

**SUPPORTING JUSTIFICATION
EMERGENCY NOTIFICATION SYSTEM STANDARDS
OMB No. 2130-XXXX; RIN 2130-AC14**

Summary of Submission

- FRA is amending 49 CFR Part 234 by adding a new Subpart E. The collection of information associated with this Notice of Proposed Rulemaking (NPRM) is a completely new submission.
- It should be noted that this collection of information is entirely associated with the proposed rulemaking and the relevant text for each information collection requirement is exactly included in paperwork requirements listed in answer to question number 12 of this document.
- FRA is publishing this Notice of Proposed Rulemaking (NPRM) in the **Federal Register** regarding its Systems for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings on March 4, 2011. See 76 FR 11992. As in every rulemaking, FRA plans to respond to any comments received in response to the NPRM both in the final rule and the associated information collection. [*Note: FRA normally does not get very many comments pertaining to the collection of information associated with rulemakings, but will be glad to upload any such comments in its final rule submission.*]
- Total number of burden hours requested for this **new** submission is **225,144 hours**.
- Total number of responses requested for this **new** submission is **685,429**.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 14-29).**

1. Circumstances that make collection of the information necessary.

The proposed rule – and associated collection of information – is intended specifically to help implement Section 205 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law No. 110-432, Division A, which was enacted October 16, 2008, and generally to increase safety at highway-rail and pathway grade crossings. See 49 U.S.C. 20152, Notification of grade crossing problems, and definitions in proposed § 234.301. Section 205 of RSIA mandates that the Secretary of Transportation (Secretary) require certain railroad carriers (railroads) to take a series of specified actions related to setting up and using systems for the public to notify the dispatching railroad of grade crossing problems. A separate statutory provision, 49 U.S.C. 20103, gives the Secretary very broad authority to prescribe rail safety regulations and issue rail safety orders pursuant to notice-and-

comment procedures. The Secretary has delegated the responsibility to carry out both Section 205 of RSIA and 49 U.S.C. 20103 to the Administrator of FRA. 49 CFR 1.49(m)/(oo). Essentially, section 205 of RSIA imposes a mandate requiring FRA as the Secretary's delegate to prescribe regulations or orders imposing the requirements specified in that section. FRA has chosen to require the railroads to set up and use a notification program specified by Section 205 of RSIA by conducting a rulemaking and prescribing a regulation.

In particular, under Section 205 of RSIA, FRA is to require railroads to "establish and maintain a toll-free telephone service for rights-of-way over which the railroad dispatches trains" through "the grade crossing of railroad trains on those rights-of-way and public or private roads," "to directly receive calls reporting" any of three types of unsafe conditions at the grade crossings or other safety-related information involving such a grade crossing. Under that section, the three types of reportable unsafe conditions are as follows: (1) malfunctions of warning signals, crossing gates, and other devices intended to promote safety at the highway-rail grade crossing; (2) disabled vehicles blocking railroad tracks at such grade crossings; and (3) obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to such a grade crossing. To the extent that the requirements proposed in this NPRM exceed the requirements specified by Section 205 of RSIA, such as by covering pathway grade crossings, FRA relies primarily upon its general safety rulemaking authority under 49 U.S.C. 20103.

In addition to specifying the requirement that the Secretary must impose on dispatching railroads to establish a telephonic notification system, Section 205 of RSIA includes a series of additional specifications to be reflected in FRA's regulation. When a railroad receives a report of a malfunction of a warning signal, crossing gate, and/or other device intended to promote safety at the grade crossing or a report of a disabled vehicle blocking a railroad track at a grade crossing through which the railroad dispatches a train, the dispatching railroad must immediately contact all trains operating near the grade crossing to warn them of the malfunctioning device or disabled vehicle. After contacting the trains as necessary, the dispatching railroad must contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities. When a railroad receives a report of either obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to the grade crossing or other safety information involving such grade crossings, the railroad must timely investigate the report, remove the obstruction if possible, or correct the unsafe circumstance.

Further, under Section 205 of RSIA, FRA must require that the owner of the track at the grade crossing "ensure the placement . . . of appropriately located signs" bearing, at a minimum, a toll-free telephone number to be used by the public for placing calls to report unsafe conditions at the crossing to the railroad that dispatches trains on that right-of-way

through the crossing, an explanation of the purpose of that toll-free telephone number, and the grade crossing number assigned for that crossing by the National Highway-Rail Crossing Inventory of the U.S. Department of Transportation (DOT).

In this proposed rule then, FRA imposes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning systems. FRA also prescribes minimum standards for the reporting by railroad employees and public agency employees of failures of such systems and prescribes minimum actions that railroads must take when such warning systems malfunction. FRA also prescribes minimum requirements that railroads establish a system for receiving toll-free telephone calls from the public at large about unsafe conditions at highway-rail and pathway grade crossings and taking certain actions in response. FRA does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

The historical data suggest that grade crossing collisions are among the most challenging areas in FRA's efforts to reduce deaths and injuries along the Nation's railroads. In fact, grade crossing collisions are the second leading cause of fatalities in the rail industry.¹ There are approximately 221,000 public and private at-grade highway-rail grade crossings in the United States. Thus, there are 211,000 locations where a train can collide with a vehicle or a pedestrian at any time. Each year, there are approximately 4,000 collisions between a train and a highway vehicle. FRA devotes considerable resources to preventing these collisions.

While significant improvements have been achieved over the last two decades, grade crossing collisions still pose a significant public safety threat that can spiral beyond the immediate impact of the vehicle and train. In addition to the risk of serious injury to the vehicle occupants and the train crew, if the train is carrying hazardous cargo and the collision causes the train to derail, an entire community could be at risk. If it is a passenger train, the risk of injuries extends beyond the vehicle occupants to passengers. This was the case in the 1999 Bourbonnais, Illinois, accident when an Amtrak passenger train hit a truck loaded with steel. Eleven train passengers died, and hundreds were injured. Further, other vehicles and pedestrians in the vicinity of a grade crossing collision can also be at risk. Consider a train's impact on a gasoline tanker, such as the 1993 incident that occurred in Ft. Lauderdale, Florida, when an Amtrak passenger train struck a tanker truck. The truck driver and five other motorists were consumed by fire.

A collision between a train and a vehicle of any size can be catastrophic. Serious injuries or deaths are far more likely to occur with a collision between a train and a vehicle, versus a collision between two vehicles. The potential of a derailment can have a startling effect on a community if a release of hazardous materials necessitates the evacuation of a neighborhood or entire community. Over the 11-year period from 1999-2009, approximately 2,306 collisions occurred at grade crossings where a vehicle was

¹ All data cited in this publication is derived from the FRA database.

stalled or the driver’s view was obstructed.² The ability to provide an effective means to immediately alert the railroad carrier of an emergency situation at a grade crossing enables the railroad carrier and local public safety officials to respond quickly in order to avert a serious collision and its consequences.

The majority of Class I railroads have installed some type of emergency notification signs at most public and private grade crossings on their rail systems. This rule would require the installation of such signs at all at-grade crossings, including grade crossings on systems operated by regional and short line carriers, and would include private and pedestrian (pathway) crossings. FRA believes it is equally important to provide an immediate means to communicate an emergency situation, even at grade crossings that are infrequently used. Imagine a logging truck hung up at a private crossing with no knowledge of what actions to take, or whom to contact.

Currently, there is a wide variance in the design and location of ENS signs as well as the information provided on them. This rule would require signs to be designed using minimum standards for size, color, and wording as specified in the rule and be located so as to be easily visible throughout the nation’s at-grade highway-rail grade crossings.

The following table shows the combined totals for all incidents from 2005 to 2009:

Grade Crossing Incidents 2005–2009			
Fatalities and Injuries			
Year	Number of Incidents	Number of Fatalities	Number of Injuries
2005	823	40	168
2006	831	43	214
2007	826	33	189
2008	702	31	136
2009	596	34	161
Total	3778	181	868
Yr Average	756	36	174

Only grade crossing incidents where the train collided with a motor vehicle that was stopped or stalled on the tracks were used for this analysis. Analyzing the data, FRA finds that stopped or stalled vehicles on tracks struck by a moving train caused an average of 36 fatalities per year and 174 injuries per year.

The proposed rule – and associated information collection to monitor/enforce compliance – then would build on existing voluntary programs and to a certain extent on existing regulations concerning response to reports of warning system malfunction at highway-rail

² Data taken from Form FRA F 6080.57, data elements, Nos. 16, 41, 43.

grade crossings and on maintenance, inspection, and testing of highway-rail grade crossing signal systems. The ability to provide an effective means for a member of the public to immediately alert the railroad of an emergency situation or other unsafe condition at a highway-rail or pathway grade crossing will enable the railroad and local public safety officials to respond earlier to avert a serious incident. Currently, all Class I railroads have put in place some sort of means by which they can receive notification from the public of any emergency or unsafe condition at most of their grade crossings, whereas many regional and short line railroads do not have any such kind of notification system in place. The proposed rule would require these railroads to implement such a system, called an Emergency Notification System (ENS), covering public and private highway-rail and pathway grade crossings.

2. How, by whom, and for what purpose the information is to be used.

This is a new collection of information. The information to be collected will be used by FRA for compliance purposes. In particular, the collection of information will be used by FRA to ensure that the Congressional mandate to require railroad carriers to establish and maintain a toll-free telephone service to report emergencies at all public, private, and pedestrian grade crossings for rights-of-way over which they dispatch trains is carried out. Under § 234.303, the telephone reporting system – referred to as Emergency Notification System (ENS) – will directly receive calls reporting emergencies that occur where a roadway or pathway crosses any public, private, or pedestrian grade crossing. The proposed rule requires railroad carriers to post signs at all grade crossings and to provide a telephone number that the public can call to report such emergencies as provided in this rule. The requirements of the proposed rule under § 234.303 are intended to provide an effective means of communicating situations at crossings that could endanger the safety of the public and railroad employees. This information will be used by railroads to investigate such reports and to take appropriate action to reduce the risk of accidents/incidents and corresponding casualties and property damage at such crossings.

Section 234.305 of the proposed rule specifies what actions the railroad carrier must take upon receipt of such calls. Dispatching railroads receiving such reports must immediately contact the railroad having maintenance responsibility for the warning system to which the report pertains. The maintaining railroad must then immediately contact all trains that are authorized to operate through the highway-rail grade or pathway crossing and warn the trains of the reported malfunction. The maintaining railroad must also contact the law enforcement authority having jurisdiction over the highway-rail grade crossing and provide the necessary information. Train crews will use the communicated information to take appropriate measures, such as reducing train speed or perhaps stopping the train completely if there is a disabled vehicle that needs to be removed, to ensure safety and prevent an accident/incident (e.g., a collision with a motor vehicle, or striking a pedestrian, etc.) from occurring. Law enforcement authorities will use the communicated information to direct vehicular traffic or carry out other activities

to maintain safety at the highway-rail grade crossing or pathway grade crossing. The maintaining railroad will also use the information communicated to it to investigate the report and determine the nature of the failure and repair the active warning system or take other appropriate measures/actions, depending on the conditions detailed in the report.

Under § 234.307, railroads may use a third-party service to directly receive reports stipulated under § 234.303. FRA recognizes that many regional and short line railroads may not have the capability and resources to set up and operate a 24-hour system to respond to reports of unsafe conditions at highway-rail and pathway grade crossings. Railroads must notify FRA of their intent to use a third-party service before the third party service actually starts receiving calls. FRA will use this information to evaluate whether the use of the third party-service substantially increases the railroad's response time to the extent that the use of the service is no longer considered as the railroad "directly" receiving calls and whether this use of a third-party service complies with the rule.

FRA will also use the information collected under § 234.307 to ensure that these railroads have established a means/mechanism of receiving reports of unsafe conditions at highway-rail grade and pathway grade crossings so that they can respond accordingly and take remedial action, where necessary. Additionally, FRA will use this information to confirm that railroads using such a service provide the third-party service with sufficient contact information by which that service may immediately contact the contracting railroad upon receipt of a report. Moreover, FRA will use this information to ensure that contracting railroads identify to FRA the highway-rail grade and pathway crossings about which the third-party service will receive reports so that FRA can verify that all highway-rail and pathway grade crossings are included in the emergency notification system. Finally, FRA will use the information collected under this section to ensure that contracting railroads do not use an automated answering service for purposes of receiving reports pursuant to § 234.303 to avoid delays in the railroad's receipt of the report and the railroad's response to the unsafe condition that would render ENS ineffective.

FRA will use the information collected under § 234.309/234.311 to ensure that the dispatching railroad for a highway-rail or pathway grade crossing provides the maintaining railroad with the telephone number to be posted on the required ENS signs at that crossing (if the dispatching railroad and maintaining railroad are not the same). FRA will also use the information collected under these sections to ensure that ENS signs are posted at each highway-rail and pathway grade as required by § 234.311 and that they have the necessary information. A minimum amount of information must be placed on each sign so that the unsafe condition may be properly reported and remedied. A sign must be placed and maintained for each direction of traffic at that grade crossing so that they can be seen by grade crossing users. The information collected pertaining to ENS signs will be used by rail employees, law enforcement officers, highway traffic officials, other employees of public agencies acting in an official capacity, and the public at large to report unsafe conditions.

FRA will review the information collected under § 234.313 to ensure that railroads meet and comply with the recordkeeping requirements of this section. Each railroad must keep records, subject to § 234.313(b), relating to compliance with this subpart. Specifically, each railroad responsible for receiving reports pursuant to § 234.303(a) and, if applicable, each railroad with maintenance responsibility must keep, at a minimum, the following information for each report received under this subpart: (1) The nature of the reported problem; (2) Location of the highway-rail grade crossing or pathway grade crossing (by highway name and U.S. DOT Crossing Inventory File Number); (3) Time and date of receipt of the report by the railroad; (4) Whether the person who provided the report was a railroad employee, law enforcement officer, highway traffic official, other employee of a public agency acting in an official capacity or member of the general public; (5) Actions taken by the railroad prior to rectifying the reported highway-rail grade crossing or pathway grade crossing problem; (6) If the reported unsafe condition is substantiated, actions taken by the railroad to rectify the reported problem, if possible; (7) Date and time at which the was rectified; and (8) If a railroad is required by this subpart to contact a railroad with maintenance responsibility, the time and date the railroad contacted the railroad having maintenance responsibility. FRA inspectors will monitor these records to ensure that railroads are carrying out their responsibilities related to reports of unsafe conditions and are responding to these reports promptly and taking remedial actions, where necessary. These records must be kept for one year by railroads. In the event of an accident/incident at one of these highway-rail or pathway grade crossings, these records will be extremely useful to FRA and State investigators participating under 49 CFR 212.

3. Extent of automated information collection.

Over the years, FRA has strongly encouraged and highly endorsed the use of advanced information technology, wherever possible, to reduce burden on respondents. In particular, FRA has greatly encouraged electronic recordkeeping by railroads for many years. In keeping with the requirements of the Paperwork Reduction Act (PRA) and the Government Paperwork Elimination Act (GPEA), the minimum standards imposed by this regulation are sufficiently broad to permit a railroad to comply through the use of improved technology and commercial off the shelf word processing software. Thus, proposed § 234.315 permits records required by new Subpart E to be kept in electronic form, if railroads so choose. Section 234.315 provides railroads with an electronic option, that is, the opportunity to establish electronic recordkeeping systems as long as the system meets the specified criteria under this section, which are intended to safeguard the integrity and authenticity of each record. As a result of this option, approximately 38 percent of responses may be completed electronically, if railroads so choose. *[Note: The greatest number of responses (an estimated 422,802) pertains to ENS signs under § 234.309/234.311 that must be placed at highway-rail and pathway grade crossings that must be 12" wide by 9" high, have lettering measuring, at a minimum, 1" height, and have a white legend and border on a blue background and thus do not lend themselves to*

advanced information technology.]

4. Efforts to identify duplication.

The information collection requirements are unique, entirely related to this proposed regulation, and thus are not duplicated anywhere to our knowledge.

Similar data are not available from any other source.

5. Efforts to minimize the burden on small businesses.

“Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A. 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 use a different standard 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 proposed rulemaking.

Some provisions of this proposed rule would apply to all railroads that dispatch trains through highway-rail or pathway grade crossings. Out of the 674 Class III railroads, FRA estimates there are 117 small railroads that do not dispatch trains through any grade crossings and, therefore, would not be affected by those provisions of this regulation. Therefore, FRA has concluded that 557 small railroads would be affected by those provisions of this rule. However, the impact on these small railroads would not be significant.

Other provisions of this proposed rule would require railroads that own track at highway-rail or pathway grade crossings [or maintain grade crossing signal warning systems at such crossings per rule text] to incur fixed costs, such as the purchase of signs and posts, which are directly proportional to the number of crossings. Additionally, the number of calls received is also expected to be proportional to the number of highway-rail or pathway grade crossings owned or maintained by each railroad.

Smaller railroads generally have fewer highway-rail or pathway grade crossings than larger railroads do. Although each grade crossing may have the same probability of being the subject of an ENS-generated call, the total burden on smaller railroads should be smaller, when implementing and complying with the major requirements of purchasing signage and recordkeeping. For example, FRA has found that there are 137 extremely small railroads, accounting for 4,408 grade crossings. On average, each of the 137 railroads has approximately 32 grade crossings. Additionally, the average total implementation cost for these railroads is approximately \$2,300 per railroad for the first year and \$519 per railroad per year for each of the following 14 years. Expressed differently, the cost for these railroads to comply with this proposed rule is about \$72 per crossing per railroad for the first year and approximately \$16 per crossing per railroad for each of the following 14 years. Railroads with just a few crossings would incur minimal costs to comply with this proposed rule. Thus, FRA believes that this proposed regulation would not have a significant impact on these railroads.

Some small railroads are subsidiaries of large short-line holding companies with the expertise and resources comparable to larger railroads. The proposed requirements to install two new signs per highway-rail or pathway grade crossing and provide a toll-free telephone number to report emergencies and other unsafe conditions would not have a significant impact on these railroads. Short lines affected by this proposed rule might collaborate with other small railroads to jointly implement its requirements, which would lower the burden on these small railroads.

Previously, FRA sampled small railroads and found that revenue averaged approximately \$4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad, or \$47,000, is far less than the average annual cost that these railroads would incur because of this proposed rule. FRA concludes that the proposed burden would not have a noticeable impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601(b)), FRA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Moreover, it should be noted that the following are exempted from the requirements of this Part: (1) Operations of a plant railroad as defined in § 234.5; (2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation; or (3) Tourist, scenic, historic, or excursion operations conducted only on

track used exclusively for that purpose (i.e., there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

Finally, it should be noted that FRA has provided staggered compliance dates to ease the burden on medium and small railroads (Class IIs and Class IIIs). Class II railroads subject to this subpart are required to comply with this subpart beginning no later than 30 months from the effective date of the final rule. Class III railroads subject to this subpart and any other railroads subject to this subpart are required to comply with this subpart beginning no later than 36 months from the effective date of the final rule.

6. Impact of less frequent collection of information.

If FRA does not collect this information or collects it less frequently, FRA will be unable to fulfill the Section 205 RSIA Congressional mandate and public safety at highway-rail and pathway grade crossings throughout the country will be considerably more dangerous. Specifically, without the information collected under § 234.303, dispatching railroads will not establish and maintain a toll-free telephone service by which the railroad can directly receive calls from the public and others reporting unsafe conditions with respect to highway-rail grade crossings through which that railroad dispatches trains. Without the information collected under § 234.303 and § 234.305, dispatching railroads will not be able to directly and immediately receive reports of warning system malfunctions, disabled vehicles or other obstructions blocking a railroad track at the highway-rail grade crossing and other unsafe conditions. Without this information, the dispatching railroad will be unable to immediately contact all trains authorized to operate through the highway-rail grade crossing and warn these trains of the reported malfunction or obstruction. Increased rail accidents and corresponding injuries/fatalities and property damage are likely to result because of this lack of timely communicated information and the train crew's consequent inability to take appropriate necessary action.

Also, without the information collected under § 234.305, dispatching railroads will be unable to immediately contact the railroad that has maintenance responsibility for the warning system and inform it of the reported malfunction. Without this important communication and information, the maintaining railroad will be unable to investigate unsafe conditions reports and take remedial actions, where necessary. Again, greater numbers of rail accidents/incidents, along with increased injuries and fatalities to railroad employees and members of the public, are likely to be the result. Further, without the information collected under this section, the dispatching railroad will be unable to contact the law enforcement authority having jurisdiction over the crossing to direct traffic and maintain safety. Without this timely information, there is likely to be more train and motor vehicle collisions and increased injuries to train crews and more fatalities to motor vehicle operators and their passengers.

Without the information collected under § 234.307, FRA will have no way to know whether railroads have engaged a third-party service to directly receive reports of unsafe

conditions pursuant to § 234.303. Without receiving contact information from the railroads that they have engaged a third-party service, FRA will be unable to ensure that the railroad is not using an automated service for the purpose of receiving reports of unsafe conditions and will have no information identifying the highway-rail and pathway grade crossings about which the third-party service will receive reports. Use of an automated service might cause delays or omissions of reports of unsafe conditions and thus prevent timely investigation and action by the maintaining railroad, thereby leading to more train-motor vehicle accidents at highway-rail grade crossings and more train-pedestrian incidents and corresponding increases in injuries and fatalities at pathway grade crossings.

Without the information collected under § 234.309 and § 234.311, FRA will have no assurance that the dispatching railroad for a highway-rail or pathway grade crossing has provided the maintaining railroad for the crossing with its telephone number to be posted on the ENS sign at the crossing. Without this information, ENS signs at each highway-rail or pathway grade crossing required by § 234.311 will not have the necessary information for the dispatching railroad to receive reports of unsafe conditions at the crossing. Also, without this crucial telephone number and other information explaining the purpose of the sign and the U.S. DOT Crossing Inventory Number assigned to that crossing, rail employees and members of the public wishing to report an unsafe condition will not know where to call or what information to report concerning an unsafe condition at one of these crossings. Thus, without the ENS signs at each crossing and the essential information conveyed on them, timely reporting of unsafe conditions and necessary remedial actions by the maintaining railroad, train crews, and law enforcement authorities will not take place, leading to greater numbers of accidents/incidents and corresponding injuries and deaths at these crossings.

Without the information collected under § 234.313, FRA will not have essential records to track and ensure compliance with the various requirements of this rule. In particular, without these records, FRA would have no detailed data about reported unsafe conditions at highway-rail and pathway grade crossings. Specifically, FRA would have no data concerning the nature of the reported unsafe condition, the location of the grade crossing (by highway name and U.S. DOT Inventory File Number), the time and date of receipt of the report by the railroad, whether the person who made the report was a railroad employee/law enforcement officer/highway traffic official/other employee of a public agency acting in an official capacity, the actions taken by the railroad prior to rectifying the reported unsafe condition, the actions taken by the railroad to rectify (if possible) the reported grade problem, the date and time at which the reported unsafe condition was rectified, and the time and date the railroad contacted the railroad having maintenance responsibility (if the railroad is required to contact the railroad with maintenance responsibility). In the event of an accident/incident at highway-rail grade or pathway grade crossings, such records would prove extremely helpful to FRA and participating Part 212 State investigators in determining the cause(s) of the accident/incident and in developing necessary countermeasures to prevent those types of accident/incident from

occurring again.

