

medications.²⁷ *Note:* Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.

3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.

4. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance.²⁸

5. When necessary to temporarily remove the mask to provide a breath or saliva specimen for required alcohol testing under U.S. Department of Transportation drug and alcohol testing regulations or an employer-mandated substance abuse testing program.

(C) The following persons are exempted from wearing masks:

1. Persons in private conveyances operated solely for personal, non-commercial use.

2. A driver, when operating a commercial motor vehicle, such as a crew transportation van, limo, or taxi, as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.

3. A person who is the sole occupant of an enclosed cab of a locomotive, hi-rail vehicle, roadway maintenance machine, or any other on-track equipment that has an enclosed cab.

(D) This E.O. exempts the following categories of persons from wearing masks:²⁹

²⁷ The CDC has stated that brief periods of close contact without a mask should not exceed 15 minutes. <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>.

²⁸ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask. 86 FR 8027, FN 7.

²⁹ Railroad carriers may impose requirements on employees requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the railroad carrier, as well as require evidence that the person does not have COVID-19, such as a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SARS-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Railroad carriers may also impose additional protective measures that improve the ability of an employee eligible for exemption to maintain social distance (separation from others by 6 feet). Railroad carriers may further require that employees seeking exemption from the requirement to wear a mask request an exemption in advance.

1. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).³⁰

2. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or Federal regulations.³¹

Preemption

The requirements in this E.O. do not preempt any State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this E.O., if that provision is not incompatible with this E.O.

Relief

Any railroad carrier affected by this E.O. may petition for special approval to take actions not in accordance with this E.O. Petitions must be submitted to the Associate Administrator for Railroad Safety, who is authorized to act on those requests without amending this E.O. In reviewing any petition for special approval, the Associate Administrator will grant petitions only if the petitioner has clearly articulated an alternative action that will provide, in the Associate Administrator's judgment, at least a level of safety equivalent to that provided by compliance with this E.O.

Civil Penalties

Any violation of this E.O. may subject the person (a railroad carrier) committing the violation to a civil penalty of up to \$118,826 for each day the violation continues. 49 U.S.C. 21301 and 86 FR 1751 (Jan. 11, 2021). Any individual (railroad personnel) who willfully violates a provision stated in this order is subject to civil penalties under 49 U.S.C. 21301. In addition, any individual (railroad personnel) whose violation of this order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under 49 U.S.C. 20111. FRA may, through the Attorney General, also seek

³⁰ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability. CDC states it will issue additional guidance regarding persons who cannot wear a mask under this exemption. <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>. 86 FR at 8027-28.

³¹ For example, a maintenance shop employee performing welding operations may be exempt from this E.O., due to potential mask flammability concerns.

injunctive relief to enforce this Order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This E.O. is effective upon issuance and railroad carriers subject to this E.O. must immediately initiate steps to implement this E.O. This E.O. remains in effect until the CDC Order is modified or rescinded based on specific public health or other considerations, until the U.S. Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists, or until rescinded by FRA, unless FRA extends its terms by subsequent notice published in the **Federal Register**.

Review

Opportunity for formal review of this E.O. will be provided under 49 U.S.C. 20104(b) and 5 U.S.C. 554. Administrative procedures governing such review are at 49 CFR part 211.

Issued in Washington, DC, on February 24, 2021.

Amitabha Bose,

Acting Administrator, Federal Railroad Administration.

[FR Doc. 2021-04233 Filed 2-25-21; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 389

[FMCSA-2016-0341]

RIN 2126-AB96

Rulemaking Procedures Update

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation.

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, titled "Regulatory Freeze Pending Review," the Department delays the effective date of the final rule, "Rulemaking Procedures Update," until March 21, 2021.

DATES: As of March 1, 2021, the effective date of the final rule published on December 31, 2020, at 85 FR 86843, is delayed until March 21, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Steven J. LaFreniere, Regulatory

Ombudsman, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590-0001, (202) 366-0596, steven.lafreniere@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of the notice of proposed rulemaking (82 FR 36719, August 7, 2017), all comments received, the final rule, and all background material may be viewed online at <http://www.regulations.gov> using the docket number listed above. A copy of this document will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at <http://www.ofr.gov> and the Government Publishing Office's website at <http://www.gpo.gov>.

Background

On January 20, 2021, the Assistant to the President and Chief of Staff issued a memorandum titled, "Regulatory Freeze Pending Review." The memorandum requested that the heads of executive departments and agencies (agencies) take steps to ensure that the President's appointees or designees have the opportunity to review any new or pending rules. With respect to rules published in the **Federal Register**, but not yet effective, the memorandum asked that agencies consider postponing the rules' effective dates for 60 days from the date of the memorandum (*i.e.*, March 21, 2021) for the purpose of reviewing any questions of fact, law, and policy the rules may raise.

In accordance with this direction, FMCSA has decided to delay the effective date of the final rule, "Rulemaking Procedures Update" (RIN 2126-AB96), until March 21, 2021. The final rule amends FMCSA's rulemaking procedures by revising the process for preparing and adopting rules and petitions. Also, the Agency adds new definitions, and makes general administrative corrections throughout its rulemaking procedures. The delay in the rule's effective date will afford the President's appointees or designees an opportunity to review the rule and will allow for consideration of any questions of fact, law, or policy that the rule may raise before it becomes effective.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), FMCSA generally offer interested parties the

opportunity to comment on proposed regulations and publish rules not less than 30 days before their effective dates. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking or delay effective dates when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive both of these requirements here as they are impracticable. A delay in the effective date of the final rule, "Rulemaking Procedures Update," is necessary for the President's appointees and designees to have adequate time to review the rule before it takes effect, and neither the notice and comment process nor the delayed effective date could be implemented in time to allow for this review.

List of Subjects in 49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

Issued under authority delegated in 49 CFR 1.87.

John W. Van Steenburg,
Assistant Administrator.

[FR Doc. 2021-04110 Filed 2-26-21; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2020-0050; FF09E21000 FXES11110900000 212]

RIN 1018-BF01

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl; Delay of Effective Date

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; delay of effective date and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, are delaying the effective date of a final rule we published on January 15, 2021, revising the designation of critical habitat for the northern spotted owl (*Strix occidentalis caurina*) under the Endangered Species Act of 1973, as amended (ESA) (January 15, 2021, Final Rule). In addition, this action opens a 30-day comment period to allow interested parties to comment on issues of fact, law, and policy raised

by that rule and whether further delay of the effective date is necessary.

DATES: As of March 1, 2021, the effective date of the final rule that published on January 15, 2021, at 86 FR 4820, is delayed from March 16, 2021, to April 30, 2021.

Comment Period: To be assured consideration, comments must be received or postmarked by March 31, 2021.

ADDRESSES: You may submit comments using either of the following methods:

Electronically via the Federal eRulemaking Portal: Please visit <https://www.regulations.gov>. In the Search Box, enter FWS-R1-ES-2020-0050, which is the docket number for this action, and click "search" to view the publications associated with the docket folder. Locate the document with an open comment period and follow the instructions to submit your comments prior to the close of the comment period.

By hard copy: Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R1-ES-2020-0050, U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and locate the docket folder for FWS-R1-ES-2020-0050.

FOR FURTHER INFORMATION CONTACT:

Bridget Fahey, Division of Conservation and Classification, U.S. Fish and Wildlife Service, Falls Church, VA 22041, telephone 703-358-2172. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On January 15, 2021, we published a final rule (86 FR 4820) revising critical habitat for the northern spotted owl by excluding additional areas from designation as critical habitat pursuant to the Secretary of the Interior's authority under section 4(b)(2) of the ESA (16 U.S.C. 1531 *et seq.*). On January 20, 2021, the White House issued a memorandum instructing Federal agencies to consider postponing the effective date after January 20, 2021, of any rules that have published in the **Federal Register** but not yet taken effect, for the purpose of reviewing any questions of fact, law, and policy the rules may raise (86 FR 7424; January 28, 2021) ("Regulatory Freeze Memorandum").