

impact overall is positive, we certify that the action described will not result in a significant economic impact on a substantial number of small entities.

9. Further, we certify that our decision to modify the preliminary handset deployment benchmark for Tier I wireless carriers will not have a significant economic impact on a substantial number of small entities. Tier I wireless carriers are not small.

10. The Commission will send a copy of the *Order on Reconsideration*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the *Order on Reconsideration* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA.

III. Ordering Clauses

11. Pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 302, 303, 308, 309(j), 310, and 610, this *Order on Reconsideration* is adopted.

12. It is further ordered that the amendment of the Commission's rules, 47 CFR part 20, as specified in Appendix B of the *Order on Reconsideration* are effective, August 26, 2005.

13. It is further ordered that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by the Cellular Telecommunications and Internet Association is granted in part and denied in part to the extent set forth herein.

14. It is further ordered that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by Verizon Wireless is granted in part and denied in part to the extent set forth herein.

15. It is further ordered that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by Research in Motion Limited is granted to the extent set forth herein.

16. It is further ordered that the petition for reconsideration of the *Hearing Aid Compatibility Order* filed by the TDMA Carriers (Public Service Cellular Inc., Missouri RSA No. 7 Limited Partnership dba Mid Missouri Cellular; Minnesota Southern Wireless Company dba Hickory Tech, Northwest Missouri Cellular Limited Partnership, Illinois Valley Cellular RSA 2-1 Limited Partnership, Illinois Valley Cellular 2-II Limited Partnership and Illinois Valley RSA 2-III Limited Partnership) and Rural Telecommunications Group and is

granted in part to the extent set forth herein.

17. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Order on Reconsideration* and the Final Regulatory Flexibility Certification to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

■ 2. Section 20.19 is amended by adding paragraph (b)(4) and by revising paragraphs (c)(2) and (c)(3)(i) to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(b) * * *

(4) All factual questions of whether a wireless phone meets the technical standard of this subsection shall be referred for resolution to Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

(c) * * *

(2) And each provider of public mobile radio services must:

(i)(A) Include in its handset offerings at least two handset models per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store; or

(B) In the event a provider of public mobile radio services is using a TDMA air interface and plans to overbuild (*i.e.*, replace) its network to employ alternative air interface(s), it must:

(1) Offer two handset models that comply with § 20.19(b)(1) by September 16, 2005, to its customers that receive service from the overbuilt (*i.e.*, non-TDMA) portion of its network, and make available in each retail store it

owns or operates all of these handset models for consumers to test in the store:

(2) Overbuild (*i.e.*, replace) its entire network to employ alternative air interface(s), and

(3) Complete the overbuild by September 18, 2006; and

(ii) Ensure that at least 50 percent of its handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide.

(3) * * *

(i)(A) Include in its handset offerings four digital wireless handset models per air interface or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide) per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

(B) Include in its handset offerings five digital wireless handset models per air interface or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide) per air interface that comply with § 20.19(b)(1) by September 16, 2006, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

* * * * *

[FR Doc. 05–14613 Filed 7–26–05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AB63

Railroad Workplace Safety

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

ACTION: Final rule.

SUMMARY: On February 10, 2005, FRA published an interim final rule amending regulations on railroad workplace safety to clarify an

ambiguous provision concerning the circumstances under which life vests or buoyant work vests are required for bridge workers working over water. 70 FR 7047. As no comments were received in response to the notice of interim final rule, this document adopts the interim final rule as a permanent final rule.

DATES: *Effective Date:* This rule becomes effective July 27, 2005.

FOR FURTHER INFORMATION CONTACT:

Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6320); or Anna Nassif, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6166).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, FRA published railroad workplace safety regulations in 49 CFR part 214. 57 FR 28127. Subsequent amendments to that regulation added Subpart C, Roadway Worker Protection, and Subpart D, On-Track Roadway Maintenance Machines and Hi-Rail Vehicles. 61 FR 65959 (December 16, 1996), 68 FR 44388 (July 28, 2003). Additional amendments have provided technical corrections and changes to improve the effectiveness of the regulation.

FRA subsequently received a request from the Norfolk Southern Railway Company (NS) to permit NS employees who are working on a bridge deck over water to work without a life vest or buoyant work vest under circumstances in which falls are effectively prevented. NS referred to factual situations under the regulation, where a bridge worker who was located 12 feet or more over the ground was prevented from falling by hand rails, walkways, or acceptable work procedures and was therefore not required to use a personal fall arrest system. However, if the same circumstances prevailed on a bridge over water, the bridge worker was required to wear a life vest or buoyant work vest even though the bridge worker over water may have had the same safety hand rails, walkways, or acceptable work procedures in place as the bridge worker had over dry land. FRA considered this request, and found that the situation addressed by NS was not limited to one railroad. FRA therefore considered it advisable to provide an industry-wide resolution by issuing a technical amendment to the regulation.

On February 10, 2005, FRA published an interim final rule amending section 214.107 to resolve this unintended

inconsistency. 70 FR 7047. Written comments were due March 28, 2005; however, no comments were received, and the rule went into effect on April 11, 2005. The amendment now permits the exceptions in sub-paragraph (b)(2), and paragraphs (c) and (d) of § 214.103, which previously only applied to the use of personal fall arrest systems and safety nets over dry land, to also apply to the use of life vests or buoyant work vests while working over water. The amendment will have the effect, in a common example, of permitting a railroad track inspector, when on a bridge that is over water and equipped with effective handrails and walkways, to replace a joint bolt without having to wear a life vest or buoyant work vest, without the need to have a life preserver within ready access, and without the need for ring buoys and a boat or skiff in the water. The amendment should also have the beneficial effect of encouraging bridge owners to install effective fall prevention components on low bridges over water in order to improve labor efficiency.

Section-by-Section Analysis

No comments were received in response to the interim final rule. Accordingly, a section-by-section analysis is unnecessary. Please see the section-by-section analysis in the interim final rule at 70 FR 7049.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this rule will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This final rule clarifies existing requirements. The changes will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this final rule.

Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The rule meets the criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

This final rule will not have a substantial effect 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. Thus, in accordance with Executive Order 13132, preparation of a Federalism Assessment is not warranted.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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)." Sec. 201. Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120,700,000 or more 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. The rule published today does not include any mandates which will result in the expenditure, in the aggregate, of \$120,700,000 or more in any one year, and thus preparation of a statement is not required.

List of Subjects in 49 CFR Part 214

Bridges, Fall arrest equipment, Incorporation by reference, Occupational safety and health, Personal protective equipment, Railroad employees, Railroad safety.

The Final Rule

In consideration of the foregoing, the interim final rule amending 49 CFR part

214, which was published at 70 FR 7047 on February 10, 2005, is adopted as a final rule without change.

Issued in Washington, DC on July 5, 2005.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 05-14756 Filed 7-26-05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333-5040-02; I.D. 072205C]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 24, 2005, through 1200 hrs, A.l.t., September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA is 400 metric tons as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005), for the period 1200 hrs, A.l.t., July 5, 2005, through 1200 hrs, A.l.t., September 1, 2005.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2005 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are all rockfish of the genera *Sebastes* and *Sebastolobus*, deep-water flatfish, rex sole, arrowtooth flounder, and sablefish.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 22, 2005.

Alan D. Risenhoover

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 05-14855 Filed 7-22-05; 3:27 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332-5039-02; I.D. 072205B]

Fisheries of the Economic Exclusive Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for yellowfin sole in the Bering Sea and Aleutian Islands (BSAI). This action is necessary to allow the yellowfin sole fishery in the BSAI to resume.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 25, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for yellowfin sole in the BSAI under § 679.21(d)(7)(i) on May 19, 2005 (70 FR 29458, May 23, 2005).

NMFS has determined that as of June 20, 2005 approximately 7,862 metric tons of yellowfin sole remain in the 2005 yellowfin sole TAC in the BSAI. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the yellowfin sole fishery to resume, NMFS is terminating the previous closure and is reopening directed fishing for yellowfin sole in the BSAI. The reopening is effective 1200 hrs, Alaska local time (A.l.t.), July 25, 2005, through 2400 hrs, A.l.t., December 31, 2005.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant