

SUPPORTING JUSTIFICATION
EMERGENCY NOTIFICATION SYSTEM STANDARDS
OMB No. 2130-XXXX; RIN 2130-AC12

Summary of Submission

- FRA is amending 49 CFR Part 234 by adding a new Subpart E. The collection of information associated with this final rulemaking is a completely new submission. This collection of information is entirely associated with the final 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 published a 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.
- FRA is publishing the final rule regarding its Systems for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings on June 12, 2012. See 77 FR 35164.
- Total number of burden hours requested for this **new** submission is **55,308 hours**.
- Total number of responses requested for this **new** submission is **376,268**.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 14-43).**

1. Circumstances that make collection of the information necessary.

The 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 revised 49 CFR 234.5 and 49 CFR 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 by which the public is able to notify the railroad by toll-free telephone number of safety problems at its highway-rail and pathway grade crossings. Such systems are commonly known as Emergency Notification Systems (ENS) or ENS programs.

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; this final rule implements that statutory mandate.

In particular, under Section 205 of RSIA, FRA is to require each railroad 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 of the final rule 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 through the ENS a report of a malfunction of a warning signal, crossing gate, and/or other device intended to promote safety at a 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 promptly 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 a grade crossing through which it dispatches a train or a report of another unsafe condition involving such a grade crossing, the railroad must timely investigate the report, remove the obstruction if lawful and feasible to do so, or correct the unsafe condition if lawful and feasible to do so, or, if that railroad does not have maintenance responsibility for the crossing, ask the maintaining railroad to do so as required by the rule.

Further, under the RSIA, FRA must require that the owner of the track at a grade crossing "ensure the placement . . . of appropriately located signs" bearing, at a minimum, "a toll-free telephone number to be used 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 U.S. DOT National Highway-Rail Crossing Inventory (Crossing Inventory).

There are approximately 211,000 public and private at-grade highway-rail and pathway crossings (highway-rail and pathway grade crossings) in the United States. In other words, the country has approximately 211,000 locations where a collision can occur between a train and a car, truck, or other motor vehicle, or a pedestrian at any one time. 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, since 1997, grade crossing collisions have caused more railroad-related fatalities per year than any other single factor except for trespassing on railroad property. During the 11-year period from 1999-2009, 2,306 collisions occurred at highway-rail and pathway grade crossings where a vehicle was stalled or sight obstructions were reported to FRA. See accident reporting regulations at 49 CFR part 225 and 49 CFR 234.7.

A train striking a pedestrian can result in serious injury or death. Further, 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 than with a collision between two vehicles. While significant improvements in grade crossing safety have been achieved over the last two decades, grade crossing collisions still pose a significant public safety threat, and one that can spiral beyond the immediate impact of the vehicle and train. The derailment of a freight train as a result of a collision at the grade crossing can have a disastrous effect on the train crew or even on an entire community, especially if the derailment results in a release of hazardous material that necessitates the evacuation of a neighborhood or the community. Moreover, if a passenger train derails as a result of a collision, the risk of injuries extends beyond the vehicle occupants and train crew to the passengers of the train. This was the case in 1999 in Bourbonnais, Illinois, when a National Railroad Passenger Corporation (Amtrak) passenger train struck a truck loaded with steel at a highway-rail grade crossing. Almost the entire train derailed, causing 11 deaths and 131 injuries to the passengers and crew of the train.

Other vehicles and pedestrians in the vicinity of a highway-rail or pathway grade crossing collision can also be at grave risk. This was the scenario in 1993 when an Amtrak passenger train collided with a gasoline tanker truck at a highway-rail grade crossing in Ft. Lauderdale, Florida. The truck driver was attempting to cross through a grade crossing where traffic was congested. The tanker truck was punctured when it was struck by the Amtrak train; a fire erupted and engulfed the truck and nine other vehicles near the crossing. The fire killed the driver of the truck and five occupants of three stopped vehicles near the grade crossing.

In 1994, Congress directed FRA to conduct pilot projects in at least two States to demonstrate the efficiency of such “emergency notification system” programs covering highway-rail grade crossings and to report to Congress on the results of the pilot projects. Section 301, “Emergency Notification of Grade Crossing Problems,” of Public Law 103-440, November 2, 1994 (108 Stat. 4626). Also, in 1996, Congress appropriated funds for the development of software and hardware to support the demonstration of a toll-free ENS to report emergencies and other safety problems at crossings.

Initially, FRA joined in a cooperative effort with the Texas Department of Emergency Management to evaluate the Texas notification system. Texas was designated one of the pilot States, and an extensive array 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 of the software was modified for use by a “9-1-1” center in Clinton County, Pennsylvania, with the participation of eight short line railroads. A 30-month demonstration program was initiated in November 2001. See Project Plan: 1-800 Toll-Free Emergency Notification System for Shortline Railroad Highway-Rail Crossings in the Commonwealth of Pennsylvania (Washington, DC: Federal Railroad Administration, September 20, 2000), http://www.fra.dot.gov/downloads/safety/emergency_notification_system.pdf. In 2002, an agreement was reached with the Paducah & Louisville Railway, Inc. (PAL) to conduct an additional pilot project (the third). At the time PAL was a regional railroad with 24-hour operations and approximately 400 grade crossings. FRA modified the program software to accommodate the railroad’s needs.

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 (Report). Pilot Programs for Emergency Notification Systems at Highway-Rail Grade Crossings, (Washington, DC: Federal Railroad Administration, May 2006), 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 ENS programs that 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 should conform to the Federal Highway Administration’s (FHWA) 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.

The National Transportation Safety Board (NTSB) issued a report in March 2012 of a derailment on the Canadian National Railway Company (CN) that illustrates the potential benefit of having an ENS. The accident occurred in Cherry Valley, Illinois in 2009. The derailment, which resulted in a fatality, several injuries, and the evacuation of 600 residents, was caused by a washout of track near a highway-rail grade crossing, but not at the crossing. Before the derailment occurred, several individuals observed high water conditions affecting the track. One individual was familiar with the practice of railroads posting emergency telephone numbers at grade crossings and attempted to locate such a sign. There was no sign posted at the crossing. Several calls were placed to the local 911¹ system to report the washout and warn of the potential of a train derailment. The first call was received by the 911 center 56 minutes before a train approached, but local police only first learned of the situation approximately 20 minutes after that first call was made to 911. Additionally, several critical minutes were lost as the local police attempted to identify the railroad that owned the track. The NTSB concluded that “[h]ad the emergency contact information been available to the citizen [i.e., the individual who was unable to locate the railroad contact information at the Mulford Road crossing] would likely have called the CN instead of 911, or both. Even though the 911 center was able to identify the crossing, it was not until 41 minutes after the initial 911 call that the CN Police Emergency Call Center in Montreal was notified of the track washout.”

By the time the information was relayed to the proper railroad officials, the train derailed, and several of the cars, carrying flammable liquids, erupted in flames. As a result, several motor vehicles that had been stopped at the crossing waiting for the train to pass were impacted by the incident. One motor vehicle passenger was fatally injured; two other passengers in the vehicle were seriously injured along with five occupants of another car. The incident also resulted in the evacuation of 600 nearby residents. The NTSB concluded “that had the required CN grade crossing identification and emergency contact information been posted at the Mulford Road crossing, the railroad would likely

¹ The current 911 system in the United States was designed to provide a universal, easy-to-remember number, 9-1-1, for people to reach police, fire or emergency medical assistance from any phone in any location, without having to look up specific phone numbers.

have been notified of the track washout earlier, and the additional time may have been sufficient for the [rail traffic controllers] to issue instructions to stop the train and prevent the accident.” Derailement of CN Freight Train U70691-18 With Subsequent Hazardous Materials Release and Fire, Cherry Valley, Illinois, June 19, 2009, Railroad Accident Report NTSB/RAR-12/01 (Washington, DC: National Transportation Safety Board, February 14, 2012), <http://www.nts.gov/doclib/reports/2012/RAR1201.pdf>.

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.

In this rule then, FRA is amending its primary regulations on grade crossing safety to require railroads to establish and maintain a system that allows a member of the public to call the railroad and report an emergency or other unsafe condition at a crossing. The rule refers to the system as an Emergency Notification System which consists of the following components: (1) signs, placed at the grade crossings that display the information necessary for the public to report an unsafe condition; (2) the method that the railroad uses to receive and process a telephone call reporting the unsafe condition; (3) the remedial actions that the dispatching and maintaining railroad takes to address the report of the unsafe condition; and (4) the recordkeeping conducted by the railroad.

The rule – and associated information collection to monitor/enforce compliance–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 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 accident/incident and the injuries, fatalities, and property damage that normally accompany them.

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 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 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 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) The location of the highway-rail grade crossing or pathway grade crossing by highway name, if applicable, and the U.S. DOT National Crossing Inventory Number; (3) The time and date of receipt of the report by the railroad; (4) If applicable, 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 resolving the reported unsafe condition at the grade crossing (e.g., warning train crews, notifying the maintaining railroad, or contacting law enforcement or other public authorities); (6) If the reported unsafe condition is substantiated, actions taken by the railroad to remedy the reported unsafe condition, if lawful and feasible; (7) The time and date when the reported unsafe condition was remedied; (8) If no remedial action was taken, the reason why; and (9) If a dispatching railroad, in accordance with § 234.305, is required to contact a maintaining railroad, the time and date when it contacted the maintaining railroad.

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 inspectors participating under 49 CFR 212 during their investigation.

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 81,948) 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 (Section 601). Section 601(3) defines the term “small entity” as having the same meaning as “small business concern” under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section

601(4) likewise includes within the definition of “small entity” a not-for-profit enterprise that is independently owned and operated, and not dominant in its field of operations.

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.” See “Size Eligibility Provisions and Standards,” 13 CFR part 121 subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad. See 68 FR 24891 (May 9, 2003), codified at Appendix C to 49 CFR part 209. Currently, the revenue requirements are \$20 million or less in annual operating revenue, adjusted annually for inflation. The \$20 million limit (adjusted annually for inflation) is based on the STB’s threshold for a Class III railroad, which is adjusted by applying the railroad revenue deflator adjustment. For further information on the calculation of the specific dollar limit, see 49 CFR part 1201. FRA is using the STB’s threshold in its definition of “small entities” for this rule.

Included in the entities impacted by this final rule are governmental jurisdictions or transit authorities—none of which are small for purposes of the SBA (i.e., no entity serves a locality with a population less than 50,000). Commuter railroads are part of larger transit organizations that receive Federal funds. Therefore, they are not included in this analysis. Additionally, this final rule is expected to indirectly impact sign and post manufacturers, but only to the extent that the demand increases for products and services they supply. Such impact, however, will likely be both small and favorable to those small businesses.

FRA estimates that there are 710 Class III freight and passenger (excluding commuter and intercity) railroads in the United States. Certain provisions of this final rule will apply to all railroads that dispatch trains through highway-rail or pathway grade crossings. Out of the 710 Class III railroads, FRA estimates that there are 153 small freight and passenger (excluding commuter and intercity) railroads that do not have a dispatching function as part of their operations; and therefore, would not be affected by these certain provisions of this final rule. Thus, FRA has concluded that 557 small railroads will be affected by those provisions of this final rule. Hence, FRA has concluded that a substantial number of small entities will be impacted. However, as explained below, the impact on these small railroads will not be significant.

The small railroads affected by this final rule are defined as Class III railroads with grade crossings. FRA estimates that Class III railroads dispatch trains over 59,845 grade crossings. To evaluate the impact on these railroads, it is helpful to separate them into

three groups by number of employees. Thus, FRA subdivided these railroads into small railroads, very small railroads, and extremely small railroads. Small railroads are Class III railroads with 15 or more employees. Very small railroads are those with fewer than 15 employees, but more than 2 employees. Extremely small railroads are those with 2 or fewer employees. The table below shows the average annualized cost per small railroad, by category:

Class III Affected Entities	Number of Railroads	Average Number of Crossings per Railroad	Average Annualized Cost per Railroad per Year
Small	203	199	\$2,461
Very Small	217	69	\$944
Extremely Small	137	32	\$312

Source: Federal Railroad Administration 2009 data, compiled on September 1, 2010.

The cost to comply with this final rule largely depends upon the number of crossings that a railroad maintains. FRA has split the small railroads into three categories and analyzed the costs and benefits separately for each of these categories. The burden placed on the very small and extremely small Class III railroads is generally proportionately less because they usually maintain fewer crossings.

FRA estimates there are 203 small railroads with 15 or more employees. This group of railroads has 40,363 grade crossings; an average of approximately 199 crossings per railroad. FRA estimates the average total cost for small railroads to comply with this final rule is approximately \$4,304 per railroad for each of the first 3 years, and \$1,037 per railroad per year for each of the following 12 years.

FRA estimates there are 217 very small railroads; those with less than 15 employees but more than 2 employees. This group of very small railroads has 15,074 grade crossings, an average of approximately 69 crossings per railroad. The average total cost for very small railroads is approximately \$1,567 per railroad for each of the first 3 years, and \$428 per railroad per year for each of the following 12 years.

Extremely small railroads are those with two or fewer employees. There are 137 railroads in this category, accounting for 4,408 grade crossings. Extremely small railroads have an average of approximately 32 grade crossings. The average total cost for extremely small railroads is approximately \$646 per railroad for each of the first 3 years, and \$104 per railroad per year for each of the following 12 years. Using the average annualized cost of \$312 per railroad per year, and an average of 32 crossings per railroad, FRA estimates the cost to these extremely small railroads to comply with this final rule is about \$10 per crossing per year over the 15-year analysis. Railroads with just a few

crossings will incur very minimal costs to comply with this final rule. Thus, this final rule will not have a significant economic impact on extremely small railroads.

Many small railroads are subsidiaries of large short line holding companies with the expertise and resources comparable to larger railroads. The requirement to install two new signs per crossing and provide a toll-free telephone number in case of emergencies will not have a significant economic impact on these railroads. Short line railroads affected by this final rule might collaborate with other small railroads to implement its requirements, which would lower the burden on these small railroads.

The changes to the final rule made since the NPRM will reduce the burden on small railroads. FRA revised the monitoring requirements for railroads that dispatch trains authorized to operate at speeds less than or equal to 20 mph through crossings. Also, those railroads that operate at seasonally or intermittently and at speeds greater than 20 mph through crossings are not required to have live monitoring during hours of non-operation. Farm grade crossings are now only required to have one sign per crossing; this reduces the number of signs for Class III railroads by 13,510. These changes have moderately decreased the annual and total costs for small entities. Based on changes made in the regulatory requirements since the NPRM, FRA is even more confident that the impact on small entities will not be significant.

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 more than the average annual cost that these railroads will incur because of this final rule. Very small and extremely small railroads likely do have smaller revenues than larger Class III railroads. However, FRA believes that this average provides a good representation of the small railroads, in general. If a railroad has annual average revenue greater than \$134,122, the annual cost per railroad will be less than 1 percent of revenue.

FRA concludes that the final rule will not have a noticeable economic impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole. Although a substantial number of small railroads will be affected by the final rule, none of these entities will be significantly impacted. Accordingly, FRA certifies that this final rule and associated information collection will not have a significant economic impact on a substantial number of small entities.

6. Impact of less frequent collection of information.

If FRA does not collect this information or collects it less frequently, 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 be able to 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 prior to the train's arrival at the crossing. 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 [that are not also the maintaining railroad] 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 of 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 delaying receipt of 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 omissions as well as delays 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 National 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. Consequently, 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 National Crossing Inventory 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 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's 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.

8. Compliance with 5 CFR 1320.8.

On March 4, 2011, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** titled Systems for Telephonic Notification of Unsafe Conditions at

Highway-Rail and Pathway Grade Crossings. See 76 FR 11992. In response, FRA received a variety of comments from different parties. None of the comments addressed burden hour or burden costs estimates.

There were comments, though, that touched on cost. ASLRRRA recommended that the rule not apply to Class II and Class III railroads that operate at restricted speed for their primary operating practice, in order to relieve those railroads of the rule's financial burden.

FRA is not in a position to make such an exception since the RSIA statutorily mandates that each railroad "establish and maintain a toll-free telephone service for rights-of-way over which it dispatches trains." However, FRA has carefully considered the various monitoring and sign placement costs that the rule imposes on small railroads and has made several changes with respect to these costs in the final rule to lessen the financial burden.

One comment noted that placing signs at private highway-rail grade crossings (*i.e.*, a highway-rail grade crossing on a private roadway) and pathway grade crossings would not result in a benefit to the public. FRA believes that providing a mechanism to report an unsafe condition is vital, regardless of the type of crossing. Incidents such as a downed tree, or a recreational vehicle hung up on the crossing can and do happen at all types of highway-rail and pathway grade crossings, both public and private. Furthermore, as FRA stated in the NPRM, the frequency with which a highway-rail or pathway grade crossing is used does not determine whether it is included in the system established pursuant to § 234.303(a). FRA believes that it is important to provide an immediate means to communicate a notice of an unsafe condition even at such grade crossings traversed infrequently. Imagine, for example, the driver of a logging truck stuck at a seldom-used private highway-rail grade crossing in the Rocky Mountains with no knowledge of what actions to take or whom to contact. FRA agrees that some private highway-rail grade crossings, such as farm grade crossings, have characteristics that lend themselves to a modification of the requirement to have a sign on each approach to the crossing. In consideration of public comments on the number of signs that would be required at crossings, the final rule in § 234.311 permits farm grade crossings to have just one ENS sign. This will reduce costs. FRA believes that this exception is warranted because farm grade crossings generally have less vehicular traffic and people who traverse these crossings typically are more familiar with the crossings and likely will have prior knowledge of the presence and location of the ENS sign, if they need to report an unsafe condition.

Also, in the final rule, FRA is creating a new paragraph (b) in § 234.303 to provide exceptions to § 234.303(a) that allow certain railroads under certain conditions to use an answering machine, as defined in § 234.301, to receive reports of unsafe conditions at highway-rail and pathway grade crossings through which they dispatch trains. The exceptions in § 234.303(b) reduce the economic burden placed on smaller railroads,

allowing many of these railroads to use an existing phone line to receive ENS reports and, thereby, avoid any additional expense for a toll-free service.

Regarding § 234.303, FRA believes that there may be certain scenarios in which a caller would be discouraged from reporting an unsafe condition at a grade crossing because the use of a non-toll-free number would impose an additional cost on the caller as opposed to if a toll-free number was used. Yet, the requirement for the number to be toll-free may be overly burdensome to a short line or other small railroad. To avoid these types of situations, FRA adopts § 234.303(e) in this final rule (as proposed in the NPRM), which states that if a railroad classified by the Surface Transportation Board (STB) as a Class II or Class III rail carrier dispatches trains within an area in which the use of a non-toll-free number would incur no additional fees for the caller than if a toll-free number were used, then that railroad may use that non-toll-free number to receive calls pursuant to § 234.303(a) regarding each grade crossing in that area.

In response to the NPRM, the Angels on Track Foundation objected to the use of a third-party telephone service, asserting that it would compromise safety because railroads would not be receiving calls “directly.”

FRA does not believe that this method of receiving reports of unsafe conditions at highway-rail and pathway grade crossings would compromise safety. All of the Class I railroads currently have telephone systems in place by which they receive reports of unsafe conditions at highway-rail and pathway grade crossings. As a result, Class I railroads are unlikely to employ a third-party telephone service. Permitting the use of a third-party telephone service provides smaller railroads with a more economical and less burdensome option, without compromising safety. As previously stated in the NPRM, 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 receive and respond to reports of unsafe conditions at highway-rail and pathway grade crossings. Indeed, requiring such a system could divert limited resources from more vital safety projects. The results of the pilot project that FRA conducted with eight short line railroads in Pennsylvania from October 15, 2001 through May 31, 2003, proved to be extremely successful and demonstrated that a third-party telephone service is a reasonable approach when considered from both a safety and economic perspective.

In response to the NPRM, the organization Crossing Call commented that proposed § 234.307(d) put an undue burden on the third-party telephone service by requiring it to comply with all of subpart E because proposed paragraph (d) stated that “A third-party service is responsible for complying with this subpart.”

FRA did not intend to hold a third-party telephone service responsible for compliance with all of subpart E. Accordingly, in the final rule, FRA in paragraph (e) of this section, clarifies that the third-party telephone service is responsible only for carrying out the duties of § 234.307, in addition to the recordkeeping duties under § 234.313, and, if

applicable, § 234.315. Furthermore, the railroad is responsible for any acts or omissions of the third-party telephone service under the contract that violate these specified sections of subpart E.

Comments submitted by the Everett Railroad Company expressed concern that posting of an emergency number could lead to nuisance calls and false reports of emergencies, placing an excessive burden on small railroads.

History has proven this concern to be unwarranted for the most part. As railroads began to adopt various forms of emergency notification systems, the expectation of nuisance calls was a concern, but did not materialize. This fact was supported by the pilot projects that FRA conducted in the State of Kentucky, the State of Texas, and with several short line railroads in the Commonwealth of Pennsylvania. The pilot programs did not find that false reports, or nuisance calls were an issue. In fact, the report concluded that railroads and the public overwhelmingly benefit from emergency call-in systems, noting:

[t]he preponderance of calls have reported broken or malfunctioning warning devices, but other calls have reported trains blocking crossings, rough roadway surfaces, obstructions on tracks (often vehicles that are stuck), fires, vandalism, trespassers, etc. Trains have been slowed or stopped to avoid obstructions. Warning devices have been repaired more quickly because railroads have been provided more timely notifications that problems existed.

In order for the public to have an effective means to report warning system malfunctions and other unsafe conditions, a sign(s) must be located at the crossing with the pertinent information in order to contact the appropriate railroad and provide the railroad with sufficient information to correct the unsafe condition. The organization Crossing Call commented that while collisions on smaller railroads with reduced speeds may pose less of a hazard, there are additional benefits to an ENS other than reporting a stalled vehicle at the crossing. Crossing Call noted that —

[a] properly functioning warning systems [sic] promotes a public perception that the warning ought to be heeded
An Emergency Notification System facilitates prompt attention to malfunctioning equipment and fosters the perception that railroads are concerned that equipment operates as intended.

FRA agrees.

Section 234.313 sets forth the recordkeeping requirements for this Subpart that apply to each railroad subject to this Subpart. In the NPRM, FRA solicited comments on what other information the railroad should be required to record. The CPUC recommended requiring information about why a railroad found a reported problem infeasible or unlawful to remedy.

FRA believes that the new requirement in paragraph (a) addresses the issue raised by CPUC. The ILCC also suggested that weather conditions at the crossing location be recorded when a caller makes a report of an unsafe condition. While this may be helpful information for some remedial actions undertaken by the railroad, FRA is not requiring that weather conditions be recorded. The recordkeeping requirements mandated by this section are minimum requirements; railroads are permitted to record additional information if they choose to do so.

Paragraph (e) of § 234.313 requires that each railroad retain for at least one year (from the latest date of railroad activity in response to a report received under this Subpart) all records that it makes that are required by this section. Records required to be kept must be made available to FRA as provided by statute (49 U.S.C. 20107). Some public comments received by FRA indicated that one year is not a sufficient period of time for the railroads to retain the records required by this section. However, a one-year period for retention of records is consistent with other FRA regulations in part 234.

