



# FEDERAL REGISTER

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Vol. 80

Tuesday,

No. 3

January 6, 2015

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Part IV

Department of Transportation

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Federal Railroad Administration

49 CFR Part 234

National Highway-Rail Crossing Inventory Reporting Requirements; Final Rule

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Part 234**

[Docket No. FRA-2011-0007, Notice No. 4]

RIN 2130-AC26

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule requires railroads that operate one or more trains through highway-rail or pathway crossings to submit information to the U.S. DOT National Highway-Rail Crossing Inventory about the crossings through which they operate. These amendments, mandated by section 204 of the Rail Safety Improvement Act of 2008, require railroads to submit information about previously unreported and new highway-rail and pathway crossings to the U.S. DOT National Highway-Rail Crossing Inventory and to periodically update existing crossing data.

**DATES:** This final rule is effective March 9, 2015. Petitions for reconsideration must be received on or before February 25, 2015. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before April 13, 2015.

**ADDRESSES:** Petitions for reconsideration and any comments to petitions for reconsideration must be identified by docket number FRA-2011-0007 and may be submitted by any of the following methods:

- **Online:** Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590.
- **Hand Delivery:** Room W12-140 on the Ground level of the West Building, U.S. Department of Transportation, Docket Management Facility, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**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, Highway-Rail Crossing and Trespasser Prevention Programs Division, Office of Railroad Safety, 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 Gresham, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 13, Washington, DC 20590 (telephone: 202-493-6063), [kathryn.gresham@dot.gov](mailto:kathryn.gresham@dot.gov).

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**I. Executive Summary**

On October 18, 2012, consistent with the statutory mandate of Section 204(a) of the Rail Safety Improvement Act of 2008 (RSIA) (codified at 49 U.S.C. 20160), FRA published a notice of proposed rulemaking (NPRM) proposing to require railroads to submit certain information to the existing U.S. DOT National Highway-Rail Crossing

Inventory (Crossing Inventory). 77 FR 64077. After careful consideration of comments received in response to the NPRM and testimony received at a February 19, 2013 public hearing on FRA's proposal, FRA is amending 49 CFR part 234 to require railroads that operate one or more trains through highway-rail or pathway crossings (*i.e.*, "operating railroads") to submit certain information to the Crossing Inventory about the highway-rail and pathway crossings through which they operate. This rule furthers FRA's efforts to improve existing data on the characteristics of the Nation's highway-rail and pathway crossings and implements the statutory mandate. Consistent with the statute, this rule requires operating railroads 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. This rule also requires operating railroads to periodically update data in the Crossing Inventory, including the prompt reporting of a crossing sale, crossing closure, or changes in certain crossing characteristics.

In the NPRM, FRA estimated the costs of the proposed rule to be \$2.1 million over a 20-year period. Using a 7-percent discount rate, the cost estimate would have been \$1.5 million. The final rule's estimated cost is \$2.8 million, discounted to \$2.0 million (7%). The base cost estimates increased in the final rule due to adjustment of the Congressional Budget Office (CBO) real wage forecasts for each year of the analysis. FRA also updated wage inputs using the Surface Transportation Board's newest wage rates for 2012, which impacted the overall cost estimate. FRA also assumed that the implementation year will be 2014 and adjusted all wages accordingly. While the final rule will not take effect until 2015, FRA does not believe this will materially impact the findings of its analysis. FRA conducted a break-even analysis of the rule and believes that potential benefits from the rule will equal or exceed total costs.

FRA analyzed 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 final rule prior to publication of this rulemaking. FRA estimates that as many as 50 percent of all highway-rail crossings have up-to-date information in the current Crossing Inventory. For more details on the costs, see the Regulatory Evaluation contained

in the public docket. The burdens of the rule relate to the collection of recent information and to the periodic update of the Crossing Inventory. The table below presents the estimated costs associated with the rule.

#### 20-YEAR COST FOR FINAL RULE

Initial Update of Inventory ....	\$1,178,701
Periodic Update of Inventory	819,473
Total .....	1,998,174

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

In the Regulatory Evaluation, FRA has explained what the likely benefits are for the final rule and provided a break-even analysis. The main benefit of the rule is improved Crossing Inventory data. This more precise information will 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 analysis, FRA determined that if there were a decrease of 0.015 percent in crossing accidents over the twenty-year period, the costs of the rule will break-even with the benefits. In the last decade there were over 26,000 collisions at grade crossings. This break-even analysis indicates that preventing at least three incidents over the next twenty years would justify the rule. FRA anticipates that this rulemaking will increase the precision, completeness, and utility of railroad records and will improve the Crossing Inventory and safety. This will allow FRA to identify certain highway-rail crossings and pathway crossings that are not currently recorded in the existing voluntary crossing inventory and analyze the data to identify safety trends and issues. FRA believes that these benefits will offset costs associated with the rulemaking by simplifying the reporting process and decreasing crossing accidents. FRA also believes the value of the anticipated benefits justifies the cost of implementing the final rule.

## II. Statutory Background

This final rule implements section 204(a) of RSIA, Public Law 110-432, Division A (Oct. 16, 2008) (codified at 49 U.S.C. 20160 and titled “National crossing inventory”). Consistent with Section 20160, this rule is intended to improve existing data on highway-rail and pathway crossings in the Crossing Inventory. Section 20160 requires the Secretary to establish reporting requirements for railroad carriers for highway-rail and pathway crossings. As stated above, the Secretary delegated

this responsibility to the FRA Administrator. 49 CFR 1.89(b).

Section 20160 mandates that the Secretary issue regulations requiring railroad carriers to report certain information, including current information about warning devices and signage, for new and previously unreported highway-rail and pathway crossings to the Crossing Inventory. Section 20160 also requires the Secretary to issue regulations that require railroad carriers to periodically update existing information in the Crossing Inventory about highway-rail and pathway crossings through which they operate. Under Section 20160, whenever a railroad carrier sells all, or a portion of, a highway-rail or pathway crossing it must submit updates. However, in the interim, Section 20160 provides that the Secretary may enforce the Crossing Inventory policy, procedures, and instructions in effect at the time of Section 20160’s enactment (October 16, 2008). The policy, procedures, and instructions in effect at the time of Section 20160’s enactment are the guidance we issued in August 2007 titled, “U.S. DOT National Highway-Rail Crossing Inventory Policy, Procedures and Instructions for States and Railroads.”

## III. The U.S. DOT National Highway-Rail Crossing Inventory Program

### A. History

As detailed in the preamble to the NPRM, in August 1972, DOT submitted a Report to Congress titled “Railroad-Highway Safety Part II: Recommendations for Resolving the Problem” (Report). DOT intended for the Report to provide recommendations to Congress for actions that would lead to a significant reduction in accidents, fatalities, personal injuries, and property damage at highway-rail crossings. In the Report, DOT recommended the establishment of an information system consisting of a national database of all highway-rail crossings in the Nation.

Following the submission to and acceptance of the Report by Congress, FHWA, FRA, AAR, certain States and railroads cooperatively developed the Crossing Inventory. Based on an instruction manual that was issued in the early 1970s, railroads and States surveyed each highway-rail crossing—public and private, grade-separated and at-grade—and recorded the data on an inventory form railroads submitted to FRA. This instruction manual evolved into the “Highway-Rail Crossing Inventory Instructions and Procedures Manual,” dated December 1996. A

revised policy and set of instructions, “U.S. DOT National Highway-Rail Crossing Inventory Policy, Procedures and Instructions for States and Railroads,” were subsequently issued in August 2007.

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 railroads, States, and others use to obtain information about the physical and operating characteristics of individual crossings. The Crossing Inventory is intended to provide a uniform inventory database which public and private agencies responsible for highway-rail crossing safety, as well as the railroad industry and academia, can merge with highway-rail crossing collision files and use to analyze information for planning and implementation of crossing improvement programs.

The Crossing Inventory receives information from individual railroads and States to form a composite record for each crossing. This composite record has many purposes because 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.

### B. Overview of the Reporting Process

As previously explained, the Crossing Inventory is a national database that contains data on highway-rail crossings, which States and railroads have voluntarily submitted. Because the crossing data has been submitted to the Crossing Inventory voluntarily, FRA estimates the Crossing Inventory contains up-to-date information for approximately 50 percent of the highway-rail crossings reported.

To improve the accuracy of existing data in the Crossing Inventory and implement the statutory mandate contained in Section 20160, this final rule requires primary operating railroads (*i.e.*, generally, the railroads that either own or maintain the track through the highway-rail or pathway crossing, or operate the most trains through the crossing) to assign Inventory Numbers to previously unreported and new highway-rail and pathway crossings and, in most cases, to provide the assigned Inventory Number to the other railroads that operate through the crossing. In addition, the rule will require primary operating

railroads to submit completed Inventory Forms (or the electronic equivalent) for previously unreported and new highway-rail and pathway crossings to the Crossing Inventory.

FRA recognizes that as related to new and previously unreported highway-rail and pathway crossings, this rule requires primary operating railroads to submit some crossing data State agencies have traditionally maintained. Therefore, FRA strongly encourages primary operating railroads to work with the appropriate State agencies to obtain this information. However, in the event the primary operating railroad requests crossing data from a State agency that the State has traditionally maintained (e.g., highway system class, highway speed limit, estimated percent of truck traffic, and the average number of school buses per day), but does not timely receive the requested data, the primary operating railroad may notify FRA of the State's lack of response. In such a case, FRA will not hold the primary operating railroad responsible for failing to submit the requested data to the Crossing Inventory. (See the Section-by-Section Analysis of §§ 234.405(d) and 234.407(d) for more information.)

This final rule also requires primary operating railroads to submit periodic updates to the Crossing Inventory every three years. To minimize the burden of submitting periodic updates, the final rule only requires the primary operating railroad to submit updated crossing data for specific data fields on the Inventory Form. Railroads have traditionally completed these data fields, identified in Appendix B to the Inventory Guide, which consist of information that railroads can identify and supply on their own (e.g., the total number of daily train movements and the speed of the trains at the crossing).

This final rule also will require primary operating railroads to submit updates to the Crossing Inventory to report the closure of a highway-rail or pathway crossing within three months of the closure. In addition, the rule will require primary operating railroads to report changes in crossing surface or changes in warning devices at public highway-rail grade crossings within three months of the change. Also, any railroad that sells all, or part, of a highway-rail or pathway crossing must report the crossing sale to the Crossing Inventory within three months of the sale.

As further explained below, this final rule implements the statutory mandate in Section 20160 to issue regulations requiring railroads to submit crossing data to the Crossing Inventory. Although

this final rule does not require States to report crossing data to or update data in the Crossing Inventory, DOT, and FRA in particular, will continue to evaluate whether additional regulations are needed to address State reporting to the Crossing Inventory to maintain the accuracy of crossing records contained in the Crossing Inventory. DOT may issue regulations in the future that would address State reporting of public highway-rail and pathway crossing data to the Crossing Inventory. However, as stated above, FRA strongly encourages railroads to work with appropriate State agencies to obtain crossing data the State maintains. Similarly, FRA encourages State agencies responsible for maintaining crossing data to promptly release State-maintained data to railroads, upon request, and to submit timely updates to existing crossing records in the Crossing Inventory. As reflected by the detailed and thoughtful comments our State partners submitted during the course of this rulemaking, State agencies generally share FRA's interest in ensuring that Crossing Inventory records are up-to-date and accurate to the extent permitted by existing resources.

#### *C. Use of Crossing Inventory Data in Private Litigation*

FRA received comments on the proposed rule from Orion's Angels, a non-profit organization located in Chattanooga, Tennessee, which recommended that this final rule should allow all crossing data to be discoverable in private litigation so courts can determine whether there has been compliance with railroad safety regulations. However, this recommendation falls outside the scope of FRA's statutory authority. The current prohibition against the use of crossing data in private litigation can be found in 23 U.S.C. 409. RSIA did not amend this statute. Therefore, in the absence of specific statutory authority to revise the current Federal prohibition against the use of crossing data in private litigation, FRA cannot adopt this recommendation in this final rule.

#### **IV. Section-by-Section Analysis**

In response to the NPRM, FRA received comments from several State agencies, AAR, the Brotherhood of Railroad Signalmen (BRS), and other individual stakeholders. Although commenters generally expressed support for FRA's goal of improving the accuracy and completeness of Crossing Inventory data, commenters did make several recommendations about the practicalities of implementing the proposed reporting scheme.

Accordingly, in developing this final rule, FRA carefully considered each of the comments received, as well as the testimony presented at the February 19, 2013 public hearing on the NPRM. Within the constraints imposed by the specific statutory mandate, FRA has, as appropriate, modified its original proposals in response to the comments received and those modifications are discussed in detail in the relevant section-by-section analyses below.

#### *Section 234.1 Scope*

To reflect the proposed expansion of part 234 to include a new subpart F titled, Highway-Rail and Pathway Crossing Inventory Reporting, in the NPRM, FRA proposed to revise paragraph (a) of this section to include a reference to new proposed subpart F. FRA received no substantive comments in response to this specific proposal. Accordingly, with the slight modifications to the proposed language discussed below, FRA is adopting its proposed revisions to this section substantially as proposed.

We are changing references to "public, private, and pathway crossings" in § 234.1 and throughout subpart F to "highway-rail and pathway crossings," to accurately reflect the proper classification of crossings in the Crossing Inventory. Pathway crossings are not included in the definition of the term "highway-rail crossing." Thus, pathway crossings (like highway-rail crossings) can be classified as either "public" or "private", depending on the nature of the pathway.

#### *Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting*

##### Section 234.401 Definitions

This section contains definitions of terms used in this subpart, listed alphabetically. We provide additional explanation for some of these definitions below.

FRA received comments from the Illinois Commerce Commission (ICC) recommending that the definitions of all terms used in the Inventory Guide should be included in the Definitions section of the final rule. However, this section is intended to define terms that are used in the text of the final rule. Therefore, while FRA has reviewed the definitions provided in the Inventory Guide to ensure consistency with the definitions provided in this section, we have not added the definitions of terms used exclusively in the Inventory Guide to this section.

##### Class I

In the NPRM, FRA proposed to define the term "Class I", the same as Surface

Transportation Board (STB) regulations. (See 49 CFR part 1201, General Instructions 1–1, Classification of carriers). As explained in the NPRM, this definition would include any revision to the definition the STB makes after the publication of this subpart, including any modifications in the class threshold based on revenue deflator adjustments. FRA received one comment in response to this proposed definition. Denver Regional Transportation District (Denver RTD), a transit agency that provides passenger rail service, asserted that it seems inappropriate to classify rail transit agencies as Class I, II, or III railroads since rail transit agencies are essentially subsidized public transportation operations. In response to Denver RTD's comment, FRA notes that it does not consider urban rapid transit operators as Class I rail carriers for purposes of this subpart. While the electronic submission requirement set forth in § 234.403(c) applies to Class I railroads, urban rapid transit operators may submit hard copy Inventory Forms to the Crossing Inventory or submit their crossing data electronically.

#### Closed Crossing

Although not proposed in the NPRM, we added a definition of the term "closed crossing" in this final rule. As discussed below in the Section-by-Section Analysis of § 234.409(a), we added an exception to the requirement to submit periodic updates to the Crossing Inventory for closed crossings. To clarify the crossings to which this exception applies, we defined the term "closed crossing" as a location where a previous crossing no longer exists because either the railroad tracks have been physically removed, or each pathway or roadway approach to the crossing has been physically removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A grade-separated highway-rail or pathway crossing that has been physically removed is also considered a closed crossing.

#### Highway-Rail Crossing

In the NPRM, FRA proposed to define "highway-rail crossing" as "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." In response to this proposed definition, in its comments, Denver RTD asked whether a pathway crossing is essentially a type of highway-rail crossing. A pathway crossing is not a type of highway-rail crossing. As

reflected in the current version of FHWA's Manual on Uniform Traffic Control Devices (MUTCD), pathways are public ways that are physically separated from the roadway by an open space or barrier. Therefore, in order to draw a clear distinction between highway-rail and pathway crossings in this final rule, FRA has revised the proposed definition of "highway-rail crossing" by removing the reference to pathways. For purposes of this subpart, the term "highway-rail crossing" is defined as "the location where one or more railroad tracks intersect with a public highway, road, street, or private roadway, either at grade or grade-separated, including associated sidewalks." This revised definition of "highway-rail crossing" is consistent with generally accepted use of this term.

As explained in the NPRM, for purposes of the Crossing Inventory, railroad tracks that lie within the same pair of crossing warning devices are considered a single highway-rail or pathway 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 two crossings with two separate Inventory Numbers for purposes of the Crossing Inventory. 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

In the NPRM, FRA proposed to define the term "operating railroad" as any railroad that operates one or more trains through a highway-rail crossing or pathway crossing. FRA received three comments about this proposed definition. First, noting that the Inventory Form contemplates the submission of information related to "transit operations," AAR asserted that it would be inconsistent with FRA's existing statement of agency policy on its safety jurisdiction to require submission of information related to transit operations to the Crossing Inventory. See 49 CFR part 209, appendix A (Appendix A). Despite this assertion, AAR suggested that if FRA were to require rail transit operations to be reported on the Crossing Inventory Form, transit operators, as opposed to general system railroads, should be required to submit the relevant information about those operations. The California Public Utilities Commission (CPUC) and Denver RTD, submitted

comments seeking clearer guidance as to the applicability of the reporting and updating requirements contained in this subpart to transit agencies. In its comments, Denver RTD noted that rapid transit operations within an urban area that are not connected to the general railroad system of transportation are generally not considered to be "railroads" subject to FRA regulation. The CPUC submitted comments questioning whether transit agencies may submit crossing data for crossings which are not subject to train movements by railroads that are part of the general railroad system of transportation.

In response to these comments, FRA first notes that AAR's assertion that FRA's policy on jurisdiction over passenger operations "categorically excludes rapid transit operations from [the agency's safety] jurisdiction" is incorrect. Instead, FRA's policy statement (published at 49 CFR part 209, appendix A and titled "FRA's Policy on Jurisdiction Over Passenger Operations"), specifically notes that the agency's statutory authority extends to all railroads except "rapid transit operations in an urban area that are not connected to the general system of transportation." 49 U.S.C. 20102.

As explained in more detail in Appendix A, the "general railroad system of transportation" is generally defined 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. Further, as explained in Appendix A, FRA can exercise its jurisdiction over a rapid transit operation if it is connected to the general railroad system and the agency does so depending upon the nature of the connection(s). For example, as noted in Appendix A, a connection that involves operation of transit equipment as part of, or over the lines of, the general system will trigger FRA's exercise of jurisdiction. Similarly, as also noted in Appendix A, another connection to the general system sufficient to warrant FRA's exercise of jurisdiction is a railroad crossing at grade where the rapid transit operation and other railroad cross each other's tracks. Further, Appendix A notes that FRA will also exercise jurisdiction to a limited extent over a rapid transit operation that, while not operated on the same tracks as a conventional railroad, is connected to the general system by virtue of operating in a shared right-of-way involving joint control of trains and in situations where transit

operations share highway-rail grade crossings with conventional railroads.

Thus, consistent with Appendix A and after careful consideration of the comments received, in this final rule FRA is revising the definition of "operating railroad" to include urban rapid transit operators that operate "one or more trains through a highway-rail or pathway crossing on, or connected to, the general railroad system of transportation."

In other words, the term "operating railroad" as defined in this final rule includes urban rapid transit operators that operate trains through highway-rail and pathway crossings which are located on the same track used by railroads that are part of the general railroad system of transportation. Examples of these types of operations include (1) urban rapid transit operations that, even though conducted on the same track used by a general system railroad, are temporally separate from those general system operations, and (2) urban rapid transit operations that constitute simultaneous joint use with train movements by general system railroads. Please see FRA's policy statement (published at 49 CFR part 211, appendix A and titled "Statement of Agency Policy Concerning Waivers Related to Shared Use of Trackage or Rights-of-Way by Light Rail and Conventional Operations") for a definition of the term, "simultaneous joint use."

The term "operating railroad" also includes urban rapid transit operators that operate trains through highway-rail and pathway crossings located within a common corridor or right-of-way with railroads that are part of the general railroad system of transportation. For example, an urban rapid transit operator that operates trains on separate tracks through highway-rail and pathway crossings, which are located within a common corridor or right-of-way with railroads that are part of the general railroad system of transportation and are served by the same set of crossing warning devices, is considered an operating railroad.

However, this final rule does not require urban rapid transit operators that operate through highway-rail and pathway crossings which are not on, or connected to, the general system of railroad transportation to submit crossing data to the Crossing Inventory for those crossings. Nevertheless, we encourage urban rapid transit operators to voluntarily submit (and update) crossing data to the Crossing Inventory for highway-rail and pathway crossings that are not on, or connected to, the general system of railroad

transportation, in order to improve the accuracy of crossing data reflected in the Crossing Inventory.

It should be noted that urban rapid transit operators are distinguished from commuter railroads that serve an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area. FRA considers commuter railroads, whose primary function is moving passengers back and forth between their places of employment in the city and their homes within the greater metropolitan area, to be part of the general railroad system of transportation and are therefore required to comply with the requirements of this subpart.

In its comments, Denver RTD also requested guidance on whether FRA would consider an entity that has a long-term contract with a public transit agency to operate and maintain that agency's rail network the operating railroad, independent of the transit agency. CPUC submitted similar comments requesting guidance on whether a railroad that contracts out its train operations, such as commuter railroads, should identify itself as the primary operating railroad. The CPUC recommended that, in this instance, the commuter railroad should be identified as the primary operating railroad on the Inventory Form, as opposed to the short-term contracted railroad operator. FRA agrees. In situations where a railroad or public transit agency contracts with a third-party to conduct train operations or maintain the track that runs through the highway-rail or pathway crossing at issue, FRA will consider the railroad or public transit agency (not the third-party contractor) to be the operating railroad for purposes of this subpart to ensure long-term continuity in reporting to the Crossing Inventory.

#### Pathway Crossing

Denver RTD submitted comments seeking clarification as to whether FRA considers pedestrian station crossings to be pathway crossings and whether pathway crossings are considered to be a type of highway-rail crossing.

As discussed above, a pathway crossing is separate and distinct from a highway-rail crossing. While highway-rail crossings may include associated sidewalks, pathway crossings are physically separated from a nearby roadway by an open space or barrier. As explained in the preamble to the NPRM, consistent with Section 20160, for purposes of the Crossing Inventory, a pathway crossing must have all of the following characteristics: (1) Explicit authorization by a public authority or an operating railroad; (2) dedicated use by

non-vehicular traffic, including pedestrians, bicyclists, and others; (3) no association with a public highway, road, or street, or a private roadway; and (4) cross one or more railroad tracks either at grade or grade-separated. Since pedestrian station crossings generally have all of these characteristics, we consider them pathway crossings. However, as also noted in the NPRM, we do not consider an area where pedestrians trespass, even routinely, a pathway crossing.

Denver RTD also submitted comments recommending that we revise the definition of "pathway crossing" to require explicit authorization by both the relevant public authority and the railroad that owns or operates over the crossing rather than one or the other. In this final rule, FRA is not adopting this recommendation because it would be inconsistent with the specific criteria for a pathway crossing paragraph (d)(1) of Section 20160 establishes.

#### Primary Operating Railroad

In the NPRM, FRA proposed to define the term "primary operating railroad" as "the operating railroad responsible for submitting and/or updating data in the Crossing Inventory for a highway-rail crossing or pathway crossing." Denver RTD objected to this proposed definition and asserted that the proposed criterion for determining what entity is a primary operating railroad over a particular grade crossing was confusing and conflicting, especially with respect to rail transit operators. Therefore, in this final rule, FRA is revising the definition of "primary operating railroad" to include specific criteria that will determine primary operating railroad status. Under this definition, an operating railroad will qualify for primary operating railroad status if the operating railroad 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 there is more than one operating railroad that qualifies for primary operating railroad status on the basis of this criterion, then the operating railroad that operates the most trains over the crossing is the primary operating railroad. If 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.

A different method is used to determine primary operating railroad status for crossings located within a private company, port, or dock area. In recognition of the existing practice of

general system railroads to assign Inventory Numbers to these crossings, the definition of “primary operating railroad” provides that each railroad that owns track leading to the private company, port, or dock area is considered a primary operating railroad for the crossings within the private company, port, or dock area—even if the operating railroad does not own or maintain track through the crossings.

#### Private Crossing

In the NPRM, FRA proposed to define the term “private crossing” as “a highway-rail crossing that is not a public crossing.” In the interest of clarity, in this final rule FRA is revising this proposed definition to include a specific reference to pathway crossings in addition to highway-rail crossings. As explained in the NPRM, the term “private crossing” includes intersections of railroad tracks and roadways that are not open to public travel or maintained by a public authority. This explanation in the NPRM, however, failed to recognize that just as railroad tracks may cross roadways that are not open to the public or maintained by a public authority, railroad tracks also may cross private pathways that are not open to the public or maintained by a public authority. Typical types of private crossings include farm crossings, industrial plant crossings, and residential access crossings.

#### Public Crossing

In the NPRM, FRA proposed to define the term “public crossing” as follows: “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 received several comments in response to this proposed definition. In response to those comments, which are discussed below, FRA is revising the definition of the term “public crossing” in this final rule to include a specific reference to pathway crossings (in addition to highway-rail crossings) and to replace references to “roadway approaches” in the proposed definition with the more generic term “approaches” because pathway crossings generally do not have roadway approaches. FRA also revised the definition to specify that all approaches to a public crossing must be under the jurisdiction of the public authority and no approach may be on private property, “unless State law or regulation provides otherwise.” Further,

FRA notes that for purposes of this definition, “open to public travel” means that the road or pathway section is available (except during scheduled periods, extreme weather, or emergency conditions) and open to the general public for use without restrictive gates, prohibitive signs, or regulation.

As noted in the NPRM, FRA recognizes this definition of “public crossing” 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 222.9 related to the use of locomotive horns and quiet zones. However, as also noted in the NPRM, these criteria are intended to make the definition of the term “public crossing” in this final rule more consistent with the definition of the term “public grade crossing” contained in 23 CFR 924.3, which is widely used by States for Highway Safety Improvement Program planning and funding purposes.

FRA received comments on the definition of “public crossing” from the ICC, which asserted the definition in the proposed rule failed to address situations in which a public authority, such as a forest preserve, owns and maintains the roadway or pathway approaches on both sides of the crossing. In addition, the Louisiana Department of Transportation and Development (LaDOTD) submitted comments recommending that pathway crossings should be classified as public or private, based upon the entity that maintains the approaches to the crossing.

As explained above, if the highway-rail or pathway crossing is open to public travel and each approach to the crossing is under the jurisdiction of and maintained by a public authority, we will generally consider the highway-rail or pathway crossing to be a public crossing for purposes of this subpart. Therefore, a highway-rail or pathway crossing is considered a public crossing for purposes of this subpart, if each approach to the crossing is under the jurisdiction of and maintained by a governmental entity and the crossing is open to the general public for use without restrictive gates, prohibitive signs, or regulation. If only one approach is under the jurisdiction of and maintained by a governmental entity, the crossing will be considered a private crossing unless otherwise provided by State law.

Denver RTD also submitted comments requesting guidance on how to determine the proper classification of a highway-rail or pathway crossing. In its comments, Denver RTD noted that, in

many instances, the railroad owns the land on which the highway-rail or pathway crossing is located. While FRA acknowledges that highway-rail and pathway crossings are generally located on privately-owned railroad rights-of-way, the public/private nature of a highway-rail or pathway crossing has traditionally been determined by ownership of the approaches that lead up to the railroad’s right-of-way. FRA intends its definition of the term “public crossing” in this final rule to be consistent with this practice.

As noted in the NPRM, 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 and pathway crossings in the State for purposes of the Crossing Inventory. To clarify this point in the final rule and in response to comments received from LaDOTD and Tavla Solutions noting that some States have classified high-way rail grade crossings as public crossings despite the fact that there is only one roadway approach to the crossing on public property, in this final rule, we revised the definition of “public crossing” to include an exception to the requirement that all approaches to the crossing must be on public property “unless State law or regulation provides otherwise.”

#### Temporary Crossing

In the NPRM, FRA proposed to define “temporary crossing” to mean “a highway-rail crossing created to serve a specific activity for a temporary time period not to exceed six months.” We revised this definition in the final rule to include a specific reference to pathway crossings, which we inadvertently omitted from the definition proposed in the NPRM.

As explained in the NPRM, given the short-term nature of temporary crossings, Inventory Numbers have not historically been assigned to such crossings. FRA intends to maintain this practice and therefore, the reporting and updating requirements contained in this final rule do not apply to any crossing that meets the definition of “temporary crossing.”

AAR’s comments recommend that the definition of “temporary crossing” be revised to include crossings that are in existence for a period “not to exceed 12 months.” In support of this recommendation, the AAR asserted that

railroads are often faced with circumstances, such as construction, that necessitate use of a crossing on a temporary basis, but for periods exceeding six months. In its comments, Denver RTD concurred with AAR's recommendation.

Although FRA recognizes the potential for certain non-permanent circumstances, including construction activities, to take longer than six-months, FRA does not believe that it is appropriate for purposes of this rule to define a "temporary crossing" as a crossing that exists more than six months. Moreover, FRA notes that the Crossing Inventory procedure in place for at least 18 years uses a six-month period for classifying highway-rail and pathway crossings as temporary crossings. Consistent with this existing practice, FRA is not revising the proposed definition to increase the temporary time from six months to 12 months. Therefore, if a highway-rail or pathway crossing is reasonably expected to be in use for more than six months, or if it becomes apparent that the highway-rail or pathway crossing will need to remain in use for longer than a six-month period, the primary operating railroad must assign an Inventory Number to the crossing and report the crossing to the Crossing Inventory. When the crossing is no longer needed, the primary operating railroad is required to close the crossing and, under § 234.411(b), provide notification of the crossing closure to the Crossing Inventory.

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

As proposed in the NPRM, paragraph (a) of this section requires use of the Inventory Form, or its electronic equivalent, to submit highway-rail and pathway crossing data to the Crossing Inventory. Although we are adopting this paragraph substantially as proposed, in the final rule FRA modified the language slightly to include specific references to both highway-rail and pathway crossings to reflect the two basic categories of grade crossings for which data will be collected. As also proposed in the NPRM, paragraph (a) generally allows submission of the Inventory Form in both hard copy format or electronically.

Consistent with the proposal in the NPRM, paragraph (b) requires completion of the Inventory Form in accordance with the Inventory Guide. In this final rule, FRA is adopting paragraph (b) substantially as proposed, but adding a reference to the "electronic equivalent" of the Inventory Form to make it clear the rule allows for

submission of the Inventory Form electronically. As noted in the NPRM and explained in the Inventory Guide, with the exception of highway-rail and pathway crossings that are located in a railroad yard, a passenger station, or an area belonging to a private company, port, or dock, one Inventory Form (or its electronic equivalent) must be submitted to the Crossing Inventory for each highway-rail or pathway crossing. Where there is more than one crossing in a railroad yard, a passenger station, or an area belonging to a private company, port, or dock area, the primary operating railroad may choose to either submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory for each individual crossing or to submit an Inventory Form (or its electronic equivalent) for all (or a group) of the crossings within the railroad yard, passenger station, or area belonging to a private company, port, or dock.

In the NPRM, FRA requested comments on whether it should retain its current practice of allowing railroads to assign a single Inventory Number to a group of crossings in a railroad yard, passenger station, or an area belonging to a private company, port, or a dock area should be retained. FRA received comments on this issue from a private citizen, the AAR, the CPUC, the ICC, Denver RTD, and BRS.

AAR recommended that FRA retain 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. While noting there are a number of private restricted access facilities that have railroad crossings, the AAR asserted that railroads are often granted limited access into these facilities due to security concerns. Therefore, the AAR argued that there continues to be a need for a flexible approach allowing the assignment of a single Inventory Number to multiple crossings located within such facilities. In addition, the AAR noted that assigning a single Inventory Number to a group of crossings in a railroad yard or area belonging to a private company, a port, or a dock would be consistent with FRA requirements to place and maintain only one Emergency Notification System sign at each vehicular entrance to a railroad yard or port or dock facility.

FRA also received comments from the CPUC, ICC, and the BRS asserting that the practice of assigning a single Inventory Number to a group of crossings should cease. The BRS expressed concern that the practice of assigning a single Inventory Number to multiple crossings could hinder

accurate reporting of crossing malfunctions, stalled vehicles at crossing locations, and grade crossing accidents. While noting that large ports may have hundreds of crossings, the CPUC asserted that assigning a single DOT Inventory number to an entire port area would make it nearly impossible to identify the location of accidents and safety issues at a particular crossing within the facility. The CPUC recommended that each crossing should be assigned an individual DOT identification number because each crossing may have independent characteristics and accident history. In the alternative, the CPUC recommended that FRA should consider limiting the assignment of a single Inventory Number to multiple crossings located within a very small area, which is privately owned and subject to strictly limited access. The ICC recommended that each unique pathway crossing within a passenger station should be assigned an individual DOT identification number.

After careful consideration of these comments and because the commenters did not provide any specific safety data to support their concerns, FRA has decided to retain the current practice of allowing railroads to assign one Inventory Number to multiple crossings that are located within an area belonging to a private company, a port or a dock area. FRA notes that crossing malfunctions and other crossing incidents are often reported directly to the facility or to an authorized facility representative who has knowledge of, or is otherwise familiar with, the location of crossings on the property. Section 204(a) of the RSIA directs the Secretary of Transportation to issue regulations that require railroads to submit crossing data to the Crossing Inventory. Consistent with that authority, while it might otherwise be reasonable and appropriate to require private property owners to obtain an individual Inventory Number for each highway-rail and pathway crossing on their property, we have determined that the responsibility for obtaining an Inventory Number for crossings located on private property or in a port or dock area should continue to be placed on the railroads who operate through the crossings. Therefore, FRA is retaining the current practice of assigning a single Inventory Number to a group of crossings located on private property, or in a dock or port area, which does not appear to have a negative impact on emergency response to crossing malfunctions or other types of crossing incidents.

As for crossings within passenger stations, Denver RTD recommended that

the Inventory Guide be revised to specifically state that one Inventory Number can be assigned to multiple crossings within a passenger station. As noted above, in these types of locations crossing malfunctions and other crossing incidents are typically reported directly to the facility or to an authorized representative of the facility who has knowledge of, or is otherwise familiar with, the location of the crossings on the property. In addition, the current practice of assigning a single Inventory Number to a group of crossings located in a railroad yard or passenger station does not appear to have a negative impact on emergency response to crossing malfunctions or other types of crossing incidents. Therefore, FRA also has decided to retain the current practice of allowing railroads to assign one Inventory Number to multiple crossings that are located in a railroad yard or passenger station.

Paragraph (c) of this section requires Class I railroads to submit all crossing data to the Crossing Inventory electronically. The net effect of this provision is that Class II and Class III railroads, as well as urban rapid transit operators and State agencies, may submit their crossing data to the Crossing Inventory on a hard-copy Inventory Form or its electronic equivalent, while Class I railroads must submit the data electronically.

In the proposed rule, FRA requested comments on whether it should require additional railroads to submit crossing data electronically to the Crossing Inventory. FRA received comments from the BRS recommending that all parties who are required to submit data to the Crossing Inventory should be required to submit their data electronically. By applying this requirement to all parties, the BRS asserted that FRA would be better able to track crossing data and there would be no issues with the legibility of the data entered on the hard copy Inventory Form. FRA also received comments from the ICC recommending that the scope of the electronic submission requirement should be expanded to require all primary operating railroads and States with more than 5,000 crossings to submit their crossing data electronically to the Crossing Inventory. Denver RTD submitted comments recommending that all crossing data be electronically submitted to the Crossing Inventory, whether submitted by a State agency or an operating railroad. On the other hand, the North Carolina Department of Transportation (NCDOT) submitted comments asserting it would be impractical and cost burdensome to

require all railroads to submit crossing data electronically to the Crossing Inventory because some Class III railroads do not have electronic databases for their crossing records.

FRA encourages Class II and Class III railroads, as well as urban rapid transit operators and State agencies, to submit their data electronically to the Crossing Inventory. However, in order to minimize the burdens associated with the reporting and updating of this subpart, the final rule does not require Class II or Class III railroads or urban rapid transit operators to submit crossing data electronically to the Crossing Inventory (unless they are a parent corporation submitting crossing data to the Crossing Inventory on behalf of a subsidiary railroad under paragraph (e) of this section). As for voluntary reporting by State agencies, State agencies may elect to either submit crossing data electronically to the Crossing Inventory or through submission of hard-copy Inventory Forms.

Currently, some States and railroads use a PC-based software product (GX 32) to update the existing Grade Crossing Inventory System (GCIS) that contains the Crossing Inventory database. However, GX 32 will be replaced with a new secure Web-based application on the final rule effective date. This new Web-based application will allow railroads and States to either upload their crossing data to the Crossing Inventory as an electronic file or to complete an online version of the Inventory Form. The new Web-based application will also have the capability to support bulk crossing data submissions. Railroads and States that previously used the GX 32 software product to update the Crossing Inventory will need to adjust their existing electronic data systems to ensure their systems work with the new Web-based application. Please refer to the Electronic Submission Instructions that have been placed in the public docket for more information. FRA also intends to conduct outreach and training on the new Web-based application. More information about these upcoming FRA outreach and training sessions will be provided on FRA's Web site.

Paragraph (d) of this section specifically addresses reporting by State agencies on behalf of operating railroads. In the proposed rule, FRA noted that it intended to allow State agencies with jurisdiction over highway-rail and pathway crossings to submit crossing data to the Crossing Inventory on behalf of primary operating railroads. These provisions

were proposed in §§ 234.405(a)(3), 234.405(b)(4), and 234.405(c)(4). However, as proposed, the rule might have allowed a wide range of third parties to submit crossing data to the Crossing Inventory on behalf of the primary operating railroad, which would have inadvertently expanded the intended scope of this provision. Therefore, in this final rule, FRA has redrafted these provisions and included them in paragraph (d) of this section, to specifically address the submission of data to the Crossing Inventory by a State agency on behalf of an operating railroad.

Paragraph (d) is intended to minimize any potential burden the requirements of this subpart may impose on Class III railroads and to accommodate existing arrangements between shortline railroads and State agencies, where State agencies have agreed to submit crossing data to the Crossing Inventory on the railroads' behalf. To take advantage of this provision, the State agency and the operating railroad are required to provide written notice to the FRA Associate Administrator that the State agency has agreed to report and update crossing data in the Crossing Inventory on behalf of the operating railroad for all of the operating railroad's highway-rail and pathway crossings within the state. Unlike FRA's proposal in the NPRM, the operating railroad and State agency are not required to provide positive identification of each individual crossing for which the State agency has agreed to submit and update crossing data in the Crossing Inventory.

NCDOT submitted comments seeking clarification as to the types of sanctions and/or consequences FRA might use to enforce the reporting and updating requirements contained in this subpart against State agencies that have agreed to report and update crossing data in the Crossing Inventory for operating railroads, yet fail to do so. FRA expects State agencies that agree to report and update crossing data on behalf of operating railroads will share FRA's interest in ensuring that Crossing Inventory records for highway-rail and pathway crossings within the State are kept up-to-date and accurate to the extent possible. FRA anticipates there will be few instances in which State agencies fail to timely report and/or update crossing data in the Crossing Inventory, per their agreement with the operating railroad. Nevertheless, FRA does reserve the right to take enforcement action (e.g., in the form of civil penalties or otherwise) against the operating railroad, when appropriate, if a State does not timely comply with the

reporting and updating requirements contained in this subpart on behalf of the operating railroad.

The ICC also submitted comments recommending that the primary operating railroad be allowed to assign responsibility for updating crossing data to a contractor, but not be allowed to assign responsibility for updating crossing data to the appropriate State agency. FRA is not adopting this recommendation with respect to State agency reporting. Operating railroads (including the primary operating railroad) may choose to enter into separate contractual arrangements with third-party contractors for the submission of crossing data to the Crossing Inventory on their behalf without regulatory authority. However, the operating railroad will remain fully responsible to FRA for any errors or omissions in crossing data the third-party contractor submits on its behalf.

We added a new paragraph (e) to this section of the final rule to provide an option for reporting and updating of crossing data to the Crossing Inventory by the parent corporation of certain integrated railroad systems. Specifically, paragraph (e) provides that a parent corporation, and one or more subsidiary railroads, may provide written notification to the FRA Associate Administrator that the parent corporation will assume the reporting and updating responsibilities of its subsidiary railroad for purposes of complying with this subpart. Any written notification provided under paragraph (e) of this section must contain a list of all subsidiary railroads for which the parent corporation will assume reporting and updating responsibility and an explanation of how the parent corporation and the subsidiary railroads operate as a single, seamless, integrated United States railroad system. In addition, any written notification provided under paragraph (e) of this section must include a statement signed by the chief executive officer of the parent corporation, that the parent corporation consents to guarantee any monetary penalty assessments or other liabilities owed to the United States government the named subsidiaries incur for violating the reporting and updating requirements of this subpart. The parent corporation also must agree to provide immediate written notification to the FRA Associate Administrator of any change in the list of subsidiary railroads for which the parent corporation has assumed reporting and updating responsibility. Finally, the parent corporation must agree to submit crossing data for all of the subsidiary

railroad's highway-rail and pathway crossings to the Crossing Inventory electronically.

#### Section 234.405 Submission of Initial Data to the Crossing Inventory for Previously Unreported Crossings

As proposed, this section would have included requirements that primary operating railroads submit data to the Crossing Inventory for previously unreported crossings (proposed paragraph (a)) and new crossings (*i.e.*, crossings not in existence as of effective date of final rule) (proposed paragraph (b)), as well as periodic update requirements (proposed paragraph (c)), and update requirements related to crossing sales, closures and changes in crossing characteristics (proposed paragraph (d)). In this final rule, FRA is revising this section by moving the provisions that address the reporting of new crossings and the periodic updating of existing crossing data, and the provisions that address the reporting of crossing sales, crossing closures, and changes in crossing characteristics, to separate sections. The reporting of new highway-rail and pathway crossings is now under § 234.407, while the periodic updating of existing crossing data is under § 234.409. In addition, the reporting of a crossing sale, crossing closure, or change in crossing characteristics is now under § 234.411.

As proposed in the NPRM, this section made primary operating railroads responsible for submitting completed Inventory Forms or their electronic equivalents, to the Crossing Inventory for previously unreported crossings through which the railroads operate. FRA received a number of comments relating to FRA's proposal to make railroads responsible for submitting completed Inventory Forms, as opposed to limiting railroads' duty to report to only railroad-maintained crossing data. In its comments, AAR recommended that the final rule require railroads to report only railroad-maintained crossing data (*e.g.*, the total number of daily train movements and the speed of the train at the crossing) to the Crossing Inventory and should leave State agencies responsible for reporting State-maintained crossing data (such as highway system class, highway speed limit, estimated percent of truck traffic, and the average number of school buses per day). NCDOT submitted similar comments. In its comments, the Virginia Department of Transportation (VDOT) recommended that State agencies be responsible for updating crossing data because railroads do not have staff in every state. The Florida Department of Transportation (FDOT) recommended

that primary operating railroads be required to coordinate with State agencies to obtain State-maintained crossing data before they submit this data to the Crossing Inventory for previously unreported highway-rail and pathway crossings. The ICC submitted comments recommending that State agencies be permitted to submit crossing data to the Crossing Inventory for previously unreported crossings, if the primary operating railroad fails to do so in a timely fashion.

After careful consideration of all comments submitted on this issue, FRA has retained the requirement that primary operating railroads must submit completed Inventory Forms (or the electronic equivalent) to the Crossing Inventory for previously unreported highway-rail and pathway crossings in the final rule. This final rule implements the statutory mandate in Section 20160 to issue regulations requiring railroads to submit crossing data to the Crossing Inventory for previously unreported crossings. While DOT may issue regulations in the future that would address State reporting of public highway-rail and pathway crossings to the Crossing Inventory, this final rule does not require State agencies to report or update the Crossing Inventory. However, FRA strongly encourages primary operating railroads to work with State agencies to obtain crossing data the State maintains.

In response to commenters expressed concerns, and in recognition of the fact that even a primary operating railroad may not have access to all the data necessary to complete an Inventory Form, FRA added a new paragraph (d) to this section. This paragraph establishes a procedure for primary operating railroads to provide official notification to FRA if the primary operating railroad is unable to timely submit a complete Inventory Form (or its electronic equivalent) to the Crossing Inventory because it requested State-maintained crossing data from the State agency that has not yet been received.

This section implements the statutory mandate contained in paragraph (a)(1) of Section 20160, which requires railroad carriers to report current information to the Secretary about warning devices and signs at each previously unreported crossing through which they operate. With respect to the reporting to the Crossing Inventory of previously unreported highway-rail and pathway crossings (which, for purposes of this subpart, are highway-rail and pathway crossings (both at-grade and grade-separated) that were not reported to the Crossing Inventory as of the effective date of this final rule), we

revised paragraph (a) of this section. Paragraph (a) has been revised to include a provision, in paragraph (a)(1)(i), requiring the primary operating railroad to assign an Inventory Number to each previously unreported highway-rail and pathway crossing through which it operates, unless the crossing is located in a railroad yard, passenger station, or within a private company, port, or dock area. If the previously unreported crossings are located in a railroad yard, passenger station, or within a private company, port, or dock area, paragraph (a)(1)(ii) requires the primary operating railroad(s) to assign one or more Inventory Numbers to the previously unreported crossings. In these instances, each railroad that owns track leading to the private company, port, or dock area is considered the primary operating railroad for the crossings within the facility (see definition of “primary operating railroad” in § 234.401). Thus, if more than one railroad owns track leading into a private company, port, or dock area, it is possible that a single crossing could have more than one unique Inventory Number assigned to it. If a primary operating railroad does not already have an Inventory Number it can assign to the previously unreported highway-rail or pathway crossing, then the railroad must obtain an Inventory Number. Instructions for obtaining an Inventory Number are found in the Inventory Guide.

As proposed in the NPRM, paragraph (a)(1)(iii) specifically provides that the requirements to assign Inventory Numbers to crossings and to submit Inventory Forms to the Crossing Inventory do not apply to any crossing meeting the definition of a “temporary crossing.”

We also revised paragraph (a)(2) in the final rule to require the primary operating railroad to provide the assigned Inventory Number to each operating railroad that operates through the previously unreported highway-rail or pathway crossing within ten months of the final rule’s effective date. FRA added this requirement because each operating railroad will need to know the Inventory Number assigned to the previously unreported crossing. (For example, the operating railroad will need to be able to verify whether the primary operating railroad has timely reported the previously unreported crossing to the Crossing Inventory.) However, this requirement does not apply to the Inventory Numbers assigned to highway-rail and pathway crossings that are located within a private company, port, or dock area. As stated above, if more than one railroad

owns track that leads into a private company, port, or dock area, each railroad that owns track leading to the private company, port, or dock area must assign its own Inventory Number to the highway-rail and pathway crossings that are located within the facility.

As proposed in the NPRM, primary operating railroads would have had six months after the effective date of a final rule to report any previously unreported highway-rail and/or pathway crossings to the Crossing Inventory. NCDOT submitted comments recommending that the reporting requirements contained in the final rule should allow for a 12-month transition period to accommodate changes to database code and validation rules, while FDOT submitted comments recommending that the final rule should allow for a six- to 12-month transition period. On the other hand, the ICC submitted comments recommending that the final rule should allow for a 24-month period after the final rule’s effective date before the electronic submission of crossing data to the Crossing Inventory is required, in order to provide sufficient time within which to modify existing crossing database systems or to develop new systems to retain crossing data.

After consideration of these comments, we revised paragraph (a)(3) of this section to extend the proposed six month initial reporting period to allow primary operating railroads to submit completed Inventory Forms (or their electronic equivalent) to the Crossing Inventory for the previously unreported highway-rail and pathway crossings through which they operate within 12 months of the final rule effective date. This will provide additional time for railroads, as well as State agencies, to modify existing systems or to develop new systems. FRA believes 12 months is ample time for railroads to modify their existing systems of reporting or to develop new systems. This 12-month reporting period is applicable, regardless of whether the crossing data is submitted electronically or by hard-copy. FRA recognizes that some Class II and Class III railroads may elect to retain their crossing data on an electronic database, yet submit their crossing data to the Crossing Inventory on hard-copy Inventory Forms. FRA has no objection to this non-Class I railroad practice.

FRA added paragraph (b) of this section to the final rule to address the situation when multiple operating railroads operate trains on separate tracks through the same highway-rail or pathway crossing. As discussed in the Section-by-Section Analysis of the

definition of the term “highway-rail crossing,” railroad tracks that lie within the same pair of crossing warning devices are considered a single highway-rail or pathway crossing for purposes of the Crossing Inventory.

AAR’s comments expressed agreement with FRA’s proposal that when two or more railroads operate on the same track and through the same highway-rail or pathway crossing, the primary operating railroad should provide crossing data to the Crossing Inventory. However, when multiple railroads operate on separate tracks through the same crossing, AAR recommended that each operating railroad should submit separate reports to the Crossing Inventory for crossing data that is unique to its tracks. Denver RTD also submitted comments questioning whether any one railroad should be designated the primary operating railroad in the case of a shared crossing where each operating railroad owns, operates, and maintains its portion of the crossing.

On the other hand, FRA received comments from the ICC recommending that only two entities—the primary operating railroad and the State—be authorized to edit or update crossing data in the Crossing Inventory. In situations involving multiple operating railroads, the ICC recommended that FRA require other operating railroads to provide crossing data to the primary operating railroad for submission to the Crossing Inventory. The Minnesota Department of Transportation submitted similar comments recommending that the railroad responsible for the maintenance of the track at the crossing be the reporting railroad with the obligation to collect the required data, if any, from the other railroads that operate on its line. FDOT also submitted comments recommending that the primary operating railroad should not submit train count data to the Crossing Inventory until after it obtains a total count from all other railroads that operate through the crossing.

As reflected in paragraph (a) of this section, the primary operating railroad is required to submit an accurate and complete Inventory Form, or its electronic equivalent, to the Crossing Inventory for previously unreported highway-rail and pathway crossings. However, in situations involving multiple railroads that operate on separate tracks through the same crossing, it may not be practicable for the primary operating railroad to submit train count and train speed data to the Crossing Inventory on behalf of all of the operating railroads that operate trains through the crossing. The primary

operating railroad may not have sufficient information related to train movements for tracks over which it does not operate or dispatch trains. Therefore, paragraph (b) of this section requires multiple operating railroads that operate on separate tracks through the same highway-rail or pathway crossing to assume responsibility for reporting certain crossing data directly to the Crossing Inventory consistent with the Inventory Guide. This crossing data includes railroad-specific train count and train speed data, as well as railroad-specific location data such as the milepost location, railroad subdivision, and railroad division data. However, the primary operating railroad is still required to submit an accurate and complete Inventory Form, or its electronic equivalent, to the Crossing Inventory for the crossing, which includes train count and train speed data that is specifically related to the primary operating railroad's train operations.

We intend for paragraph (c) of this section to address the situation when the primary operating railroad has not submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for a previously unreported highway-rail or pathway crossing, under paragraph (a) of this section. Unless the primary operating railroad has provided a written certification statement to the FRA Associate Administrator under paragraph (d) of this section that it requested certain crossing data from the appropriate State agency which the State agency has not yet provided, other operating railroads that operate through the previously unreported crossing will need to monitor the Crossing Inventory to confirm that the primary operating railroad has timely submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for the crossing. If an operating railroad discovers that the primary operating railroad has not submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for a previously unreported highway-rail or pathway crossing (which is not a temporary crossing) by March 7, 2016, the operating railroad must provide written notification of this oversight to the FRA Associate Administrator. Otherwise, each operating railroad (including the primary operating railroad) that operates through the unreported highway-rail or pathway crossing may be subject to civil penalties for failure to timely report the crossing to the Crossing Inventory.