In sum, without the proposed collection of information, FRA will have no way to monitor compliance with this proposed rule. Without the information to be collected, the effectiveness of the actual implementation could not be determined nor could the rule be enforced. The proposed information collection enables FRA to carry out the RSIA Congressional mandate and facilitates the agency mission, which is to promote and enhance rail safety throughout the Nation.

7. Special circumstances.

All information collection requirements are in compliance with this section. Thus, there are no requirements for respondents to report information more than quarterly, to prepare a written response in fewer than 30 days, to submit more than original and two copies of any document, to retain records more than three years, or to submit confidential or proprietary information.

8. Compliance with 5 CFR 1320.8.

FRA is publishing a Notice of Proposed Rulemaking (NPRM) in the Federal Register regarding Emergency Notification System Standards on March 4, 2011. See 76 FR 11992. In this publication, FRA is soliciting public comments on the proposed rule and its accompanying information collection requirements and associated burden. FRA will respond to any comments it receives in the agency final rulemaking and accompanying Supporting Justification.

Background

In 1994, Congress directed FRA to conduct pilot projects in at least two States to demonstrate the efficiency of such an “emergency notification system” programs covering highway-rail grade crossings and to report to Congress on the results of the programs. Section 301, “Emergency Notification of Grade Crossing Problems,” of Public Law 103-440 (108 Stat. 4626). Initial efforts were spent in a cooperative effort with the Texas Department of Emergency Management evaluating the Texas system. Texas was designated one of the pilot States, and an extensive list of software, hardware, and operating improvements was developed. FRA prepared and implemented new software on an upgraded system in 1999. Based on comments and suggestions, further improvements were implemented in 2001 when the Texas call center operation was transferred to the Texas Department of Public Safety.

This 2001 version was modified for use by a 911 center in Clinton County, Pennsylvania, with the participation of eight short line railroads. A 30-month demonstration program was initiated in November 2001.

In 2002, an agreement was reached with the Paducah & Louisville Railroad to conduct an additional pilot project (the third). At the time, this was a regional railroad with 24-hour operations and approximately 400 grade crossings. FRA modified the program software to accommodate the railroad's needs.

Further, the 1994 Highway-Rail Crossing Safety Action Plan issued by DOT recommended an automated telephone answering system for handling telephone calls to report emergencies, malfunctions, and other safety-related problems at highway-rail intersections. However, the automated system proved to be unworkable, whereas the staffed systems were successful.

In May 2006, as mandated by Congress in Section 301, "Emergency Notification of Grade Crossing Problems," of Public Law 103-440, FRA published a report to Congress outlining the development of ENS programs up to that date (Report). A copy of the Report can be found at http://www.fra.dot.gov/downloads/safety/1_800_report.pdf. The Report covered, among other things, the Texas ENS program, the Pennsylvania ENS program, Congressional action, NTSB recommendations, and FRA actions. Based on the findings of the Report, FRA made certain recommendations to Congress. These recommendations were as follows: (1) Class I railroads should continue to implement, augment, and review the emergency notification programs they have initiated; (2) smaller railroads, including commuter railroads, should work cooperatively through The American Short Line and Regional Railroad Association, or another suitable organization or organizations, to establish ENS programs serving member railroads; (3) signs installed or replaced at highway-rail grade crossings should be displayed prominently to crossing users (e.g., mounted on signal masts where practicable) and conform to the Manual on Uniform Traffic Control Devices (MUTCD) guidance; and (4) any program that does not currently include passive highway-rail grade crossings be expanded to include, at minimum, all such public crossings where it is practicable to do so.

The Report concluded that the pilot ENS programs in both Texas and Pennsylvania afforded the general public a quick and easy means of alerting appropriate railroad officials of safety-related problems. Additionally, the Report concluded that the Texas ENS likely resulted in the prevention of numerous accidents and injuries, and Pennsylvania's ENS, albeit on a smaller scale than Texas's, demonstrated that it is possible to create emergency call systems through the development of agreements with multiple railroads. Finally, the Report emphasized that the Pennsylvania ENS also showed the value of including all highway-rail grade crossings, not just those with train-activated warning devices.

9. Payments or gifts to respondents.

There are no monetary payments or gifts made to respondents associated with the information collection requirements contained in this regulation.

10. Assurance of confidentiality.

Information collected is not of a confidential nature, and FRA pledges no confidentiality.

11. Justification for any questions of a sensitive nature.

There are no questions of a sensitive or private nature involving this regulation.

12. Estimate of burden hours for information collected.

Note: Based on the latest FRA data, there are approximately 720 railroads currently operating in the United States. However, 126 railroads will not be impacted by this proposed rulemaking. Thus, approximately 594 railroads will be affected by this NPRM (7 Class I railroads; 12 Class II railroads; 557 Class III railroads; 18 Commuter railroads). Since there is no agency data concerning the information requirements of this proposed rule, FRA contacted many of the affected railroads to get currently available information to provide the best possible burden estimates.

§ 234.303 Telephonic Notification of Unsafe Conditions at a Highway-Rail or Pathway Grade Crossing.

(a) Duty of dispatching railroad in general. Each dispatching railroad must establish and maintain a toll-free telephone service by which the railroad can directly receive calls from the public reporting any of the conditions listed in paragraph (b) of this section with respect to a highway-rail grade crossing through which the railroad dispatches a train; and paragraph (c) of this section with respect to a pathway grade crossing through which the railroad dispatches a train. The railroad must not use an automated answering service for the purpose of receiving reports pursuant to this section.

(b) Reportable unsafe conditions at highway-rail grade crossings. Each dispatching railroad shall establish a service pursuant to § 234.303(a) to receive reports or specific information regarding the following conditions with respect to a highway-rail grade crossing through which it dispatches a train:

- (1) A warning system malfunction at the highway-rail grade crossing;
- (2) A disabled vehicle or other obstruction blocking a railroad track at the highway-rail grade crossing;
- (3) An obstruction to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach to the highway-rail grade crossing; or
- (4) Any information relating to any other unsafe condition at the highway-rail grade crossing.

FRA estimates that railroads will receive approximately 186,000 reports under the above requirements. However, each of the seven (7) Class I railroads voluntarily established an emergency notification system a decade or more ago. Consequently, the required reports are a usual and customary procedure for them that would not have to be accounted for here. Since these Class I railroads represent almost 66 percent (65.65%) of at-grade crossings, approximately 122,109 calls would be subtracted from the total of 186,000 calls, leaving the burden for 63,891 calls to be calculated. It is estimated that it will take approximately one (1) minute to complete each report. Total annual burden for this requirement is 1,065 hours.

594 railroads		
Burden time per response:		
		1 minute
Frequency of Response:		On occasion
Annual number of Responses:	63,891 telephone reports	
Annual Burden:	1,065 hours	
<u>Calculation:</u>	63,891 telephone reports x 1 min. = 1,065 hours	

(c) Reportable unsafe conditions at pathway grade crossings. Each dispatching railroad shall establish a service pursuant to § 234.303(a) to receive reports or information regarding the following conditions with respect to a pathway grade crossing through which it dispatches a train:

- (1) A failure of the active warning system at the pathway grade crossing to perform as intended;
- (2) An obstruction blocking a railroad track at the pathway grade crossing;
- (3) An obstruction to the view of a pathway grade crossing user for a reasonable distance in either direction of a train's approach to the pathway grade crossing; or
- (4) Any information relating to any other unsafe condition at the pathway grade crossing.

FRA estimates that railroads will receive approximately 1,860 reports each year under the conditions requirement. It is estimated that it will take approximately one (1) minute to complete each report. Total annual burden for this requirement is 31 hours.

594 railroads
Burden time per response:

Frequency of Response:		1 minute On occasion
Annual number of Responses:	1,860 telephone reports	
Annual Burden:	31 hours	

Calculation: 1,860 telephone reports x 1 min. = 31 hours

(d) Class II or III dispatching railroads. A Class II or Class III railroad that dispatches a train through a highway-rail or pathway grade crossing within an area in which the use of a non-toll-free number would not incur any additional fees for the caller compared to if a toll-free number was used, may use that non-toll-free number to receive calls pursuant to § 234.303(a) regarding each such crossing in that area.

The burden for this requirement is included above under §§ 234.303(b) and 234.303(c). Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 1,096 hours (1,065 + 31).

§ 234.305 Remedial Actions

(a) General rule on response to credible reports of warning system malfunction at highway-rail grade crossing. (1) If a railroad receives a report pursuant to § 234.303 (b) (1) that is a credible report of warning system malfunction at a highway-rail grade crossing and the railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall take the appropriate action required by subpart C of this part.

(2) If a railroad receives a report pursuant to § 234.303(b)(1) that is a credible report of warning system malfunction at a highway-rail grade crossing and that railroad does not have maintenance responsibility for the warning system to which the report pertains, the railroad shall immediately contact all trains that are authorized to operate through the highway-rail grade crossing and warn the trains of the reported malfunction. The railroad shall then immediately contact the railroad that has maintenance responsibility for the warning system and inform it of the reported malfunction. The railroad that has maintenance responsibility for the warning system at the highway-rail grade crossing shall take the appropriate action required by subpart C of this part.

Respondents contacted indicated that that less than one-tenth of one percent of crossings are dispatched but not maintained. For purposes of this analysis, FRA will use .5 percent. Respondents also indicated that they treat nearly all signal malfunction calls as credible or, for purposes of this analysis, approximately 99 percent.

FRA estimates then that approximately 465 trains operating through highway-rail grade

crossing will be contacted/warned each year by railroads not having maintenance responsibility for the warning system to which the report pertains after that railroad receives a credible report of a warning system malfunction at a highway-rail grade crossing. It is estimated that each warning will take approximately one (1) minute to complete. Total annual burden for this requirement is eight (8) hours.

594 railroads

Burden time per response:

		1 minute
Frequency of Response:		On occasion
Annual number of Responses:	465 contacts/warnings	
Annual Burden:	8 hours	

Calculation: 465 contacts/warnings x 1 min. = 8 hours

Additionally, FRA estimates that approximately 465 calls will be received by railroads having maintenance responsibility each year by the dispatching railroad after the dispatching railroad receives a credible report of a warning system malfunction at a highway-rail grade crossing. It is estimated that each contact/communication will take approximately one (1) minute to complete. Total annual burden for this requirement is eight (8) hours.

594 railroads

Burden time per response:

		1 minute
Frequency of Response:		On occasion
Annual number of Responses:	465 contacts/communications	
Annual Burden:	8 hours	

Calculation: 465 contacts/communications x 1 min. = 8 hours

(b) General rule on response to other reports of warning system malfunction at highway-rail grade crossing. (1) If a railroad receives a report of warning system malfunction pursuant to § 234.303(b)(1) that is not a credible report of warning system malfunction at a highway-rail grade crossing and that railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall immediately contact all trains that are authorized to operate through the highway-rail grade crossing and warn the trains of the reported malfunction. The railroad shall also promptly contact the law enforcement agency having jurisdiction over the highway-rail grade crossing and provide

the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the highway-rail grade crossing. The railroad shall then promptly investigate the report and determine the nature of the malfunction and shall take the appropriate action required by § 234.207(a).

Railroads routinely do this as part of their normal standard operating procedures. Further, FRA estimates that approximately 925 trains operating through highway-rail grade crossing will be contacted/warned each year by maintaining railroads under the above requirement. It is estimated that each contact/warning will take approximately one (1) minute to complete. Total annual burden for this requirement is 15 hours.

	594 railroads	
Burden time per response:		1 minute
Frequency of Response:		On occasion
Annual number of Responses:	925 contacts/warnings	
Annual Burden:	15 hours	
<u>Calculation:</u>	925 contacts/warnings x 1 min. = 15 hours	

Additionally, FRA estimates that approximately 925 calls will be received each year by law enforcement authorities having jurisdiction over the crossing and provided the necessary information by the railroad having maintenance responsibility under the above requirement. It is estimated that each contact/communication will take approximately one (1) to complete. Total annual burden for this requirement is 15 hours.

	594 railroads	
Burden time per response:		1 minute
Frequency of Response:		On occasion
Annual number of Responses:	925 contacts/communications	
Annual Burden:	15 hours	
<u>Calculation:</u>	925 contacts/communications x 1 min. = 15 hours	

(2) If a railroad receives a report of warning system malfunction pursuant to § 234.303(b) (1) that is not a credible report of warning system malfunction and that railroad has dispatching responsibility for the crossing but does not have maintenance responsibility for the warning system at the highway-rail grade crossing, the railroad shall immediately

contact all trains that are authorized to operate through the highway-rail grade crossing to which the report pertains and warn the trains of the reported malfunction. The railroad shall also promptly contact the law enforcement agency having jurisdiction over the highway-rail grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the highway-rail grade crossing. The railroad shall then promptly contact the railroad that has maintenance responsibility for the warning system and inform it of the reported malfunction. The railroad having maintenance responsibility shall promptly investigate the report and determine the nature of the malfunction and shall take the appropriate action required by § 234.207(a).

Railroads do this routinely under their standard operating procedures. Moreover, FRA estimates that approximately 920 trains that are authorized to operate through the highway-rail grade crossing will be contacted/warned of the reported malfunction each year by the dispatching railroad under the above requirement. It is estimated that each contact/communication will take approximately one (1) minute to complete. Total annual burden for this requirement is 15 hours.

	594 railroads	
Burden time per response:		1 minute
Frequency of Response:		On occasion
Annual number of Responses:	920	contacts/communications
Annual Burden:	15 hours	
<u>Calculation:</u>	920 contacts/communications x 1 min. = 15 hours	

Also, FRA estimates that approximately 920 calls will be received each year by law enforcement agencies having jurisdiction over the crossing and will be provided the necessary information under the above requirement. It is estimated that each contact/communication will take approximately one (1) minute to complete. Total annual burden for this requirement is 15 hours.

	594 railroads	
Burden time per response:		1 minute
Frequency of Response:		On occasion

Annual number of Responses: 920 contacts/communications
Annual Burden: 15 hours

Calculation: 920 contacts/communications x 1 min. = 15 hours

Additionally, FRA estimates that approximately 920 calls will be received each year by railroads having maintenance responsibility under the above requirement. It is estimated that each contact/communication will take approximately one (1) minute to complete. Total annual burden for this requirement is 15 hours.

594 railroads
Burden time per response:

Frequency of Response: 1
On occasion
Annual number of Responses: 920 contacts/communications
Annual Burden: 15 hours

Calculation: 920 contacts/communications x 1 min. = 15 hours

(c) General rule on response to warning system failure at a pathway grade crossing. (1) If a railroad receives a report of warning system failure at a pathway grade crossing pursuant to § 234.303(c)(1) and that railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall immediately contact all trains that are authorized to operate through the pathway grade crossing and warn the trains of the reported failure. The railroad shall also promptly contact the law enforcement agency having jurisdiction over the pathway grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the pathway grade crossing. The railroad shall then promptly investigate the report and determine the nature of the failure and repair the active warning system if necessary.

