

(i) The pipeline is a Category 1 rural low-stress pipeline;

(ii) The pipeline carries crude oil from a production facility;

(iii) The pipeline, when in operation, operates at a flow rate less than or equal to 14,000 barrels per day; and

(iv) The operator determines it would abandon or shut-down the pipeline as a result of the economic burden to comply with the assessment requirements in § 195.452(d) or 195.452(j).

(2) A notification submitted under this provision must include, at minimum, the following information about the pipeline: its operating, maintenance and leak history; the estimated cost to comply with the integrity assessment requirements (with a brief description of the basis for the estimate); the estimated amount of production from affected wells per year, whether wells will be shut in or alternate transportation used, and if alternate transportation will be used, the estimated cost to do so.

(3) When an operator notifies PHMSA in accordance with paragraph (d)(1) of this Section, PHMSA will stay compliance with §§ 195.452(d) and 195.452(j)(3) until it has completed an analysis of the notification. PHMSA will consult the Department of Energy, as appropriate, to help analyze the potential energy impact of loss of the pipeline. Based on the analysis, PHMSA may grant the operator a special permit to allow continued operation of the pipeline subject to alternative safety requirements.

(e) *Changes in unusually sensitive areas.*

(1) If, after June 3, 2008, for Category 1 rural low-stress pipelines or October 1, 2011 for Category 2 rural low-stress pipelines, an operator identifies a new USA that causes a segment of pipeline to meet the criteria in paragraph (b) of this Section as a Category 1 or Category 2 rural low-stress pipeline, the operator must:

(i) Comply with the IM program requirement in paragraph (c)(1)(iii)(A) or (c)(2)(iii)(A) of this Section, as appropriate, within 12 months following the date the area is identified regardless of the prior categorization of the pipeline; and

(ii) Complete the baseline assessment required by paragraph (c)(1)(iii)(C) or (c)(2)(iii)(C) of this Section, as appropriate, according to the schedule in § 195.452(d)(3).

(2) If a change to the boundaries of a USA causes a Category 1 or Category 2 pipeline segment to no longer be within one-half mile of a USA, an operator must continue to comply with paragraph (c)(1)(iii) or paragraph

(c)(2)(iii) of this section, as applicable, with respect to that segment unless the operator determines that a release from the pipeline could not affect the USA.

(f) *Record Retention.* An operator must maintain records demonstrating compliance with each requirement applicable to the category of pipeline according to the following schedule.

(1) An operator must maintain the segment identification records required in paragraph (c)(1)(i), (c)(2)(i) or (c)(3)(i) of this Section for the life of the pipe.

(2) Except for the segment identification records, an operator must maintain the records necessary to demonstrate compliance with each applicable requirement set forth in paragraph (c) of this Section according to the record retention requirements of the referenced Section or Subpart.

■ 4. Section 195.48 is revised to read as follows:

§ 195.48 Scope.

This Subpart prescribes requirements for periodic reporting and for reporting of accidents and safety-related conditions. This Subpart applies to all pipelines subject to this Part. An operator of a Category 3 rural low-stress pipeline meeting the criteria in § 195.12 is not required to complete those parts of the hazardous liquid annual report form PHMSA F 7000-1.1 associated with IM or high consequence areas.

Issued in Washington, DC, on April 28, 2011.

Cynthia L. Quarterman,
Administrator.

[FR Doc. 2011-10778 Filed 5-4-11; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket ID. FMCSA-2010-0032]

RIN 2126-AB36

Hours of Service Exception for Railroad Signal Employees

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends its hours-of-service (HOS) regulations to adopt regulatory language consistent with the statutory exemption for certain railroad signal employees operating commercial motor vehicles (CMVs) in connection with railroad signal work.

This is in accordance with the Rail Safety Improvement Act of 2008 (RSIA of 2008), which took effect July 16, 2009. This action will ensure that Federal, State and local motor carrier enforcement officials are aware of the statutory exemption applicable to signal employees and eliminate the potential for issuance of improper citations.

DATES: This action is effective on May 5, 2011.

Docket: For access to the docket to read background documents identified by docket number FMCSA-2010-0032 or RIN 2126-AB36 go to *Federal eRulemaking Portal: http://www.regulations.gov* at any time, or visit the U.S. Department of Transportation's Docket Management Facility at West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-4325.

SUPPLEMENTARY INFORMATION:

I. Background/Overview

This exception to FMCSA's hours-of-service (HOS) regulations is mandated by the RSIA of 2008. This law provides that "signal employees" who operate motor vehicles and who are regulated under 49 U.S.C. 21101, *et seq.*, are not subject to HOS rules promulgated by any other Federal authority, including FMCSA. *See* 49 U.S.C. 21104(e). Thus, FMCSA amends its regulations to state that FMCSA's HOS regulations do not apply to a signal employee who is regulated under 49 U.S.C. 21101-21109. This amendment will clarify the current exception applicable to signal employees for industry and for Federal, State and local law enforcement and eliminate the potential for issuance of improper citations.

FMCSA is also amending the authority citation for 49 CFR part 395 to add appropriate statutory references and eliminate references that are either erroneous or unnecessary.

II. Legal Basis for the Rulemaking

This final rule is based on FMCSA's authority to implement statutory directives enacted by several provisions of the RSIA of 2008, Public Law 110-432, 122 Stat. 4848, 49 U.S.C. 21101, *et seq.* Section 108 of the RSIA of 2008 substantively amends the law applicable to employees engaged in signal work for

railroad operations, effective July 16, 2009. Section 108(a) amends the definition of “signal employee” to eliminate the words “employed by a railroad carrier.” See 49 U.S.C. 21101(4). As a result, employees of railroad contractors and subcontractors who are engaged in installing, repairing, or maintaining signal systems (the functions within the definition of signal employee) will also be covered by the HOS laws administered by the Federal Railroad Administration (FRA). Section 108(c) modifies the HOS restrictions applicable to covered employees. See 49 U.S.C. 21104(a)–(d).

Finally, section 108(c) provides that the HOS, duty hours, and rest periods of signal employees are governed exclusively by the HOS laws administered by FRA. It also provides that signal employees operating applicable motor vehicles are not subject to other HOS, duty hours, or rest period rules besides the FRA’s requirements. See 49 U.S.C. 21104(e).

The statutory provision may be incorporated in regulations adopted by FMCSA under the authority of the Motor Carrier Act of 1935 (49 U.S.C. 31502(b)) and the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136). FMCSA is authorized to implement these statutory provisions by delegation from the Secretary of Transportation in 49 CFR part 1.73.

Congress gave the Agency no discretion with respect to implementation of these RSIA of 2008 provisions. While the Administrative Procedure Act (APA) ordinarily requires the issuance of a notice of proposed rulemaking (NPRM) and opportunity for public comment, the APA provides an exception when an “agency for good cause finds * * * that notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). Because this rule is technical and simply conforms FMCSA rules with current statutory provisions, the Agency deems notice and comment procedures “unnecessary” under 5 U.S.C. 553(b)(B). The promulgation of this final rule is a nondiscretionary ministerial act required by a statute. It is also contrary to the public interest to delay clarification of this requirement and FMCSA’s lack of authority to enforce regulations in light of the FRA’s authority of this area. Thus, the Agency finds that this rule may be adopted without issuing an NPRM and receiving public comment.

Similarly, the Agency finds the normal 30-day delayed effective date following publication of a rule does not apply. 5 U.S.C. 553(d). The APA

exempts from the delayed effective date requirement “a substantive rule which grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. 553(d)(1). Pursuant to the RSIA of 2008, persons covered by the statutory provision have not been subject to FMCSA’s HOS requirements since the enactment of the legislation. This rule simply makes FMCSA rules consistent with the statute. Therefore, a 30-day delay in the effective date would serve no purpose as the Agency amends its rule to eliminate confusion among enforcement officials. The Agency further finds good cause for this rule to take effect upon publication under 5 U.S.C. 553(d)(3) because, given that the rule results in no substantive change in the law, there is no need for the affected industry to prepare for its implementation.

Although the RSIA of 2008 uses the term “exemption” to cover signal employees, in order to avoid confusion with the process that FMCSA uses to grant time-limited exemptions under 49 CFR part 381, today’s final rule creates an “exception.” This exception, unlike an exemption, is permanent in nature, subject to our legal authority.

III. RSIA of 2008 Provisions Implemented by the Final Rule

We implement section 108(c) of the RSIA of 2008 by adding paragraph (r) to § 395.1, exempting signal employees who operate CMVs, but who are covered by laws applicable to railroad operations, from FMCSA HOS regulations.

Executive Orders 13563 and 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action does not meet the criteria for a “significant regulatory action” either as specified in Executive Order (E.O.) 12866 as supplemented by E.O. 13563 issued by the President on January 18, 2011 (76 FR 3821), or within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). Therefore, this rule has not been reviewed by the Office of Management and Budget (OMB). There is no economic impact to this rule that would necessitate conducting a full regulatory evaluation. The rule simply codifies the elimination of FMCSA jurisdiction over railroad signal employees, pursuant to the RSIA of 2008. The RSIA of 2008 section 108(c) delegates the jurisdiction over the HOS, duty hours, and rest periods of signal employees exclusively to the FRA. See 49 U.S.C. 21104(a)–(e).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued an NPRM prior to this action. This final rule also complies with the President’s memorandum of January 18, 2011, entitled *Regulatory Flexibility, Small Business, and Job Creation* (76 FR 3827). As discussed above, promulgation of this final rule is a nondiscretionary ministerial act required by a statute and it creates a regulatory exception.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. However, as noted above, this is a non-discretionary action mandated by statute, and such actions do not require preparation of a statement under 2 U.S.C. 1532. In addition, FMCSA is not required to prepare a statement for this final rule because the Agency has not issued an NPRM prior to this action. 2 U.S.C. 1532.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

The rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Given FRA’s authority under the RSIA of 2008 to regulate the HOS for certain carriers previously regulated by FMCSA under 49 CFR part 395, FMCSA expects the population of affected entities subject to its HOS paperwork burden may be reduced slightly. However, due to the total number of entities covered, the impact to the burden from this change is expected to be *de minimis*. Therefore, FMCSA has not modified its burden estimate based on this final rule. FMCSA will consider this impact during its next planned update to the associated Information Collection Request.

National Environmental Policy Act

The Agency analyzed this final rule in accordance with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and

determined under FMCSA environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that the provision of this rule is categorically excluded (CE) based on Appendix 2, section 6(b) of the FMCSA order. This is a technical amendment needed to conform the regulations to a statutory mandate. In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. The additional contributions to air emissions from this action are expected to fall within the CAA *de minimis* standards and are not expected to be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this action under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. We determined that this final rule does not pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This final rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in E.O. 13132, Federalism Assessment, and it has been determined that this rulemaking does not have a substantial direct effect or sufficient federalism implications for States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This final rule does not impose additional costs or burdens on the States.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Executive Order because it would not be likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Motor Carrier Safety Administration amends 49 CFR part 395 as follows:

PART 395—HOURS OF SERVICE OF DRIVERS

■ 1. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106-159 (as transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109-59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110-432, 122 Stat. 4860-4866; and 49 CFR 1.73.

■ 2. Amend § 395.1 to revise paragraph (a)(1) and add paragraph (r) to read as follows:

§ 395.1 Scope of the rules in this part.

(a) * * *

(1) The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (r) of this section.

* * * * *

(r) *Railroad signal employees.* The provisions of this part shall not apply to a signal employee, as defined in § 395.2, who operates a commercial motor vehicle, is engaged in installing, repairing, or maintaining signal systems, is employed by a railroad carrier or a contractor or subcontractor to a railroad carrier, while regulated by the Federal Railroad Administration.

■ 3. Amend § 395.2 by adding the definition "signal employee" in alphabetical order to read as follows:

§ 395.2 Definitions.

* * * * *

Signal employee, as defined in 49 U.S.C. 21101(4), means an individual who is engaged in installing, repairing, or maintaining signal systems.

* * * * *

Issued on: May 2, 2011.

Anne S. Ferro,
Administrator.

[FR Doc. 2011-11018 Filed 5-4-11; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2011-0032; 92220-1113-0000; ABC Code: C6]

RIN 1018-AX81

Endangered and Threatened Wildlife and Plants; Reissuance of Final Rule To Identify the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and To Revise the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On April 15, 2011, President Obama signed the Department of Defense and Full-Year Appropriations Act, 2011. A section of that Appropriations Act directs the Secretary of the Interior to reissue within 60 days of enactment the final rule published on April 2, 2009, that identified the Northern Rocky Mountain population of gray wolf (*Canis lupus*) as a distinct population segment (DPS) and to revise the List of Endangered and Threatened Wildlife by removing most of the gray wolves in the DPS. This rule complies with that directive.

DATES: This action is effective May 5, 2011.

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov>. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Montana Ecological Services Field Office, 585 Shepard Way, Helena, MT 59601; telephone (406) 449-5225.

FOR FURTHER INFORMATION CONTACT: For information on wolves in the northern Rocky Mountains, see <http://www.fws.gov/mountain-prairie/species/mammals/wolf/>, or contact U.S. Fish and Wildlife Service, Montana Ecological Services Field Office (see **ADDRESSES**) or telephone (406) 449-5225. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: