Contractor is responsible for the compliance of its subcontractors with the provisions of this clause.

(End of clause)

852.236–88 [Removed and Reserved]

■ 15. Section 852.236–88 is removed and reserved.

■ 16. Section 852.243–70 is added to read as follows:

852.243–70 Construction Contract Changes—Supplement.

As prescribed in 843.205–70, the Contracting Officer shall insert this clause in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold. The Contracting Officer shall fill in the number of days in which a Contractor must assert its right to an equitable adjustment; however, such amount shall not exceed 60 calendar days.

Construction Contract Changes—Supplement (SEP 2019)

The FAR clauses 52.236–2, Differing Site Conditions; 52.243–4, Changes; and 52.243–5, Changes and Changed Conditions, are supplemented as follows:

(a) Submission of request for equitable adjustment proposals. When directed by the Contracting Officer or requested by the Contractor, the Contractor shall, in accordance with FAR 15.403–5, submit proposals for changes in the work exceeding $500,000 in writing to the Contracting Officer or Administrative Contracting Officer (ACO), and to the resident engineer.

(1) The Contractor must provide an itemized breakdown for changes exceeding the micro-purchase threshold (see FAR 2.101).

(2) The itemized breakdown shall include materials, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. Labor costs shall be identified with specific material placed or operation performed.

(3) Proposals shall be submitted to the Contracting Officer or ACO and the resident engineer as expeditiously as possible, but not later than [*fill-in*] calendar days, after receipt of a written change order by the Contracting Officer.

(4) Proposals shall be signed by each subcontractor participating in the change.

(5) The Contracting Officer will consider issuing a settlement by determination to the contract if the Contractor's proposal required by paragraph (a)(3) of this clause is not received within the time period specified in paragraph (a)(3), or if agreement has not been reached.

(b) Paragraphs (a)(1) through (5) of this clause and the following paragraphs (b)(1) and (2) apply to proposals for changes in the work $500,000 or less:

(1) As a basis for negotiation, allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. This declining scale will also be used to negotiate the prime Contractor's or upper-tier subcontractor's fee when work is performed by lower-tier subcontractors (to a maximum of three tiers) and will be based on the net increased cost to the prime or upper-tier subcontractor, as applicable. Profit (fee) shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs. Allowable percentages on changes will not exceed the following:

(i) 10 percent overhead and/or 10 percent profit (fee) on the first $20,000.

(ii) 7.5 percent overhead and/or 7.5 percent profit (fee) on the next $30,000.

(iii) 5 percent overhead and/or 5 percent profit (fee) on a balance over $50,000.

(2) The Contracting Officer will consider issuing a settlement by determination to the contract if the Contractor's proposal required by paragraph (3) is not received within 30 calendar days, or if agreement has not been reached.

(c)(1) Overhead and Contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made. Assistants to office supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are considered to be included in the Contractor's overhead and/or fee percentage.

(2) Where the Contractor's or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The Contractor's fee is limited to the net increase to Contractor or subcontractors' portions of cost computed in accordance with this clause.

(3) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the Contractor if it had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(End of clause)

[FR Doc. 2019–18524 Filed 8–29–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 270

[Docket No. FRA–2011–0060, Notice No. 11]

RIN 2130–AC81

System Safety Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; stay of regulations.

SUMMARY: On August 12, 2016, FRA published a final rule requiring commuter and intercity passenger railroads to develop and implement a system safety program (SSP) to improve the safety of their operations. FRA has stayed the SSP final rule's requirements until September 4, 2019. FRA is issuing this final rule to extend that stay until March 4, 2020.

DATES: Effective August 29, 2019, 49 CFR part 270, stayed February 13, 2017, at 82 FR 10443, and further stayed March 21, 2017, at 82 FR 14476, May 22, 2017, at 82 FR 23150, June 7, 2017, at 82 FR 26359, November 30, 2017, at 82 FR 56744, and December 7, 2018, at 83 FR 63106, is further stayed until March 4, 2020.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Gross, Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel; telephone: 202–493–1342; email: *Elizabeth.Gross@dot.gov.*

SUPPLEMENTARY INFORMATION: On August 12, 2016, FRA published a final rule requiring commuter and intercity passenger railroads to develop and implement an SSP to improve the safety of their operations. *See* 81 FR 53850. On February 10, 2017, FRA stayed the SSP final rule's requirements until March 21, 2017, consistent with the new Administration's guidance issued January 20, 2017, intended to provide the Administration an adequate opportunity to review new and pending regulations. *See* 82 FR 10443 (Feb. 13, 2017). To provide additional time for that review, FRA extended the stay until May 22, 2017, June 5, 2017, December 4, 2017, December 4, 2018, and then September 4, 2019. *See* 82 FR 14476 (Mar. 21, 2017); 82 FR 23150 (May 22, 2017); 82 FR 26359 (June 7, 2017); 82 FR

56744 (Nov. 30, 2017), and 83 FR 63106 (Dec. 7, 2018). The provisions in part 270 were adopted on August 12, 2016, for the purposes of 49 U.S.C. 20119(b). That adoption was unaffected by the subsequent stays.

FRA's review included petitions for reconsideration of the SSP final rule (Petitions). Various rail labor organizations (Labor Organizations) filed a single joint petition.[1] State and local transportation departments and authorities (States) filed the three other petitions, one of which was a joint petition (State Joint Petition).[2] The State Joint Petition requested that FRA stay the SSP final rule, and NCDOT specifically requested that FRA stay the rule while FRA was considering the petitions. All Petitions were available for public comment in the docket for the SSP rulemaking. On November 15, 2016, the Massachusetts Department of Transportation (MassDOT) submitted a comment supporting the State Joint Petition, also asking FRA to stay the SSP final rule. FRA did not receive any public comments opposing the States' requests for a stay.

On October 30, 2017, FRA met with the Passenger Safety Working Group and the System Safety Task Group of the Railroad Safety Advisory Committee (RSAC) to discuss the Petitions and comments received in response to the Petitions.[3] FRA specifically invited its State partners to this meeting, which was also open to the public. This meeting was necessary for FRA to receive input from industry and the public, and to discuss potential paths forward to respond to the Petitions prior to FRA taking final action. During the meeting, a representative from the Oregon Department of Transportation asked whether the SSP final rule would be further stayed pending FRA's development of a response to the Petitions and public input received at the meeting. An FRA representative indicated that he anticipated a further stay of the rule to provide time to resolve the issues raised by the petitions. None of the meeting participants expressed opposition to a further stay. *See generally* FRA–2011–0060–0046.

In response to draft rule text FRA presented for discussion during the RSAC meeting, the States indicated they would need an extended caucus to discuss. On March 16, 2018, the Executive Committee of the States for Passenger Rail Coalition (SPRC)[4] provided, and FRA uploaded to the rulemaking docket, proposed revisions to the draft rule text. *See* FRA–2011–0060–0050. FRA reviewed and considered these suggested revisions in formulating its proposed response to the petitions for reconsideration.

On June 12, 2019, FRA published a notice of proposed rulemaking (NPRM) that proposed certain amendments responding to the petitions for reconsideration. *See* 84 FR 27215 (June 12, 2019). In the NPRM, FRA specifically requested public comment on a proposed stay extension to allow FRA time to review any comments on the NPRM and issue a final rule. *Id.* at 27216. The deadline for submitting written comments on the NPRM was August 12, 2019.

FRA received thirteen comments in response to the NPRM.[5] Comments from NCDOT, MassDOT, and CTDOT supported extending the stay, with NCDOT specifically requesting that FRA stay implementation of the rule until ''all applicable administrative and judicial processes are completed.'' FRA received one comment objecting to extending the stay from Amtrak, which urged FRA to lift the stay and implement the rule immediately. No other commenters responded to FRA's request for comment on a proposed stay extension.

FRA has considered Amtrak's comment opposing extension of the stay in light of Amtrak's central role in the Nation's passenger rail system. Nevertheless, given the number of comments received in response to the SSP NPRM, the importance of the issues discussed therein, the lack of opposition to the stay from all commenters except Amtrak, and FRA's interest in addressing the issues raised in the petitions through notice and comment rulemaking prior to requiring full compliance with the SSP final rule, FRA believes it appropriate to extend the stay of the rule an additional six months until March 4, 2020. Extending the stay should provide FRA adequate time to review comments responding to NPRM and to issue a final rule in that proceeding.