None of the responding railroads tracks pathway crossings separate from all other crossings but estimate the number to be very, very low. Of the approximately 189 signalized pathway crossings, FRA believes approximately one (1) percent would be affected and railroads will receive a call reporting a malfunction. Thus, FRA estimates that approximately two (2) trains operating through pathway grade crossings will be contacted/warned each year by maintaining railroads under the above requirement. It is estimated that each contact/warning will take approximately one (1) minutes to complete. Total annual burden for this requirement is .03333 hour.

594 railroads

Burden time per response:

Frequency of Response:		1 minute
Annual number of Responses:	2 contacts/warnings	On occasion
Annual Burden:		.03333 hour

Calculation: 2 toll-free telephone reports x 1 min.
= .03333 hours

Also, FRA estimates that approximately two calls (2) will be made to law enforcement agencies having jurisdiction over the pathway grade crossing and provided the necessary information each year by maintaining railroads under the above requirement. It is estimated that each contact/communication will take approximately one (1) minute to complete each contact/communication. Total annual burden for this requirement is .0333 hour.

594 railroads
Burden time per response:

Frequency of Response:		1 minute
Annual number of Responses:	2 contacts/communications	On occasion
Annual Burden:		.0333 hour

Calculation: 2 contacts/communications x 1 min. = .0333 hour

(2) If a railroad receives a report of warning system failure at a pathway grade crossing pursuant to § 234.303(c)(1) and that railroad has dispatching responsibility for the pathway grade crossing but does not have maintenance responsibility for the warning system to which the report pertains, the railroad shall immediately contact all trains that are authorized to operate through the pathway grade crossing to which the report pertains and warn the trains of the reported failure. The railroad shall also promptly contact the law enforcement agency having jurisdiction over the pathway grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the pathway grade crossing. The railroad shall then promptly contact the railroad that has maintenance responsibility for the warning system and inform it of the reported failure. The railroad having maintenance responsibility shall then promptly investigate the report and determine the nature of the failure and shall repair the warning system if necessary.

FRA estimates that there will be zero reports received under the above provision.

Consequently, there is no burden associated with this requirement.

(d) General rule on dispatching railroad's response to reports of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing. Upon receiving a report pursuant to § 234.303(b)(2) or (c)(2), the railroad shall immediately contact all trains that are authorized to operate through the highway-rail or pathway grade crossing to which the report pertains and warn the trains of the reported disabled vehicle or other track obstruction. After contacting the necessary trains, the railroad shall promptly contact the law enforcement agency having jurisdiction over the highway-rail or pathway grade crossing to provide it with the information necessary to assist in the removal of the reported track obstruction or to carry out other activities as appropriate.

Based on the estimated number of reports in § 234.303(b)(2), FRA estimates that four (4) percent of that number or approximately 2,556 authorized trains will be contacted/warned of the disabled vehicle or other track obstruction each year by the dispatching railroad under the above requirement. It is estimated that each contact/communication will take approximately one (1) minute to complete. Total annual burden for this requirement is 43 hours.

594 railroads	
Burden time per response:	
	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	2,556 contacts/communications
Annual Burden:	43 hours

Calculation: 2,556 contacts/communications x 1 min. = 43 hours

Also, FRA estimates that approximately 2,556 calls to law enforcement agencies having jurisdiction over the highway-rail or pathway grade crossing will be made and provided the necessary information each year by the dispatching railroad under the above requirement. It is estimated that each contact/communication will take approximately one (1) minute to complete. Total annual burden for this requirement is 43 hours.

594 railroads	
Burden time per response:	
	1 minute

Frequency of Response:		On occasion
Annual number of Responses:	2,556 contacts/communications	
Annual Burden:	43 hours	

Calculation: 2,556 contacts/communications x 1 min. = 43 hours

(e) Special rule on contacting a train that is not required to have communication equipment. If a railroad is not required by § 220.9 of this chapter to have a working radio or working wireless communications in each occupied controlling locomotive of its trains and the dispatching railroad receives a report pursuant to § 234.303(b)(1), (b)(2), (c)(1), or (c)(2) about a crossing that one of the trains is approaching, the dispatching railroad shall immediately contact the occupied controlling locomotive of the train as required by § 234.305(a), (b), (c), or (d) by the quickest means available consistent with § 220.13(a) of this chapter.

The burden for this requirement is already included under that of § 234.305 (b), (c), and (d) above. Consequently, there is no additional burden associated with this requirement.

(f) General rule on response to reports of obstruction of view at highway-rail or pathway grade crossings. Upon receiving a report pursuant to § 234.303(b)(3) or (c)(3), the dispatching railroad, if it is also the maintaining railroad, shall timely investigate the report and shall remove the obstruction if it is feasible and lawful to do so. If the dispatching railroad is not the maintaining railroad, the dispatching railroad shall promptly contact the maintaining railroad, which shall timely investigate the report and which shall remove the obstruction, if it is lawful and feasible to do so.

FRA estimates that this will occur zero (0) times under the above scenario. Consequently, there is no burden associated with this requirement.

(g) General rule on response to reports of other unsafe conditions at highway-rail or pathway grade crossings. (1) Upon receiving a report pursuant to § 234.303(b)(4) or (c)(4) related to the maintenance of a crossbuck or other similar grade crossing safety device not covered by § 234.305(a), (b), or (c), the dispatching railroad, if it also has maintenance responsibility for the device, shall timely investigate the report; and, if it finds that the unsafe circumstance exists, the dispatching railroad shall timely correct it if it is lawful and feasible to do so. If the dispatching railroad does not have maintenance responsibility for the device, the dispatching railroad shall timely inform the railroad with maintenance responsibility for the device, and the maintaining railroad shall timely investigate the report; and, if the maintaining railroad finds that the unsafe circumstance exists, the railroad shall timely correct it if it is lawful and feasible to do so.

(2) Upon receiving a report pursuant § 234.303(b)(4) or (c)(4), not covered by § 234.305(g)(1), the dispatching railroad, if it is also the maintaining railroad, shall timely investigate the report; and, if it finds that the unsafe condition exists, the

dispatching railroad shall timely correct it if it is lawful and feasible to do so. If the dispatching railroad is not the maintaining railroad, the dispatching railroad shall timely inform the maintaining railroad of the report, and the maintaining railroad shall timely investigate the report; and, if the maintaining railroad finds that the unsafe condition exists, the railroad shall timely correct it if it is lawful and feasible to do so.

The burden for reports pursuant to § 234.303(b)(4) or (c)(4) is included under those sections above. Consequently, there is no additional part for that part of the above requirement.

For the rest of the above provision, FRA estimates that this will occur zero (0) times as described. Consequently, there is no burden associated with this requirement.

(h) General rule on contacting the maintaining railroad and use of an automated answering service. If the dispatching railroad is required under this section to contact the maintaining railroad, the maintaining railroad shall – (1) Provide the dispatching railroad with sufficient contact information by which the dispatching railroad may immediately contact the maintaining railroad upon receipt of a report; and (2) Not use an automated answering service for the purpose of receiving a call from the dispatching railroad.

FRA estimates that approximately 10 maintaining railroads will provide the necessary contact information to dispatching railroads under the above requirement. It is estimated that it will take approximately one (1) minute to provide the necessary contact information. Total annual burden for this requirement is .1667 hour.

594 railroads	
Burden time per response:	1 minute
Frequency of Response:	One-time
Annual number of Responses:	10 contact information communications
Annual Burden:	.1667 hour

Calculation: 10 contacts information communications x 1 min. = .1667 hours

Total annual burden for this entire requirement is 177 hours (8 + 8 + 15 + 15 +15 + 15 + 15 + .0333 + .0333 + 43 + 43 + .1667).

§ 234.307 Third-party Telephone Service

(a) Use of a third-party service. A railroad may use a third-party service to directly receive reports pursuant to § 234.303. The third-party service shall be reached directly by the telephone number placed on the sign pursuant to § 234.309. The third-party

service shall not use an automated answering service for the purpose of receiving such reports, and the contracting railroad shall ensure that the third-party service does not use an automated answering service for the purpose of receiving such reports.

The burden for information (tel. no., etc.) placed on the sign pursuant to § 234.309 is included under that section below. Consequently, there is no additional burden associated with this requirement.

(b) Duties of railroad using third-party service. If a railroad uses a third-party service to directly receive reports pursuant to § 234.303, the railroad –

(1) Shall provide the third-party service with sufficient contact information by which the third-party service may immediately contact the contracting railroad upon receipt of a report;

As noted in the regulatory impact analysis accompanying this NPRM, there are at least three railroads/entities that offer third-party notification nationwide. In fact, FRA estimates that approximately 50 railroads will use a third-party service and will provide 50 contacts to the third-party service with the necessary information so that the third-party service may immediately contact it upon receipt of report. It is estimated that it will take approximately 15 minutes to provide the necessary contact information. Total annual burden for this requirement is 13 hours.

594 railroads		
Burden time per response:		15 minute s
Frequency of Response:		On occasion
Annual number of Responses:	50 contacts	
Annual Burden:		13 hours

Calculation: 50 contacts x 15 min. = 13 hours

(2) Shall not use an automated answering service to receive calls from the third-party service for the purpose of receiving reports pursuant to § 234.303;

(3) Shall promptly inform FRA of its intent to use a third-party service and shall provide FRA with contact information for the third-party service, and information identifying the highway-rail and pathway grade crossings about which the third-party service will receive reports; and

FRA estimates that it will receive approximately 50 notices/letters with the stipulated

information from railroads of their intent to use a third-party service under the above requirement. It is estimated that it will take approximately 60 minutes to complete each letter. Total annual burden for this requirement is 50 hours.

594 railroads	
Burden time per response:	60 minute s
Frequency of Response:	On occasion
Annual number of Responses:	50 third-party service letters
Annual Burden:	50 hours

Calculation: 50 third-party service letters x 50 min. = 50 hours

(4) Upon being contacted by the third-party service about a report pursuant to § 234.303, the railroad shall take appropriate action as required by § 234.305.

The burden associated with this requirement is included under that of § 234.305 above. Consequently, there is no additional burden associated with this requirement.

(c) Duties of third-party service. Upon receiving a report pursuant to § 234.303, the third-party service shall immediately contact the contracting railroad, and, at a minimum, provide the railroad with the following:

- (1) Information on the nature of the reported unsafe condition;
- (2) Information on the location of the unsafe condition, including the U.S. DOT Crossing Inventory File Number;
- (3) Information on whether the person reporting the unsafe condition is a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity; and
- (4) Any additional information provided by the caller that may be useful to restore the crossing to a safe condition.

The burden for reports pursuant to § 234.303 is already included under that section above. Consequently, there is no additional burden associated with the first part of this requirement.

Additionally, FRA estimates that the third-party service will contact the contracting railroad approximately 100 times and provide it with the all the stipulated reporting

information. It is estimated that it will take approximately one (1) minute to complete each informational contact. Total annual burden for this requirement is two (2) hours.

594 railroads
Burden time per response:

Frequency of Response: 1
minute
On occasion
Annual number of Responses: 100 informational contacts
Annual Burden: 2 hours

Calculation: 100 informational contacts x 1 min. = 2 hours

Total annual burden for this entire requirement is 65 hours (13 + 50 + 2).

§ 234.309 ENS signs in general.

(a) No later than 30 days before the implementation of an ENS, the dispatching railroad for a highway-rail or pathway grade crossing shall provide to the maintaining railroad for the crossing the telephone number to be posted on the ENS sign at the crossing if the dispatching railroad and the maintaining railroad are not the same.

FRA estimates that approximately 10 communications with the necessary telephone number will be made by the dispatching railroad to the maintaining railroad under the above requirement. It is estimated that it will take approximately 30 minutes to complete each communication. Total annual burden for this requirement is five (5) hours.

594 railroads
Burden time per response:

Frequency of Response: 30
minutes
On occasion
Annual number of Responses: 10 communications
Annual Burden: 5 hours

Calculation: 10 communications x 30 min. = 5 hours

(b) Each ENS sign located at each highway-rail or pathway grade crossing as required by § 234.311 shall have the necessary information for the dispatching railroad to receive reports of unsafe conditions at the crossing. This information, at a minimum, includes the toll-free number (or non-toll-free number as provided for in § 234.303(d)) established

to receive reports pursuant to § 234.303(a), an explanation of the purpose of the sign, and the U.S. DOT Crossing Inventory File Number assigned to that crossing.

(c) Each ENS sign shall be at least 12 inches wide by 9 inches high, have lettering measuring, at a minimum, 1 inch in height, and have a white legend and border on a blue background.

As noted in the regulatory impact analysis accompanying this proposed rule, the number of highway-rail at grade crossings is estimated at approximately 211,401. There are two directions of traffic. Thus, FRA estimates that approximately 422,802 ENS signs that conform to § 234.309 will be placed at the necessary locations under the above requirement. It is estimated that it will take approximately 30 minutes to complete each ENS sign. Total annual burden for this requirement is 211,401 hours.

	594 railroads	
	Burden time per response:	
		30 minute s
Frequency of Response:		On occasion
Annual number of Responses:	422,802 ENS signs	
Annual Burden:	211,401 hours	

Calculation: 422,802 ENS signs x 30 min. = 211,401 hours

Total annual burden for this entire requirement is 211,406 hours (5 + 211,401).

§ 234.311 ENS sign placement.

(a) The maintaining railroad for a highway-rail or pathway grade crossing shall place and maintain a sign that conforms to § 234.309 at the crossing for each direction of traffic at that crossing. A pathway grade crossing is considered to have a minimum of two directions of traffic unless specifically designed for traffic in one direction only.

(b) Each sign required by paragraph (a) of this section shall be located and maintained by the maintaining railroad so that it —

- (1) Is conspicuous to users of the roadway or pathway;
- (2) Optimizes its visibility at nighttime;
- (3) Minimizes the effect of mud splatter and debris; and

(4) Does not obscure any other sign at the crossing.

(c) A sign placed on the signal bungalow shall not be deemed to comply with § 234.311(b).

The burden for the above requirement is included under that of § 234.309 above. Consequently, there is no additional burden associated with this requirement.

§ 234.313 Recordkeeping

(a) Each railroad subject to this subpart must keep records in accordance with paragraph (b) of this section pertaining to its compliance with this subpart. Records may be kept either on paper forms provided by the railroad or by electronic means in a manner that conforms with 49 CFR § 234.315. Each railroad responsible for receiving reports pursuant to § 234.303(a) and, if applicable, each railroad with maintenance responsibilities must keep, at a minimum, the following information for each report received under this subpart:

(1) The nature of the reported unsafe condition;

(2) Location of the highway-rail or pathway grade crossing (by highway name and U.S. DOT Crossing Inventory File Number);

(3) Time and date of receipt of the report by the railroad;

(4) Whether the person who provided the report was a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity;

(5) Actions taken by the railroad prior to rectifying the reported unsafe condition at the grade crossing;

(6) If the reported unsafe condition is substantiated, actions taken by the railroad to rectify the reported unsafe condition, if possible;

(7) Time and date at which the reported unsafe condition was rectified; and

(8) If a railroad is required by this subpart to contact a railroad with maintenance responsibility, the time and date the railroad contacted the railroad having maintenance responsibility.