FRA received a number of comments that were critical of the requirement

contained in paragraph (c) of this section that each operating railroad must notify the FRA Associate Administrator when the primary operating railroad has not submitted a completed Inventory Form, or its electronic equivalent, to the Crossing Inventory. The AAR and the ICC submitted comments asserting that this requirement is burdensome. The AAR further asserted that FRA could implement the statutory mandate in Section 20160, without imposing reporting requirements on secondary railroads, by giving entities other than the primary operating railroad the ability to submit crossing data to the Crossing Inventory. For example, the AAR noted that the proposed rule already contained provisions that would allow reporting by other entities on behalf of the primary operating railroad, which appear to be consistent with other assignment provisions that appear in the rail safety regulations.

Section 20160 contains specific language requiring that each railroad carrier ensure crossing data for previously unreported crossings has been reported to the Crossing Inventory by another railroad carrier that operates through the crossing. As discussed earlier, paragraph (a) of this section requires the primary operating railroad to submit an accurate and complete Inventory Form, or its electronic equivalent, for previously unreported highway-rail and pathway crossings. However, if the primary operating railroad fails to submit a completed Inventory Form in a timely manner, paragraph (c) of this section implements Section 20160's mandate to require each operating railroad to provide written notification to the FRA Associate Administrator that a previously unreported highway-rail or pathway crossing has not been timely reported to the Crossing Inventory. Therefore, we did not change this requirement in the final rule.

The AAR also submitted comments asserting that requiring operating railroads to notify the FRA Associate Administrator when the primary operating railroad has not timely submitted crossing data to the Crossing Inventory would require operating railroads to differentiate between crossings through which they operate trains and crossings through which they simply have trackage rights (but do not operate trains), in order to determine whether they must follow up on a primary railroad's reporting responsibility. FRA acknowledges that the final rule will require railroads to differentiate between crossings through which they operate trains and crossings

for which they simply have trackage rights to determine the extent of their reporting and updating responsibilities under this final rule. If a railroad or urban rapid transit operator simply has trackage rights (but does not operate trains) over a highway-rail or pathway crossing that is on, or connected to, the general railroad system of transportation, the railroad or rail transit operator will not be considered an "operating railroad" with respect to that crossing. Therefore, the railroad or rail transit operator will not be required by this subpart to submit or update crossing data to the Crossing Inventory for the highway-rail or pathway crossing for which it simply has trackage rights but does not operate trains.

FRA added paragraph (d) of this section to the final rule to allow the primary operating railroad to provide written notification that it has requested, but not received, certain crossing data, from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data. We added this paragraph to the final rule in response to comments noting that under the proposed rule, the primary operating railroad and all other operating railroads could be held responsible for the timely submission of crossing data, which may only be obtainable from the State agency that maintains highway-rail and pathway crossing data. As noted earlier, the AAR submitted comments asserting that railroads should only be required to report railroad-maintained crossing data to the Crossing Inventory, thus leaving the responsibility for reporting State-maintained crossing data to State agencies. Denver RTD also submitted comments recommending that railroads only be responsible for failing to submit or update crossing information in the Crossing Inventory if the State timely provided the information requested and the railroad nevertheless failed to timely update the Crossing Inventory. The ICC submitted comments recommending that the final rule contain a mechanism for any party to inform the FRA Associate Administrator of the failure of the State agency (or the primary operating railroad) to submit data in a timely manner.

Paragraph (d) will allow the primary operating railroad to submit a written statement to the FRA Associate Administrator, by certified mail, return receipt requested, certifying it requested certain crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data at least 60 days earlier, which the State has not yet provided. If the primary operating railroad provides

this written statement to the FRA Associate Administrator, FRA will not hold the primary operating railroad responsible for failing to submit an accurate and complete Inventory Form (or its electronic equivalent) to the Crossing Inventory. In addition, the rule will not require other operating railroads that operate through the crossing to notify the FRA Associate Administrator that a completed Inventory Form (or its electronic equivalent) has not been submitted for the previously unreported crossing.

To take advantage of this provision, the primary operating railroad must limit the crossing data requested to one or more of the data fields that contain State-maintained crossing data, which the States are being asked to voluntarily update in the Crossing Inventory. We have identified these data fields in Appendix B in the Inventory Guide. The primary operating railroad must mail a written statement to the FRA Associate Administrator by certified mail, return receipt requested, which includes a list of each data field for which the primary operating railroad requested crossing information from the appropriate State agency and the date the crossing data was requested. The primary operating railroad also must mail copies of the written certification statement to each operating railroad that operates through the highway-rail or pathway crossing and to the State agency responsible for maintaining highway-rail and pathway crossing data. In addition, the primary operating railroad must submit the requested crossing data to the Crossing Inventory within 60 days of receipt from the appropriate State agency.

#### Section 234.407 Submission of Initial Data to the Crossing Inventory for New Crossings

Proposed § 234.407 set forth the recordkeeping requirements for this subpart that would apply to each railroad subject to this subpart. In this final rule, we moved these recordkeeping requirements to §§ 234.413 and 234.407 now addresses the reporting of new highway-rail and pathway crossings to the Crossing Inventory. This section implements paragraph (a)(1) of Section 20160, which requires railroad carriers to report current information to the Secretary about warning devices and signs at each new crossing through which they operate. Specifically, paragraph (a)(1)(i) of this section requires the primary operating railroad to assign an Inventory Number to each new highway-rail and pathway crossings through which it operates. Consistent with the reporting requirements in § 234.405 regarding

previously unreported crossings, this requirement does not apply to new highway-rail and pathway crossings located in a railroad yard, passenger station, or within a private company, port, or dock area or to temporary crossings.

If new crossings are located in a railroad yard, passenger station, or within a private company, port or dock area, paragraph (a)(1)(ii) requires the primary operating railroad(s) to assign one or more Inventory Numbers to the crossings. The primary operating railroad(s) may assign an Inventory Number to a specific highway-rail or pathway crossing or to a group of highway-rail and pathway crossings located in a railroad yard, passenger station, or within a private company, port, or dock area.

For new highway-rail and pathway crossings located within a private company, port, or dock area, we will consider each railroad that owns track leading to the private company, port, or dock area the primary operating railroad for the crossings within the facility (see definition of “primary operating railroad” in § 234.401). Thus, if more than one railroad owns track leading into a private company, port or dock area, it is possible that a single crossing could have more than one unique Inventory Number assigned to it. If a primary operating railroad does not already have an Inventory Number that it can assign to the new highway-rail or pathway crossing, the railroad must obtain an Inventory Number. Instructions for obtaining an Inventory Number can be found in the Inventory Guide.

Paragraph (a)(1)(iii) of this section provides that the requirement to assign Inventory Numbers to crossings and report those crossings to the Crossing Inventory does not apply to any crossing meeting the definition of a “temporary” crossing. However, the primary operating railroad must report a highway-rail or pathway crossing that was deemed to be a “temporary” crossing to the Crossing Inventory as a new crossing if it becomes apparent the highway-rail or pathway crossing will remain in place for more than six months.

We also revised paragraph (a)(2) in the final rule to require the primary operating railroad to provide the assigned Inventory Number to each operating railroad that operates through the new highway-rail or pathway crossing no later than four months after the date the crossing becomes operational or ten months after the effective date of this rule, whichever occurs later. FRA added this

requirement to the final rule because each operating railroad will need to know the Inventory Number assigned to the new highway-rail or pathway crossing. (For example, the operating railroad will need to verify whether the primary operating railroad timely reported the new crossing to the Crossing Inventory.) However, this requirement does not apply to the Inventory Numbers assigned to highway-rail and pathway crossings located within a private company, port, or dock area. As stated above, if more than one railroad owns track that leads into a private company, port, or area, each railroad that owns track leading to the private company, port, or dock area must assign its own Inventory Numbers to the highway-rail and pathway crossings that are located within the facility.

As proposed in the NPRM, primary operating railroads would have had six months after the effective date of the final rule to report any new highway-rail and/or pathway crossings to the Crossing Inventory. In this final rule, FRA is providing additional flexibility in the timeframe for reporting of new crossings to the Crossing Inventory. Specifically, paragraph (a)(3) of this section requires primary operating railroads to submit accurate and complete Inventory Forms (or their electronic equivalent) to the Crossing Inventory for new highway-rail and pathway crossings through which they operate no later than six months after the crossing becomes operational or within twelve months of the final rule's effective date, whichever occurs later.

FRA received comments from the ICC and the Brotherhood of Railroad Signalmen recommending that the timeframe for reporting new crossings to the Crossing Inventory should be changed to 90 days from the date on which a new crossing is established. In its comments, the ICC explained that this recommended change would standardize the time period for reporting new crossings and changes in crossing characteristics. However, we retained the requirement to report new crossings within six months of the date on which the crossing becomes operational in this final rule consistent with the mandate of Section 20160. We also extended the deadline for submitting crossing data for new highway-rail and pathway crossings to the Crossing Inventory in the final rule to provide additional time for railroads and State agencies to modify existing reporting systems or to develop new systems. This initial extended reporting period applies to the submission of all new crossing data to the Crossing

Inventory, regardless of whether the crossing data is submitted electronically or by hard-copy.

FRA also received comments from the Iowa Department of Transportation recommending not adding new crossings to the Crossing Inventory unless railroads and State agencies have submitted crossing data. However, this final rule implements the statutory mandate in Section 20160 to issue regulations requiring railroads to report current information about new crossings through which they operate. While DOT may issue regulations in the future that address State reporting of public highway-rail and pathway crossing data to the Crossing Inventory, this final rule does not require State agencies to submit crossing data to the Crossing Inventory for new crossings. Therefore, paragraph (a)(3) requires primary operating railroads to submit accurate and complete Inventory Forms (or their electronic equivalent) to the Crossing Inventory for new crossings through which they operate. However, FRA strongly encourages primary operating railroads to work with State agencies to obtain crossing data the State maintains.

Consistent with the addition of paragraph (b) to § 234.405 as applied to previously unreported crossings (discussed above), FRA added a new paragraph (b) to this section in the final rule to address the situation in which multiple operating railroads operate trains on separate tracks through the same highway-rail or pathway crossing. Paragraph (b) requires multiple operating railroads that operate on separate tracks through the same highway-rail or pathway crossing to assume responsibility for reporting certain crossing data directly to the Crossing Inventory consistent with the Inventory Guide. This crossing data includes railroad-specific train count and train speed data, as well as railroad-specific location data such as the milepost location, railroad subdivision, and railroad division data. However, the primary operating railroad is still required to submit an accurate and complete Inventory Form, or its electronic equivalent, to the Crossing Inventory for the crossing, which includes train count and train speed data that is specifically related to the primary operating railroad's train operations.

Consistent with paragraph (c) of § 234.405 as applied to previously unreported crossings, paragraph (c) of this section establishes a requirement that each operating railroad must provide written notification to the FRA Associate Administrator, if the primary operating railroad has not submitted a

completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for a new highway-rail or pathway crossing. Again, this provision is intended to implement paragraph (a)(2) of Section 20160, which states that each railroad carrier must ensure another railroad carrier that operates through the crossing submits crossing data for new highway-rail and pathway crossings to the Crossing Inventory.

Unless the primary operating railroad has provided a written statement to the FRA Associate Administrator, in accordance with paragraph (d) of this section, certifying that it requested State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data which the State agency has not yet provided, other operating railroads that operate through the new crossing will need to monitor the Crossing Inventory to confirm that the primary operating railroad has timely submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for the crossing. If an operating railroad discovers that the primary operating railroad has not submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for a new highway-rail or pathway crossing (which is not a temporary crossing) within six months of the date on which the crossing became operational or March 7, 2016, whichever occurs later, the operating railroad must provide written notification of this oversight to the FRA Associate Administrator. This written notification must include, at a minimum, the latitudinal and longitudinal coordinates of the new highway-rail or pathway crossing. If the operating railroad fails to provide written notification of this oversight to the FRA Associate Administrator, FRA may assess civil penalties against each operating railroad (including the primary operating railroad) that operates through a new crossing, which was not timely reported to the Crossing Inventory.

The AAR submitted comments expressing concern that the written notification requirement in paragraph (c) of this section would create confusion. In its comments, the AAR further asserted that a secondary railroad would have no way of knowing when a primary operating railroad opens a crossing because the primary operating railroad is not required to share this information. However, the installation of new highway-rail and pathway crossings necessarily involves coordination between the primary operating railroad and all other

operating railroads that operate trains through the crossing. At the very least, train crews for each operating railroad must be notified of changes in railroad operations that are necessary to accommodate construction work, such as slow orders. When the highway-rail or pathway crossing is complete, train crews will also need to be notified of required actions they must take upon approach to the crossing, such as sounding the locomotive horn to provide an audible warning for highway users. Therefore, it is reasonable to expect that each operating railroad will receive notification from the crossing owner whenever a new highway-rail or pathway crossing becomes operational. Upon receiving notification that a new highway-rail or pathway crossing has become operational, each operating railroad will need to monitor the Crossing Inventory to ensure that the new crossing is timely reported by the primary operating railroad.

Consistent with the addition of paragraph (d) to § 234.405 regarding the reporting of previously unreported crossings to the Crossing Inventory, FRA added a new paragraph (d) to this section allowing primary operating railroads to provide written notification that they have requested, and have not received, certain crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data. If written notification is provided under this provision, we will not hold the primary operating railroad responsible for failing to submit the crossing data it has requested from the appropriate State agency and not received. In addition, we will not require the other operating railroads that operate through the crossing to notify FRA that a completed Inventory Form (or its electronic equivalent) has not been submitted for the new crossing. However, the primary operating railroad must submit the requested crossing data to the Crossing Inventory within 60 days of receipt from the appropriate State agency.

#### Section 234.409 Submission of Periodic Updates to the Crossing Inventory

As proposed, provisions related to the periodic updating of information submitted to the Crossing Inventory were contained in paragraph (c) of proposed § 234.405. FRA moved these provisions to § 234.409 in this final rule and revised them to reflect consideration of comments received. We also made minor revisions to this section to include specific references to highway-rail and pathway crossings to reflect the two basic categories of

crossings for which data will be collected in the Crossing Inventory. This section is intended to implement paragraph (b)(1) of Section 20160, which requires railroad carriers to periodically report current information, including information about warning devices and signage as specified by the Secretary, to the Crossing Inventory concerning crossings through which they operate.

As proposed in § 234.405(c)(1), § 234.409(a) of this final rule requires each primary operating railroad to periodically update existing crossing data in the Crossing Inventory for each highway-rail and pathway crossing through which it operates consistent with the Inventory Guide. However, we do not require submission of these periodic updates for closed or grade-separated highway-rail and pathway crossings. FRA has determined that changes in crossing characteristics do not appear to have a significant impact on existing risk levels at closed or grade-separated crossings. Once the highway-rail or pathway crossing has been closed or grade-separated, there will not be any changes at the crossing (other than re-opening the crossing) that have a significant impact on crossing safety.

Paragraph (a) requires each primary operating railroad to submit up-to-date and accurate crossing data on a periodic basis to the Crossing Inventory for each highway-rail and pathway crossing (except grade-separated or closed crossings) through which it operates consistent with the Inventory Guide. The primary operating railroad must submit updated crossing data at least every three 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 March 7, 2016, whichever occurs later. For hard-copy submissions to the Crossing Inventory, this three-year period is measured from the date on which the most recent submission of data for the crossing was mailed to the Crossing Inventory by the primary operating railroad (or on behalf of the primary operating railroad). However, FRA recommends that the primary operating railroad submit an update to the Crossing Inventory as soon as practicable, if there is any significant change in train count or train speed data, as opposed to waiting for the next required three-year periodic update to report the change.

FRA extended the deadline for submitting initial periodic updates for existing highway-rail and pathway crossings to the Crossing Inventory in this final rule to three years from the last submittal or 12 months after the

final rule effective date, whichever is later (the NPRM provided for updates within three years from the last submittal or six months after effective date of final rule) to provide additional time for primary operating railroads to implement necessary changes to their crossing databases to ensure compatibility with FRA's new Web-based application for the Grade Crossing Inventory System (GCIS) system. We made this revision in response to comments requesting additional time within which to comply with the final rule. FDOT submitted comments recommending that the final rule should allow for at least a six-month period for State agencies and railroads to address issues that will result from subjecting existing records to new validation rules. On the other hand, the AAR submitted comments recommending that the final rule effective date should be at least three years from the date on which the final rule is published to accommodate modifications that railroads and State agencies will need to make to crossing databases they maintain to comply with the reporting and updating requirements of this rule.

FRA notes that primary operating railroads will have at least 14 months from the publication date of this final rule to prepare for the submission of their initial required periodic updates to the Crossing Inventory. Moreover, the deadline for submitting required periodic updates is directly related to the date on which the primary operating railroad last submitted data for the crossing to the Crossing Inventory. Therefore, railroads that have recently submitted updates to their crossing data in the Crossing Inventory will have close to three years to prepare for the submission of their initial required periodic updates.

FRA received comments from LaDOTD recommending that the final rule require submission of periodic updates on a five-year cycle, as opposed to every three years. However, LaDOTD did not submit any evidence to support the longer reporting period. On the other hand, the CPUC submitted comments recommending that we should encourage railroads to provide updates to train counts and train speed when they make significant operational changes. In making this recommendation, the CPUC noted that errors in the average count or maximum speed of trains can result in significant inaccuracies, especially when used in conjunction with the DOT Accident Prediction Formula.

In the absence of evidence that a three-year cycle for the submission of periodic updates to the Crossing

Inventory will pose an undue burden on primary operating railroads, FRA retained the requirement to submit periodic updates at least every three years. Section 20160 directs the Secretary to establish requirements for the periodic updating of the Crossing Inventory on either an annual basis or as otherwise specified by the Secretary. The three-year cycle for submitting periodic updates to the Crossing Inventory, which paragraph (a) of this section established, is intended to balance the updating burden imposed on primary operating railroads with the benefits derived from having up-to-date and accurate crossing data in the Crossing Inventory, such as improved grade crossing safety analyses.

FRA also received comments from NCDOT recommending that the final rule be revised to require submission of periodic updates to the Crossing Inventory for grade-separated crossings at least every six years (or possibly every 12 years) to coincide with the three-year periodic updates that must be submitted for highway-rail and pathway grade crossings. Because FRA has found that changes in crossing characteristics do not appear to have a significant impact on existing risk levels at grade-separated crossings, we did not adopt this recommendation.

FRA received a number of comments recommending who FRA should consider the appropriate party required to submit periodic updates of crossing data to the Crossing Inventory. The BRS submitted comments expressing strong support for requiring the primary operating railroad to submit updated crossing data to the Crossing Inventory, especially because FRA has noted its lack of oversight authority with regard to the reporting of crossing data by State agencies. FDOT submitted comments recommending that railroads be required to coordinate with State agencies to obtain State-maintained crossing information for data fields that States are being asked to update on a voluntary basis, as reflected in Appendix B to the Inventory Guide. NCDOT submitted comments recommending that FRA ask State agencies to voluntarily submit crossing data to the Crossing Inventory for data fields on the Inventory Form historically completed by State agencies within three to six months after the primary operating railroad submits crossing data to the Crossing Inventory. Tavla Solutions submitted comments recommending that the GCIS system be designed to facilitate electronic communication with State agencies, especially with respect to data fields on the Inventory Form that have

traditionally completed by State agencies.

The ICC submitted comments recommending that FRA require railroads to continue to provide crossing data updates to the appropriate State agencies for incorporation into the Crossing Inventory. In the alternative, the ICC noted that a mechanism could be developed to provide notice to the appropriate State agency that the primary operating railroad has submitted an update to the Crossing Inventory. While noting that a similar mechanism could be developed to notify the primary operating railroad whenever State agencies submit updated crossing data to the Crossing Inventory, the ICC asserted that this process would be preferable to that outlined in the proposed rule because the appropriate State agency will know whenever a new crossing is added to the Crossing Inventory.

FRA also received comments from the CPUC recommending sending notifications to the appropriate State agency with jurisdiction over grade crossing safety and the operating railroad(s) responsible for submitting crossing data to the Crossing Inventory whenever updated data is posted to the Crossing Inventory. In the alternative, the CPUC recommended that the GCIS system should allow Crossing Inventory users to generate reports that show all changes made during a specified time period, such as the last month, quarter, or year.

After consideration of these comments, FRA has decided to retain the process in the proposed rule wherein the primary operating railroad (and, as further discussed below, other operating railroads) submit updated crossing data directly to the Crossing Inventory. In response to comments the BRS submitted, although FRA previously stated it did not have authority to require States to report, upon further consideration FRA believes that Section 20160 does give the Secretary authority to require States to report and update highway-rail and pathway crossing information in the Crossing Inventory. Therefore, DOT may issue regulations in the future that address State reporting to the Crossing Inventory, which are based upon this existing statutory mandate. However, in the interim, FRA encourages primary operating railroads to send copies of their crossing data to the appropriate State agency responsible for grade crossing safety when they submit crossing data to the Crossing Inventory. As reflected in Appendix B to the Inventory Guide, data fields on the Inventory Form that State agencies have

historically completed have generally been assigned to State agencies for updating on a voluntary basis. Therefore, State agencies are encouraged to submit updates to these data fields at least every three years.

We have not designed the current version of the GCIS system to provide email notification or to facilitate electronic communication between State agencies and the primary operating railroad whenever crossing data related to a highway-rail or pathway crossing is submitted to the Crossing Inventory. However, we have configured the GCIS system to allow Crossing Inventory users to download crossing data for multiple crossings or individual crossings. This functionality will allow State agencies and operating railroads to verify that new or previously unreported crossings have been reported to the Crossing Inventory and that required updates have been submitted by the primary operating railroad. In addition, the GCIS system has been designed to allow Crossing Inventory users to generate reports showing all changes that have been made in the Crossing Inventory during a specified time period.

The CPUC submitted comments recommending that there be a process for resolving conflicts that may arise due to State agencies and railroads providing conflicting data for the same data field. To address this potential concern, a private citizen submitted comments proposing that the Crossing Inventory be designed to reflect two entries for data fields for which conflicting data was submitted—one entry for data the primary operating railroad submits and the other entry for data the State submits. The commenter believes that by adopting this approach, the Crossing Inventory could flag conflicting data and record the date on which the data was submitted to the Crossing Inventory, but not allow the crossing data to be overridden by another entity.

The AAR submitted comments recommending that FRA address the possibility that one entity could incorrectly modify or nullify a data field assigned to another entity for updating purposes. FRA also received comments from a private citizen, the Iowa Department of Transportation, the Minnesota Department of Transportation, and NCDOT recommending that railroads be prohibited from overwriting existing highway data and State agencies be prohibited from overwriting existing railroad data in the Crossing Inventory. In addition, LaDOTD recommended that there be a process in place for resolving

discrepancies between States and railroads.

In response to these comments, we revised Appendix B to the Inventory Guide to identify which data fields on the Inventory Form must be updated by the primary operating railroad for purposes of the three-year periodic update and which data fields State agencies are being asked to update on a voluntary basis. As a result, there should be fewer potential conflicts between the State agency and the primary operating railroad regarding the appropriate data for a specific data field since the entity responsible for updating the data field is ultimately responsible for ensuring the accuracy of the data submitted for that field. While the historical records associated with each highway-rail and pathway crossing will reflect changes in data that are submitted to the Crossing Inventory by the State agency and the primary operating railroad (and, in some cases, each operating railroad), the GCIS system has not been designed to reflect separate entries for an individual data field on the Inventory Form. Nor has the GCIS system been designed to prohibit entities that are authorized to submit crossing data to the Crossing Inventory from submitting revised data for existing crossing records. However, in the event that disputes arise over the accuracy of crossing data submitted to the Crossing Inventory, FRA will provide assistance upon request.

Consistent with FRA's addition of paragraph (b) to §§ 234.405 and 234.407, we added paragraph (b) to this section to address submission of periodic updates by multiple operating railroads that operate trains on separate tracks through the same highway-rail or pathway crossing. For highway-rail and pathway crossings where multiple operating railroads operate trains on separate tracks through the crossing, paragraph (b) requires each operating railroad to periodically submit up-to-date and accurate crossing data for certain specified data fields on the Inventory Form to the Crossing Inventory consistent with the Inventory Guide. These data fields include railroad-specific train count and train speed data fields, as well as the milepost location, railroad subdivision, and railroad division data fields. Each operating railroad must submit these periodic updates at least every three years from the date of the most recent submission of data for the crossing by that operating railroad, or by March 7, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period will be measured from mailing date of the most recent

submission of data by the operating railroad (or on behalf of the operating railroad). However, if there is a significant change in train count or train speed data, FRA recommends that the operating railroad submit an update to the Crossing Inventory, as opposed to waiting for the next required three-year periodic update.

Consistent with paragraph (c) of §§ 234.405 and 234.407, paragraph (c) of this section establishes a requirement that each operating railroad must provide written notification to the FRA Associate Administrator if the primary operating railroad fails to timely submit up-to-date crossing data to the Crossing Inventory for a highway-rail or pathway crossing (other than a grade-separated crossing) through which it operates. This provision is intended to implement paragraph (b)(1)(B) of Section 20160, which states that each railroad carrier must ensure updated crossing information is periodically submitted to the Crossing Inventory by another railroad carrier that operates through the crossing.

If the primary operating railroad fails to submit up-to-date crossing data to the Crossing Inventory for a highway-rail grade crossing or pathway grade crossing within three years from the date of its last submission of crossing data to the Crossing Inventory for that crossing or March 7, 2016, whichever occurs later, each operating railroad that operates through the crossing must provide written notification of this oversight to the FRA Associate Administrator. This written notification must include, at a minimum, the Inventory Number for each highway-rail and pathway crossing through which it operates that was not timely updated by the primary operating railroad.

#### Section 234.411 Changes Requiring Submission of Updated Information to the Crossing Inventory

Paragraph (d) of proposed § 234.405 addressed changes requiring submission of updated information to the Crossing Inventory. In this final rule, FRA moved those provisions to § 234.411. Specifically, proposed § 234.405(d) is now § 234.411(a) and proposed § 234.405(e) is now paragraphs (b) and (c) of this section.

Paragraph (a) contains updating requirements for the sale of a highway-rail or pathway crossing. This provision implements paragraph (b)(2) of Section 20160, which requires each railroad carrier that sells a crossing or any part of a crossing to report to the Secretary current information concerning the change in ownership of the crossing

within three months of the date of sale, or as otherwise specified in regulations.

Paragraph (a) requires any railroad that sells all, or part, of a highway-rail or pathway crossing to submit updated ownership data to the Crossing Inventory within three months of the date of sale or March 7, 2016, whichever occurs later, in accordance with § 234.403. In this final rule, FRA has provided additional flexibility in the reporting of crossing sales by extending the reporting deadline to the latter of three months after the date of sale or 12 months after the final rule effective date. This will provide additional time for operating railroads to implement necessary changes to their crossing databases prior to the submission of updated crossing ownership data to the Crossing Inventory.

FRA received comments from Denver RTD recommending that the final rule confirm that the “date of sale” referenced in paragraph (a) of this section refers to the date title passes, not the date a purchase and sale agreement has been executed. In response to this comment, FRA confirms that the “date of sale” in paragraph (a) of this section means the date title is transferred.

A railroad that sells all, or part, of a highway-rail or pathway crossing should consult the Inventory Guide for guidance on reporting the crossing sale to the Crossing Inventory. In addition, FRA strongly recommends that the primary operating railroad submit updated crossing data for all of the data fields Appendix B to the Inventory Guide assigns to railroads within six months of the date on which the crossing was sold.

The rule requires the primary operating railroad to submit a periodic update to the Crossing Inventory for the recently acquired highway-rail or pathway crossing to the Crossing Inventory under § 234.409 within three years of the date on which the last periodic update for the crossing was submitted to the Crossing Inventory. The report of crossing sale by the previous owner does not constitute a periodic update and therefore cannot be used for purposes of determining the date on which the next periodic update required by § 234.409 will become due for the recently acquired highway-rail or pathway crossing.

Paragraph (b) of this section contains the reporting requirements applicable to the closure of a crossing (these requirements were included in proposed § 234.405(e) of the NPRM). When a highway-rail or pathway crossing is closed, the primary operating railroad is required to submit an Inventory Form (or its electronic

equivalent) to the Crossing Inventory that reflects the closure of the crossing within three months of the date on which the crossing is closed or March 7, 2016, whichever occurs later. We extended this deadline from the NPRM proposed three month deadline to allow reporting up to 12 months after the final rule’s effective date. This will provide additional time for primary operating railroads to implement necessary changes to their crossings databases prior to the submission of updated crossing data to the Crossing Inventory. The primary operating railroad should consult the Inventory Guide for guidance on reporting the closure of a highway-rail or pathway crossing to the Crossing Inventory.

Paragraph (c) in the final rule requires the primary operating railroad to submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory which reflects updated crossing information consistent with the Inventory Guide and § 234.403, when there is a change in crossing surface or a change in warning device at a public highway-rail grade crossing within three months of the date the change was implemented. This is a change from the NPRM proposed requirement which would have required the reporting of a change in crossing surface or change in warning device at any public or private highway-rail or pathway crossing to the Crossing Inventory. The scope of this proposed requirement has been limited in the final rule because railroads are not required to submit data on crossing surface or crossing warning devices for private highway-rail grade crossings, pathway crossings, or grade-separated crossings. However, FRA strongly encourages railroads to voluntarily report data on train-activated warning devices, crossing signs, and crossing surface at private highway-rail grade crossings and pathway crossings to the Crossing Inventory. The National Transportation Safety Board (NTSB) recently issued Safety Recommendation R-14-48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. FRA also received comments in support of requiring railroads to complete the entire Inventory Form for private highway-rail grade and pathway crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory.

Paragraph (c)(2) defines a “change in warning device” as “the addition or removal of a crossbuck, yield or stop sign, flashing lights, or gates at a public

highway-rail grade crossing.” Consistent with the NPRM, a “change in warning device” means a change in the type of warning device installed at the crossing as opposed to a modification of an existing crossing device or replacement of a damaged or missing warning device. For example, the addition of cantilevered lights to a crossing that is already equipped with post-mounted flashing lights would be considered a “change in warning device” for the purpose of this provision. The installation of two-quadrant, three-quadrant, or four-quadrant gate systems where none were previously installed, or where existing warning systems are upgraded, would also be considered a “change in warning device” for the purpose of this provision. However, a change from incandescent to LED flashing lights would not be considered a “change in warning device” for the purpose of this provision.

Prior to the submission of updated information concerning a change in crossing surface or change in warning device, the primary operating railroad should consult the Inventory Guide for guidance. FRA revised the Inventory Guide to clarify that, when there has been a change in crossing surface (such as replacing an asphalt crossing surface with a concrete crossing surface) or a change in warning device at a public highway-rail grade crossing, the primary operating railroad must update all data fields in Parts II and III of the Inventory Form. However, as stated in paragraph (c)(2), primary operating railroads are not required to report changes in warning devices to the Crossing Inventory that will be in place for a period not to exceed six months.

In the preamble to the proposed rule, FRA solicited comments on the proposed requirement to report changes in crossing surface and changes in warning devices to the Crossing Inventory. The AAR submitted comments in support of the proposed requirement to report changes in crossing surface and changes in warning devices, as well as crossing closures, to the Crossing Inventory within three months of the date on which either the change is made or the crossing is closed. The CPUC submitted comments recommending that the proposed requirement to report changes in crossing surface and changes in warning devices be revised to require the primary operating railroad to report these changes to the appropriate State agency within 30 days. The CPUC then recommended that the State agency should be given 60 days within which to report the change to the Crossing Inventory. FRA also received comments

from the ICC recommending that the reporting of changes to crossing characteristics be expanded to include changes to any data field element that feeds into the national risk assessment tool (PCAPS) utilized by FRA.

On the other hand, FRA received comments from NCDOT recommending that the final rule be revised to provide a six-month timeframe for the reporting of crossing closures, changes in crossing surface, and changes in warning device at highway-rail and pathway crossings. In making this recommendation, NCDOT asserted that the proposed three-month timeframe will not provide sufficient time to generate the required reports for the Crossing Inventory and may result in an undue financial burden, especially for State agencies that agree to submit crossing data to the Crossing Inventory on behalf of operating railroads. In addition, Denver RTD submitted comments recommending that the final rule be revised so that FRA will not hold the primary operating railroad responsible for failing to timely report changes in crossing characteristics if the appropriate State agency fails to notify the primary operating railroad of a change that has been made to the crossing.

After considering these comments, FRA decided to retain the requirement that the primary operating railroad must report changes in crossing surface and changes in warning devices directly to the Crossing Inventory within three months. We retained the three-month period for reporting changes in crossing surface and changes in warning devices by the primary operating railroad in the final rule to be consistent with the requirement in paragraph (a) of this section to report the sale of all, or part, of a highway-rail or pathway crossing to the Crossing Inventory within three months. FRA notes that changes in crossing surface and changes in warning devices are generally planned well in advance and require coordination between the crossing owner and the State agency during the planning process. Therefore, we recommend that State agencies which agree to submit crossing data on behalf of operating railroads include an additional step in their planning processes for the reporting of changes in crossing surface and changes in warning devices to the Crossing Inventory to ensure the timely reporting of these changes.

With regard to the concern expressed by Denver RTD related to FRA enforcement activity in situations in which a State or local government has installed or removed a yield or stop sign at a public highway-rail grade crossing

without notifying the primary operating railroad, FRA has prosecutorial discretion to forgo enforcement if the primary operating railroad fails to submit updated crossing data to the Crossing Inventory within three months of the installation or removal of a yield or stop sign because the State or local entity installed or removed the sign without notifying the primary operating railroad. However, the primary operating railroad must submit up-to-date and accurate crossing data to the Crossing Inventory for each data field Appendix B to the Inventory Guide assigns to railroads for updating within three months of the date on which the primary operating railroad becomes aware that the State or local government has installed (or removed) a yield or stop sign at the crossing.

#### Section 234.413 Recordkeeping

Denver RTD submitted comments on the provisions contained within this section in the proposed rule recommending that FRA defer to State laws governing the public’s right of inspection of public records, with respect to the accessibility, format, and timeframes for retaining railroad records of compliance with the requirements of this subpart. However, the recordkeeping requirements contained in this section reflect the exercise of FRA’s longstanding statutory authority to require railroads to produce, and make available for FRA inspection, relevant records of compliance with Federal safety regulations. Therefore, because we intend this section to require operating railroads to make their records of compliance reasonably available to FRA inspectors for inspection and enforcement purposes, we did not revise this section in the final rule.

#### Section 234.415 Electronic Recordkeeping

We did not revise this section in the final rule. FRA received comments on the electronic recordkeeping provision in the proposed rule from Denver RTD recommending that electronic records be retained solely in non-native format so crossing data submitted to FRA cannot be changed. FRA agrees that electronic records of crossing data submitted to the Crossing Inventory must be retained in a manner that will not allow subsequent changes to be made to the original electronic record. However, FRA believes that paragraph (a) of this section, requiring the railroad to adequately limit and control accessibility to electronic records of crossing data they have submitted to the Crossing Inventory adequately addresses

this concern. In addition, FRA notes that the GCIS system will maintain independent records of crossing data that was submitted electronically to the Crossing Inventory, which FRA can use for verification purposes if necessary.

Denver RTD also submitted comments asserting that the requirements contained in paragraph (a) of this section may discourage electronic recordkeeping by requiring access, safety, and other control provisions that are not required for paper recordkeeping and do not appear to be consistent with current technology. For example, Denver RTD stated it did not understand the purpose of the dedicated terminal paragraph (a)(2) of this section requires. In addition, Denver RTD suggested that FRA consider email capability as relevant as fax and printer connections for purposes of paragraph (a)(3) of this section. FRA acknowledges that the electronic recordkeeping requirements in this section are not identical to the recordkeeping requirements in § 234.413, which generally apply to the retention of hard-copy records. However, the electronic recordkeeping requirements in this section are consistent with requirements in other FRA regulations that also permit electronic recordkeeping, such as § 234.315 of this part.

With respect to Denver RTD's specific comment asking about the purpose of the dedicated terminal required by paragraph (a)(2) of this section, we retained the requirement in the proposed rule that requires railroads to make a computer available at the office where the railroad reporting officer conducts his/her official business and at each location the railroad designates as having a copy of any required crossing records to ensure FRA inspectors are granted access the electronic records stored at these locations. FRA agrees that it would be helpful if the computer made available to FRA inspectors also has email capability so the operating railroad could also email any requested documents to FRA inspectors upon request. However, to reduce the burden on operating railroads that may wish to retain electronic records under this section, we did not revise the final rule to include an additional regulatory provision requiring an operating railroad to provide a computer with email capability. The operating railroad can provide its electronic records to FRA inspectors by email without the need for an additional regulatory provision/requirement.

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

FRA revised this appendix by adding recommended civil penalties for specific violations of the reporting and updating requirements contained in subpart F of this part. For example, we added recommended civil penalties for failure of a Class I railroad to submit crossing data to the Crossing Inventory electronically, as well as failure by the primary operating railroad to timely submit accurate and complete Inventory Forms (or their electronic equivalent) to the Crossing Inventory for new and previously unreported crossings.

Denver RTD responded to FRA's invitation to submit recommendations on appropriate civil penalty amounts it should issue for non-compliance with the requirements of this subpart. In its comments, Denver RTD stated the civil penalties established for non-compliance with the reporting and updating requirements contained in this subpart should not be excessive since they will be applied equally to Class I railroads and publicly operated transit agencies. Thus, Denver RTD recommended that failure to timely submit Inventory Forms (or their electronic equivalent) to the Crossing Inventory be treated as recordkeeping violations with associated civil penalties in the range of \$1,000–\$2,000.

While FRA agrees that we should not establish excessive civil penalty amounts for violations of the reporting and updating requirements in this subpart, we believe it is reasonable to establish standard civil penalties for violations of this subpart which are consistent with civil penalties FRA established for failure to comply with the reporting requirements in 49 CFR parts 225 and 234. Therefore, primary operating railroads and other operating railroads that fail to timely submit Inventory Forms (or their electronic equivalent) to the Crossing Inventory may be subject to a \$2,500 standard civil penalty per crossing per day. However, after FRA issues a civil penalty, FRA may adjust or compromise the initial penalty claim(s) based on a wide variety of mitigating factors, which include the severity of the safety or health risk presented, the entity's compliance history, the entity's ability to pay the assessed civil penalty, and evidence that the entity acted in good faith.

#### *FRA Guide for Preparing U.S. DOT Crossing Inventory Forms*

The ICC submitted comments recommending that the Inventory Form should be submitted to an independent third party that specializes in data and

asset management inventory systems so that current best practices may be incorporated. Then, once the desired data elements have been identified, defined, and responsibility assigned, several alternative versions of a new and improved inventory form which is consistent with modern asset management information systems could be created for approval. In the alternative, the ICC recommended that FRA delete all data fields on the Inventory Form it proposed as "optional," unless it can make a business case justifying the time and expense to retain the data field.

FRA appreciates the recommendation to recreate the Inventory Form by evaluating each proposed data field for its continued usefulness and incorporating current best practices. However, FRA has decided to instead make revisions to the Inventory Form consistent with other comments the general public and all affected parties who have reviewed and evaluated it submitted. FRA notes that the Inventory Form was extensively vetted with State agencies and railroads prior to the issuance of the NPRM in this rulemaking.

We retained most of the optional data fields on the Inventory Form. Railroads and States are not required to submit data for these data fields. Therefore, railroads and States are free to determine whether the safety benefits associated with the collection and evaluation of additional crossing information railroads and States voluntarily provide is justified by the time and expense associated with the collection and retention of this data.

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

In the proposed rule, FRA requested comments on whether we should retain the proposed Instructions in the Header of the Inventory Form. While the majority of commenters generally supported retaining Instructions in the Header of the Inventory Form, several commenters stated the proposed Instructions in the Header of the Inventory Form conflicted with the instructions in the Inventory Guide for submission of the Inventory Form.

FRA agrees the proposed Instructions at the top of the Inventory Form were inconsistent with the guidance the Inventory Guide provided on the submission of Crossing Inventory Forms. Therefore, we revised the Instructions at the top of the Inventory Form to be consistent with the guidance in the Inventory Guide.

The CPUC submitted comments recommending that FRA also revise the

Instructions at the top of the Inventory Form to direct Crossing Inventory users to complete the Submission Information section at the end of the form. However, NCDOT recommended that FRA remove the Submission Information section from the Inventory Form and require Crossing Inventory users to submit hard-copy Inventory Forms with a cover letter that provides the identity and contact information for the Crossing Inventory user.

While FRA agrees that revising the Instructions at the top of the Inventory Form would be beneficial, we decline to require Crossing Inventory users to submit cover letters with their hard-copy Inventory Forms in this final rule. We believe it is more burdensome to require Crossing Inventory users to prepare and submit a cover letter than to require Crossing Inventory users to complete four data fields at the bottom of the hard-copy Inventory Form. Therefore, we revised the Instructions to direct Crossing Inventory users to complete the Submission Information section at the end of the Inventory Form when submitting crossing data by hard copy. However, Crossing Inventory users will not be required to complete the Submission Information section when they submit crossing data electronically to the Crossing Inventory. The GCIS system has been designed to retain a record of the identity of the Crossing Inventory user, along with the date on which data is electronically submitted to the Crossing Inventory.

AAR also submitted comments recommending that FRA explain which data fields on the Inventory Form railroads must complete and which data fields State agencies must complete. In response to this recommendation, the Introduction to the Inventory Guide explains which Parts of the Inventory Form need to be completed for the initial reporting of crossing data for new and previously unreported highway-rail and pathway crossings. Appendix B to the Inventory Guide also contains a Responsibility Table which shows the data fields that primary operating railroads must update, as well as the data fields that State agencies are assigned for voluntary updating in the Crossing Inventory.

#### Header Information

##### Revision Date

We retained the Revision Date data field (Item A in the Header of the Inventory Form) as proposed. Since the date the Inventory Form is submitted to the Crossing Inventory will often differ from the date changes took effect at the crossing, NCDOT and the ICC submitted

comments recommending that we revise the Revision Date data field to show the date the changes in the Inventory Form took effect. However, the Revision Date data field is intended to show the date the Crossing Inventory was updated to reflect changes at the crossing. By requesting that reporting entities provide the date on which the Crossing Inventory Form was mailed or electronically submitted, the Crossing Inventory should contain a reasonably accurate record of the dates on which the Crossing Inventory was updated. This will assist operating railroads in determining when future periodic updates will become due.

NCDOT also recommended that the Crossing Inventory should reflect separate submission dates for crossing data railroads supply and crossing data State agencies supply. As explained above, we designed the GCIS system to record the date crossing updates are electronically submitted to the Crossing Inventory, as well as the identity of the reporting entity who submitted the update. With respect to hard copy submissions, the Crossing Inventory will reflect the date contained provided in the Revision Date data field for each update.

##### Reporting Agency

FRA retained the Reporting Agency data field (Item B in the Header of the Inventory Form) as proposed.

The CPUC submitted comments recommending that we eliminate the "Other" box from the "Reporting Agency" data field on the Inventory Form. Instead of allowing local agencies to submit crossing data directly to FRA, the CPUC stated that the local agency should be instructed to provide updated crossing data to the State agency and/or the railroad for submission to the DOT Crossing Inventory.

FRA regulations in 49 CFR part 222 (49 CFR 222.49(a)), allow local governments that meet the definition of a "public authority" to file Inventory Forms with FRA if the State agency and railroad fail to timely do so. Therefore, we retained the "Other" box in the Reporting Agency data field to reflect FRA entry of updated crossing data for quiet zone-related purposes. The "Other" box is only intended for FRA use. Accordingly, to avoid improper use of the "Other" box, the GCIS system will not permit non-FRA users to check the "Other" box when submitting crossing data electronically.

The CPUC expressed strong support for retaining the "Transit" box in the "Reporting Agency" data field due to the large number of crossings in California that also have urban rapid

transit tracks and/or urban rapid transit operations through the same crossing. However, the CPUC and Denver RTD encouraged FRA to include a discussion in the Inventory Guide on whether (and how) transit agencies are required to submit data for crossings subject to urban rail transit operations. NCDOT also requested clarification on the application of the proposed crossing reporting requirements to transit agencies.

We retained the "Transit" box in the "Reporting Agency" data field. However, we added a discussion in the Inventory Guide on urban rapid transit operators who are subject to the reporting and updating requirements in the Crossing Inventory final rule. (The Section-by-Section Analysis of the definition of "operating railroad" in § 234.401 also contains a detailed discussion on the application of the reporting and updating requirements of this subpart to urban rapid transit operators.) Urban rapid transit operators who submit crossing data to the Crossing Inventory (whether voluntarily or otherwise) should therefore check the "Transit" box in the "Reporting Agency" data field.

##### Reason for Update

In the proposed rule, FRA requested comments on whether the rule should give railroads and States the option to select more than one reason for submitting data to the Crossing Inventory. FRA received comments from four State transportation agencies and the AAR expressing support for allowing railroads and States to select more than one reason for submitting crossing data to the DOT Crossing Inventory. The AAR reasoned that allowing States and railroads to select more than one reason for submitting crossing data to the DOT Crossing Inventory would allow them to capture more than one change in a single submittal.

However, FRA also received comments from the ICC and FDOT recommending that FRA limit railroad and State users to selection of one reason for update. After considering the comments submitted, FRA decided to continue to require railroad and State users to select only one reason for update per submission. This will ensure historical records in the Crossing Inventory continue to reflect the primary reason for each data submission.

FRA also received comments from LaDOTD and Tavla Solutions recommending that the Inventory Guide should indicate which entities have authority to submit the various types of

updates in the "Reason for Update" data field. In response to this recommendation, we revised the Inventory Guide to state that only operating railroads should check the "New Crossing", "No Train Traffic", "Re-Open", and "Change in Primary Operating RR" boxes. However, all reporting entities may check the "Change in Data", "Date Change Only", "Closed", and "Admin. Correction" boxes.

*New Crossing:* The CPUC submitted comments recommending that the Inventory Guide description of the "New Crossing" box in the "Reason for Update" data field reference "open" crossings as opposed to "active" crossings. The CPUC noted that the term "active crossing" is often used to refer to crossings equipped with automatic warning devices such as flashing light signals and gates. Thus, use of this term could limit the intended scope of the "New Crossing" box in the "Reason for Update" data field. FRA agrees and adopted this recommendation.

*Closed:* LaDOTD and Tavla Solutions submitted comments stating that the removal of track, or otherwise disconnecting crossings from the main line, should cause all crossings on that segment of rail line to be classified as closed crossings. NCDOT submitted comments stating removal of the crossing surface or other situations that make it impossible to use the crossing (such as fencing) should qualify as closing the crossing. For purposes of the "Reason for Update" data field, the "Closed Crossing" box should be checked when the railroad tracks have been physically removed or each pathway or roadway approach to the crossing have been physically removed. However, the "Closed Crossing" box only should be checked in situations involving the permanent closure of a highway-rail or pathway crossing. The use of fencing to deter or otherwise prevent access to the crossing does not constitute closure of a crossing for purposes of the Crossing Inventory.

*No Train Traffic:* The CPUC submitted comments recommending that the "Abandoned" box be eliminated from the "Reason for Update" data field. In support of this recommendation, the CPUC stated that abandonment of the segment of track on which a crossing is located under the authority of the Surface Transportation Board, merely means the railroad is no longer required to provide railroad service on that track segment. It does not necessarily indicate that the crossing is no longer used or maintained.

However, FRA also received comments in support of retaining the "Abandoned" box in the "Reason for Update" data field. NCDOT submitted comments recommending that the "Abandoned" box be retained to capture data on highway-rail and pathway crossings that are located on abandoned track yet are still used by hi-rail and other authorized vehicles that access the railroad right-of-way.

FRA also received comments recommending that the "Out-of-Service/Inactive" box be removed from the "Reason for Update" data field. The AAR stated that FRA should remove the "Out-of-Service/Inactive" box because there are no fixed definitions of "out-of-service" or "inactive." The CPUC stated that the data collected would be unlikely to accurately reflect the physical or operational status of the crossing since rail lines are often placed back into service with little or no notification to authorities.

After considering the comments received, we removed the Abandoned and Out-of-Service/Inactive boxes from the "Reason for Update" data field on the final Inventory Form. However, FRA intends to continue to collect data regarding the operational status of crossings, as it may be useful to filter out crossings that are not subject to train traffic when conducting statistical analyses. Therefore, we added a new box titled, "No Train Traffic" to the "Reason for Update" data field on the Inventory Form to continue FRA's efforts to identify crossings that no longer have train traffic.

We strongly encourage railroads to update the Crossing Inventory to reflect changes to "No Train Traffic" status as soon as possible. However, it is important to note the "No Train Traffic" box/category is separate and distinct from the "Closed" box/category. The "Closed" box/category applies to crossings where the roadway approaches or railroad tracks have been physically removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. Also, as discussed in more detail in the Section-by-Section Analysis of § 234.411(b), the primary operating railroad must report the closure of a highway-rail or pathway crossing to the Crossing Inventory within three months.

*Re-Open:* The ICC submitted comments recommending that the "Re-Open" box be removed from the "Reason for Update" data field because the re-opening of crossings can be reported by checking the "Change in Data" box. However, FRA has decided to retain the "Re-Open" box in the "Reason for Update" data field to

continue FRA's efforts to capture accurate data on the status of formerly closed crossings or crossings that are placed back into active service.

The ICC also recommended that the final rule only allow State agencies to submit updates to the Crossing Inventory that reflect the re-opening of a formerly closed public crossing or a public crossing that was previously not subject to train traffic. However, as the Inventory Guide states, the primary operating railroad is responsible for providing updates to the Crossing Inventory showing the re-opening of a highway-rail or pathway crossing and that railroad should have ready access to up-to-date train traffic data for the crossing. While the primary operating railroad must report this change in operating status in the periodic update § 234.409(a) requires, we also strongly encourage the primary operating railroad to update the Crossing Inventory as soon as possible after a highway-rail or pathway crossing is placed back in service.

*Date Change Only:* While expressing concern that FRA should consider renaming the "Date Change Only" box in the "Reason for Update" data field, LaDOTD and Tavla Solutions stated the Inventory Guide fails to provide sufficient guidance for when this box should be checked. While we retained the title of this box as proposed, we changed the Inventory Guide to state the "Date Change Only" box should be checked to indicate the crossing data has not changed since the last update to the Crossing Inventory.

*Change in Primary Operating RR:* The CPUC submitted comments recommending that the "Operating RR Transfer" box in the "Reason for Update" data field be removed because the new primary operating railroad can check the "Change in Data" box and provide updated information. While we removed the "Operating RR Transfer" box from the Inventory Form in the final rule, we added a new box titled, "Change in Primary Operating RR". We added the "Change in Primary Operating RR" box to the Inventory Form to facilitate official notification of a change in primary operating railroad status that may result from the sale of a highway-rail or pathway crossing. The "Change in Primary Operating RR" box should also be checked as part of the periodic updating process, if there has been a change in the primary operating railroad since the last railroad submission to the Crossing Inventory.

*Admin. Correction:* FRA has decided to retain the "Admin. Correction" box in the "Reason for Update" data field despite comments from the ICC and

CPUC recommending that the “Admin. Correction” box either be eliminated or combined with the “Change in Data” box. The “Admin. Correction” and “Change in Data” boxes have separate and distinct purposes. The “Admin. Correction” box should be checked when a railroad or State user intends to correct crossing data that was previously submitted in error. However, a railroad or State user should check the “Change in Data” box when it intends to submit crossing data associated with an actual change in crossing characteristics that is not reflected by any other box in the “Reason for Update” data field.

LaDOTD and Tavla Solutions also submitted comments recommending that FRA allow railroads to check the “Admin Correction” box when reporting previously unreported crossings. However, previously unreported crossings are “new” to the Crossing Inventory. Therefore, the “New Crossing” box must be checked when reporting previously unreported crossings to the Crossing Inventory.

**Quiet Zone Update:** The ICC submitted comments recommending that the “Quiet Zone Update” box be removed from the “Reason for Update” data field because the “Change in Data” box could be checked when submitting quiet zone updates. However, FRA retained the “Quiet Zone Update” box to reflect FRA entry of Crossing Inventory data that has been submitted for quiet zone-related purposes. The “Quiet Zone Update” box is only intended for FRA use. Accordingly, the GCIS system will not allow users to check the “Quiet Zone Update” box when crossing data is submitted or updated electronically.

#### Part I, Location and Classification Information

The ICC submitted comments recommending that the maximum character limits reflected in various boxes on the Inventory Form be increased. In response to these comments, FRA designed the GCIS database to contain generally accepted database standards for maximum character limitations. In addition, we revised the Inventory Form by removing most of the maximum character limits that were specified for individual data fields.

#### City/Municipality

The ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users that they should provide the name of the city or municipality that is located closest to the crossing on the railroad line segment

in the “City/Municipality” data field for crossings that are not located within a city or municipality. We agree and have revised the Inventory Guide to instruct Crossing Inventory users to enter the name of the city or municipality along the rail line that is closest to the crossing if the crossing is not located within the boundaries of a city or municipality.

#### Street/Road Name & Block Number

A private citizen submitted comments recommending that Crossing Inventory users be allowed to provide a specific address for the “Street/Road Name & Block Number” data field, especially for private crossings, as opposed to a block number. The commenter stated that because first responders are generally dispatched to an address, the private citizen believes retention of specific addresses in the Crossing Inventory could improve response time to problems at grade crossing locations until dispatchers have access to the latitude and longitude coordinates that will be submitted in the next required periodic update. While we designed the GCIS system designed to accept a specific street address in this data field, we did not revise the Inventory Guide to advise Crossing Inventory users to provide a specific street address in this data field because highway-rail and pathway crossings do not have specific street addresses.

The ICC submitted comments recommending that the Street/Road Name data field be revised to include a subfield for the street name alias, such as the common name used locally or the name used by 911 system operators. Although we did not adopt this recommendation, State agencies may use the State Use data fields to record street name aliases associated with individual highway-rail crossings.

NCDOT submitted comments recommending that the Block Number subfield in the Street/Road Name data field be classified as optional. We agree and revised the Inventory Form based on this recommendation.

#### Highway Type & No.

NCDOT and the CPUC submitted comments recommending that FRA revise the Inventory Guide to include a reference to highways and roadways that are classified as “SR” in the list of highway types. FRA agrees that this revision would be beneficial and revised the Inventory Guide accordingly. In addition, since States generally determine highway type by using established criteria, we revised the Inventory Guide discussion of this data

field to defer to methods States use to designate highway type.

Do other railroads operate a separate track at crossing?

The CPUC submitted comments recommending that the Inventory Guide address submission of crossing data by operating railroads other than the primary operating railroad. Therefore, we have revised the final rule to specifically address this issue. Unless the “Yes” box has been checked in the “Do Other Railroads Operate a Separate Track at Crossing” data field, the primary operating railroad is the only operating railroad that is required to submit initial and updated crossing data for highway-rail and pathway crossings to the Crossing Inventory.

If the “Yes” box is checked in the “Do Other Railroads Operate a Separate Track at Crossing” data field and the primary operating railroad has submitted one or more railroad codes to identify the operating railroads that operate over separate tracks at the crossing, each operating railroad that operates through the highway-rail or pathway crossing must submit certain crossing data directly to the Crossing Inventory and then submit updates to that data every three years. (However, the primary operating railroad is still required to submit an accurate and complete Inventory Form, or its electronic equivalent, to the Crossing Inventory for the crossing, which includes train count and train speed data that is specifically related to the primary operating railroad’s train operations.) Please refer to the Inventory Guide for an explanation of the individual data fields that each operating railroad must complete.

#### RR Milepost

The CPUC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to measure the milepost location from the center of the highway-rail crossing. We did not adopt this recommendation. As long as the operating railroad adopts a consistent method for designating milepost locations, the milepost location the operating railroad submits should be sufficient.

The CPUC also recommended that FRA eliminate the “prefix” and “suffix” data subfields because this information appears to be intended for railroad use. In the alternative, the CPUC recommended that the “prefix” and “suffix” data subfields be put in a separate data field and not combined with milepost information. We decline to adopt this recommendation and retained the RR Milepost data field as

proposed. The prefix or suffix an operating railroad uses is relevant and useful information that can be used to distinguish between milepost locations on different territories or lines.

The ICC submitted comments recommending that the Inventory Form only capture milepost data to the hundredths of a mile, as opposed to the thousandths of a mile on the Inventory Form. Although we retained the RR Milepost data field as proposed, we modified the Inventory Guide to state that milepost data provided to the hundredths of a mile will be accepted.

#### Line Segment

The ICC submitted comments recommending that the Line Segment data field be a required data field rather than an optional data field. In addition, the ICC recommended that FRA add a Line Segment data field for State use. Although we retained the Line Segment data field as an optional data field, we revised the Inventory Guide to advise railroads to provide line segment information, if applicable. Railroads and States are also encouraged to use the Railroad Use and State Use data fields on the Inventory Form to record additional line segment data for individual highway-rail and pathway crossings.

#### Crossing Type

In the proposed rule, FRA requested comments on the proposed revision to the Inventory Form that would remove pedestrian crossings from the list of crossing types, yet allow railroads to select "Pathway, Ped." or "Station, Ped." as the crossing purpose. FRA received comments in support of these revisions from a number of State agencies, such as the CPUC, the Delaware Department of Transportation (DelDOT), and the Nevada Department of Transportation (NDOT). However, FRA also received comments from Denver RTD and the AAR expressing concern that the Inventory Guide failed to provide sufficient guidance on the appropriate classification of crossings previously classified as pedestrian crossings.

In its comments, the AAR stated the Inventory Guide fails to explain how crossings currently designated as "pedestrian" should be classified, for purposes of determining crossing type. Denver RTD requested guidance on whether FRA intended to collect data on the public/private status of pathway crossings. In response to these comments, we revised the Inventory Guide to provide definitions of public and private pathway crossings and public pedestrian station crossings to

provide assistance to railroads and State agencies on the proper classification of crossings that were formerly classified as "pedestrian crossings" for the Crossing Inventory.

FRA also received comments on the appropriate entity (State agency or railroad) it should hold responsible for submitting updates to the "Crossing Type" data field. LaDOT recommended that FRA hold State agencies responsible for submitting crossing data for this data field because railroads are unable to determine crossing type for crossings are located on the State/county/municipal system. Similarly, the AAR submitted comments recommending that State agencies have the exclusive authority to determine whether a highway-rail or pathway crossing should be classified as a public or private crossing. However, the ICC submitted comments recommending that State agencies have exclusive responsibility for submitting crossing type and crossing purpose updates for public crossings and the primary operating railroad have the exclusive responsibility to submit crossing type updates for private crossings.

As stated in the preamble to the proposed rule, FRA 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. In addition, as the Inventory Guide states, when Crossing Type is changed from Private to Public for a highway-rail grade crossing, we are asking the State agency to complete the remainder of the Inventory Form (or its electronic equivalent) for the affected crossing. The remainder of the Inventory Form reflects State-maintained public crossing information, including highway or pathway traffic control device data and public highway information.

#### Crossing Purpose

In the proposed rule, FRA requested comments on the newly added "Crossing Purpose" data field on the Inventory Form, which is intended to allow railroads and States to identify highway-rail crossings, pedestrian crossings located within railway stations, and other pedestrian/pathway crossings. Denver RTD submitted comments recommending that FRA change the title of the "Highway Vehicle" box in the "Crossing Purpose" data field to "Highway" since highway-rail crossings are, by definition, subject

to vehicular use. The CPUC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to check the "Highway Vehicle" box if the highway-rail crossing is equipped with both vehicular and pedestrian warning devices.

In the final rule we changed the title of the "Highway Vehicle" box in the "Crossing Purpose" data field to "Highway" on the Inventory Form. In addition, we added a description of the crossings that should be classified as having a "Highway" crossing purpose to the Inventory Guide. (While crossings classified as having a "Highway" crossing purpose may be equipped with vehicular and pedestrian warning devices, a crossing that is dedicated for the use of non-vehicular traffic should not be classified as having a "Highway" crossing purpose).

As for the "Pathway, Ped., Other" box in the "Crossing Purpose" data field, Denver RTD submitted comments recommending that the title of the box be changed to "Pathway" since pathway crossings are, by definition, subject to pedestrian use. Denver RTD also asserted that use of the term "Other" in the title was confusing. We agree and changed the title of the "Pathway, Ped., Other" box to "Pathway, Ped." on the Inventory Form to assist Crossing Inventory users seeking guidance on the appropriate classification of crossings that were formerly classified as pedestrian crossings and are not located within a railway station.

While stating there is no need to distinguish between pedestrian crossings located within a station versus pedestrian crossings located outside of a station, the ICC submitted comments recommending that FRA eliminate the "Station, Ped." box from the "Crossing Purpose" data field. However, Denver RTD submitted comments recommending the "station crossing" box be retained, yet defined, so that it can be used to collect passenger transit data. (For example, Denver RTD requested guidance on whether FRA would classify a station crossing that is to be utilized only by fare-paying passengers and thus not otherwise open to or available for general public use as a private or public crossing).

FRA retained the "Station, Ped." box on the Inventory Form to capture crossing data related to passenger stations. However, we revised the Inventory Guide to include a definition of the type of pathway crossing that should be classified as "Station, Ped." on the Inventory Form. We also revised the Inventory Guide to advise Crossing Users to classify pedestrian station

crossings as public crossings on the Crossing Type data field discussed above.

#### Public Access

NCDOT and the AAR submitted comments requesting additional guidance on what would constitute a private crossing with public access for purposes of the Crossing Inventory.

NCDOT recommended that the Inventory Guide include a privately maintained road that serves a housing development of multiple property owners as an example of a private crossing with public access. Otherwise, NCDOT believes there may be inconsistent classification of these private crossings by reporting entities. FRA agrees that additional guidance would be helpful, so we revised the definition of public access in the Inventory Guide and added a privately-owned road that serves a residential housing development (of at least five dwellings) as another example of a private crossing with public access.

The AAR stated that access for expected guests, including utilities and public services on private property, should not constitute public access for purposes of this data field. Instead, the AAR recommended that “public access” designations be restricted to situations where the public has an easement across a private crossing. However, the Public Access data field is intended to capture data for private highway-rail and pathway crossings where the railroad tracks intersect with a private road open to public travel. If we limited the definition of “public access” to situations involving public access easements, this data field would fail to capture private crossings where the public has a reasonable expectation of being able to travel through the private crossing without restrictions.

Tavla Solutions also submitted comments asserting that the Inventory Guide has a different definition for the term “public access” than the standard definition of this term used in the real estate context. Tavla Solutions further asserted that the definition in the Inventory Guide may differ from State law definitions of this term. After considering these comments, FRA revised the Inventory Guide to make the definition of “public access” consistent with the definition in the Federal Highway Administration’s MUTCD.

The ICC submitted comments recommending that the Inventory Guide require completion of Parts I through V of the Inventory Form if the “Yes” box in the Public Access data field is checked. While we did not adopt this recommendation in this final rule, FRA

strongly encourages railroads to voluntarily report data on train-activated warning devices, crossing signs, and crossing surface at private highway-rail grade crossings and pathway crossings to the Crossing Inventory. The NTSB recently issued Safety Recommendation R-14-48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory.

#### Type of Train

The AAR recommended that urban rapid transit operations should not be reported in the “Type of Train” data field because FRA’s statement of jurisdiction published at appendix A to 49 CFR part 209 excludes rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

However, the “Transit” subfield has been retained in the “Type of Train” data field in Part I of the Inventory Form. As explained in the Section-by-Section Analysis of § 234.401, urban rapid transit operators that operate one or more trains through highway-rail and pathway crossings that are on or connected to the general railroad system of transportation are considered to be operating railroads subject to the reporting and updating requirements in the final rule.

#### Average Passenger Train Count Per Day

The CPUC submitted comments recommending that we add an additional line to the “Average Passenger Train Count Per Day” data field in Part I of the Inventory Form to capture data on the number of daily urban rapid transit movements through the highway-rail or pathway crossing. The CPUC believes the number of urban rapid transit movements should not be combined with the number of passenger/commuter rail train movements with significantly different safety concerns.

Even though we retained this data field as proposed, FRA agrees that it will be useful to capture data on the number of rail transit movements through highway-rail and pathway crossings. Therefore, as explained in more detail in the discussion of Part II of the Inventory Form, we revised Part II of the Inventory Form by adding a data field dedicated to the total number of transit train movements per day.

The ICC submitted comments recommending that we change the title

of the “Average Passenger Train Count Per Day” data field to “Average Passenger Train Count Per Weekday” and instruct the primary operating railroad to submit data on the total number of trains operated Monday through Friday, divided by five. We decided to retain the title of this data field as proposed in the Inventory Form. While many commuter railroads operate a higher number of trains during the workweek as compared to week-end operations, other passenger railroads (such as Amtrak) may have a more consistent number of train movements throughout the week. Since the primary purpose of this data field is to collect data on passenger train movements on a typical operating day, the Inventory Guide gives operating railroads the flexibility to determine which day of the week best represents a typical operating day for their passenger train operations.

#### Type of Land Use

The ICC submitted comments recommending that FRA change the title of the “Type of Development—Primary Purpose of Crossing” data field in Part I of the Inventory Form to “Type of Land Use” since this data field will capture data on the type of land use around the highway-rail or pathway crossing. To more accurately reflect the intended use of this data field, we changed the title to “Type of Land Use”.

The ICC also recommended that we change the title of the “Farm (Field to Field)” box in the “Type of Development—Primary Purpose of Crossing” data field to “Farm” since there are some Farm crossings that are not Field to Field crossings. The ICC also submitted comments recommending that the Inventory Guide discussion of the “Farm (Field to Field)” box refer to wineries and other types of non-traditional agricultural enterprises. We agree and revised the Inventory Guide based on these recommendations.

DelDOT submitted comments recommending that the primary operating railroad be assigned the responsibility for submitting three-year periodic updates to this data field under § 234.409(a). However, LaDOTD submitted comments recommending that State agencies be responsible for submitting crossing data for this data field since States routinely use demographic information for analysis purposes and, therefore, should have the requisite information.

After considering these comments, FRA is asking State agencies to voluntarily submit updates for this data field for public highway-rail and pathway crossings, as reflected in

Appendix B of the Inventory Guide. As noted by LaDOTD, the State agency with jurisdiction over public highway-rail and pathway crossings will likely have information related to the type of land use in the vicinity of the crossing. However, primary operating railroads are required to submit three-year periodic updates for this data field for private highway-rail grade crossings and private pathway grade crossings.

Is there an adjacent crossing with a separate number?

NCDOT submitted comments recommending that we revise the Inventory Guide to define the term "adjacent crossing" as another set of tracks crossing the same highway with 25 feet or less between centerlines of tracks and where the tracks have different crossing numbers. However, we are defining adjacent crossings as having a distance of 100 feet or less between the centerlines of the tracks because queuing issues can occur at 100 feet. Therefore, FRA did not adopt this recommendation.

#### Quiet Zone

The ICC, LaDOTD, and Tavla Solutions submitted comments recommending that we remove the "Quiet Zone" data field from the Inventory Form because FRA is the only entity that will have permission to submit data for this data field. However, FRA retained the Quiet Zone data field as proposed in the Inventory Form. To avoid confusion about whether this data field should be completed, we revised the Inventory Guide to add specific instructions to leave this data field blank.

#### HSR Corridor ID

We revised the Inventory Guide to make this data field a required data field and to correct a typographical error in the reference to Appendix F, which contains a list of the High-Speed Rail Corridor Designations and Codes.

#### Latitude in Decimal Degrees/Longitude in Decimal Degrees

FRA made technical corrections to the title of the Latitude and Longitude data fields to reflect the correct decimal format required for this data.

#### Lat/Long Source

The ICC submitted comments recommending that we should define the "Actual" box in the "Lat/Long Source" data field in the Inventory Guide to mean coordinates taken in the field centerline of the roadway or pathway to the centerline of the railroad tracks with a horizontal accuracy of one

meter or better. The ICC recommended that coordinates which fail to meet this standard should be classified as estimates. However, Tavla Solutions submitted comments asserting that a requirement to conduct field measurements from the center of a highway-rail grade crossing to meet the criteria for "Actual" latitude and longitude coordinates would create a safety hazard for the data collection team.

We revised the Inventory Guide to advise Crossing Inventory users that they should measure latitude and longitude coordinates taken in the field at the intersection of the centerline of the roadway or pathway with the centerline of the railroad track, with a horizontal accuracy of one meter or better. However, the Crossing Inventory will continue to classify latitude and longitude coordinates taken using global positioning system equipment as "Actual" latitude and longitude coordinates. The Crossing Inventory also will continue to classify latitude and longitude coordinates obtained using free online technology as "Actual" latitude and longitude coordinates for purposes of the Crossing Inventory. The "Estimated" box in the "Lat/Long Source" data field will therefore be largely populated by existing latitude and longitude coordinates that generated by early computer models that may have been somewhat inaccurate.

#### Railroad Use/State Use

The AAR submitted comments recommending that the Railroad Use boxes be expanded to allow for crossings that have more than four operators. However, the number of Railroad Use boxes is not intended to directly correlate with the number of railroads that may operate through a highway-rail or pathway crossing because the Railroad Use boxes are optional. After reviewing current usage patterns associated with the Railroad Use boxes, we did not change the number of Railroad Use boxes on the Inventory Form.

#### Narrative

We revised the Narrative box on the Inventory Form by dividing it into two separate boxes, with one Narrative box for railroad use and another Narrative box for State use. FRA made this change in response to ICC comments recommending this change to the Inventory Form. This change also should alleviate concerns expressed in comments NCDOT submitted that a Narrative box shared by Railroads and State agencies may lead to over-writing

of data in the event of inconsistent information.

#### Emergency Notification Telephone No.

FRA revised the Inventory Guide to provide clarification that "911" cannot be used as an emergency notification telephone number in the Crossing Inventory. As stated in the Inventory Guide, the Emergency Notification System (ENS) telephone number the railroad publicized for use in reporting emergencies, malfunctions, and problems at the highway-rail or pathway crossing under subpart E to 49 CFR part 234, must be reported in this data field.

#### Part II, Railroad Information

##### Estimated Number of Daily Train Movements

We changed the title of Item One in Part II of the Inventory Form from "Estimated Average Number of Daily Train Movements" to "Estimated Number of Daily Train Movements" to clarify that this data field is intended to collect data on the estimated number of daily train movements not the average number of daily train movements.

The CPUC submitted comments seeking clarification on whether local freight train movements, as well as passenger, commuter rail, and urban rapid transit train movements, should be included in the train counts reflected in the "Estimated Number of Daily Train Movements" data field. The CPUC recommended that urban rapid transit train movements not be reported in the "Total Day Thru Trains" data field, if the data captured in this data field is used for the DOT Accident Prediction Formula.

In response to these comments, FRA revised the Inventory Guide to state that local freight through train movements, as well as passenger and commuter rail train movements, should be reported as "Thru Train" movements for purposes of the Crossing Inventory. We also revised the Inventory Form to include a separate subfield titled "Total Transit Trains" to capture data on urban rapid transit train movements through highway-rail and pathway crossings.

FRA also provided additional guidance in the Inventory Guide on the train movement data the primary operating railroad must report. The primary operating railroad is responsible for reporting train movement data for all railroads that operate through the crossing, unless Item Seven in Part I of the Inventory Form ("Do Other Railroads Operate a Separate Track at Crossing?") shows there are other operating railroads that operate over a separate track at the

crossing. (If Item Seven in Part I of the Inventory Form shows there are other operating railroads that operate over a separate track at the crossing, each operating railroad is responsible for submitting their own train count and train speed data directly to the Crossing Inventory.) We provided this guidance in response to CPUC comments requesting clarification as to whether the primary operating railroad is responsible for reporting the number of train movements by other railroads through the crossing.

FRA received comments recommending that the five proposed data fields dedicated to train counts be consolidated into fewer data fields. The ICC submitted comments recommending that four of the proposed data fields be consolidated into two data fields—one data field for all daytime train movements and another for all nighttime train movements. Under this scenario, the Crossing Inventory would not differentiate between train counts for through trains and switching train movements. We did not adopt this recommendation because the DOT Accident Prediction Formula relies upon the number of through train movements shown in the Crossing Inventory. (Many States use the DOT Accident Prediction Formula to determine the appropriate allocation of funding for needed crossing safety improvements.) Since the number of daily switching movements is not used in the DOT Accident Prediction Formula, we retained separate data fields on the Inventory Form for train counts of through train movements and switching train movements.

The AAR recommended that the Inventory Form be revised to reflect the train count data fields contained in the 1999 version of the Inventory Form. In the 1999 version of the Inventory Form, there was one data field for total through train movements and another data field for total switching train movements. In support of this recommendation, the AAR noted that a previously published FRA guidance document related to data file structure and field input specifications contained language stating that distinctions between daytime train movements and nighttime train movements are no longer maintained in the Crossing Inventory. While asserting that train counts are not constant throughout the year for many reasons, including changes in operating plans and changes in shipping/delivery requests from local industries, the AAR stated that it will be difficult for railroads to break down their train counts into the requested 12-hour blocks.

FRA agrees that train counts for daytime and nighttime switching movements should remain combined. However, we note that the 1999 version of the Inventory Form also contained a third data field for total daylight through train movements during the 12-hour period between 6 a.m. to 6 p.m. As discussed above, a distinction was drawn between daytime through train movements and nighttime through train movements so daily through train movements could be used in the DOT Accident Prediction Formula. Therefore, while FRA understands it may be difficult to provide an accurate count of daily through train movements due to variations in operating plans and business arrangements, railroads should be accustomed to submitting data on estimated “daylight” through train counts to the Crossing Inventory. Accordingly, we retained the separate data fields for daytime and nighttime through train movements on the Inventory Form as proposed.

#### Year of Train Count Data

FRA did not revise the “Year of Train Count Data” data field in Part II of the Inventory Form. The CPUC submitted comments recommending expansion of this data field to collect data on the month, as well as the year, of the train count data submitted to the Crossing Inventory. However, we designed the GCIS system to capture the date on which any update to the Crossing Inventory is submitted, which includes any update to the train count data fields. Therefore, we retained this data field as proposed.

#### Speed of Train at Crossing

FRA provided additional guidance in the Inventory Guide to clarify that the highest maximum timetable speed for any type of train movement through the crossing should be entered in the “Speed of Train at Crossing” data field in Part II of the Inventory Form. Therefore, if a highway-rail or pathway crossing is subject to freight and passenger train movements, the highest maximum authorized speed (which will generally apply to passenger train movements) should be entered in this data field. We provided this guidance in response to ICC comments recommending that the “Speed of Train at Crossing” data field should show the highest maximum authorized timetable speed for any type of train movement through the crossing.

#### Type and Count of Tracks

In the proposed rule, FRA solicited comments on the definitions we provided in the Inventory Guide for the

various types of track listed in the “Type and Count of Tracks” data field. FRA received comments from the AAR and the CPUC recommending that FRA reduce the proposed list of track types and define each track type consistent with definitions FRA and the Surface Transportation Board currently use. NCDOT submitted comments noting that the “Spur/Lead” and the “Storage” track types appear to be repetitive. The ICC also submitted comments recommending that the “Type and Count of Tracks” data field be revised to capture data on the number of each type of track at the crossing. FRA generally agrees with these recommendations and has therefore reduced the number of track types. For example, we merged the “Spur/Lead” and the “Storage” track types into the “Yard” track type. In addition, we removed the proposed “Wye” track type from the Inventory Form because there does not appear to be sufficient need to capture this data.

In addition, we revised the definitions of the “Main”, “Industry”, “Siding”, and “Yard” track types in the Inventory Guide to make them consistent with the FRA Guide for Preparing Accident/ Incident Reports. We also revised the “Type and Count of Tracks” data field to collect data on the number of each type of track at the crossing.

#### Train Detection

In the NPRM, FRA solicited comments on whether we should collect data on the number of tracks at a crossing equipped with train detection technology. Noting the absence of information explaining FRA’s purpose in collecting this data, AAR submitted comments asserting it could not support the proposed collection of data. However, if FRA decides to collect this data, AAR recommended elimination of the “PTC” category because the Inventory Guide failed to identify which Positive Train Control characteristics must be present in the crossing circuitry to qualify as “PTC” for purposes of the Crossing Inventory.

The CPUC, Denver RTD, and the ICC submitted comments in support of collecting data on the tracks at a crossing equipped with train detection technology. However, the CPUC and ICC believe FRA should only collect data on the train detection technology installed on mainline tracks through the crossing. The BRS submitted comments in support of reporting the various types of train detection equipment installed at a crossing so that FRA and railroad personnel can confirm the presence (or absence) of such equipment when performing inspections. The BRS also

stated that collection of data on the various types or brands of train detection equipment installed at a crossing will make it easier for FRA and railroad personnel to confirm that proper prints are available at each crossing location. Similarly, Denver RTD stated that reporting the types of train detection equipment installed at a crossing will create a more accurate record for determining the root cause of accidents and ensure proper inspection and repairs of train detection equipment.

We retained the “Train Detection” data field in Part II of the Inventory Form as proposed. Although FRA agrees that collection of data on train detection technology installed at highway-rail and pathway crossings is beneficial, FRA is not requiring the submission of data on individual brands of train detection equipment installed in the field. However, railroads that wish to record this information may use the “Railroad Use” data fields in Part I of the Inventory Form for this purpose. We did revise the Inventory Guide discussion of the “PTC” box in the “Train Detection” data field to include a reference to FRA’s Positive Train Control System regulations in 49 CFR 236.1005, which contains a list of the required functionalities for positive train control systems.

#### Is track signaled?

The ICC submitted comments recommending that FRA add a subfield for PTC to the “Is Track Signaled?” data field in Part II of the Inventory Form. In support of this recommendation, the ICC explained that if the primary operating railroad submits data indicating that the highway-rail or pathway crossing is located on track equipped with a block signal, cab signal, or train control system to govern train operations, the Inventory Guide could direct the primary operating railroad to specify whether the track is equipped with a PTC system by checking an additional “Yes/No” box.

We retained this data field as proposed. Since the type of train detection technology present on mainline tracks through the crossing must be reported in the “Train Detection” data field discussed above, there is not sufficient need to add a PTC subfield in this data field.

#### Event Recorder/Remote Health Monitoring

NCDOT submitted comments asserting that the proposed title of the “Event Recorder Monitoring Device” data field on the Inventory Form was too similar to the title of the

“Monitoring Devices” data field in Part III of the Inventory Form and should therefore be changed. The ICC also submitted comments recommending that FRA divide the “Event Recorder Monitoring Device” data field on the Inventory Form into two separate data fields, with one data field for Event Recorders and another data field for Remote Health Monitors. In making this recommendation, the ICC noted that many crossings have remote health monitors, whereas far fewer have event recorders. FRA agrees it would be beneficial to revise this data field and has therefore revised the Inventory Form by dividing the former “Event Recorder Monitoring Device” data field into two separate data fields, with one data field for Event Recorders and another for Remote Health Monitoring devices.

#### Part III, Highway or Pathway Traffic Control Device Information

FRA changed the title of Part III of the Inventory Form from “Highway Traffic Control Device Information” to “Highway or Pathway Traffic Control Device Information.” We made this change in response to ICC comments to show that Part III of the Inventory Form is intended to collect traffic control device data for both highway-rail and pathway crossings.

#### Are there signs or signals?

The ICC submitted comments recommending that FRA change the title of the “No Signs or Signals” data field in Part III of the Inventory Form to “Are There Warning Signs or Signals in Place?” and replace the “Check if this applies” box with Yes/No boxes. Consistent with this recommendation, FRA changed the title of the “No Signs or Signals” data field in Part III of the Inventory Form to “Are there Signs or Signals?” and added Yes/No boxes to replace the proposed “Check if this applies” box.

#### Types of Passive Traffic Control Devices Associated With the Crossing

The ICC submitted comments recommending that we rename the heading “Type of Passive Traffic Control Devices at Crossing—Signs” for item two in Part III of the Inventory Form to “Type of Passive Traffic Control Sign at and/or near the Crossing” since many advance warning signs are not actually posted at the crossing, but are often located nearby on adjacent or intersecting roadways. Consistent with this recommendation, we changed the title for item two in Part III of the Inventory Form to “Types of Passive

Traffic Control Devices associated with the Crossing”.

LaDOTD and Tavla Solutions also submitted comments recommending that the Inventory Guide include pictures or drawings of the MUTCD signs referenced in the data fields that make up item two of Part III of the Inventory Form. FRA agrees and added pictures of warning devices and signs to the Inventory Guide to provide additional clarification. However, FRA did not add pictures and drawings of all MUTCD-compliant signs referenced in the data fields in item two of Part III of the Inventory Form because the MUTCD is frequently revised. Instead, Crossing Inventory users are advised to consult the current edition of the MUTCD for additional information regarding MUTCD-compliant sign and warning device specifications.

#### Crossbuck Assemblies

The ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to submit data on the actual number of crossbuck signs associated with a crossing, rather than the number of crossbuck assemblies (which would be counted by the proposed method of reporting the number of masts or posts on which crossbuck signs have been installed). The ICC noted that, while unusual, there are situations in which there may be more than one crossbuck sign per assembly. The ICC also recommended that the Inventory Guide advise Crossing Inventory users to submit data on the number of all crossbucks signs present at the crossing, regardless of the presence of flashing lights or gates.

FRA retained the guidance contained in the Inventory Guide to provide data on the number of masts or posts with mounted crossbucks. By requiring a count of the number of masts or posts with mounted crossbucks, Crossing Inventory users can monitor compliance with an FHWA requirement that crossbuck assemblies must be installed by December 31, 2019, or when adjustments are made to the crossing, whichever comes first. FRA also retained the proposed instruction to refrain from reporting the number of crossbuck signs installed on train-activated warning devices, such as flashing light structures and gate masts, because the “Crossbuck Assemblies” data field is primarily intended to collect data on the number of crossbuck assemblies present at passive crossings.

#### Stop Signs/Yield Signs

Consistent with comments submitted on the “Crossbuck Assemblies” data

field, the ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to report the actual number of MUTCD-compliant Stop signs and Yield signs at the crossing, rather than the number of posts or masts. The ICC also recommended that the Inventory Guide advise Crossing Inventory users to report the number of all Stop signs and Yield signs present at the crossing, regardless of the presence of flashing lights or gates. In addition, the ICC recommended that FRA add a new data field to the Inventory Form to capture data on crossings equipped with crossbucks and yield signs.

Consistent with the approach taken for the "Crossbuck Assemblies" data field above, FRA retained the proposed guidance contained in the Inventory Guide to collect data on the number of posts or masts with stop signs and the number of posts or masts with yield signs (as opposed to the number of stop signs and yield signs). However, with respect to the "Stop Signs" and "Yield Signs" data fields, the Inventory Guide advises Crossing Inventory users to provide data on the number of posts or masts with stop signs and yield signs, regardless of the presence of any other type of warning device at the crossing. FRA notes that Crossing Inventory users can identify crossings equipped with crossbucks and yield signs by reviewing the "Yield Signs" data field, in conjunction with the "Crossbuck Assemblies" data field. Therefore, there is no need to add a separate data field exclusively dedicated to capturing data on crossings equipped with both crossbucks and yield signs.

#### Advance Warning Signs

In the NPRM, FRA solicited comments on whether the Crossing Inventory should collect data on the actual number of advance warning signs posted at a crossing, as opposed to the number of posts or masts bearing the advance warning signs.

The BRS submitted comments asserting that the number of signs at a particular crossing is far more important than the number of posts or masts bearing signs at the crossing. The CPUC, FDOT, NDOT, ICC, Denver RTD, and NCDOT also submitted comments recommending that the Crossing Inventory collect data on the number of advance warning signs posted at the crossing, rather than the number of posts or mast assemblies. Since this data field, unlike the data fields for Stop Signs and Yield Signs, contains boxes that should be checked to indicate the specific type of advance warning signs present at the crossing, the Inventory

Guide has been revised to instruct Crossing Inventory users to submit a count of each type of advance warning sign present at the crossing.

The ICC also submitted comments recommending that the Advance Warning Signs data field on the Inventory Form be replaced with a list of all warning signs provided in the current edition of the MUTCD. However, we would have to update the list of MUTCD-compliant signs on a continual basis to incorporate new signs that are added to the MUTCD, which would increase the reporting burden on railroads and may require railroads to continually update their crossing databases to keep up with changes that are made in future revisions of the MUTCD. Therefore, we retained the Advance Warning Signs data field as proposed.

#### Low Ground Clearance Sign

The ICC submitted comments recommending that the "Low Ground Clearance Sign" data field in Part III of the Inventory Form show the number of MUTCD-compliant signs present at the crossing. FRA agrees with this recommendation and revised the Inventory Form consistent with this recommendation.

#### Pavement Markings/Channelization Devices

The ICC submitted comments recommending that we add a box for Dynamic Envelope Markings to the Pavement Markings data field in Part III of the Inventory Form, a box for "Other," and a text field of at least 40 characters to record the presence of any additional pavement markings. Although we did not add an "Other" box to the Pavement Markings data field, we revised the Pavement Markings data field in Part III of the Inventory Form to add a box for Dynamic Envelope markings. FRA encourages States to use the "State Use" data fields in Part I of the Inventory Form to record any additional pavement markings that may be present at the crossing.

The ICC also recommended that FRA change the title of the "Channelization Devices" data field in Part III of the Inventory Form to "Medians and Channelization Devices." Consistent with this recommendation, we changed the title of this data field to "Channelization Devices/Medians".

The ICC submitted comments recommending that we move the Pavement Markings and Channelization Devices data fields to a location after the "Types of Train-Activated Warning Devices at the Grade Crossing" section in Part III of the Inventory Form, so all

warning signs and then devices are inventoried sequentially. However, we retained these data fields in their proposed location on the Inventory Form. We believe it is appropriate to retain these data fields under the heading, "Types of Passive Control Devices associated with the Crossing" in Part III of the Inventory Form since pavement markings and channelization devices are considered to be passive traffic control devices associated with crossings.

#### Channelization Devices/Medians

NCDOT submitted comments recommending that FRA revise the Inventory Guide to clarify the proper classification of medians. Therefore, we revised the Inventory Guide to provide guidance on how to properly complete this data field when channelization devices or medians are present at the crossing.

#### EXEMPT Sign/ENS Sign Displayed

The ICC submitted comments recommending that we add the word "Sign" to the title of the "Exempt" data field in Part III of the Inventory Form to clarify that the presence (or absence) of Exempt signs at the crossing should be reported. FRA agrees and changed the title of this data field to "EXEMPT Sign".

The ICC also recommended that we revise the "EXEMPT Sign" and "ENS Sign Displayed" data fields in Part III of the Inventory Form to require submission of the number of MUTCD-compliant signs present at the crossing. However, we retained these data fields as proposed. FRA is primarily interested in obtaining data on the presence (or absence) of these signs, not the number of these signs present at the crossing.

#### Other Signs/Private Crossing Signs

The ICC submitted comments recommending that we revise the "Other Signs" data field to accept data on the presence of non-MUTCD compliant signs, including private crossing signs, at the crossing. However, given the wide variety of non-MUTCD compliant signs that may be in use at grade crossings, FRA does not perceive any significant benefit that would justify the additional burden associated with obtaining data on every type of non-MUTCD compliant sign currently in use. Therefore, we retained the "Private Crossing Signs" data field proposed on the Inventory Form to collect data on private crossing signs at private highway-rail and pathway crossings. In addition, the Inventory Guide continues to advise Crossing Inventory users to submit data on the presence of MUTCD-

compliant signs in the “Other Signs” data field in Part III of the Inventory Form.

The ICC also recommended that signs and warning devices at private crossings be inventoried and recorded in the same data fields used for reporting signs and warning devices at public highway-rail grade crossings. The ICC noted that this approach would eliminate the need for the “Private Crossing Signs” data field. While FRA has not adopted this recommendation, we may revisit this recommendation in a future rulemaking. As noted previously, the NTSB recently issued Safety Recommendation R-14-48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to complete the data fields used for reporting signs and warning devices in Part III of the Inventory Form for private highway-rail and pathway crossings as well. However, in the meantime, FRA strongly encourages primary operating railroads to voluntarily report data on train-activated warning devices and crossing signs at private highway-rail grade crossings and pathway crossings to the Crossing Inventory.

The ICC also submitted comments recommending that we require submission of the number of signs that are present at the crossing in the data fields for “Private Crossing Signs” and “LED Enhanced Signs” in Part III of the Inventory Form. However, FRA is primarily interested in obtaining data on the presence (or absence) of these signs, as opposed to the number of these signs present at a crossing. Therefore, we retained the Private Crossing Signs and LED Enhanced Signs data fields in Part III of the Inventory Form as proposed.

The ICC recommended that FRA revise the “Other Signs” data field in Part III of the Inventory Form by adding a check box to denote whether any signs are “LED enhanced.” The ICC suggested that this check box could replace the “LED Enhanced Signs” data field in Part III of the Inventory Form. We retained the “LED Enhanced Signs” data field as proposed on the Inventory Form. However, we revised the Inventory Guide to advise Crossing Inventory users to include references to the applicable MUTCD code when reporting various types of LED enhanced signs present at a crossing.

#### Types of Train-Activated Warning Devices at the Crossing

The ICC submitted comments recommending that FRA change the heading for item three in Part III of the Inventory Form from “Type of Active

Warning Devices at Crossing—Train Activated Devices” to “Type of Train-Activated Warning Devices at the Crossing.” The ICC also recommended that we arrange the data fields in item three in Part III of the Inventory Form covered by this heading in hierarchical order to address flashing light assemblies before gates. Consistent with the ICC’s recommendation, we changed the title of the heading for item three in Part III of the Inventory Form to “Types of Train Activated Warning Devices at the Grade Crossing.” However, we retained the order of the data fields in item three in Part III of the Inventory Form as proposed to provide continuity between the current version of the Inventory Form and previous versions of this form. We hope this continuity will minimize the burden on entities that submit electronic data to the Crossing Inventory that may need to revise their existing databases to conform to changes made to the Inventory Form.

In the NPRM, FRA solicited comments on whether we should require the primary operating railroad to submit updates to the Crossing Inventory after implementation of one or more train-activated warning devices at a crossing. FDOT submitted comments recommending that all updates to the data fields in item three of Part III of the Inventory Form, under the heading (“Type of Train Activated Warning Devices at Crossing—Train Activated Devices”) be assigned to State agencies so any changes railroads make to train-activated warning devices at a crossing would have to be reported to the State agency. The State agency would then submit all updates to these data fields to the Crossing Inventory.

As stated in § 234.411(c), the primary operating railroad is required to submit updated data directly to the Crossing Inventory within three months of any change in warning device at a public highway-rail grade crossing. While we also encourage the primary operating railroad to submit a copy of this updated data to the appropriate State agency, it is not required to do so. However, as stated in Appendix B to the Inventory Guide, the data fields in item three of Part III of the Inventory Form (“Types of Train Activated Warning Devices at the Grade Crossing”) have been assigned to State agencies for voluntary updating.

#### Gate Arms

In the proposed rule, FRA solicited comments on whether we should assign the Gate Arms data field in Part III of the Inventory Form to State agencies for updating. FRA received comments from

NCDOT, FDOT and the AAR recommending that State agencies be assigned the responsibility for updating this data field. However, FRA also received comments from the CPUC, DelDOT, NDOT, and the BRS recommending that the primary operating railroad be required to update this data field since the primary operating railroad should have information about the warning devices they install and maintain.

After considering these comments, FRA decided to retain the assignment of responsibility in Appendix B of the Inventory Guide. Therefore, it assigned the responsibility for submitting voluntary updates to the Gate Arms data field to State agencies. This assignment of responsibility roughly coincides with FHWA’s annual reporting requirement for States for Highway Safety Improvement Plan purposes. However, the primary operating railroad must still submit updated data on the number of gate arms installed at a highway-rail or pathway crossing to Crossing Inventory within three months of any change, consistent with § 234.411(c).

The ICC submitted comments recommending that FRA revise the Inventory Guide to explain that the Gate Arms data field in Part III of the Inventory Form is only intended to collect data on the number of traditional red-white gate arms present at the crossing. The ICC believes the number of pedestrian swing gates or other types of pedestrian gates that may be present at the crossing should not be reported in this data field. FRA agrees the proposed revision is beneficial. Therefore, we revised the Inventory Guide to include a description of pedestrian gate arms, as well as specific guidance that this data field is not intended to collect data on the presence of any pedestrian swing gates at the crossing.

The ICC also recommended that we replace the word “Count” with “Quantity” in the Gate Arms data field. FRA notes that the term “Count” has been used in multiple places on the Inventory Form in order to denote that the Crossing Inventory user should provide data on the number of devices present at the crossing. Therefore, to be consistent, we retained the term “Count” as proposed in this data field.

#### Gate Configuration

The ICC submitted comments recommending that FRA revise the Inventory Guide to include illustrations of the various types of gate configurations that may be present at a crossing to help Crossing Inventory users identify them. However, the attributes associated with individual

gate configurations tend to vary greatly. Therefore, while the Inventory Guide contains detailed descriptions of each gate configuration listed on the Inventory Form, we did not add gate configuration illustrations.

The ICC also recommended that we use the terminology and definitions in the MUTCD for the various types of gate configurations in the Inventory Guide. In addition, the ICC noted that the proposed Inventory Guide discussion of four-quadrant gate systems included an incorrect reference to Section 8.D of the MUTCD. We removed the erroneous reference to Section 8.D of the MUTCD from Appendix D to the Inventory Guide. However, FRA notes that the MUTCD does not provide an official definition for the two-quadrant, three-quadrant, or four-quadrant gate systems listed on the Inventory Form. Moreover, the terms used in the Inventory Guide to describe the various types of highway-rail grade crossing gate configurations constitute standard terminology commonly used within the railroad industry. Therefore we did not change the definitions and terminology.

Finally, FRA revised the Gate Configuration data field by removing the "Full Entrance Closure" box. After further evaluation of the gate configuration options listed on the Inventory Form, FRA determined that the "Full Entrance Closure" box would likely result in collection of redundant data.

#### Cantilevered (or Bridged) Flashing Light Structures

The ICC submitted comments in support of the Inventory Guide instruction to report the number of posts that support the cantilevered flashing lights at a crossing, as opposed to the number of flashing-light pairs. FRA agrees that the number of flashing light pairs should not be reported to the Crossing Inventory in this data field. Therefore, the Inventory Guide continues to instruct Crossing Inventory users to provide a count of the flashing light structures that are present at the crossing in this data field.

NCDOT also submitted comments recommending that FRA either remove the LED boxes from the "Cantilevered (or Bridged) Flashing Light Structures" and the "Post-Mounted Flashing Light Assemblies" data fields in Part III of the Inventory Form or move the LED boxes to a new data field which the railroad would be responsible for updating. In support of this recommendation, NCDOT asserted that States will have a very difficult time verifying this data element since the only way to verify the presence of LED lights is to either open

the lens or obtain access into the signal cabinet bungalow.

FRA notes that upgrades from incandescent to LED lights are typically financed, at least in part, by Federal funding, which requires State DOT involvement. In addition, the presence of certain LEDs can be detected through simple observation of the flashing light lens. The primary operating railroad is required to complete the "Cantilevered (or Bridged) Flashing Light Structures" and "Mast Mounted Flashing Lights" data fields in Part III of the Inventory Form (and check the "LED" boxes, if applicable) for previously unreported and new public highway-rail grade crossings. In addition, FRA strongly encourages primary operating railroads to complete the "Cantilevered (or Bridged) Flashing Light Structures" and "Mast Mounted Flashing Lights" data fields for previously unreported and new private highway-rail grade crossings. As noted previously, the NTSB recently issued Safety Recommendation R-14-48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory. However, the "Cantilevered (or Bridged) Flashing Light Structures" and "Mast Mounted Flashing Lights" data fields in Part III of the Inventory Form (and the "LED" boxes contained therein) should be voluntarily updated by State agencies for public highway-rail grade crossings. In addition, we retained the LED boxes as proposed.

#### Mast-Mounted Flashing Lights

In the proposed rule, FRA solicited comments on whether we should revise the Post-Mounted Flashing Light Assemblies data field in Part III of the Inventory Form to require reporting of side lights installed for the benefit of highway users on an approaching parallel roadway.

NCDOT, CPUC, DelDOT, FDOT, NDOT and the BRS submitted comments recommending that we revise the Inventory Form to require reporting of side lights installed on mast-mounted flashing light assemblies. The BRS asserted that side-mounted lights provide the same level of safety to individuals approaching the crossing from a parallel roadway as that provided to individuals approaching the crossing on the main road.

NCDOT and CPUC recommended adding a check box to this data field to indicate side lights have been installed on the flashing light structures. In

making this recommendation, NCDOT asserted this information could prove helpful when conducting a diagnostic analysis of warning devices at a crossing. The BRS also believes revising the Inventory Form to collect this data will facilitate prompt replacement of side-mounted lights after a knock down or accident, if all parties involved in the inspection, testing, and maintenance of the crossing know that side lights have been installed at the crossing. FRA agrees and revised the "Mast Mounted Flashing Lights" data field to include a check box to indicate that side lights have been installed at the crossing.

The ICC submitted comments recommending that FRA require counting all individual posts housing flashing-light assemblies whether they contain side lights or regular forward-facing lights. The ICC also recommended that we include illustrations in the Inventory Guide of flashing light pairs and back lights. We agree and revised the Inventory Guide to advise Crossing Inventory users that they should count the total number of masts with flashing lights and indicate whether they include back lights and side lights. We also added illustrations of flashing light pairs, back lights, and side lights to the Inventory Guide.

The AAR submitted comments recommending that we assign States the responsibility for updating the "Mast Mounted Flashing Lights" data field because this information is maintained by the States and it benefits highway users. FRA agrees with this recommendation and revised Appendix B to the Inventory Guide to assign responsibility for submitting voluntary updates to this data field to State agencies. However, the primary operating railroad is required to submit updated data within three months of any change in the number of masts with flashing lights at a public highway-rail grade crossing under § 234.411(c). In addition, FRA strongly encourages primary operating railroads to complete the "Mast Mounted Flashing Lights" data fields for private highway-rail grade crossings. As noted previously, the NTSB recently issued Safety Recommendation R-14-48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory.

We also changed the title of this data field from "Post-Mounted Flashing Light Assemblies" to "Mast-Mounted Flashing Lights" to distinguish between

flashing-lights and crossbuck assemblies.

#### Total Count of Flashing Light Pairs

With respect to the "Total Count of Flashing Light Pairs" data field in Part III of the Inventory Form, the ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to submit data on each pair of flashing lights installed at the crossing, whether backlight, sidelight or regular, forward facing flashing-lights. In addition, the ICC recommended that FRA add an illustration of a pair of flashing-lights to the Inventory Guide to eliminate confusion between side by side flashing lights and two pairs of back to back flashing lights. Consistent with this recommendation, FRA revised the Inventory Guide to advise Crossing Inventory users to count each pair of flashing lights installed at the crossing, including back lights, side lights, and flashing light pairs installed on cantilever structures and added illustrations of flashing light pairs to the Inventory Guide.

#### Installation Date of Current Active Warning Devices

In the proposed rule, FRA solicited comment on whether it should collect data on the installation date of active warning devices installed after the final rule effective date for the Crossing Inventory.

The CPUC submitted comments supporting collection of data on the original installation date of the active warning devices installed at the crossing for the Crossing Inventory to facilitate data analysis of the types of active warning devices at the crossing when certain crossing accidents occurred. The CPUC also recommended that the installation date shown in the Crossing Inventory should only be updated when there is a change in the configuration of warning devices, such as the installation of gates at a crossing equipped with flashing lights.

The ICC, Denver RTD, and NDOT submitted comments recommending that FRA only require submission of data on the installation date of active warning devices that are installed after the final rule effective date. In addition, the ICC recommended that FRA only require reporting of installation year since the specific date of any change in warning devices could be found from a review of the "history file" for the grade crossing. Denver RTD also noted that use of the term "original installation date" in the proposed title of this data field on the Inventory Form ("Original Installation Date of Current Active

Warning Devices") could be confusing, especially if additional active warning devices are installed at a later date.

In response to the comments, we changed the title of this data field on the Inventory Form to "Installation Date of Current Active Warning Devices" to avoid confusion. FRA also agrees it would be helpful to record the installation date of active warning devices installed at a crossing after the final rule effective date to facilitate grade crossing safety analyses. FRA encourages the voluntary submission of data on the installation date of active warning devices installed at public highway-rail grade crossings prior to March 9, 2015, as well as the voluntary submission of data on the installation date of active warning devices installed at private highway-rail grade crossings. However, the primary operating railroad is only required to submit data on the installation date of active warning devices installed at public highway-rail grade crossings after the effective date of this final rule. We hope limiting the application of this data collection requirement to active warning devices installed after March 9, 2015 will help minimize the reporting burden on the primary operating railroad. However, the Inventory Guide does require the primary operating railroad to report the month and year the active warning devices are installed or upgraded. This will be beneficial if there is more than one change in warning devices during the calendar year.

DelDOT submitted comments recommending that we not hold State agencies responsible for submitting data or updates to this data field since railroads should have this information readily available. The primary operating railroad is required to update this data field within three months of any change in train-activated warning devices at a public highway-rail grade crossing under § 234.411(c). In addition, FRA strongly encourages primary operating railroads to complete this data field for private highway-rail grade crossings. As noted previously, the NTSB recently issued Safety Recommendation R-14-48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory.

However, States generally have some involvement in approving the installation of train-activated warning devices at public highway-rail grade crossings. Therefore, we are asking States to consider submitting voluntary

updates to this data field for train-activated warning devices that have already been installed, as well as train-activated warning devices that are installed after the final rule effective date. Even though the primary operating railroad is required to update this data field within three months of any change in train-activated warning devices at a public highway-rail grade crossing, we retained the language in Appendix B to the Inventory Guide to invite States to voluntarily update this data field if the primary operating railroad fails to do so in a timely manner.

#### Wayside Horn/Highway Traffic Signals Controlling Crossing

The ICC submitted comments recommending that FRA merge the "Automated Wayside Horn" and "Highway Traffic Signals Controlling Crossing" data fields in Part III of the Inventory Form into the "Special Active Warning" data field. The ICC states that there are not many crossings equipped with wayside horn system installations or controlled by highway traffic signals. However, if we retain a separate data field to collect data on wayside horn systems, the ICC recommended we change the title of the "Automated Wayside Horn" data field to "Wayside Horn System". In addition, the ICC recommended that the Inventory Guide discussion of this data field should refer to Section 8C.07 of the MUTCD, which contains a discussion of wayside horn systems.

We retained a separate data field for wayside horn systems on the Inventory Form to facilitate collection of data on the prevalence of these warning devices and the date the wayside horn was installed. Consistent with the ICC's recommendation, we changed the title of the "Automated Wayside Horn" data field to "Wayside Horn." However, we did not add a reference to Section 8C.07 of the MUTCD in the Inventory Guide because the MUTCD is frequently revised.

#### Non-Train Active Warning

The ICC submitted comments recommending that we change the title of the "Special Active Warning" data field in Part III of the Inventory Form to remove the reference to FRA's "WD-5" warning device code to avoid confusion of individuals who are not familiar with this code. FRA agrees and changed the title of the "Special Active Warning" data field to "Non-Train Active Warning" and removed the reference to FRA's warning device code.

The ICC also recommended that FRA remove the boxes for "Manually Operated Signals" and "Watchman"

from the “Special Active Warning” data field on the Inventory Form unless these types of warning can be found at more than 500 locations nationwide. While FRA acknowledges that manually operated signals and watchmen are being utilized at a diminishing number of crossings, we retained the boxes on the Inventory Form to indicate the presence of manually operated signals and watchmen at crossings to allow long-term analysis of existing crossing data.

In addition, the ICC recommended that the Inventory Guide explain the various scenarios that might constitute “flagging,” such as a flag attached to a crossbuck assembly or a fusee/flare left to burn on the ground at a crossing. As indicated in the Inventory Guide, the term “flagging” is generally understood to mean an appropriately equipped flagger is actively controlling the flow of vehicular traffic. Thus, for purposes of the Crossing Inventory, merely attaching a flag to a crossbuck assembly or lighting a fuse/flare and leaving it to burn on the ground at a crossing does not, in and of itself, constitute flagging. Flagging situations are so varied and site specific that providing a useful list would be impractical.

#### Other Flashing Lights or Warning Devices

The ICC submitted comments recommending that we merge the “Wigwags” data field in Part III of the Inventory Form into the “Other Flashing Lights or Warning Devices” data field since there were only 440 crossings equipped with wigwags as of December 2012. FRA agrees it is no longer necessary to retain a separate data field for the collection of data on wigwags. Therefore, we revised the Inventory Guide to advise Crossing Inventory users to submit data on the presence of wigwags in the “Other Flashing Lights or Warning Devices” data field in Part III of the Inventory Form.

#### Does nearby hwy intersection have traffic signals?

The ICC submitted comments recommending that the Inventory Guide define a “nearby highway intersection” as a highway intersection located within 500 feet from the near rail at a crossing. FRA agrees and revised the Inventory Guide accordingly.

The ICC also recommended that the Crossing Inventory collect data on nearby intersections equipped with stop signs to identify crossings with potential queuing problems. However, potential queuing problems can be identified by the data collected on intersecting roadways located within 500 feet of the

grade crossing in Part IV of the Inventory Form. Therefore, FRA did not adopt this recommendation.

NCDOT submitted comments recommending that we assign railroads the responsibility for updating the data fields which pertain to the presence of traffic signals at a nearby highway intersection and the presence of highway traffic signal interconnection and preemption since some municipalities do not report this information to the State. However, the ICC submitted comments recommending that we assign the responsibility for updating the Highway Traffic Signal Interconnection data field exclusively to State agencies. After considering these comments, Appendix B to the Inventory Guide, now assigns responsibility for submitting voluntary updates for items 4.A., 4.B, and 4.C (“Does nearby Hwy Intersection have Traffic Signals?”, “Hwy Traffic Signal Interconnection” and “Hwy Traffic Signal Preemption”) on Part III of the Inventory Form to State agencies. However, the primary operating railroad is required to complete these data fields for new and previously unreported public highway-rail grade crossings. The primary operating railroad also is required to update items 4.B and 4.C (“Hwy Traffic Signal Interconnection” and “Hwy Traffic Signal Preemption”) after a change in crossing characteristics at a public highway-rail grade crossing, if applicable.

#### Highway Traffic Signal Interconnection

The ICC submitted comments recommending that the Inventory Guide use terms and definitions consistent with terminology the MUTCD uses and refer to the appropriate MUTCD sections that address traffic signal interconnection and preemption. NCDOT and the CPUC submitted comments noting that the Inventory Guide did not provide guidance on when the “For Warning Signs” box in the “Hwy Traffic Signal Interconnection” data field should be checked. FRA has incorporated terms and definitions that are consistent with the MUTCD in the Inventory Guide, where applicable. In addition, we revised the Inventory Guide to state the meaning of “Not Interconnected”, “For Traffic Signals”, and “For Warning Signs.” However, we did not revise the Inventory Guide to contain specific references to the applicable MUTCD section(s) due to frequent updating of the MUTCD.

#### Highway Traffic Pre-Signals

NCDOT submitted comments recommending that the definition for

“Stop Line Distance” in the Inventory Guide should state that stop line distance is the distance between the highway intersection’s stop line and the nearest crossing gate(s). However, after evaluating the proposed definition for “stop line distance” in the Inventory Guide, which defines stop line distance as the distance between the stop line and the crossing gates, we determined that the proposed definition accomplishes the same purpose.

The ICC submitted comments recommending that we add illustrations demonstrating how the measurements for Storage Distance and Stop Line Distance should be obtained to the Inventory Guide discussion of the Highway Traffic Pre-Signals data field. We did not adopt this recommendation because these terms are widely used in highway safety parlance and additional guidance on how to obtain these measurements can be obtained from a variety of sources, including the MUTCD.

The CPUC and ICC submitted comments recommending that the Inventory Guide should direct Crossing Inventory users to complete the “Storage Distance” subfield in the “Highway Traffic Pre-Signals” data field, if an intersecting roadway is located within 500 feet of the grade crossing or if a nearby highway intersection has traffic signals. We did not revise the Inventory Guide to require completion of the “Storage Distance” subfield. However, storage distance can be calculated by using data reported in the “Intersecting Roadway within 500 feet?” data field in Part IV of the Inventory Form, which should contain data on the approximate distance of any intersecting roadway within 500 feet of the crossing.

#### Highway Monitoring Devices

The ICC submitted comments recommending that FRA change the title of the “Monitoring Devices” data field in Part III of the Inventory Form to “Automated Enforcement (of Traffic Laws).” NCDOT also submitted comments recommending that the title of this data field be revised to avoid confusion with the “Remote Health Monitoring” data field in Part II of the Inventory Form. FRA agrees and changed the title of this data field to “Highway Monitoring Devices” to clarify the intent of this data field is to collect data on the presence of device(s) at the crossing that monitor highway vehicles.

The ICC recommended that we revise the Inventory Guide to provide additional explanation of the two types of highway monitoring devices featured

in this data field. The ICC also recommended that the Inventory Guide advise Crossing Inventory users that this data field is only intended to collect data on crossings with train activated warning devices. FRA agrees and revised the Inventory Guide to provide additional explanation of the two types of highway monitoring devices in the "Highway Monitoring Devices" data field. We also revised the Inventory Guide to advise Crossing Inventory users that the "Highway Monitoring Devices" data field only applies to crossings equipped with train activated warning devices.

NCDOT submitted comments recommending that we change the "Photo/Video Enforcement" box in the "Highway Monitoring Devices" data field to "Photo/Video Recording" since efforts to use photo and video data for enforcement purposes are being challenged in court. We agree and changed the title of the "Photo/Video Enforcement" box to "Photo/Video Recording." We also revised the Inventory Guide to state the temporary installation of these devices (*e.g.*, for research purposes) should not be reported to the Crossing Inventory.

#### Crossing Warning Device WD Code

The ICC submitted comments recommending that FRA remove the "Crossing Warning Device WD Code" data field from the Inventory Form since this data field has been reserved for the exclusive use of FRA. We adopted this recommendation.

#### Part IV, Physical Characteristics

The ICC submitted comments recommending that Parts IV and V of the Inventory Form be merged into one section titled "Roadway/Pathway Information." We did not adopt this recommendation because we want to maintain a clear demarcation between the physical and operating characteristics of highway-rail and pathway crossings.

#### Traffic Lanes Crossing Railroad

NCDOT submitted comments recommending that we revise the Inventory Guide to clarify that only dedicated travel lanes should be counted in this data field. NCDOT noted that some highway-rail crossings have a double-yellow solid painted cross-hatch island approaching the crossing, yet further away (say 100 to 200 feet) from the crossing, the painted island may change/revert into a center turn lane or left turn lane. Therefore, at a crossing which may be 60 feet wide and physically capable of carrying five 12-foot wide lanes across the crossing, only

four lanes are painted as crossing the tracks. In this type of scenario, NCDOT recommended that only dedicated travel lanes be counted as traffic lanes crossing the tracks. We agree and revised the Inventory Guide to state this data field is intended to capture through traffic lanes that cross the railroad tracks.

NCDOT also recommended that the Inventory Guide should clarify that the term, "divided traffic", refers to the characteristic of the entire roadway longitudinally away from the crossing. NCDOT believes the mere presence of channelization at a crossing should not be considered for purposes of determining whether there is divided highway traffic on the roadway that crosses the railroad tracks. We adopted this recommendation and revised the Inventory Guide to state that the Divided Traffic box in the "Traffic Lanes Crossing Railroad" data field refers to the characteristics of the entire roadway (as opposed to the presence of channelization devices at the crossing). Is roadway/pathway paved?

The ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to submit data on paved pathways, in addition to paved roadways. The ICC also recommended that the definition of a paved roadway be consistent with the FHWA and/or the American Association of State Transportation and Highway Officials (AASHTO) definition of a paved road. We did not change the Inventory Guide description of a paved roadway because it reflects generally accepted use of the term. However, we did revise the title of this data field and the Inventory Guide discussion of this data field to include a reference to paved pathways in addition to paved roadways, at crossings.

#### Does track run down a street?

NCDOT submitted comments recommending that the Inventory Guide provide additional clarification for completing this data field. FRA agrees and revised the Inventory Guide to provide additional guidance on the type of crossing configuration for which data is being collected.

#### Is crossing illuminated?

NCDOT submitted comments recommending that we should revise the Inventory Guide state that an illuminated crossing must have publicly maintained street lighting. However, FRA is primarily interested in collecting data on the presence (or absence) of street lighting at the crossing. Since FRA does not wish to exclude crossings that are illuminated by privately maintained

street lighting, we did not adopt this recommendation.

#### Crossing Surface

The ICC submitted comments recommending that FRA remove the box for "Width" from the "Crossing Surface" data field since it is essentially captured by the number of tracks at the crossing. The ICC also recommended that the Inventory Guide explain how length should be measured when there are sidewalks present at the crossing and add helpful illustrations on how to measure crossing length in a variety of different environments.

We retained the box for "Width" as proposed in the Crossing Surface data field since the distance between railroad tracks is not uniform and therefore cannot be relied upon for purposes of determining crossing width. However, we revised the Inventory Guide to provide additional explanation on how crossing length (and width) should be measured.

NCDOT submitted comments recommending that we revise the Inventory Guide description for the subfield "Asphalt and Timber" to refer to a range of materials that could be used to form flangeway openings, such as "rubber, steel, or other flange material." However, after evaluating the language in the Inventory Guide, FRA determined the description for this subfield (which states that other material which could be used to form flangeway openings may include rubber) is broad enough to accomplish the same purpose. Therefore, we did not adopt this recommendation.

#### Intersecting roadway within 500 feet?

LaDOTD submitted comments recommending that FRA revise this data field to collect data on the presence of an intersecting roadway within 200 feet of the crossing to identify highway-rail crossings that might be good candidates for highway traffic signal preemption. While the MUTCD recommends the use of highway traffic signal preemption for highway-rail grade crossings located less than 200 feet from an intersecting roadway, FRA believes highway traffic signal preemption may be beneficial for highway-rail grade crossings that are located up to 500 feet from an intersecting roadway. Therefore, we did not revise this data field.

The CPUC submitted comments recommending addition of checkboxes to the "Intersecting Roadway within 500 feet?" data field in Part IV of the Inventory Form that would capture additional data on the type of any highway traffic control device present at the highway intersection. Although we

did not adopt this recommendation, State agencies may record data on the types of highway traffic control devices that are present at the crossing in the State Use data fields in Part I of the Inventory Form.

#### Smallest Crossing Angle

The CPUC submitted comments recommending that FRA revise the Inventory Form to require reporting of the smallest crossing angle as a whole number between 0 and 90 degrees, as opposed to a 30-degree range to improve precision. We did not adopt this recommendation because the specific data that would be captured does not justify the additional burden that would be imposed by the proposed revision to this data element.

The CPUC also recommended that Inventory Guide advise Crossing Inventory users to determine the smallest crossing angle from the roadway approach lane to the track on the right-hand side of the roadway approach. The CPUC asserted that research of detailed angle data and associated accident history seems to indicate that small angles on the right-hand side of the roadway approach may be a significant factor in crossing collisions. FRA did not adopt this recommendation because FRA has historically collected data on the smallest angle present at the crossing rather than limiting data collection to the size of the angle present on the right-hand side of the roadway approach. The presence of acute angles on the left-hand side of the roadway approach can also be problematic. Whenever the railroad tracks intersect roadway approaches at an acute angle, drivers must look over one shoulder to watch for approaching trains. However, States may record the measurements of acute angles on either side of the roadway approach in the State Use fields in Part I of the Inventory Form.

#### Is commercial power available?

The ICC submitted comments recommending removal of the "Is Commercial Power Available" data field from Part IV of the Inventory Form unless an analysis determines this data field is sufficiently utilized and demonstrates collecting this data is worth the effort. However, we retained this data field as proposed on the Inventory Form because the data collected in this data field is often relied upon when evaluating crossings that are candidates for potential crossing improvements.

#### Part V, Public Highway Information

The CPUC submitted comments recommending that FRA add a new data field to Part V of the Inventory Form for the name of the local highway agency responsible for installing and maintaining signs and pavement markings near the crossing. FRA also received comments from the University of Nebraska-Lincoln recommending that we add a new data field to Part V of the Inventory Form to capture data on estimated pedestrian and bicycle traffic counts at the crossing.

FRA encourages State agencies to use their "State Use" data fields in Part I of the Inventory Form to record the name of the local highway agency that is responsible for installing and maintaining signs and pavement markings, as well as estimated pedestrian and bicycle traffic counts. However, we did not add data fields to Part V of the Inventory Form to collect this data.

#### Highway System

The ICC submitted comments recommending that we remove the "Highway System" data field in Part V of the Inventory Form unless an analysis determines that this data is sufficiently utilized such that the burden associated with collecting and reporting this information is justified. However, we retained the "Highway System" data field as proposed since the data collected in this data field can be useful for nationwide analyses.

#### Functional Classification of Road at Crossing

In the proposed rule, FRA solicited comment on whether the "Local Access" functional classification code should be changed to "Local" to be consistent with the official functional classification codes contained in the FHWA's Highway Performance Monitoring System (HMPS) Manual. FRA received multiple comments from State agencies, including the CPUC, NCDOT, DelDOT, FDOT, and NDOT, requesting that FRA revise the proposed Functional Classification categories provided on the Inventory Form to make them consistent with FHWA's current Functional Classification Codes. FRA adopted this recommendation and revised the functional classification codes in this data field to be consistent with FHWA's current Functional Classification Codes.

#### Linear Referencing System (LRS Route ID)/LRS Milepost

LaDOTD and Tavla Solutions submitted comments recommending elimination of the Linear Referencing

System data fields in Part V of the Inventory Form based on the assertion that this information can vary within the State and railroad system. The ICC submitted comments recommending that the Inventory Guide discussion of the "Linear Referencing System" (LRS) data field explain that this data field is intended to show whether the crossing is on a State-defined linear referencing system or the Federal Highway Performance Monitoring System (HPMS).

We retained these data fields in the Inventory Form as proposed. However, to address situations when more than one LRS code is used, FRA revised the Inventory Guide to recommend that the LRS code entered should match the HPMS data reported to the Federal Highway Administration. In addition, FRA notes that the Linear Referencing System data fields in Part V of the Inventory Form are optional.

#### Annual Average Daily Traffic

FRA changed the title of the "Estimated Average Daily Traffic" data field in Part V of the Inventory Form to "Annual Average Daily Traffic" to make the title consistent with generally accepted terms used in highway safety parlance. We made this revision in response to comments the ICC submitted recommending that the title of this data field be revised to reflect the terminology used in the MUTCD. While the ICC also recommended that we add subfields for "Actual" and "Estimated" to this data field, we did not adopt this recommendation because there are very few annual average daily traffic counts that reflect actual (as opposed to estimated) values.

#### Estimated Percent of Trucks

We changed the title of the "Estimated Percent Commercial Trucks" data field in Part V of the Inventory Form to "Estimated Percent Trucks." In addition, in response to ICC comments requesting clarification of the primary purpose of this data field, FRA revised the Inventory Guide to explain that this data field is intended to collect data on crossing usage by vehicles having a manufacturer's gross vehicle weight (GVW) rating of 9,000 pounds for more and having dual tires on at least one rear axle. This would include buses, single-unit trucks, combination trucks, and campers/recreational vehicles, but not school buses.

The ICC also submitted comments recommending that we add a subfield to the Estimated Percent Trucks data field to collect data on whether the crossing is located on a State's officially designated Truck Route System or a

locally-designated municipal Truck Route. While FRA encourages State agencies to use their "State Use" data fields in Part I of the Inventory Form to collect this data, we did not add these subfields to the Inventory Form because the potential benefits that might result from collecting this additional data do not appear to justify the increased burden associated with collection of this data.

#### Regularly used by school buses?

The ICC submitted comments recommending that the "Regularly Used by School Buses" data field in Part V of the Inventory Form be analyzed to determine whether this data can be collected with statistical reliability. However, if this data field is retained, the ICC recommended that FRA revise the Inventory Guide to capture data on whether the crossing is located on a local school district's published school bus route system or a local mass transit fixed route bus system used to transport schoolchildren. The ICC also recommended that we add boxes for "Unknown" and "No" to this data field.

We retained this data field as proposed except we added a "No" box for crossings that are not subject to at least one school bus movement on a normal school day. While we did not revise the Inventory Guide to require the submission of data on whether a crossing is located on a local school district's published school bus route system or a local mass transit fixed route bus system that is used to transport schoolchildren, State agencies may use their State Use data fields in Part I of the Inventory Form to record this data.

#### Regularly used by hazmat vehicles?

With respect to the data field titled, "Regularly Used by Hazmat Vehicles?" in the Inventory Form, in the NPRM, FRA solicited comments on how it should define "regular use" in the Inventory Guide. DelDOT submitted comments asserting the collection of data on crossing use by vehicles transporting hazardous materials could be time consuming and costly because it would require additional field data collection. LaDOTD and Tavla Solutions submitted comments asserting the collection of this data would be difficult to obtain, not reliable, and might have liability implications. AAR also submitted comments stating that railroads do not maintain the type of information which would be collected in this data field. In response to these comments, we removed the "Regularly Used by Hazmat Vehicles?" data field from the Inventory Form. However,

State agencies may record this information in one of the State Use fields in Part I of the Inventory Form.

#### Emergency Services Route

With respect to the "Regular Emergency Services Route" data field in Part V of the Inventory Form, FRA solicited comments in the NPRM on how it should define the term "regular emergency services route."

The AAR submitted comments stating that railroads do not maintain information about emergency service routes and therefore should not be held responsible for reporting information to the Crossing Inventory that State agencies maintain. However, under this rule, the primary operating railroad is only required to provide information for this data field for new and previously unreported public highway-rail grade crossings. In addition, under §§ 234.405(d) and 234.407(d), if the primary operating railroad cannot obtain information for this data field from the applicable State agency responsible for grade crossing safety, the primary operating railroad may provide a written certification statement to the FRA Associate Administrator noting that it has requested, and not yet received, this information from the appropriate State agency.

FRA also received comments from NCDOT requesting that we clarify what would constitute a regular emergency services route. In response, we added guidance in the Inventory Guide to explain that the "Yes" box in the "Emergency Services Route" data field should be checked if highway vehicles routinely use a crossing to obtain access to emergency facilities including hospitals and police and fire stations.

While FRA received comments from the ICC, LaDOTD, and Tavla Solutions recommending elimination of the Emergency Services Route data field in Part V of the Inventory Form, FRA decided to retain this data field in order to facilitate safety analysis of crossings located on emergency services routes. However, we changed the title of the "Regular Emergency Services Route" data field in Part V of the Inventory Form to "Emergency Services Route." We also drew a clear demarcation between the section titled, "Submission Information," and Part V of the Inventory Form. FRA made this change in response to CPUC comments recommending that we revise the Inventory Form to include a clear separation between Part V and the data fields which identify and provide contact information for the individual who submits crossing data to the Crossing Inventory.

#### Appendix A, U.S. DOT Crossing Inventory Form

We revised Appendix A by including specific instructions for the initial reporting of new and previously unreported highway-rail and pathway crossings. We also added instructions for reporting changes in crossing characteristics at a public highway-rail grade crossing, under § 234.411(c), as well as changes to the public/private status of highway-rail and pathway grade crossings to this appendix.

Appendix A contains a draft of the revised Form FRA F6180.71, "U.S. DOT Crossing Inventory Form." Form FRA F6180.71 was submitted to OMB for approval and is still pending OMB approval. Therefore, operating railroads and State agencies cannot use the form until it has been approved. FRA expects that, prior to the final rule effective date, the form will be approved. Following approval, the final form will be available on FRA's safety data Web site under the Forms/Publications tab.

#### Appendix B, Responsibility Table for Periodic Updates to the Crossing Inventory

In the NPRM, FRA requested comments on the proposed Crossing Inventory Responsibility Table, which assigns responsibility for updating specific data fields on the Inventory Form to either the State or railroad.

Several commenters recommended that FRA assign responsibility for the completion of each individual data field (with the exception of the data fields contained in the Header of the Inventory Form) to either the State or the railroad. For example, DelDOT submitted comments recommending that we assign responsibility for updating the "Type of Land Use" data field in Part I of the Inventory Form to railroads, while Tavla Solutions submitted comments recommending that we assign responsibility for updating this data field exclusively to States. The CPUC also submitted comments recommending that we assign responsibility for updating the "Gate Arms" data field in Part III of the Inventory Form to railroads, while NCDOT submitted comments recommending that we assign responsibility for updating the "Highway Traffic Signal Interconnection" and "Highway Traffic Signal Preemption" data fields in Part III of the Inventory Form to railroads.

FRA also received comments recommending that we assign responsibility for updating certain data fields exclusively assigned to States. NCDOT and the CPUC submitted

comments recommending that we assign responsibility for updating the “Latitude in decimal degrees” and “Longitude in decimal degrees” data fields in Part I of the Inventory Form to States, while Tavla Solutions submitted comments recommending that we assign responsibility for updating the “Crossing Type” data field in Part I of the Inventory Form to States. The ICC submitted comments recommending that we assign responsibility for updating all of the data fields in Parts III through V of the Inventory Form for public highway-rail grade crossings to States.

In response to these comments, FRA revised Appendix B to the Inventory Guide to clarify which data fields are assigned to States for voluntary updating and which data fields are assigned to primary operating railroads for mandatory updating. For example, we assigned the responsibility for updating the “Type of Land Use” data field in Part I of the Inventory Form to primary operating railroads for private highway-rail grade crossings and private pathway grade crossings, while State agencies are being asked to voluntarily update this data field for public highway-rail grade crossings and public pathway grade crossings. Similarly, we assigned the responsibility for updating the “Crossing Type”, “Latitude in decimal degrees” and “Longitude in decimal degrees” data fields in Part I of the Inventory Form to primary operating railroads for private highway-rail grade crossings and private pathway grade crossings, while asking State agencies to voluntarily update these data fields for public highway-rail grade crossings and public pathway grade crossings.

We are not requiring primary operating railroads to submit data for Parts III–V of the Inventory Form for private highway-rail crossings and private pathway crossings (with the exception of the “Private Crossing Sign” data field in Part III of the Inventory Form). This final rule only requires primary operating railroads to update one data field (the “Private Crossing Sign” data field) in Parts III–V of the Inventory Form for private highway-rail grade crossings and private pathway grade crossings. However, FRA strongly encourages primary operating railroads to voluntarily report data on train-activated warning devices and crossing signs at private highway-rail grade crossings and private pathway crossings to the Crossing Inventory. As noted previously, the NTSB recently issued Safety Recommendation R-14-48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore,

FRA may issue regulations in the future that would require railroads to complete Parts III–V of the Inventory Form for private highway-rail crossings and private pathway crossings. With respect to public pathway grade crossings, Appendix B states that State agencies are being asked to submit voluntary updates to certain specified data fields in Part I of the Inventory Form. However, with respect to public highway-rail grade crossings, State agencies are being asked to submit voluntary updates to certain specified data fields in Part I of the Inventory Form for public highway-rail grade crossings, along with the data fields in Parts III–V of the Inventory Form (with the exception of the “Private Crossing Sign” data field in Part III of the Inventory Form).

#### *Appendix C, Reporting Crossings That Have Multiple Operating Railroads*

FRA revised Appendix C to the Inventory Guide to provide specific guidance on the reporting and updating of Crossing Inventory data by operating railroads that operate trains on separate tracks through highway-rail and pathway crossings. The requirements that apply to the reporting and updating of Crossing Inventory data by individual operating railroads are in §§ 234.405(b), 234.407(b), and 234.409(b).

#### *Appendix D, Definitions*

We added new definitions for various terms used in the Inventory Guide to Appendix D and revised the proposed definitions for certain terms (e.g., “adjacent crossing”, “operating railroad”, “primary operating railroad”, and “public crossing”) as further explained below.

FRA revised the definition of “adjacent crossing” in Appendix D to the Inventory Guide to provide additional detail. As stated in the revised definition, adjacent crossings have separate warning devices and separate Crossing Inventory Numbers, even though they are located on the same vehicular highway or pathway and the distance between the inside rail of each crossing does not exceed 100 feet.

We added a definition of “Annual Average Daily Traffic (AADT)” to Appendix D to the Inventory Guide and the Inventory Guide discussion of the “Annual Average Daily Traffic (AADT)” data field in Part V of the Inventory Form to clarify the meaning of this term.

We also added a definition of “back lights” to Appendix D to the Inventory Guide and an illustration of “back lights” in the Inventory Guide discussion of the “Mast Mounted Flashing Lights” data field in Part III of

the Inventory Form. FRA added the definition and illustration in response to ICC comments recommending that we add an illustration of back lights to the Inventory Guide to clarify the meaning of this term.

As discussed previously in the Section-by-Section Analysis of the “Reason for Update” data field in Part I of the Inventory Form, we revised the definition of “closed crossing” in response to comments submitted by LaDOTD, NCDOT, and Tavla Solutions. Therefore, we made the same revision to the definition of “closed crossing” in Appendix D to the Inventory Guide.

In addition, we added definitions for “event recorder” and “remote health monitoring” to Appendix D to the Inventory Guide and to the Inventory Guide discussion of the “Event Recorder” and “Remote Health Monitoring” data fields in Part II of the Inventory Form. These data fields were originally combined on the Inventory Form to collect data on the presence of either an event recorder or a remote health monitoring system at a highway-rail or pathway crossing. However, in response to comments the ICC submitted, we divided the “Event Recorder Monitoring Device” data field on the Inventory Form into two separate data fields, with one data field for Event Recorders and another data field for Remote Health Monitoring Systems. Likewise, we added definitions for “event recorder” and “remote health monitoring” to Appendix D to the Inventory Guide to clarify the meaning of these terms for Crossing Inventory users.

FRA added a definition of “flashing light pairs” to Appendix D to the Inventory Guide and illustrations of flashing light pairs to the Inventory Guide discussion of the “Total Count of Flashing Light Pairs” data field in Part III of the Inventory Form. These additions were made in response to ICC comments recommending that an illustration of a pair of flashing lights be added to the Inventory Guide to provide further clarification of the meaning of this term for Crossing Inventory users.

We made revisions to the definition of “gate” and the definitions for specific types of gate configurations (such as “Two Quadrant Gates”, “Three Quadrant Gates” and “Four Quadrant Gates”) in Appendix D to the Inventory Guide to correct inadvertent errors and clarify the meaning of these terms for Crossing Inventory users. In addition, we removed the proposed definition for “full entrance closure gates” from Appendix D to the Inventory Guide because the “Gate Configuration” data field in Part III of the Inventory Form no

longer contains a reference to full entrance closure gates.

To clarify that the term “grade crossing” applies to both highway-rail grade crossings and pathway grade crossings (including pedestrian station crossings), we added a definition of “grade crossing” to Appendix D to the Inventory Guide. We also added definitions of “highway-rail grade crossing,” “pathway grade crossing,” and “pedestrian station grade crossing” to Appendix D to the Inventory Guide because these terms are used frequently in the Inventory Guide. These terms are not defined in § 234.401, due to the limited use of these terms in the text of the final rule.

In response to comments seeking clarification as to whether a pathway crossing is essentially a type of highway-rail crossing, we revised the definition of “highway-rail crossing” in § 234.401. Therefore, to be consistent, we also made the same revision to the definition of “highway-rail crossing” in Appendix D to the Inventory Guide.

We added a definition of “median” to Appendix D to the Inventory Guide and to the Inventory Guide discussion of the “Channelization Devices/Medians” data field in Part III of the Inventory Form. This definition addresses NCDOT comments recommending that the Inventory Guide be revised to clarify the classification of medians.

We made the same revisions to the definition of “operating railroad” in Appendix D to the Inventory Guide as the revisions that were made to the definition of this term in § 234.401.

FRA added to the definition of “pathway crossing” in Appendix D to the Inventory Guide to clarify that pathways located more than 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.

Denver RTD submitted a comment requesting guidance on the proper classification of station crossings that are used by fare-paying passengers. In response to this comment, we added a definition of “pedestrian station crossing” to Appendix D to the Inventory Guide and to the Inventory Guide discussion of the “Crossing Purpose” data field in Part I of the Inventory Form. The Inventory Guide also states that for the “Crossing Purpose” data field, pedestrian station crossings are basically pathway crossings that are located within passenger stations.

We also added a definition of “plant railroad” to Appendix D to the Inventory Guide in response to

comments from NCDOT and the CPUC recommending that we add a definition of this term to this appendix. As stated in § 234.3, plant railroads are not subject to the reporting and updating requirements of this subpart.

Nonetheless, we added a definition of “plant railroad” consistent with the definition in § 234.5 for reference purposes.

To be consistent with the revisions we made to the definition of “primary operating railroad” in § 234.401, we also revised this definition in Appendix D to the Inventory Guide.

We revised the definition of “private crossing” in Appendix D to the Inventory Guide to specifically reference pathway crossings in addition to highway-rail crossings. In addition, FRA revised the definition of “public crossing” in Appendix D to the Inventory Guide to specifically reference pathway crossings, in addition to highway-rail crossings, and to replace the term “roadway approaches” with “approaches” to acknowledge the fact that pathway crossings generally do not have roadway approaches. We also merged the proposed definition of “open to public travel” in Appendix D to the Inventory Guide with the definition of “public crossing” and added an exception to the requirement that all approaches to the crossing must be on public property for situations where State law or regulation provides otherwise.

To clarify the meaning of the term “side lights” for Crossing Inventory users, we added a definition of this term to Appendix D to the Inventory Guide and an illustration of “side lights” to the Inventory Guide discussion of the “Mast Mounted Flashing Lights” data field in part III of the Inventory Form.

We revised the definition of “temporary crossing” in Appendix D to the Inventory Guide to specifically reference pathway crossings in addition to highway-rail crossings.

The ICC submitted comments recommending we add all definitions to § 234.401, or in the body of the Inventory Guide, where the data item is discussed. FRA notes that the definitions of terms in § 234.401 are consistent with the definitions in Appendix D to the Inventory Guide. We did not adopt this recommendation because the definitions in § 234.401 are intended to clarify terms used in the rule text. For the most part, the definitions in Appendix D to the Inventory Guide are also in the Inventory Guide discussion of the specific data field on the Inventory Form where the defined term is used. However, in some instances, FRA

determined that illustrations of specific defined terms would be especially helpful to Crossing Inventory users. In those instances, we included illustrations of the defined term in the Inventory Guide discussion of the relevant data field on the Inventory Form, but retained the official definition of the term in Appendix D to the Inventory Guide for reference purposes.

#### *Appendix E, Frequently Asked Questions (FAQs)*

To be consistent with changes we made to the final rule and Inventory Guide, we made minor revisions to the questions and answers in Appendix E to the Inventory Guide. We also added new questions and answers to Appendix E to provide guidance on the following topics: (1) Whether the Crossing Inventory records for closed or grade-separated crossings must be updated; (2) how to report a previously closed crossing that has recently been re-opened; (3) how to report the sale of a highway-rail or pathway crossing to the Crossing Inventory; (4) how to report a change in crossing characteristics (such as a change in the crossing surface or a change in the crossing warning devices); and (5) whether a private company can have more than one Inventory Number.

#### *Appendix F, High-Speed Rail ID Corridor Designations and Codes*

We updated Appendix F to the Inventory Guide to show current high-speed rail corridor designations and codes.

### **V. Regulatory Impact and Notices**

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

This final 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, Feb. 26, 1979. FRA has prepared and placed in the docket a Regulatory Evaluation addressing the economic impact of this 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.

As part of the regulatory evaluation, FRA has assessed quantitative estimates of the costs expected to result from the

implementation of this rule. FRA’s analysis follows DOT’s “Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses,” published in March 2013. Based on real wage growth forecasts from the Congressional Budget Office, DOT’s estimates that there will be a 1.07 percent annual growth rate in median real wages over a 20-year period (2014–2034). Real wages represent the purchasing power of nominal wages. FRA assumed an income elasticity of 1.0 and adjusted the Value of Statistical Life (VSL) in future years in the same way. VSL is the basis for monetizing avoided casualties. FRA’s analysis further accounts for expected wage growth by adjusting the taxable wage component of labor costs. Other non-labor based costs and benefits are not impacted.

The NPRM estimated the costs of the proposed rule to be \$2.1 million. Using a 7-percent discount rate the cost estimate will be \$1.5 million. The final rule’s estimated cost is \$2.8 million, discounted to \$2.0 million (7 percent). From the NPRM to the final rule, the base cost estimates increased due to the adjustment of the CBO real wage forecasts for each year of the analysis. FRA also updated wage inputs using the Surface Transportation Board’s newest wage rates for 2012, which impacted the overall cost estimate. FRA also assumed that the implementation year will be 2014 and adjusted all wages accordingly. While the final rule will not take effect until 2015, FRA does not believe this will materially impact the findings of its analysis. FRA conducted a break-even analysis of the rule and believes that potential benefits from the rule will equal or exceed total costs.

FRA analyzed 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 final rule prior to publication of the rulemaking. 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 contained in the public docket. The burdens of the rule 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 rule.

**20-YEAR COST FOR FINAL RULE**

Initial Update of Inventory .....	\$1,178,701
Periodic Update of Inventory ....	819,473

**20-YEAR COST FOR FINAL RULE—  
Continued**

Total .....	1,998,174
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Future costs are discounted to present value using a 7 percent discount rate.

In the Regulatory Evaluation, FRA has explained the expected likely benefits for the final rule, and provided a break-even analysis. The main benefit derived from the rule is improved crossing inventory data. This more precise information will 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 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 will break-even. In the last decade there were over 26,000 collisions at grade crossings. This break-even analysis indicates that preventing at least three incidents over the next twenty years would justify the rule. FRA anticipates that this rulemaking will increase the precision, completeness, and utility of railroad records and will improve the Crossing Inventory. This will 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 helps offset costs associated with the rulemaking by simplifying the reporting process. FRA believes the value of the anticipated benefits justify the cost of implementing the final rule.

*B. Regulatory Flexibility Act and Executive Order 13272*

To ensure potential impacts of rules on small entities are properly considered, FRA has developed this final rule in accordance 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. An agency must prepare a regulatory flexibility analysis (RFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

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.

(1) Description of Regulated Entities and Impacts: 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 final rule directly affects Class I, Class II, and Class III railroads that own or operate over at-grade or grade-separated 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 three 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 this term not-for-profit enterprises that are independently owned and operated and are not dominant in their field of operation. The U.S. Small Business Administration (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 using this definition for this rulemaking.

*Railroads:* There are a total of 756 regulated railroads. This rulemaking does not affect 152 railroads because they do not own any crossings. There are seven Class I railroads and 12 Class II railroads, all which are not considered small. There are a total of ten out of 29 commuter/passenger railroads, including Amtrak, this rule will affect. 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. There are also 11 transit operators. FRA typically does not regulate transit operators. However, some transit operators have crossings which must be included in the Crossing Inventory.

The costs each railroad incurs will 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 standards. There are 710 Class III railroads, and of those railroads, this rule affects 569. However, large holding companies own 113 of these railroads and, thus, are not considered small entities for purposes of this analysis. Hence, there are 456 railroads considered to be small entities impacted by this rule.

For the purpose of this analysis, FRA broke Class III railroads into two categories. We considered any Class III railroad with more than 40 crossings a Larger Class III railroad and any Class III railroad with 40 or less crossings a Smaller Class III railroad. FRA anticipates the majority of the Larger Class III railroads will use FRA's Web based program to submit their inventories to the FRA. FRA believes the Smaller Class III railroads will manually fill out and 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 rule.

In the regulatory evaluation FRA determined that there are 322 Larger Class III railroads. FRA estimates each Larger Class III railroad will initially task one person for approximately one week to review and update its inventory. Subsequently, FRA estimates it will take one person two days to update a Larger Class III railroad inventory every year. The initial cost associated with Larger Class III railroads will be around \$1,945 per railroad. We estimate the cost to periodically update their inventory is about \$780 per railroad. FRA does not believe the

regulation will significantly impact the Larger Class III railroads.

In the regulatory evaluation FRA determined that there are 247 Smaller Class III railroads. FRA estimates that each Smaller Class III railroad will initially need one person to work 16 hours to review and update each inventory. Subsequently, the periodic inventory update cost will be the same, requiring one person to work eight hours each year. We estimate the initial cost associated with Smaller Class III railroads will be \$778 per railroad. The cost to periodically update their inventory is about \$389 per railroad. Again, FRA believes that the regulation will not significantly burden any of the Smaller Class III railroads.

During the NPRM public comment period, FRA did not receive any comments discussing the Initial Regulatory Flexibility Analysis or Executive Order 13272. FRA certifies that the final rule will not have any significant economic impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

(2) Certification: Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies 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.

#### *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 final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. 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.

This final rule amends part 234, which contains FRA's principal regulations regarding grade crossing safety. Part 234 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 section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final 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 final rule is not required.

#### *D. Paperwork Reduction Act*

The information collection requirements in this final 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 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
234.403(a-c)—(New Requirements; Formerly Voluntary)				
—Submission of Data to the U.S. DOT Highway-Rail Crossing Inventory: Completion of Inventory Form.	51 States/entities & 618 railroads.	4,212 forms .....	30 minutes .....	2,106
—Mass Update Lists of Designated Data Submitted by Railroads/States.	51 States/entities & 618 railroads.	257 lists .....	30 minutes .....	129
—Excel Lists of Submitted Data .....	51 States/entities & 618 railroads.	1,234 lists .....	30 minutes .....	617
—Changes/Corrections to Crossing Inventory Data Submitted via GX 32 Computer Program.	51 States/entities & 618 railroads.	35,845 records .....	6 minutes .....	3,585
—Written Requests by States/Railroads for FRA Crossing Inventory Guide (New Requirement).	51 States/entities & 618 railroads.	10 requests .....	15 minutes .....	3
(d)—Reporting Crossing Inventory Data by State Agencies on Behalf of Railroads: Written Notices to FRA (New Requirement).	51 States/entities & 618 railroads.	20 notices .....	30 minutes .....	10
(e)(1)—Consolidated Reporting by Parent Corporation on Behalf of Its Subsidiary Railroads: Written Notice to FRA (New Requirement).	51 States/entities & 618 railroads.	250 notices .....	30 minutes .....	125
(e)(2)—Immediate Notification to FRA by Parent Corporation of Any Changes in the List of Subsidiary Railroads for Which It Reports (New Requirement).	51 States/entities & 618 railroads.	75 notices .....	30 minutes .....	38
234.405(a)(1)—Initial Submission of <i>Previously Unreported Highway-Rail and Pathway Crossings</i> through which They Operate by Primary Operating Railroads: Providing Assigned Crossing Inventory Number to Each Railroad that Operates One or More Trains Through Crossing (New Requirement).	51 States/entities & 618 railroads.	2,120 assigned numbers + 4,180 provided assigned numbers.	5 minutes + 5 minutes.	525
(a)(2)(i)—Completed Inventory Forms for Each Previously Unreported Crossing (New Requirement).	51 States/entities & 618 railroads.	2,120 forms .....	30 minutes .....	1,060
(c)—Duty of All Operating Railroads: Notification to FRA of Previously Unreported Crossing through Which It Operates (New Requirement).	51 States/entities & 618 railroads.	450 notices/ notifications.	30 minutes .....	225
(d)—Incomplete Submission by State Agency: Written Certification by Primary Operating Railroad that State has Not Provided Requested Crossing Information (New Requirement).	51 States/entities & 618 railroads.	35 certification statements.	45 minutes .....	26
—Copies of Written Certification Statements to Other Operating Railroads and Responsible State Agency (New Requirement).	51 States/entities & 618 railroads.	105 mailed certification copies.	2 minutes .....	4
234.407(a)—Submission of Initial Data to the Crossing Inventory for New Crossings: Providing Assigned Inventory Numbers for <i>New Highway-Rail and Pathway Crossings</i> through which They Operate by Primary Operating Railroads to Each Railroad that Operates One or More Trains Through the Crossing (New Requirement).	51 States/entities & 618 railroads.	100 assigned numbers + 100 provided assigned numbers.	5 minutes + 5 minutes.	16
(a)(2)(i)—Completed Inventory Forms for Each New Highway-Rail and Pathway Crossing (New Requirement).	51 States/entities & 618 railroads.	100 forms .....	90 minutes .....	150
234.409(a)—Submission of Periodic Updates to the Crossing Inventory (New Requirements; Formerly Voluntary).	51 States/entities & 618 railroads.	80,775 crossing inventory updates.	2.5025 minutes .....	3,369
(c) Duty of All Operating Railroads: Written Notification to FRA of that Up-to-date and Accurate Information has <i>Not</i> Been Timely Submitted to the Crossing Inventory (New Requirement).	51 States/entities & 618 railroads.	950 written notices	20 minutes .....	317
234.411(a)—Crossing Sale: Submission of Crossing Inventory Form by Any Operating Railroad that Sells All or Part of Highway-Rail and Pathway Crossing (New Requirement).	51 States/entities & 618 railroads.	650 updated crossing inventory forms.	2 hours .....	1,300
(b)—Crossing Closure: Submission of Crossing Inventory Form by Primary Operating Railroad that Closes Highway-Rail and Pathway Crossing (New Requirement).	51 States/entities & 618 railroads.	85 crossing inventory forms (closures).	5 minutes .....	7
(c)—Primary Operating RR Submission of Inventory form for Any Surface/Warning Device Changes at Crossing (New Req.).	51 States/entities & 618 railroads.	650 forms .....	30 minutes .....	325
234.413(a & b)(1)—Recordkeeping: Duplicate Copy of Each Inventory Form Submitted in Hard Copy (New Requirement).	51 States/entities & 618 railroads.	5,901 duplicate copies.	1 minute .....	98
(a & b)(2)—Railroad Copy of FRA Confirmation after Electronic Submission of Crossing Data to the Crossing Inventory (New Requirement).	51 States/entities & 618 railroads.	80,775 copies .....	1 minute .....	1,346
(c)—Railroad List of Establishment Locations Where Any Required Records are Kept (New Requirement).	51 States/entities & 618 railroads.	618 lists .....	5 minutes .....	52

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, Office of Safety, at 202-493-6292, or Ms. Kimberly Toone, Records Management Officer, Office of Information Technology, at 202-493-6132 or via email at the following addresses: [Robert.Brogan@dot.gov](mailto:Robert.Brogan@dot.gov); [Kimberly.Toone@dot.gov](mailto:Kimberly.Toone@dot.gov).

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, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: [oira\\_submissions@omb.eop.gov](mailto:oira_submissions@omb.eop.gov).

OMB is required to make a decision concerning the collection of information requirements contained in this 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 prior to the effective date of this 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 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 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 final 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 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 final 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 final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has 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 (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 final rule 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*

In accordance with 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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://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.

#### **The Rule**

In consideration of the foregoing, FRA amends 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 1.89.

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

■ 3. Amend § 234.1 by revising paragraphs (a)(3) and (4) and 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 highway-rail and pathway crossings.

\* \* \* \* \*

■ 4. Subpart F is added to part 234 to read as follows:

#### Subpart F—Highway-Rail and Pathway 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.

Appendix A to Part 234—Schedule of Civil Penalties

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

##### § 234.401 Definitions.

As used in this subpart—

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

*Closed crossing* means a location where a previous crossing no longer exists because either the railroad tracks

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

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

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

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

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

*Inventory Guide* means the FRA Guide for Preparing Highway-Rail Crossing Inventory Forms in effect at the time of the submission of data to the Crossing Inventory.

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

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

*Pathway crossing* means a pathway that:

(1) Is explicitly authorized by a public authority or a railroad;

(2) Is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others;

(3) Is not associated with a public highway, road, or street, or a private roadway; and

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

*Primary operating railroad* means the operating railroad that either owns or maintains the track through the highway-rail or pathway crossing, unless the crossing is located within a private company, port, or dock area. If more than one operating railroad either owns or maintains the track through the highway-rail or pathway crossing, 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, each railroad that owns track leading to the private company, port, or dock area will be considered a primary operating railroad as applied to crossings within the private company, port, or dock area.

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

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

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

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

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

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

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

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

(e) *Reporting by the parent corporation on behalf of subsidiary railroads.* (1) In order 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 and the subsidiary railroad(s) shall provide written notice to the FRA Associate Administrator that the parent corporation 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 operating railroads for which the parent corporation will assume reporting and updating responsibility;

(ii) An explanation as to how the parent corporation and the subsidiary operating railroad(s) operate as a single, seamless, integrated United States railroad system; and

(iii) A statement signed by the chief executive officer of the parent corporation, in which the chief executive officer shall consent, on behalf of the parent corporation, to guarantee any monetary penalty assessments or other liabilities owed to the United States government that are incurred by the named subsidiaries for violating the reporting or updating requirements set forth in 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.

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

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

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

(3) Each primary operating railroad shall submit accurate and complete 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 March 7, 2016. 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 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 March 7, 2016. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted in accordance with § 234.403.

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

(d) *Incomplete submission—State agency data.* (1)(i) If a primary operating railroad requests State-maintained

crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data and does not receive the requested data within 60 days, the primary operating railroad may provide a written statement to the FRA Associate Administrator certifying that it requested crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data at least 60 days prior, but has not yet received the data. If a written statement is provided to the FRA Associate Administrator pursuant to this subsection by certified mail, return receipt requested, the primary operating railroad will not be held liable for failure to timely submit an accurate and complete Inventory Form, or its electronic equivalent, as required by § 234.405(a)(3). If the primary operating railroad receives the requested crossing data subsequent to the mailing of a certified statement under this section, the primary operating railroad shall submit the crossing data to the Crossing Inventory within 60 days of receipt.

(ii) Any written statement provided pursuant to this subsection shall certify that the primary operating railroad requested crossing information for one or more data fields that have been assigned by the Inventory Guide to the State for updating purposes and the requested information has not yet been provided. The written certification statement shall be mailed no later than March 7, 2016. Copies of this written certification statement shall also be mailed to each operating railroad that operates through the crossing and to the State agency responsible for maintaining highway-rail and pathway crossing data.

(2) The written certification statement shall include the following:

(i) A list of each data field for which crossing information has been requested from the appropriate State agency; and

(ii) The date on which this crossing information was requested from the appropriate State agency.

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

(a) *Duty of primary operating railroad.*

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

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

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

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

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

(3) Each primary operating railroad shall submit accurate 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. 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 March 7, 2016. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted in accordance with § 234.403.

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

and unreported highway-rail or pathway crossing for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section.

(d) *Incomplete submission—State agency data.* (1)(i) If a primary operating railroad requests State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data and does not receive the requested data within 60 days, the primary operating railroad may provide a written statement to the FRA Associate Administrator certifying that it requested crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data at least 60 days prior, but has not yet received the data. If a written statement is provided to the FRA Associate Administrator pursuant to this subsection by certified mail, return receipt requested, the primary operating railroad will not be held liable for failure to timely submit an accurate and complete Inventory Form, or its electronic equivalent, as required by § 234.405(a)(3). If the primary operating railroad submits the requested crossing data subsequent to the mailing of a certified statement under this section, the primary operating railroad shall submit the crossing data to the Crossing Inventory within 60 days of receipt.

(ii) Any written certification statement provided pursuant to this subsection shall certify that the primary operating railroad requested crossing information for one or more data fields that have been assigned by the Inventory Guide to the State for updating purposes and the requested information has not yet been provided. The written certification statement shall be mailed no later than six (6) months after the crossing becomes operational or March 7, 2016, whichever occurs later. Copies of this written certification statement shall also be mailed to each operating railroad that operates through the crossing and to the State agency responsible for maintaining highway-rail and pathway crossing data.

(2) The written certification statement shall include the following:

(i) A list of each data field for which crossing information has been requested from the appropriate State agency; and

(ii) The date on which this crossing information was requested from the appropriate State agency.

**§ 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, in accordance 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 March 7, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad).

(b) *Duty of operating railroad when operating railroads operate on separate tracks.* For each highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad shall submit up-to-date and accurate crossing data for certain specified data fields on the Inventory Form, or its electronic equivalent, to the Crossing Inventory at least every three (3) years from the date of the most recent submission of data by that operating railroad (or on behalf of that operating railroad) for the crossing or March 7, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the operating railroad (or on behalf of the operating railroad). The Inventory Form, or its electronic equivalent, shall be partially completed in accordance with the Inventory Guide and submitted in accordance with § 234.403.

(c) *Duty of all operating railroads.* Each operating railroad, other than the primary operating railroad, that operates through a highway-rail or pathway crossing for which up-to-date information has not been timely submitted to the Crossing Inventory in accordance with paragraph (a) of this section shall notify the FRA Associate Administrator in writing of this oversight. Written notification provided by the operating railroad shall include, at a minimum, the Inventory Number for each highway-rail and pathway crossing that has not been updated.

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

(a) *Crossing sale.* Any railroad that sells all or part of a highway-rail or

pathway crossing shall submit to the Crossing Inventory an Inventory Form, or its electronic equivalent, which reflects the crossing sale. The updated Inventory Form, or its electronic equivalent, shall be submitted to the Crossing Inventory in accordance with § 234.403 no later than three (3) months after the date of sale or March 7, 2016, whichever occurs later.

(b) *Crossing closure.* Within three (3) months after the closure of any highway-rail or pathway crossing reported to the Crossing Inventory or March 7, 2016, whichever occurs later, the primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects closure of the crossing to the Crossing Inventory, in accordance with the Inventory Guide and § 234.403.

(c) *Changes in crossing characteristics.* (1) Within three (3) months of any change in crossing surface or change in warning device at any public highway-rail grade crossing or March 7, 2016, whichever occurs later, 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, in accordance with the Inventory Guide and § 234.403.

(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.

**§ 234.413 Recordkeeping.**

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

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

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

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

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

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

**§ 234.415 Electronic recordkeeping.**

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

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

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

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

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

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

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

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

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

Section	Violation	Willful violation
<b>Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting</b>		
§ 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 and complete 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 and complete 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

Section	Violation	Willful violation
(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
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely submit up-to-date crossing data.	1,000	2,000
§ 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

Issued in Washington, DC, on December 19, 2014.

**Melissa L. Porter,**  
*Chief Counsel.*

[FR Doc. 2014-30279 Filed 1-5-15; 8:45 am]

**BILLING CODE 4910-06-P**