Regulatory Impact and Notices

Executive Orders 12866 and 13771, and DOT Regulatory Policies and Procedures

This final rule is a non-significant deregulatory action within the meaning of Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). The final rule is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings are below.

In August 2016, FRA issued the System Safety Program final rule (2016 Final Rule) as part of its efforts to continuously improve rail safety and to satisfy the statutory mandate in sections 103 and 109 of the Rail Safety Improvement Act of 2008. The 2016 Final Rule requires passenger railroads to establish a program that systematically evaluates railroad safety risks and manages those risks with the goal of reducing the number and rates of railroad accidents, incidents, injuries, and fatalities. Paperwork requirements are the largest burden of the 2016 Final Rule.

FRA believes that this final rule, which will stay the requirements of the 2016 Final Rule until March 4, 2020, will reduce regulatory burden on the railroad industry. By staying the requirements of the 2016 Final Rule, railroads will realize a cost savings as railroads will not sustain any costs during the first six months of this analysis. In addition, because this analysis discounts future costs and this final rule will move forward all costs by six months, the present value costs of this stay will lower the present value cost of the SSP rulemaking. FRA

[1] The labor organizations that filed the joint petition are: The American Train Dispatchers Association (ATDA), Brotherhood of Locomotive Engineers and Trainmen (BLET), Brotherhood of Maintenance of Way Employes Division (BMWED), the Brotherhood of Railroad Signalmen (BRS), Brotherhood Railway Carmen Division (TCU/IAM), and Transport Workers Union of America (TWU).

[2] The Capitol Corridor Joint Powers Authority (CCJPA), Indiana Department of Transportation (INDOT), Northern New England Passenger Rail Authority (NNEPRA), and San Joaquin Joint Powers Authority (SJJPA) filed a joint petition (Joint Petition). The North Carolina Department of Transportation (NCDOT) and State of Vermont Agency of Transportations (VTrans) each filed separate petitions.

[3] Attendees at the October 30, 2017, meeting included representatives from the following organizations: ADS System Safety Consulting, LLC; American Association of State Highway and Transportation Officials (AASHTO); American Public Transportation Association (APTA); American Short Line and Regional Railroad Association (ASLRRA); ATDA; Association of American Railroads (AAR); BLET; BMWED; BRS; CCJPA; The Fertilizer Institute; Gannett Fleming Transit and Rail Systems; International Brotherhood of Electrical Workers; Metropolitan Transportation Authority (MTA); National Railroad Passenger Corporation (Amtrak); National Transportation Safety Board (NTSB); NCDOT; NNEPRA; San Joaquin Regional Rail Commission/Altamont Corridor Express; Sheet Metal, Air, Rail, and Transportation Workers (SMART); and United States Department of Transportation—Transportation Safety Institute.

[4] SPRC's website indicates it is an ''alliance of State and Regional Transportation Officials,'' and each State petitioner appears to be an SPRC member. *See https://www.s4prc.org/state-programs.*

[5] Comments were submitted by AAR, Amtrak, APTA, CCJPA (jointly with INDOT, Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency, and SJJPA), the Connecticut Department of Transportation (CTDOT), MassDOT, Massachusetts Bay Transportation Authority, NCDOT, NNEPRA (jointly with the State of Maine Department of Transportation), SPRC, VTrans, Washington Department of Transportation, and one individual.

estimates this cost savings to be approximately $170,618, at a 3-percent discount rate, and $164,240, at a 7-percent discount rate. The following table shows the 2016 Final Rule's total cost, delayed an additional six months past the 2019 stay extension, the implementation date total costs, and the cost savings from the additional six-month implementation date delay.

	Present value (7%)	Present value (3%)
2016 Final Rule, total cost	$2,327,223	$3,412,649
Cost savings from six-month delay	164,240	170,618
2016 Final Rule, total cost with cost savings from six-month delay	2,162,983	3,242,031

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* and Executive Order 13272, 67 FR 53461 (Aug. 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule will affect passenger railroads, but will have a beneficial effect, lessening the burden on any small railroad.

''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''linehaul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 1,500 employees, or a ''commuter rail system'' with annual receipts of less than $15.0 million dollars. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may adopt their own size standards for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003), codified at appendix C to 49 CFR part 209. The $20-million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

For purposes of this analysis, this final rule will apply to 31 commuter or other short-haul passenger railroads and two intercity passenger railroads, Amtrak and the Alaska Railroad Corporation (ARC). Neither is considered a small entity. Amtrak serves populations well in excess of 50,000, and the ARC is owned by the State of Alaska, which has a population well in excess of 50,000.

Based on the definition of ''small entity,'' only one passenger railroad is considered a small entity: The Hawkeye Express (operated by the Iowa Northern Railway Company). As the final rule is not significant, this final rule will merely provide this entity with additional compliance time without introducing any additional burden.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. A substantial number of small entities may be impacted by this regulation; however, any impact will be minimal and positive.

Paperwork Reduction Act

There are no new collection of information requirements contained in this final rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* an information collection submission to the Office of Management and Budget (OMB) is not required. The record keeping and reporting requirements already contained in the SSP final rule were approved by OMB on October 5, 2016. The information collection requirements thereby became effective when they were approved by OMB. The OMB approval number is OMB No. 2130–0599, and OMB approval expires on October 31, 2019.

Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this rule does not impose substantial direct compliance costs on State and local

governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Environmental Assessment

FRA has evaluated this rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this rule is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). FRA has evaluated this rule in accordance with Executive Order 13211 and has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. *See* 82 FR 16093 (Mar. 31, 2017). FRA determined this regulatory action will not burden the development or use of domestically produced energy resources.

List of Subjects in 49 CFR Part 270

Penalties, Railroad safety, Reporting and recordkeeping requirements, System safety.

The Rule

In consideration of the foregoing, FRA extends the stay of the SSP final rule published August 12, 2016 (81 FR 53850) until March 4, 2020.

Authority: 49 U.S.C. 20103, 20106–20107, 20118–20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Issued in Washington, DC.

Ronald Louis Batory,

Administrator.

[FR Doc. 2019–18789 Filed 8–29–19; 8:45 am]

BILLING CODE 4910–06–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

[Docket No.: NTSB–GC–2019–0001]

RIN 3147–AA21

Civil Monetary Penalty Annual Inflation Adjustment

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2018 and 2019 adjustments to the civil penalties that the NTSB may assess against a person for violating certain NTSB statutes and regulations.

DATES: This final rule is effective on August 30, 2019.

ADDRESSES: A copy of this final rule, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW, Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide website on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2019–0001).

FOR FURTHER INFORMATION CONTACT: Kathleen Silbaugh, General Counsel, (202) 314–6080 or *rulemaking@ntsb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the NTSB may impose a civil penalty up to $1,617 on a person who violates 49 U.S.C. 1132 (Civil aircraft accident investigations), 1134(b) (Inspection, testing, preservation, and moving of aircraft and parts), 1134(f)(1) (Autopsies), or 1136(g) (Prohibited actions when providing assistance to families of passengers involved in aircraft accidents). 49 CFR 831.15.

The current maximum penalty amount was calculated after the passage of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which required agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rulemaking (IFR); and (2) make subsequent annual adjustment for inflation by January 15th every year. OMB, M–16–06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Feb. 24, 2016).

At the time of the 2015 Act, the maximum civil penalty amount had been $1,000. 49 U.S.C. 1155. Pursuant to the 2015 Act, the NTSB issued an IFR on October 12, 2017 that calculated the agency's catch-up adjustment and its 2017 annual inflation adjustment. Civil Monetary Catch Up Inflation Adjustment and Annual Inflation Adjustment, 82 FR 47401 (Oct. 12, 2017). The catch-up adjustment increased the original maximum penalty from $1,000 to $1,591. And the 2017 annual adjustment increased the maximum civil penalty from $1,591 to $1,617. While the IFR stated that the maximum civil penalty would be adjusted for inflation by January 15, 2018, the agency did not publish subsequent annual inflation adjustments.

The Office of Management and Budget (OMB) has since published updated guidance for Fiscal Years 2018 and 2019. OMB, M–19–04, *Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil*