

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Part 655**

RIN 1205-AB24

Labor Certification and Petition Process for Temporary Agricultural Employment of Nonimmigrant Workers in the United States (H-2A Workers); Modification of Fee Structure; Informal Briefing**AGENCY:** Employment and Training Administration, Labor.**ACTION:** Proposed rule; notice of informal briefing; reopening and extension of deadline for notices of intention to appear.

SUMMARY: The Division of Foreign Labor Certification, Employment and Training Administration (ETA), Department of Labor (Department), is reopening and extending the deadline for notices of intention to appear at two informal briefings to allow agricultural workers and employers and other interested parties to communicate directly with the Department regarding proposed rule changes which would require employers to submit fees for temporary foreign agricultural labor certification and the associated H-2A petition with a consolidated application form at the time of filing. See proposed rule to amend 20 CFR part 655, published elsewhere in today's issue of the **Federal Register**. The proposed rule also would modify the fee structure for H-2A labor certification applications. These briefings are being held to allow the Department to solicit individual responses and experiences from interested persons and other entities. This notice extends the deadline for filing by the public of their intention to appear.

DATES: The briefing dates are:

Thursday, November 8, 2001, 9:30 a.m. to 4 p.m., Washington, DC.

Friday, November 16, 2001, 9:30 a.m. to 4 p.m., Monterey, CA.

Notices of intention to appear at the briefing must be postmarked no later than October 31, 2001.

ADDRESSES: The briefing locations are: U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Plaza Level Auditorium, Washington, DC 20010. Hilton Monterey, 1000 Oguajito Road, Monterey, CA 93940.

Send notices of intention to appear to: Charlene Giles, U.S. Department of Labor, 200 Constitution Avenue, NW,

Room C-4318, Washington, DC 20210. Notices also may be faxed to Charlene Giles at 202-693-2760 (this is not a toll-free number), or submitted by e-mail at dflc@uis.doleta.gov.**FOR FURTHER INFORMATION CONTACT:** Charlene Giles; telephone 202-693-2950. (This is not a toll-free number).**SUPPLEMENTARY INFORMATION:** The informal public briefings will be chaired by a senior official of the Employment and Training Administration. Persons appearing at the briefings will be allowed to present their views and pose questions to Department staff and other parties presenting their views.

Signed at Washington, DC, this 19th day of October, 2001.

Emily Stover DeRocco,*Assistant Secretary for Employment and Training.*

[FR Doc. 01-26866 Filed 10-23-01; 8:45 am]

BILLING CODE 4510-30-P**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****21 CFR Part 1310**

[DEA-203P]

RIN 1117-AA52

Establishment of a Threshold for Gamma-Butyrolactone**AGENCY:** Drug Enforcement Administration (DEA), Justice.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: DEA is proposing a zero kilogram threshold for domestic, export, and import transactions of gamma-butyrolactone (GBL), a List I chemical and the precursor to gamma-hydroxybutyric acid (GHB), a Schedule I controlled substance. DEA is concerned that GBL packaged in individual containers is convenient to traffickers and at risk of diversion. Therefore, DEA is proposing to regulate containers that can be easily transported, stored, and generally dealt with in clandestine settings.

However, most GBL produced is used in captive markets or transported in large quantities in single containers. This material is less likely to be diverted. Therefore, this NPRM proposes to exempt from the definition of a "regulated transaction" all transactions of 16,000 kilograms (net weight) or more in a single container.

Pub. L. 106-172, the "Hillory J. Farias and Samantha Reid Date-Rape Prohibition Act of 1999," made GBL a

List I chemical. Accordingly, DEA published a Final Rule, on April 24, 2000, (65 FR 21645) conforming its regulations to this Act and making GBL a List I chemical. Because that Final Rule did not establish a threshold, all transactions in GBL are regulated transactions as described by 21 CFR 1300.02(b)(28). The removal from the definition of a "regulated transaction" that DEA proposes in this NPRM for large (i.e., over 16,000 kilograms) transactions of GBL will help minimize the potential impact of this rule on legitimate industry while preventing diversion.

DATES: Written comments must be received on or before December 24, 2001.**ADDRESSES:** Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Division Control, Drug Enforcement Administration, Washington, DC 20537.**SUPPLEMENTARY INFORMATION:****What Is GBL and Why Is It Being Regulated Under the Controlled Substances Act (CSA)?**

GBL is gamma-butyrolactone, the precursor used in the clandestine production of the Schedule I controlled substance gamma-hydroxybutyric acid (GHB). Since 1990, DEA has documented over 15,600 overdoses and law enforcement encounters in 46 states with GHB. DEA has documented 71 GHB-related deaths. The GHB obtained in the vast majority of these encounters is by conversion of GBL.

