

Given this information, FMCSA does not believe a limited 90-day waiver from the 30-minute rest break requirement would decrease the level of safety on the Nation's highways.

FMCSA Determination

In consideration of the above, FMCSA has determined that it is in the public interest to provide a limited waiver from the 30-minute break requirement in the Federal HOS regulations for interstate motor carriers transporting livestock. A review of the most recent MCMIS and TIFA data provides a basis for determining that a limited waiver, based on the terms and conditions imposed, would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

Terms and Conditions of the Waiver

The FMCSA provides a limited 90-day waiver from the 30-minute break provision of the HOS rules for drivers transporting livestock as defined in the Emergency Livestock Feed Assistance Act of 1988, as amended (the 1988 Act) [7 U.S.C. 1471(2)]. The term "livestock" as used in this waiver means "cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring, or are purchased as part of a normal operation and not to obtain additional benefits under [the 1988 Act]."

The waiver is further limited to motor carriers that have a "satisfactory" safety rating or are "unrated;" motor carriers with "conditional" or "unsatisfactory" safety ratings are prohibited from utilizing this waiver.

Safety Rating

Motor carriers that have received compliance reviews are required to have a "satisfactory" rating. The compliance review is an on-site examination of a motor carrier's operations, including records on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The assignment of a "satisfactory" rating means the motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are

appropriate for the size and type of operation of the motor carrier.

The FMCSA will also allow "unrated" carriers to take advantage of the waiver. Unrated motor carriers are those that have not received a compliance review. It would be unfair to exclude such carriers simply because they were not selected by for a compliance review, especially since carriers are prioritized for compliance reviews on the basis of known safety deficiencies.

The Agency is not allowing motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate that the carrier has safety management control problems. There is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions of the waiver.

Accident Reporting Requirement

Within 10 business days following an accident (as defined in 49 CFR 390.5), irrespective of whether the CMV was being operated under the this waiver, the motor carrier must submit the following information:

- (a) Date of the accident;
- (b) City or town in which the accident occurred, or city or town closest to the scene of the accident;
- (c) Driver's name and license number;
- (d) Vehicle number and State license number;
- (e) Number of injuries;
- (f) Number of fatalities;
- (g) The police-reported cause of the accident;
- (h) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge; and
- (i) Whether the driver was operating under the waiver, and if so, an estimate of the total on-duty and driving time between the last break of at least 15 minutes and the accident.

Duration of the Waiver

The waiver is effective upon publication in the **Federal Register** and is valid until October 9, 2013, unless revoked earlier by the FMCSA. The exemption preempts inconsistent State or local requirements.

Safety Oversight of Carriers Operating Under the Waiver

The FMCSA expects that any motor carrier operating under the terms and conditions of the waiver will maintain its safety record. However, should any deterioration occur, the FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public

interest. Use of the waiver is voluntary, and the FMCSA will immediately revoke the waiver for any interstate motor carrier or driver for failure to comply with the terms and conditions of the waiver

Issued on: July 5, 2013.

Anne S. Ferro,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563-3148-02]

RIN 0648-XC750

Fisheries of the Exclusive Economic Zone Off Alaska; Kamchatka Flounder in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Kamchatka flounder in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2013 Kamchatka flounder initial total allowable catch (ITAC) in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 8, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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.

The 2013 Kamchatka flounder ITAC in the BSAI is 8,500 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has

determined that the 2013 Kamchatka flounder ITAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,000 mt, and is setting aside the remaining 2,500 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Kamchatka flounder in the BSAI.

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 Kamchatka flounder to directed fishing in the BSAI. NMFS was unable to publish a notice providing time for public comment

because the most recent, relevant data only became available as of July 5, 2013.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 8, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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