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Wildfire Protection in the 108th Congress

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Wildfire Protection in the 108th Congress

SUMMARY

The 2000 and 2002 fire seasons were, by most standards, among the worst in the past 50 years. Many argue that the threat of severe wildfires has grown in recent years because of unnaturally high fuel loads (e.g., dense undergrowth and dead trees), raising concerns about damage to property and homes in the *wildland-urban interface* (WUI) — forests near or surrounding homes. Debates about fire control and protection, including funding and fuel treatments (e.g., thinning and prescribed burning), have focused on national forests and other federal lands, but nonfederal lands are also at risk.

Federal wildfire management funding rose dramatically after the severe 2000 fire season. In September 2000, President Clinton proposed a new National Fire Plan, requesting \$1.8 billion to supplement the \$1.1 billion originally requested for FY2001. Congress enacted most of this proposal and funding request, and support for expanded wildfire programs (excluding supplemental firefighting money) generally has continued.

On August 22, 2002, President Bush proposed the Healthy Forests Initiative. The initiative proposed changes to forest management laws, in part, to improve fire protection through fuel reduction. Several tools can reduce fuel loads — prescribed burning, thinning, and salvage and other timber cutting. Proponents of fuel reduction have expressed frustration with alleged project delays from environmental analyses of, and public participation in, federal agency decisions (primarily under the National Environmental Policy Act [NEPA]) and from administrative appeals and judicial reviews of decisions. Critics dispute these assertions and are concerned that speed-

ier action could allow environmentally damaging timber harvesting, without adequate environmental review and public oversight.

Wildfire protection bills were introduced in the 107th Congress; however, none was enacted. Issues addressed in various proposals included priorities for action (typically emphasizing the WUI, municipal watersheds, and areas with insect and disease problems and blown-down trees); the necessity of NEPA environmental analysis and other environmental protection; public involvement and collaboration in, and administrative and judicial review of, fuel reduction projects; and the magnitude and duration of the program.

Much of the attention in the 108th Congress has been on the Healthy Forests Restoration Act of 2003, H.R. 1904. This bill addresses many issues treated in the President's Initiative — priorities, NEPA analysis, and public involvement and review — but also includes titles allowing grants to use biomass, providing watershed forestry assistance, addressing insect infestations, and establishing private forest reserves. The bill passed the House on May 20, 2003, the Senate on October 30, and was signed into law (P.L. 108-148) on December 3, 2003.

On May 10, 2004, federal contracts for 33 large firefighting airtankers were cancelled over concerns about their airworthiness. On June 1, the agencies announced new contracts for additional firefighting aircraft to replace the grounded airtankers. Hearings have been held on wildfire preparedness and firefighting aircraft. Also, the House Interior Appropriations Subcommittee directed reprogramming \$54 million to hire additional firefighters.



MOST RECENT DEVELOPMENTS

On June 1, 2004, the Forest Service and Department of the Interior announced contracts for nearly 100 additional firefighting aircraft for the upcoming fire season. This offset the agencies' action on May 10, when they cancelled the contracts for 33 large firefighting airtankers, because of continuing concerns about their airworthiness. The House Resources Subcommittee on Forests and Forest Health held hearings on wildfire preparedness, emphasizing the airtanker contracts, on May 13, and the Senate Commerce Subcommittee on Aviation held hearings on airtanker management on June 2. Senate Energy and Natural Resources Committee hearings on the issue, scheduled for June 16, were cancelled.

On December 3, 2003, the President signed the Healthy Forests Restoration Act of 2003, P.L. 108-148. This act contains provisions to expedite authorized fuel reduction projects on FS and BLM lands, as well as several other titles for related programs.

A bill (H.R. 2696) to establish research institutes in the Southwest, to demonstrate adaptive management for western fire-adapted ecosystems, passed the House on February 24, 2004, and was reported by the Senate Committee on Energy and Natural Resources on March 29, 2004.

On July 22, 2004, the House and Senate approved the conference report (H.Rept. 108-622) on FY2005 DOD appropriations (H.R. 4613) with \$500 million in emergency FY2004 firefighting funds. On June 17, the House passed the Interior Appropriations Act (H.R. 4568) with \$3.02 billion of funds for the National Fire Plan for FY2005, including \$500 million for emergency firefighting funds (\$100 million for the BLM and \$400 million for the FS). This is \$551.5 million (22%) above the FY2005 budget request, and \$274.1 million (8%) less than FY2004 appropriations (\$3.29 billion), including enacted emergency funding of \$447.3 million and \$500.0 million of FY2004 emergency funding included in the FY2005 DOD appropriations act. Also, on May 14, 2004, the House Interior Appropriations Subcommittee Chair and Ranking Member, Charles Taylor and Norm Dicks, respectively, sent a letter to the Secretary of Agriculture directing a reprogramming of \$54 million from wildfire suppression to wildfire preparedness to hire additional firefighters for the 2004 fire season.

BACKGROUND AND ANALYSIS

Wildfires and efforts to halt the damage they cause have been the center of increased attention in recent years. The 2000 and 2002 fire seasons were, by most standards, among the worst in the past 50 years, and many argue that the threat of severe wildfires has grown in recent years, because many forests have unnaturally high fuel loads (e.g., dead trees and dense undergrowth) and a historically unnatural mix of plant species (e.g., exotic invaders or an understory of trees differing from the overstory). (For more information on these forest health problems, see CRS Report RS20822, *Forest Ecosystem Health: An Overview*, by Ross W. Gorte.) These higher threats have raised concerns about potential damage to homes that increasingly abut or are surrounded by forests — the *wildland-urban interface*, or WUI. (See CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*, by Ross W. Gorte.) The threats have led to debates over fire control and fire protection efforts, including

questions about funding levels and fire protection treatments (e.g., thinning and prescribed burning).

Debates about wildfire protection have focused on federal lands — especially the national forests administered by the USDA Forest Service (FS) and the lands administered by the Bureau of Land Management (BLM) and other Department of the Interior (DOI) agencies — since federal lands are subject to congressional authority. However, the threats are not limited to federal lands, and many lands in the WUI are privately owned.

Wildfire Funding. The severe 2000 fire season led President Clinton to propose, in September 2000, a new program of fire control, protection, and funding — the National Fire Plan. He requested an additional \$1.8 billion to supplement the \$1.1 billion for FY2001 wildfire management requested before the fire season began. Much of the funding was to pay for FY2000 firefighting, but money also was increased for fuel treatment, burned area restoration, assistance to affected communities, and preparation for future fire seasons. Congress largely enacted this proposal in the Interior Appropriations Act for FY2001 (P.L. 106-291).

President Bush's budget requests have proposed continuing most of the wildfire management programs expanded under President Clinton. Wildfire protection appropriations in FY2003 totaled more than \$2.8 billion (including supplemental appropriations), and many observers warn that the 2003 fire season could be as bad as or worse than 2002. (For background on wildfire funding, see CRS Report RS21544, *Wildfire Protection Funding*. For action on bills appropriating fire funds, see CRS Report RL31806, *Appropriations for FY2004: Interior and Related Agencies*.)

For FY2005, the House provided \$3.02 billion, including \$500 million for emergency firefighting funds (\$100 million for the BLM and \$400 million for the FS). This is \$551.5 million (22%) above the Administration's FY2005 budget request, and \$274.1 million (8%) less than FY2004 appropriations (\$3.29 billion), including enacted emergency funding of \$447.3 million and \$500.0 million of FY2004 emergency funding included in the FY2005 DOD appropriations act.

The FS and BLM wildland-fire line items include funds for fire suppression (fighting fires), preparedness (equipment, training, baseline personnel, prevention, and detection), and other operations (rehabilitation, fuel treatment, research, and state and private assistance). In addition, the FS has fire protection assistance programs funded under State and Private Forestry (S&PF). These programs provide assistance to states — financial and technical help for fire prevention, fire control, and prescribed fire use by state foresters — and through them, to other agencies and organizations, and also provide direct assistance to volunteer fire departments. Also, the 2002 farm bill (P.L. 107-171) created a community fire protection program to authorize the FS to act on nonfederal lands (with the consent of the landowner) and assist in protecting structures and communities from wildfires.

Fuel Reduction. The severe 2002 fire season prompted President Bush to propose a Healthy Forests Initiative, which aims to alter federal forest management laws to accelerate many of the existing procedures for reducing the fuel levels on federal lands. These proposals led to extensive discussions in the 107th Congress of the various fire protection programs, primarily fuel reduction, and of various viewpoints on limitations or difficulties

in their use. As legislation was not enacted in the 107th Congress, the discussions continued in the 108th Congress.

Several tools exist for reducing fuel loads. Prescribed burning — setting fires under prescribed weather and fuel conditions — can be effective for converting small fuels (grasses, needles or leaves, twigs) to minerals and to carbon dioxide and other gases, but prescribed fires produce large quantities of smoke and can be difficult to control. Salvage and other timber harvesting can reduce biomass from medium- and large-diameter trees, but the limbs and tree tops (*slash*) that are left after logging increase fuel loads, at least until the slash has rotted or been burned or removed. In addition, generally only sound trees of at least 6 inches in diameter can be sold for wood products, and thus commercial sales may be ineffective for removing small-diameter and low quality trees. Thinning, especially precommercial thinning (cutting trees with little or no commercial value), may be effective at reducing medium- and small-diameter trees, but also leaves behind slash, and is usually quite expensive.

These and other tools and techniques are commonly used in combination to achieve the desired goals (lower fuel loads, better water quality, etc.). A single tool might be sufficient for a particular site, but the variety of forest conditions suggests a coordinated program of relevant tools and techniques. The need to combine tools and the high cost of many tools has led some observers to propose a different approach: trading goods (timber) for services (other activities in the same area). This approach has been called goods-for-services contracting, land management service contracting, stewardship contracting, end-results contracting, and other terms. These contracts are largely modified timber sales, where the agency requires timber purchasers to perform other, typically related services (e.g., precommercial thinning), and in return they pay less for the timber. (See CRS Report RS20985, *Stewardship Contracting for the National Forests*, by Ross W. Gorte.) Authority for the FS and the BLM to use goods-for-services stewardship contracting through 2013 was enacted in §323 of Division F of the Consolidated Appropriations Resolution for FY2003 (P.L. 108-7).

The presence of unnaturally high fuel loads (dense undergrowth and dead trees) in many forests is widely presumed to be a significant factor in the apparently increasing severity of recent fire seasons. This leads to the logical conclusion that lowering fuel loads will reduce the extent, severity, and costs of wildfires, and many assert that reducing fuel loads is necessary to allow control of severe wildfires and to reduce the damage done by them. Critics of that conclusion contend that these recent severe fire seasons are the result of prolonged drought, combined with lightning to start fires and high winds to push them, and argue that lower fuel loads may have little effect on the extent and severity of wildfires. Critics also question the effectiveness of fuel treatment. Research has shown that treatments (including, but not limited to, reducing fuels) can protect individual structures. Also, many individual accounts, and some case studies, have shown that fuel reduction helps in controlling wildfires in certain situations. However, research documenting the effectiveness of broad-scale fuel reduction treatments for reducing the extent, severity, and control costs of wildfires is generally lacking.

Proponents of fuel reduction have expressed frustration with alleged project delays resulting from analyses of the environmental effects of proposed projects, from public involvement in agency planning and decision-making, and from administrative and judicial

challenges to agency decisions. The National Environmental Policy Act of 1969 (NEPA; P.L. 91-190, 42 U.S.C. §§4321-4347) requires federal agencies to assess the possible environmental effects of their actions and to involve the public in their decisions. The FS is also required by §322 (commonly known as the Forest Service Appeals Reform Act) of the 1993 Interior Appropriations Act (P.L. 102-381) to allow administrative appeals of most plans and decisions. (The DOI has different administrative review processes, but the processes have not been as controversial as the FS appeals process.) The agencies and certain interest groups see these laws as causing lengthy delays for projects seen as critical to protecting both wildlands and communities from wildfire, and propose eliminating or streamlining environmental studies, administrative reviews, and judicial review. Opponents contend that the reports of delays are exaggerated and that these laws are designed to protect the environment. They are also suspicious of Administration plans that could increase timber harvests for the industry and road construction into roadless areas while, they assert, reducing public input into decision-making.

The House-passed Interior appropriations act matches the President's FY2005 budget request for fuel reduction — \$475.5 million, a rise of \$58.1 million (14%) from FY2004 appropriations (\$417.4 million). The amount is substantially below the \$760.0 million authorized for fuel reduction in Title I of the Healthy Forests Restoration Act of 2003.

Firefighting Aircraft. On April 23, 2004, National Transportation Safety Board Chair Ellen Engleman Conners sent a letter to the FS, DOI, and FAA (Federal Aviation Administration) questioning the airworthiness of certain airtankers, because of in-flight structural failures, and recommending changes in maintenance and inspections. On May 10, the FS and DOI responded by cancelling the contracts for 33 large airtankers. The House Resources Subcommittee on Forests and Forest Health hearing scheduled for May 13 on wildfire preparedness shifted to emphasize the impact of the airtanker grounding on fire fighting in the upcoming fire season. The Senate Commerce Subcommittee on Aviation held a hearing specifically on firefighting airtankers on June 2. The previous day, the Bush Administration announced the acquisition (via contract) of 100 additional firefighting aircraft (small airtankers and helicopters) to replace the grounded airtankers.

Administrative Action. Because wildfire protection legislation was not enacted in the 107th Congress, the Bush Administration has made two administrative changes to facilitate fuel reduction by the FS and by DOI. The effect of both changes would be to expedite the authorized activities by reducing environmental review and/or public involvement.

One change is the addition of two new categories of actions to be excluded from NEPA analysis and documentation: fuel reduction and post-fire rehabilitation activities (68 *Federal Register* 33814, June 5, 2003). Categorically excluded mechanical fuel reduction (e.g., thinning) is limited to 1,000 acres and prescribed burning to 4,500 acres, and both are limited to the WUI or to certain hazardous condition classes and historic fire regimes. These categorical exclusions cannot be used in wilderness, or in wilderness study areas if doing so would impair the suitability of those areas for preservation as wilderness, or if "extraordinary circumstances" exist and the managers determine that the effects might be significant. Post-fire rehabilitation projects are limited to 4,200 acres and must be completed within three years after the wildfire. Fuel reduction and rehabilitation projects using herbicides or pesticides or involving new permanent road construction may not be categorically excluded,

but the exclusions may be used for projects that include timber sales if fuel reduction is the primary purpose.

The second change is the revision of the FS administrative appeals process (68 *Federal Register* 33582, June 4, 2003). Among the many changes is a clarification that some emergency actions may be implemented immediately and others may be implemented after complying with publication requirements. The proposal expands emergency situations to include those “that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed,” while deleting examples of emergency situations. It also would exclude notice and opportunity for the public to comment on or to appeal actions categorically excluded from NEPA, such as the fuel reduction activities discussed above.

These changes must be read in conjunction with other final and proposed regulatory changes to understand the potential consequences for fuel reduction, public involvement, and environmental impacts. New FS forest planning regulations were proposed on December 6, 2002 (67 *Federal Register* 72770), new procedures for the effect of extraordinary circumstances on categorical exclusions were finalized on August 23, 2002 (67 *Federal Register* 54622), and new categorical exclusions for small FS timber harvesting projects were finalized on July 29, 2003 (68 *Federal Register* 44598). The total impact of these proposals seems to be greater discretion for the Forest Service, and to a lesser extent for the BLM, to act without environmental studies and with fewer opportunities for the public to comment on or to administratively appeal those actions.

Legislative Activity in the 108th Congress. Most of the congressional attention on wildfire protection in the 108th Congress has been on the Healthy Forests Restoration Act of 2003, H.R. 1904. The bill, as passed by the House, contains many provisions to expedite authorized fuel reduction projects on FS and BLM lands, as well as several other titles for related programs. The version reported by the Senate Committee on Agriculture, Nutrition, and Forestry (S.Rept.108-121) was quite similar, but with modifications in many of the details. After the bill was reported, the Committee developed a compromise version that was offered as a substitute on the Senate floor; this new version passed the Senate on October 30, 2003, also quite similar, but with many differences in the details and with many additional sections. An agreement was reached resolving differences between the House- and Senate-passed versions, and the conference report (H.Rept. 108-386) was agreed to in the House and the Senate on November 21. The President signed P.L. 108-148 on December 3, 2003.

Title I of the law addresses hazardous fuel reduction on federal lands. It authorizes a new alternative process for reducing fuels on up to 20 million acres of national forests or BLM lands in or near the *wildland-urban interface* and municipal water supply systems, as well as certain endangered species habitats and areas affected by wind or ice storms or by insect or disease epidemics that threaten ecological health or natural resources. Priority is directed to protecting “at-risk communities” and municipal watersheds. Authorized projects must be consistent with land management plans and are generally to focus on small trees, thinning, fuel breaks, and prescribed burning while retaining large trees and maintaining old growth stands, but are prohibited on certain lands, such as wilderness areas. The law authorizes \$760 million annually for authorized projects and for any other fuel reduction activities, including grants to states, without allocating funds between authorized and other projects.

For authorized projects, the Forest Service or BLM must prepare NEPA documents, but are allowed to analyze a very limited number of alternatives. The public can be involved through scoping, collaboration, and multi-party monitoring of project impacts; the public also must be given a chance to comment on proposed projects. For Forest Service projects, the agency is to develop a new pre-decisional review process to supplant the existing administrative appeals process, and administrative reviews must be “exhausted” before litigation is allowed. Lawsuits must be filed in the district court for the area where the project is proposed, and courts are encouraged to review cases expeditiously. Preliminary injunctions are limited to 60 days, but can be renewed, and courts are directed to balance short- and long-term impacts of action and of inaction.

P.L. 104-148 contains five other titles, as well. Title II expands biomass research, authorizes a new biomass rural revitalization program, and authorizes grants for biomass use. Title III establishes a watershed forestry assistance program with cost-sharing assistance to landowners and financial and technical assistance to states and to tribal governments to protect water quality through forestry practices. Title IV authorizes data collection on forest-damaging insects and “applied silvicultural assessments” (treatments for research purposes) of up to 1,000 acres each (250,000 acres total) which are categorically excluded from NEPA, but with peer review and public notice and comment on each project. Title V authorizes a program of 10-year agreements or 30-year or long-term (up to 99-year) easements to pay willing private landowners to protect or restore their lands as habitat for endangered species. Finally, the one section in Title VI authorizes an “early warning system” for environmental threats primarily to eastern U.S. forests.

Other wildfire protection legislation has been introduced in the 108th Congress. Some of these measures (e.g., H.R. 387) are substantially the same as 107th Congress bills. (See CRS Report RL31679, *Wildfire Protection: Legislation in the 107th Congress and Issues in the 108th Congress*, by Ross W. Gorte.) Still others focus on narrow aspects of fire protection (e.g., firefighting equipment availability) or protecting private lands (e.g., H.R. 1042). Other comprehensive bills also have been introduced, notably H.R. 1621, S. 1314, H.R. 2639/S. 1352, S. 1449, and S. 1453. S. 1449 is similar to H.R. 1904. The others, although they have significant differences, would authorize or direct categorical exclusions from NEPA for fuel reduction projects on certain lands and under certain conditions over the next five years, with priority on the WUI and municipal water supply systems. S. 1314 also would authorize assessments of insect infestations, borrowing for fire suppression, and funding for wildfire risk reduction and burned area restoration on nonfederal lands, while limiting application of the competitive sourcing initiative. H.R. 2639/S. 1352 also would authorize biomass utilization grants, forest health inventory and monitoring, emergency fuel reduction grants to private landowners, and priority for assistance to communities with proactive steps to reduce fire risks. S. 1453 also would authorize specific forestry research, watershed forestry assistance, federal compensation for private forest reserves, and an economic assistance program for forest resource dependent communities.

LEGISLATION

P.L. 108-148, H.R. 1904

The Healthy Forests Restoration Act of 2003 authorizes expedited planning and review procedures for fuel reduction projects on federal lands, grants for biomass utilization, watershed forestry assistance, assessment and treatment of insect infestations, federal payments for a private forests reserve system, and monitoring of environmental threats to forests. Passed House May 20, 2003, and Senate, with an amendment in the nature of a substitute, October 31, 2003. Conference agreement (H.Rept. 108-386) agreed to by House and Senate November 21, 2003. Signed into law December 3, 2003.

H.R. 387 (Shadegg)

The Wildfire Prevention and Forest Health Protection Act authorizes FS Regional Foresters to exempt tree-thinning projects from any provision of law, and from administrative appeals and judicial review. Introduced January 27, 2003; referred to Committee on Agriculture and Committee on Resources.

H.R. 460 (Hayworth)/H.R. 2696 (Renzi)/S. 32 (Kyl)

The Wildfire Prevention Act of 2003/Southwest Forest Health and Wildfire Prevention Act of 2003 establishes Institutes to demonstrate and promote adaptive ecosystem management to reduce the risk of wildfires and restore healthy fire-adapted ecosystems in the West. S. 32 introduced January 7, 2003; Senate Committee on Energy and Natural Resources held hearings February 27, 2003 (S.Hrg. 108-10). H.R. 460 introduced January 29, 2003; referred to House Committee on Resources. H.R. 2696 introduced July 10, 2003; passed House February 24, 2004 and reported by Senate Committee on Energy and Natural Resources (S.Rept. 108-252) March 29, 2004.

H.R. 1042 (Udall, M.)

The Forest Restoration and Fire Risk Reduction Act authorizes a cooperative program for wildland fire hazard reduction and forest restoration on federal and other lands, with special procedures for projects meeting the specified conditions. Introduced February 27, 2003; referred to Committee on Agriculture and Committee on Resources.

H.R. 1621 (Miller, G.)

The Federal Lands Hazardous Fuels Reduction Act of 2003 authorizes expedited procedures for fuel reduction projects on certain federal lands over the next five years. Introduced April 3, 2003; referred to Committee on Agriculture and Committee on Resources.

H.R. 2639 (Hooley)/S. 1352 (Wyden)

The Community and Forest Protection Act authorizes expedited procedures for fuel reduction projects on certain federal lands over the next five years, biomass utilization grants, forest health inventory and monitoring, emergency fuel reduction grants, and assistance to communities with proactive steps for fire protection. Both introduced June 26, 2003; H.R. 2639 referred to House Committee on Agriculture and House Committee on Resources, and S. 1352 referred to Senate Committee on Agriculture, Nutrition, and Forestry. Senate Committee on Energy and Natural Resources held hearings on S. 1352 July 22, 2003.

S. 1314 (Bingaman)

The Collaborative Forest Health Act authorizes expedited procedures for certain fuel reduction projects over the next five years, assessment of insect infestations, borrowing for fire suppression, limits on competitive sourcing, and funding for wildfire protection and rehabilitation of nonfederal lands. Introduced on June 23, 2003. Senate Committee on Energy and Natural Resources held hearings July 22, 2003.

S. 1449 (Crapo)

America's Healthy Forest Restoration and Research Act authorizes expedited planning and review procedures for fuel reduction projects on federal lands; grants for biomass use; watershed forestry assistance; research on insect infestations, forest threats, biomass use, and economic development and treatment of insect infestations; federal payments for private forest reserves; and a program for controlling invasive plants. Introduced July 23, 2003; referred to Committee on Agriculture, Nutrition, and Forestry.

S. 1453 (Leahy)

Forestry and Community Assistance Act of 2003 authorizes expedited procedures for certain fuel reduction projects over five years, research on forest health protection, watershed forestry assistance, federal payments for private forest reserves, and assistance for rural communities dependent on natural resources. Introduced July 23, 2003; referred to Committee on Agriculture, Nutrition, and Forestry.

FOR ADDITIONAL READING

CRS Report RL30755. *Forest Fire/Wildfire Protection*, by Ross W. Gorte.

CRS Report RS21544. *Wildfire Protection Funding*, by Ross W. Gorte.

CRS Report RS21880. *Wildfire Protection in the Wildland-Urban Interface*, by Ross W. Gorte.

CRS Report RS20822. *Forest Ecosystem Health: An Overview*, by Ross W. Gorte.

CRS Report RL32306. *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren.

CRS Issue Brief IB10076. *Public (BLM) Lands and National Forests*, coordinated by Ross W. Gorte and Carol Hardy Vincent.

CRS Report RL31679. *Wildfire Protection: Legislation in the 107th Congress and Issues in the 108th Congress*, by Ross W. Gorte.

CRS Congressional Distribution Memorandum. *The Healthy Forests Restoration Act of 2003*, by Ross W. Gorte (January 5, 2004).