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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.

(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.

[64 FR 62865, Nov. 17, 1999, as amended at 74 FR 25174, May 27, 2009]

§ 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 \$650 and not more than \$25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of re-

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peated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$100,000 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.

[64 FR 62865, Nov. 17, 1999, as amended at 69 FR 30594, May 28, 2004; 72 FR 51197, Sept. 6, 2007; 73 FR 79703, Dec. 30, 2008]

§ 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 is FRA’s intent that State laws or regulations applicable to those rail operations to which this part does not apply (*i.e.*, insular tourist operations) not be preempted.

§ 230.6 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator of FRA for a waiver of compliance with such requirement. The filing of such a petition does not affect that person’s responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary. Where a waiver is granted, the Administrator publishes a notice containing the reasons for granting the waiver.

(d) All waivers of every form and type from any requirement of any

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order or regulation implementing the Locomotive Boiler Inspection Act, 36 Stat. 913, as amended, 49 U.S.C. 20702, applicable to one or more steam locomotives, shall lapse on January 18, 2000 unless a copy of the grant of waiver is filed for reassessment prior to that date with the Office of Safety, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. FRA will review the waiver and notify the applicant whether the waiver has been continued.

[64 FR 62865, Nov. 17, 1999, as amended at 74 FR 25174, May 27, 2009]

§ 230.7 Responsibility for compliance.

(a) The locomotive owner and/or operator is directly responsible for ensuring that all requirements of this part are satisfied, and is the entity primarily responsible for compliance with this part.

(b) Although the duties imposed by this part are generally stated in terms of the duties of a railroad or a steam locomotive owner and/or operator, any person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

(c) Chapter 207 of Title 49 of the United States Codes makes it unlawful for any railroad to use or permit to be used on its line any steam locomotive or tender unless the entire steam locomotive or tender and its parts and appurtenances are in proper condition and safe to operate in the service to which they are put, without unnecessary danger of personal injury and have been inspected and tested as required by this part.

§ 230.8 Definitions.

As used in this part, the terms listed in this section have the following definitions:

Administrator. The Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alteration. Any change to the boiler which affects its pressure retention capability. Rating changes are considered alterations.

ANSI. American National Standards Institute.

API. American Petroleum Institute.

ASME. American Society of Mechanical Engineers.

Boiler surfaces. The boiler interior is all the space inside a boiler occupied by water or steam under pressure, and all associated surfaces inside that space exposed to that water and steam. The boiler exterior is the opposite surface of all components directly exposed to the boiler interior. This includes the fire side of the firebox sheets.

Break. A fracture resulting in complete separation into parts.

Code of original construction. The manufacturer's or industry code in effect when the boiler was constructed. If the exact code is not known, the closest contemporary code may be used provided it does not pre-date the construction date of the boiler.

Crack. A fracture without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be cracked.

Dead locomotive. A locomotive unable to produce tractive effort.

Fire. Anything that produces products of combustion that heat transferring components of the locomotive are exposed to.

FRA. The Federal Railroad Administration.

Locomotive operator. Person or entity which operates, but which does not necessarily own, one or more steam locomotives. This term means, for purposes of inspection and maintenance responsibility, the entity responsible for the day-to-day operation of the steam locomotive, or the delegate thereof. This entity may be a railroad or a person or persons who operate a steam locomotive under contract for a railroad.

Locomotive owner. Person or entity which owns, but which does not necessarily operate, one or more steam locomotives that is operated on a railroad to which this part applies. For purposes of inspection and maintenance responsibility, this term includes that entity's delegate as well.

MAWP. Maximum allowable working pressure as specified by the steam locomotive specification FRA Form No. 4. (See appendix C of this part.)