GBL was placed in the CSA as a List I chemical effective February 18, 2000, by enactment of Pub. L. 106-172, the "Hillory J. Farias and Samantha Reid Date-Rape Prohibition Act of 1999" (65 FR 21645, April 24, 2000). That law, however, did not establish a threshold. As a result of the law not establishing a threshold, all transactions in GBL are regulated transactions as described in 21 CFR 1300.02(b)(28).

DEA has identified the source for illicit GHB as being clandestinely synthesized from GBL. Law enforcement agencies have encountered GHB on at least 1,700 occasions, including more than 180 clandestine laboratories and more than 750 seized and analyzed laboratory exhibits. GHB has only recently been scheduled in the CSA as

a controlled substance and GBL regulated as a List I chemical.

The Final Rule titled, "Placement of gamma-Butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802(34))" was published in the **Federal Register** on April 24, 2000, (65 FR 21645). It amended 21 CFR 1310.02(a) (List I chemicals) to reflect the status of GBL as a List I chemical. For regulatory purposes, DEA had no discretion in taking this action. Therefore, 21 CFR 1310.02(a) was amended as a final rule. Since it was published as a Final Rule, a threshold could not be established at that time because that would circumvent the notice and comment process. Therefore, DEA is proposing to establish a threshold for GBL in this NPRM to allow opportunity for public comment.

Law enforcement authorities have identified GBL in many GHB clandestine laboratories and documented its use as a GHB precursor. GBL is a necessary chemical precursor in the clandestine synthesis of GHB because, to date, no other chemical has been substituted for GBL in this process. Congress recognized this, and controlled GBL as a List I chemical upon enactment of Pub. L. 106-172 on February 18, 2000.

GBL is a unique chemical precursor. It can be converted to GHB by a simple chemical reaction or it can be ingested directly, without running a chemical reaction. That is, the body efficiently converts GBL to GHB when ingested. Because GBL is converted to GHB by the body's own action, GBL is routinely substituted for GHB to obtain the same type of intoxication. Congress recognized this and adopted in Pub. L. 106-172 a new subparagraph to 21 U.S.C. 802(32), which is the section of the CSA that defines a "controlled substance analogue." The subparagraph maintains that the placement of GBL, or any other chemical, as a listed chemical does not preclude a finding that the chemical is a controlled substance analogue. DEA recognizes this concern of Congress that GBL is being used as a direct substitute for a Schedule I controlled substance. Although GBL is a chemical commodity when used by legitimate industry, diversion of GBL can be tantamount to diversion of a Schedule I controlled substance when it is intended for human consumption.

What Amounts of GBL Are Diverted for Conversion to GHB?

DEA is aware that GBL is diverted in a variety of sizes to produce GHB. Unscrupulous suppliers, including those operating through the internet, supply different size containers to the

public. GBL diverted from well-known and well-established reputable companies has also been identified. At least fifteen companies operated internet sites that sold GBL and potassium hydroxide or sodium hydroxide. The latter two chemicals are used to convert GBL to GHB in a simple one-step chemical reaction. These sites sold GBL either separately or in "GHB kits." A kit contains premeasured amounts of GBL and potassium hydroxide or sodium hydroxide, as needed to produce GHB. GBL has been made available to anyone who desires it in quantities ranging from 75, 150, and 450 grams, to 55-gallon drums. Most DEA documented diversion or attempted diversion of GBL is in 500-gram, three-kilogram, one-gallon, three-gallon, five-gallon, and 55-gallon sizes. Usually, multiple containers are found at GHB manufacturing sites. However, because GBL has only recently been made a listed chemical and GHB a scheduled substance, law enforcement has only recently been involved with diversion of GBL and mostly concerned with large-scale diversion.

What Transactions of GBL Are of Concern?

GBL is an industrial chemical. Most GBL produced is consumed by the producer or transported in large quantities. DEA is concerned that GBL packaged in smaller individual containers is convenient to traffickers and higher risk of diversion. DEA is proposing to regulate containers that can be easily transported, stored, and generally dealt with in clandestine settings.

The largest size container identified by DEA, short of a tank-truck, is a 55-gallon (500-pound) drum. This size, as well as smaller sizes (see above), have been marketed to the public, used for conversion to GHB, and encountered in clandestine GHB laboratories. Therefore, to address diversion of GBL in 55-gallon and smaller containers, DEA is proposing that no threshold be established. However, because DEA is concerned with these smaller size containers and because large-scale industrial distributions of GBL by tank-truck and rail car containers have not, and are not, likely to be diverted this proposal includes an exemption for large container industrial distributions.

This notice proposes that large, single-container distributions of GBL are exempt from the definition of a regulated transaction. DEA identified approximately 16,330 kilograms as the smallest bulk size distribution in a single container. A tank-truck is used to transport that amount. Therefore, DEA

is proposing that distributions of GBL in single container shipments of 16,000 kilograms (35,200 pounds) (net weight) or more be excluded from the definition of a regulated transaction for domestic, import and export distributions. According to this proposal, transactions involving multiple containers each holding less than 16,000 kilograms are regulated, even if the aggregate weight is over 16,000 kilograms.

Why Is DEA Proposing This Rulemaking?

The purpose of this notice is to propose a zero threshold for distribution of GBL, to propose a regulatory exemption for large bulk transactions, and obtain comments on this approach. DEA is soliciting further information on the type and extent of transactions in GBL. This information is required to help minimize the potential impact on industry while maintaining necessary regulatory controls.

What Is a Threshold and Why Are Thresholds Used?

Transactions involving listed chemicals that are not exempt by statute (e.g. certain transactions in chemical mixtures) may be removed from the definition of "regulated transaction" (21 U.S.C. 802(39)) if regulation of such transactions is determined to be unnecessary for purposes of law enforcement. Two options for doing so include a categorical exemption under 21 U.S.C. 802(39)(A)(iii) or the establishment of a quality threshold under 21 U.S.C. 802(39)(A).

The CSA provides that the Attorney General may establish a threshold amount for each listed chemical. A threshold amount is established to determine whether a receipt, sale, importation or exportation within a calendar month or cumulative transactions by an individual within a calendar month are considered regulated transactions. If the transaction is considered a regulated transaction, recordkeeping and reporting requirements as specified in 21 CFR part 1310 apply.

Why Is DEA Proposing This Threshold?

Because GBL is easily converted to GHB, GBL is desired by persons not experienced in chemistry and finds its way into both household and traditional clandestine laboratory settings. That is, GBL is converted to GHB for "individual use" and by traffickers for wider distribution. Therefore, the control of GBL is necessary for relatively small quantities of GBL used to make "individual use" amounts of GHB.

DEA is proposing a zero threshold for domestic, import, and export transactions to capture all quantities of GBL that can be easily used in a clandestine laboratory. In addition, this chemical is efficiently converted to GHB when ingested. Therefore, the zero threshold is proposed to regulate distribution of a chemical that can be, and is, directly converted into and substituted for a Schedule I controlled substance.

DEA identified GBL in quantities as small as 75 grams being sold unconcernedly to the public by unscrupulous persons. If a threshold above zero is established for GBL, DEA believes that individuals will obtain GBL at a quantity below the established threshold, not only from legitimate distributors, but also from businesses that will cater to this market.

The DEA is aware that most businesses that manufacture and/or distribute GBL have recognized its abuse and attempted to prevent its diversion, even before the chemical became a regulated chemical. The GBL that is sold irresponsibly to the general public is not manufactured clandestinely. All GBL is produced by legitimate manufacturers. GBL diverted from legitimate and responsible companies has been identified at clandestine GHB laboratories and at sites where GBL is knowingly diverted. Chemical companies that are concerned about public safety still find it difficult to prevent diversion of their products. However, if records are kept for all transactions, and the buyer understands that the sale is reportable to DEA, persons who intend to use the chemical illegitimately will be discouraged from ordering.

What Is an Exemption and Why Are Exemptions Used?

In addition to setting quantity-based thresholds, DEA is authorized to remove certain categories of transactions from the definition of "regulated transactions." Under 21 U.S.C. 802(39)(A)(ii) the agency may, by regulation, exempt "any category of transaction of any category of transactions for a specific listed chemical or chemicals specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this subchapter or subchapter II of this chapter."

What Exemptions Is DEA Proposing and Why?

DEA is proposing to exempt large single container distributions of GBL based on industry's response to an

earlier solicitation of information. DEA published a request for information entitled "Industrial Uses and Handling of Gamma-butyrolactone; Solicitation of Information" in the **Federal Register** on October 23, 1998 (63 FR 56941) in anticipation that GBL may become a regulated chemical. Interested persons supplied DEA with pertinent information. Of the eight respondents, three were manufacturers, one a European business association, and four were end-users. There was no response from distributors of GBL, except that the three manufacturers also distribute.

