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:


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.

* * * * *
Background

On April 2, 2009, we, the U.S. Fish and Wildlife Service (Service), published a final rule to remove protections of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), from most of the concurrently designated northern Rocky Mountain (NRM) gray wolf Distinct Population Segment (DPS) (74 FR 15123). Additional background information on the NRM gray wolf population, including previous Federal actions, can be found in our April 2, 2009, final rule. The complete text of the April 2, 2009, publication in the Federal Register can be viewed online as part of the docket for this rulemaking at http://www.regulations.gov.

Lawsuits challenging our April 2, 2009, final rule were filed in U.S. District Court for the District of Montana and U.S. District Court for the District of Wyoming. On August 5, 2010, the U.S. District Court for the District of Montana vacated and set aside our 2009 delisting rule (Defenders of Wildlife et al. v. Salazar et al., 729 F. Supp. 2d 1207 (D. Mont.).

On April 15, 2011, President Obama signed Public Law 112–10—The Department of Defense and Full-Year Continuing Appropriations Act, 2011. Section 1713 of Public Law 112–10 requires: “Before the end of the 60-day period beginning on the date of enactment of this Act, the Secretary of the Interior shall reissue the final rule published on April 2, 2009 (74 FR 15123 et seq.), without regard to any other provision of statute or regulation that applies to issuance of such rule. Such reissuance (including this section) shall not be subject to judicial review and shall not abrogate or otherwise have any effect on the order and judgment issued by the United States District Court for the District of Montana in the Case Number 09–CV–118J and 09–CV–15184.

Effects of the Rule

Gray wolves in Montana and Idaho, as well as portions of eastern Oregon, eastern Washington, and north-central Utah, are removed from the List of Endangered and Threatened Wildlife. Gray wolves in Wyoming remain on the List of Endangered and Threatened Wildlife and continue to be subject to the provisions of our experimental population regulations codified at 50 CFR 17.84(i) and (n).

Outside Wyoming, this rule will not affect the status of the gray wolf in the NRM under State laws or suspend any other legal protections provided by State law. This rule will not affect the gray wolf’s Appendix II status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Concurrent Proposed Rule

In the Proposed Rules section of today’s Federal Register, we are also publishing a proposed rule that reevaluates the listing of the western Great Lakes population of gray wolves (Canis lupus) and proposes to revise it to conform to current statutory and policy requirements. The rule portions for 50 CFR 17.11(h) of this final rule and the proposed western Great Lakes rule are different because the final rule depicts the listing for the gray wolf as it stands today, based on the long history of rulemaking for this species, various judicial decisions, and the recent congressional action. The rule portion of the western Great Lakes rule reflects the listing for the gray wolf as we envision it should be unless public comments on the proposed rule provide information that persuades us that the listing should be presented differently.

Effective Date

This rule is effective upon publication in the Federal Register. Section 1713 of Public Law 112–10, directs us to reissue, within 60 days of enactment, the final NRM rule published on April 2, 2009. Section 1713 also expressly provides that such reissuance is not subject to any other statute or regulation that applies to such a rule.

Administrative Procedure

This rulemaking implements section 1713 of Public Law 112–10, which expressly provides that the reissuance of this rule is not subject to any other provision of statute or regulation that applies to issuance of such a rule.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:


2. Amend § 17.11(h) by revising the entry for “Wolf, gray” under MAMMALS Threatened Wildlife to read as follows:

§ 17.11 [Amended]

* * * * * (h) * * *
3. Amend § 17.84 by:
   a. Revising paragraphs (i)(7)(i) and (ii) and removing paragraph (i)(7)(iii);
   b. Revising the first sentence of paragraph (n)(1); and
   c. Revising paragraphs (n)(9)(1) and (ii) and removing paragraph (n)(9)(iii).

The revisions read as follows:

§ 17.84 Special rules—vertebrates.

(i) The nonessential experimental population area includes all of Wyoming.

(ii) All wolves found in the wild within the boundaries of this paragraph (i)(7) will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would take on the status for wolves in the area in which it is found unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it may be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it may be returned to captivity or killed.

(n) The gray wolves (wolf) identified in paragraph (n)(9)(i) of this section are a nonessential experimental population.

(i) The nonessential experimental population area includes all of Wyoming.

(ii) All wolves found in the wild within the boundaries of this experimental area are considered nonessential experimental animals.

Dated: April 26, 2011.

Daniel M. Ashe,
Acting Director, Fish and Wildlife Service.

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