

**PART 63—[AMENDED]**

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart E—Approval of State Programs and Delegation of Federal Authorities**

■ 2. Section 63.99 is amended revising the paragraph (a)(33)(ii) to read as follows:

**§ 63.99 Delegated Federal authorities.**

(a) \* \* \*  
(33) \* \* \*

(ii) North Carolina Department of Environment and Natural Resources (NC DENR) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Riegelwood mill, Riegelwood, North Carolina; International Paper Roanoke Rapids mill, Roanoke Rapids, North Carolina; Blue Ridge Paper Products, Canton, North Carolina; Weyerhaeuser New Bern facility, New Bern, North Carolina; and Weyerhaeuser Plymouth facility, Plymouth, North Carolina, for Subpart S of this Part—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and Subpart MM of this Part—National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills. This action is contingent upon NC DENR including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirements applicable to the sources remain the Federal section 112 requirements until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

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**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE****45 CFR Part 1206****Grants and Contracts: Suspension and Termination and Denial of Application for Refunding; Correction Technical Amendments and Reinstatement**

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Final rule.

**SUMMARY:** The Corporation for National and Community Service published in

the **Federal Register** of March 27, 2003, a document removing obsolete regulations from 45 CFR Chapter XII. Inadvertently, part 1206 concerning procedures for suspension, termination, and denial of refunding of grants and contracts was removed. This document reinstates part 1206 in its entirety as part of 45 CFR Chapter XII and corrects the nonsubstantive errors found in the original text. It makes no changes to the original part 1206 other than substituting Corporation positions for the now obsolete ACTION agency positions.

**DATES:** Effective April 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Britanya Rapp, Associate General Counsel, Corporation for National and Community Service, telephone: 202-606-5000, ext. 258; TDD: 800-833-3722; Internet e-mail address: [brapp@cns.gov](mailto:brapp@cns.gov).

**SUPPLEMENTARY INFORMATION:** The ACTION agency promulgated a regulation at part 1206 addressing the termination, suspension, and denial of refunding of programs funded under the Domestic Volunteer Service Act of 1973, as amended. The Corporation published a document in the **Federal Register** of March 27, 2003, (68 FR 14901) inadvertently removing part 1206. This correction adds part 1206 and replaces the obsolete references to the ACTION agency with references to the Corporation, its departments and offices, officials, and employees.

**List of Subjects in 45 CFR Part 1206**

Community action programs, Grant programs—social programs.

Dated: April 6, 2004.

**Frank R. Trinity,**  
*General Counsel.*

■ Accordingly, and under the authority of 42 U.S.C. 12561 and for the reasons stated in the preamble, the Corporation reinstates part 1206 in 45 CFR chapter XII as follows:

**PART 1206—GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING****Subpart A—Suspension and Termination of Assistance**

Sec.

- 1206.1-1 Purpose and scope.
- 1206.1-2 Application of this part.
- 1206.1-3 Definitions.
- 1206.1-4 Suspension.
- 1206.1-5 Termination.
- 1206.1-6 Time and place of termination hearings.
- 1206.1-7 Termination hearing procedures.
- 1206.1-8 Decisions and notices regarding termination.

- 1206.1-9 Right to counsel; travel expenses.
- 1206.1-10 Modification of procedures by consent.
- 1206.1-11 Other remedies.

**Subpart B—Denial of Application for Refunding**

- 1206.2-1 Applicability of this subpart.
- 1206.2-2 Purpose.
- 1206.2-3 Definitions.
- 1206.2-4 Procedures.
- 1206.2-5 Right to counsel.

Authority: 42 U.S.C. 5052.

