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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 89G-0384]

Direct Food Substances Affirmed as Generally Recognized as Safe; Chymosin Enzyme Preparation Derived From Aspergillus Niger Van Tieghem Variety Awamori (Nakazawa) Al-Musallam

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that the use of chymosin preparation derived by fermentation from genetically modified *Aspergillus niger* van Tieghem variety *awamori* (Nakazawa) Al-Musallam (*A. niger* var. *awamori*) is generally recognized as safe (GRAS). This action is in response to a petition filed by Genencor, Inc., now Genencor International, Inc.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Vincent E. Zenger, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9523.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), Genencor International, Inc. (Genencor), previously known as Genencor, Inc., 180 Kimball Way, South San Francisco, CA 94080, submitted a petition (GRASP 9G0352) requesting that its chymosin preparation (referred to as "chymosin" in the notice of filing of the Genencor petition that FDA published in the Federal Register of October 4, 1989 (54 FR 40910)) be affirmed as GRAS as a direct human food ingredient. Genencor's chymosin preparation is derived from the fermentation of genetically modified *A. niger* var. *awamori*. Chymosin is the principal enzyme in rennet, a GRAS food ingredient that is used for its milk-clotting activity and that is primarily responsible for that activity. Chymosin preparation is intended for use as a substitute for rennet.

To avoid confusion between chymosin, the enzyme, and the chymosin-containing enzyme preparation (in which chymosin is the principal active component, but which may also contain impurities), this document will henceforth use the terms "chymosin" to refer to the enzyme and "chymosin preparation" to refer to the fermentation-derived chymosin enzyme preparation.

In the October 4, 1989, notice of filing, FDA gave interested parties an opportunity to submit comments concerning the subject chymosin preparation to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. FDA received three comments in response to the notice of filing. One of the comments offered a general opinion on the regulation of biotechnology-derived food ingredients, and the second expressed support for approval of the petition. Neither of these comments contained information relevant to the safety, functionality, environmental impact, or GRAS status of the food use of the chymosin preparation. The third comment, however, raised two issues that concern the evaluation of the chymosin preparation: (1) Whether the petitioner has incorrectly identified the host organism *A. niger* var. *awamori*; and (2) whether, because 10 percent of Genencor's chymosin is glycosylated, the safety of the glycosylated material itself must be evaluated on its own merit. The agency's evaluation of these issues is discussed later in this document.

II. Standards For GRAS Affirmation

Pursuant to § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances. The basis of such views may be either: (1) Scientific procedures; or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). As shown below, FDA has evaluated Genencor's petition on the basis of scientific procedures to establish that the petitioned chymosin preparation is GRAS.

Rennet is an animal-derived enzyme preparation that is GRAS as specified in § 184.1685 (21 CFR 184.1685). Therefore, if published information shows that the principal active component of the chymosin preparation is the same as that of rennet, and that the other components (i.e., impurities) of the chymosin preparation, which may differ from the other components (i.e., impurities) of rennet, do not render the use of the substance unsafe, then the chymosin preparation derived from *A. niger* var. *awamori* would present no more safety concern than rennet. In such circumstances, FDA can affirm the chymosin preparation derived from *A. niger* var. *awamori* as GRAS for use as a replacement for rennet.

III. Safety

A. Introduction

Chymosin, also known as rennin, is the principal milk-clotting enzyme present in rennet (Ref. 1). Rennet is an enzyme preparation that will clot milk, forming it into curds and whey (Refs. 1 and 2). It is used to make cheese and other dairy products. Rennet has a long and extensive history of safe use in food and has been affirmed by FDA as GRAS in § 184.1685 (48 FR 51151, November 7, 1983).

Food-grade rennet is an enzyme preparation that is isolated from the fourth stomach of calves, kids, or lambs. Commercially, it is generally derived by aqueous extraction from the fourth stomach of unweaned calves. The aqueous extraction step is followed by purification steps and an acidification step to cleave prochymosin (the inactive

precursor of chymosin) in rennet into chymosin (Ref. 1).

There are two predominant forms of calf chymosin, chymosin A and chymosin B (Ref. 1). Foltmann et al. have shown that chymosin A and chymosin B differ by a single amino acid (Ref. 3). In this document, the term "chymosin" refers to either, or both, chymosin A and chymosin B.

Techniques developed in the early 1970's (frequently termed "recombinant DNA technology" or "cloning techniques") enable scientists to locate and to obtain a segment of deoxyribonucleic acid (DNA) containing a gene of interest. Scientists are also able to move that DNA segment into a vector (a DNA molecule that is easy to manipulate) and then introduce that segment into a new host organism where the segment can be correctly expressed (that is, produce the protein that it would have produced in the original organism). These techniques are well-known to molecular biologists (Refs. 4 and 5).

B. The Chymosin Component

Using cloning techniques, scientists in a number of different laboratories have identified the gene in the calf from which the chymosin in rennet is produced, i.e., the prochymosin gene (Refs. 6 through 8). Scientists have moved the calf prochymosin gene into *A. niger* var. *awamori* (Refs. 9 through 12) as well as into other microorganisms (Refs. 6 through 8 and 13 through 17).

These scientists have used a variety of techniques to demonstrate that they have cloned full-length copies of the correct gene. Such techniques include: (1) DNA sequencing, whereby the cloned putative prochymosin gene was shown to have the nucleotide sequence that encodes the amino acid sequence of prochymosin (Refs. 6 through 8); (2) nucleic acid hybridization, whereby the cloned DNA fragments or the ribonucleic acid (RNA) molecules transcribed from the DNA fragments were shown to hybridize (i.e., specifically bind) with complementary DNA in the prochymosin gene (Refs. 7, 8, and 13 through 16); and (3) physical mapping, whereby the cloned DNA segments were shown to be large enough to contain the prochymosin gene and, when digested with appropriate DNA-cutting enzymes and the resulting DNA fragments separated by size, were shown to yield the pattern of DNA fragments expected for the prochymosin gene (Refs. 7, 8, and 13 through 17).

The published evidence establishes that the new host organisms are able to use the prochymosin gene to produce prochymosin that has the same molecular weight as prochymosin found in calf rennet (Refs. 11 through 15 and 17 through 19). This evidence also establishes that the prochymosin that is produced (cloned prochymosin) can be cleaved into chymosin (cloned chymosin) that has the same molecular weight and the same functional activity as chymosin found in calf rennet (Refs. 11, 13, 14, and 16 through 19).

A number of techniques have been used to demonstrate that the chymosin produced by *A. niger* var. *awamori* is equivalent to calf chymosin, including: (1) Reaction with antibodies to calf chymosin, (2) amino acid composition analysis, (3) amino acid sequencing, and (4) specific activity determination (Refs. 9 through 12). The molecular weight of chymosin was determined, using sodium dodecyl sulfate polyacrylamide gel electrophoresis and tricine-sodium dodecyl sulfate polyacrylamide gel electrophoresis, techniques that enable one to determine the comparative molecular weight of proteins, based on their rate of migration through the gels. Cloned chymosin was found to migrate through these gels at the same rate as the chymosin found in rennet (Refs. 9 and 11), except for a minor band representing 10 percent of the molecules that are glycosylated (see discussion below) and that have a slightly higher molecular weight.

The functional activity of chymosin that was measured was milk-clotting activity. Cloned chymosin was found to clot milk at the same rate as the chymosin in rennet under various temperatures, salt concentrations, and pH conditions (Refs. 11 and 13 through 21).

One of the comments FDA received in response to the **Federal Register** notice announcing the filing of the GRAS petition (54 FR 40910) questioned whether the fact that about 10 percent of chymosin produced by *A. niger* var. *awamori* is glycosylated presents any threat to human safety. The comment urged FDA to give careful consideration to the glycosylation issue. However, the comment did not present any information on the nature of any adverse effect that might result from the ingestion of a small amount of this glycosylated enzyme. In fact, a variety of proteins, including many glycosylated protein enzymes, are present in foods that have been safely consumed for many years (Ref. 22 through 24). For example, chymosin derived from lamb, which has been affirmed as GRAS (§ 184.1685), is a glycosylated enzyme (Ref. 25), as are other milk-clotting enzymes listed in FDA regulations (§ 173.150). Therefore, the agency finds that glycosylation of a small proportion of an enzyme does not per se raise any safety concerns. Such a conclusion is consistent with current scientific thinking that enzymes that are substantially similar to proteins known to be safely consumed (including minor variations in structure such as glycosylation) do not raise new safety concerns (see, for example, Ref. 26).

Based on the fact that published information demonstrates that chymosin produced from the cloned chymosin gene has the same molecular weight and the same functional activity as the chymosin derived from calves, FDA concludes that the chymosin enzyme in the chymosin preparation is equivalent to the chymosin enzyme in calf rennet. Therefore, FDA concludes that the chymosin enzyme in the chymosin preparation is as safe as the chymosin enzyme in rennet.

Moreover, corroborative evidence of the safety of the petitioned chymosin enzyme preparation, including glycosylated chymosin, is provided by the results of a feeding study conducted by the petitioner. In that study, described later in this document, no adverse effects attributable to consumption of the enzyme preparation were noted.

C. Sources of Impurities

Enzyme preparations used in food processing are usually not chemically pure, but contain extraneous source (cellular) and processing material. The nature and amounts of these materials in the finished enzyme preparation depend on the organism from which the enzyme is produced (i.e., the source or production organism), the fermentation materials and methods used to grow the production organism, and the materials and methods used to generate the finished enzyme preparation.

Both the source material and the manufacturing methods for producing the chymosin preparation differ from those used to produce animal rennet. Therefore, the impurities in the chymosin preparation will differ from those in rennet. The question thus is whether the source material or manufacturing methods for the chymosin preparation will introduce impurities that would raise concerns about the safety of the preparation.

1. Processing steps

Researchers in several laboratories have published papers containing descriptions of methods that they used for producing chymosin preparations from microorganisms containing the calf prochymosin gene (Refs. 13 through 19 and 27 through 30). The enzyme that is the subject of this petition is secreted

from the production organism during fermentation and, therefore, is an extracellular enzyme product. Thus, it is not necessary to disrupt the cells to recover the enzyme. Extracellular enzymes account for approximately three-fourths of the market for fermentation-derived enzymes, and the techniques for their production and processing are well-known (Refs. 31 and 32). The processing methods developed by Genencor and described in this petition and in the published literature (Refs. 29 and 30) do not differ in any significant way from the published methods generally used to produce extracellular enzymes. The key steps described by Genencor are summarized below.

A. niger var. *awamori* is grown in liquid nutrient medium until the desired activity of chymosin is reached. The broth is then treated with acid to interrupt the fermentation and kill the cells of the production organism. The acid treatment step also degrades any DNA which may be present in the broth. The broth is filtered, which removes the cell material from the chymosin-containing filtrate. Chymosin is then recovered from the filtrate, using one of two methods. In one method, the filtrate is passed through a chromatography column. Chymosin binds to the chromatographic resin while impurities pass through the column. Chymosin is then eluted from the column with an appropriate solution. In another method, chymosin is extracted from the filtrate and purified by ion exchange chromatography. Chymosin recovered by either method is formulated to the desired strength and sterilized by filtration.

FDA finds that the manufacturing method described does not require the use of any processing materials that are not GRAS or are not approved food additives. Accordingly, the agency is specifying in the amended regulation that the substance being affirmed as GRAS is one that is produced using only processing materials that are GRAS substances or food additives approved for use in this type of process.

Therefore, the agency concludes that the manufacturing steps will not introduce impurities into the enzyme preparation that will adversely affect the safety of the preparation.

2. Production organism

The petitioner presented information that the source for the chymosin enzyme preparation that is the subject of this petition is the production organism "*Aspergillus niger* var. *awamori*." The full proper name of this organism is *Aspergillus niger* van Tieghem variety *awamori* (Nakazawa) Al-Musallam. To identify clearly the source organism that has been evaluated in this review, the agency will use the full proper name in the regulation set forth below. However, for simplicity, the organism is referred to as *A. niger* var. *awamori* in the preamble of this document. The agency notes that the organism is also referred to as *Aspergillus awamori* Nakazawa (*Aspergillus awamori*).

One of the comments received in response to the filing notice stated that the name *A. niger* var. *awamori* incorrectly identifies the production organism. The comment contended that characterizing the production organism as a variety of *A. niger* implies that the production organism has a history of safe use in producing enzymes for use in food, when in fact it should be characterized as a distinct species, *A. awamori*, which species has no such history.

FDA notes that it is relying on scientific procedures, and not on history of safe use, as a basis for affirming the general recognition of safety of Genencor's chymosin preparation. In reviewing the petition, FDA evaluated whether the production organism is adequately identified and whether the scientific information that supports safety pertains to the production organism. In its evaluation, FDA relied on information that refers to the production organism and did not rely on information regarding other members of the genus *Aspergillus*.

The taxonomic placement and name of an organism may change as a result of scientific advances. This is especially true for organisms such as *A. niger* var. *awamori* whose taxonomic placement is based on highly variable characteristics such as colony color (Refs. 33 and 34). If internationally accepted rules of nomenclature are followed, changes in the taxonomic placement of an organism should not affect the ability to identify scientific references to the organism of interest, including scientific references to its toxigenicity, pathogenicity, or use in the production of food or enzymes.

The production organism for this enzyme preparation is a fungus. FDA notes that the proper naming of fungi should follow the internationally accepted rules of nomenclature used for plants (Ref. 36). Proper scientific reference to a fungal species is done with its Latin binomial, representing the genus in which the species has been placed and the specific epithet; the name the Latin binomial of the author who introduced the specific epithet should follow. If a species has been moved in its taxonomic placement, the Latin binomial may be followed by the name of the author who made the original type description in parenthesis, followed by the name of the author of the current combination of generic and specific epithet. Proper use of nomenclature allows references to a particular organism to be followed historically in the scientific literature.

The organism referred to by the petitioner as *A. niger* var. *awamori* was first described in 1907 and was named *Aspergillus awamori* Nakazawa. Since the original description, authoritative texts have continued to refer to *A. awamori* as a distinct species (Refs. 36 through 38). However, this organism, along with many others in the genus *Aspergillus*, has been reclassified. A monograph on the taxonomy of the black *Aspergilli* was published in 1980. In that monograph, based on an analysis of 28 taxonomic characteristics, Al-Musallam (Ref. 33) reclassified the production organism as *Aspergillus niger* van Tieghem variety *awamori* (Nakazawa) Al-Musallam. More recent molecular analytical approaches to taxonomy, including DNA restriction fragment length polymorphism analysis, have confirmed this taxonomic placement (Refs. 34 and 39). Genencor also submitted evidence that this taxonomic placement is recognized by experts in the field (Ref. 40).

In evaluating published information, FDA recognized that prior to 1980, the production organism was referred to as *A. awamori* and occasionally as *A. niger* type *awamori*, and that literature published prior to 1980 uses these names when referring to the production organism. Literature published after 1980 may refer to the production organism as *A. niger* var. *awamori* or one of its synonyms, for example, *A. awamori* Nakazawa. Based on an analysis of the data submitted, FDA finds sufficient evidence to support the identification of the petitioner's production organism as *Aspergillus niger* van Tieghem variety *awamori* (Nakazawa) Al-Musallam (synonym *Aspergillus awamori* Nakazawa), and further concludes that the references relied on by the agency pertain to the production organism.

The petitioner provided published information documenting that the production organism has been safely used in a variety of food and food enzyme applications. These data provide a context for FDA's safety evaluation, and are useful in determining what quantity of data are necessary to establish the safety of the organism. *A. niger* var. *awamori* (referred to in these references as *A. awamori*) has been identified and isolated from the starter cultures used to

produce several types of fermented rice alcoholic products (Refs. 38 and 41 through 47) and has also been used in making other fermented food products. Reed (Ref. 48) reports its use in sorghum fermentations and in brewing. It is cited in patents for making Worcester sauce (Ref. 43) and making "mirin," which can be used as a seasoning or dark liquor (Ref. 44). It has also been referenced as the production organism for citric acid produced by fermentation (Refs. 49 and 50).

There are numerous references in the literature to the use of *A. niger* var. *awamori* as the source organism for production of a variety of enzymes, including glucoamylase (Ref. 51) and α-amylase (Ref. 48). For example, Raper and Fennell (Ref. 36) cite two uses of *A. niger* var. *awamori* for enzyme production; one of these was reported by Komaki in 1956 to 1957 as a source of amylase used for the production of glucose from starch, under the synonym *A. usamii*, and the other was reported by Feniksova and Shilova in 1960 as a source of enzymes for production of glucose syrup from starch. Hiram Walker's patent for production of distiller's yeast (Ref. 52) cites the use of glucoamylase from *A. niger* var. *awamori* in treating grain mash. Hiram Walker deposited this strain with the Agricultural Research Station Culture Collection, Northern Regional Research Laboratory (NRRL) where it was listed as *Aspergillus awamori* strain NRRL 3112. This strain is the source organism for a commercial glucoamylase sold since 1963 (Ref. 53). This same strain, NRRL 3112, is also the strain Genencor genetically manipulated to create the final production organism.

The petitioner provided several published animal studies supporting the organism's safety. Semeniuk et al., (Ref. 54) studied the toxigenicity of 392 strains of *Aspergillus* obtained from the Agricultural Research Station Culture Collection of NRRL. The strains studied included three different strains of *A. niger* var. *awamori*. The investigators fed each strain to chicks and mice for 4 weeks. While some of the 392 *Aspergillus* strains they tested were found to be toxic, all three of the *A. niger* var. *awamori* strains were found to be nontoxic. In addition, Bogoroditskaya and Dyubyuk (Ref. 55) reported that amyloprotease prepared from *A. niger* var. *awamori* was nontoxic when administered orally in acute doses of up to 5 grams per kilogram to mice and guinea pigs.

Species of the *A. niger* group are not considered to be of primary significance in the cause of disease (Refs. 56 through 59). During the period 1946 to 1965, however, reports appeared in which organisms identified as *A. niger* var. *awamori* were isolated from several infected postoperative wounds and ear lesions (Ref. 56). There is general agreement that reduced host resistance is required in order for the fungal infection to become established (Refs. 56 through 58), and in many cases there is doubt as to whether *A. niger* var. *awamori* was the causative agent of the infection (Ref. 58). None of the cases of infection was the result of ingestion of *A. niger* var. *awamori*. Moreover, the processing steps described above, including acid treatment and filtration, remove any viable cells of the production organism from the final product, which eliminates the possibility that ingestion of *A. niger* var. *awamori* would result in a fungal infection.

As corroborative evidence of the safety of chymosin preparation and of the host organism, Genencor submitted the results of several unpublished studies. These included several in vivo studies and one in vitro study on its chymosin enzyme preparation. An unpublished acute oral pathogenicity study conducted in mice using both the host organism and the actual production strain of the host organism demonstrated both were nonpathogenic. An in vitro study was done using several lots of the chymosin enzyme preparation to assess its potential to be clastogenic (i.e., cause chromosomal aberrations) in Chinese hamster ovary cells. The chymosin enzyme preparation was negative for in vitro clastogenicity in this study. In a 13-week in vivo feeding study, no significant adverse effects were observed in the rats fed the chymosin enzyme preparation.

The petitioner also provided two studies that were conducted to test the chymosin enzyme preparation as an irritant. An eye irritation study in rabbits was conducted with the chymosin enzyme preparation. The preparation was an apparent mild irritant; however, all ocular irritation of the treated eyes subsided by 24 hours after treatment. Such a result is not unexpected or relevant to ingestion of the chymosin enzyme preparation. A primary dermal irritation study conducted in rabbits demonstrated that the enzyme preparation was not an irritant. Except for being found to be a minimal irritant in the eye irritation study, the results of the two tests were negative.

In another study, the potential of the enzyme preparation to cause delayed contact hypersensitivity was tested in guinea pigs. In this 3-week study, the response of the test animals to the enzyme preparation was no greater than the response to the control material. The authors concluded that the chymosin enzyme preparation did not induce sensitization in guinea pigs under the conditions of the study.

One potential safety concern raised by cloning is whether extraneous DNA (particularly DNA flanking the gene of interest that could encode proteins of unknown safety) may be cloned along with the gene of interest (i.e., that producing prochymosin) and contaminate the enzyme preparation. As a matter of current good manufacturing practice, manufacturers using recombinant DNA technology should ensure that they have not inadvertently cloned extraneous protein-encoding DNA along with the prochymosin gene. Such assurance can come from reviewing the details of the cloning steps, such as the origin and sequence of the DNA fragments used in the cloning, and from full characterization of the final genetic constructs via techniques such as DNA sequencing. Genencor's petition contains information demonstrating that the company conducted these steps.

For example, the *A. niger* var. *awamori* strains that are used by Genencor (Refs. 9 through 11) to produce the chymosin preparation contain marker genes that encode resistance to a clinically useful antibiotic. The agency evaluated whether these genes could be transferred to other microorganisms with which the production strain or its DNA comes into contact, causing proliferation of antibiotic resistance. As previously described, the isolation of the enzyme includes an acid treatment step that results in the destruction of residual cells and the degradation of residual DNA, including marker genes (Ref. 60).

As corroborative evidence that the enzyme preparation does not contain gene-sized DNA fragments or transformable DNA (that is, DNA that a microorganism can take up from its surroundings and functionally incorporate into its own DNA), Genencor submitted data from several unpublished experiments, including a DNA extraction/Southern blot assay and a transformation assay. The results of the DNA extraction/Southern blot assay showed that no plasmid sequences, including the antibiotic resistance marker, were present in the product. In the transformation assay, bacterial cells were mixed with the enzyme preparation under optimized conditions and assayed to see if they had picked up DNA encoding antibiotic resistance. The cells did not become resistant to the

antibiotic. Based on the facts discussed above, FDA concludes that chymosin preparation manufactured in conformity with § 184.1685(a)(3) will not contain DNA encoding resistance to antibiotics at levels that would produce any safety concern.

Moreover, the regulation stipulates that the substance being affirmed as GRAS is one that is produced using a production strain that is nontoxigenic (see § 184.1685(a)(4)). If the cloned DNA were to encode a harmful substance that could render the enzyme preparation unsafe, the production strain would be toxigenic; in such circumstances, the chymosin preparation would not be GRAS under § 184.1685(a)(4). Therefore, the agency finds that there is no basis for concern that the safety of the chymosin preparation will be compromised by contaminating proteins encoded by extraneous uncharacterized DNA cloned along with the prochymosin gene.