Section 234.317 provides the date by which each of various groups of railroads must comply with this Subpart. In response to the compliance dates proposed in the NPRM, FRA received several comments from railroads and other groups and individuals in the railroad industry. With respect to railroads that currently do not have an ENS of any kind in place, the ILCC recommended that these railroads have 12 months to implement a system that conforms to the Subpart. The organization Crossing Call stated that the proposal in the NPRM to allow railroads without an ENS to implement one within 18 months (after the effective date of Subpart E), as proposed in the NPRM, was an overly generous amount of time, and recommended allowing only 9 months to conform to the subpart. One individual commented that the compliance dates proposed in the NPRM failed to instill a sense of urgency and all railroads should be allowed somewhere between six and twelve months to conform to the subpart.

After careful consideration of these comments, as well as comments from smaller railroads regarding the financial burden that the rule will place on their business operations (see Regulatory Evaluation for this final rule), FRA decided in the final rule to extend the implementation period for railroads that currently do not have any sort of ENS in place from 18 months, as proposed in the NPRM, to approximately three years after the effective date of the final rule, *i.e.*, September 1, 2015. This additional time provides smaller railroads the opportunity to phase-in implementation of an ENS in stages, thus spreading out the costs of implementation.

In paragraph (c)(1) of § 234.317, if a railroad already has ENS signs in place, but those signs do not comply with the requirements set forth in § 234.309, the railroad's ENS signs must conform to § 234.309 within certain time periods as required in paragraph (c)(1)(i)-(iii) of § 234.317. In response to the NPRM, both the AAR and KCS recommended that all existing ENS signs be permitted to remain in place for their normal useful life. In consideration of these comments, in the final rule, FRA is allowing certain

signs to remain in place for the lifecycle of the sign. Specifically, paragraph (c)(1)(i) permits a railroad to keep an ENS sign that is in place for its useful life if the sign size is greater than or equal to 60 square inches, and the height of the lettering on the sign is greater than or equal to ¾ inch for the information required in § 234.309(b). FRA assesses that the useful life of a sign is approximately 15 years. This modification in the final rule decreased the estimated costs initially assessed in the NPRM by \$3.0 million over a 15-year period.

Finally, in the NPRM, FRA solicited comments on whether to reduce the amount of time that the railroad would have to bring the placement of the sign into compliance if the only sign at the crossing is placed on the signal bungalow. FRA received several comments on this issue. The BRS, the CPUC, and the ILCC all supported reducing the implementation period from five years to 18 months or less for signs placed on signal bungalows.

To provide economic relief to railroads, FRA decided in the final rule to grant railroads until September 1, 2017, allotting the same amount of time as proposed in the NPRM.

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 754 railroads currently operating in the United States. However, 160 railroads (153 Class III and 7 commuter railroads/Amtrak) will not be impacted by this rulemaking. Thus, approximately 594 railroads will be affected by this final rule.

FRA assumes the following table represents the applicable railroad industry by railroad classification, the number of railroad crossings and percent of crossings:

	Affected Railroads	Number of Crossings	Percent of Crossings
Class I	7	138,779	66%
Class II	12	9,448	4%
Class III	557	59,845	28%
Commuter & Amtrak	18	3,329	2%
Total	594	211,401	100%

Note: Affected railroads include freight and passenger railroads. For purposes of this analysis, all Class I, II, and III railroads are defined as railroads excluding passenger railroads. “Commuter” railroads are defined as passenger railroads excluding tourist, scenic, historic, and excursion railroads, and excluding the Alaska Railroad and Amtrak as well. Nevertheless, Amtrak is included in the Commuter category for purposes of this analysis because it will be similarly burdened.

§ 234.303 Emergency notification systems for telephonic reporting of unsafe conditions at highway-rail and pathway grade crossings.

(a) Duty of railroads in general. Each railroad shall establish and maintain a toll-free telephone service by which the railroad can directly and promptly receive telephone calls from the public reporting specific information about any of the conditions listed in paragraph (c) of this section with respect to a highway-rail grade crossing and paragraph (d) of this section with respect to a pathway grade crossing through which the railroad dispatches a train, except as provided in paragraphs (b) and (c) of this section, and in §234.306(a). The dispatching railroad shall either have a live person answer calls directly and promptly, or use an automated answering system or a third-party telephone service for the purpose of receiving reports pursuant to this section, except as provided in paragraph (b) of this section.

(b) Exemptions for certain railroads. If a dispatching railroad operates in accordance with either of the conditions set forth in this paragraph, the railroad is not subject to the general duties stated in the last sentence of paragraph (a) of this section.

(1) If a railroad dispatches one or more trains through a highway-rail or pathway grade crossing, each of which is authorized to travel through the crossing at speeds not greater than 20 miles per hour (mph), the railroad may use an answering machine to receive calls regarding unsafe conditions at such a crossing. If using an answering machine pursuant to this paragraph, the railroad must retrieve its messages immediately prior to the start of its operations each day.

(2) If a railroad dispatches one or more trains through a highway-rail or pathway grade crossing on a seasonal or intermittent basis (e.g., tourist, biweekly service, or non-24-hour service), and any of the trains is authorized to travel through the crossing at speeds greater than 20 mph, the railroad may use an answering machine to receive calls

regarding unsafe conditions at such a crossing, but only during hours of non-operation. If using an answering machine pursuant to this paragraph (b), during periods of non-operation, the railroad must retrieve its messages daily. However, the railroad must retrieve its messages immediately prior to the start of its operations for the day, and during hours of operation the dispatching railroad shall either have a live person answer calls directly and promptly, use an automated answering system, or employ a third-party telephone service, in accordance with paragraph (a) of this section, to receive reports regarding unsafe conditions at crossings through which it dispatches trains.

FRA estimates that railroads will receive approximately 15,500 reports per month or an annual total of 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. *(Note: The burden for keeping a record of these telephonic reports is included under § 234.313 below. Consequently, there is no additional burden associated with this requirement.)*

	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 highway-rail grade crossings. Each railroad shall establish a service pursuant to paragraph (a) of this section, except as provided in paragraphs (b) and (e) of this section, and in § 234.306(a), to receive telephone calls 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.

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

(d) Reportable unsafe conditions at pathway grade crossings. Each railroad shall establish a service pursuant to paragraph (a) of this section, except as provided in paragraphs (b) and (e) of this section, and in § 234.306(a), to receive telephone calls 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 and one (1) minute to prepare the corresponding record. Total annual burden for this requirement is 62 hours.

594 railroads

Burden time per response:

1
minute
+ 1
minute

Frequency of Response:

On occasion

Annual number of Responses: 1,860 telephone calls/reports + 1,860
telephone call records

Annual Burden: 62 hours

Calculation: 1,860 telephone calls/reports x 1 min. + 1,860 telephone call

records x 1 min. = 62 hours

(e) Class II or III dispatching railroads. A Class II or Class III railroad that dispatches one or more trains 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 than if a toll-free number were used may use that non-toll-free number to receive calls pursuant paragraph (a) of this section 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 1,127 hours (1,065 + 62).

§ 234.305 Remedial Actions in Response to Reports of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

(a) General rule on response to credible report of warning system malfunction at highway-rail grade crossing: (1) If a railroad receives a credible report of warning system malfunction at a highway-rail grade crossing pursuant to § 234.303 (c)(1) and the railroad has maintenance responsibility for the warning system to which the report pertains, then it shall take the appropriate action required by Subpart C of this Part.

(2) If a railroad receives a credible report of warning system malfunction at a highway-rail grade crossing pursuant to § 234.303(c)(1) and the railroad has dispatching responsibility for the crossing, but does not have maintenance responsibility for the warning system to which the report pertains, it shall promptly contact all trains that are authorized to operate through the highway-rail grade crossing in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing. After contacting the appropriate trains, the railroad shall then promptly contact the maintaining railroad and inform it of the reported malfunction. The maintaining railroad shall then 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 by the same railroad. For purposes of this analysis, FRA will use .5 percent.

FRA estimates then that approximately 465 trains operating through highway-rail grade crossing will be contacted/warned each year by dispatching 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/report will take approximately one (1) minute to complete and that it will take one (1) minute to complete the required record regarding the unsafe condition by the maintaining railroad. Total annual burden for this requirement is 16 hours.

594 railroads
Burden time per response:

		1 minute + 1 minute
Frequency of Response:		On occasion
Annual number of Responses:	465 contacts/communications + 465 unsafe condition records	
Annual Burden:	16 hours	

Calculation: 465 contacts/communications x 1 min. + 465 unsafe condition records x 1 min. = 16 hours

(b) General rule on response to public report of warning system malfunction at highway-rail grade crossing. (1) If a railroad receives a public report of a warning system malfunction at a highway-rail grade crossing pursuant to § 234.303(c)(1) and the railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall promptly contact all trains that are authorized to operate through the highway-rail grade crossing in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing. After contacting the appropriate trains, the railroad shall then 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, determine the nature of the malfunction and take the appropriate action required by § 234.207.

Railroads routinely do this as part of their normal standard operating procedures. Further, FRA estimates that approximately 925 trains authorized to operate through highway-rail grade crossing will be contacted/warned each year by dispatching railroads that also have maintenance responsibility for the crossing under the above requirement. It is estimated that each contact/warning will take approximately one (1) minute to complete and that it will take one (1) minute to complete the required record of the unsafe condition by the maintaining railroad. Total annual burden for this requirement is 30 hours.

	594 railroads	
	Burden time per response:	
		1 minute + 1 minute
Frequency of Response:		On occasion
Annual number of Responses:	925 contacts/warnings + 925 unsafe condition records	
Annual Burden:		30 hours

Calculation: 925 contacts/warnings x 1 min. + 925 unsafe condition records = 30 hours = 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) 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/communications	
Annual Burden:		15 hours

Calculation: 925 contacts/communications x 1 min. = 15

hours

(2) If a railroad receives a public report of warning system malfunction at a highway-rail grade crossing pursuant to § 234.303(c)(1) and the railroad does not have maintenance responsibility for the warning system at the highway-rail grade crossing, it shall promptly contact all trains that are authorized to operate through the highway-rail grade crossing to which the report pertains in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing. After contacting the appropriate trains, the railroad shall then 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 maintaining railroad and inform it of the reported malfunction. The maintaining railroad shall then promptly investigate the report, determine the nature of the malfunction, and take the appropriate action required by § 234.207.

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 and that it will take one (1) minute to complete the required record of the unsafe condition by the maintaining railroad. Total annual burden for this requirement is 30 hours.

594 railroads
Burden time per response:

		1 minute + 1 minute
Frequency of Response:		On occasion
Annual number of Responses:	920 contacts/communications + 920 unsafe condition records	
Annual Burden:	30 hours	

Calculation: 920 contacts/communications x 1 min. + 920 unsafe condition records = 30 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(d)(1) and that railroad has maintenance responsibility for the warning system to which the report pertains, the railroad shall promptly contact all trains that are authorized to operate through the pathway grade crossing in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing. After contacting the appropriate trains, the railroad shall then 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, determine the nature of the failure, and without undue delay repair the active warning system if necessary.

None of the responding railroads track 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 dispatching railroads that also have maintenance responsibility for the crossing under the above requirement. It is estimated that each contact/warning will take approximately one (1) minute to complete and that it will take approximately one (1) minute to complete the required record of the unsafe condition by the maintaining railroad. Total annual burden for this requirement is .06666 hour.

594 railroads

Burden time per response:

1
minute
+ 1
minute

Frequency of Response: On occasion

Annual number of Responses: 2 contacts/warnings + 2 unsafe condition records

Annual Burden: .06666 hour

Calculation: 2 toll-free telephone reports x 1 min. + 2 unsafe condition records x 1 min. = .06666 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 dispatching railroads that also have maintenance responsibility for the crossing 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:

1
minute

Frequency of Response: On occasion

Annual number of Responses: 2 contacts/communications

Annual Burden: .0333 hour

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

(2) If a railroad receives a report of a warning system failure at a pathway grade crossing pursuant to § 234.303(d)(1) but does not have maintenance responsibility for the warning system to which the report pertains, the railroad shall promptly contact all trains that are authorized to operate through the pathway grade crossing to which the report pertains in an effort to notify the train crews of the reported failure prior to each train's arrival at the crossing. After contacting the appropriate trains, the railroad shall then 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 maintaining railroad and inform it of the reported failure. The maintaining railroad shall then promptly investigate the report, determine the nature of the failure, and without undue delay repair the warning system if necessary.

FRA estimates that there will be zero (0) reports received under the above provision. Consequently, there is no burden associated with this requirement.

(d) General rule on railroad's response to reports of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing. (1) If a railroad receives a report of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing, pursuant to § 234.303(c)(2) or (d)(2), and the railroad has maintenance responsibility for the crossing to which the report pertains, the railroad shall promptly contact all trains that are authorized to operate through the crossing in an effort to notify the train crews of the reported obstruction prior to each train's arrival at the crossing. After contacting the appropriate trains, the railroad shall then promptly contact the law enforcement agency having jurisdiction over the crossing to provide it with the information necessary to assist in the removal of the reported track obstruction or to carry out other activities to maintain safety at the crossing. The railroad shall then promptly investigate the report, determine the nature of the obstruction, and without undue delay take the necessary action to have the obstruction removed.

FRA estimates that approximately 7,440 trains that are authorized to operate through the crossing will be contacted/warned of the disabled vehicle or other track obstruction at a highway-rail or pathway grade crossing, pursuant to § 234.303(c)(2) or (d)(2), each year by the dispatching railroad that also has responsibility for the crossing under the above requirement. It is estimated that each contact/communication will take approximately one (1) minute to complete and that it will take approximately one (1) minute to complete the required record of the unsafe condition by the maintaining railroad. Total annual burden for this requirement is 248 hours.

594 railroads
Burden time per response:

		minute
		+ 1
		minute
Frequency of Response:		On occasion
Annual number of Responses:	7,440 contacts/communications + 7,440 unsafe condition records	
Annual Burden:	248 hours	

Calculation: 7,440 contacts/communications x 1 min. = 248 hours

Also, FRA estimates that approximately 7,440 calls/contacts/communications by the dispatching railroad that also has responsibility for the crossing will be made to law enforcement agencies having jurisdiction over the highway-rail or pathway grade to provide them with the necessary information each year under the above requirement. It is estimated that each call/contact/ communication will take approximately one (1) minute to complete. Total annual burden for this requirement is 124 hours.

	594 railroads	
Burden time per response:		
		1
		minute
Frequency of Response:		On occasion
Annual number of Responses:	7,440 contacts/communications	
Annual Burden:	124 hours	

Calculation: 7,440 contacts/communications x 1 min. = 124 hours

(2) If a railroad receives a report of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing, pursuant to § 234.303(c)(2) or (d)(2), but does not have maintenance responsibility for the crossing to which the report pertains, the railroad shall promptly contact all trains that are authorized to operate through the crossing to which the report pertains in an effort to notify the train crews of the reported obstruction prior to each train's arrival at the crossing. After contacting the appropriate trains, the railroad shall then promptly contact the law enforcement agency having jurisdiction over the crossing to provide it with the information necessary to assist in the removal of the reported track obstruction or to carry out other activities to maintain safety at the crossing. The railroad shall then promptly contact the maintaining railroad and inform it of the reported obstruction. The maintaining railroad shall then promptly investigate the report, determine the nature of the obstruction, and without undue delay take the necessary action to have the obstruction removed.

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 two (2) 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

Additionally, FRA estimates that approximately 2,556 contacts by the dispatching railroad will be made to the maintaining railroad regarding the reported obstruction under the above requirement. It is estimated that each contact/communication will take approximately one (1) minute to complete and that each required record will also take one(1) minute to complete. Total annual burden for this requirement is 86 hours.

	594 railroads
Burden time per response:	

		1 minute + 1 minute
Frequency of Response:		On occasion
Annual number of Responses:	2,556 contacts/communications + 2,556 records	
Annual Burden:	86 hours	

Calculation: 2,556 contacts/communications x 1 min. + 2,556 records x 1 min.
= 86 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 railroad receives a report pursuant to § 234.303(c)(1), (c)(2), (d)(1), or (d)(2) about a highway-rail or pathway crossing that any of the trains is authorized to operate through, the railroad shall promptly contact the occupied controlling locomotive of the train as required by § 234.305(a), (b), (c), or (d) of this § 234.305 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(a), (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(c)(3) or (d)(3), the railroad, if it is both the dispatching and the maintaining railroad, shall timely investigate the report and remove the obstruction if it is lawful and feasible to do so. If the dispatching railroad is not also the maintaining railroad, it shall promptly contact the maintaining railroad, which shall timely investigate the report and 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. Upon receiving a report pursuant to § 234.303(c)(4) or (d)(4) related to the maintenance of a crossbuck sign or other similar grade crossing safety device or any other unsafe condition (such as a pot hole that could cause injury or damage) not covered by paragraph (a), (b), or (c) of this § 234.305, the railroad, if it is both the dispatching and maintaining railroad, shall timely investigate the report; and, if the railroad finds that the unsafe condition exists, it shall timely correct it if it is lawful and feasible to do so. If the dispatching railroad is not also the maintaining railroad, it

shall timely inform the maintaining railroad, which shall timely investigate the report; and, if the maintaining railroad finds that the unsafe condition exists, it shall timely correct it if it is lawful and feasible to do so.

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

The burden for the second part of this requirement is already included above under § 234.305(a), (b), and (c). Consequently, there is no additional burden associated with it.

(h) General rule on a maintaining railroad’s responsibilities for receiving reports of unsafe conditions at highway-rail and pathway grade crossings. (1) In general. If the dispatching railroad is required under this section to contact the maintaining railroad, the maintaining railroad shall – (i) Provide the dispatching railroad with sufficient contact information by which the dispatching railroad may promptly contact the maintaining railroad upon receipt of a report; and (ii) Have either a live person answer calls directly or use an automated answering service for the purpose of receiving a call from the dispatching railroad of a report of an unsafe condition, except as provided in paragraph (2) of this section.

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.

(2) Exceptions for use of a third-party telephone service and answering machine by a maintaining railroad. (i) If a maintaining railroad is responsible for the maintenance of a highway-rail or pathway grade crossing through which a railroad dispatches one or more trains, each of which is authorized to travel through the crossing at speeds not greater than 20 mph, the maintaining railroad may use a third-party telephone service, in accordance with § 234.307, or an answering machine to receive reports from a

dispatching railroad of unsafe conditions at such a crossing. If using an answering machine pursuant to this paragraph, the railroad must retrieve its messages immediately prior to the start of its operations for the day.

(ii) If a maintaining railroad is responsible for the maintenance of a highway-rail or pathway grade crossing only on a seasonal or intermittent basis (e.g., tourist, biweekly service, or non-24 hours service), the maintaining railroad may use a third-party telephone service, in accordance with § 234.307, or an answering machine to receive reports from a dispatching railroad of unsafe conditions at such a crossing. If using an answering machine pursuant to this paragraph, during periods of non-operation, the maintaining railroad must retrieve its messages daily. However, the railroad must retrieve its messages immediately prior to the start of its operations for the day, and during hours of operation the railroad shall either have a live person answer calls directly or use an automated answering system to receive reports regarding unsafe conditions at such a crossing.

The burden for this requirement is included under that of § 234.307 below. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 587 hours (8 + 16 + 30 + 15 + 15 + 15 + 30 + .0666 + .0333 + 248 + 124 + 43 + 43 + 86 + .1667).

§ 234.306 Multiple dispatching or maintaining railroads with respect to the same highway-rail or pathway grade crossing; appointment of responsible railroad.

(a) Duty of multiple dispatching railroads to appoint a primary dispatching railroad for the crossing. (1) Where more than one railroad dispatches a train through the same highway-rail or pathway grade crossing, the dispatching railroads for the crossing shall appoint one of the railroads to be the primary dispatching railroad for the crossing and, as such, the primary dispatching railroad for the crossing shall do the following:

(i) Provide its emergency telephone number to the railroad responsible for the placement and maintenance of the ENS sign(s) at the crossing;

(ii) Receive all reports through ENS of unsafe conditions at the crossing as required by § 234.303;

(iii) After receiving a report of an unsafe condition at the crossing, promptly contact all other railroads that dispatch trains through the crossing to warn them of the reported unsafe condition, and, as appropriate, promptly contact the maintaining railroad(s) for the crossing as required by § 234.305; and

(iv) Otherwise carry out its duties under this Subpart as a dispatching railroad for the crossing, with respect to the crossing.

(2) After receiving a report of an unsafe condition at the crossing from the appointed dispatching railroad, each of the other dispatching railroad(s) to which the report pertains shall carry out the remedial action required by § 234.305 and the recordkeeping required by § 234.313. *[Note: The burden for receiving reports of unsafe conditions at the crossing is included under § 234.303, and the burden for promptly contacting all railroads/trains is included under that of § 234.305. Consequently, there is no additional burden associated with these requirements.]*

FRA estimates that there are approximately 3,834 crossings nationally where there are multiple dispatching railroads through the same crossing and where railroads will communicate with one another about responsibility for receiving reports of unsafe conditions at such crossings on a corridor basis. FRA estimates that approximately 150 discussions will be conducted appointing/designating one railroad as the primary railroad to receive reports regarding unsafe conditions at such crossings. This railroad will provide the necessary information for the ENS sign. It is estimated that it will take approximately 60 minutes to complete each appointment discussion/record that meets the above requirements. However, since this a one-time requirement and since OMB approvals are given for three years, the annual number of responses is 50 appointment discussion/record (150 appointment discussion /records divided by three) and 50 hours (150 hours divided by three). Total annual burden for this requirement is 50 hours.

	594 railroads	
Burden time per response:		60 minute s
Frequency of Response:		One-time
Annual number of Responses:	50 appointment discussions/records	
Annual Burden:	50 hours	
<u>Calculation:</u>	50 appointment discussions/records x 60 min. = 50 hours	

(b) Duty of multiple maintaining railroads to appoint a railroad responsible for the placement and maintenance of the ENS sign(s). (1) Where more than one railroad maintains the same crossing, the maintaining railroads for the crossing shall appoint one of the railroads to be responsible for the placement and maintenance of the ENS sign(s) at the crossing pursuant to §§ 234.309 and 234.311.

(2) The railroad appointed under paragraph (b)(1) of this section shall display on the ENS sign(s) at the crossing the emergency telephone number of the dispatching railroad for the crossing or, if more than one railroad dispatches a train through the crossing, the

emergency telephone number of the primary dispatching railroad for the crossing identified under paragraph (a) of this section.

FRA estimates that 150 discussions will be conducted appointing /designating one railroad to be responsible for installing and maintaining the ENS sign(s) at the crossing. It is estimated that it will take approximately 60 minutes to complete each appointment discussion/record. However, since this a one-time requirement and since OMB approvals are given for three years, the annual number of responses is 50 appointment discussion/record (150 appointment discussion /records divided by three) and 50 hours (150 hours divided by three). Total annual burden for this requirement is 50 hours. *(Note: The burden for ENS signs is included under § 234.309. Consequently, there is no additional burden associated with this part of the above requirement.)*

	594 railroads	
	Burden time per response:	60 minute s
Frequency of Response:		One-time
Annual number of Responses:	50 appointment discussions/records	
Annual Burden:	50 hours	
<u>Calculation:</u>	50 appointment discussions/records x 60 min. = 50 hours	

(c) Duty of multiple maintaining railroads with respect to remedial action at the crossing. Where there are multiple maintaining railroads for a crossing, the dispatching railroad (or, if more than one railroad dispatches a train through the crossing, the primary dispatching railroad for the crossing under paragraph (a) of this section) upon receipt of a report of an unsafe condition shall promptly contact and inform the appropriate maintaining railroad(s) for the crossing of the reported problem. After each maintaining railroad for the crossing receives a report of an unsafe condition at the crossing that pertains to its maintenance responsibilities for the crossing, the maintaining railroad shall carry out the remedial action required by § 234.305 and the recordkeeping required by § 234.313.

The burden for this requirement is included under that of § 234.305(a)(2), and § 234.305 (b)(2) above. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 100 hours (50 + 50).

§ 234.307 Third-party Telephone Service

(a) General use of a third-party telephone service by a dispatching railroad. A dispatching railroad may use a third-party telephone service to receive reports of unsafe conditions at highway-rail and pathway grade crossings pursuant to § 234.303. If a dispatching railroad chooses a third-party telephone service, the third-party telephone service shall be reached directly by the telephone number displayed on the ENS sign pursuant to § 234.309. The third-party service may use an automated answering service for the purpose of receiving such reports. The dispatching railroad shall have a live person answer calls directly from the third-party telephone service, unless permitted pursuant to § 234.303(b) to use an answering machine. The dispatching railroad shall ensure that the third-party telephone service complies with the applicable requirements of § 234.307.

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

(b) General use of a third-party telephone service by a maintaining railroad. Pursuant to § 234.305(h)(2), a maintaining railroad that either maintains a highway-rail or pathway grade crossing on a seasonal or intermittent basis (e.g., tourist, biweekly service, or non-24 hours service), or a crossing through which a railroad dispatches one or more trains, each of which is authorized to travel through the crossing at speeds not greater than 20 mph, may use a third-party telephone service to receive reports of unsafe conditions at such a crossing from a dispatching railroad. The third-party telephone service may use an automated answering system for the purpose of receiving such reports. The maintaining railroad shall receive reports from the third-party telephone service by either having a live person answer calls directly or using an answering machine. If using an answering machine pursuant to this paragraph, the railroad must use the answering machine in accordance with § 234.305(h)(2). The maintaining railroad shall ensure that the third-party telephone service complies with the applicable requirements of § 234.307.

FRA estimates that approximately 50 reports from the third-party telephone service will be made to maintaining railroads under the above requirement. It is estimated that it will take approximately one (1) minute for the maintaining railroad to receive each third-party telephone service report and approximately one (1) minute for the third-party service to prepare a record of each call/report. Total annual burden for this requirement is two (2) hours.

594 railroads
Burden time per response:

1
minute
+ 1
minute

Frequency of Response:		On occasion
Annual number of Responses:	50 third-party telephone service reports + 50 third-party call/report records	
Annual Burden:		2 hours

Calculation: 50 3rd party telephone service reports x 1 min. + 50 3rd party call/report records x 1 min. = 2 hours

(c) Duties of third-party telephone service in contacting dispatching and maintaining railroads. Upon receiving a report pursuant to §§ 234.303 or 234.305, on behalf of either the dispatching railroad or maintaining railroad, respectively, the third-party telephone service shall immediately contact the railroad, and, at a minimum, provide it with the following information:

- (1) The nature of the reported unsafe condition;
- (2) The location of the unsafe condition, including the U.S. DOT National Crossing Inventory Number for the crossing;
- (3) 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;
- (4) The date and time that the report was received by the third-party telephone service; and
- (5) Any additional information provided by the caller that may be useful to restore the crossing to a safe condition.

In addition to the third-party telephone service reports to maintaining railroads in § 234.307 (b) above, FRA estimates that approximately 50 reports will be made to dispatching railroads with the stipulated information under the above requirement. It is estimated that it will take approximately one (1) minute to receive each third-party telephone service report. Total annual burden for this requirement is one (1) hour.

	594 railroads	
Burden time per response:		1 minute
Frequency of Response:		On occasion
Annual number of Responses:	50 third-party telephone service reports	
Annual Burden:		1 hour

Calculation: 50 3rd party telephone service reports x 1 min. = 1 hour

(d) Duties of railroad using third-party service. If a dispatching or maintaining railroad uses a third-party telephone service to receive reports of unsafe conditions at a highway-rail or pathway grade crossing, the railroad shall —

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

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. However, since this is a one-time requirement and since OMB approvals are generally given for three years, responses and burden must be divided by three to calculate the annual response/burden (50 contacts divided by three; 13 hours divided by three). Total annual burden for this requirement is four (4) hours.

594 railroads		
Burden time per response:		15 minute s
Frequency of Response:		One-time
Annual number of Responses:	17 contacts	
Annual Burden:		4 hours

Calculation: 17 contacts x 15 min. = 4 hours

(2) Inform FRA in writing, before the implementation of such a service, of the railroad's intent to use a third-party telephone service, and provide FRA with contact information for the third-party telephone service and information identifying the highway-rail and pathway grade crossings about which the third-party telephone service will receive reports;

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. However, since this a one-time requirement and since OMB approvals are given for three years, the annual number of responses is 17 appointment discussion/records (50 appointment discussions /records divided by three) and 17 hours (50 hours divided by three). Total annual burden for this requirement is 17 hours.

594 railroads
Burden time per response:

Frequency of Response: 60 minutes
Annual number of Responses: 17 third-party service letters
Annual Burden: 17 hours
Calculation: 17 third-party service letters x 60 min. = 17 hours

(3) Inform FRA in writing within 30 days following any changes in the use or discontinuance of a third-party telephone service; and

FRA estimates that it will receive approximately five (5) notices/letters of changes in the use of or discontinuance of a third-party telephone service each year 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 five (5) hours.

594 railroads
Burden time per response:

Frequency of Response: 60 minutes
Annual number of Responses: 5 third-party service change letters
Annual Burden: 5 hours
Calculation: 5 third-party service change letters x 60 min. = 5 hours

(4) Take appropriate action required by § 234.305 upon being contacted by the third-party telephone service about a report.

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

(e) Third-party telephone service and contracting railroad liability. If a railroad uses a third-party telephone service to receive reports pursuant to §§ 234.303 or 234.305, the third-party telephone service is responsible for carrying out the duties of this section and recordkeeping duties under § 234.313, and, if applicable under § 234.315. In addition, the railroad remains responsible for any acts or omissions of the third-party telephone service it utilizes that violate the provisions of this section or the recordkeeping requirements under § 234.313, and, if applicable, under § 234.315.

The burden for recordkeeping is included under section 234.313 and 234.315 below. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 29 hours (2 + 1 + 4 + 17 + 5).

§ 234.309 ENS signs in general.

(a) Provision of information. If the dispatching railroad and the maintaining railroad(s) are not the same entity, the dispatching railroad for a highway-rail or pathway grade crossing shall provide to the maintaining railroad the telephone number that is to be displayed on the ENS sign at the crossing, not later than 180 calendar days before the date that implementation of an ENS is required.

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

Calculation: 10 communications x 30 min. = 5 hours

(b) Information to be displayed. Each ENS sign located at each highway-rail or pathway grade crossing as required by § 234.311 shall display the necessary information for the dispatching railroad to receive reports of unsafe conditions at the crossing. This information, at a minimum, includes the following:

- (1) The toll-free telephone number (or non-toll-free telephone number as provided for in § 234.303(e)) established to receive reports pursuant to § 234.303(a);
 - (2) An explanation of the purpose of the sign (e.g., “Report emergency or problem to ____”); and
 - (3) The U.S. DOT National Crossing Inventory Number assigned to that crossing.
- (c) Sign size and other physical features. Each ENS sign shall --

- (1) Measure at least 12 inches wide by 9 inches high;
- (2) Be retroreflective;
- (3) Have legible text (*i.e.*, letters and numerals) with a minimum character height of 1 inch for the information required in paragraph (b) of this section; and
- (4) Have white text set on a blue background with a white border, except that the U.S. DOT National Crossing Inventory Number may be black text set on a white rectangular background.

As noted in the regulatory impact analysis accompanying this final rule, there are approximately 211,401 crossings throughout the country. Two signs will be required at each crossing, but only one sign will be required at each farm crossing. FRA estimates that approximately 105,160 crossings will require two signs each (210,320 signs), and 35,524 private farm crossings will require one sign each. The remaining 70,717 crossings are already compliant regarding signs. Thus, 245,844 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 15 minutes to complete each ENS sign and another 15 minutes to install it. However, since this is a one-time requirement and since OMB approvals are generally given for three years, responses and hours must be divided by three to calculate the annual number of responses and hours. Thus, approximately 81,948 ENS signs (245,844 signs divided by three) will be placed at crossings annually and the corresponding burden amounts to 40,974 hours (122,922 hours divided by three). Total annual burden for this requirement then is 40,974 hours.

594 railroads		
Burden time per response:		30 minute s
Frequency of Response:		One-time
Annual number of Responses:	81,948 ENS signs	
Annual Burden:	40,974 hours	

Calculation: 81,948 ENS signs x 30 min. = 40,974 hours

Total annual burden for this entire requirement is 40,979 hours (5 + 40,974).

§ 234.311 ENS sign placement and maintenance.

(a) Number of signs at highway-rail or pathway grade crossing. (1) In general. The maintaining railroad, or railroad appointed pursuant to § 234.306(b), for a highway-rail or pathway grade crossing shall place and maintain a sign on each approach to the crossing that conforms to § 234.309, except as provided in paragraph (a)(2) of this section.

(2) Exceptions. (i) At a farm grade crossing, the responsible railroad shall place and maintain a minimum of one sign that conforms to § 234.309 at the crossing.

(ii) At a railroad yard, port or dock facility, or a private industrial facility that does not meet the definition of a plant railroad in § 234.5, the responsible railroad shall place and maintain a minimum of one sign at each vehicular entrance to the facility in accordance with § 234.309, in lieu of placing signs at each crossing within the yard, port or dock facility, or private industrial facility. Each sign must be placed so that it is clearly visible to a driver of a motor vehicle located at the vehicular entrance to the facility.

(b) Placement of signs. Each sign required by paragraph (a) of this section must be located at the crossing except as provided in paragraph (a)(2)(ii) of this section, and maintained by the responsible railroad so that the sign—

(i) Is conspicuous to users of the roadway or pathway by day and night;

(ii) Does not obstruct any other sign or traffic control device at the crossing;

(iii) Does not limit the view of trains approaching the highway-rail or pathway grade crossing; and

(iv) If mounted on a post, has supports that are crashworthy (i.e., breakaway or yielding).

(2) A sign placed on the signal bungalow does not comply with paragraph (b)(1)(i) of this section.

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) In general. Each railroad subject to this Subpart must keep records in accordance with this section. Records may be kept either on paper forms provided by the railroad or by electronic means in a manner that conforms with § 234.315. Each dispatching railroad responsible for receiving reports pursuant to § 234.303(a), each third-party telephone service responsible for receiving reports pursuant to § 234.307, and, if applicable, each maintaining railroad must keep, at a minimum, the following information for each report received under this Subpart:

(1) The nature of the reported unsafe condition;

(2) The location of the highway-rail or pathway grade crossing, by highway name, if applicable, and U.S. DOT National Crossing Inventory Number;

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

(4) If applicable, 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 resolving the reported unsafe condition at the grade crossing (e.g., warning train crews, notifying the maintaining railroad, or contacting law enforcement or other public authorities);

(6) If the reported unsafe condition is substantiated, actions taken by the railroad to remedy the reported unsafe condition, if lawful and feasible;

(7) The time and date when the reported unsafe condition was remedied;

(8) If no remedial action was taken, the reason why; and

(9) If a dispatching railroad, in accordance with § 234.305, is required to contact a maintaining, the time and date when it contacted the maintaining railroad.

The burden for this requirement is included under that of §§ 234.303, 234.307, and 234.313(d) below. Consequently, there is no additional burden associated with this requirement.

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

The burden for this requirement is included under that of OMB No. 2130-0534.

Consequently, there is no additional burden associated with this requirement.

(c) Records involving multiple dispatching or maintaining railroads. (1) Where multiple railroads dispatch trains through the same highway-rail or pathway grade crossing and appoint one railroad to receive telephonic reports regarding unsafe conditions at such crossings pursuant to §234.306, the appointment must be recorded in writing and a copy of the document retained by each railroad for the duration of the appointment or for one year, whichever period is longer.

The burden for this requirement is included under that of §234.306 above. Consequently, there is no additional burden associated with this requirement.

(2) Where multiple railroads have maintenance responsibility for the same highway-rail or pathway grade crossing and they appoint one railroad to be responsible for installing and maintaining the ENS sign(s) at the crossing pursuant to § 234.306, the appointment must be recorded in writing and a copy of the document retained by each railroad for the duration of the appointment or for one year, whichever period is longer.

The burden for this requirement is included under that of §234.306 above. Consequently, there is no additional burden associated with this requirement.

(d) Record retention period; records availability. 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 paragraphs (a)-(c) of this section. Records required to be kept under this Subpart shall be made available to the FRA 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

Total annual burden for this entire requirement is 12,400 hours.

§ 234.315 Electronic recordkeeping.

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

The burden for this requirement is included under §§ 234.306 and 234.313 above.

Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire information collection submission is 55,308 hours.

Total annual burden for this entire information collection is 55,308 hours.

13. Estimate of total annual costs to respondents.

As noted in the regulatory impact analysis accompanying the ENS final 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 per Railroad	Percentage of Railroads Impacted	Total Annual Toll Free Cost for Entire Railroad Category
Class I	7		0%	\$0
Class II	12	\$900	100%	\$10,800
Class III Small	203	\$420	100%	\$85,260
Class III Very Small	217	\$420	50%	\$45,570
Class III Extremely Small	137		0%	\$0
Commuter A	7	\$420	100%	\$2,940
Commuter B	8	\$420	100%	\$3,360
Commuter C	3		100%	\$0
Total	594			\$147,930

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

Another cost pertains to signs. Under the 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 § 234.303, an explanation of the purpose of the sign, and the U.S. DOT National Crossing Inventory 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. FRA estimates that approximately 105,160 crossings will require two signs each; and 35,524 private farm crossings, which will require one sign each. Therefore, a total of 245,844 signs will be required over the entire railroad industry. FRA finds that the annual signage material cost for the first three years to be **\$368,766**. [**Calculation** = 245,844 signs x \$15 per sign x 10% compliance = \$368,766.] [*Note: The final rule grandfathers in some crossings – approximately 70,717 – that already have signs so the crossings referenced above do not add up to the total of 211,401 crossings shown above.*]

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 15 minutes in labor resources to install each sign. FRA finds that the annual signage labor cost for the first three year to be to be **\$258,566**. [**Calculation** = 245,844 signs x \$42.07 hourly rate x .25 hour x 10% compliance = \$258,566].

FRA acknowledges that in addition to purchasing the actual signage, in some cases where space does not permit installation of an additional sign, railroads will also need to purchase a post to satisfy the placement requirements. FRA estimates that five (5) percent of the affected crossings will need to supply a separate post to adequately comply with this requirement. Therefore, approximately 12,292 posts will be required over the

entire industry. Assuming a post cost estimate² of \$25, FRA estimates that the annual post material cost for the first three years to be **\$30,731**. [**Calculation** = 12,292 posts x \$25 per post x 10% compliance rate = \$30,731].

TOTAL ANNUAL COST = \$805,993 (\$147,930 + \$368,766 + \$258,566 + \$30,731)

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 information requirements associated with this final rule are entirely new. By definition, the entire collection of information – and its estimated burden of 55,308 hours – is a **program change**. Thus, there are no **adjustments**.

The annual cost to respondents of \$805,993 is also a **program change** for the same reason. Again, there are no **adjustments**.

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.

² Cost estimate for 10 foot, 2 lb per foot, U-channel galvanized steel post from Traffic and Parking Control Co., Inc., 5100 W. Brown Deer Road, Brown Deer, WI 53223. Price found online at: <http://www.tapcostore.com/U-Channel-p/54-23.htm>

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.