOR PROPOSED RULE

Initial Update of Inventory .....	\$874,280
Periodic Update of Inventory .....	646,856
Total .....	1,521,136

Future costs are discounted to present value using a 7 percent discount rate.

As part of the Regulatory Evaluation, FRA has explained what the likely benefits for this proposed rule would be, and provided a break-even analysis. The main benefit derived from the rule would be improved crossing inventory data. This more precise information would better enable FRA, railroads, and any other entity to accurately analyze pertinent data, detect trends, and if needed, initiate crossing-related safety initiatives. In this break-even analysis, FRA determined that if there were a decrease of 0.015 percent of crossing accidents over the twenty-year period the costs associated with the rule would break-even. In the last decade there were over 26,000 collisions at grade crossing, this break-even analysis expects that over a twenty-year period there would be at least 3 fewer incidents due to the proposed rule. FRA anticipates that this rulemaking will increase the precision, completeness, and utility of railroad records and will improve FRA's national crossing

inventory. This would allow FRA to identify certain highway-rail crossings and pathway crossings that are not currently recorded in the existing voluntary crossing inventory. FRA believes that such clarification would help offset costs associated with the rulemaking by simplifying the reporting process. FRA believes the value of the anticipated benefits would justify the cost of implementing the proposed rule.

#### *B. Initial Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant impact on a substantial number of small entities. Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the proposed requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of this NPRM. FRA will consider all comments received in the public comment process when making a final determination.

The proposed rule would apply to all railroads which own or maintain public and private highway-rail crossings (both at-grade and grade-separated) as well as pathway crossings. Based on information currently available, FRA estimates that Class III railroads own 28 percent of the total highway-rail crossings. However a number of the Class III railroads are owned by larger holding companies. FRA often treats these holding companies as Class I or Class II railroads as they have more resources than a Class III railroad. Excluding the 113 railroads that are owned by a holding company, the small entities own 17 percent of the total highway-rail crossings. FRA analysis estimates that the cost of the proposed rule would be \$2.1 million with a present value (PV, 7 percent) of \$1.5 million.

As calculated below, there are 569 Class III railroads that would be considered small for the purposes of this analysis. As explained above, FRA believes that 113 of these railroads should be excluded because they are part of large holding companies that do

not meet the criteria established by the U.S. Small Business Administration (SBA) in determining small entities. Therefore there are 456 railroads that comprise around 17 percent of the total highway-rail crossings. All of these railroads would have to make some labor investment to meet the proposed requirements. As these railroads have less mileage, an indicator of fewer crossings, in their system than Class I and Class II railroads, FRA expects them to meet the proposed requirements at a lower overall cost. Thus, although numerous small entities in this sector would likely be impacted, the economic impact on them would likely not be significant. This IRFA is not intended to be a stand-alone document. In order to get a better understanding of the total costs for the railroad industry, which forms the basis for the estimates in this IRFA, or more cost detail on any specific requirement, please see the Regulatory Evaluation that FRA has placed in the docket for this rulemaking.

In accordance with the Regulatory Flexibility Act, an IRFA must contain:

(1) A description of the reasons why the action by the agency is being considered.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

(3) A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.

(4) A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record.

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

#### 1. Reasons for Considering Agency Action

The goal of the U.S. DOT Highway-Rail Crossing Inventory is to provide information to all stakeholders in the rail industry (e.g., Federal Government, State Governments, Local Governments, all railroads, public) for the improvement of safety at highway-rail crossings. The improved and more accurate information will help to add to a general pool of information regarding accidents at crossings, which might be able to help prevent future accidents.

RSIA required that all railroads submit an inventory of all existing crossings to the FRA. Although the FRA currently has a national inventory, it has

not been consistently updated. FRA believes that around 99 percent of the crossings that exist are currently in the database, but much of the information on each crossing needs to be updated, and numerous nonexistent crossings need to be removed from the database.

The FRA reviewed RSIA in order to determine the best, most cost efficient and beneficial way to issue the proposed rule. FRA anticipates that the proposed requirements will be accepted by the industry as being as unobtrusive as possible. A team in the FRA carried out a careful review of the mandates in RSIA to incorporate these requirements into these proposed Federal regulations.

## 2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The purpose of this rulemaking is to require railroads to submit information for public and private highway-rail crossings and pathway crossings. The proposed rule also sets forth regulations mandating the periodic update of the national crossing inventory. Any crossings that have been sold should also be updated in the inventory.

Section 204 of RSIA has a requirement for a National Crossing Inventory. Congress gave the Secretary of Transportation the authority to prescribe the regulations to implement Section 204. The task of creating the necessary regulation was delegated to the Administrator of the Federal Railroad Administration. This proposed regulation will be codified in Title 49 of the Code of Federal Regulations, Part 234.

## 3. A Description of, and Where Feasible, an Estimate of Small Entities to Which the Proposed Rule Would Apply

The “universe” of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. This proposed rule would affect all railroads that own or maintain public or private highway-rail crossings or pathway crossings.

“Small entity” is defined in 5 U.S.C. 601. Section 601(3) defines a “small entity” as having the same meaning as “small business concern” under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The SBA stipulates in its size standards that

the largest a railroad business firm that is “for profit” may be and still be classified as a “small entity” is 1,500 employees for “Line Haul Operating Railroads” and 500 employees for “Switching and Terminal Establishments.” Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR, part 209. The \$20 million-limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is proposing to use this definition for this rulemaking. Any comments received pertinent to its use will be addressed in the final rule.

## Railroads

There are a total of 756 regulated railroads. FRA is excluding 150 railroads from the rulemaking because they do not own any crossings. There are 7 Class I railroads and 12 Class II railroads, all which are not considered to be small. There are a total of 29 commuter/passenger railroads, including Amtrak, with 19 that would be affected by this rule. However, all the affected commuter railroads are part of larger public transportation agencies that receive Federal funds and serve major jurisdictions with populations greater than 50,000.

The level of costs incurred by each railroad should generally vary in proportion to the number of crossings they maintain. For instance, railroads with fewer crossings should have lower overall costs associated with implementing the proposed standards. There are 710 Class III railroads, and of those railroads, only 569 are affected by the rule. However, 113 of these railroads are owned by large holding companies, and are therefore not considered to be

small entities for the purposes of this analysis. Hence there are 456 railroads which would be considered to be small entities impacted by this proposed rule. The impact on these small railroads is discussed in the following section.

## 4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

For a thorough presentation of cost estimates, please refer to the Regulatory Evaluation, which has been placed in the docket for this rulemaking.

For the purpose of this analysis, FRA broke Class III railroads into two categories. We considered any Class III railroad that had more than 40 crossings to be a Large Class III railroad and any Class III railroad with 40 or less crossings to be a Small Class III railroad. Crossing specialists in FRA’s Office of Safety anticipate that the majority of the Large Class III railroads use FRA’s web based program, to submit their inventories to the FRA. FRA assumes that the Large Class III railroads would continue to use a web-based program to input their crossing inventories into the national database. FRA believes that the Small Class III railroads would manually send their inventory forms, by either mail or email, to the FRA. FRA also estimates that 50 percent of all railroads in the industry are already in compliance with the proposed rule.

There are 240 Large Class III railroads that would be considered small entities. FRA estimates that each Large Class III railroads would initially task one person for approximately one week to review and update their inventory. Subsequently, FRA estimates that it would take one person two days to update a Large Class III railroads inventory every year. The initial cost associated with Large Class III railroads would be around \$900 per railroad. The cost to periodically update their inventory is estimated to be about \$350 per railroad. FRA believes that although the Large Class III railroads would be burdened by the proposed regulation, none of these small entities would be significantly impacted.

There are 216 Small Class III railroads that would be considered small entities. FRA estimates that each Small Class III railroad would initially need one person to work 8 hours to review and update each inventory. Subsequently, the periodic inventory update cost would be the same, requiring one person to work 8 hours each year. The initial cost

associated with Small Class III railroads would be \$173 per railroad. The cost to periodically update their inventory is \$173 per railroad. Again, FRA believes that although all of the Small Class III railroads would be affected by the proposed regulation, none of these small entities would be significantly impacted.

In conclusion, FRA believes that both the Large Class III railroads and the Small Class III railroads, thus a substantial number of small entities (small railroads) would be impacted by the proposed regulation. However, FRA has found that these entities that are directly burdened by the regulation would not have an economic significant impact. FRA believes that the costs associated with the proposed rule are reasonable and would not cause any significant financial impact on their operations.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

FRA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a determination.

C. Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input

by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of

law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to section 20106.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements are duly designated, and the estimated time to fulfill each requirement is as follows:

CFR Section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
234.403—Submission of Information to the U.S. DOT Highway-Rail Crossing Inventory (Formerly Voluntary).	50 states & 607 railroads .....	6,942 forms .....	30	3,471
	50 states & 607 railroads .....	257 lists .....	30	129
234.405—Submission of initial data and periodic updates to the U.S. DOT Highway-Rail Crossing Inventory (New Requirement).	50 states & 607 railroads .....	1,111 lists .....	30	556
	50 states & 607 railroads .....	38,982 records .....	6	3,898
	607 railroads .....	450 written notifications .....	30	225
	50 states & 607 railroads .....	175 written notifications .....	30	88
	607 railroads .....	65 written notifications .....	30	33
	607 railroads .....	12 written notifications .....	30	6
	50 states & 607 railroads .....	10 written notifications .....	30	5
	607 railroads .....	950 written notifications .....	20	317
234.407 Recordkeeping (New Requirement).	607 railroads .....	650 written notifications .....	20	217
	50 states & 607 railroads .....	525 written notifications .....	20	175
	607 railroads .....	5,674 copies .....	1	95
	607 railroads .....	2,837 copies .....	1	47
	607 railroads .....	607 forms .....	5	51

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202-493-6292, or Ms. Nakia Jackson at 202-493-6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: [Robert.Brogan@dot.gov](mailto:Robert.Brogan@dot.gov); [Kimberly.Toone@dot.gov](mailto:Kimberly.Toone@dot.gov).

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

#### E. Environmental Impact

FRA has evaluated this rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May

26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. See 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

#### F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The proposed rule will not result in the expenditure, in the aggregate, of \$140,800,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

#### G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that

promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of Executive Order 13211.

#### H. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96-39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA has assessed the potential effect of this NPRM on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act of 1979. The requirements imposed are safety standards, which, as noted, are not considered unnecessary obstacles to trade.

#### I. Privacy Act

Interested parties should be aware that anyone is able to search the electronic form of all written comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

#### List of Subjects in 49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

## The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

### PART 234—GRADE CROSSING SAFETY

1. The authority citation for part 234 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Pub. L. 110-432, Div. A., Sec. 202, 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. The heading for part 234 is revised to read as set forth above.

3. Section 234.1 is amended by revising paragraphs (a)(3) and (4) and by adding paragraph (a)(5) to read as follows:

#### § 234.1 Scope.

(a) \* \* \*

(3) Requirements for particular identified States to develop State highway-rail grade crossing action plans;

(4) Requirements that certain railroads establish systems for receiving toll-free telephone calls reporting various unsafe conditions at highway-rail grade crossings and pathway grade crossings, and for taking certain actions in response to those calls; and

(5) Requirements for reporting to, and periodically updating information contained in, the U.S. DOT National Highway-Rail Crossing Inventory for public, private, and pathway crossings.

\* \* \* \* \*

4. Subpart F is added to read as follows:

### Subpart F—Highway-Rail Crossing Inventory Reporting

Sec.	
234.401	Definitions.
234.403	Submission of data to the Crossing Inventory, generally.
234.405	Submission of initial data and periodic updates to the Crossing Inventory.
234.407	Recordkeeping.
234.409	Electronic recordkeeping.

#### § 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).

*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.

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

*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 that operates one or more trains through a highway-rail crossing or pathway crossing.

*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;

(4) Crosses one or more railroad tracks either at grade or grade-separated.

*Primary operating railroad* means the operating railroad responsible for submitting and/or updating data in the Crossing Inventory for a highway-rail crossing or pathway crossing.

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

*Public crossing* means a highway-rail crossing where the roadway is under the jurisdiction of and maintained by a public authority and open to public travel. All roadway approaches must be under the jurisdiction of the public roadway authority and no roadway approach may be on private property.

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

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

(a) Public, private, and pathway crossing data shall be submitted to the Crossing Inventory on the Inventory Form pursuant to the requirements set forth in § 234.405 of this part. Except as provided in paragraph (c) of this section, the Inventory Form may be submitted in hard copy or electronically.

(b) The Inventory Form 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 the FRA Web site at (FRA Web site address to be inserted).

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

#### § 234.405 Submission of initial data and periodic updates to the Crossing Inventory.

(a) *Initial Submission for Previously Unreported Crossings.* (1) *Duty of Primary Operating Railroad.* Each primary operating railroad shall submit a completed Inventory Form, or its electronic equivalent, to the Crossing Inventory for each previously unreported public, private, and pathway crossing (except a temporary crossing) through which it operates, no later than (DATE 6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE). The completed Inventory Form, or its electronic equivalent, must reference the assigned Inventory Number for the crossing and the Inventory Form, or its electronic equivalent, must be completed and submitted in accordance with § 234.403 of this part.

(2) *Duty of Operating Railroads.* Each operating railroad, other than the primary operating railroad, which operates through a previously unreported public, private, 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)(1) 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 public, private, or pathway crossing for which a completed Inventory Form, or its electronic equivalent, has not been timely submitted to the Crossing Inventory.

(3) *Reporting by Other Entities on Behalf of the Primary Operating Railroad.* In order to satisfy the reporting requirements of paragraph (a)(1) of this section, an entity other than the primary operating railroad may submit a completed Inventory Form, or its electronic equivalent, to the Crossing Inventory, provided both the reporting entity and the primary operating

railroad provide written notice to the FRA Associate Administrator of the entity assuming reporting responsibility. Any such notification must include a positive identification of the locations that will be covered.

(b) *Initial Submissions for New Crossings.* (1) *Duty of Primary Operating Railroad.* Each primary operating railroad shall submit a completed Inventory Form, or its electronic equivalent, to the Crossing Inventory for each new public, private, or pathway crossing (except a temporary crossing) through which it operates no later than six (6) months after the crossing becomes operational. The completed Inventory Form, or its electronic equivalent, must reference the assigned Inventory Number for the crossing and the Inventory Form, or its electronic equivalent, must be completed and submitted in accordance with § 234.403.

(2) *Duty of Operating Railroads.* An operating railroad, other than the primary operating railroad, which operates through a new public, private, or pathway crossing (except a temporary crossing) for which a completed Inventory Form has not been submitted to the Crossing Inventory within six (6) months after the crossing becomes operational 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 public, private, or pathway crossing through which it operates.

(3) *Joint Reporting by Multiple Operating Railroads.* Two or more operating railroads may agree to assume joint responsibility for the reporting requirement set forth in paragraph (b)(1) of this section by providing written notification of this agreement in accordance with the Inventory Guide.

(4) *Reporting by Other Entities on Behalf of the Primary Operating Railroad.* In order to satisfy the reporting requirements of paragraph (b)(1) of this section, an entity other than the primary operating railroad may submit a completed Inventory Form, or its electronic equivalent, to the Crossing Inventory, provided both the reporting entity and the primary operating railroad provide written notification to the FRA Associate Administrator of the entity assuming reporting responsibility. Any such notification must include positive identification of the locations that will be covered.

(c) *Periodic Updates.* (1) *Duty of primary operating railroad.* Each primary operating railroad shall submit up-to-date and accurate crossing data to

the Crossing Inventory for each public, private, and pathway crossing (other than a temporary crossing or a grade-separated crossing) through which it operates, in accordance with the Inventory Guide. Updated crossing data shall be submitted to the Crossing Inventory at least every 3 years from the date of the most recent railroad submission or (DATE 6 MONTHS AFTER EFFECTIVE DATE OF FINAL RULE), whichever occurs later.

(2) *Duty of Operating Railroads.* An operating railroad, other than the primary operating railroad, that operates through a public, private, or pathway crossing (other than a temporary crossing or a grade-separated crossing) for which up-to-date and accurate information has not been timely submitted to the Crossing Inventory in accordance with paragraph (c)(1) shall notify the FRA Associate Administrator, in writing, of this oversight. Written notification provided by the operating railroad in accordance with this paragraph shall include, at a minimum, the Inventory Number for each public, private, or pathway crossing(s) that has not been updated.

(3) *Joint Updating by Multiple Operating Railroads.* Two or more operating railroads may assume joint responsibility for submission of the periodic updates required by paragraph (c)(1) of this section by providing written notification of this agreement in accordance with the Inventory Guide.

(4) *Submission of Periodic Updates by Other Entities on Behalf of the Primary Operating Railroad.* In order to satisfy the periodic updating requirements of paragraph (c)(1) of this section, an entity other than the primary operating railroad may submit up-to-date and accurate crossing data to the Crossing Inventory, provided both the reporting entity and the primary operating railroad provide written notification to the FRA Associate Administrator of the entity assuming the periodic updating responsibility. Any such notification shall include positive identification of the locations that will be covered.

(d) *Changes Requiring Submission of Updated Information to the Crossing Inventory, Crossing sale.* Any railroad that sells all or part of a public, private, or pathway crossing shall submit an Inventory Form, or its electronic equivalent, which reflects the crossing sale to the Crossing Inventory. The updated Inventory Form, or its electronic equivalent, shall be submitted to the Crossing Inventory, no later than three (3) months after the date of sale, in accordance with § 234.403 of this subpart.

(e) *Changes Requiring Submission of Updated Information to the Crossing Inventory, Changes in Crossing Characteristics.* (1) Within three (3) months of any crossing closure, change in crossing surface, or change in warning device at any public, private, or pathway crossing, the primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects the change in crossing characteristics to the Crossing Inventory, in accordance with § 234.403 of this subpart. A “change in warning device” means the addition of a crossbuck, yield or stop sign, flashing lights, or gates at a public, private, or pathway crossing.

(2) *Submission of Updated Information to the Crossing Inventory by Other Entities on Behalf of the Primary Operating Railroad.* In order to satisfy the reporting requirements of paragraph (e)(1) of this section, an entity other than the primary operating railroad may submit an Inventory Form, or its electronic equivalent, that reflects the change(s) in crossing characteristics to the Crossing Inventory, provided both the reporting entity and the primary operating railroad provide written notification to the FRA Associate Administrator of the entity assuming reporting responsibility. Any such notification shall include positive identification of the location(s) that will be covered.

#### **§ 234.407 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 § 234.409.

(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.

#### § 234.409 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 § 234.407.

Issued in Washington, DC, on October 12, 2012.

**Karen J. Hedlund,**

*Deputy Administrator.*

[FR Doc. 2012-25623 Filed 10-17-12; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 395

[Docket No. FMCSA-2011-0373]

#### Hours of Service of Drivers

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public listening session.

**SUMMARY:** FMCSA announces that it will hold a public listening session to solicit information, concepts, ideas, and information on hours-of-service (HOS) requirements for drivers of passenger-carrying commercial motor vehicles (CMVs). Specifically, the Agency would like to know what factors, issues, and data it should consider as it determines preliminarily whether the HOS regulations applicable to these drivers need to be changed to decrease the risk of fatigue-related crashes. The session, which will be held in Santa Barbara, CA, will allow interested persons to present comments, views, and relevant new research that FMCSA should consider in drafting a Notice of Proposed Rulemaking (NPRM). All comments will be transcribed and placed in the docket for FMCSA's consideration. The entire day's proceedings will be webcast.

**DATES:** The listening session will be held on Tuesday, October 30, 2012, in Santa Barbara, CA. The listening session will be held from 1:15 p.m. until 5:30 p.m., LT, or earlier, if all participants wishing to express their views have done so.

**ADDRESSES:** The October 30, 2012, meeting will be held at the Fess Parker's Doubletree Resort, 633 East Cabrillo Blvd., Santa Barbara, CA 93103. The hotel telephone number is 1-805-884-8511.

*Internet Address for Live Webcast.* FMCSA will post specific information on how to participate via the Internet on the FMCSA Web site at <http://www.fmcsa.dot.gov/rules-regulations/topics/hos/HOS-Listening-Sessions.aspx>.

You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2011-0373 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building

Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the listening session or the live webcast, please contact Ms. Shannon L. Watson, Senior Advisor for Policy, FMCSA, (202) 385-2395.

If you need sign language assistance to participate in this HOS listening session, contact Ms. Watson by Thursday, October 18, 2012, to allow us to arrange for such services. There is no guarantee that interpreter services requested on short notice can be provided.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The HOS requirements for motorcoach operators have not been substantially revised in several decades.