

material. FRA, however, will monitor the retroreflective qualities of various fleet segments over time and may extend the ten year interval if warranted.

Appendix A—Schedule of Civil Penalties

This appendix is being reserved until the final rule. At that time it will include a schedule of civil penalties to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

G. Public Participation

When conducting a rulemaking, FRA must follow the APA. The APA generally requires that FRA allow all interested parties to review and comment on any proposed rule. Thus, by this notice, FRA is providing the public an opportunity to study the proposed rule and comment on it. Based on comments provided in response to this notice, FRA will, after the close of the comment period, determine what action to take.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become a part of this docket and will be available for inspection or copying at Room PL-401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at <http://dms.dot.gov>.

Regulatory Impact and Notices
A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at <http://dms.dot.gov>. FRA invites comments on this regulatory evaluation.

The life expectancy of the proposed reflective material is 10 years, therefore, the potential costs and benefits are calculated for a ten-year period. Because most of the costs of the rule for a single car occur in the year material is applied while benefits are spread over subsequent years, and because the benefits are discounted to present value, use of this limitation on the study period is a very conservative approach. If a twenty-year period were used, the benefits would substantially increase relative to the costs. The total cost of reflectorizing locomotives, \$194,512.08 (NPV), added to the cost of reflectorizing rail cars, \$48,671,710.63 (NPV) equals the total costs of \$48,866,222.71 (NPV).

Benefits of increased rail car visibility are measured in terms of grade crossing accidents averted. Safety benefits were calculated in terms of the decline in the probability of accidents. The magnitude of the reduction in the probability of accidents as a result of rail car reflectorization depends on the effectiveness of reflectors and the

number of accidents expected absent reflectorization. The FRA employed three completely separate approaches to the estimation of benefits utilizing data from FRA's highway-rail grade crossing accident/incident reports (Form F 6180.57) from 1998–2001. In each method of benefits estimation, in order to ensure a realistic estimate, FRA took into account various factors that could influence the effectiveness of the retroreflective material (e.g., active versus passive grade crossings, clear versus cloudy weather conditions, dark versus illuminated crossings). FRA accounted for these factors by developing “effectiveness rates” which varied depending on the circumstances of reported Category 1 RIT accidents. For example, the highest effectiveness rate employed was 60% for accidents where motor vehicles ran into the sides of trains at night at unlighted, passive crossings, while the lowest effectiveness rate employed was 15% for accidents where motor vehicles ran into the sides of trains at night at lighted crossings equipped with active warning devices (i.e., flashing lights or gates).

Each approach appears to be reasonable, and the FRA suggests that together they provide a good idea of the order of magnitude of benefits likely to result from a rule requiring the reflectorization of rail freight equipment. The first approach employed the Delphi methodology based on the opinions of FRA's grade crossing experts. The discounted total ten-year benefit equals \$87,517,527.50. Using the signal detection model, which is based on signal detection theory, the accident reduction potential of placing reflectors on rail cars is estimated, once discounted, to equal a total ten-year benefit of \$69,304,986.61. Using results from a NHTSA report evaluating truck reflector effectiveness, the average benefit estimates are approximately \$101 million. The following chart summarizes the three different benefit estimation techniques, unique subsets of the accident pool utilized, resulting values of collisions, and the resulting net present value of estimated benefits.

REFLECTORIZATION BENEFIT ESTIMATION TECHNIQUES

Alternative Approaches	Grade Crossing Experts	Signal Detection Model	NHTSA Technical Report. ²
Methodology	Delphi Method	Risk and Uncertainty Analysis	Truck Reflector Effectiveness Rates.
Subset of RIT accident pool (1998–2001 data: 768 accidents, 84 fatalities, 347 injuries).	67.89 accidents (271.55 accidents/4 years × various scenario effectiveness rates).	53.76 accidents (768 accidents/4 years × effectiveness rate of 28%).	93.68, 76, 47.72 accidents (707 accidents/4 years. (176.75) × various effectiveness rates of 53%, 43%, and 27%).
Value of accident	\$412,829	\$412,829	\$442,738.