Having considered the evidence concerning the production organism and the processing steps to derive the chymosin preparation, FDA concludes that *A. niger* var. *awamori* is safe for use as a source of food-grade chymosin preparations, and that impurities resulting from its use in the production of chymosin preparation will not affect the safety of the chymosin preparation.

IV. Specifications

The agency finds that, because the principal active ingredient of the chymosin preparation and rennet are the same, and because the potential impurities in the chymosin preparation that may originate from the source organism or manufacturing process do not provide any basis for concern about the safe use of the preparation, the current requirements given for chymosin preparations in § 184.1685(b) are adequate for defining the minimum criteria for a food-grade chymosin preparation derived from *A. niger* var. *awamori*.

V. Conclusion

The agency has evaluated all available information and finds, based upon the published and corroborative evidence discussed above, that the principal active ingredient in the chymosin preparation is the same as that in rennet, and that when the preparation is manufactured in accordance with § 184.1685(a)(4), the source organism and manufacturing process will not introduce impurities into the preparation that may render the use of the preparation unsafe. Therefore, the agency concludes, based upon scientific procedures, that the chymosin preparation derived by fermentation from *A. niger* var. *awamori* and described in the regulation set out below is GRAS for use as a replacement for rennet.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Economic Effects

FDA has examined the economic implications of the final rule affirming the GRAS status of chymosin enzyme preparation derived from *A. niger* var. *awamori* as a direct human ingredient, as required by Executive Order 12291 and 12612 and the Regulatory Flexibility Act (Pub. L. 96–54). Executive Order 12291 compels agencies to use cost-benefit analysis when making decisions and Executive Order 12612 requires Federal agencies to ensure that Federal solutions, rather than State or local solutions, are necessary. Pub. L. 96–54 requires regulatory relief for small businesses where feasible. The agency finds that this final rule is not a major rule as defined by Executive Order 12291. In accordance with Pub. L. 96–54, FDA has also determined that this final rule will not have a significant adverse impact on a substantial number of small business. Finally, because this regulation applies to food for interstate trade and individual State regulations would hinder interstate trade, FDA finds that there is no substantial federalism issue which would require an analysis under Executive Order 12612.

Because no current activity is prohibited by this final rule, it will not result in any compliance cost to firms. Also, because no increase in the health risks faced by consumers will result from this final rule, no compliance costs will result. Potential benefits include the wider use of this enzyme because of reduced uncertainty concerning its GRAS status and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this enzyme from this source organism.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects in 21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 184.1685 is amended by adding new paragraph (a)(4) to read as follows:

§ 184.1685 Rennet (animal-derived) and chymosin preparation (fermentation-derived).

(a) * * *

(4) Chymosin preparation is a clear solution containing the active enzyme chymosin (E.C. 3.4.23.4). It is derived, via fermentation, from a nonpathogenic and nontoxigenic strain of *Aspergillus*

niger van Tieghem variety *awamori* (Nakazawa) Al-Musallam (synonym *A. awamori* Nakazawa) containing the prochymosin gene. Chymosin is recovered from the fermentation broth after acid treatment. All materials used in the processing and formulating of chymosin preparation must be either generally recognized as safe (GRAS) or be food additives that have been approved by the Food and Drug Administration for this use.

* * * * *

Dated: April 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-10760 Filed 5-6-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 401

RIN 1028-AA03

State Water Research Institute Program

AGENCY: U.S. Geological Survey, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Geological Survey (USGS) is amending the procedures used to evaluate the State Water Research Institutes to implement the changes to the Water Resources Research Act of 1984. This action is intended to reduce costs associated with the evaluation process for both the USGS and the institutes. The USGS is also removing references to obsolete documents, revising and clarifying the requirements for new institutes, revising the requirements for expenditure of unobligated funds, and making other minor changes to bring the regulation in compliance with the amended Act.

EFFECTIVE DATE: June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Allen Ford, Office of External Research, U.S. Geological Survey, Water Resources Division, 424 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, (703) 648-6806.

SUPPLEMENTARY INFORMATION:

Background

The State Water Research Institutes authorized by the Water Resources Research Act of 1984 (Pub. L. 98-242, 98 Stat. 97) and reauthorized by Water Research Institutes Authorization Through Fiscal Year 1994 (Pub. L. 101-397, 104 Stat. 852) support research, education, and information transfer activities. The 54 institutes in the program are administered and periodically evaluated under the provisions of 30 CFR part 401, adopted in May 1985. The reauthorization amended several provisions of the Water Resources Research Act of 1984, and the USGS is accordingly making minor revisions to the rule guiding the administration and evaluation of the institutes.

The former rule guiding the evaluation of the institutes required that five person teams visit each of the 54 institutes at least once every 5 years. The USGS has made minor revisions to the rule pertaining to institute evaluations by amending subpart E of 30 CFR 401.26 which describes the procedures used to evaluate the State Water Research Institutes. The reauthorization amends section 104(e) of the Water Resources Research Act of 1984 to give the Secretary of the Interior more discretion in the evaluation process. This action revises the rule pertaining to institute evaluations such that: The size of the evaluation team is decreased and its composition changed; the evaluation team will visit only those institutes it considers, on the basis of submitted documentation, to be potential candidates for probation; the composition of the evaluation team is changed; the evaluation team will consider only those institute activities funded under section 104 of the Water Resources Research Act of 1984; evaluation criteria not directly related to performance of the institutes is eliminated; the evaluation team is allowed more time to submit a written report of its findings. The changes will: lower the cost of the evaluation process to both the granting agency and the institutes by minimizing the number of institute site visits; permit greater consistency in the evaluation process by using, to the extent possible, only one evaluation team for all institutes; and base the evaluation only on demonstrated performance in the use of section 104 grants.

Section 401.11(a) of the rule requires that, if the full amount of the available grant funds for any fiscal year has not been requested as of the closing date for receipt of applications, any remaining funds shall be made available to the institutes for amended applications. The USGS is revising this section to state that any such remaining funds be made available to support competitively selected research projects under the terms of section 104(g) of the Act, as required by the reauthorization.

The USGS is amending section 401.11(g) to state that Federal funds received by the institutes shall be matched on a basis of no less than two non-Federal dollars for each Federal dollar, as required by the reauthorization, unless the grant is exempt under the provisions of 48 U.S.C. 1469a(d) as amended.

The USGS is amending section 401.12(c) to remove references to obsolete documents and add references to new documents guiding the institutes' administration of the grants received under section 104 of the Act.

Response to Public Comment

Two comments were received in response to the proposed rule as published in the **Federal Register** (57 FR 59941) on December 17, 1992. A discussion of the comments follows:

Comment: The existing rule (30 CFR 401.3) defines "State" to include the Trust Territory of the Pacific Islands. Pub. L. 101-397 amended the Water Resources Research Act of 1984 by changing "Trust Territory of the Pacific Islands" to "Federated States of Micronesia," and the language of the rule should be changed accordingly.

Response: The language of section 401.3 has been modified to adopt the suggested change.

Comment: The proposed revision to section 401.11(g) states that the Federal funds are to be matched on a basis of no less than two non-Federal dollars for each Federal dollar. Guam, the Federated States of Micronesia, and the Virgin Islands are not required to match the Federal funds received under this grant.

Response: The language of section 401.11(g) has been modified to recognize that, under the provisions of 48 U.S.C. 1469a(d) as amended, the matching requirement may be waived for applicants from specified Insular Areas.

Required Analyses

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action will promote efficiency and economy by reducing costs for both the Government and the institutes. Therefore, it will not adversely affect the economy of the Nation or any small entity.

Environmental Effects

This action will have no potential for significant environmental impact and is categorically excluded from the requirements for compliance with the

National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 83 Stat. 852).

Paperwork Reduction Act

The information collection requirements in section 401.11 and 401.19 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1028–0044.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this regulation meets the standards provided in sections 2(a) and 2(b) of Executive Order No. 12778.

Author

The principal author of this rule is Allen Ford, Water Resources Division, U.S. Geological Survey.

The Catalog of Federal Domestic Assistance program affected is No. 15.805, Assistance to State Water Research Institutes.

List of Subjects in 30 CFR Part 401

Colleges and universities, Grants programs-natural resources, Research, Water resources.

For the reasons set out in the preamble, 30 CFR chapter IV, part 401, is amended as follows:

PART 401—STATE WATER RESEARCH INSTITUTE PROGRAM

1. The authority citation for 30 CFR part 401 is revised to read as follows:

Authority: 42 U.S.C. 10303.

Subpart A—General

2. Section 401.3 is amended by revising the definition, "State" to read as follows:

§ 401.3 Definitions.

* * * * *

State means each of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, the District of Columbia, Guam, American Samoa, the Commonwealth of the Mariana Islands, and the Federated States of Micronesia.

3. Section 401.4 is revised to read as follows:

§ 401.4 Information collection.

(a) The information collection requirements contained in sections 401.11 and 401.19 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1028–0044. The information will be used to support water related research and provide performance reports on accomplishments achieved under Pub. L. 98–242, 98 Stat. 97 (42 U.S.C. 10303). This information allows the agency to determine compliance with the objectives and criteria of the grant programs. Response is mandatory in accordance with 30 CFR 401.11 and 401.19.

(b) Public reporting burden for the collection of information is estimated to average 84 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other suggestions for reducing the burden, to Paperwork Management Officer, U.S. Geological Survey, Paperwork Management Section MS 208, Reston, Virginia 22092 and the Office of Management and Budget, Paperwork Reduction Project (1028–0044), Washington, DC 20503.

Subpart B—Designation of Institutes; Institute Programs

4. Section 401.6 is amended by revising paragraph (c)(2) to read as follows:

§ 401.6 Designation of Institutes.

* * * * *

(c) * * *

(2) A management plan for meeting the requirements of the evaluation mandated by § 401.26.

Subpart C—Application and Management Procedures

5. Section 401.11 is amended by revising paragraphs (a) and (g) to read as follows:

§ 401.11 Application for grants.

(a) Subject to the availability of appropriated funds, but not to exceed a total of $10 million, an equal amount of dollars will be available to each qualified institute in each fiscal year to assist it in carrying out the purposes of the Act. If the full amount of the appropriated funds is not obligated by the close of the fiscal year for which they were appropriated, the remaining funds shall be made available in the succeeding fiscal year to support competitively selected research projects under the terms of section 104(g) of the Act. Selection and approval of such projects shall be based on criteria to be determined by the Director. Announcement of such criteria shall be made by notice in the **Federal Register**. The granting agency may retain an amount up to 15 percent of the total appropriation for administrative costs.

* * * * *

(g) The application shall provide assurance that non-Federal dollars will be available to share the costs of the proposed program. The Federal funds are to be matched on a basis of no less than two non-Federal dollars for each Federal dollar, unless this matching requirement has been waived.

* * * * *

6. Section 401.12 is amended by revising paragraph (c) to read as follows:

§ 401.12 Program management.

* * * * *

(c)(1) Acceptance of the award document certifies the grantee's assurance that the grant will be administered in compliance with OMB regulations, policies, guidelines, and requirements as described in:

(i) Circular No. A–21, revised, Cost Principles of Educational Institutions;

(ii) Memorandum No. M–92–01, Coordination of Water Resources Information;

(iii) Circular No. A–88, revised, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions;

(iv) Circular No. A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations; and

(v) Circular No. A–124, Patents—Small Business Firms and Nonprofit Organizations.

(2) Copies of the documents listed in paragraph (c)(1) of this section shall be available from the granting agency.

Subpart E—Evaluation

7. Section 401.26 is revised to read as follows:

§ 401.26 Evaluation of Institutes.

(a) Within 2 years of the date of its certification according to the provisions of § 401.6, each institute will be evaluated for the purpose of determining whether the national interest warrants its continued support under the provisions of the Act. That determination shall be based on:

(1) The quality and relevance of its water resources research as funded under the Act;

(2) Its effectiveness as an institution for planning, conducting, or arranging for research;

(3) Its demonstrated performance in making research results available to users in the State and elsewhere; and

(4) Its demonstrated record in providing for the training of scientists through student involvement in its research program.

(b) An evaluation team, selected by the granting agency on the basis of the members' knowledge of water research and administration, shall evaluate each institute, and may with the concurrence of the granting agency, visit such institutes as it considers necessary. The team is to include at least one individual from each of the following categories:

(1) Employees of the Department of the Interior;

(2) University faculty or other professionals with relevant experience in the conduct of water resources research;

(3) Former directors of water research institutes; and

(4) University faculty or other professionals with relevant experience in information transfer.

(c) The granting agency may request recommendations for team selections from the National Research Council/ National Academy of Sciences and from other organizations whose members include the types of individuals cited in paragraph (b) of this section.

(d) The granting agency shall, as an administrative cost, provide the funds for travel and per diem expense of the team members, within the maximum limits allowable under Federal travel regulations (41 CFR subtitle F).

(e) The granting agency has the right to select dates for evaluation visits, and notice of the team's visit shall be provided to the institute being evaluated at least 60 days in advance.

(f) It shall be the responsibility of each institute to provide such documentation of its activities and accomplishments as the granting agency and evaluation team may reasonably request. The request for this documentation shall be made at least 60 days prior to the due date of its receipt.

(g) The team shall, within 90 days after completion of its evaluation, submit a written report of its findings to the granting agency for transmittal to the institute. If an institute is found to have deficiencies in meeting the objectives of the Act, it shall be allowed 1 year to correct them and to report such action to the granting agency. The decision as to the institute's eligibility to receive further funding will rest with the granting agency.

(h) After the initial evaluation, each institute shall be reevaluated at least every 5 years.

Dated: April 2, 1993.

Donald R. Glaser,

Acting Assistant Secretary—Water and Science.

[FR Doc. 93–10759 Filed 5–6–93; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 50, 77, 80, 138, 177, 237, 244, 364, and 371

Removal of Parts

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense hereby removes obsolete parts concerning Fulfilling the Military Service Obligation (DoD Directive 1304.25); Mortgage Insurance for Service Members to Aid in Construction or Purchase of Homes (DoD Directive 1338.4); Child Development Programs (CDPs)(DoD Instruction 6060.2); Birth registration overseas (DoD Instruction 6040.34); Emergency Requirements, Allocations, Priorities, and Permits for DoD Use of Domestic Civil Transportation (DoD Directive 3005.7); Community Relations (DoD Directive 5410.18); Honorary Awards to Private Citizens and Organizations (DoD Directive 1432.2); Assistant to Secretary of Defense (Atomic Energy) (DoD Directive 5148.2); and Organization of the Joint Chiefs of Staff and Relationships with the OSD (DoD Instruction 5158.1) from title 32 of the Code of Federal Regulations. These parts have served the purpose for which they were intended and are no longer valid.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: The parts listed above are removed from the Code of Federal Regulations, however, the DoD Directives and Instructions are still valid. The removal of the parts are only to ensure that obsolete information is not retained in the Code of Federal Regulations. An updated version of DoD Directive 1304.25 (previously part 50); DoD Directive 1338.4 (previously part 77); DoD Instruction 6060.2 (previously part 80); DoD Instruction 6040.34 (previously part 138); DoD Directive 3005.7 (previously part 177); DoD Directive 5410.18 (previously part 237); DoD Directive 1432.2 (previously part 244); DoD Directive 5148.2 (previously part 364); and DoD Instruction 5158.1 (previously part 371) is available from the National Technical Information, 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects

32 CFR Part 50

Armed forces reserves, Military personnel, Selective Service System.

32 CFR Part 77

Military personnel, Mortgage insurance.

32 CFR Part 80

Day care, Federal buildings and facilities, Government employees, Infants and children.

32 CFR Part 138

Archives and records, Citizenship and naturalization, Infants and children.

32 CFR Part 177

Armed forces, Emergency powers, Transportation.

32 CFR Part 237

Armed forces, Federal buildings and facilities, Intergovernmental relations, Reporting and recordkeeping requirements.

32 CFR Part 244

Armed forces, Decorations, medals, awards.

32 CFR Part 364

Organization and functions (Government agencies).

32 CFR Part 371

Organization and functions (Government agencies).

PARTS 50, 77, 80, 138, 177, 237, 244, 364, and 371—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 131, 32 CFR parts 50, 77, 80, 138, 177, 237, 244, 364, and 371 are removed.

Dated: May 4, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–10819 Filed 5–6–93; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50580D; FRL–4171–5]

Coconut Oil; Reaction Products with Tetrahydroxy Branched Alkane Esters of Trisubstituted Benzenepropanoic Acid; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for coconut oil; reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

EFFECTIVE DATE: The effective date of this rule is June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 1990 (55 FR 26092), EPA issued a SNUR establishing significant new uses for coconut oil reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid. Because of additional data EPA has received for this substance, EPA proposed to revoke this SNUR in the **Federal Register** of August 4, 1992 (57 FR 34282).

I. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS-50580 (P-89-770). This record includes information considered by the Agency in developing this rule.

II. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of August 4, 1992 (57 FR 34282). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

III. Objectives and Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is revoking the SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 30, 1993

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.770 [Removed]

2. By removing § 721.770.

[FR Doc. 93-10854 Filed 5-6-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 721

[OPPTS-50592C; FRL-4171-8]

Heterocyclic Aldehyde Imine; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for heterocyclic aldehyde imine based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health or the environment and further regulation under section 5 of TSCA is not warranted at this time.

EFFECTIVE DATE: The effective date of this rule is June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1991 (56 FR 40204), EPA issued a SNUR establishing significant new uses for heterocyclic aldehyde imine. Because of additional data EPA has received for this substance, EPA proposed to revoke this SNUR in the **Federal Register** of August 4, 1992 (57 FR 34281).

I. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS-50592 (P-90-1624). This record includes information considered by the Agency in developing this rule.

II. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of August 4, 1992 (57 FR 34281). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

III. Objectives and Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA

pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health and environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is revoking the SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 30, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.1245 [Removed]

2. By removing § 721.1245.

[FR Doc. 93–10852 Filed 5–6–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50583D; FRL–4171–6]

Phenol, 4,4'-(9*H*-Fluoren-9-ylidene)bis-; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for phenol, 4,4'-(9*H*-fluoren-9-ylidene)bis- based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

EFFECTIVE DATE: The effective date of this rule is June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32406), EPA issued a SNUR establishing significant new uses for phenol, 4,4'-(9*H*-fluoren-9-ylidene)bis-. Because of additional data EPA has received for this substance, EPA proposed to revoke this SNUR in the **Federal Register** of August 4, 1992 (57 FR 34283).

I. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50583 (P–88–831). This record includes information considered by the Agency in developing this rule.

II. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of August 4, 1992 (57 FR 34283). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

III. Objectives and Rationale for Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is revoking the SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 30, 1993

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.1536 [Removed]

2. By removing § 721.1536.

[FR Doc. 93-10853 Filed 5-6-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 505, 510 and 540

[Docket No. 93-02]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is amending its rules of practice and procedure in numerous respects. Experience under these rules indicates that these several changes are desirable to remove ambiguities, to delete outdated or extraneous provisions, and to improve the efficient administration of proceedings.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 202-523-5725.

SUPPLEMENTARY INFORMATION: The FMC's Rules of Practice and Procedure ("Rules"), 46 CFR part 502, govern procedures in proceedings before it. Experience under the Rules suggested that certain provisions are either outdated, unclear, conflicting or inadequate to achieve their desired purpose. Additionally, it appeared that certain provisions in parts 505 and 540 dealing with assessment and compromise of civil penalties would more appropriately be included in part 502. To remedy these deficiencies the Commission, by notice published on February 5, 1993 (58 FR 7199), proposed several amendments to its Rules.

Three comments were filed in response to the notice of proposed rulemaking. With one exception, each of these comments addressed only the proposal dealing with the requirements for filing of complaints alleging violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1). The exception is a comment regarding the proposed amendment for submission of sworn documents, 46 CFR 502.112, which was supportive of that change In order to expedite the implementation of the portions of the proposal that received no objection, the Commission is proceeding to final rule and adopting the proposed changes on those matters while deferring decision on the section 10(a)(1) issue.

One additional amendment has been incorporated into this final rule. The copy requirement for filing of public versions of confidential filings, pursuant to 46 CFR 502.119, is clarified to reflect a reduction to an original and one copy. Because this represents a reduction in burden relating to a procedural requirement, opportunity for public comment on this amendment is not necessary.

A section by section explanation of the rule changes follows.

Federal Rules of Civil Procedure

The Commission has consistently endorsed the policy of following the Federal Rules of Civil Procedure ("FRCP") in situations not covered by a specific Commission rule and where there is no conflict with administrative law or another FMC rule. This policy is well established, see, e.g., *Brazilian National Steel Co.* v. *Lloyd Brasileiro*, 21 SRR 1505, 1507-1508 (ALJ 1983). A new § 502.12 is added which codifies this policy in the Rules.

Firms and Corporations

Section 502.28 currently bars "firms or corporations" from practicing before the Commission on behalf of others. This rule is confusing in its application and is frequently not followed. For example, tariff publishing firms or filing agent firms often represent carriers in special docket proceedings and rate auditors often represent shippers in overcharge claim proceedings. It is unclear whether the existing rule is intended to bar practice by such firms or corporations when their representative is one who is admitted to practice before the Commission. This prohibition appears to serve no purpose and it is, therefore, removed. Firms and corporations thereby are permitted to represent others, subject of course to the requirement in 46 CFR 502.27 that their representative is admitted to practice before the agency.

Counter-Complaints

The Commission currently has no rule permitting or governing the filing of counter-complaints in complaint proceedings, even though in practice they have been allowed. See *A/S Ivaran* v. *Lloyd Brasileiro*, 24 SRR 1029, 1032, n.7 (FMC 1988). The frequency with which such filings have been made has been increasing and often they fail to include a verification, which is required by statute for complaints before the Commission, 46 U.S.C. app. 1710. Section 502.64, therefore, is amended to provide for the filing of properly verified counter-complaints and providing for their service directly by the parties if authorized by the presiding officer.

Amendments to Pleadings

Section 502.113 provides that complaints and amendments to complaints will be served by the Secretary of the Commission. Section 502.70(b) states that amendments to pleadings allowed prior to hearing will be served in the same manner as the original pleading. These rules would seem to mandate that amended complaints be served only by the Secretary. In practice, when amended complaints are filed, the complainant simultaneously serves a copy on respondents. In such situations, there appears to be no need to have the complaint re-served by the Secretary, and the presiding administrative law judge ("ALJ") has sometimes, with agreement of the parties, waived application of the requirement. Sections 502.70(b) and 502.113 are amended, therefore, to authorize the presiding officer to allow service of amended complaints merely by having the filing party serve respondent or its counsel of record.

Bill of Particulars

Section 502.71 contains provisions for a bill of particulars. Under the FRCP, the bill of particulars has been replaced by motions for more definite statement, FRCP 12(e). To avoid confusion and to bring the Rules more in line with modern federal practice, § 502.71 is revised to include provisions modeled on present Rule 12(e) of the FRCP.

Satisfaction of Complaint

Section 502.93 contains provisions relating to satisfaction of complaints. This rule is outdated, applies to shipper complaints against carriers only, and refers to a non-existent form ("exhibit No. 1 to subpart D"). The rule would appear to be unnecessary, in any event, because any proceeding may be dismissed by the presiding officer upon a proper showing, and the requirement for seeking dismissal would be no different where the complaint has been satisfied than where any other settlement has been reached. The rule therefore, is being removed.

Subscription and Verification of Documents

Section 502.112(a) currently provides that the signature of the attorney or

practitioner on a filing constitutes a certificate that the filer has read the filing and "that to the best of his or her knowledge, information, and belief there is good ground to support it." This rule is the counterpart to FRCP 11, which now imposes a requirement that a filer's signature on a pleading represents that the filer has made reasonable inquiry that the pleading is well grounded in fact and is warranted in existing law. The FRCP provision imposes a stricter standard on the filer and is designed to avoid the bringing of frivolous actions or the submission of frivolous pleadings. Section 502.112 is amended, therefore, to conform to FRCP 11. This change and the current provision in the Rules which subjects violators to disciplinary action, should serve to minimize the filing of inappropriate pleadings in Commission proceedings.

Section 502.112(b) currently requires that when filings are made by an officer or agent of a party not represented by someone admitted or qualified to practice before the Commission, the filing either must (in the case of a corporate party) be attested under seal of the corporation, or (in the case of a non-corporate party) be accompanied with a power of attorney. These requirements have not been uniformly applied and do not appear to be necessary inasmuch as such filings are otherwise required to be sworn, verified, or submitted under penalty of perjury. This requirement, therefore, is removed.

Modern practice in civil courts and in some administrative agencies permits the filing of unsworn declarations under penalty of perjury in lieu of requiring the submission of sworn or verified filings. This is embodied in the provisions of 28 U.S.C. 1746 which applies to any rule, regulation, order or requirement made pursuant to United States law. It is especially appropriate to permit such unsworn declarations where the filing is executed outside of the United States and filers are unfamiliar with United States verification requirements. A new paragraph, therefore, is added to § 502.112 which permits the use of unsworn declarations whenever the Rules otherwise require a sworn or verified filing.

Documents Containing Confidential Materials

Section 502.119 concerns the filing of documents containing confidential materials, and requires the filing of public and confidential copies. There is no reference to the number of copies required and therefore the provisions of § 502.118 require that parties file both an original and 15 confidential copies, and an original and 15 public copies. Only an original and one copy is needed for public versions of confidential filings. The rule is changed, therefore, to reflect this requirement.

Depositions Upon Oral Examination

Section 502.203 contains procedures for the taking of depositions upon oral examination. When this rule was reissued in 1984, a portion of the rule which required a notice of oral deposition to provide the name and address of each person to be examined or, if unknown, a general description sufficiently complete to identify the person, was inadvertently omitted. The omitted language is reinserted.

Exceptions/Appeals

Section 502.227 includes procedures for filing of exceptions to an ALJ's initial decisions and appeals of an ALJ's order of dismissal, and allows 22 days for their filing. The rule allows 22 days for filing of replies to exceptions, but allows only 15 days for filing of replies to appeals. In the interest of consistency and fairness, the rule is amended to allow 22 days for filing of replies to appeals.

Attorney's Fees

Section 502.254 governs proceedings to determine whether an award of attorney's fees is appropriate in particular reparation proceedings. Paragraph (f) of this section governs appeals to the Commission of a presiding officer's award of attorney's fees. The procedures for such appeals are significantly different than those contained in § 502.227 for exceptions and appeals of other presiding officer decisions. Additionally, no provision is included for review of such awards by the Commission on its own motion in the absence of appeal. The rule, therefore, is amended to include the same appeal and review procedures that apply under current Rule 227.

Petitions for Reconsideration and Replies

Section 502.261 governs the filing of petitions for reconsideration and stay. Under this rule, such petitions are limited to specific and narrow grounds. The rule provides that "[p]etitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received * * *." Despite these restrictions, unnecessarily lengthy petitions are often filed. The Federal Rules of Appellate Procedure limit petitions for rehearing of a circuit court decision to 15 pages. A page limitation similarly is being imposed on such petitions at the Commission. Since decisions and petitions for reconsideration of such decisions may involve questions of evidence, however, and such questions may require more space to discuss than would pure issues of law, the page limit is set at 25 pages.

Section 502.262 currently permits "any party" to file a reply to a petition for reconsideration. This rule is amended to clarify that only replies in opposition to petitions for reconsideration may be filed. The filing of replies in support of petitions usually evokes a request for the filing of a further reply to the reply. Additionally, it is reasonable to require parties who feel aggrieved by a Commission decision to timely file their own petitions for reconsideration rather than tagging onto someone else's petition. This rule is further amended to impose the same 25 page limitation on replies to petitions for reconsideration.

Civil Penalty Procedures

The rules on compromise and settlement of civil penalties currently are contained in part 505 of title 46 CFR Because these rules are essentially procedural in nature and in part pertain to proceedings conducted under part 502 of 46 CFR, they will be relocated and incorporated as a new subpart in part 502. Additionally, appendix A (model compromise agreement) is revised to better reflect current practice and appendix B (Example of Promissory Note) is deleted because installment payments are seldom permitted, and the presence of this appendix may leave the mistaken impression that the Commission welcomes them. References to the civil penalty provisions of section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 875, also are added.

Subpart C of 46 CFR part 540, the passenger vessel certification rules, also contains provisions governing civil penalties, *viz.*, for violations of Public Law 89–777. Confusion has resulted, however, from those provisions being separated from, and sometimes conflicting with, part 505. Accordingly, subpart C of part 540 is removed and the new subpart of part 502 is amended to reflect that its procedures also govern civil penalties for violations of Public Law 89–777.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that because this rule deals only with agency practice and procedure, it will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 505

Administrative practice and procedure, Maritime carriers, Penalties.

46 CFR Part 510

Freight forwarders; Maritime carriers; Reporting and recordkeeping requirements; Surety bonds.

46 CFR Part 540

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

Therefore, 46 CFR parts 502, 505, 510 and 540 are amended as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6499); 21 U.S.C. 853a; and Pub. L. 89–777 (46 U.S.C. app. 817d, 817e).

2. A new § 502.12 is added to subpart A reading as follows:

§ 502.12 Applicability of Federal Rules of Civil Procedure.

In proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice.

§ 502.28 [Removed]

3. Section 502.28 is removed.

4. Section 502.64 is amended to revise the section title and to add a new paragraph (d) reading as follows:

§ 502.64 Answer to complaint; counter-complaint.

* * * * *

(d) In addition to filing an answer to a complaint, respondent may file a counter-complaint alleging violations of the Shipping Acts within the jurisdiction of the Commission. The filing of counter-complaints and answers to counter-complaints is governed by the rules and requirements of § 502.62 (excluding fees) and of this section for the filing of complaints and answers. Counter-complaints may be served directly by the parties if authorized by the presiding officer.

5. Section 502.70 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 502.70 Amendments or supplements to pleadings.

(a) * * *

(b) * * * Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading, except that the presiding officer may authorize the service of amended complaints directly by the parties rather than by the Secretary of the Commission.

* * * * *

6. Section 502.71 is revised to read as follows:

§ 502.71 Motions for more definite statement.

If a pleading (including a complaint or counter-complaint filed pursuant to §§ 502.62 or 502.64) to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall be filed within 15 days of the pleading and shall point out the defects complained of and the details desired. If the motion is granted and the order of the presiding officer is not obeyed within 10 days after service of the order or within such time as the presiding officer may fix, the presiding officer may strike the pleading to which the motion was directed or make such order as is deemed just. If the motion is disallowed, the time for responding to the pleading shall be extended to a date 10 days after service of the notice of disallowance.

§ 502.93 [Removed]

7. Section 502.93 is removed.

8. Section 502.112 is amended by revising the third sentence of paragraph (a) and by adding a new paragraph (c) to read as set forth below; and is further amended by removing the last sentence of paragraph (b).

§ 502.112 Subscription and verification of documents.

(a) * * * The signature of a person admitted or qualified to practice before the Commission constitutes a certificate by the signer that the signer has read the pleading, document or paper; that the signer is authorized to file it; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. * * *

* * * * *

(c) Wherever, under any rules of this part, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition under §§ 502.203 or 502.204), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by such person, as true under penalty of perjury, in substantially the following form.

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

9. The first sentence of § 502.113 is revised to read as follows:

§ 502.113 Service by the Commission.

Complaints filed pursuant to § 502.62, amendments to complaints (unless otherwise authorized by the presiding officer pursuant to § 502.70(b)), and complainant's memoranda filed in shortened procedure cases will be

served by the Secretary of the Commission. * * *

10. The second sentence of § 502.119(b) is revised to read as follows:

§ 502.119 Documents containing confidential materials.

* * * * *

(a) * * *

(b) * * * The public copies shall exclude confidential materials, shall indicate on the cover page and on each affected page "confidential materials excluded," and shall be filed in an original and one copy. * * *

* * * * *

11. Section 502.203 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

* * * * *

§ 502.203 Depositions upon oral examination.

(a) *Notice of examination.* (1) * * * The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. * * *

* * * * *

12. Section 502.227 is amended by revising paragraph (b)(2) to read as follows:

§ 502.227 Exceptions to decisions or orders of dismissal of administrative law judges; replies thereto; and review of decisions or orders of dismissal by Commission.

* * * * *

(b)(1) * * *

(2) Any adverse party may file and serve a reply to an appeal under this paragraph within twenty-two (22) days after the appeal is served.

* * * * *

13. Section 502.254 is amended by revising paragraph (f) to read as follows:

§ 502.254 Attorney's fees in reparation proceedings.

* * * * *

(f) In cases where the presiding officer issues an award order, appeal of that order and Commission review of that order in the absence of appeal shall be governed by the procedures of § 502.227 of this part. [Rule 254.]

14. Section 502.261 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 502.261 Petitions for reconsideration and stay.

(a) * * * Such petition shall be limited to 25 pages in length and shall be served in conformity with the requirements of subpart H of this part. * * *

* * * * *

15. Section 502.262 is revised to read as follows:

§ 502.262 Reply to petition for reconsideration or stay.

Any party may file a reply in opposition to a petition for reconsideration or stay within fifteen (15) days after the date of service of the petition in accordance with § 502.74. The reply shall be limited to 25 pages in length and shall be served in conformity with subpart H of this part. [Rule 262.]

16. Subpart W—Paperwork Reduction Act is redesignated as subpart X.

PART 505—COMPROMISE, ASSESSMENT, SETTLEMENT AND COLLECTION OF CIVIL PENALTIES

16a. The authority citation for Part 505 continues to read as follows:

Authority: 5 U.S.C. 552, 553, secs. 32 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 831 and 841a); secs. 10, 11, 13, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1710, 1712, and 1716).

17. Part 505 of chapter IV, title 46 CFR, is redesignated as subpart W of Part 502, and is revised to read as follows:

Subpart W—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties

Sec.
502.601 Purpose and scope.
502.602 Definitions.
502.603 Assessment of civil penalties: Procedure; criteria for determining amount; limitations; relation to compromise.
502.604 Compromise of penalties: Relation to assessment proceedings.
502.605 Payment of penalty: Method; default.

Appendix A—Example of Compromise Agreement To Be Used Under 46 CFR 502.604

Subpart W—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties

§ 502.601 Purpose and scope.

The purpose of this subpart is to implement the statutory provisions of section 32 of the Shipping Act, 1916, section 19 of the Merchant Marine Act, 1920, section 13 of the Shipping Act of 1984, and sections 2(c) and 3(c) of Public Law 89–777 by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Shipping Act, 1916, the Merchant Marine Act, 1920, the Intercoastal Shipping Act, 1933, the Shipping Act of 1984, Public Law 89–777, and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes.

§ 502.602 Definitions.

For the purposes of this subpart:

(a) *Assessment* means the imposition of a civil penalty by order of the Commission after a formal docketed proceeding.

(b) *Commission* means the Federal Maritime Commission.

(c) *Compromise* means the process whereby a civil penalty for a violation is agreed upon by the respondent and the Commission outside of a formal, docketed proceeding.

(d) *Mitigation* means the reduction, in whole or in part, of the amount of a civil penalty.

(e) *Person* includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(f) *Respondent* means any person charged with a violation.

(g) *Settlement* means the process whereby a civil penalty or other disposition of the case for a violation is agreed to in a formal, docketed proceeding instituted by order of the Commission.

(h) *Violation* includes any violation of sections 14 through 21 (except section 16 First and Third) of the Shipping Act, 1916; sections 19(6)(d), 19(7)(d) and 19(11) of the Merchant Marine Act, 1920; section 2 of the Intercoastal Shipping Act, 1933; any provision of the Shipping Act of 1984; sections 2 and 3 of Public Law 89–777; and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under the Shipping Act, 1916, the Merchant Marine Act, 1920, the Intercoastal Shipping Act, 1933, the Shipping Act of 1984, or Public Law 89–777.

(i) Words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but which are in the same general class. The word "and" includes "or", except where specifically stated or where the context requires otherwise.

§ 502.603 Assessment of civil penalties: procedure; criteria for determining amount; limitations; relation to compromise.

(a) *Procedure for assessment of penalty.* The Commission may assess a civil penalty only after notice and opportunity for hearing. Civil penalty assessment proceedings, including settlement negotiations, shall be governed by the Commission's Rules of Practice and Procedure in this part. All settlements must be approved by the Presiding Officer. The full text of any settlement must be included in the final order of the Commission.

(b) *Criteria for determining amount of penalty.* In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes. The Commission shall also consider the respondent's degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

(c) *Limitations; relation to compromise.* When the Commission, in its discretion, determines that policy, justice or other circumstances warrant, a civil penalty assessment proceeding may be instituted at any time for any violation which occurred within five years prior to the issuance of the order of investigation. Such proceeding may also be instituted at any time after the initiation of informal compromise procedures, except where a compromise agreement for the same violations under the compromise procedures has become effective under § 502.604(e).

§ 502.604 Compromise of penalties: relation to assessment proceedings.

(a) *Scope.* Except in pending civil penalty assessment proceedings provided for in § 502.603, the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section.

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except when otherwise authorized by the Commission, or where circumstances render it unnecessary, send a registered or certified Notice and Demand Letter ("NDL") to the respondent. The NDL will describe specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The NDL also will state the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

(c) *Request for compromise.* Any person receiving a NDL provided for in paragraph (b) of this section may, within the time specified, deny the violation, or submit matters explaining, mitigating or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in § 502.603(b), in compromising a penalty claim, the Commission may consider litigative probabilities, the cost of collecting the claim and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such compromise agreement is set forth as appendix A to this subpart.) This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official. Upon compromise of the penalty in the agreed amount, a duplicate original of the executed agreement shall be furnished to the respondent.

(2) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this subpart is delegated to the Director, Bureau of Hearing Counsel.

§ 502.605 Payment of penalty: method; default.

(a) *Method.* Payment of penalties by the respondent is to be made as follows:

(1) By bank cashier's check or other instrument acceptable to the Commission;

(2) Upon execution of a promissory note containing a confess-judgment agreement, by periodic regular installments, with interest where appropriate, by bank cashier's check or other instrument acceptable to the Commission; or

(3) By combination of the alternatives in paragraphs (a) (1) and (2) of this section.

(b) All checks or other instruments submitted in payment of claims shall be made payable to the Federal Maritime Commission.

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under § 502.603, or compromised and agreed to under § 502.604, appropriate collection efforts will be made by the Commission, including, but not limited to referral to the Department of Justice for collection. Where such defaulting respondent is a licensed freight forwarder, such default also may be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

Appendix A to Subpart W—Example of Compromise Agreement

Compromise Agreement

FMC File No. _____

This Agreement is entered into between:

(1) the Federal Maritime Commission, hereinafter referred to as Commission, and

(2) _____, hereinafter referred to as Respondent.

Whereas, the Commission is considering the institution of an assessment proceeding against Respondent for the recovery of civil penalties provided under the [appropriate statute], for alleged violations of section _____;

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by Respondent, to wit:

[General description of practices and dates or time period involved]

Whereas, the Commission has authority under the Shipping Act of 1984 and the Shipping Act, 1916, to compromise and collect civil penalties; and,

Whereas, Respondent has terminated the practices which are the basis for the allegations of violation set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate these practices by Respondent, its officers, directors or employees.

Now Therefore, in consideration of the premises herein, and in compromise of all

civil penalties arising from the alleged violations, Respondent and the Commission hereby agree upon the following terms and conditions of compromise and settlement:

1. Respondent shall make a monetary payment to the Commission herewith, by bank cashier's check, in the total amount of $_____.

2. Upon acceptance in writing of this Agreement by the Director of the Bureau of Hearing Counsel of the Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claim for recovery of civil penalties from the Respondent arising from the alleged violations set forth above.

3. It is expressly understood and agreed that this Agreement is not, and is not to be construed as, an admission by Respondent to the alleged violations set forth above.

(Respondent's Name)
By: _____
Title: _____
Date: _____

Approval and Acceptance

The above terms, conditions and consideration are hereby approved and accepted:

By the Federal Maritime Commission:

Director, Bureau of Hearing Counsel
Date: _____

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

17. The authority citation for part 510 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716 and 1718; 21 U.S.C. 853a.

§§ 510.15, 510.16 [Amended]

18. The references to "part 505" in §§ 510.15 and 510.16 (a)(5) and (b) are revised to read "subpart W of part 502."

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

19. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

20. The heading of subpart C of part 540 is revised to read:

Subpart C—General

§§ 540.30–540.36, Appendices A and B [Removed]

21. Sections 540.30 through 540.36 and Appendices A and B are removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–10841 Filed 5–6–93; 8:45 am]

BILLING CODE 6730–01–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–6, FCC 92–472]

Cellular Radio Service

AGENCY: Federal Communications Commission.

ACTION: Correction to Summary of Report and Order.

SUMMARY: This document provides the Final Regulatory Analysis which was previously omitted from the Summary of the Third Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket No. 90–6 (FCC 92–472) (Third Report), which was published on Tuesday, November 10, 1992 (57 FR 53446). The Third Report improved licensing procedures for cellular radio in general and also clarified and modified rules concerning the filing and processing of applications for unserved areas in the cellular service.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman or B.C. Jackson, Jr., Mobile Services Division, Common Carrier Bureau (202) 632–6400.

SUPPLEMENTARY INFORMATION:

Background

The Third Report which is the subject of this correction concluded a rulemaking proceeding which adopted new rules governing the licensing of cellular radio in general and revised existing rules concerning the filing and processing of cellular applications for unserved areas.

Need for Correction

The summary of the Third Report did not contain a reference to the Commission's compliance with the Regulatory Flexibility Act, as required by Section 604(b) of the Regulatory Flexibility Act, 5 U.S.C. section 604(b). Appendix C of the Third Report contains the Commission's Final Regulatory Analysis.

Correction of Publication

Accordingly, the publication on November 10, 1992, of the Third Report and the final rules [FCC 92–472], which were the subject of FR Doc. 92–27202, is corrected as follows:

Add new subheading and new paragraph 3 at the end of the summary of the Third Report in column 3 on page 53446:

Final Regulatory Analysis

3. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's Final Analysis is as follows:

I. Need and Purpose of This Action

In this document, the Federal Communications Commission adopts separate methods for calculating service in the Gulf of Mexico Metropolitan Statistical Area and over water in other markets. Further, the Commission limits the consideration that an applicant or a party filing a pleading may receive for agreeing to withdraw a mutually exclusive cellular radio application or a pleading, or for refraining from filing a pleading, against a cellular radio application. The Commission also adopts prohibitions against alienating ownership interests in applications for unserved areas. In addition, this document disposes of ten petitions for reconsideration of the Commission's First Report and Order and Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 6195 (1991), concerning the acceptance, processing, and selection of applications for unserved areas. This document also revises and clarifies rules previously adopted in this docket.

II. Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

The public comments in this proceeding did not address regulatory flexibility issues specifically.

III. Significant Alternatives Considered

The Commission considered variations of the method for determining the Cellular Geographic Service Area in the Gulf of Mexico and found the adopted method to be superior to the alternatives considered and appropriate for the purpose intended. Otherwise, the comments received in this proceeding generally support the actions taken herein. Modifications and clarifications of our proposed recently adopted rules which the commenters suggested were considered and some were adopted.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–10757 Filed 5–6–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92-293; RM-8128]

Radio Broadcasting Services; Stillwater, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kenneth R. Greenwood, allots Channel 251A to Stillwater, Oklahoma, as the community's third local commercial FM channel. See 57 FR 60782, December 22, 1992. Channel 251A can be allotted to Stillwater in compliance with the Commission's minimum distance separation requirements with a site restriction of 9 kilometers (6 miles) northwest to avoid a short-spacing to Station KMOD-FM, Channel 248C, and KVOO-FM, Channel 253C, Tulsa, Oklahoma, at coordinates North Latitude 36-09-27 and West Longitude 97-09-20. With this action, this proceeding is terminated.

DATES: Effective June 14, 1993. The window period for filing applications will open on June 15, 1993, and close on July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order MM Docket No. 92-293, adopted April 22, 1993, and released May 3, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 251A at Stillwater.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-10753 Filed 5-6-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930497-3097]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP). This emergency interim rule revises the percentage of the commercial quota allocated to the states and makes additional quota available to commercial vessels landing summer flounder in the State of Connecticut.

DATES: This emergency interim rule is effective from May 4, 1993, through August 5, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from: Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, 508-281-9324.

SUPPLEMENTARY INFORMATION: The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations are authorized under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are found at 50 CFR part 625. The regulations were amended on December 4, 1992 (57 FR 57358), by the final rule to implement Amendment 2 to the FMP. These regulations imposed several management measures, including an annual commercial quota allocated to the states on a percentage basis.

Description of This Emergency Action

The Council and ASMFC have requested revision of the state shares of commercial quota specified in Amendment 2 to the FMP. The allocation of the state quota shares was based on historical landings data. This action is requested because, subsequent to approval and implementation of Amendment 2, ASMFC members states recognized that Connecticut's commercial landings were underreported from the early to mid-1980s. In response, they recommended that a proxy for underreported landings in the State of Connecticut should be used to revise the percentage of the 1993 commercial quota allocated to the states and make additional quota available to commercial vessels landing in the State. Specifically, the revision increases Connecticut's quota share by 1.30388 percent or 161,029 pounds (73,042 kg) in 1993. The remaining states share a corresponding decrease, with the decreases ranging from 0.00004 percent of the total or 5 lbs (2.3 kg) to 0.36967 percent of the total or 45,649 lbs (20,706 kg). The total quota for the management unit does not change, but is slightly redistributed. Any quota overages resulting from this redistribution will be deducted in 1994 as specified in § 625.20(d)(2). A separate notice of availability of commercial quota in Connecticut will be published concurrently with this emergency rule. A permanent revision of the state shares will be submitted shortly as Amendment 4 to the FMP.

TABLE 1.—REVISED STATE QUOTA SHARES

State	Percentage	Pounds	Kilograms
Maine	0.04756	5,874	2,664
New Hampshire	0.00046	57	26
Massachusetts	6.82046	842,327	382,077
Rhode Island	15.68298	1,936,851	878,550

TABLE 1.—REVISED STATE QUOTA SHARES—Continued

State	Percentage	Pounds	Kilograms
Connecticut	2.25708	278,749	126,440
New York	7.64699	944,405	428,379
New Jersey	16.72499	2,065,539	936,922
Delaware	0.01779	2,197	996
Maryland	2.03910	251,829	114,229
Virginia	21.31676	2,632,623	1,194,150
North Carolina	27.44584	3,389,565	1,537,497
Total	100.00000	12,350,016	5,601,930

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment, or to delay for 30 days the effective date of these emergency regulations under the provisions of sections 553 (b) and (d) of the Administrative Procedure Act. Failure to implement emergency measures would prolong the fishery closures to vessels landing in the State of Connecticut and needlessly harm the fishing industry in that State.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. The rule is being reported to the Director of the Office of Management and Budget (OMB), with an explanation of why it is not practicable to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule does not involve a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

NMFS prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

This rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the affected Atlantic coastal states. This determination has been submitted for review by the appropriate State agencies of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, Pennsylvania, and North Carolina under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: May 3, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. Section 625.20 is amended by temporarily suspending paragraph (d)(1) and temporarily adding paragraph (d)(3) from May 4, 1993, through August 5, 1993, to read as follows:

§ 625.20 Catch quotas and other restrictions.

* * * * *

(d) * * *

(3) The annual commercial quota will be distributed to the states based upon the following percentages:

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44585

* * * * *

[FR Doc. 93-10797 Filed 5-4-93; 9:56 am]

BILLING CODE 3510-22-M

50 CFR Part 625

[Docket No. 920543-2293]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notification of commercial quota availability.

SUMMARY: NMFS issues this notification to announce that additional commercial quota for the summer flounder fishery has been made available to the State of Connecticut. Vessels issued a Federal fisheries permit for the summer flounder fishery may land summer flounder in the State of Connecticut until further notification. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Connecticut, and vessel and dealer permit holders, that a commercial quota is available for landing summer flounder in the State.

EFFECTIVE DATE: May 4, 1993.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 625, as amended on December 4, 1992 (57 FR 57358). The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20. The commercial quota for summer flounder for the 1993 calendar year is set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). At the time the commercial quota was set, the percent allocated to vessels landing summer flounder in Connecticut was 0.9532 percent or 117,720 pounds (53,397 kg). NMFS issued a notification, February

16, 1993 (58 FR 8557), announcing that the available commercial quota was harvested for vessels landing in the State of Connecticut.

The percent allocated to vessels landing summer flounder in Connecticut has since been readjusted by an emergency interim rule published in this issue of the **Federal Register** (May , 1993, 58 FR) to 2.25708 percent or 278,749 pounds (126,440 kg). Therefore, the February 16, 1993, notification (58 FR 8557) is rescinded and vessels may again land summer flounder in Connecticut until the available quota is harvested and NMFS issues a notification announcing that no commercial quota is available for landing summer flounder in that State.

Classification

This action is required by 50 CFR part 625 and complies with E.O. 12291.

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

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: May 3, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-10798 Filed 5-4-93; 9:56 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 921185-3021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for aggregate rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1993 second seasonal Pacific halibut bycatch mortality allowance for the trawl rockfish fishery category in the BSAI has been reached.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), May 4, 1993, through 12 noon, A.l.t., July 4, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1993 Pacific halibut bycatch mortality allowance for the trawl rockfish fishery category, which is defined at § 675.21(b)(1)(iii)(D), is 201 metric tons (mt); the second seasonal apportionment of that allowance is 81 mt for the period April 4, 1993, through July 3, 1993 (58 FR 14524, March 18, 1993).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iv), that the second seasonal Pacific halibut bycatch mortality allowance for the trawl rockfish category has been reached. Therefore, NMFS is prohibiting directed fishing for aggregate rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the BSAI, from 12 noon, A.l.t., May 4, 1993, through 12 noon, A.l.t., July 4, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 3, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-10748 Filed 5-3-93; 4:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 87
Friday, May 7, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–65–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that would have required inspections of certain fuselage frames for cracks, and repair, if necessary; and a one-time visual inspection at certain body stations to detect open pilot holes, and repair, if necessary. That proposal was prompted by reports of open pilot holes found in the inboard flange and strap of certain frames. This action revises the proposed rule by removing the requirement to plug any open pilot hole that is found. This action would also add a requirement to inspect open pilot holes to detect cracks; and would add an alternative perform those inspections repetitively, provided no cracks are found. If cracks are found, installation of a preventive modification would be required. The actions specified by this proposed AD are intended to prevent frame failures and consequent rapid decompression of the cabin.

DATES: Comments must be received by June 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 27, 1992 (57 FR 38785). That supplemental NPRM would have required inspections of certain fuselage frames for cracks, and repair, if necessary, and a one-time visual inspection at certain body stations to detect open pilot holes, and repair, if necessary. That supplemental NPRM was prompted by reports of open pilot holes found in the inboard flange and strap of certain frames. That condition, if not corrected, could result in frame failures and consequent rapid decompression of the cabin.

Two commenters request that the FAA revise the proposal to required that, if any open pilot hole is found, the pilot hole must be plugged (as specified in the existing supplemental NPRM) and a preventive modification must be installed. One of these commenters states that installing a preventive modification should be required because the location of the pilot holes cannot be controlled and the potential for "figure 8" holes exists, which would reduce the fatigue life of the frame.

The FAA concurs partially. The FAA has re-evaluated its proposed requirement that open pilot holes must be plugged with rivets, and finds that some pilot holes may be too close to an edge or upturned surface, in which case sufficient edge margin or head clearance for a rivet would not be provided. The FAA concludes that this proposed requirement must be removed from the proposal, since plugging the pilot holes may not be possible in all cases and would not provide an additional level of safety. Consequently, the FAA has removed this requirement from this proposal.

The FAA agrees with the commenter's remark that the location of open pilot holes cannot be controlled. The FAA has determined that the possibility exists for open pilot holes to be found in several layers of the built-up structure of the frame/fail-safe strap. The FAA also notes that since open pilot holes located in the underlying structure may not fully align, "figure 8"

holes may be present in the built-up structure following oversizing the holes in order to plug the holes with rivets. In light of these considerations, the FAA concludes that installation of the preventive modification specified in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992, would increase the fatigue life of the frame by adding to its structure. (The preventive modification was described in detail in the existing supplemental NPRM.) Therefore, the FAA has added a requirement to paragraphs (d)(1)(ii) and (d)(1)(iii) of this proposal for installation of the applicable preventive modification specified in the service bulletin (if any open pilot hole is found inside the shaded area specified in the service bulletin) or installation of a preventive modification in accordance with a method approved by the FAA (if any open pilot hole is found outside that shaded area).

Three commenters request that paragraphs (a)(4)(i) and (a)(4)(ii) of the existing supplemental NPRM be revised to remove the requirement to plug open pilot holes if those holes are not cracked. The commenters state that there have been no reports of cracks in open pilot holes on airplanes with over ten years of service and that such service experience should be considered in determining whether the unplugged holes have a propensity for cracking. One commenter does not believe that open pilot holes would pose a threat to safety.

The FAA concurs partially. For reasons explained previously, the FAA agrees with the commenter's request to remove the requirement to plug open pilot holes, regardless of cracking. However, the FAA does not agree with the commenters' assertion that open pilot holes do not pose a threat to safety. Consequently, as discussed previously, the FAA has included in this supplemental NPRM a requirement for installation of the preventive modification in order to increase the load-carrying capability and to decrease the stress on the frame.

Two commenters request that operators be allowed to inspect repetitively if open pilot holes are found, but no crack exists. The commenters state that if this option were included in the AD, operators would be provided more time to schedule the repair while repetitive inspections would ensure the integrity of the fuselage frame in the interim. The FAA concurs. The FAA finds that an option to inspect repetitively to detect cracks in the open pilot holes could be included in this AD without compromising the structural integrity of the fuselage frame and without adversely affecting safety, provided that those inspections are accomplished at intervals not to exceed 6,000 flight cycles and no crack exists in any open pilot hole that is found. Paragraph (d)(1)(i) of this supplemental NPRM includes this alternative. Additionally, the FAA finds that installation of a preventive modification, as described previously, would constitute terminating action for those repetitive inspections.

Since these changes expand the scope of the existing supplemental NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The format of this supplemental NPRM has been restructured for clarification purposes.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,172 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 53 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,416,380, or $2,915 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 91-NM-65-AD.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of fuselage frames and depressurization of the airplane, accomplish the following:

(a) For airplanes identified as Group 1 or 2 in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992: Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the fastener holes and a close visual inspection of the frame flange and web to detect cracks at body stations (BS) 760.95, 783.95, 825.95, and 848.95 in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(1) If any crack is found, prior to further flight, install the applicable preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Once this modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the modified frame flange and web are required by this AD.

(2) If no crack is found, prior to further flight, accomplish one of the procedures identified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD, in accordance with Part I, paragraph E., of the Accomplishment Instructions of the service bulletin.

(i) Oversize the hole by 1/32 inch and install an oversized fastener. Prior to the accumulation of 12,000 flight cycles after oversizing the hole, and thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (a) of this AD. If any crack is found, prior to further flight, install the applicable preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Once this modification is installed,

no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(ii) Install the same size fastener that was removed. Thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (a) of this AD. If cracks are found, prior to further flight, install the applicable preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Once this modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(iii) Install the applicable preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Once this modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(b) For airplanes identified as Group 3, 4, or 5 in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992: Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the fastener holes and a close visual inspection of the frame flange and web to detect cracks at body stations (BS) 760.95 and 783.95 in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(1) If any crack is found, prior to further flight, install the applicable preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Once this modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(2) If no crack is found, prior to further flight, accomplish one of the procedures identified in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD, in accordance with Part II, paragraph E. of the Accomplishment Instructions of the service bulletin:

(i) Oversize the hole by 1/32 inch and install an oversized fastener. Prior to the accumulation of 12,000 flight cycles after oversizing the hole, and thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (b) of this AD. If cracks are found, prior to further flight, install the applicable preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Once this modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(ii) Install the same size fastener that was removed. Thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (b) of this AD. If cracks are found, prior to further flight, install the applicable preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Once this modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(iii) Install the applicable preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Once this modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(c) For airplanes identified as Group 1, 2, 3, or 4 in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992: Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform a close visual inspection to detect cracks in the frame gussets at BS 825.95 in accordance with Part V (for Groups 1 and 2 airplanes) or Part VI (for Groups 3 and 4 airplanes) of the Accomplishment Instructions of the service bulletin. Repeat these inspections thereafter at intervals not to exceed 6,000 flight cycles.

(1) If any crack is found, prior to further flight, replace the gusset in accordance with Figure 10 (for Groups 1 and 2 airplanes) or Figure 11 (for Groups 3 and 4 airplanes) of the service bulletin.

(2) Replacement of the gusset in accordance with paragraph (c)(1) of this AD constitutes terminating action for the repetitive inspections required by paragraph (c) of this AD.

(d) For airplanes identified as Group 1, 2, 3, 4, or 5 in Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992: Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform a close visual inspection of the inner flange of the frames and the strap on the inner flange at BS 760.95 and 783.95 to detect open pilot holes in accordance with Part VII of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992.

(1) If no open pilot hole is found, no further action is required by this AD.

(2) If any open pilot hole is found, perform a close visual inspection to detect cracks in that open pilot hole in accordance with the inspection procedures described in Part VI of the Accomplishment Instructions of the service bulletin.

(i) If no crack is found in any open pilot hole, repeat the inspection required by paragraph (d)(1)(i) of this AD thereafter at intervals not to exceed 6,000 flight cycles until a preventive modification specified in paragraph (d)(1)(ii) or (d)(1)(iii) of this AD, as applicable, is installed.

(ii) If any crack is found in an open pilot hole that is located inside any of the shaded areas shown in Figures 3, 4, and 5 of the service bulletin, prior to further flight, repair the crack and install a preventive modification in accordance with Part III or IV of the Accomplishment Instructions of the service bulletin. Installation of a preventive modification constitutes terminating action for the repetitive inspections of the open pilot holes specified in paragraph (d)(1)(i) of this AD.

(iii) If any crack is found in an open pilot hole that is located outside any of the shaded areas shown in Figures 3, 4, and 5 of the service bulletin, prior to further flight, repair the crack in accordance with Part III or IV of the Accomplishment Instructions of the service bulletin, and install a preventive modification in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Installation of a preventive modification constitutes terminating action for the repetitive inspections of the open pilot holes specified in paragraph (d)(1)(i) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 3, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-10808 Filed 5-6-93; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-14-81]

RIN 1545-AD81

Deductions and Reductions in Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of previous proposed rules and notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the limitations on deductions and

adjustments to earnings and profits (or accumulated profits) with respect to certain foreign deferred compensation plans. These new proposed regulations reflect changes to the applicable law made by the Act of December 28, 1980, as amended by the Technical Corrections Act of 1982, by the Tax Reform Act of 1986, and by the Technical and Miscellaneous Revenue Act of 1988. The new proposed regulations will affect employers (and shareholders of employers) that provide deferred compensation directly or indirectly to foreign employees and will provide the public and Internal Revenue Service personnel with the guidance needed to comply with section 404A of the Internal Revenue Code of 1986. These new proposed regulations supersede the prior proposed regulations published in the **Federal Register** on April 8, 1985 (50 FR 13821).

DATES: Written comments must be received by July 6, 1993. Requests to speak (with outlines of oral comments) at a public hearing scheduled for October 5, 1993, at 10:00 a.m., must be received by September 14, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines of comments to be presented to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–14–81), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth A. Purcell, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622–6080 (not a toll-free number). Concerning the hearing, Carol Savage, Regulations Unit, at (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Statutory Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 404A and 7805(a) of the Internal Revenue Code (Code).

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirement in these regulations is in §§ 1.404A–5, 1.404A–6 and 1.404A–7. This information is required by the Internal Revenue Service to determine accurately the correct deductions and reductions in earnings and profits for foreign deferred compensation. The likely respondents are businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances. The estimated total annual reporting burden is 633,200 hours. The estimated annual reporting burden per respondent varies from 5 hours to 1,000 hours, depending on individual circumstances, with an estimated average of 506 hours. The estimated number of respondents is 1,250. The estimated annual frequency: once.

Background

On April 8, 1985, the Internal Revenue Service published in the **Federal Register** proposed amendments to the Income Tax Regulations under section 404A of the Internal Revenue Code of 1954 (now 1986) (50 FR 13821). Comments were requested and received, and a public hearing was held on September 20, 1985. After consideration of the comments received, the Service has determined that, rather than promulgate final regulations, it is more appropriate to withdraw the original proposed regulations and propose new regulations. This determination is based on a number of factors, including the number of significant substantive changes made to the prior proposed rules, changes to the underlying statute and other relevant Code provisions, and a need to reorganize the regulations. For a general discussion of section 404A and description of the prior proposed regulations, see the preamble to the prior proposed regulations published in the **Federal Register** on April 8, 1985.

The significant differences (or, where appropriate, the significant similarities) between these new proposed regulations and the prior proposed regulations are discussed, section by section, in the remainder of this preamble. Prior proposed § 1.404A–1 remains new proposed § 1.404A–1. However, the rules found in § 1.404A–2 of the prior proposed regulations are now incorporated in new proposed §§ 1.404A–6 and 1.404A–7. Prior proposed §§ 1.404A–3, 1.404A–4, 1.404A–5 and 1.404A–6 are redesignated §§ 1.404A–2, 1.404A–3, 1.404A–4 and 1.404A–5, respectively.

Section 1.404A–1 General Rules Concerning Deductions and Adjustments to Earnings and Profits for Foreign Deferred Compensation Plans

90-Percent Test

As a condition to electing treatment as a qualified foreign plan, section 404A(e)(2) requires that 90 percent or more of the amounts taken into account for a taxable year under the plan be attributable to services performed by nonresident aliens, the compensation for which is not subject to United States federal income tax. Prior proposed § 1.404A–1(c) provided that, in determining whether the 90-percent test is satisfied, accrued benefits may be calculated under any reasonable method. It also provided that the rules for calculating the present value of accrued benefits at normal retirement age (except for the actuarial assumption safe harbor) under § 1.416–1 (concerning the determination whether a retirement plan is top-heavy) are presumed to be reasonable for this purpose.

Many commentators suggested that these rules for calculating accrued benefits for purposes of the 90-percent test are extremely burdensome and disproportionately expensive. They also suggested that the calculations require a degree of precision and accuracy that in many cases is unwarranted by the circumstances (i.e., where very few plan participants are United States citizens or residents and little compensation of the plan participants is subject to United States federal income tax). To give taxpayers in those cases a less burdensome and less expensive means of demonstrating compliance with the 90-percent requirement, a safe harbor provision has been provided in paragraph (c)(2) of new proposed § 1.404A–1. It provides that the 90-percent requirement of § 1.404A–1(a)(3) will be deemed satisfied with respect to a plan if the participants' benefits under the plan increase generally in proportion to their compensation taken into account under the plan, and the sum of (1) the compensation of United States citizens and residents taken into account under the plan, and (2) any other compensation subject to United States federal income tax taken into account under the plan, does not exceed

five percent of all compensation taken into account under the plan for the plan year. This safe harbor provision does not apply, however, if the Commissioner determines that a significant purpose of the plan is to provide benefits not otherwise eligible for tax benefits under the Internal Revenue Code for participants who are United States citizens or residents. An example is provided in new proposed § 1.404A–1(c)(4) to illustrate the application of this safe harbor provision.

Termination Indemnity Plans

Many commentators suggested that the regulations be revised to provide specifically that certain termination indemnity plans are considered deferred compensation plans for purposes of section 404A. The laws of many countries require employers to maintain termination indemnity plans to pay termination benefits. Some of these termination indemnities are payable solely upon involuntary discharge (other than by reason of mandatory retirement) and thus may be viewed as dismissal wage plans under United States tax principles. However, other termination indemnity plans are akin to deferred compensation plans. For example, one commentator noted that, in one European country, employers are required by law to provide severance benefits equal to one month's pay (final pay) for each year of service. These benefits are fully vested and payable upon all events of termination, including retirement.

Because the provisions of termination indemnity plans may vary widely, paragraph (iii) of the definition of deferred compensation in paragraph (e) of new proposed § 1.404A–1 provides guidelines for determining whether such a plan provides deferred compensation. A termination indemnity plan is considered to provide deferred compensation if: (1) a major purpose of the plan is to provide for the payment of retirement benefits, (2) it has a benefit formula providing for payment based at least in part upon length of service, (3) it provides for the payment of benefits to employees (or their beneficiaries) after the employee's retirement, death or other termination of employment, and (4) it meets such other requirements as may be prescribed by the Commissioner with respect to termination indemnity plans. An example is provided under the definition of deferred compensation in paragraph (e) of new proposed § 1.404A–1 to illustrate this provision. Any plan that meets these requirements is treated as providing deferred compensation, whether or not it is called a termination indemnity plan.

Equivalent of a Trust

Section 404A(b)(5)(A) provides that, in order for a contribution to be taken into account in the case of a qualified funded plan, it must be paid to a trust or the "equivalent of a trust". The reference to the equivalent of a trust recognizes that, in some foreign countries, the common law concept of a trust does not exist. Thus, in those countries, the arrangement used to fund deferred compensation benefits for purposes of section 404A(b)(5)(A) must be functionally equivalent to a trust. The essential function of a trust in the context of a United States deferred compensation plan is to provide an entity separate from an employer through which deferred compensation benefits may be secured and liabilities funded. The four elements necessary to accomplish this function are provided in the definition of "equivalent of a trust" in paragraph (e) of new proposed § 1.404A–1. These elements have been revised to allow an employer some latitude to insulate corpus and income from the claims of an employer's creditors, and to remove the concept of legal and beneficial ownership. Finally, the concept of fiduciary duty has been replaced with legally enforceable duty.

Some commentators urged the Service to endorse as the equivalent of a trust the so-called "Security Contract" or "Security Concept" developed in Germany. As explained by those commentators, the Security Contract combines a book reserve commitment by an employer with a pledge and guaranty. First, an employer establishes a book reserve for its pension liabilities for which it receives a tax deduction under German law. It then establishes a wholly-owned subsidiary to which it transfers assets to fund its pension liabilities. As such, the corpus and income of the subsidiary are separately identifiable from an employer's general assets. This arrangement, without more, would not satisfy the requirements of the equivalent of a trust because the assets held by the subsidiary are not protected from the claims of an employer's creditors in the event of bankruptcy or receivership. Under the Security Contract concept, however, the subsidiary also pledges its assets irrevocably to a custodian who then gives a guaranty to the employees to pay the benefits up to the assets pledged to the custodian in the event an employer declares bankruptcy or goes into receivership. The custodian's guaranty is intended to place a prior lien on the assets pledged and protect them from the claims of an employer's creditors in the event of bankruptcy or receivership.

As one commentator asserted, however, it is unclear under German law that the arrangement provides such protection. According to that commentator, in the event of bankruptcy or receivership, the German Pension Guaranty Corporation is required by law to settle an employer's book reserve commitment. The Pension Guaranty Corporation then becomes a non-privileged creditor in the bankruptcy process and exercises any rights the employees have under the plan. As a non-privileged creditor, the Pension Guaranty Corporation is not entitled to all the assets pledged to the custodian, but is limited to a percentage of employer assets that is consistent with its general bankruptcy quota. Thus, it appears that the subsidiary's assets may be subject to the claims of an employer's creditors before all claims of the Pension Guaranty Corporation, exercising the rights of the employees under the plan, are settled.

Until the Service is satisfied that the corpus and income of the subsidiary are to be used to satisfy the claims of the employees and their beneficiaries (or those exercising their rights under the plan) before those of an employer's creditors, the Service cannot endorse this arrangement as the equivalent of a trust.

Exclusive Means for Deduction or Reduction in Earnings and Profits

For foreign plans that fail to satisfy the requirements of section 404A, section 404 governs deductions for deferred compensation expense. For plans that are not qualified under section 401, section 404(a)(5) generally provides that the employer's deduction for contributions is delayed until amounts attributable to the employer's contribution are includible in the plan participant's gross income. In addition, under section 404 (a) (5), deductions are denied altogether unless separate accounts are maintained for each participant. The Service took this position with respect to a foreign plan in Private Letter Ruling 7904042 (Oct. 25, 1978), available in the Freedom of Information Reading Room, room 1569, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. This position is reflected, in part, in paragraph (a) of new proposed § 1.404A–1.

Prior proposed § 1.404A–1(e) provided that earnings and profits (or accumulated profits) may be reduced with respect to payments by an employer to a funded foreign deferred compensation plan that are not deductible under section 404(a) even where an election under section 404A

has not been made. Upon reexamination of the Congressional intent underlying the enactment of section 404A, however, the Service now believes that the position reflected in the prior proposed regulations is inconsistent with the purposes of section 404A (and the limitations thereunder). Thus, in accordance with the Secretary's section 404A(h) authority to prescribe regulations necessary to carry out the purposes of section 404A, paragraph (a) of new proposed § 1.404A–1 provides that section 404A provides the exclusive means by which an employer may reduce earnings and profits for deferred compensation in situations other than those in which a reduction of earnings and profits is permitted under section 404. See also the discussion below of the relevance of sections 61, 671 through 679, and 1001 in this context.

Request for Comments Concerning Foreign Corporations That Are Not Controlled

The Service is considering whether simplified or alternative methods of determining allowable earnings and profits reductions under section 404A might be appropriate for foreign corporations that are not controlled. Suggestions are invited on this matter.

Section 1.404A–2 Rules for Qualified Funded Plans

Substantiality of Payments to Trust

A commentator suggested that the focus of the flush language of paragraph (b) of prior proposed § 1.404A–3 (requiring a trust to have "substantiality") should be on the substantiality of payments to a trust (or the equivalent of a trust) rather than on the substantiality of a trust (or the equivalent of a trust), because the determination with respect to the latter can be made under the standards set forth in prior proposed § 1.404A–1(g)(9). Accordingly, new proposed § 1.404A–2(b)(2)(i) provides that employer contributions must have substance. For example, contributions may not be made in the form of a promissory note. This also means that the contributions must be accumulated in the trust (or the equivalent of a trust) in order to be distributed as benefits under a deferred compensation plan. Whether contributions are being accumulated in the trust (or the equivalent of a trust) to be distributed as benefits will depend on the facts and circumstances. The example in paragraph (b)(5) of new proposed § 1.404A–2 reflects this change.

Exclusive Benefit Rule

Section 404A(b)(5)(A) provides that, in the case of a qualified funded plan, a contribution is taken into account only if it is paid to a trust (or the equivalent of a trust) that meets the requirements of section 401(a)(2). Section 401(a)(2) provides generally that it must be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of the employees or their beneficiaries. Thus, in effect, section 404A(b)(5)(A) reemphasizes, with regard to qualified funded plans, the general rule found in section 404A(e) that any "qualified foreign plan" must be for the exclusive benefit of an employer's employees or their beneficiaries. (As stated in the Senate Finance Committee Report, "[f]irst, the plan must be for the exclusive benefit of an employer's employees or their beneficiaries." S. Rep. No. 1039, 96th Cong., 2d Sess. 13 (1980).)

To reflect this emphasis, new proposed § 1.404A–2(b)(2) provides that one important factor that is taken into account in determining whether a trust has or has not been operated in a manner consistent with the exclusive benefit rule is whether it has not or has been involved in a transaction that would be described in section 4975(c)(1) if the plan were the type of plan subject to those rules. For example, a loan from the trust to an employer, on any terms, ordinarily would be a circumstance that strongly suggests noncompliance with section 404A(b)(5)(A). Similarly, a sale, exchange, or lease of any property between the trust and an employer would generally violate this provision. These rules, as set forth in new proposed § 1.404A–2(b)(2), apply prospectively.

Contributions Deemed Made Before Payment

Paragraph (c) of new proposed § 1.404A–2 clarifies the circumstances under which a payment made after the last day of an employer's taxable year is deemed to have been made on that last day.

Frequency of Actuarial Valuations

The new proposed regulations generally continue the requirement in the prior proposed regulations that an actuarial valuation be made no less frequently than once every three years for a qualified funded plan. However, for interim years, they require a reasonable actuarial determination to be made of whether the full funding limit in § 1.404A–5(c)(2) applies to the plan, and provide that the Commissioner may require an actuarial valuation in interim years under appropriate circumstances. It is anticipated that the Commissioner will not exercise this authority except in situations similar to those described in § 1.412(c)(9)–1(d) of the proposed regulations.

Shareholder-Level Consequences

A sentence in paragraph (d)(1) of prior proposed § 1.404A–3 provided that, where a foreign corporation maintained a qualified funded plan, the deductible amount was taken into account for the shareholder's taxable year in which or with which an employer's taxable year ended. This sentence has been deleted because section 404A does not govern the time at which adjustments to earnings and profits of a foreign employer corporation for a particular year are taken into account at the shareholder level.

Section 1.404A–3 Rules for Qualified Reserve Plans

The new proposed regulations have modified in several ways the guidance on the calculation of the amount that may be taken into account under a qualified reserve plan. First, the presentation has been changed in order to parallel the components of net periodic pension cost used in Statement of Financial Accounting Standards No. 87 "Employer's Accounting for Pensions" (1985), available from the Financial Accounting Standards Board, 401 Merritt 7, Norwalk, CT 06856. Thus, the amount taken into account for a year is based on the sum of a type of "service cost", "interest cost" and the amortization of the increase or decrease in the reserve from other sources. As part of this change, the steps for determining the actuarial gain or loss have been made explicit. In addition, as discussed below, certain increases or decreases in the reserve that were subject to amortization under the old proposed regulations are now included in the reasonable addition to the reserve.

Ten-Year Amortization

Section 404A (c)(4) provides for the spreading over ten years of certain increases and decreases in reserves on account of various events including a catch-all category of "such other factors as may be prescribed by regulations". The Senate Finance Committee Report includes two suggestions of possible items that could be included in this category: "adjustments in the reserve resulting from changes in levels of

compensation on which benefits depend or the vesting in one year of a benefit which was accrued in a prior year." S. Rep. No. 1039, 96th Cong. 2d. Sess. 14 (1980).

Some commentators criticized the rule in paragraph (d) of prior proposed § 1.404A–4 providing for the amortization of changes in the reserve arising from these two sources. They suggested that the ten-year amortization requirement for increases or decreases to the reserve on account of changes in the level of compensation upon which plan benefits depend, and for vesting of benefits accrued in prior years, was unnecessary because those items are ongoing costs of the plan that are specifically contemplated by the plan and will arise periodically as each participant's circumstances dictate. Thus, those increases or decreases can be expected to occur regularly in the aggregate and will not create the "bunching" that section 404A (c)(4) was designed to avoid.

The new proposed regulations respond to commentators' concerns by incorporating certain increases in the reserve (as described below) into the definition of the reasonable addition to a reserve, subject to an anti-abuse rule. The effect of this change is to allow immediate recognition, rather than ten-year amortization, of these changes. Under normal circumstances this immediate recognition will not result in significant bunching of income or deductions. Further, to the extent bunching occurs, abuse potential is limited because the bunching is the result of a deferral of deductions rather than the recognition of these items. Finally, as discussed below, for taxable years beginning after December 31, 1986, the indirect foreign tax credit is determined using post-1986 earnings and profits (i.e., aggregated for all post-1986 years). Use of a multi-year earnings and profits pool diminishes the effect of bunching on the foreign tax credit.

The increases in reserve that are now included in the reasonable addition to the reserve are those increases that result from expected changes in compensation and from the increase in vesting for employees whose liabilities were included in the reserve as of the beginning of the year. Thus, for example, the reasonable addition to the reserve may reflect an expected increase in compensation of five percent and expected changes in the vesting percentage in the current year for all employees in the reserve as of the beginning of the year. By contrast, any increase in reserve that results from compensation changes that are greater than expected or from the inclusion of newly-vested employees who were not included in the prior year's reserve are categorized as actuarial losses subject to ten-year amortization.

Section 1.404A–4 United States and Foreign Law Limitations on Amounts Taken Into Account for Qualified Foreign Plans

Section 404A(d) Limitation—Pooling of Earnings and Profits

Section 404A(d)(3) provides that, in determining the earnings and profits (and accumulated profits) of any foreign corporation with respect to a qualified foreign plan, the amount determined under section 404A with respect to any plan for any taxable year must not exceed the amount allowed as a deduction under the appropriate foreign law for such taxable year. As the legislative history makes clear, this limitation was imposed in response to "the possibilities for distortion of a taxpayer's indirect foreign tax credit which are presented by the present annual system for determining the amount of the foreign taxes paid by a subsidiary which are attributable to dividends paid to U.S. shareholders." S. Rep. No. 1039, 96th Cong., 2d Sess. 15 (1980). The legislative history further makes clear that "[t]his potential for distortion might be eliminated if the indirect credit were computed with reference to the subsidiary's accumulated foreign taxes and undistributed accumulated profits for all years." *Id.*

Section 1202(a) of the Tax Reform Act of 1986 amended section 902 to provide for computation of the indirect foreign tax credit by pooling all post-1986 earnings and profits and all post-1986 creditable foreign taxes. These amendments to section 902 prevent the distortion at which section 404A(d)(3) was aimed. Section 1012(b)(4) of the Technical and Miscellaneous Revenue Act of 1988 added specific regulatory authority to section 404A(d)(3) (retroactive to enactment of the Tax Reform Act of 1986), to take this change in the law into account. Accordingly, pursuant to that grant of regulatory authority, new proposed § 1.404A–4 provides that, for taxable years beginning after December 31, 1986, the reduction of earnings and profits of a foreign corporation with respect to a qualified foreign plan is determined without regard to the tax deduction under foreign law for that year. This new rule allows any amount that is disallowed for a year (because the foreign tax deduction for that year is greater than the amount allowed under section 404A (b) or (c)) to be carried forward to a future year, in which it may increase the amount allowable under section 404A.

Section 404A(d) Limitation

Section 404A(d)(1) provides that the annual amount allowable under section 404A "shall equal" the lesser of the cumulative United States amount or the cumulative foreign amount, reduced by the aggregate amount. Prior proposed § 1.404A–5(a) provided that the annual amount allowable "shall not exceed" these cumulative amounts. The new proposed regulations adopt the language of the statute. See new proposed § 1.404A–4(b).

Foreign Currency Rules

One commentator requested guidance with respect to a number of foreign currency issues. Sections 985–989 were subsequently enacted by the Tax Reform Act of 1986. These sections, effective for taxable years beginning after December 31, 1986, address many of the problems identified by the commentator. Paragraph (d)(1) in new proposed § 1.404A–4 clarifies that, for taxable years beginning after December 31, 1986, income or loss of foreign branches and earnings and profits (or deficits in earnings and profits) of foreign corporations are determined in functional currency as defined in section 985. For taxable years beginning before January 1, 1987, paragraph (d)(2) in new proposed § 1.404A–4 provides that the rules in effect for those taxable years determine the amount of income or loss or earnings and profits (or deficit in earnings and profits) for the foreign branch or subsidiary. A new paragraph (d)(3) provides special rules for those circumstances where the net worth method of accounting is used.

Section 1.404A–5 Additional Limitations on Amounts Taken Into Account for Qualified Foreign Plans

New proposed § 1.404A–5 clarifies the evidentiary requirements and rules on actuarial assumptions. No significant changes are made to the rules in prior proposed § 1.404A–6, which are now contained in new proposed § 1.404A–5.

Section 1.404A–6 Elections Under Section 404A and Other Changes in Accounting Method

Time and Manner for Making Elections

Paragraph (b)(5) of prior proposed § 1.404A–2 provided that elections made under section 404A must be made no later than the time prescribed by law for filing the United States tax return for a United States taxpayer's taxable year. For a qualified foreign plan maintained by a foreign corporation, the regulations

have been modified to conform the filing requirements to the general rules applicable to tax accounting elections on behalf of foreign corporations under section 964. For example, under the new proposed regulations, a section 404A election need not be made before the United States shareholder's tax liability is affected by the earnings and profits of the foreign corporation. Such an effect on the United States shareholder's tax liability may occur as the result of any of the following: a dividend distribution, an income inclusion under section 951(a), a section 1248 transaction, a section 864(e) basis adjustment by earnings and profits, or an inclusion in income of the earnings of a qualified electing fund under section 1293(a)(1).

The prior proposed regulations provided that, in order for "protective" or "Method (2)" elections to be effective, taxpayers who made those elections had to file amended returns no later than 90 days after the date on which the final regulations were published in the **Federal Register**. See Ann. 81–114, Ann. 81–148 and Ann. 82–128, reproduced as an appendix to this preamble. Otherwise, the elections would have no effect. Numerous commentators suggested that the 90-day period is inadequate for taxpayers to evaluate the final regulations, collect the required data, make the appropriate actuarial calculations, decide whether the election is beneficial, and file the required returns. Thus, the deadlines for perfecting retroactive elections and making or perfecting certain other elections in new proposed § 1.404A–7 have generally been extended to 365 days after the publication of final regulations.

Single Plan

As originally proposed, § 1.404A–2(b)(6)(i) provided that an election may be made with respect to each plan that qualifies as a "single plan". The term "single plan" has for this purpose the same definition as it has in § 1.414(l)–1(b). Commentators asked for an illustration of the application of this single plan rule to an existing deferred compensation plan that is split into two single plans for purposes of section 404A. Thus, a new example has been added in paragraph (a)(2) of new proposed § 1.404A–6.

Section 481(a) Adjustment

New proposed § 1.404A–6(a) addresses the adoption of methods of accounting and changes in methods of accounting with respect to a foreign deferred compensation plan for which an election under section 404A has been made. It clarifies, for example, that an initial election with respect to a pre-existing plan, termination of an election, revocation of an election, and a change in actuarial funding method, constitute changes in methods of accounting under section 446(e) and section 481(a). To compute the section 481(a) adjustment upon a change in method of accounting under section 404A, § 1.404A–6(f)(6) of the prior proposed regulations required a historical computation. Taxpayers were to compute contributions, deductions or reductions in earnings and profits from the establishment of the plan to the first day of the first year in which a section 404A election was made. Commentators argued that this historical approach was unduly burdensome.

The new proposed regulations respond to commentators' concerns by generally replacing the historical computation requirement with a "snapshot" approach to determining the amount of the section 481(a) adjustment for purposes of section 404A. As illustrated below, the snapshot approach is adopted in the proposed regulations in an effort to reduce substantially taxpayers' recordkeeping and compliance burdens.

The snapshot approach is generally intended to compare (i) the extent to which an employer has accelerated deductions (or reductions in earnings and profits) under its old method of accounting for deferred compensation with (ii) the acceleration (if any) that would have been allowed under its new method of accounting. In the interest of avoiding historical calculations and other complexities, the snapshot approach generally attempts to compare the old and new methods of accounting based, to the extent possible, on actual reserve or fund balances existing at the time of the change. These balances generally have been reduced for amounts actually paid to plan participants and beneficiaries. However, amounts actually paid to participants and beneficiaries would be the same under both an employer's old method and its new method of accounting. Therefore, deductions attributable to such payments can be eliminated from consideration in determining both the old and the new method amounts that are compared.

In other words, in the case of both the old method and the new method of accounting, the extent of acceleration is measured by reference to a common baseline: the amount actually paid to plan participants and beneficiaries (i.e., a pay-as-you-go method). Thus, the snapshot approach generally measures the extent to which an employer, under its old method of accounting, has claimed deductions (or reductions in earnings and profits) that exceed the amount actually paid to plan participants and beneficiaries as of the change in accounting method. This amount (generally referred to as the "Old Method Closing Amount") is then compared to the deductions (or reductions in earnings and profits) in excess of the amount actually paid to plan participants and beneficiaries that the employer would have claimed for the same period under its new method of accounting (generally referred to as the "New Method Opening Amount"). The section 481(a) adjustment is equal to the difference between the Old Method Closing Amount and the New Method Opening Amount. The comparison is based on the status of the plan as the beginning of the year of a change in accounting method.

To illustrate, if the employer has used a funded method of accounting for deferred compensation, the Old Method Closing Amount equals the amount of the fund balance as of the beginning of the year that the accounting method is changed. In determining the amount of the section 481(a) adjustment for purposes of section 404A, this fund balance is compared with a New Method Opening Amount. The New Method Opening Amount will depend on which new method of accounting the employer elects. If the employer makes a qualified funded plan election, the New Method Opening Amount generally will equal the amount of the fund balance, adjusted as appropriate to reflect the limitations in section 404A (b) and (d) on prior contributions to the fund that could have been taken into account under section 404A. If, however, the employer makes a qualified reserve plan election, the New Method Opening Amount generally will be the amount of the reserve under section 404A(c). Alternatively, if the new method of accounting is a non-section 404A method (i.e., a pay-as-you-go method), the New Method Opening Amount generally will be zero.

As the foregoing discussion indicates, the new method will not necessarily be a section 404A method (a qualified funded plan method or qualified reserve plan method), and the old method will not necessarily be a non-section 404A method. The section 481(a) adjustment and the proposed snapshot approach to computing the adjustment apply whether the employer is changing to or from a section 404A method or from one section 404A method to another. For example, assume that a foreign branch has a qualified funded plan with a trust fund balance of 15 of functional

currency (as defined in section 985(b)). Assume that this fund balance resulted from FC10 of deductible contributions to the fund under section 404A, plus FC5 of net investment income earned within the fund. Under the snapshot approach, the Old Method Closing Amount upon a change to qualified reserve plan treatment is FC15. Assuming that the reserve under the qualified reserve plan method is FC20 as of the date of the method change, the New Method Opening Amount is FC20, and the amount of the section 481(a) adjustment under section 404A is a negative FC5.

By using the amount of the fund balance in determining both the Old Method Closing Amount and the New Method Opening Amount, the proposed regulations require consideration of both the deductions previously taken by the employer and the accumulated net income (or inside build-up) of a fund in calculating the amount of the section 481(a) adjustment for purposes of section 404A. The Service believes that, in addition to permitting the adoption of a simplified method for determining the section 481(a) adjustment, consideration of a fund's accumulated net income under the snapshot approach avoids additional complexities that might result from the application of sections 61 and 1001 at the time of an election under section 404A. For example, consider an employer that makes a qualified funded plan election after having used a funded method of accounting for a foreign deferred compensation plan that is not a qualified funded plan. Ordinarily, the value of the fund (which is used to satisfy the employer's plan liabilities) will exceed the employer's contributions to the fund (net of the fund's previous payments to plan participants and beneficiaries). If the snapshot method were not applied, arguably sections 61 and 1001 would result in a recognition of income (or increase in earnings and profits) by the employer at the time of the election equal to the excess of the value of the fund over the employer's basis in the fund. This result is consistent with the treatment of a change in method of accounting that consists of a qualified funded plan election as involving a change in the status of the fund from a grantor trust (defined and treated in accordance with sections 671 through 679) to a non-grantor trust (treated in a manner analogous to the treatment of a trust under a section 401(a) tax-qualified plan). The Service solicits comments from interested parties on this analysis and on the utility of the snapshot approach in reducing taxpayer burden.

Effect of Section 404A(d)(1) Limits on Section 481(a) Adjustment Computation

Since the limitations of section 404A(d)(1) are part of the section 404A method of accounting under the new proposed regulations, the snapshot section 481(a) adjustment calculation must take into account the cumulative foreign amount limitation in section 404A(d) and new proposed § 1.404A–4. This is a departure from § 1.404A–6(f)(9) in the prior proposed regulations. The snapshot approach includes a simplified method to make this adjustment in computing the section 481(a) adjustment. More specifically, paragraph (g) of new proposed § 1.404A–6 allows taxpayers to use the snapshot approach to compute the initial cumulative United States and foreign law limitations under section 404A(d) as of the beginning of a year of change in method of accounting. The rules to initialize the cumulative United States amount, cumulative foreign amount and the aggregate amount rely on the constant relationship between these three amounts (i.e., the aggregate amount always equals the lesser of the two cumulative amounts).

