

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA–2021–0080;
REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK;
CODIFYING EXISTING WAIVERS

COMMENTS OF
THE
ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (“AAR”), on behalf of itself and its member railroads, submits the following comments on FRA’s July 21, 2022, NPRM requesting comment on the agency’s proposal to update the requirements governing the reflectorization of rolling equipment at 49 C.F.R. Part 224.¹ 87 Fed. Reg. 43,467 (July 21, 2022).

AAR supports FRA’s proposals in the NPRM to update part 224 and to codify existing industry waivers. In particular, with the two minor changes suggested below, AAR supports FRA’s proposal to update 49 C.F.R. § 224.111 to incorporate the substance of AAR’s existing reflectorizing waiver and pilot program at Docket Number FRA-2015-0105 into Part 224.² That waiver allows for a performance-based process to determine when retroreflective sheeting should be replaced, as an alternative to a strict 10-year replacement interval that does not account for the actual condition of the sheeting on a freight car. As FRA discusses in the NPRM, this waiver has not resulted in any known accidents or other adverse safety consequences. This

¹ AAR is a trade association whose membership includes freight railroads that operate approximately 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service.

² <https://www.regulations.gov/docket/FRA-2015-0105>.

performance-based rule also would significantly reduce industry burdens and the need to unnecessarily renew existing waiver and pilot program approvals. This proposal also aligns with the Congress' mandate to FRA regarding review and potential codification of existing railroad industry waivers at Section 22411 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58) (Nov. 15, 2021).

AAR notes, however, that FRA's evaluation of the costs and benefits associated with the proposed rule uses a labor rate of \$59.89 per hour (burdened to cover employee fringe benefits) for Maintenance of Equipment & Stores employees. This is a significantly lower rate than the actual \$140.38 hourly rate for Maintenance of Equipment & Stores employees that AAR has provided to FRA. The actual rate of \$140.38 is more appropriate for purposes of calculating costs and benefits of a safety rulemaking because it accounts for both overhead costs as well as fringe benefits. By excluding the overhead components, FRA is overlooking the actual costs incurred to support the work of employees who inspect and repair retroreflective sheeting. Such overhead costs include general and direct supervision and guidance, administration, procurement of retroreflective sheeting and car cleaning supplies along with the supplies and tools used to remove and install reflector sheets, business insurance, facility costs, as well as employer taxes. A portion of these indirect costs are appropriately allocated to the Maintenance of Equipment & Stores employee labor costs since they are for real expenses incurred to support that class of employees' work. In the final rule, FRA should utilize the actual hourly rate of \$140.38 in calculating the economic impacts of this rule.

AAR does have two requests for minor revisions to the rule as proposed. First, Paragraph 224.111(c)(2) of the proposed rule requires each sheet to be evaluated using a

comparator panel. AAR procedures provide for an initial inspection whereby an experienced employee can determine if a particular sheet has marginal performance simply by inspecting the sheet with a light source. There is no need to compare each sheet with a comparator panel unless it is found to be marginal through visual inspection with a light source. AAR's Rule 66 includes the following instruction for an initial inspection, and AAR would recommend inserting this passage into the Rule:

While maintaining a uniform distance from the car/locomotive as you move down the side (15 ft is preferred but not required), examine each individual sheet with a light source and determine if comparison is needed. Use of a light source will allow the inspector to verify if the cleaning was sufficient and to identify the following:

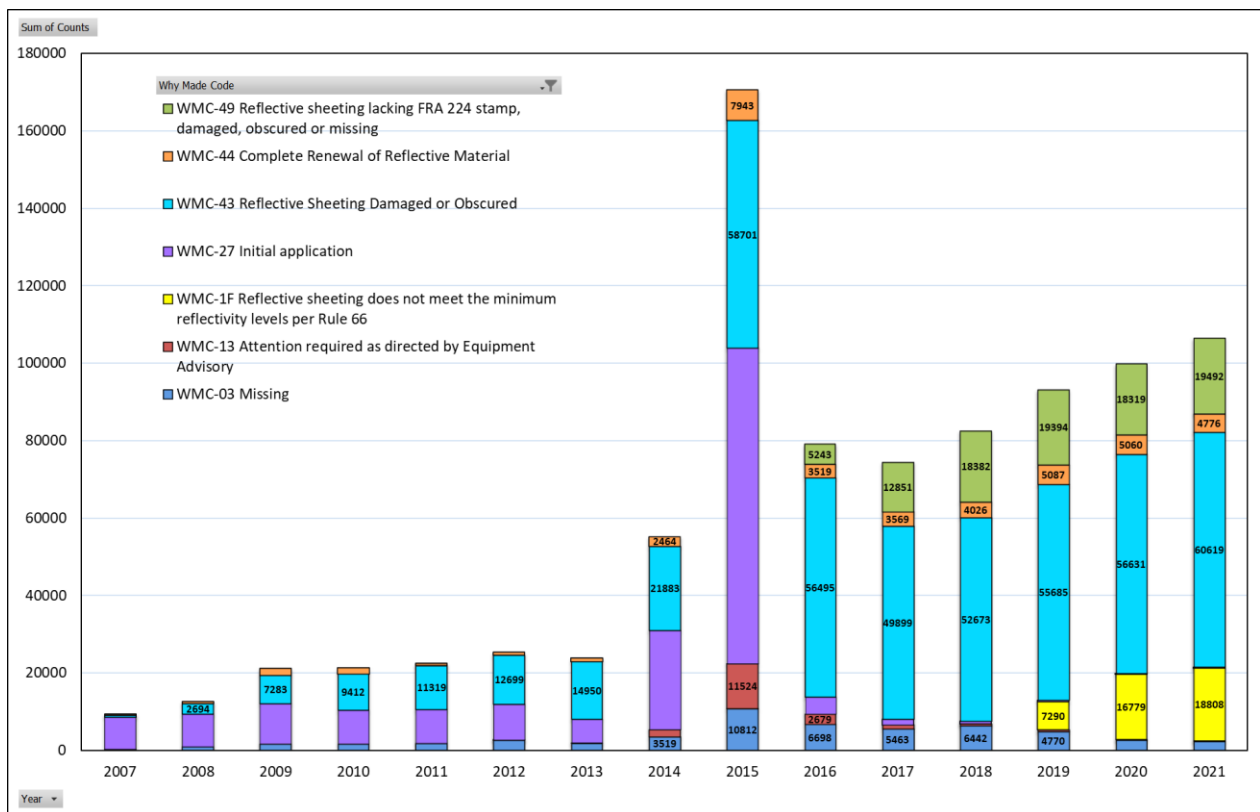
- Sheeting that is obviously degraded (no further evaluation is needed), or
- Sheeting that is obviously good (no further evaluation is needed), or
- Sheeting that is suspect and needs further evaluation with a panel

Second, Paragraph 224.111(c)(2)(iv) specifies 10-20 feet from which to evaluate performance. Fifteen feet is the distance at which strips appear the brightest to the observer based on the entrance and observation angle design requirements for sheeting. This inspection is a comparison based on the relative appearance of the sheeting and panel to the observer, regardless of distance. AAR requests that the proposed inspection distance limits of 10 to 20 feet be removed, because it may not be possible in certain environments.

Finally, as requested in the NPRM, AAR provides the following update. Review of the Car Repair Billing database (see graph below) shows a jump in year over year repairs (number of cars repaired). In 2015, initial applications spiked as the industry worked to the deadline of November 2015. In January 2015, AAR also added initial application as cause for attention at

any time to Rule 66. The usage of Why Made Code 1F (Reflective Sheeting Does Not Meet the Minimum Reflectivity Levels per Rule 66) has been steadily increasing since implementation

Why Made Code 49 (Reflective sheeting lacking FRA 224 stamp, damaged, obscured or missing) and Why Made Code 43 (Reflective Sheeting Damaged or Obscured) were confounded by an attempt to differentiate grandfathered cars. AAR will provide greater differentiation going forward by changing the definition of WMC 49 to include only sheeting that lacks the FRA-224 stamp.



Thank you for your consideration of these comments.

Respectfully submitted,

Kathryn D. Kirmayer
SVP- Law and General Counsel
Association of American Railroads
425 3rd Street, SW, Suite 1000
Washington, DC 20024
(202) 639-2100

September 16, 2022