

interference with a contract that is based on the furnishing or use of information in accordance with this section may be brought against—

(i) A motor carrier investigating the information, described in paragraphs (d) and (e) of this section, of an individual under consideration for employment as a commercial motor vehicle driver,

(ii) A person who has provided such information; or

(iii) The agents or insurers of a person described in paragraph (l)(1) or (l)(2) of this section, except insurers are not granted a limitation on liability for any alcohol and controlled substance information.

(2) The protections in paragraph (l) of this section do not apply to persons who knowingly furnish false information, or who are not in compliance with the procedures specified for these investigations.

6. In § 391.51, paragraph (b)(2) is revised to read as follows:

**§ 391.51 General requirements for driver qualification files.**

\* \* \* \* \*

(b) \* \* \*

(2) A copy of the response by each State agency concerning a driver's driving record pursuant to § 391.23(a)(1);

\* \* \* \* \*

7. Add a new § 391.53 to read as follows:

**§ 391.53 Driver Employment History File.**

(a) Each motor carrier must maintain records relating to the investigation into the employment history of a new or prospective driver pursuant to paragraphs (d) and (e) of this section. This file must be maintained in a secure location with controlled access.

(1) The motor carrier must ensure that access to this data is limited to those who are involved in the hiring decision or who control access to the data. In addition, the motor carrier's insurer may have access to the data (except the alcohol and controlled substances data) for the purpose of determining whether to include the driver on the carrier's insurance policy.

(2) This data must only be used for the hiring decision.

(b) The file must include:

(1) A copy of the driver's written authorization for the motor carrier to seek information about a driver's drug and alcohol history as required under § 391.23(d).

(2) A copy of the response(s) received to request for information under paragraphs (d) and (e) of § 391.23 from each previous employer, or documentation of a good faith effort to

contact them. The record must include the previous employer's name and address, the date the previous employer was contacted, and the information provided about the driver.

(c)(1) The record for a driver who is hired must be retained for as long as the driver is employed by that motor carrier and for three years thereafter.

(2) The record for a driver who is not hired must be retained for one year.

(d) A motor carrier shall make all records and information in this file available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration or an authorized State or local enforcement agency representative, upon request or as part of any inquiry within the time period specified by the requesting representative.

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**Annette M. Sandberg,**  
*Acting Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 697

[I.D. 070203E]

#### Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit (EFP)

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

**ACTION:** Notification of a request for an EFP to harvest horseshoe crabs; request for comments.

**SUMMARY:** NMFS announces that the Director, Office of Sustainable Fisheries, is considering issuing an EFP to Limuli Laboratories of Cape May Court House, NJ to conduct a third year of an exempted fishing operation otherwise restricted by regulations prohibiting the harvest of horseshoe crabs in the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve) located 3 nautical miles (nm) seaward of the mouth of Delaware Bay. NMFS is considering issuing an EFP for the harvest of 10,000 horseshoe crabs for biomedical purposes and requiring as a condition of the EFP the collection of data related to the status of Delaware Bay horseshoe crabs within the Reserve. Therefore, this document invites

comments on the issuance of an EFP to Limuli Laboratories.

**DATES:** Comments on this action must be received on or before August 1, 2003.

**ADDRESSES:** Written comments should be sent to John H. Dunnigan, Director, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Horseshoe Crab EFP Proposal." Comments may also be sent via facsimile (fax) to (301) 713-0596. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Tom Meyer, Fishery Management Biologist, (301) 713-2334.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow a Regional Administrator or the Director of the Office of Sustainable Fisheries to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up and/or hazardous removal purposes, the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of the fishery management plan are not compromised, and issuance of the EFP is beneficial to the management of the species.

The Reserve was established on February 5, 2001 (66 FR 8906), to provide protection for the Atlantic coast stock of horseshoe crabs, and to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab. The final rule prohibited fishing for horseshoe crabs in the Reserve and the possession of horseshoe crabs on a vessel with a trawl or dredge aboard while in the Reserve. The rule did not allow for any biomedical harvest or the collection of fishery dependent data. However, in the comments and responses section, NMFS stated that it would consider issuing EFPs for the biomedical harvest of horseshoe crabs from the Reserve.

The biomedical industry collects horseshoe crabs, removes approximately 30 percent of their blood, and returns them alive to the water. Approximately 10 percent do not survive the bleeding process. The blood contains a reagent called Limulus Amebocyte Lysate (LAL)