(b) A railroad having maintenance responsibility over warning devices at a highway-rail grade crossing that maintains records pursuant to § 234.109 shall be deemed to comply with the recordkeeping requirements of this subpart with regards to credible reports of warning system malfunctions.

(c) Each railroad shall retain for at least one year (from the latest date of railroad activity in response to a report received under this subpart) all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to the Federal Railroad Administration as provided by 49 U.S.C. 20107.

FRA estimates that approximately 186,000 reports/records will be kept under the above requirement. It is estimated that it will take approximately four (4) minutes to complete each report/record. Total annual burden for this requirement is 12,400 hours.

594 railroads
Burden time per response:

4
minute
s

Frequency of Response: Occasionally
Annual number of Responses: 186,000 reports/records
Annual Burden: 12,400 hours

Calculation: 186,000 reports/records x 4 min. = 12,400 hours

§ 234.315 Electronic recordkeeping.

(a) If a railroad subject to this subpart keeps a record required by this subpart electronically in lieu of on paper, the system for keeping the electronic record must meet all of the following conditions:

- (1) The railroad adequately limits and controls accessibility to the record retained in its electronic database system and identifies those individuals who have such access;
- (2) The railroad has a terminal at the location designated by the railroad as the general office for the railroad system and at each division headquarters;
- (3) Each such terminal has a computer and either a facsimile machine or a printer connected to the 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 for inspection and copying during normal business hours and provides a printout of such record upon request.

(b) If a record required by this part 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.

The burden for this requirement is included under §§ 234.303 and 234.313 above. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire information collection submission is 225,144 hours.

13. Estimate of total annual costs to respondents.

As noted in the regulatory impact analysis accompanying the ENS proposed rule, there will be additional costs to respondents related to this collection of information besides those detailed in the answer to question number 12 above. One of the costs involves establishing a toll-free service to accept emergency calls at crossings. Class I railroads have had such service for more than a decade, so they would not incur any additional costs with this rule requirement. When considering the Class II entities, additional phone lines would be required. FRA assumes that a multiple line telephone system would have the switching capabilities to handle simultaneous calls. FRA assumed a monthly toll-free service charge of \$75 to maintain additional incoming telephone lines (in addition to their existing telephone service). The annual charge was therefore estimated at \$900. When considering the Class III and Commuter entities, FRA assumed a monthly toll-free service charge of \$35 to maintain one incoming telephone line. The annual charge was therefore estimated at \$420.

The following table summarizes the annual cost by railroad class:

	Affected Railroads	Annual Toll Service Rate	Total Burden By Railroad Class
Class I	7	N/A	N/A
Class II	12	\$ 900.00	\$ 10,800.00
Class III	557	\$ 420.00	\$ 233,940.00
Commuter	18	\$ 420.00	\$ 7,560.00
Total	594		\$ 252,300.00

These costs would begin to accrue in the first year of the rule and would be recurring.

Another cost pertains to signs. Under the proposed rule, a sign would be required at each highway-rail grade and pathway grade crossing with the necessary information for the dispatching railroad to receive reports of unsafe conditions at the crossing. This

information, at a minimum, includes the toll-free number established to receive reports pursuant to proposed § 234.303, an explanation of the purpose of the sign, and the U.S. DOT Crossing Inventory File Number assigned to that crossing. The sign must be at least 12 inches wide by 9 inches high; have lettering measuring, at a minimum, 1 inch in height; and have a white legend and border on a blue background.

All public, private, and pathway *at-grade* crossings are affected by this rulemaking. The ENS is not required for grade-separated crossings; therefore all 36,247 *grade-separated* open highway-rail intersections are excluded from this proposed rulemaking.

FRA estimates the number of regulated open highway-rail intersections as follows:

December 2009			
Number of Open Grade Crossings			
Type	Total Number of Crossings	Grade Separated (Excluded)	At-Grade Crossings
Public	162,876	32,602	130,274
Private	81,804	2,515	79,289
Pathway	2,968	1,130	1,838
Total	247,648	36,247	211,401

Although individual railroads may have specific signage requirements that exceed those requirements specified by the MUTCD and discounts or allowances may be permitted by suppliers for bulk orders, FRA estimates the general cost per sign to be \$15. Considering the 211,401 highway-rail grade crossings where, on average, two signs will be required per intersection, and applying the compliance schedule percentages (10 percent per year for the first three years), FRA finds that the annual signage material cost for the first three years to be **\$634,203**. [**Calculation** = 211,401 at-grade intersections x 2 signs x \$15 per sign x 10% compliance = \$634,203.]

In addition to material costs for signage, there are labor costs associated with the signage installations. FRA estimates for each at-grade crossing affected by the regulation, the industry would expend a half-hour in labor resources to comply. Considering the 211,401 at-grade intersections where, on average, 30 minutes of a labor resource, will be

required per intersection and applying the compliance rate of 10 percent for the first three years, the annual signage installation cost to be **\$442,682**. [**Calculation** = 211,401 at-grade intersections x \$42.07 hourly rate x .5 hour x 10% compliance = \$442,682].

Also, when considering the 211,401 at-grade intersections and assigning a projected average of two signs per intersection, FRA estimates that five (5) percent of the affected crossings would also need to supply a separate post to adequately comply with this requirement. Assuming a post cost estimate of \$25, FRA estimates that the annual post material cost for the first three years to be **\$52,850**. [**Calculation** = 211,401 at-grade intersections x \$25 per post x 2 posts per intersection x 5% affected x 10% compliance = \$52,850].

TOTAL ANNUAL COST = \$1,382,035 (\$252,300 + \$634,203 + \$442,682 + \$52,850)

14. Estimate of Cost to Federal Government.

There is no additional cost to the Federal Government in connection with these information collection requirements. Railroad carrier records are examined by FRA inspectors on a routine basis as part of their regular enforcement activities that monitor carrier compliance with Federal rail safety regulations.

15. Explanation of program changes and adjustments.

The collection of information associated with this proposed rule is new. By definition, the entire estimated hourly burden is the result of a **program change**.

The cost to respondents is also a **program change** for the same reason.

16. Publication of results of data collection.

FRA has no plans to publish this information.

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. This collection of information furthers national rail safety by requiring railroad carriers to establish and maintain a toll-free telephone service to report emergencies at all public, private, and pedestrian grade crossings for rights-of-way over which they dispatch trains. The telephone reporting system, referred to as Emergency Notification System (ENS), would directly receive calls reporting emergencies that occur where a roadway or pathway crosses any public, private, or pedestrian grade crossing at grade. The collection of information will assure that railroad carriers post signs at all at-grade crossings that provide a telephone number that rail employees, law enforcement officers, highway traffic officials, other employees of public agencies acting in an official capacity, and members of the general public can call to report such emergencies as provided in this rule.

With the information to be collected, FRA can verify that railroads have devised and carried out a program that establishes and maintains a toll-free telephone service to report emergencies at all public, private, and pedestrian grade crossings for rights-of-way over which they dispatch trains. Based on the potential of serious injury and costly damage present by unsafe conditions at a highway-rail and pathway grade crossings, the ability to provide an effective means to immediately alert the railroad carrier and law enforcement of an unsafe condition at a grade crossing is crucial. An effective means of notifying the railroad carrier of an unsafe condition at a grade crossing enables the railroad carrier and local public safety officials to respond quickly and appropriately to potentially avert a serious train-motor vehicle collision or other type of accident/incident that might result in serious injuries and fatalities to railroad employees and members of the public and significant property damage. The information to be collected pertaining to recordkeeping provides a means to monitor and ensure compliance with this rule and thereby enhances both rail and highway safety at the numerous crossings where these two vital modes of transportation intersect.

In this information collection then, as in all its information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.