

§ 230.4

49 CFR Ch. II (10–1–02 Edition)

provisions of § 230.10 of the regulations in effect prior to January 18, 2000 (See 49 CFR parts 200–999, revised October 1, 1978) until January 18, 2002.

(c) *Petition for special consideration.* The locomotive owner or operator may petition FRA for special consideration of this part's implementation with respect to any locomotive that has either fully or partially satisfied the requirements of § 230.17 within the three (3) year period prior to September 25, 1998—provided the locomotive is in full compliance with § 230.17 by the time the petition is actually filed.¹

(1) *Petition process.* Petitions must be filed by January 18, 2001 and must be accompanied by all relevant documentation to be considered, including a FRA Form No. 4 (see appendix C of this part) that has been calculated in accordance with § 230.17, and all records that demonstrate the number of days the locomotive has been in service. Based upon the documentation provided, FRA will calculate the number of “service days” the locomotive has accrued and will notify the petitioner of the number of service days that remain in the locomotive's 1472 service day cycle. Petitions should be sent to FRA by some form of registered mail to ensure a record of delivery. FRA will investigate these petitions and will respond to these petitions within one year of their receipt. FRA will send its response by some form of registered mail to ensure that a record of delivery is created. In its response, FRA may grant the petition or deny it. If FRA grants the petition, the entirety of the revised requirements will become effective upon receipt of FRA's response, unless FRA's response indicates otherwise. If FRA denies the petition, the rule will become effective as provided in the first paragraph of this section.

¹NOTE: As an example, where a locomotive has received a proper boiler inspection after September 25, 1995 pursuant to §§ 230.10 and 230.11 of the regulations in effect prior to January 18, 2000 but has not had its FRA Form No. 4 updated, the locomotive owner or operator may update and verify the FRA Form No. 4 for that locomotive, and submit a timely petition that requests retroactive credit for the boiler inspection. (See 49 CFR parts 200–999, revised October 1, 1978.)

(2) *FRA silence.* Anyone who does not receive a response within one year of the date they filed their petition, whether through administrative or postal error, must notify FRA that the response has not been received. The notification should be provided to FRA by some form of registered mail to ensure a record of delivery. Upon receipt of this notification, FRA will ensure that a response is either issued, or re-issued, as soon as possible. In the interim, however, any operator who is at the end of their inspection cycle under the rules in effect prior to January 18, 2000 (See 49 CFR parts 200–999, revised October 1, 1978) will be allowed to remain in service without conducting the required inspection under § 230.17 for an additional six months, or until they receive FRA's decision, whichever occurs first.

§ 230.4 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A of part 209 for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 230.5 Preemptive effect.

The Locomotive Boiler Inspection Act (49 U.S.C. 20701–20703) preempts all State laws or regulations concerning locomotive safety. *Napier v. Atlantic Coast Line R.R.*, 272 U.S. 605 (1926). However, FRA believes Congress did not intend to preempt State laws or regulations concerning rail operations over which FRA does not exercise jurisdiction. Therefore, in issuing this part, it