Domestic manufacturers informed DEA that tens of thousands of tons are produced annually. Most GBL is consumed by the manufacturer or transported in net weight of tens of thousands of pounds. The smallest tank-truck size identified by DEA, from the response to the Federal Register request for information, is 16,330 kilograms (net weight). GBL shipped by tank-truck needs to be transferred to a holding container. This equipment implies shipment is made to an established industrial location having facilities able to handle large quantities of industrial chemicals. It is likely that the added difficulty, cost, equipment, and complexity in handling this type of large bulk shipment would deter diversion. Therefore, DEA is proposing to exempt shipments of 16,000 kilograms (35,200 pounds) (net weight) or more in a single container from the definition of a regulated transaction, pursuant to 21 U.S.C. 802(39)(A)(iii).

What Alternatives Has DEA Considered, and Why Were They Not Chosen?

As an alternative to the above exemption, DEA considered proposing a threshold of multiple quantity 55-gallon drums. However, DEA determined that while clandestine operations would have difficulty handling tank-truck shipments they will be able to divert smaller, self-contained receptacles of GBL, *i.e.*, containers of 55-gallons or less. Accordingly, DEA declined to propose a threshold of multiple quantity 55-gallon drums.

DEA also considered exempting smaller quantities of GBL, such as those below 75 grams. However, because these smaller quantities would be desirable to those who would manufacture "individual use" quantities of GHB, or consume the GBL without chemical conversion to GHB, DEA decided not to propose this exemption. Further, most legitimate GBL is distributed in larger quantities. Quantities of 75 grams and less is restricted mostly to chemical clearinghouses that supply researchers.

The amount of GBL distributed in these quantities is relatively small. The minimal regulatory relief from exemption of small quantity distributions in GBL, weighed against its diversion without fear of reprisal, convinced DEA not to propose small quantity exemptions.

Regulatory Certifications

Regulatory Flexibility, and Small Business Concerns

This NPRM will not have a significant economic impact on small business. Pub. L. 106-172 amended the CSA to make GBL a List I chemical effective February 18, 2000. Regulatory impact due to registration requirements were addressed in the Final Rule "Placement of gamma-butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802(34))" (65 FR 21645). In that final rule, DEA concluded that making GBL a List I chemical would not have a significant economic impact. That conclusion was based on an estimated number of new registrants and that all distributions in GBL are regulated. This NPRM does not add new regulatory controls. In fact, it proposes to eliminate some large-scale industrial transactions from the definition of "regulated transaction," thus granting additional relief to industry. DEA identified approximately 16,330 kilograms as the minimum amount available by tank-truck. DEA determined that clandestine operations will have difficulty handling tank-truck shipments but will be able to divert self-contained shipments of GBL, *i.e.*, containers of 55-gallons or less. Therefore, DEA is proposing to exempt tank-truck sized shipments (16,000 kilograms or more, net weight) from the requirements of this regulation.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Deputy Administrator has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. DEA has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and

3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Paperwork Reduction Act

This rulemaking imposes no recordkeeping or reporting requirements on registrants. No information collection request is necessary.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

List of Subjects in 21 CFR Part 1310

Drug traffic control, List I and List II chemicals, reporting requirements.

For the reasons set out above, 21 CFR part 1310 is proposed to be amended to read as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.04(g)(1) is proposed to be amended by adding a new paragraph to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * * *

(ii) Gamma-Butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; gamma-hydroxybutyric acid lactone)

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3. Section 1310.08 is proposed to be amended by adding a new paragraph (j) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(j) Domestic, import, and export distributions of gamma-butyrolactone weighing 16,000 kilograms (net weight) or more in a single container.

Dated: October 16, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01-26741 Filed 10-23-01; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-093-FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Enrolled Senate Bill 5003. The amendment provides for the creation of a special reclamation fund advisory council, and additional revenues for the West Virginia special

reclamation fund by increasing the special reclamation tax. The amendment is intended to improve the effectiveness of the West Virginia program and to revise the program to be consistent with SMCRA and the Federal regulations.

This document gives the times and locations that the West Virginia program and proposed amendment are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:30 p.m. (local time), on November 23, 2001. If requested, we will hold a public hearing or meeting on the amendment on November 19, 2001. We will accept requests to speak at the hearing until 4:30 p.m. (local time), on November 8, 2001.

ADDRESSES: You may mail or hand-deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347-7158. E-mail: chfo@osmre.gov.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0510. The proposed amendment will be posted at the Department's Internet page: <http://www.dep.state.wv.us>.

In addition, you may review copies of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291-4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston