



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA-2011-0007, Notice No. 6]

RIN 2130-AC55

National Highway-Rail Crossing Inventory Reporting Requirements

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

ACTION: Final Rule; response to petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of FRA's January 6, 2015, final rule addressing U.S. DOT National Highway-Rail Crossing Inventory (Crossing Inventory or Inventory) Reporting Requirements. This document amends and clarifies the final rule in response to the petition for reconsideration and makes certain additional amendments to the rule to address practical implementation problems that arose after publication of the final rule.

DATES: The amendments in this final rule are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

On October 18, 2012, FRA published a notice of proposed rulemaking (NPRM) as a first step towards the agency's promulgation of Crossing Inventory regulations per the Congressional mandate contained in Section 204(a) of the Rail Safety Improvement Act of 2008 (RSIA) (codified at 49 U.S.C. 20160). See 77 FR 64077. After careful consideration of comments received in response to the NPRM and testimony received at a February 19, 2013, public hearing, FRA published a final rule on January 6, 2015, requiring railroads that operate one or more trains through highway-rail or pathway crossings to submit initial reports to the Crossing Inventory, including current information about warning devices and signs for previously unreported and new highway-rail and pathway crossings through which they operate. The final rule also requires railroads to periodically update the data in the Crossing Inventory, including the prompt reporting of a crossing sale, crossing closure, or changes in certain crossing characteristics. See 80 FR 746.

The Association of American Railroads (AAR) filed a petition for reconsideration (Petition) of the final rule. In its Petition, AAR asks FRA: (1) for additional time to comply with the final rule; (2) to reconsider the rule's requirement that railroads, in certain instances, submit data to the Crossing Inventory that State agencies have historically submitted voluntarily. Specifically, AAR asks FRA to amend 49 CFR 234.405 and 234.407 to address that issue and issues associated with the assignment of inventory numbers to certain crossings located in private companies', ports', and docks' areas; (3) to amend those same sections, and § 234.409, to remove the requirement that railroads operating trains through highway-rail or pathway crossings, that are not the

“primary operating railroad” for those crossings, ensure information the relevant primary operating railroad provides to the Crossing Inventory is submitted and updated; and (4) to revise the Inventory Guide¹ to disallow states from reporting crossing closures to the Crossing Inventory.

The specific issues AAR raised, and FRA’s responses to those issues, are discussed in detail in the “Section-by-Section Analysis” below. The Section-by-Section Analysis also contains a discussion of each provision of the final rule which FRA is amending or clarifying in response to practical implementation issues it has discovered since it promulgated the final rule. These amendments also allow greater flexibility in complying with the rule. These amendments are within the scope of the issues and options discussed, considered, or raised in the NPRM.

II. Section-by-Section Analysis

A. Amendments to 49 CFR Part 234

Section 234.401 Definitions.

FRA is adding definitions of “general railroad system of transportation” and “general system railroad” to this section because these terms are used in the revised definition of “primary operating railroad”, which is discussed below. For purposes of this subpart, FRA is defining a general railroad system of transportation as the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.

Consistent with the definition of “general railroad system of transportation”, FRA is defining general system railroad as a railroad that operates on track, which is part of the

¹ Federal Railroad Administration, Office of Railroad Safety, “Guide for Preparing U.S. DOT Crossing Inventory Forms” (initially published January 6, 2015).

general railroad system of transportation. Thus, a general system railroad is not a plant railroad, as defined in § 234.5 of this part.

As applied to highway-rail and pathway crossings located within private companies', ports', or docks' areas, the final rule defines "primary operating railroad" as "each railroad that owns track leading to the private company, port, or dock area." After FRA issued the final rule, at least one regulated entity expressed concern about a private company where a railroad owns track leading into the private company, but does not actually operate on track within the company. Because the railroad does not operate over any crossings within the company's area, the railroad stated it does not have ready access to the information the rule requires it to report to the Crossing Inventory for crossings within the private company.

FRA did not intend to require railroads merely owning track leading to a private company, port, or dock area, where the only railroad that operates through crossings within the area is a plant railroad, as defined in § 234.5, to report to the Crossing Inventory information on the crossings within the private area. Accordingly, FRA is revising the definition of "primary operating railroad" to clarify that mere ownership of track leading to a private company, port, or dock area does not make a railroad a primary operating railroad for crossings within that area, if no general system railroad operates over that track and through at least one crossing within the private area.

If a general system railroad operates over track leading to a private area and through at least one highway-rail or pathway crossing within the private area, the railroad that owns the track leading to the area and over which the general system railroad operates, is responsible for reporting to the Crossing Inventory information on all the

crossings within the private area. The railroad owning the track leading to the private area should be able to obtain access to the information required to be submitted to the Crossing Inventory (*e.g.*, number and speed of train movements through the crossings within the area) through the railroad operating over the track it owns.

For example, if one general system railroad (Railroad A) owns a track leading to a private company, port, or dock area and operates over that track and through at least one crossing within the private area, that Railroad (Railroad A) is the primary operating railroad for all crossings within the private area. Similarly, if Railroad A owns track leading to a private company, port, or dock area, but does not operate over that track or any crossings within the private area but instead allows another general system railroad (Railroad B) to operate over its track leading to the private area and Railroad B also operates through at least one crossing within the private area, Railroad A (the railroad that owns the track leading to the private area) is considered the primary operating railroad for all of the crossings within the private area – even though it does not actually operate over the track.

On the other hand, if two general system railroads (*e.g.*, Railroad C and Railroad D) own separate tracks leading to a private company, port, or dock area, and Railroad C operates over its own track leading to the private area and through at least one crossing within that area (and Railroad D does not operate over its track leading to the private area or through any crossings within the area), Railroad C (the general system railroad that owns and operates over its track leading to the private area and through at least one crossing within that area) is considered the primary operating railroad for all of the crossings within that area.

Likewise, if Railroads C and D each own track leading to a private company, port, or dock area, and Railroad E (another general system railroad) operates over one of their tracks leading to the private area and through at least one crossing within the area, the owner of the track leading to the area over which Railroad E operates is the primary operating railroad for all crossings within the private area. If both Railroads C and D own track leading to a private company, port, or dock area, and they each operate over their owned track into the area and through at least one crossing within the area, they both will be considered primary operating railroads for all crossings within the private area.

Finally, if in any scenario a general system railroad (or more than one railroad) owns track leading to a private company, port, or dock area, but neither that railroad nor any other general system railroad operates over that track and through at least one crossing within the area, then the crossings in the private area do not need to be reported to the Crossing Inventory. For example, if a general system railroad owns track leading up to the entrance of a private area and operates over that track (or allows another general system railroad to operate over that track), but does not operate over any crossing within the area, that railroad is not considered a primary operating railroad for purposes of the crossings within the private area.

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

Section 234.403 of the final rule contains the general requirements for submission of information to the Crossing Inventory. Paragraph (e) of that section of the final rule allows a parent corporation to submit crossing data to the Crossing Inventory on behalf of one or more of its subsidiaries, if the parent corporation and subsidiary railroad(s): (1)

provide written notice (signed by the chief executive officer of the parent corporation) to FRA that the parent corporation is assuming the reporting and updating responsibility; and (2) operate as a “single, seamless, integrated” railroad system. Since publication of the final rule, numerous railroads that voluntarily submitted crossing data in the past on behalf of their subsidiaries notified FRA they would like to continue to do so. However, because they do not operate as a “single, seamless, integrated” railroad system they cannot report on behalf of their subsidiaries under the final rule. Railroads also questioned the need for the chief executive officer, as opposed to any railroad official, to sign the written notice the parent corporation submits. After considering these concerns, which could inadvertently prevent parent corporations from reporting crossing data on behalf of their subsidiaries, FRA is amending § 234.403(e) by removing the requirement that parent corporations and their subsidiary railroads operate as a “single, seamless, integrated” railroad system. As a result, all railroad parent corporations can now report on behalf of their subsidiaries under paragraph (e).

This final rule also simplifies the notification process a parent corporation must follow if it wants to submit Crossing Inventory data on behalf of one or more of its subsidiary railroads. At least one regulated entity raised concerns about current paragraph (e)(1) of this section of the final rule that requires the chief executive officer of the parent corporation to sign the required notice to FRA that the parent corporation is assuming reporting and updating responsibility for its subsidiaries. In response to those concerns, FRA is amending paragraph (e)(1) to allow any appropriate management official with authority to bind the company to sign the notice. This notice must include a statement that the parent corporation is agreeing to (1) submit and update crossing data

for the named subsidiaries and the parent corporation, and (2) be subject to enforcement action for noncompliance with the final rule. FRA is also amending paragraph (e)(1) to require only the parent corporation, instead of the parent corporation and the named subsidiary, to submit the required written notice to FRA.

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

Assignment of Inventory Numbers to Previously Unreported Crossings Located in a Private Company, Port, or Dock Area

Current paragraph (a)(1)(ii) of § 234.405 requires each primary operating railroad that operates through at least one previously unreported crossing within a private company, port, or dock area to assign one or more Inventory Numbers to those crossings. AAR asserts that (1) this requirement is contrary to current practice that allows a single Inventory Number to be assigned to all crossings in these areas, and (2) this new requirement could create reporting confusion if an accident were to occur at a crossing within a private company, port, or dock area. AAR requests that FRA amend this requirement to allow multiple primary operating railroads to share an assigned Inventory Number for one or more previously unreported highway-rail and pathway crossings located within a private company, port, or dock area.

After careful consideration, FRA is not adopting AAR's request to modify the language of § 234.405(a)(1)(ii) for two reasons. First, for purposes of enforcement of this rule's reporting requirements, if the railroads share a single Inventory Number, FRA will not know which railroad is responsible for misreporting or failure to report. Second, if a reportable accident/incident occurs at a previously unreported highway-rail or

pathway crossing located within a private company, port, or dock area, it benefits both FRA and the railroads involved for the railroad responsible for reporting the accident/incident under 49 CFR part 225 to have its own unique Inventory Number it can use in the accident/incident report it files with FRA.²

FRA disagrees with AAR's argument that assigning multiple Inventory Numbers to the same highway-rail or pathway crossing could create reporting confusion. It is possible that a railroad that operates over its own track into a private company, port, or dock area may not know if another railroad with its own track leading into the area assigned an Inventory Number to the crossings within the area. By requiring each railroad to assign its own Inventory Number to the crossings within a private company, port, or dock area, a railroad involved in a crossing collision inside the area will not have to rely on another railroad to provide the Inventory Number so it can report the accident as required under part 225.

FRA also disagrees with AAR's assertion that requiring each primary operating railroad to assign one or more Inventory Numbers to crossings located within a private company, port, or dock area could result in multiple railroads having multiple signs at each vehicular entrance that provide multiple Inventory Numbers and emergency notification information for the same crossings. However, FRA regulations do not require railroads to post emergency notification signs (ENS signs) at crossings located within a private company. As for port and dock areas, subpart E of 49 CFR part 234

² FRA is aware that some primary operating railroads already share a single Inventory Number for highway-rail and pathway crossings located within a private company, port, or dock area that have already been reported to the Crossing Inventory. See discussion of § 234.409 below for how to submit periodic updates in such situations.

(subpart E) requires railroads to post at least one ENS sign only at each vehicular entrance if any highway-rail and/or pathway crossings are located within that area (and provided the port or dock area does not meet the definition of “plant railroad” in § 234.5.) See 49 CFR 234.311(a)(2)(ii). Subpart E does not require railroads to post signs at each crossing within such an area. The track owner or lessee that maintains the highway-rail or pathway grade crossing (the “maintaining railroad” under 49 CFR 234.301) is responsible for the placement and maintenance of ENS signs at each vehicular entrance. See 49 CFR 234.311(a)(2)(ii). Under subpart E, if the primary dispatching railroad under 49 CFR 234.306 and the maintaining railroad are not the same entity, the primary dispatching railroad must provide the emergency telephone number to display on the ENS sign to the maintaining railroad. See 49 CFR 234.309(a).

If there is more than one primary operating railroad that operates through highway-rail or pathway crossings in a port or dock area, subpart E does not require multiple signs at each vehicular entrance with multiple Inventory Numbers and emergency notification information for the crossings. Instead, under subpart E, the maintaining railroad (not the primary operating railroad under this final rule) is responsible for posting ENS signs that display the emergency telephone number and the Inventory Number assigned to the crossings in the port or dock area by the primary dispatching railroad.

Submission of Completed Inventory Forms for Previously Unreported Highway-Rail and Pathway Crossings

Paragraph (a)(3) of § 234.405 of the final rule requires primary operating railroads to submit to the Crossing Inventory “accurate and complete [U.S. DOT

Crossing] Inventory Forms, or their electronic equivalent,” for previously unreported highway-rail and pathway crossings through which the railroads operate. AAR requests that FRA amend this provision (and the corresponding provision in § 234.407(a)(3) addressing new highway-rail and pathway crossings) by removing the requirement that primary operating railroads submit “completed” U.S. DOT Crossing Inventory Forms (Inventory Forms) for such crossings.

AAR also objects to the voluntary process in paragraph 234.405(d) (and the corresponding provision in § 234.407(d) (addressing new highway-rail and pathway crossings). Section 234.405(d) provides that if a railroad requests data necessary to complete an Inventory Form from a State agency, but does not timely receive that information from the State agency, the railroad may notify FRA in writing of the State’s non-responsiveness. AAR asserts that railroads should not be held responsible for supplying state-controlled information not maintained by the railroads. AAR urges FRA to revise this requirement to limit primary operating railroads’ reporting responsibilities to crossing data within their control.

FRA acknowledges that State agencies generally maintain the crossing data in Parts III, IV, and V of the Inventory Form. However, the RSIA, as amended by sec. 11316(g) of the Fixing America’s Surface Transportation Act (FAST Act), specifically requires railroads to report “[n]ot later than 1 year after the date of enactment of the RSIA or 6 months after a new crossing becomes operational, whichever occurs later . . . current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates with respect to the trackage over which it operates.” 49 U.S.C. 20160. Crossing data

about warning devices and signage is primarily in Part III of the Inventory Form, under the heading “Highway or Pathway Traffic Control Device Information.” Thus, in addition to the crossing data in Parts I and II of the Inventory Form, which railroads have historically collected and maintained in the Crossing Inventory, the RSIA specifically requires railroad carriers to submit additional crossing data “about warning devices and signage” for previously unreported and new crossings.

The RSIA also contains language granting the Secretary of Transportation (and by delegation, FRA) the authority to exercise discretion in determining the scope of the crossing data railroads must submit to the Crossing Inventory. In the final rule, FRA determined that submission of complete Inventory Forms for previously unreported and new public highway-rail grade crossings is needed to increase the accuracy and utility of the Crossing Inventory. FRA continues to maintain that position. Railroads generally work closely with the State agency responsible for grade crossing safety before any new public highway-rail grade crossings become operational. Therefore, any burden associated with obtaining State-maintained crossing data for new public highway-rail grade crossings should be minimal.

Nevertheless, to clarify this requirement, FRA is revising § 234.405(a)(3) (and the corresponding provision in § 234.407(a)(3) on new highway-rail and pathway crossings) to require primary operating railroads to submit “accurate Inventory Forms, or their electronic equivalent,” (as opposed to “accurate and complete” Inventory Forms) to the Crossing Inventory for previously unreported highway-rail and pathway crossings through which they operate. Primary operating railroads must fill out these accurate Inventory Forms as the Inventory Guide requires. In other words, primary operating

railroads are only required to complete the entire Inventory Form for new and previously unreported public highway-rail grade crossings. The Inventory Guide only requires primary operating railroads to complete Parts I and II of the Inventory Form for new and previously unreported pathway grade crossings and new and previously unreported private highway-rail grade crossings.

State-Maintained Crossing Data

Since the final rule requires primary operating railroads to complete Inventory Forms (or their electronic equivalent) for new and previously unreported public highway-rail grade crossings, those railroads may need to obtain crossing data from the State agency responsible for maintaining highway-rail and pathway crossing data to complete the Inventory Form (or its electronic equivalent). Current § 234.405(d) of the final rule explains how a primary operating railroad that requests State-maintained crossing data from the appropriate State agency responsible for maintaining the data, but does not timely receive the requested data, may notify FRA in writing that the railroad requested the required data, but did not receive the data. Under the final rule, if a railroad properly submits such notification, FRA would not hold the primary operating railroad responsible for failing to complete and submit accurate Inventory Forms (or their electronic equivalent) for previously unreported public highway-rail grade crossings.

In its Petition, AAR asserts that “FRA has taken a relatively straightforward process, whereby primary operating railroads could provide the data which they possess and state agencies could provide the remaining highway traffic and other non-railroad data, and has made it burdensome and complex.” Noting that a primary operating railroad may operate in dozens of states, AAR further asserts that contacting each

relevant State agency, tracking the responses of those agencies, and creating a certification process would be an unmerited burden on the industry.

As noted previously, FRA continues to maintain its position that submission of complete Inventory Forms for previously unreported and new public highway-rail grade crossings is needed to increase the accuracy and utility of the Crossing Inventory. To achieve this goal, FRA is requiring primary operating railroads to provide the crossing data they possess and to request any additional required crossing data from the State agency responsible for maintaining that data. FRA anticipates that State agencies will generally respond promptly to railroad requests for State-maintained crossing data. However, primary operating railroads may submit copies of their written requests for State-maintained crossing data to FRA and to each operating railroad that operates through the crossing. This is not mandatory, but, if FRA audits the Crossing Inventory, FRA would know the primary operating railroad made an effort to obtain State data for one or more previously unreported public highway-rail grade crossings.

After considering AAR's request, FRA is simplifying the written notification process in § 234.405(d). Instead of providing written notice to FRA certifying that State-maintained crossing data was requested at least 60 days earlier and has not yet been received, a primary operating railroad can send a copy of its written request for State-maintained crossing data to FRA and to each operating railroad that operates through the crossing. As long as the primary operating railroad submits the State-maintained crossing data within 60 days of receipt, FRA will consider the written request for State-maintained crossing data to be an affirmative defense to potential liability for failure to

timely submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory for a previously unreported public highway-rail grade crossing.

Deadline for the Submission of Crossing Data for Previously Unreported Highway-Rail and Pathway Crossings

Paragraphs (a)(3) and (b) of § 234.405 of the final rule provide a deadline of March 7, 2016, for operating railroads and primary operating railroads to submit the required Inventory Forms, or their electronic equivalent, for previously unreported highway-rail and pathway crossings. AAR requests that FRA extend the deadline to three years from the final rule's effective date (i.e., until March 9, 2018). AAR asserts this additional time will allow railroads to hire and train additional staff to physically locate and inspect tens of thousands of previously unreported private crossings. AAR also asserts that railroads need this additional time to add newly acquired information to the Crossing Inventory and to modify their IT systems to meet the new requirements.

After careful consideration, FRA is not adopting AAR's request to extend the reporting deadline for new and previously unreported highway-rail and pathway crossings to three years from the final rule's effective date. However, FRA acknowledges that railroads may need additional time to incorporate the changes that FRA is making in this amendment to the final rule as a result of AAR's Petition. Therefore, FRA is revising § 234.405(a)(3) to extend the deadline for primary operating railroads to submit crossing data to the Crossing Inventory for previously unreported highway-rail and pathway crossings to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Consistent with this extension of time, FRA is also extending the deadline for operating railroads that operate on separate

tracks to submit crossing data to the Crossing Inventory to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. FRA is not adjusting any other deadlines in § 234.405(a) and (b).

Duty of Operating Railroads to Ensure New and Previously Unreported Highway-Rail and Pathway Crossings Are Reported to the Crossing Inventory

Paragraph (c) of § 234.405 requires operating railroads (railroads other than the primary operating railroad that operate through a crossing) to notify FRA if a primary operating railroad has not submitted a completed Inventory Form, or its electronic equivalent, to the Crossing Inventory consistent with the rule for a new or previously unreported crossing the railroad operates through. AAR requests that FRA amend this requirement (along with the corresponding requirement in § 234.407(c) related to new crossings) so operating railroads will not be liable for a primary operating railroad's failure to submit the required crossing data. AAR asserts this provision imposes a significant burden on operating railroads and constitutes an inappropriate shift of regulatory compliance policing responsibility to a private business. AAR asserts that the final rule requires operating railroads to include and validate data for other railroads' crossings in their databases on an ongoing basis to ensure the primary operating railroad properly submitted required crossing data to the Crossing Inventory. AAR further asserts it is unrealistic to require railroads to audit the crossing data of other railroads, in addition to their own crossing data, all within 14 months.

After careful consideration of AAR's request, with respect to the initial reporting of new and previously unreported highway-rail and pathway crossings, FRA cannot legally adopt AAR's request. Paragraph (c) of § 234.405 (and paragraph (c) of § 234.407

related to new crossings) implements the RSIA mandate that *each railroad carrier* ensure current information about each previously unreported highway-rail or pathway crossing is reported to the Crossing Inventory. See 49 U.S.C. 20160(a). Congress left FRA no discretion to ignore this mandate. Clearly, Congress thought operating railroads that operate over new and unreported highway-rail and pathway crossings are in the best position to identify crossings that have not been reported to the Crossing Inventory. Section 234.407 Submission of initial data to the Crossing Inventory for new crossings.

Paragraph (b) of this section of the final rule requires operating railroads that operate on separate tracks through a new highway-rail or pathway crossing to submit crossing data to the Crossing Inventory by March 7, 2016, but erroneously fails to provide a future deadline for highway-rail and pathway crossings that become operational after the final rule's effective date. This document corrects this technical error by amending § 234.407(b) to require operating railroads that operate on separate tracks through a new highway-rail or pathway crossing to submit crossing data no later than six months after the crossing becomes operational or [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever occurs later.

FRA is also making a technical amendment to correct a typographical error in the second sentence of paragraph (d)(1)(i) of this section in this final rule. The original version of this sentence in the final rule contained an erroneous reference to § 234.405(a)(3).

Assignment of Inventory Numbers to New Crossings Located in a Private Company, Port, or Dock Area

Paragraph (a)(1)(ii) of § 234.407 of the final rule requires each primary operating railroad to assign one or more Inventory Numbers to new highway-rail and pathway crossings within a private company, port, or dock area and through which the railroad operates. See discussion of § 234.405 above. AAR requests that FRA amend this requirement to allow multiple primary operating railroads to assign a shared Inventory Number to new highway-rail and pathway crossings that are located within a private company, port, or dock area. AAR asserts that as drafted, § 234.407(a)(1)(ii) is contrary to current practice. AAR also asserts that this new requirement could create reporting confusion if an accident were to occur at a crossing within a private company, port, or dock area. After careful consideration, FRA is not adopting AAR's request to modify § 234.407(a)(1)(ii) for the reasons explained in the Section-by-Section analysis of § 234.405(a)(1)(ii) above.

Submission of Completed Inventory Forms for New Highway-Rail and Pathway Crossings

Paragraph (a)(3) of § 234.407 requires primary operating railroads to submit to the Crossing Inventory “accurate and complete [U.S. DOT Crossing] Inventory Forms, or their electronic equivalent,” for new highway-rail and pathway crossings through which railroads operate. As discussed in the Section-by-Section Analysis of § 234.405 above, under the heading “Submission of Completed Inventory Forms for Previously Unreported Highway-Rail Grade Crossings”, AAR requests that FRA amend § 234.407(a)(3) to remove the requirement that primary operating railroads submit “completed” Inventory Forms for new highway-rail and pathway crossings. AAR also objects to the voluntary process in paragraph (d) of this section which provides that if a railroad requests data

necessary to complete an Inventory Form from a State agency and that agency does not timely respond, the railroad may notify FRA in writing of the State's non-responsiveness.

After careful consideration, FRA is revising § 234.407(a)(3) consistent with the revisions to § 234.405(a)(3), to clarify that primary operating railroads must submit “accurate Inventory Forms, or their electronic equivalent,” (as opposed to “accurate and complete” Inventory Forms) to the Crossing Inventory for new highway-rail and pathway crossings through which they operate. The primary operating railroad must fill out these accurate Inventory Forms consistent with the Inventory Guide, which requires completion of the entire Inventory Form only for new public highway-rail grade crossings.

Deadline for the Submission of Crossing Data for New Highway-Rail and Pathway Crossings

The final rule provides that “[e]ach primary operating railroad shall submit accurate and complete Inventory Forms, or their electronic equivalent, to the Crossing Inventory for new highway-rail and pathway crossings through which it operates, no later than six (6) months after the crossing becomes operational or March 7, 2016, whichever occurs later.” 49 CFR 234.407(a)(3). The final rule also provides that “[f]or each new highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad (other than the primary operating railroad) shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than March 7, 2016.” 49 CFR 234.407(b).

AAR requests that FRA amend § 234.407(a)(3) to establish a deadline three years from the final rule effective date for operating railroads and primary operating railroads

to submit crossing data for new highway-rail and pathway crossings to the Crossing Inventory. AAR asserts that railroads need this additional time to add newly acquired information to the Inventory and to modify their IT systems to meet the new requirements. For the reasons explained in the Section-by-Section analysis of § 234.405(a)(3) above, FRA is not adopting the AAR's request to extend the reporting deadline for new highway-rail and pathway crossings to March 9, 2018 (three years from the final rule effective date). However, with respect to new crossings (highway-rail and pathway crossings that become operational on or after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]), primary operating railroads will have six (6) months from the date on which the highway-rail or pathway crossing becomes operational to report the new crossing to the Crossing Inventory, consistent with § 234.403 and the Inventory Guide. Similarly, operating railroads that operate on separate tracks through a new highway-rail or pathway crossing will have six (6) months from the date on which the highway-rail or pathway crossing becomes operational to submit crossing data to the Crossing Inventory, consistent with § 234.403 and the Inventory Guide.

Duty of Operating Railroads to Ensure New Highway-Rail and Pathway Crossings Are Reported to the Crossing Inventory

Paragraph (c) of § 234.407 requires operating railroads (railroads other than the primary operating railroad that operate through a crossing) to notify FRA if a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory consistent with the final rule for a new crossing that the railroad operates through. Consistent with its request to amend § 234.405(c) regarding previously

unreported crossings, AAR requests that FRA amend § 234.407(c), so operating railroads will not be held liable for the primary operating railroad's failure to timely report a new highway-rail or pathway crossing to the Crossing Inventory. For the reasons discussed in the Section-by-Section analysis of § 234.405(c), FRA is not adopting AAR's request to amend § 234.407(c).

State-Maintained Crossing Data

As explained in the Section-by-Section analysis of § 234.405(d), primary operating railroads are required to complete Inventory Forms (or their electronic equivalent) for new public highway-rail grade crossings. Therefore, primary operating railroads may need to obtain crossing data from the State agency responsible for maintaining highway-rail and pathway crossing data to complete the Inventory Form (or its electronic equivalent). Like paragraph (d) of § 234.405, current paragraph (d) of § 234.407 of the final rule explains how a primary operating railroad may submit written notification to the FRA Associate Administrator that they requested certain crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data, which the State has not yet provided. As long as the primary operating railroad submits the State-maintained crossing data within 60 days of receipt, FRA will consider a properly filed written notification to be an affirmative defense to potential violations for failure to timely submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory for a new public highway-rail grade crossing.

FRA is revising the written notification process in § 234.407(d). FRA is no longer asking primary operating railroads to provide their written notifications by certified mail, return receipt requested. Instead, a primary operating railroad can send

copies of its request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the new public highway-rail grade crossing. As long as the primary operating railroad: (1) sends copies of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the new public highway-rail grade crossing no later than six (6) months after the crossing becomes operational; and (2) submits the State-maintained crossing data within 60 days of receipt, FRA will consider the written request for State-maintained crossing data to be an affirmative defense to potential liability for failure to timely submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory for a new public highway-rail grade crossing.

Section 234.409 Submission of periodic updates to the Crossing Inventory.

AAR's Petition states that some primary operating railroads share a single Inventory Number for highway-rail and pathway crossings located within a private company, port, or dock area that have already been reported to the Crossing Inventory. (As explained in the definition of "primary operating railroad" in § 234.401 above, each railroad that owns track leading to a private company, port, or dock area is considered a primary operating railroad for the crossings within that area, if a general system railroad operates over the track owned by that railroad and through at least one crossing within that private area.)

Paragraph (a) of § 234.409 requires each primary operating railroad to submit periodic updates to the Crossing Inventory. To comply with this requirement, primary operating railroads that currently share Inventory Numbers for highway-rail and pathway

crossings located within a private company, port, or dock area must exercise one of two options.

First, each primary operating railroad that operates through the crossing(s) may choose to assign a new unique Inventory Number (or set of Inventory Numbers) to the crossing(s) located within a private company, port, or dock area through which it operates. Each primary operating railroad (except the primary operating railroad that assigned the original Inventory Number to the crossing(s)) would then use its new Inventory Number(s) to submit crossing data to the Crossing Inventory as a new crossing record. After the new crossing record is established, each primary operating railroad can submit periodic updates to the Crossing Inventory for the highway-rail and pathway crossing(s) located within a private company, port, or dock area using the Inventory Number(s) it assigned to the crossing(s).

Second, FRA will accommodate primary operating railroads that wish to continue sharing a single Inventory Number which has already been used to report highway-rail and pathway crossings located within a private company, port, or dock area to the Crossing Inventory. As explained in Frequently Asked Question (FAQ) number 37 in Appendix E to the Inventory Guide, the primary operating railroad of record in the Crossing Inventory can submit an up-to-date and accurate periodic update to the Crossing Inventory for all of the railroad-assigned data fields in Appendix B to the Inventory Guide (“Responsibility Table for Periodic Updates to the Crossing Inventory”). As part of this update, the primary operating railroad of record must check the “Yes” box in Part I, item 7 (“Do Other Railroads Operate a Separate Track at Crossing”) of the Inventory

Form (or its electronic equivalent) and provide railroad codes for all of the other primary operating railroads.

The other primary operating railroads that share the Inventory Number can satisfy the periodic updating requirement in § 234.409 by using the shared Inventory Number to submit up-to-date and accurate crossing data for the data fields specified in Appendix C to the Inventory Guide (“Reporting Crossings that have Multiple Operating Railroads”). This method for submitting periodic updates is identical to the method operating railroads that operate on separate tracks through a crossing use, under paragraph (b) of § 234.409.

This second option is only available for new or previously unreported highway-rail and pathway crossings located within a private company, port, or dock area that have already been reported to the Crossing Inventory and assigned one or more Inventory Numbers that are shared by multiple primary operating railroads.

Submission of Periodic Updates

The final rule requires primary operating railroads to submit, consistent with the Inventory Guide, “up-to-date and accurate crossing data” to the Crossing Inventory for each highway-rail and pathway crossing through which it operates. Paragraph (a) of § 234.409 of the final rule requires primary operating railroads to submit updated data at least every three (3) years from the date of the primary operating railroad’s most recent submission of data (or most recent submission on behalf of the primary operating railroad) for the crossing or by March 7, 2016. Paragraph (b) requires operating railroads that operate trains on separate tracks through a crossing to similarly update the data required by the Inventory Guide.

As it did for §§ 234.405 and 234.407, AAR requests that FRA amend the compliance deadlines in paragraphs (a) and (b) of § 234.409 for three years from the final rule's effective date. This would allow railroads to submit updated crossing data for highway-rail and pathway grade crossings at least every three (3) years from the date of the most recent submission of data by that railroad for the crossing or by March 7, 2018, whichever occurs later.

Consistent with FRA's responses to AAR's requests to amend the compliance deadlines in §§ 234.405 and 234.407 discussed above, FRA is not adopting AAR's request to extend the compliance deadlines for railroads in paragraphs (a) and (b) of § 234.409 by three years. As with the compliance deadlines in §§ 234.405 and 234.407, however, FRA acknowledges that railroads may need additional time to incorporate the changes that are being made in these amendments to the final rule being made as a result of AAR's Petition. Therefore, FRA is revising § 234.409(a) and (b) to extend the deadline for primary operating railroads and operating railroads to submit updated crossing data to the Crossing Inventory for highway-rail and pathway crossings over which they operate to every three (3) years from the date of the most recent submission of data by the railroad (or on behalf of the railroad) for the crossing or [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever occurs later.

Duty of Operating Railroads to Ensure Up-to-Date Crossing Data Is Reported to the Crossing Inventory

Paragraph (c) of § 234.409 requires operating railroads (other than primary operating railroads), that operate through a highway-rail or pathway crossing for which

up-to-date information has not been timely submitted to the Crossing Inventory to notify FRA of this oversight. Written notification the operating railroad provides must include, at a minimum, the Inventory Number for each highway-rail or pathway crossing that has not been updated.

AAR requests that FRA amend § 234.409(c), so that operating railroads will not be held liable for the primary operating railroad's failure to timely submit updated crossing data to the Crossing Inventory. AAR asserts that this provision imposes a significant burden on operating railroads, which will need to include and validate data for other railroads' crossings in their databases on an ongoing basis to ensure that the primary operating railroad has properly submitted required crossing data to the Crossing Inventory. AAR further asserts that this language constitutes an inappropriate shift of regulatory compliance policing responsibility to a private business and that it is unrealistic to require railroads to audit the crossing data of other railroads, in addition to their own crossing data, within 14 months.

After considering AAR's request, FRA is removing § 234.409(c). The RSIA requires each railroad carrier to ensure that periodic updates are submitted to the Crossing Inventory for each highway-rail and pathway crossing through which it operates. See 49 U.S.C. 20160(b). However, unlike previously unreported and new crossings that have not yet been reported to the Crossing Inventory, FRA can use the Grade Crossing Inventory System (GCIS) to generate reports that identify out-of-date highway-rail and pathway crossing data. FRA can use these reports to verify that primary operating railroads (and any operating railroads that operate on separate tracks through the crossing) are timely submitting periodic updates to the Crossing Inventory, as required by

§ 234.409(a) and (b). Therefore, FRA is revising the final rule to remove the requirement that operating railroads monitor the Crossing Inventory and provide the agency written notification if a primary operating railroad fails to timely submit updates to the highway-rail and pathway crossing data for which it is responsible.

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

Consistent with the extended deadline by which railroads are required to report new and previously unreported highway-rail and pathway crossings to the Crossing Inventory, this final rule revises § 234.411 to clarify the primary operating railroad is required to report the following events to the Crossing Inventory within three (3) months, if they occur on or after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]: (1) the sale of all or part of a crossing; (2) the closure of a highway-rail or pathway crossings; or (3) a change in crossing surface or warning device at a public highway-rail grade crossing.

Current paragraph (a) of § 234.411 requires any railroad that sells all or part of a highway-rail or pathway crossing to report the crossing sale to the Crossing Inventory within three (3) months of the date of sale or March 7, 2016, whichever occurs later. However, with respect to railroads, GCIS is primarily designed to accept crossing data from the primary operating railroad, unless other operating railroads operate on separate tracks through the crossing (or the primary operating railroad delegates reporting and updating responsibility to another entity). (As stated in the Inventory Guide, GCIS will accept partial data submissions from other operating railroads once the primary operating railroad submits an Inventory Form, or its electronic equivalent, which indicates that one or more operating railroads operate on separate tracks through the crossing.) Therefore,

FRA is also amending § 234.411(a)(1) to require a selling railroad that is not the primary operating railroad to notify the primary operating railroad of the sale of all or part of a highway-rail or pathway crossing within three (3) months of the date of sale.

Under new § 234.411(a)(2)(i), if the primary operating railroad sells all or part of a highway-rail or pathway crossing for which it has reporting and updating responsibility under this subpart, it would be required to submit an Inventory Form, or its electronic equivalent, which reflects the crossing sale to the Crossing Inventory consistent with § 234.403 and the Inventory Guide within three (3) months of the date of sale. However, under new § 234.411(a)(2)(ii), if a primary operating railroad is notified of the sale of all or part of a highway-rail or pathway crossing under paragraph (a)(1) of this section, then it would be required to submit an Inventory Form, or its electronic equivalent, which reflects the crossing sale to the Crossing Inventory consistent with § 234.403 and the Inventory Guide within three (3) months of the date of notification.

Section 234.413 Recordkeeping

This document makes a technical amendment to the heading of this section to correct a typographical error.

Appendix A to Part 234—Schedule of Civil Penalties

This document revises the civil penalty schedule in appendix A to this part to reflect changes that were made to individual sections in these final rule amendments. FRA is revising the civil penalty schedule to reflect violations may be assessed under §§ 234.405(a) and 234.407(a) if the primary operating railroad fails to timely submit an accurate Inventory Form (or electronic equivalent) to the Crossing Inventory for a new or previously unreported crossing. (Previously, the civil penalty schedule indicated that

violations may be assessed under these sections if the primary operating railroad fails to timely submit an accurate and complete Inventory Form or the electronic equivalent to the Crossing Inventory for a new or previously unreported crossing. However, as discussed above, primary operating railroads are only required to submit complete Inventory Forms or their electronic equivalent for public highway-rail grade crossings.) FRA is also revising the civil penalty schedule to remove the recommended civil penalty associated with § 234.409(c) because this provision has been removed.

B. Amendments to Inventory Guide

Instructions for Completing the U.S. DOT Crossing Inventory Form

FRA is clarifying a statement made in the final rule preamble discussion of the “Crossing Type” data field in Part I of the Inventory Form. Specifically, in the preamble to the final rule, FRA stated that it

will defer to the determination of the relevant State agency for the public/private classification of highway-rail (and pathway) crossings. Accordingly, we are asking State agencies to submit voluntary updates to the Crossing Type data field in Part I of the Inventory Form, as stated in Appendix B to the Inventory Guide.

80 FR at 767. FRA intended to ask State agencies to submit voluntary updates to the “Crossing Type” data field only for public highway-rail and pathway crossings.

Appendix B to the Inventory Guide states that primary operating railroads are required to submit updates to the “Crossing Type” data field for private highway-rail and pathway crossings.

Appendix E to the Inventory Guide, Frequently Asked Questions (FAQs)

Who Can Report Closed Crossing Status in the Crossing Inventory

FAQ number 22 in Appendix E to the Inventory Guide states that “[t]he primary operating railroad must report the closure of a highway-rail or pathway crossing to the Crossing Inventory, but the State may also report the closure of a public crossing.” AAR requests that FRA amend this FAQ to state that only railroads can report the closure of a crossing to the Crossing Inventory. AAR asserts that allowing dual reporting is problematic because a State may close crossings in the Crossing Inventory on the basis of inaccurate information and without informing the operating railroad, which causes railroads to incur additional research and effort to address and resolve the discrepancy.

FRA declines to adopt AAR’s recommendation to modify FAQ number 22 in Appendix E to the Inventory Guide. While the primary operating railroad is the only entity that can report the closure of a private highway-rail or pathway crossing to the Inventory, both railroads and States collect and maintain data related to public highway-rail and pathway crossings. Both entities have an interest in ensuring that the Crossing Inventory reflects up-to-date and accurate data related to crossing status. By allowing States to report the closure of public highway-rail and pathway crossings to the Crossing Inventory, States can provide needed updates to crossing status in the event that the primary operating railroad ceases to operate.

Reporting Crossing Sales that Result in a New Primary Operating Railroad

FRA is revising FAQ number 24 in Appendix E to the Inventory Guide to incorporate an FRA recommendation when railroads report crossing sales that result in a new primary operating railroad. As stated in revised FAQ number 24, if the sale of a highway-rail or pathway crossing results in a new primary operating railroad, FRA strongly recommends that the new primary operating railroad submit updated crossing

data to the Crossing Inventory for all of the railroad-assigned data fields on the Inventory Form (or its electronic equivalent) within six (6) months of the date of sale.

III. Regulatory Impact and Notices

A. Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA analyzed the potential costs and benefits of the amendments to the final rule adopted in this document. FRA estimates that the amendments will not materially impact the findings of the previously published regulatory evaluation. The extension of time for compliance with changes that are being made in these final rule amendments will grant some relief to railroads. However, the twenty-year analysis is still valid.

FRA evaluated both the final rule and these amendments under existing policies and procedures and determined both to be non-significant under both Executive Order 12866 and 13563 and DOT policies and procedures. See 44 FR 11034, Feb. 26, 1979. FRA previously placed in the docket a regulatory evaluation addressing the economic impact of the final rule. The primary purpose of the Crossing Inventory is to provide a uniform inventory database that 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.

FRA has determined these amendments to the final rule do not change FRA's position that the anticipated benefits justify the costs.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure the impact of this rulemaking on small entities is properly considered, FRA developed these final rule amendments consistent with Executive Order 13272

(“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. FRA certified that this final rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by the final rule, none of these entities will be significantly impacted. The amendments to this final rule will grant some relief to small entities by granting them additional time to comply with changes that are being made in these the final rule amendments. However, the amendments to the final rule will not change the overall impact on small entities. Therefore, FRA is confident that its previous certification for the final rule is still valid.

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.

FRA analyzed this amended final rule in accordance with the principles and criteria contained in Executive Order 13132. Based on this analysis, FRA concluded that this rule will not have a substantial effect on the States or their political subdivisions; it will not impose any compliance costs; and it will 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 and FRA determined that preparation of a federalism summary impact statement for this amended final rule is not required. This amended final rule could have preemptive effect by operation of law under a provision of 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 (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 sec. 20106.

D. Paperwork Reduction Act

The information collection requirements in this amended final rule are being 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 new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours
<p>234.403(a-c) — Submission of Data to the U.S. DOT Highway-Rail Crossing Inventory: Completion of Inventory Form</p> <p>- Mass Update Lists of Designated Data Submitted by Railroads/States</p> <p>- Excel Lists of Submitted Data</p> <p>- Changes/Corrections to Crossing Inventory Data Submitted via GX 32 Computer Program</p> <p>- Written Requests by States/Railroads for FRA Crossing Inventory Guide</p> <p>(d) – Reporting Crossing Inventory Data by State Agencies on Behalf of Railroads: Written Notices to FRA</p> <p>-(e)(1) – Consolidated Reporting by Parent Corporation on Behalf of Its Subsidiary Railroads: Written Notice to FRA</p> <p>-(e)(2) - Immediate Notification to FRA by Parent Corporation of Any Changes in the List of Subsidiary Railroads for Which It Reports</p>	<p>51 States/entities & 618 railroads</p>	<p>4,212 forms</p> <p>257 lists</p> <p>1,234 lists</p> <p>35,845 records</p> <p>10 requests</p> <p>20 notices</p> <p>250 notices</p> <p>75 notices</p>	<p>30 minutes</p> <p>30 minutes</p> <p>30 minutes</p> <p>6 minutes</p> <p>15 minutes</p> <p>30 minutes</p> <p>30 minutes</p> <p>30 minutes</p>	<p>2,106 hours</p> <p>129 hours</p> <p>617 hours</p> <p>3,585 hours</p> <p>3 hours</p> <p>10 hours</p> <p>125 hours</p> <p>38 hours</p>

<p>234.405(a)(1) – Initial Submission of Previously Unreported Highway-Rail and Pathway Crossings through which They Operate by Primary Operating Railroads: Providing Assigned Crossing Inventory Number to Each Railroad that Operates One or More Trains Through Crossing + Assignee Inventory Numbers for Highway-Rail and Pathway Crossing Located in Rail Yard, Passenger Station, within Private Company, Port, or Dock Area</p>	<p>51 States/entities & 618 railroads</p>	<p>5,300 assigned numbers + 10,600 provided assigned numbers</p>	<p>5 minutes + 5 minutes</p>	<p>1,325 hours</p>
<p>(a)(2)(i) – Completed Inventory Forms for Each Previously Unreported Crossing</p>	<p>51 States/entities & 618 railroads</p>	<p>5,300 forms</p>	<p>30 minutes</p>	<p>2,650 hours</p>
<p>(c) – Duty of All Operating Railroads: Notification to FRA of Previously Unreported Crossing through Which It Operates</p>	<p>51 States/entities & 618 railroads</p>	<p>450 notices/ Notifications</p>	<p>30 minutes</p>	<p>225 hours</p>
<p>(d) –State-maintained Crossing Data: Written Copy of Request for Such Data to FRA (Revised Requirement)</p>	<p>51 States/entities & 618 railroads</p>	<p>35 copies of written request</p>	<p>2 minutes</p>	<p>1 hour</p>
<p>-Copies of Written Request for State-maintained Data to Each Operating Railroad Transiting Crossing (Revised Requirement)</p>	<p>51 States/entities & 618 railroads</p>	<p>105 copies of written request</p>	<p>2 minutes</p>	<p>4 hours</p>

234.413(a& b)(1) - Recordkeeping: Duplicate Copy of Each Inventory Form Submitted in Hard Copy	51 States/entities & 618 railroads	5,901 duplicate copies	1 minute	98 hours
(a& b)(2) – Railroad Copy of FRA Confirmation after Electronic Submission of Crossing Data to the Crossing Inventory	51 States/entities & 618 railroads	80,775 copies	1 minute	1,346 hours
(c) – Railroad List of Establishment Locations Where Any Required Records are Kept	51 States/entities & 618 railroads	618 lists	5 minutes	52 hours

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: oir_submissions@omb.eop.gov.

OMB is required to make a decision concerning the collection of information requirements contained in this amended final 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.

FRA cannot 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 on the effective date of this amended

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 under 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 amended final 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 under section 4(c)(20) of FRA’s Procedures. See 64 FR 28547, May 26, 1999.

Under 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 amended final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 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 million or more (adjusted annually for inflation) in any one 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. This amended final rule will not result in the expenditure, in the aggregate, of \$155,000,000 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 evaluated this amended final rule consistent with Executive Order 13211. FRA determined that this amended final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA determined that this regulatory action is not a “significant energy

action” within the meaning of Executive Order 13211.

H. Trade Impact

The Trade Agreements Act of 1979 (TAA) (Public Law 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 assessed the potential effect of this amended final rule on foreign commerce and believes that its requirements are consistent with the TAA. The requirements imposed are safety standards which, as noted, are not considered unnecessary obstacles to trade.

I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov or interested parties may review DOT’s complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

List of Subjects in 49 CFR Part 234

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

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

PART 234—[AMENDED]

1. The authority citation for part 234 continues 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 1.89.

2. Section 234.401 is amended by adding definitions of “General railroad system of transportation” and “General system railroad” in alphabetical order and revising the definition of “Primary operating railroad” to read as follows:

§ 234.401 Definitions.

* * * * *

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

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

* * * * *

Primary operating railroad means the operating railroad that either owns or maintains the track through the highway-rail or pathway crossing, unless the crossing is located within a private company, port, or dock area. If more than one operating railroad either owns or maintains the track through the highway-rail or pathway crossing, or if no

operating railroad owns or maintains the track through the highway-rail or pathway crossing, then the operating railroad that operates the highest number of trains through the crossing is the primary operating railroad. In the event that there is only one operating railroad that operates one or more trains through a highway-rail or pathway crossing, that operating railroad is the primary operating railroad. For highway-rail and pathway crossings that are located within a private company, port, or dock area (“private area”), each railroad that owns track leading to the private company, port, or dock area will be considered a primary operating railroad for all crossings within the private area if a general system railroad operates over the railroad’s track leading to the private area and through at least one crossing within that area.

* * * * *

3. Revise § 234.403(e) to read as follows:

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

* * * * *

(e) Reporting by the parent corporation on behalf of subsidiary railroads. (1) To satisfy the reporting requirements of this section, a parent corporation may submit crossing data to the Crossing Inventory on behalf of one or more of its subsidiary railroads. The parent corporation shall provide written notice to the FRA Associate Administrator that it has assumed reporting and updating responsibility for all of the subsidiary railroad’s highway-rail and pathway crossings. The written notification shall include the following:

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

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

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

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

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

4. In § 234.405, revise paragraphs (a)(1) and (3), (b), and (d) to read as follows:

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

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

(ii) A primary operating railroad shall assign one or more Inventory Numbers to previously unreported highway-rail and pathway crossings through which it operates, which are located in a railroad yard, passenger station, or within a private company, port, or dock area.

* * * * *

(3) Each primary operating railroad shall submit accurate Inventory Forms, or their electronic equivalent, to the Crossing Inventory for the previously unreported highway-rail and pathway crossings through which it operates, no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Inventory Form, or its electronic equivalent, shall reference the assigned Inventory Number for the crossing(s) and shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

(b) Duty of operating railroad when operating railroads operate on separate tracks. For each previously unreported highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad (other than the primary operating railroad) shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted in accordance with § 234.403.

* * * * *

(d) State-maintained crossing data. If a primary operating railroad requests State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data, the primary operating railroad may send a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing. FRA will consider the written request to be an affirmative defense to potential liability for

failure to timely submit an accurate Inventory Form, or its electronic equivalent, as required by paragraph (a)(3) of this section if the primary operating railroad:

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

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

5. In § 234.407, revise paragraphs (a)(3), (b) and (d) to read as follows:

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

(a) * * *

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

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

Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

* * * * *

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

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

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

6. Revise § 234.409 to read as follows:

§ 234.409 Submission of periodic updates to the Crossing Inventory.

(a) Duty of primary operating railroad. Each primary operating railroad shall submit up-to-date and accurate crossing data to the Crossing Inventory for each highway-rail and pathway crossing (except for a grade-separated or closed highway-rail or pathway crossing) through which it operates, consistent with the Inventory Guide. Updated crossing data shall be submitted to the Crossing Inventory at least every three

(3) years from the date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad) for the crossing or [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad).

(b) Duty of operating railroad when operating railroads operate on separate tracks. For each highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad shall submit up-to-date and accurate crossing data for certain specified data fields on the Inventory Form, or its electronic equivalent, to the Crossing Inventory at least every three (3) years from the date of the most recent submission of data by that operating railroad (or on behalf of that operating railroad) for the crossing or [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the operating railroad (or on behalf of the operating railroad). The Inventory Form, or its electronic equivalent, shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

7. Revise § 234.411 to read as follows:

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

(a) Crossing sale. (1) If a railroad that is not a primary operating railroad sells all or part of a highway-rail or pathway crossing on or after [INSERT DATE OF

PUBLICATION IN THE FEDERAL REGISTER], it shall report the crossing sale to the primary operating railroad within three (3) months of the date of sale.

(2) If the primary operating railroad:

(i) Sells all or part of a highway-rail or pathway crossing on or after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] for which it has reporting and updating responsibility under this subpart; or

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

(b) Crossing closure. The primary operating railroad shall report the closure of any highway-rail or pathway crossing that occurs on or after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to the Crossing Inventory within three (3) months of the date on which the crossing is closed. The primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects closure of the crossing to the Crossing Inventory consistent with § 234.403 and the Inventory Guide.

(c) Changes in crossing characteristics. (1) The primary operating railroad shall report any change in crossing surface or change in warning device at a public highway-rail grade crossing that occurs on or after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to the Crossing Inventory within three (3) months of the date of the change. The primary operating railroad shall submit an Inventory Form, or its

electronic equivalent, that reflects up-to-date and accurate crossing data for the crossing (including the change in crossing surface or change in warning device) to the Crossing Inventory consistent with § 234.403 and the Inventory Guide.

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

8. The heading of § 234.413 is revised to read as follows:

§ 234.413 Recordkeeping.

* * * * *

9. In Appendix A to Part 234, place the entry for subpart F in alphabetical order, and revise the entries under subpart F to read as follows:

Appendix A to Part 234 – Schedule of Civil Penalties¹

Section	Violation	Willful Violation
* * * * *		
Subpart F – Highway-Rail and Pathway Crossing Inventory		
Reporting		
§ 234.403 Submission of data to the Crossing Inventory		
(b) Failure to complete Inventory Form (or electronic equivalent) in accordance with the Inventory Guide.....	\$1,000	\$2,000

(c) Class I railroad failure to submit crossing data to the Crossing Inventory electronically.....	1,000	2,000
§ 234.405 Submission of initial data to the Crossing Inventory for previously unreported crossings		
(a) Primary operating railroad failure to timely submit an accurate Inventory Form (or electronic equivalent) to the Crossing Inventory for previously unreported crossing.....	2,500	5,000
(b) Operating railroad failure to timely submit accurate partial crossing data to the Crossing Inventory for previously unreported crossing.....	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely report previously unreported crossing.....	1,000	2,000
§ 234.407 Submission of initial data to the Crossing Inventory for new crossings		
(a) Primary operating railroad failure to timely submit an accurate Inventory Form (or electronic equivalent) to the Crossing Inventory for new crossing.....	2,500	5,000
(b) Operating railroad failure to timely submit accurate partial crossing data to the Crossing Inventory for new crossing.....	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely report new crossing.....	1,000	2,000

§ 234.409 Submission of periodic updates to the Crossing Inventory		
(a) Primary operating railroad failure to timely submit up-to-date and accurate crossing data to the Crossing Inventory for highway-rail or pathway crossing.....	2,500	5,000
(b) Operating railroad failure to timely submit up-to-date and accurate partial crossing data to the Crossing Inventory for highway-rail or pathway crossing.....	2,500	5,000
§ 234.411 Changes requiring submission of updated information to the Crossing Inventory		
(a) Failure to timely report crossing sale to the Crossing Inventory.....	2,500	5,000
(b) Primary operating railroad failure to timely report crossing closure to the Crossing Inventory.....	2,500	5,000
(c) Primary operating railroad failure to timely submit up-to-date and accurate crossing data to the Crossing Inventory after change in crossing characteristics.....	2,500	5,000
§ 234.413 Recordkeeping.....	1,000	2,000
§234.415 Electronic Recordkeeping.....	1,000	2,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$105,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. To facilitate the assessment of penalty amounts, the specific types of violations of a given section are sometimes designated by the paragraph of the section (e.g., “(a)”) and a code not corresponding to the legal citation for the violation (e.g., “(1)”), so that the complete citation in the penalty schedule is e.g., “(a)(1).” FRA reserves the right to revise the citation of the violation in the Summary of Alleged Violations issued by FRA in the event of litigation.

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1.89(b).

Sarah E. Feinberg,
Administrator.

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