**Subpart A—Suspension and Termination of Assistance****§ 1206.1-1 Purpose and scope.**

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance of National Senior Service Corps and AmeriCorps\*VISTA grants of assistance provided by the Corporation for National and Community Service pursuant to sections of titles I and II of the Domestic Volunteer Service Act of 1973, 87 Stat. 394, Pub. L. 93-113, (hereinafter the DVSA) because a recipient failed to materially comply with the terms and conditions of any grant or contract providing assistance under these sections of the DVSA, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

(b) However, this subpart shall not apply to any administrative action of the Corporation for National and Community Service based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964 and sections 417(a) and (b) of Pub. L. 93-113 relating to nondiscrimination. In the case of any such violation or alleged violation other provisions of this chapter shall apply.

**§ 1206.1-2 Application of this part.**

This subpart applies to programs authorized under titles I and II of the DVSA.

**§ 1206.1-3 Definitions.**

As used in this subpart—

(a) The term *Corporation* means the Corporation for National and Community Service established pursuant to 42 U.S.C. 12651 and includes each Corporation State Office and Service Center.

(b) The term *CEO* means the Chief Executive Officer of the Corporation.

(c) The term *responsible Corporation official* means the CEO, Chief Financial Officer, the Director of the National Senior Service Corps programs, the Director of the AmeriCorps\*VISTA program, the appropriate Service Center

Director and any Corporation Headquarters or State office official who is authorized to make the grant of assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1206.1–4, the term “responsible Corporation official” shall also include a designee of a Corporation official who is authorized to make the grant of assistance in question.

(d) The term *assistance* means assistance under titles I and II of the DVSA in the form of grants or contracts involving Federal funds for the administration of which the Directors of the National Senior Service Corps and AmeriCorps\*VISTA have primary responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received financial assistance under titles I and II of the DVSA. The term “recipient” does not include individuals who ultimately receive benefits under any DVSA program of assistance or National Senior Service Corps volunteers or AmeriCorps\*VISTA members participating in any program.

(f) The term *agency* means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out of the development, conduct and administration of all or part of a project assisted under titles I and II.

(g) The term *party* in the case of a termination hearing means the Corporation, the recipient concerned, and any other agency or organization which has a right or which has been granted permission by the presiding officer to participate in a hearing concerning termination of financial assistance to the recipient pursuant to § 1206.1–5(e).

(h) The term *termination* means any action permanently terminating or curtailing assistance to all or any part of a program prior to the time that such assistance is concluded by the grant or contract terms and conditions, but does not include the refusal to provide new or additional assistance.

(i) The term *suspension* means any action temporarily suspending or curtailing assistance in whole or in part, to all or any part of a program, prior to the time that such assistance is concluded by the grant or contract terms and conditions, but does not include the refusal to provide new or additional assistance.

#### § 1206.1–4 Suspension.

(a) *General.* The responsible Corporation official may suspend financial assistance to a recipient in whole or in part for a material failure or threatened material failure to comply with any requirement stated in § 1206.1–1. Such suspension shall be pursuant to notice and opportunity to show cause why assistance should not be suspended as provided in paragraph (b) of this section. However, in emergency cases, where the responsible Corporation official determines summary action is appropriate, the alternative summary procedure of paragraph (c) of this section shall be followed.

(b) *Suspension on notice.* (1) Except as provided in paragraph (c) of this section, the procedure for suspension shall be on notice of intent to suspend as hereinafter provided.

(2) The responsible Corporation official shall notify the recipient by letter or by telegram that the Corporation intends to suspend assistance in whole or in part unless good cause is shown why assistance should not be suspended. In such letter or telegram the responsible Corporation official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(3) The responsible Corporation official shall also inform the recipient of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the recipient may respond and attempt to show why such suspension should not occur. The period of time within which the recipient may submit such written material or request the informal meeting shall be established by the responsible Corporation official in the notice of intent to suspend. However, in no event shall the period of time within which the recipient must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend assistance has been sent. If the recipient requests a meeting, the responsible Corporation official shall fix a time and place for the meeting, which shall not be less than 5 days after the recipient's request is received by the Corporation.

(4) In lieu of the provisions of paragraph (b)(3) of this section dealing with the right of the recipient to request an informal meeting, the responsible Corporation official may on his own initiative establish a time and place for such a meeting and notify the recipient in writing or by telegram. However, in no event shall such a meeting be scheduled less than seven days after the

notice of intent to suspend assistance is sent to the recipient.

(5) The responsible Corporation official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the recipient in writing or by telegram of any such extension.

(6) At the time the responsible Corporation official sends the notification referred to in paragraphs (b) (2), (3), and (4) of this section to the recipient, he shall also send a copy of it to any agency whose activities or failures to act have substantially contributed to the proposed suspension, and shall inform such agency that it is entitled to submit written material or to participate in the informal meeting referred to in paragraphs (b) (3) and (4) of this section. In addition the responsible Corporation official may in his discretion give such notice to any other agency.

(7) Within 3 days of receipt of the notice referred to in paragraphs (b) (2), (3), and (4) of this section, the recipient shall send a copy of such notice and a copy of these regulations to all agencies which would be financially affected by the proposed suspension action. Any agency that wishes to submit written material may do so within the time stated in the notice. Any agency that wishes to participate in the informal meeting with the responsible Corporation official contemplated herein may request permission to do so from the responsible Corporation official, who may in his discretion grant or deny such permission. In acting upon any such request from an agency, the responsible Corporation official shall take into account the effect of the proposed suspension on the particular agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the agency requesting such permission appear to be adequately represented by other participants.

(8) In the notice of intent to suspend assistance the responsible Corporation official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(9) The responsible Corporation official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (b)(3) and (4) of this section as well as any showing that the recipient has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the

material presented to him the responsible Corporation official concludes the recipient has failed to show cause why assistance should not be suspended, he may suspend assistance in whole or in part and under such terms and conditions as he shall specify.

(10) Notice of such suspension shall be promptly transmitted to the recipient and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1206.1–5, or unless the responsible Corporation official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(11) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible Corporation official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the recipient has obligated them by contract or otherwise to an agency.

**Note:** Willful misapplication of funds may violate Federal criminal statutes.

(12) The responsible Corporation official may in his discretion modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the recipient had adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may, in the discretion of the responsible Corporation official be reimposed with or without further proceedings: *Provided however*, That the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1–5 or unless the responsible Corporation official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(c) *Summary suspension.* (1) The responsible Corporation official may suspend assistance without the prior notice and opportunity to show cause provided in paragraph (b) of this section if he determines in his discretion that immediate suspension is necessary because of a serious risk of:

(i) Substantial injury to or loss of project funds or property, or  
 (ii) Violation of a Federal, State or local criminal statute, or  
 (iii) Violation of section 403 of the DVSA or of Corporation rules, regulations, guidelines and instructions implementing this section of the DVSA, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the recipient by letter or by telegram, shall become effective upon delivery to the recipient, and shall specifically advise the recipient of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the recipient to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a recipient solely because the recipient obligated them by contract or otherwise to an agency. (See note under paragraph (b)(11) of this section.)

(3) In the notice of summary suspension the responsible Corporation official shall advise the recipient that it may request the Corporation to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible Corporation official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible Corporation official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the

responsible Corporation official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Copies of the notice of summary suspension shall be furnished by the recipient to agencies in the same manner as notices of intent to suspend as set forth in paragraphs (b)(6), (7), and (8) of this section. Agencies may submit written material to the responsible Corporation official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraphs (b)(6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1–5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with paragraph (c)(3) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the suspension of assistance shall continue in effect until the recipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in paragraph (c)(3) of this section. If the responsible Corporation official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible Corporation official may continue the suspension in effect for an additional 7 days: *Provided however*, That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

#### **§ 1206.1–5 Termination.**

(a) If the responsible Corporation official believes that an alleged failure to comply with any requirement stated in § 1206.1–1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds which warrant terminating the assistance and shall set forth the specific reasons therefore. If the reasons result in whole or substantial part from

the activities of an agency other than the grantee, the notice shall identify that agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with § 1206.1–6. In the alternative the notice shall advise the recipient of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provision of §§ 1206.1–7 and 1206.1–8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing in writing or by telegram. Consideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by the Corporation. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with requirements specified in § 1206.1–1. In any termination hearing, the Corporation shall have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in § 1206.1–1, the recipient shall have the burden of proving that such action was timely taken.

(c) If a recipient requests the Corporation to hold a hearing in accordance with paragraph (a) of this section, it shall send a copy of its request for such a hearing to all agencies which would be financially affected by the termination of assistance and to each agency identified in the notice pursuant to paragraph (a) of this section. This material shall be sent to these agencies at the same time the recipient's request is made to the Corporation. The recipient shall promptly send to the Corporation a list of the agencies to which it has sent such material and the date on which it was sent.

(d) If the responsible Corporation official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all agencies which would be financially affected by the termination and to each agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible Corporation official a list of all agencies notified and the date of notification.

(e) If the responsible Corporation official has initiated termination

proceedings because of the activities of an agency, that agency may participate in the hearing as a matter of right. Any other agency, person, or organization that wishes to participate in the hearing may, in accordance with § 1206.1–7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of the Corporation and the recipient, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any subsequent measure taken by the Corporation pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible Corporation official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible Corporation official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of the Corporation.

(h) The responsible Corporation official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

#### **§ 1206.1–6 Time and place of termination hearings.**

The termination hearing shall be held in Washington, DC, or in the appropriate Service Center or Corporation State Office, at a time and place fixed by the responsible Corporation official unless he determines that for the convenience of the Corporation, or of the parties or their representatives, requires that another place be selected.

#### **§ 1206.1–7 Termination hearing procedures.**

(a) *General.* The termination hearing, decision, and any review shall be conducted in accordance with the rules of procedure in this section and §§ 1206.1–8 and 1206.1–9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible Corporation official or, at the discretion of the responsible Corporation official, an independent hearing examiner designated as

promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on written notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of the Corporation: *Provided*, That the attorney designated to assist him has not represented the Corporation or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both the Corporation and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to the Corporation, the recipient, and any agency which has a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of suspension or proposed termination has been received by the recipient, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant

intends to contribute, and the necessity for the introduction of such evidence or arguments.

(3) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the recipient, and the Corporation, and, in the case of denial, a brief statement of the reasons for his decision: *Provided however*, That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(4) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(e) *Filing*. All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(f) *Notice*. The responsible Corporation official shall send the recipient and any other party a written notice which states the time, place, nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the Corporation requirements which it is contended the recipient has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(g) *Notice of intention to appear*. The recipient and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to the Corporation of its intention to appear at the hearing 3 days before it is scheduled to occur. Failing to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(h) *Form and date of service*. All papers and documents filed or sent to party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: *Provided however*, That the effective

date of the notice that there appear to be grounds which warrant terminating assistance shall be the date of its delivery or attempted delivery at the recipient's last known address as reflected in the records of the Corporation.

(i) *Prehearing conferences*. Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b)(2) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(j) *Evidence*. Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcription shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(k) *Depositions*. If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(l) *Official notice*. Official notice may be taken of a public document, or part of a public document, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of the Corporation. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(m) *Proposed findings and conclusions*. After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of § 1206.1-8(a).

#### **§ 1206.1-8 Decisions and notices regarding termination.**

(a) Each decision of a presiding officer shall contain his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to § 1206.1-7(m). Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the recipient has failed to comply.

(b) The decision of the presiding officer may provide for continued suspension or termination of assistance to the recipient in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the DVSA.

(c) If the hearing is held by an independent hearing examiner rather than by the responsible Corporation official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible Corporation official his written exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible Corporation official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own written decision thereof, including the reasons therefore. The decision of the responsible Corporation official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a decision shall be made by the responsible Corporation official and a written copy of the final decision of the responsible Corporation official shall be given to the recipient.

(e) The recipient may request the CEO to review a final decision by the responsible Corporation official which provides for the termination of assistance. Such a request must be made in writing within 15 days after the recipient has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the recipient requests such a review, the CEO or his designee shall consider the reasons stated by the recipient for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible Corporation official or remand the matter to the responsible Corporation official for further hearing or consideration. The decision of the responsible Corporation official will be given great weight by the CEO or his designee during the review. During the course of his review the CEO or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the CEO or his designee assistance shall remain suspended under the terms and conditions specified by the responsible Corporation official, unless the responsible Corporation official or the CEO or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the CEO or his designee within 30 days of receipt by the CEO of the recipient's request. The CEO or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

**§ 1206.1-9 Right to counsel; travel expenses.**

In all formal or informal proceedings under this subpart, the recipient and the Corporation shall have the right to be represented by counsel or other authorized representatives. If the recipient and any agency which has a right to participate in an informal meeting pursuant to § 1206.1-4 or a termination hearing pursuant to § 1206.1-7 do not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such recipient and agency will be authorized to designate an attorney to represent their organizations at any such show cause proceeding or termination hearing and to transfer sufficient funds from the Federal grant monies they have received for the project to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the

attorney. However, such fees shall not exceed \$100 per day without the prior express written approval of the Corporation. Travel and per diem expenses may be paid to such attorney only in accordance with the policies set forth in the federal government travel regulations. The Boards of Directors of the recipient or any agency which has a right to participate in an informal meeting pursuant to § 1206.1-4 or a termination hearing pursuant to § 1206.1-7 will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from Federal grant or contract monies. Such travel and per diem expenses shall conform to the policies set forth in the federal government travel regulations.

**§ 1206.1-10 Modification of procedures by consent.**

The responsible Corporation official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this subpart with the consent of the recipient and, in the case of a termination hearing, with the consent of all agencies that have a right to participate in the hearing pursuant to § 1206.1-5(e). Such consent must be in writing or be recorded in the hearing transcript.

**§ 1206.1-11 Other remedies.**

The procedures established by this subpart shall not preclude the Corporation from pursuing any other remedies authorized by law.

**Subpart B—Denial of Application for Refunding**

**§ 1206.2-1 Applicability of this subpart.**

This subpart applies to grantees and contractors receiving financial assistance and to sponsors who receive AmeriCorps\*VISTA members under the DVSA. The procedures in this subpart do not apply to review of applications for the following:

- (a) University Year for VISTA projects which have received federal funds for five years;
- (b) Mini-grants;
- (c) Other projects for which specific time limits with respect to federal assistance are established in the original notice of grant award or other document providing assistance, where the specified time limit has been reached; and
- (d) AmeriCorps\*VISTA project extensions of less than six months.

**§ 1206.2-2 Purpose.**

This subpart establishes rules and review procedures for the denial of a

current recipient's application for refunding.

**§ 1206.2-3 Definitions.**

As used in this subpart—“Corporation”, “CEO”, and “recipient” are defined in accordance with § 1206.1-3.

*Financial assistance and assistance* include the services of National Senior Service Corps volunteers and AmeriCorps\*VISTA members supported in whole or in part with Corporation funds provided under the DVSA.

*Program account* means assistance provided by the Corporation to support a particular program activity; for example, AmeriCorps\*VISTA, Foster Grandparent Program, Senior Companion Program and Retired Senior Volunteer Program.

*Refunding* includes renewal of an application for the assignment of National Senior Service Corps volunteers and AmeriCorps\*VISTA members.

**§ 1206.2-4 Procedures.**

(a) The procedures set forth in paragraphs (b) through (g) of this section applies only where an application for refunding submitted by a current recipient is rejected or is reduced to 80 percent or less of the applied-for level of funding or the recipient's current level of operations, whichever is less. It is further a condition for application of these procedures that the rejection or reduction be based on circumstances related to the particular grant or contract. These procedures do not apply to reductions based on legislative requirements, or on general policy or in instances where, regardless of a recipient's current level of operations, its application for refunding is not reduced by 20 percent or more. The fact that the basis for rejecting an application may also be a basis for termination under subpart A of this part shall not prevent the use of this subpart to the exclusion of the procedures in subpart A.

(b) Before rejecting an application of a recipient for refunding the Corporation shall notify the recipient of its intention, in writing, at least 75 days before the end of the recipient's current program year or grant budget period. The notice shall inform the recipient that a tentative decision has been made to reject or reduce an application for refunding. The notice shall state the reasons for the tentative decision to which the recipient shall address itself if it wishes to make a presentation as described in paragraphs (c) and (d) of this section.

(c) If the notice of tentative decision is based on any reasons, other than those described in paragraph (d) of this section, including, but not limited to, situations in which the recipient has ineffectively managed Corporation resources or substantially failed to comply with Corporation policy and overall objectives under a contract or grant agreement with the Corporation, the recipient shall be informed in the notice, of the opportunity to submit written material and to meet informally with a Corporation official to show cause why its application for refunding should not be rejected or reduced. If the recipient requests an informal meeting, such meeting shall be held on a date specified by the Corporation. However, the meeting may not, without the consent of the recipient, be scheduled sooner than 14 days, nor more than 30 days, after the Corporation has mailed the notice to the recipient. If the recipient requests an informal meeting, the meeting shall be scheduled by the Corporation as soon as possible after receipt of the request. The official who shall conduct this meeting shall be a Corporation official who is authorized to finally approve the refunding in question, or his designee.

(d) If the notice of tentative decision is based upon a specific charge of failure to comply with the terms and conditions of the grant or contract, alleging wrongdoing on the part of the recipient, the notice shall offer the recipient an opportunity for an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such hearing officer shall be limited to conducting the hearing and offering recommendations. The Corporation will retain all authority to make the final determination as to whether the application should be finally rejected or reduced. If the recipient requests an informal hearing, such hearing shall be held at a date specified by the Corporation. However, such hearing may not, without the consent of the recipient, be scheduled sooner than 14 days nor more than 30 days after the Corporation mails the notice to the recipient.

(e) In the selection of a hearing official and the location of either an informal meeting or hearing, the Corporation, while mindful of considerations of the recipient, will take care to insure that costs are kept to a minimum. The informal meeting or hearing shall be held in the city or county in which the recipient is located, in the appropriate Service Center or Corporation State Office, or another appropriate location. Within the limits stated in the preceding sentence, the decision as to where the

meeting shall be held will be made by the Corporation, after weighing the convenience factors of the recipient. For the convenience of the recipient, the Corporation will pay the reasonable travel expenses for up to two representatives of the recipient, if requested.

(f) The recipient shall be informed of the final Corporation decision on refunding and the basis for the decision by the deciding official.

(g) If the recipient's budget period expires prior to the final decision by the deciding official, the recipient's authority to continue program operations shall be extended until such decision is made and communicated to the recipient. If a National Senior Service Corps volunteer's or AmeriCorps\*VISTA member's term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer or member may be similarly extended. No volunteers or members may be reenrolled for a full 12-month term, or new volunteers or members enrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, the Corporation and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

#### **§ 1206.2-5 Right to counsel.**

In all formal or informal proceedings under this subpart, the recipient and the Corporation shall have the right to be represented by counsel or other authorized representatives, at their own expense.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

**[Docket No. 031124287-4060-02; I.D. 040504B]**

### **Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2004 A season total allowable catch (TAC) of Pacific cod to be harvested.

**DATES:** Effective April 7, 2004, until 2400 hours, Alaska local time (A.l.t.), December 31, 2004.

**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 the Groundfish Fishery of the Bering Sea and Aleutian Islands 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 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC allocated to vessels using jig gear in the BSAI for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., April 30, 2004, as 1,595 metric tons (mt).

As of April 1, 2004, the Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,545 mt of the A season apportionment of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(A) and § 679.20(a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(1), NMFS apportions 1,545 mt of Pacific cod from the A season apportionment of jig gear to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004) are revised as follows: 50 mt to the A season apportionment for vessels using jig gear and 2,961 mt to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

#### **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