Section 481(a) Adjustment Period

As required by section 404A(g)(5), the period for taking into account the section 481(a) adjustment arising from an election or a re-election under section 404A is 15 years. Additionally, new proposed § 1.404A–6(e)(2)(iii) provides for a six-year section 481(a) adjustment period for a change in method of accounting arising from the termination or revocation of an election under section 404A, and for any other change in accounting method under section 404A. This new paragraph also requires netting of any section 481(a) adjustment remaining from a previous change in method in determining the amount to be taken into account during the six-year section 481(a) adjustment period. The example in new proposed § 1.404A–6(e)(4) illustrates this netting rule.

Examples in the new proposed regulations illustrate the principle under section 446(e) and its underlying administrative procedures that the District Director may modify a taxpayer's calculated section 481(a) adjustment under section 404A if the District Director (1) determines that the taxpayer used an erroneous method of accounting in an open year prior to the year in which the taxpayer's qualified funded plan or qualified reserve plan election is effective, and (2) requires the taxpayer to change its erroneous method of accounting in that earlier open year. For example, if a taxpayer erroneously deducted FC100 for amounts accrued under a reserve plan in an open year prior to the effective date of a qualified reserve plan election under section 404A, the District Director could require the taxpayer to change its method of accounting in that earlier open year and to take a positive FC100 section 481(a) adjustment into account entirely in that earlier open year (rather than permitting the positive FC100 amount to be netted against any New Method Opening Amount under the snapshot approach and spread prospectively over a 15-year section 481(a) adjustment period). See section 2.02 of Rev. Proc. 92–20, 1992–1 C.B. 685.

Section 1.404A–7 Effective Date and Retroactive Application

Prior proposed § 1.404A–2(c), relating to retroactive elections, has been moved to § 1.404A–7. This change was made because the rules relating to retroactive elections are relatively discrete and thus logically should be set apart from the general election rules. Because the importance of these rules will greatly diminish within a few years, their placement at the end of the regulations will improve the clarity of the remainder of the regulations for the future. Other specific changes to the retroactive election rules are discussed below.

All-Or-Nothing Rule

Many commentators criticized the rule in paragraph (c)(2)(ii) of prior proposed § 1.404A–2 as an improper interpretation of section 2(e)(2) of the Act of December 28, 1980 (Pub. L. 96–603). Prior proposed § 1.404A–2(c)(2)(i) provided that a taxpayer could elect, during its "open period", for section 404A to apply to a qualified foreign plan maintained by a foreign subsidiary. However, prior proposed § 1.404A–2(c)(2)(i) conditioned that election for any plan on a taxpayer electing to apply section 404A with respect to all written plans of every foreign subsidiary (whether or not wholly owned) that defer the receipt of compensation and that satisfy the requirements of section 404A(e) (1) and (2). Commentators argued that the "all-or-nothing rule" of section 2(e)(2) of the Act of December 28, 1980, simply provides that a taxpayer may elect to have section 404A apply for certain prior years, and that such an election must be made for all of a taxpayer's foreign subsidiaries. It does not, however, require that a taxpayer make an election under section 404A for any of its foreign subsidiaries' plans.

According to this view, once the election is made to have section 404A apply to the foreign subsidiaries for prior years, the consequences of making or not making an election under section 404A will be determined as though section 404A had been in effect for those years.

After further consideration, the proposed regulations adopt the commentators' view of section 2(e)(2) of the Act of December 28, 1980. Thus, if a taxpayer makes an election to have section 404A apply retroactively to its foreign subsidiaries during its open period, the election to have section 404A apply must be made for all of a taxpayer's foreign subsidiaries (whether or not wholly owned) during a taxpayer's open period. Accordingly, if a taxpayer elects to have section 404A apply during a taxpayer's open period, it may not rely on any other law or rule of law to reduce earnings and profits (or accumulated profits) of any foreign subsidiary with respect to deferred compensation expenses, regardless of whether the taxpayer elects to apply section 404A to any specific deferred compensation plan. Paragraph (b) of new § 1.404A–7 reflects this view, and paragraph (c)(5) illustrates this rule with an example.

Making, Perfecting and Revoking Retroactive Elections

New proposed § 1.404A–7 provides rules for making, perfecting and revoking retroactive effective date elections as well as retroactive plan-by-plan elections for qualified foreign plans maintained by foreign subsidiaries and for qualified funded plans maintained by foreign branches. Taxpayers are afforded 365 days after publication of the final regulations to decide whether to perfect or revoke retroactive elections or to make, revoke or re-elect in intervals of six or more years, effective for taxable years in the open period (as defined in new proposed § 1.404A–7(g)(6)) and continuing after taxable years beginning after December 31, 1979. Taxpayers must file amended returns and attach statements in order to perfect a retroactive election and to conform all items to the treatment consistent with election or revocation. If the amended returns and statements are not timely filed, the retroactive elections will be deemed revoked.

Alternative to Contemporaneous Evidence Requirement

Many commentators criticized the rule in prior proposed § 1.404A–2(c)(4)(iii) prohibiting a retroactive election if a taxpayer was unable to calculate the requisite section 481(a) adjustment based upon actual data, because, in effect, it unduly restricted taxpayers' ability to make retroactive elections. The commentators were concerned that many taxpayers would lack "actual data", and thus be unable to make the election, and that, even if such data were technically available, its retrieval would be prohibitively burdensome. After further consideration, the Service has altered this requirement. Accordingly, new proposed § 1.404A–7(f) provides that the section 481(a) adjustment must be made based upon contemporaneous substantiation quality data. If contemporaneous substantiation quality data is not readily available, however, the adjustment may be based on data which are combinations of actual contemporaneous evidence and reasonable actuarial backward projections of substantiation quality data.

For the convenience of taxpayers, Ann. 81–114, 1981 I.R.B. 21, Ann. 81–148, 1981–39 I.R.B. 15, and Ann. 82–128, 1982–39 I.R.B. 103, concerning Method (1) and Method (2) elections, are reproduced below.

Appendix

Announcement 81–114, 1981–28 I.R.B. 21

This announcement provides guidance relating to section 404A of the Internal Revenue Code. Until proposed regulations are published, taxpayers may rely on the guidance provided below.

Section 404A, added by the Act of December 28, 1980 Pub. L. 96–603 (1981–5 I.R.B. 31), allows taxpayers to make certain elections concerning deductions for amounts paid or accrued by an employer under qualified foreign plans. The two types of qualified foreign plans are qualified funded plans and qualified reserve plans. A qualified foreign plan is any written plan which defers the receipt of compensation and which satisfies two requirements. First, the plan must be for the exclusive benefit of the employer's employees or their beneficiaries. Second, 90 percent or more of the amounts taken into account for the taxable year under the plan must be attributable to services performed by nonresident aliens, the compensation for which is not subject to federal income tax. In addition, the employer must properly elect to have section 404A apply to such plan. If an employer does not make such an election, deductions (or reductions in earnings and profits) are allowed only as provided under section 404 for plans and trusts meeting the requirements of that section.

The rules of section 404A are applicable for taxable years beginning after December 31, 1979, and for certain prior years to the extent the taxpayer elects to have the provisions of section 404A of the Code apply retroactively. Pending the issuance of regulations relating to such elections, the elections referred to in section 404A (e)(3) and (f)(2) of the Code may be made either by (1) claiming the permissible deduction or credit on the taxpayer's income tax return for the first taxable year ending on or after December 31, 1980, including extensions (or an amended return that is filed no later than the end of the extended time period prescribed in section 6081, whether or not such time is actually extended for filing the taxpayer's return), or (2) attaching a statement of election to the taxpayer's income tax return within the time period described in the first method. If the election is made by attaching a statement of election under method (2), the taxpayer's current return would not include deductions or in the case of foreign subsidiaries, take into account reductions in earnings and profits that relate to foreign deferred compensation plans. Deductions or credits consistent with the election would be included on an amended return, to be filed no later than the deadline (described below) for revoking the election. Under either method, the taxpayer must attach to the return a list of plans with respect to which the elections are made. Method (1) or method (2) may also be used for the elections described in section 2(e) of Pub. L. 96–603. When method (2) is used in connection with section 2(e) of Pub. L. 96–603, taxpayers need not amend past returns until regulations are issued.

A taxpayer must determine the amount deductible under section 404A (d) based, in part, on the cumulative foreign amount as defined in section 404A (d)(2)(B). No deduction is allowable under section 404A unless the cumulative foreign amount is established in one of the documents described in section 404A (g)(2)(A)(i), (ii) or (iii) of the Code. Section 404A (g)(2)(A)(iii) authorizes the Secretary to promulgate regulations that would accept certain unspecified statements or evidence as being sufficient to establish the amount of the deduction under foreign law. Until such time as regulations are promulgated under section 404A (g)(2)(A)(iii), the requirements of that section will be considered to be satisfied by a statement prepared at or before the time the return is filed, which lists separately for each plan the cumulative foreign amount and which states that such cumulative foreign amount has been determined pursuant to the requirements of the appropriate foreign tax law. The statement must be prepared by the U.S. taxpayer or a person authorized to practice before the Service. While a taxpayer need not attach any of these documents to its tax return, the taxpayer must furnish the documents for examination upon request of the Internal Revenue Service.

Taxpayers that have made the elections described in section 404A and/or section 2(e) of Pub. L. 96–603 under method (2) need not prepare the statement, described in the immediately preceding paragraph, until they amend their returns. In addition, taxpayers that have made the election described in section 404A for taxable years beginning after December 31, 1979, under Method (1), and have made the election described in section 2(e) of Pub. L. 96–603 under method (2) will satisfy section 404A (g)(2)(A)(iii) if the cumulative foreign amount in the statement reflects the aggregate foreign deductions

allowed under foreign law for taxable years commencing after December 31, 1979.

Taxpayers that have already made an election, referred to in this announcement, that does not conform with the requirements stated herein may perfect that election on an amended return filed by the later of September 23, 1981 or by the due date of the taxpayer's income tax return for the first taxable year beginning after December 31, 1979, including extensions. These taxpayers may also satisfy section 404A (g)(2)(A)(iii), to the extent applicable as previously described in this announcement, by preparing the required statement within the same time limits for perfecting the elections under sections 404A (e)(3) and (f)(2).

The qualified reserve plan election, including any retroactive election described in section 2(e)(2) of Pub. L. 96–603, may be revoked on an amended return for the first taxable year ending on or after December 31, 1980, without the consent of the Commissioner until 90 days after the publication of final regulations regarding such elections. Similarly, the qualified foreign plan election and the retroactive election described in section 2(e)(3) may be revoked within the same period.

It is anticipated that the effective date of the final regulations generally will be for taxable years beginning after December 31, 1979, and such prior years as may be affected by an election under section 2 (e) of Pub. L. 96–603. Accordingly, taxpayers may be required to amend their tax returns to the extent that deductions or credits claimed are inconsistent with final regulations.

Announcement 81–148, 1981–39 I.R.B. 15

On June 24, 1981, the Internal Revenue Service issued Announcement 81–114, 1981–28 I.R.B. 21. The announcement was intended to provide pre-regulation guidance to taxpayers concerning recent legislation under section 404A. Taxpayers have expressed concern with respect to a statement in that announcement, with respect to reductions of earnings and profits if section 404A is not elected. Announcement 81–114 is clarified as follows:

The decision not to elect section 404A will not affect the computation of earnings and profits with respect to contributions to plans as allowed under prior law. In the case of an accrued liability to a reserve plan, however, such accrued liability reduces earnings and profits only as provided in section 404A with respect to the taxable years described in section 2(e) of Pub. L. 96–603, 1980–2 C.B. 684.

Announcement 82–128, 1982–39 I.R.B. 103

Taxpayers that are interested in making the elections referred to in section 404A (e)(3) and (f)(2) of the Internal Revenue Code may continue to use the "method (1)" or "method (2)" election described in Announcement 81–114, 1981–28 I.R.B. 21 for taxable years beginning after December 31, 1979, until further guidance is made available. Pending the issuance of regulations under section 404A, qualified foreign plans must comply with the reporting requirements and other rules contained in Announcement 81–114.

Effective Dates

The amendments are proposed generally to apply to taxable years beginning after December 31, 1979. The prohibited transaction rules in § 1.404A–2(a) are proposed to be effective May 7, 1993. If a taxpayer elected pursuant to section 2(e)(2) of the Act of December 28, 1980, the amendments are proposed to apply to certain prior taxable years beginning after December 31, 1970.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying in their entirety. Because the Treasury Department expects to issue final regulations on this matter as soon as possible, a public hearing will be held at 10 a.m. on October 5, 1993, in room 2615, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. Written comments must be received by July 6, 1993. Requests to speak (with outlines of oral comments) at the public hearing must be received by September 14, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Elizabeth A. Purcell of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.401–0 Through 1.419A–2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR part 1, relating to §§ 1.404A–0, 1.404A–1, 1.404A–2, 1.404A–3, 1.404A–4, 1.404A–5 and 1.404A–6, published in the **Federal Register** for April 8, 1985 (50 FR 13821), are withdrawn.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are added to read as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citations to read as follows:

Authority: 26 U.S.C. 7805 * * * §§ 1.404A–1, 1.404A–2, 1.404A–3, 1.404A–4, 1.404A–5, 1.404A–6 and 1.404A–7 also issued under 26 U.S.C. 404A. * * *

Par. 2. Sections 1.404A–0 through 1.404A–7 are added as follows:

§ 1.404A–0 Table of Contents.

This section 1.404A–0 lists the major headings that appear in §§ 1.404A–1 through 1.404A–7.

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§ 1.404A–1 General rules concerning deductions and adjustments to earnings and profits for foreign deferred compensation plans.

(a) *In general.* Section 404A provides the exclusive means by which an employer may take a deduction or reduce earnings and profits for deferred compensation in situations other than those in which a deduction or reduction of earnings and profits is permitted under section 404. A deduction or reduction of earnings and profits is permitted under section 404A for amounts paid or accrued by an employer under a foreign deferred compensation plan, in the taxable year in which the amounts are properly taken into account under §§ 1.404A–1 through 1.404A–7, if each of the following requirements is satisfied:

(1) The plan is a written plan maintained by the employer that provides deferred compensation.

(2) The plan is maintained for the exclusive benefit of the employer's employees or their beneficiaries.

(3) 90 percent or more of the amounts taken into account under the plan are attributable to services performed by nonresident aliens, the compensation for which is not subject to United States federal income tax.

(4) An election under § 1.404A–6 or 1.404A–7 is made to treat the plan as either a qualified funded plan or a qualified reserve plan and to select a plan year.

(b) *90-percent test*—(1) *Reserve plans.* Paragraph (a)(3) of this section is not satisfied by a reserve plan unless 90 percent or more of the actuarial present value of the total vested benefits (i.e., benefits not subject to substantial risk of forfeiture) accrued under the plan is attributable to services performed by nonresident aliens, the compensation for which is not subject to United States federal income tax.

(2) *Funded plans*—(i) *Individual account plans.* Paragraph (a) (3) of this section is not satisfied by a funded plan with individual accounts unless 90 percent or more of the amounts allocated to individual accounts (as described in section 414 (i)) under the plan are allocated to the accounts of nonresident aliens and are attributable to services the compensation for which is not subject to United States federal income tax.

(ii) *Plans without individual accounts.* Paragraph (a) (3) of this section is not satisfied by a funded plan not described in paragraph (b) (2) (i) of this section unless 90 percent or more of the actuarial present value of the total benefits accrued under the plan is attributable to services performed by nonresident aliens the compensation for which is not subject to United States federal income tax.

(c) *Calculation of 90 percent amounts*—(1) *In general.* In determining whether the tests described in paragraphs (b) (1) and (b) (2) (ii) of this section are satisfied, accrued benefits and the actuarial present values of accrued benefits may be calculated under any reasonable method. See § 1.404A–5 (a) for rules describing the calculation of accrued benefits attributable to services for which the compensation is subject to United States federal income tax.

(2) *Safe harbor.* The requirement of paragraph (a)(3) of this section will be deemed satisfied with respect to a plan if—

(i) The participants' benefits under the plan increase generally in proportion to their compensation taken into account under the plan; and

(ii) The sum of the following amounts does not exceed five percent of all compensation taken into account under the plan for the plan year—

(A) The compensation of United States citizens and residents taken into account under the plan; and

(B) Any other compensation subject to United States federal income tax taken into account under the plan.

(3) *Anti-abuse rule.* Notwithstanding paragraph (c)(2) of this section, the requirement of paragraph (a)(3) of this section will not be deemed satisfied under paragraph (c)(2) of this section if the Commissioner determines that a significant purpose of the plan is to secure benefits not otherwise eligible for tax benefits under the Internal Revenue Code to participants who are United States citizens or residents.

(4) *Example.* The principles of paragraphs (c)(2) and (c)(3) of this section are illustrated by the following example:

Example. A foreign branch of a domestic corporation maintains a deferred compensation plan under which benefits are based upon a participant's average compensation for the last five consecutive years of employment. The significant purposes of the plan do not include the provision of benefits otherwise unavailable under the Code to participants who are United States citizens or residents. The foreign branch maintains its books and records in its functional currency (FC). The taxpayer's taxable year and the plan year are coterminous with the calendar year. During the plan year in question, the compensation taken into account under the plan for all plan participants totals FC200 million. Of the FC200 million, FC6 million of the compensation taken into account under the plan is compensation for United States citizens and residents or otherwise subject to United States federal income tax. Because the FC8 million is less than five percent of all compensation taken into account under the plan for the plan year, the 90-percent requirement of paragraph (a)(3) of this section is deemed satisfied for this taxable year.

(d) *Deductions and reductions of earnings and profits.* Deductions and reductions of earnings and profits for amounts paid by an employer to a plan that provides deferred compensation that does not meet the requirements of paragraph (a) of this section are governed exclusively by section 404, without regard to whether the plan benefits foreign employees.

(e) *Definitions.* The following definitions apply for purposes of section 404A and §§ 1.404A–1 through 1.404A–7:

Actuarial present value. "Actuarial present value" is defined in § 1.401(a)(4)–12.

Aggregate amount. "Aggregate amount" is defined in § 1.404A–4(g)(4).

Appropriate foreign tax law. "Appropriate foreign tax law" is defined in § 1.404A–4(g)(3).

Authorized officer. "Authorized officer" is defined in § 1.404A–5(b)(7).

Carryover contributions. "Carryover contributions" are defined in § 1.404A–2(d)(4).

Change in method of accounting. "Change in method of accounting" is defined in § 1.404A–6(a).

Closing year. "Closing year" is defined in § 1.404A–6(f)(4)(ii).

Contributions accumulated to pay deferred compensation. "Contributions accumulated to pay deferred compensation" are defined in § 1 404A–2(b)(2).

Contributions to a trust. "Contributions to a trust" are defined in § 1.404A–2(b)(1).

Controlled foreign corporation. "Controlled foreign corporation" means a controlled foreign corporation as defined in sections 953(c)(1)(B) and 957.

Cumulative foreign amount. "Cumulative foreign amount" is defined in § 1.404A–4(g)(2).

Cumulative limitation. "Cumulative limitation" is defined in § 1.404A–4(b).

Cumulative United States amount. "Cumulative United States amount" is defined in § 1.404A–4(g)(1).

Deductible limit. "Deductible limit" is defined in § 1.404A–2(d)(1)(i).

Deductions. "Deductions" are defined in § 1.404A–1(f)(1).

Deferred compensation—(i) *In general.* "Deferred compensation" means any item the deductibility of which is determined by reference to section 404, without regard to whether section 404 permits a deduction and without regard to whether elections are made under § 1.404A–6 or 1.404A–7. Deferred compensation, as described in the preceding sentence, does not include deferred benefits described in section 404(b)(2)(B).

(ii) *Social security.* A plan under which a foreign government (including a political subdivision, agency or instrumentality thereof) makes a contribution or a direct payment to a participant (or the participant's beneficiary) does not provide deferred compensation to the extent of such contributions or payments. Thus, for example, a foreign country's social security system generally will not be considered as providing deferred compensation. However, the fact that employers are required to maintain the plan by reason of foreign law, or the fact that the plan supplements social security benefits provided by a foreign country, or provides benefits in lieu of such social security benefits, does not prevent a plan from providing deferred compensation.

(iii) *Termination indemnity plans.* The determination of whether a plan (including a termination indemnity plan) provides deferred compensation must generally be made under paragraph (i) of this definition in light of all of the facts and circumstances. Benefits paid under a plan, including a plan denominated a termination indemnity plan will generally be treated as deferred compensation if—

(A) A major purpose of the plan is to provide for the payment of retirement benefits;

(B) The plan has a benefit formula providing for payment based at least in part upon length of service;

(C) The plan provides for the payment of benefits to employees (or their beneficiaries) after the employee's retirement, death or other termination of employment; and

(D) It meets such other requirements as may be prescribed by the Commissioner in guidance of general applicability with respect to termination indemnity plans.

(iv) *Example.* The definition of deferred compensation is illustrated by the following example:

Example. A domestic corporation maintains a branch operation in foreign country *F*. *F* requires that all employers doing business in its country provide benefits to employees under a termination indemnity plan insured by *F*'s government. The plan provides for payments to employees who terminate employment for any reason, including retirement, death, voluntary resignation and discharge for cause (other than for gross misconduct) and permits withdrawals for certain hardship conditions. Upon separation, the employee (or his or her beneficiary) receives an amount equal to the accumulation on the employer's books of one-thirteenth of his or her annual salary for each year of employment, with specified adjustments for interest and inflation. This termination indemnity plan provides deferred compensation as described in paragraph (e) of this section.

Earnings and profits. "Earnings and profits" means earnings and profits computed in accordance with sections 312 and 964(a) and, for taxable years beginning after December 31, 1986, section 986 and the regulations thereunder; and for purposes of section 902 in taxable years beginning before January 1, 1987, accumulated profits within the meaning of section 902(c) as in effect on the day before the enactment of the Tax Reform Act of 1986.

Employer. "Employer" means a person that maintains a plan for the payment of deferred compensation for services provided to it by its employees. "Employer" for purposes of the acceleration of the section 481(a) adjustment is defined in § 1.404A–6(e)(2)(iv).

Equivalent of a trust. "Equivalent of a trust" means a fund—

(i) The corpus and income of which is separately identifiable and segregated, through a separate legal entity, from the general assets of the employer;

(ii) The corpus and income of which is not subject, under the applicable foreign law, to the claims of the employer's creditors prior to the claims of employees and their beneficiaries under the plan;

(iii) The corpus and income of which, by law or by contract, cannot at any time prior to the satisfaction of all liabilities with respect to employees under the plan be used for, or diverted to, any purpose other than providing benefits under the plan; and

(iv) The corpus and income of which is held by a person who has a legally enforceable duty to operate the fund prudently.

Erroneous deduction. "Erroneous deduction" is defined in § 1.404A–7(d)(3)(ii).

Exclusive benefit. "Exclusive benefit" has the same meaning as in §§ 1.401–2 and 1.413–1(d).

Fixed or determinable benefits. "Fixed or determinable benefits" are defined in § 1.404A–2(d)(1)(i).

Full funding limitation. "Full funding limitation" is defined in § 1.404A–5(c)(2).

Functional currency. "Functional currency" (abbreviated as FC) means the functional currency of a taxpayer or a qualified business unit determined in accordance with section 985 (b) and the regulations thereunder, or, for taxable years beginning before January 1, 1987, the currency in which the employer's books and records were maintained for United States tax purposes.

Funded method. "Funded method" is defined in § 1.404A–6(f)(2)(iv).

Initial aggregate amount. "Initial aggregate amount" is defined in § 1.404A–6(g)(2)(iii).

Initial Cumulative foreign amount. "Initial Cumulative foreign amount" is defined in § 1.404A–6(g)(2)(ii).

Initial Cumulative United States amount. "Initial Cumulative United States amount" is defined in § 1.404A–6(g)(2)(i).

Initial section 404A(d) amounts. "Initial section 404A(d) amounts" are defined in § 1.404A–6(g).

Liability. "Liability" is defined in § 1.404A–1(f)(2).

Majority domestic corporate shareholders. "Majority domestic corporate shareholders" are defined in § 1.404A–6(c)(2)(ii)(C).

Method of accounting. "Method of accounting" is defined in § 1.404A–6(a)(1).

Method (1) election. "Method (1) election" is defined in § 1.404A–7(g)(1).

Method (2) election. "Method (2) election" is defined in § 1.404A–7(g)(2).

New Method Opening Amount. "New Method Opening Amount" is defined in § 1.404A–6(f)(3).

Noncontrolled foreign corporation. "Noncontrolled foreign corporation" means a foreign corporation other than a controlled foreign corporation.

Nonqualified individual. "Nonqualified individual" is defined in § 1.404A–5(a)(1).

Nonqualified plan. "Nonqualified plan" is defined in § 1.404A–6(f)(3)(iii).

Old Method Closing Amount. "Old Method Closing Amount" is defined in § 1.404A–6(f)(2).

Open period. "Open period" is defined in § 1.404A–7(g)(6).

Open years. "Open years" are defined in § 1.404A–7(g)(3).

Opening reserve. "Opening reserve" is defined in § 1.404A–6(f)(3)(i).

Opening year. "Opening year" is defined in § 1.404A–6(f)(4)(i).

Pay-as-you-go method. "Pay-as-you-go method" is defined in § 1.404A–6(f)(2)(iii).

Period of adjustment. "Period of adjustment" is defined in § 1.404A–6(e)(2).

Permitted plan year. "Permitted plan year" means the plan year of a plan providing deferred compensation ending with or within the employer's taxable year.

Plan year. "Plan year" means the annual accounting period of a plan providing deferred compensation.

Primary evidence. "Primary evidence" is defined in § 1.404A–5(b)(2).

Prior deduction. "Prior deduction" is defined in § 1.404A–7(d)(3)(i).

Protective election. "Protective election" is defined in § 1.404A–7(g)(2).

Qualified business unit. "Qualified business unit" is defined in section 989(a).

Qualified foreign plan. "Qualified foreign plan" means a plan that meets the requirements of paragraph (a) of this section.

Qualified funded plan. "Qualified funded plan" means a qualified foreign plan for which an election has been made under § 1.404A–6 or 1.404A–7 by the taxpayer to treat the plan as a qualified funded plan.

Qualified reserve plan. "Qualified reserve plan" means a qualified foreign plan for which an election has been made by the taxpayer under § 1.404A–6 or 1.404A–7 to treat the plan as a qualified reserve plan.

Reasonable actuarial assumptions. "Reasonable actuarial assumptions" are defined in § 1.404A–5(c).

Reductions in earnings and profits. "Reductions in earnings and profits" are defined in § 1.404A–1(f)(1).

Reserve method. "Reserve method" is defined in § 1.404A–6(f)(2)(ii).

Retirement annuity. "Retirement annuity" is defined in § 1.404A–2(b)(3).

Retroactive effective date election. "Retroactive effective date election" is defined in § 1.404A–7(b)(1).

Retroactive period. "Retroactive period" is defined in § 1.404A–7(g)(4).

Retroactive plan-by-plan election. "Retroactive plan-by-plan election" is defined in § 1.404A–7 (c)(1) and (d)(1).

Revocation of election. "Revocation of election" is defined in § 1.404A–6(d)(1).

Secondary evidence. "Secondary evidence" is defined in § 1.404A–5(b)(4).

Separate funding entity. "Separate funding entity" is defined in § 1.404A–6(f)(4)(iii).

Short taxable year. "Short taxable year" is defined in § 1.404A–7 (d)(2).

Single plan. "Single plan" is defined in § 1.404A–6(a)(2).

Substantial risk of forfeiture. "Substantial risk of forfeiture" is defined in § 1.404A–3(b)(2).

Substantiation quality data. "Substantiation quality data" means less than precise data that is nevertheless the best data available for the plan year at reasonable expense.

Taxable year of a controlled foreign corporation. "Taxable year of a controlled foreign corporation" means the taxable year as defined in sections 441(b) and 7701(a)(23), subject to section 898.

Taxable year of a noncontrolled foreign corporation. "Taxable year of a noncontrolled foreign corporation" means the taxable year as defined in sections 441(b) and 7701(a)(23).

Taxpayer. "Taxpayer" is defined in section 7701(a)(14).

Termination of election. "Termination of election" is defined in § 1.404A–6(c)(1).

Transition period. "Transition period" is defined in § 1.404A–7(g)(5).

Trust. "Trust" means a trust (as defined in § 301.7701–4(a) of this chapter) or the equivalent of a trust.

Unit credit method. "Unit credit method" is defined in § 1.404A–3(b)(2).

United States tax significance. "United States tax significance" is defined in § 1.404A–6(b)(2)(ii).

Written plan. "Written plan" means a plan that is defined by plan instruments or required under the law of a foreign country, or both. An insurance contract can constitute a written plan.

(f) *Application of other Code requirements*—(1) *Deductibility requirement*—(i) *In general.* In order to deduct amounts under section 404A, amounts contributed to a qualified funded plan or properly added to a reserve with respect to a qualified reserve plan must otherwise be deductible. The standards under section 404 are to be used in determining whether an amount would otherwise be deductible for this purpose. Thus, amounts may be taken into account under section 404A only to the extent that they are ordinary and necessary expenses during the taxable year in carrying on a trade or business and are compensation for personal services actually rendered before the end of the year. Similarly, in order to reduce earnings and profits under section 404A by amounts contributed to a qualified funded plan or properly added to a reserve with respect to a qualified reserve plan, earnings and profits must otherwise be able to be reduced by such amounts under the general principles of sections 312, 901, 902, 960, and 964.

(ii) *Capitalization requirements.* In determining if an amount would otherwise be deductible (or able to be used to reduce earnings and profits) for purposes of paragraph (g)(1)(i) of this section, the fact that the amount is required to be capitalized (e.g., under section 263A) is ignored. Additionally, while section 404A and §§ 1.404A–1 through 1.404A–7 refer generally to permissible deductions or reductions of earnings and profits for deferred compensation, those references are intended to refer both to situations under which amounts may be taken into account as deductions or reductions of earnings and profits and to situations under which amounts may be taken into account through inclusion in the basis of inventory or through capitalization.

(2) *Section 461 requirements.* In determining whether any amount of deferred compensation may be taken into account under section 404A by an accrual method taxpayer, the conditions for accrual under section 461 must be met with respect to the amount by the last day of the taxable year. For this purpose, an amount determined under §§ 1.404A–1 through 1.404A–7 establishes the fact of the liability and determines the amount of the liability with reasonable accuracy. See § 1.461–4(d)(2)(iii), which generally provides that the economic performance requirement of section 461(h) is satisfied to the extent that any amount is otherwise properly taken into account under §§ 1.404A–1 through 1.404A–7.

§ 1.404A–2 Rules for qualified funded plans.

(a) *In general.* Except as provided in this section and in §§ 1.404A–4 and 1.404A–5, the amount taken into account for a taxable year with respect to a qualified funded plan is the amount of the contributions paid by the employer to the trust in that year (regardless of whether the employer uses an accrual method of accounting). Accretions in a trust are not considered contributions to a plan.

(b) *Payment to a trust*—(1) *Contribution requirements.* Contributions paid under a qualified funded plan may not be taken into account unless they are—

(i) Paid to a trust which is operated in accordance with the requirements of section 401 (a)(2);

(ii) Paid for a retirement annuity under which retirement benefits are provided and which is for the exclusive benefit of the employer's employees or their beneficiaries; or

(iii) Paid directly to a participant or beneficiary (rather than a trust).

(2) *Trust requirements*—(i) *General rule.* A contribution does not satisfy paragraph (b)(1)(i) of this section unless it is accumulated in the trust for the purpose of being distributed as deferred compensation. Whether a contribution is being accumulated in the trust for the purpose of being distributed as deferred compensation depends on the facts and circumstances. For purposes of paragraph (b)(1)(i) of this section, the fact that a trust has been (or has not been) involved in transactions that would be described in section 4975(c)(1) (and not exempted under section 4975(c)(2) or 4975(d)), e.g., contributions made in the form of a promissory note, if the plan were subject to section 4975(c)(1), is an important factor in determining whether the trust is not (or is) considered to be operated in accordance with the requirements of section 401(a)(2). In addition, a contribution to a trust does not satisfy paragraph (b)(1)(i) of this section unless it has substance.

(ii) *Effective date.* The section 4975(c)(1) factor in determining compliance with section 401(a)(2) provided in this paragraph (b)(2) is taken into account for all transactions entered into after May 7, 1993.

(3) *Retirement annuity.* A retirement annuity means a retirement annuity (as defined in section 404(a)(2)) except that the retirement annuity need not be part of a plan that meets the requirements of section 401(a) or 401(d). Notwithstanding the preceding sentence, the retirement annuity described therein need not be issued by an insurance company qualified to do business in a State in the United States if the taxpayer(s) and/or sponsoring employer(s) of the plan have shifted the risk of making payments under the plan to an entity that is qualified to do business in the country (or countries) where the plan is maintained.

(4) *Effect of reversion of overfunded contributions.* If any portion of a contribution to a trust may revert to the benefit of the employer before the satisfaction of all liabilities to employees or their beneficiaries covered by the trust, no amount of the contribution may be taken into account under this section.

(5) *Example.* The principles of paragraph (b) of this section are illustrated by the following example:

Example. A foreign subsidiary of a domestic corporation maintains a deferred compensation plan for its employees. The foreign subsidiary makes annual contributions under the plan to a trust. Each year after the contribution is made to the trust, the trustee lends the contribution back to the foreign subsidiary maintaining the plan. The foreign subsidiary executes promissory notes obligating it to repay the borrowed funds (at a reasonable rate of interest) to the trust and to pay any benefits due under the plan. Notwithstanding that the taxpayer may have designated the plan as a qualified funded plan, amounts may not be taken into account under section 404A with respect to contributions to the trust because the loans cause the trust to fail the requirements of section 401(a)(2). Even if the loans do not cause the trust to violate section 401(a)(2), the portion of any contribution that is loaned to the foreign subsidiary could not be taken into account because, to the extent of the loan (or loans), the contribution lacks substance and is not accumulated in the trust.

(c) *Contribution deemed made before payment*—(1) *Time of payment to trust.* Regardless of whether an employer uses the cash or an accrual method of accounting, for purposes of this section, a contribution to a trust that is paid after the close of an employer's taxable year is deemed to have been paid on the last day of that taxable year if—

(i) The payment is made on account of the taxable year and is made not later than the 15th day of the ninth month after the close of the taxable year;

(ii) The payment is treated by the plan in the same manner that the plan would treat a payment actually received on the last day of the taxable year; and

(iii) Either—

(A) The employer notifies the plan administrator or trustee in writing that the payment to the plan is designated on account of the taxable year;

(B) The taxpayer claims the payment as a deduction on its tax return for the taxable year; or

(C) The employer reduces earnings and profits with respect to the payment.

(2) *Time of designation.* Any designation of a payment pursuant to paragraph (c)(1)(iii)(A) of this section must occur not later than the time described in paragraph (c)(1)(i) of this section.

(3) *Irrevocable designation.* After a payment has been designated or claimed on a return in the manner provided in paragraph (c) (1) (iii) (A) of this section as being on account of a taxable year, the designation or claim may not be retracted or changed.

(d) *Limitation for qualified funded plans*—(1) *Plans with fixed or determinable benefits*—(i) *Limit on amount taken into account.* Contributions made to a qualified funded plan under which the benefits are fixed or determinable are not taken into account under this section to the extent they exceed the amount that would be taken into account under section 404(a)(1)(A) (ii) and (iii) (determined without regard to the last sentence of paragraph (A) of section 404 (a)(1) and without regard to whether the trust is exempt under section 501(a)). Benefits are considered fixed or determinable for this purpose if either benefits under or contributions to the plan are definitely determinable within the meaning of § 1.401–1(b)(1)(i). The limit described in the first sentence of this paragraph (d)(1)(i) is determined on the basis of the permitted plan year of the qualified foreign plan. Thus, the limit for the employer's taxable year is the limit for the plan year ending with or within the employer's taxable year.

(ii) *Actuarial valuation requirements.* In determining the amount to be taken into account under this section, an actuarial valuation must be made not less frequently than once every three years. However, an actuarial valuation must be made for the first plan year of the plan for which an election under § 1.404A–6 is in effect. For interim years, a reasonable actuarial determination of whether the full funding limit in § 1.404A–5(c)(2) applies to the qualified funded plan must be made. The Commissioner may require a full actuarial valuation in an interim year under appropriate circumstances. See § 1.404A–6 for rules on changes in methods of accounting.

(2) *Plans without fixed or determinable benefits.* Contributions made to a qualified funded plan under which the benefits are not fixed or determinable may not be taken into account under this section to the extent they exceed the limitations of section 404(a)(3) (determined without regard to whether the payment is made to a trust that is exempt under section 501(a)).

(3) *Limitations where more than one type of plan is maintained.* Where payments are made for a taxable year to more than one type of qualified funded plan, the amounts that may be taken into account for the taxable year with respect to the payments are subject to the limitations of section 404(a)(7). The amount that is taken into account under this paragraph (d)(3) is determined without regard to whether the payment satisfies the minimum funding standard described in section 412.

(4) *Carryover contributions.* In the event that the aggregate amount of contributions paid during an employer's

taxable year in which an election under section 404A is in effect (reduced by an amount described in section 404A(g)(1)) exceeds the amount that may be taken into account under section 404A(a) and this section (computed without regard to section 404A(d) and § 1.404A–4), the excess contributions are treated as an amount paid in the succeeding taxable year with respect to that qualified foreign plan. A carryover contribution is also taken into account in determining whether a carryover contribution exists for a succeeding taxable year.

(5) *Additional rules.* The Commissioner may prescribe additional rules for determining the amount that may be taken into account under this paragraph (d) in guidance of general applicability.

(e) Examples. The principles of this section are illustrated by the following examples:

Example 1. A qualified funded plan under which benefits are not fixed or determinable is maintained by a foreign branch of a domestic corporation. The foreign branch computes its income in units of local currency, the FC. The taxpayer's taxable year and the plan year are coterminous with the calendar year. The plan was established in 1985, and the taxpayer made an election to apply section 404A, a qualified funded plan election as described in § 1.404A–6. For the 1985 taxable year, the employer made a FC25,000 contribution under the plan, and FC15,000 of that contribution could be taken into account under paragraph (d) (2) of this section. The cumulative foreign amount for the 1985 taxable year was FC20,000. The amount of the excess contribution carried forward was FC10,000 (FC25,000 - FC15,000), because the amount of the carryover contribution is determined without regard to section 404A (d) and § 1.404A–4.

Example 2. Assume the same facts as in *Example 1*, except that the entire FC25,000 contribution made under the plan may be taken into account under paragraph (d)(2) of this section. The amount of the excess contribution carried forward was zero, even though the cumulative United States amount may have exceeded the cumulative foreign amount for the taxable year, because the amount of the excess contribution is determined without regard to section 404A(d) and § 1.404A–4.

Example 3. P, a domestic corporation, owns all of the one class of stock of foreign corporation *S*. The taxable year for P is the calendar year. The taxable year for *S* is the fiscal year beginning on June 1. *S* made a contribution to its qualified funded plan on February 15, 1983, and notified the plan's trustee in writing that *S* designated the contribution as a payment on account of *S*'s preceding taxable year (ending May 31, 1982). The contribution is taken into account in computing *S*'s earnings and profits for *S*'s taxable year ending May 31, 1982.

§ 1.404A–3 Rules for qualified reserve plans.

(a) *Amounts taken into account with respect to qualified reserve plans*—(1) *General rule.* Except as provided in §§ 1.404A–4 and 1.404A–5, the amount taken into account for a taxable year with respect to a qualified reserve plan equals the sum of—

(i) The reasonable addition during the permitted plan year to a reserve for liabilities under the plan as described in paragraph (b) of this section; and

(ii) The amortization of certain increases or decreases in the plan reserve over ten years, as described in paragraph (c) of this section.

(2) *Amounts less than zero.* If the amount to be taken into account under this section is less than zero, that amount must be treated as an increase in income and earnings and profits for the taxable year.

(3) *Exclusive rules for qualified reserve plans.* No amounts may be taken into account with respect to a qualified reserve plan except as provided for in this section. Thus, for example, no deduction is allowed for benefit payments from the reserve. Similarly, no amount may be taken into account for any payments made by the employer that are used either to reinsure the liabilities or benefits under a qualified reserve plan or to fund separately all or a portion of the benefits under a qualified reserve plan. These amounts may, however, be taken into account as contributions to a qualified funded plan to the extent the requirements of § 1.404A–2 are satisfied.

(b) *Reasonable addition to a reserve for liabilities*—(1) *General rule.* Except as provided in § 1.404A–7(f)(2), the reasonable addition to a reserve for a plan year equals the increase in the reserve, determined under the unit credit method as described in paragraph (b)(2) of this section, that arises from the passage of time and from additional service and expected changes in compensation in the current plan year for employees who were included in the reserve as of the end of the prior plan year. Thus, the reasonable addition to the reserve includes an element of interest on the reserve as of the beginning of the plan year (less the interest on the benefit payments during the plan year) and the actuarial present value of the expected increase in vested benefits accrued during the current plan year for employees who were included in the reserve as of the end of the prior plan year, determined without reference to any plan amendment during the plan year.

(2) *Unit credit method required.* The reserve for the employer's liability must be determined under the unit credit method. Thus, the reserve must be the actuarial present value of the employer's liability, taking into account service and compensation only through the valuation date. In determining the reserve under this section, benefits that are subject to a substantial risk of forfeiture may not be taken into account. The term "substantial risk of forfeiture" has the meaning stated in section 83, except that the term "property" in all events includes benefits accrued under a qualified reserve plan.

(3) *Timing of valuation.* The determination of the reserve and the reasonable addition to the reserve must be made as of the last day of the plan year.

(4) *Permissible actuarial assumptions*—(i) *Interest rates*—(A) *In general.* Notwithstanding any other provision of §§ 1.404A–1 through 1.404A–7, no amount may be taken into account under section 404A with respect to a qualified reserve plan unless the rate (or rates) of interest for the plan that are selected by the employer are within the permissible range. The interest rate selected by the employer for the plan under this paragraph must remain in effect for that plan until the first plan year for which that rate is no longer within the permissible range. At that time, a new rate of interest must be selected by the employer from within the permissible range applicable at that time.

(B) *Permissible range.* For purposes of this paragraph (b)(4), the term "permissible range" means a rate of interest that is not more than 1.2 and not less than the product of 0.8 multiplied by the average rate of interest for the highest quality long-term corporate bonds denominated in the functional currency of the qualified business unit of the employer whose books reflect the plan's liabilities for the 15-year period ending on the last day before the beginning of the employer's taxable year. If there is no market in long-term corporate bonds denominated in the relevant functional currency, or if the qualified business unit computes its income or earnings and profits in dollars under § 1.985–3, the employer must use a rate that can be demonstrated clearly to reflect income, based on all relevant facts and circumstances, including appropriate rates of inflation and commercial practices.

(ii) *Plan benefits.* Except as otherwise provided by the Commissioner, changes in plan benefits or applicable foreign law that become effective (whether or not retroactively) in a future plan year may not be taken into account until the

plan year the change is effective. Notwithstanding the above, the reserve calculation may take into account cost-of-living adjustments that are part of the employee's vested accrued benefit, using assumptions regarding cost-of-living adjustments that are consistent with the interest rate assumptions described in paragraph (b)(4)(i) of this section and the terms of the plan. Thus, for example, a cost-of-living adjustment that does not require any future service on the part of the employee and is not subject to employer discretion may be taken into account.

(c) *Ten-year amortization for certain changes in reserves*—(1) *Actuarial valuation.* Each plan year an actuarial valuation must be made as of the end of the plan year, comparing the actual reserve with the expected value of the reserve. Any difference between the actual reserve determined as of the end of the plan year and the expected value of the reserve as of that date must be amortized in level amounts of principal over ten years, beginning in the plan year of the actuarial valuation. This amortization applies regardless of whether the difference is attributable to changes in employee population, changes in plan provisions, or changes in actuarial assumptions.

(2) *Expected value of reserve.* The expected value of the reserve as of the end of the plan year is equal to the sum of the reserve as of the end of the prior plan year plus the reasonable addition to the reserve for the plan year described in paragraph (b) of this section less the benefit payments during the plan year. Thus, the expected value of the reserve is generally determined on the basis of the plan in effect and the actuarial assumptions used as of the end of the prior plan year, but, because it includes the reasonable addition to the reserve, includes the effect of expected changes in compensation, service and vesting during the current plan year.

(3) *Special rule for certain cost of living adjustments.* Notwithstanding the general rule that the increase in liability from a plan amendment is amortized over ten years, if under foreign law a shorter period for amortization is required, that shorter period shall be substituted for ten years in this paragraph (c) if the amendment is a cost of living adjustment that either—

(i) Relates primarily to retirees; or

(ii) Is for employees of a foreign corporation in a taxable year beginning before August 5, 1993.

(4) *Anti-abuse rule.* The Commissioner may reclassify any item included by a taxpayer as a reasonable addition to a reserve as instead subject to amortization over ten years if the Commissioner determines that the taxpayer's classification of that item circumvents the intent of section 404A(c)(4). Thus, for example, if the Commissioner determines that the vesting provisions of the plan cause the increase in vested benefits to be unreasonably large in a single plan year, the reasonable addition under paragraph (b) of this section must be calculated without recognizing any changes in vesting for the plan year.

(d) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. S, a foreign subsidiary of *P*, a domestic corporation, contributes funds to an irrevocable trust which is used to pay benefits provided under *S*'s reserve plan. The trust does not satisfy the requirements of section 401(a), 404(a)(4), or 404(a)(5). The funds are not used to provide benefits in addition to those provided by the reserve plan. In 1984, the year the plan was adopted, *S* elected to treat the plan as a qualified reserve plan. In 1984, *S* also contributed an amount to the irrevocable trust. The fact that *S* contributed an amount to the trust has no effect on the computation of the amount that *S* is entitled to take into account under this section in 1984 (or in any other year). Furthermore, no additional amount may be taken into account for the amount of the contribution to the trust beyond the amount permitted to be taken into account under this section.

Example 2. (a) Employer *Y* hired 10,000 employees in 1980, each of whom was age 40 at the beginning of the year and earned FC10,000. The employees immediately commenced participation in the plan. The plan provided that the accrued benefit at the end of X years equaled: (X multiplied by one percent) multiplied by the highest one year's compensation. The plan vesting was 20 percent per year starting after two years of service with the employer. Under the plan, once an employee was vested in a benefit, the benefit could not be forfeited for any reason other than the death of the employee. Employees who terminate employment for reasons other than death or retirement receive an immediate single sum distribution in an amount equal to the actuarial present value (calculated at eight percent interest) of the vested accrued benefit (where the actuarial present value and the vested accrued benefit are determined as of the end of the prior plan year). Reserves and expected increases in the reserve were determined using eight percent interest, five percent assumed compensation increases, the UP–84 mortality table and assuming no pre-retirement terminations other than death. However as set forth in the relevant data below, the actual experience differed from these assumptions (e.g., the actual compensation did not increase five percent each year and the mortality and termination experience were different than assumed).

Year	End of year age	No. of deaths	No. of terminations	No. of employees remaining
1980	41	16	5	9,979
1981	42	18	5	9,956
1982	43	20	5	9,931
1983	44	25	5	9,901
1984	45	30	25	9,846

Year	Compensation for each employee	End of year accrued benefit for each employee	End of year vested accrued benefit for each employee
1980	10,000	100	0
1981	10,000	200	0
1982	10,000	300	60
1983	12,000	480	192
1984	12,000	600	360

Year	Benefit payments	End of year actuarial factor	End of year reserve for vested benefits
1980	0	1.049706	0
1981	0	1.136328	0
1982	0	1.230380	733,134
1983	369	1.332564	2,533,194
1984	6,396	1.443638	5,117,062

(b) *Computation of amounts taken into account for 1980.* The amount taken into account for 1980 was zero because there was no reasonable addition to the reserve (i.e., no increase in the reserve on account of the passage of time, additional service or expected changes in compensation for employees who were included in the reserve at the end of the prior year) and there were no amounts that are subject to ten-year amortization under paragraph (c) of this section.

(c) *Computation of amounts taken into account for 1981.* There was no amount taken into account for 1981 for the same reason as in 1980.

(d) *Computation of amount taken into account for 1982.* The amount taken into account in 1982 was the sum of the reasonable addition to the reserve determined under paragraph (b) of this section and the amortization of certain increases in the plan reserve over ten years determined under paragraph (c) of this section. There was no reasonable addition to the reserve (i.e., no increase in the reserve on account of the passage of time, additional service or expected changes in compensation for employees who were included in the reserve at the end of the prior year) for the 1982 year because no employee was included in the reserve as of the end of 1981. There were no benefits paid during 1981. Thus, the expected value of the reserve at the end of 1982 was zero. However, the actual value of the reserve at the end of 1982 was FC733,134 (9,931 employees × 60 × 1.230380). The difference between the expected and actual values of the reserve was taken into account over ten years beginning in 1982. Thus, the total amount taken into account for 1982 was FC73,313.

(e) *Computation of amount taken into account for 1983.* Using the employee data as of the end of 1982 and the expected rate of compensation increase for 1983, each employee's accrued benefit was expected to be 420 (10,500 × 4 years × .01) as of the end of 1983. 40 percent of this accrued benefit, or 168, was expected to be vested. Thus, the expected increase in each employee's vested accrued benefit was 108 (the difference between 168 and the vested accrued benefit as of the end of the prior year (60) for those employees who were included in the reserve as of the end of the prior year). There were 9,931 employees included in the reserve as of the end of the prior year and 9,931 × p_{43} were expected to be in the reserve as of the end of 1983. The actuarial present value factor for a deferred annuity of FC1 commencing at age 65 payable monthly is 1.332564. Thus, the actuarial present value of the expected increase in vested accrued benefits as of the end of the year was FC1,425,212 (9,931 employees × p_{43} × 108 × 1.332564). The reasonable addition to the reserve also included an element of interest on the reserve as of the end of the prior year equal to FC58,651 (8 percent × 733,134) that is offset by the interest attributable to the actual benefits paid during the year (FC15, which is interest on the benefits paid during the year (FC369) from the date of payment through the end of the year). Thus, the reasonable addition to the reserve for 1983 was FC1,483,848 (1,425,212 + 58,651 − 15) and the expected reserve at the end of the year was FC2,216,613 (733,134 + 1,483,848 − 369). The actual reserve at the end of 1983 is FC2,533,194, so there was an actuarial loss of FC316,581 (2,533,194 − 2,216,613) which was amortized over 10 years beginning in 1983. Thus, the total amount taken into account in 1983 was FC1,588,819 (1,483,848+73,313+10 percent of 316,581).

(f) *Computation of amount taken into account for 1984.* Using the employee data as of the end of 1983 and the expected rate of compensation increase for 1984, each employee's accrued benefit was expected to be 630 (12,600×5 years×.01) as of the end of 1984. 60 percent of this accrued benefit, or 378, was expected to be vested. Thus, the expected increase in each employee's vested accrued benefit was 186 (the difference between 378 and the vested accrued benefit as of the end of the prior year (192) for those employees who were included in the reserve as of the end of the prior year). There were 9,901 employees included in the reserve as of the end of the prior year and 9,901×p_{44} were expected to be in the reserve as of the end of 1984. The actuarial present value factor for a deferred annuity of FC1 commencing at age 65 payable monthly is 1.443638. Thus, the actuarial present value of the expected increase in vested accrued benefits as of the end of the year was FC2,650,355 (9,901 employees×p_{44}×186×1.443638). The reasonable addition to the reserve also included an element of interest on the reserve as of the end of the prior year equal to FC202,656 (8 percent×2,533,194), offset by interest attributable to the actual benefits paid during the year (FC256, which is interest on the benefits paid during the year (FC6,396) from the date of payment through the end of the year). Thus, the reasonable addition to the reserve for 1984 was FC2,852,755 (2,650,355+202,656 − 256) and the expected reserve at the end of the year is FC5,379,553 (2,533,194+2,852,755 − 6,396). The actual reserve at the end of 1984 was FC5,117,062, so there was an actuarial gain of FC262,491 (5,379,553 − 5,117,062) which was amortized over 10 years beginning in 1984. Thus, the total amount taken into account in 1984 was FC2,931,477 (2,852,755+73,313+31,658 − 10 percent of 262,491).

(g) *Alternative computation method.* The amounts taken into account for 1982, 1983 and 1984 may also be illustrated as follows—

Worksheet for Calculating Amount Taken Into Account for Qualified Reserve Plans Under § 404A

1982:

(1) Reserve at end of Prior Year	0
(2) Interest on (1) to end of Current Year	0
(3) Present Value of the Expected Increase in Vested Accrued Benefits for employees who were included in the reserve as of the end of the prior year.	0
(4) Benefit Payments during current year	0
(5) Interest on (4) from date of payment through end of Current year	0
(6) Reasonable addition to the reserve (2)+(3) − (5)	0
(7) Expected value of reserve (1)+(6) − (4)	0
(8) Actual value of reserve	733,134
(9) Amount to be amortized (8) − (7)	733,134

Worksheet for Calculating Amount Taken Into Account for Qualified Reserve Plans Under § 404A—Continued

(10) Remaining 10 Percent Bases from Prior Years (original amounts) (Item 12 from Prior Year)	0
(11) 10 percent Bases whose 10 years ended last year	0
(12) (9)+(10)−(11)	733,134
(13) 10 percent of (12)	73,313
(14) Amount Taken Into Account for Current Year [(6)+(13)]	73,313
1983:	
(1) Reserve at end of Prior Year	733,134
(2) Interest on (1) to end of Current Year	58,651
(3) Present Value of the Expected Increase in Vested Accrued Benefits for employees who were included in the reserve as of the end of the prior year.	1,425,212
(4) Benefit Payments during current year	369
(5) Interest on (4) from date of payment through end of Current year	15
(6) Reasonable addition to the reserve (2)+(3)−(5)	1,483,848
(7) Expected value of reserve (1)+(6)−(4)	2,216,613
(8) Actual value of reserve	2,533,194
(9) Amount to be amortized (8)−(7)	316,581
(10) Remaining 10 Percent Bases from Prior Years (original amounts) (Item 12 from Prior Year)	733,134
(11) 10 percent Bases whose 10 years ended last year	0
(12) (9)+(10)−(11)	1,049,715
(13) 10 percent of (12)	104,971
(14) Amount Taken Into Account for Current Year [(6)+(13)]	1,588,819
1984:	
(1) Reserve at end of Prior Year	2,533,194
(2) Interest on (1) to end of Current Year	202,656
(3) Present Value of the Expected Increase in Vested Accrued Benefits for employees who were included in the reserve as of the end of the prior year.	2,650,355
(4) Benefit Payments during current year	6,396
(5) Interest on (4) from date of payment through end of Current Year	256
(6) Reasonable addition to the reserve (2)+(3)−(5)	2,852,755
(7) Expected value of reserve (1)+(6)−(4)	5,379,553
(8) Actual value of reserve	5,117,062

Worksheet for Calculating Amount Taken Into Account for Qualified Reserve Plans Under § 404A—Continued

(9) Amount to be amortized (8)−(7)	(262,491)
(10) Remaining 10 Percent Bases from Prior Years (original amounts) (Item 12 from Prior Year)	1,049,715
(11) 10 percent Bases whose 10 years ended last year	0
(12) (9)+(10)−(11)	787,224
(13) 10 percent of (12)	78,722
(14) Amount Taken Into Account for Current Year [(6)+(13)]	2,931,477

Example 3. (a) The facts are the same as in *Example 2*, except that the interest rate used to determine the reserve as of the end of 1984 has been decreased to 7%.

(b) The amount taken into account for 1984 under the alternative calculation method is determined as follows:

Worksheet for Calculating Amount Taken Into Account for Qualified Reserve Plans Under § 404A

1984:	
(1) Reserve at end of Prior Year	2,533,194
(2) Interest on (1) to end of Current Year	202,656
(3) Present Value of the Expected Increase in Vested Accrued Benefits for employees who were included in the reserve as of the end of the prior year.	3,402,637
(4) Benefit Payments during current year	6,396
(5) Interest on (4) from date of payment through end of Current year	256
(6) Reasonable addition to the reserve (2)+(3)−(5)	3,605,037
(7) Expected value of reserve (1)+(6)−(4)	6,131,835
(8) Actual value of reserve	6,569,498
(9) Amount to be amortized (8)−(7)	437,663
(10) Remaining 10 Percent Bases from Prior Years (original amounts) (Item 12 from Prior Year)	1,049,715
(11) 10 percent Bases whose 10 years ended last year	0
(12) (9)+(10)−(11)	1,487,378
(13) 10 percent of (12)	148,738
(14) Amount Taken Into Account for Current Year [(6)+(13)]	3,753,775

§ 1.404A–4 United States and foreign law limitations on amounts taken into account for qualified foreign plans.

(a) *In general.* Section 404A(d) and this section place two limits on the amount taken into account for a taxable year with respect to a qualified foreign plan under section 404A (b) and (c) and §§ 1.404A–2 and 1.404A–3. First, as set forth in paragraph (b) of this section, the cumulative amounts that are or have been taken into account under section 404A through the end of the current year may not exceed the cumulative amounts deductible under foreign law in that period. Because the foreign law deduction is cumulative, however, amounts previously disallowed under this rule are taken into account in later years as the amount deductible under foreign law increases. Second, for taxable years beginning before January 1, 1987, or such later year determined under section 902(c)(3)(A), the rule in paragraph (c) of this section further limits the amount taken into account during those taxable years. Because section 404A(d) and this section apply solely to amounts that would othewise be taken into account under § 1.404A–2 or 1.404A–3, these limitations are applied without regard to amounts taken into account under section 481 (i.e., without regard to the portion of a section 481(a) adjustment that is taken into account during any taxable year within the section 481(a) adjustment period, as defined in § 1.404A–6(e)(2)). See § 1.404A–6, however, for rules applying the section 404A(d) limitations to the calculation of the section 481(a) adjustment.

(b) *Cumulative limitation.* The amount taken into account with respect to a qualified foreign plan for any taxable year equals—

(1) The lesser of—(i) The cumulative United States amount; or

(ii) The cumulative foreign amount;

(2) Reduced by the aggregate amount.

(c) *Special rule for foreign corporations in pre-pooling years.* For a taxable year of a foreign corporation beginning before January 1, 1987, or such later year determined under section 902(c)(3)(A), the reduction in earnings and profits determined under paragraph (b) of this section with respect to a qualified foreign plan may not exceed the amount allowed as a deduction under the appropriate foreign tax laws for such taxable year. See *Example 3* of paragraph (h) of this section for an illustration of this rule.

(d) *Rules relating to foreign currency*—(1) *Taxable years beginning after December 31, 1986.* For taxable years beginning after December 31, 1986, the cumulative United States amount, the cumulative foreign amount, and the aggregate amount must be computed in the employer's functional currency. See generally section 964 and sections 985 through 989 for rules applicable to determining and

translating into dollars the amount of income or loss of foreign branches and earnings and profits (or deficits in earnings and profits) of foreign corporations.

(2) *Taxable years beginning before January 1, 1987.* For taxable years beginning before January 1, 1987, the cumulative United States amount, the cumulative foreign amount, and the aggregate amount must be computed in the currency in which the foreign branch or foreign subsidiary kept its books and records. See Rev. Rul. 75–106, 1975–1 C.B. 31 (see § 601.601(d)(2)(ii)(*b*) of this chapter), for rules for determining the amount of income or loss of foreign branches using a net worth method of accounting. See Rev. Rul. 75–107, 1975–1 C.B. 32 (see § 601.601(d)(2)(ii)(*b*) of this chapter), for rules for determining the amount of income or loss of foreign branches using a profit and loss method of accounting. See sections 312, 902, and 1248 and the regulations thereunder for rules for determining the earnings and profits of noncontrolled foreign corporations. See section 964 and the regulations thereunder for rules for determining the earnings and profits of foreign corporations for purposes of subpart F.

(3) *Special rules for the net worth method of accounting.* For purposes of § 1.964–1(e)(4), an amount of deduction that is accrued but not paid at the end of the employer's taxable year with respect to a qualified funded plan must be treated as a short-term liability. In the case of a qualified reserve plan, for purposes of § 1.964–1(e), the amount of the reserve taken into account as a liability on the balance sheet as of the beginning of the taxable year must be limited to the aggregate amount, and the amount of the reserve taken into account as a liability on the balance sheet as of the close of the taxable year must be limited to the sum of the aggregate amount and the amount taken into account for the taxable year. For purposes of § 1.964–1(e)(4), each annual increase in the aggregate amount must be treated as a long-term liability incurred on the last day of the employer's taxable year to which the increase relates. As of the close of each taxable year, a portion of the aggregate amount equal to the amount of benefits expected to be paid during the succeeding taxable year must be reclassified as a short-term liability. The reclassified amount must be allocated to the annual increases in the aggregate amount on a first-in-first-out basis. Similar rules apply for purposes of determining the amount of reserve taken into account by a foreign branch using the net worth method of accounting for taxable years beginning before January 1, 1987, and by a qualified business unit that uses the United States dollar approximate separate transactions method of accounting under § 1.985–3 in a taxable year beginning after December 31, 1986.

(e) *Maintenance of more than one type of qualified foreign plan by an employer.* In determining the deduction or reduction in earnings and profits when an employer maintains one plan for purposes of foreign law that is treated as two separate plans for purposes of § 1.404A–6(a)(2), the cumulative United States amount for each plan must be combined for purposes of paragraphs (a) and (b) of this section. See *Example 5* of paragraph (h) of this section for an illustration of this rule.

(f) *United States and foreign law limitations not applicable.* The limitations set forth in this section do not apply to the adjustments required by section 481, section 446(e) and section 2(e)(3)(A) of Public Law 96–603.

(g) *Definitions*—(1) *Cumulative United States amount.* The term "cumulative United States amount" means (with respect to a qualified foreign plan) the amount determined under section 404A (without regard to section 404A(d)) for the taxable year of the employer and for all consecutive prior taxable years for which an election under section 404A was in effect for the plan plus the "initial section 404A amount" within the meaning of § 1.404A–6(g)(2)(i).

(2) *Cumulative foreign amount.* The term "cumulative foreign amount" means (with respect to a qualified foreign plan) the cumulative amount allowed as a deduction under the appropriate foreign tax law for the taxable year of the employer and for all consecutive prior taxable years for which an election under section 404A was in effect for the plan plus the initial section 404A amount within the meaning of § 1.404A–6(g)(2)(ii).

(3) *Appropriate foreign tax law.* The appropriate foreign tax law is the income tax law of the country (other than the United States) that is the principal place of business of the qualified business unit of the employer whose books reflect the plan liabilities.

(4) *Aggregate amount.* The term "aggregate amount" means (with respect to a qualified foreign plan) amounts permitted to be taken into account under section 404A(d)(1) for all consecutive prior taxable years for which an election under section 404A was in effect for the plan plus the initial section 404A amount required by § 1.404A–6(g)(2)(iii).

(h) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. X, a foreign subsidiary of a domestic corporation, maintains its main office in foreign country *A*, and a branch, *Y*, in foreign country *B*. The functional currency of *X* is the FC. *Y*'s functional currency is the local currency, LC. *X* maintains a qualified foreign plan for the benefit of *X*'s employees in *B*. In the year the plan was adopted, a section 404A election was made for the plan. The appropriate foreign tax law is the tax law of *B* because all the employees covered by the plan are in *B* and plan liabilities are accounted for on *Y*'s books. The tax law of *B* permits *X* to deduct contributions to the plan. The cumulative amount allowed as a deduction under the tax law of *B* is LC80. The cumulative United States amount with respect to the plan is LC100. Therefore, the cumulative limitation is LC80. The earnings and profits of *X* include the profit and loss for *Y* (reflecting a reduction for contributions to the plan, computed in LC and translated into FC under the principles of section 987).

Example 2. A qualified reserve plan is maintained by a foreign branch of a domestic corporation. The foreign branch computes its income under the profit and loss method of Rev. Rul. 75–107, 1975–1 C.B. 32 (see § 601.601(d)(2)(ii)(*b*) of this chapter), in units of the local currency, the FC. The foreign branch established the qualified reserve plan in 1985 and the taxpayer made the elections described in § 1.404A–6. The taxpayer's taxable year and the plan year is the calendar year. The assumed amounts taken into account under section 404A and appropriate foreign tax law for selected years and the computations under this section which follow from the amounts, in units of FC, are shown in the following table—

	1985	1986	1987	1988
(1) Amount determined with respect to the plan under section 404A for the taxable year without regard to section 404A (d)	800,000	900,000	300,000	1,000,000
(2) Cumulative United States amount	800,000	1,700,000	2,000,000	3,000,000
(3) Cumulative foreign amount	1,000,000	1,600,000	2,000,000	2,200,000
(4) Lesser of cumulative United States or cumulative foreign amount	800,000	1,600,000	2,000,000	2,200,000

	1985	1986	1987	1988
(5) Reduced by aggregate amount (cumulative sum of (6) for prior years)	(0)	(800,000)	(1,600,000)	(2,000,000)
	800,000	800,000	400,000	200,000
(6) Amount taken into account for the taxable year	800,000	800,000	400,000	200,000

Example 3. Assume the same facts as in *Example 2* for all taxable years, except that the qualified reserve plan is maintained by a foreign subsidiary of a domestic corporation. The foreign subsidiary computes its earnings and profits in units of the local currency, the FC. The foreign subsidiary's taxable year and the plan year are calendar years. The assumed amounts taken into account under section 404A and appropriate foreign law for selected years, and the computations under this section which follow from the amounts, in units of FC, are shown in the following table—

	1985	1986	1987	1988
(1) Amount determined with respect to the plan under section 404A for the taxable year without regard to section 404A (d)	800,000	900,000	300,000	1,000,000
(2) Amount allowed as a deduction under the appropriate foreign tax laws for the taxable year	1,000,000	600,000	400,000	200,000
(3) Cumulative United States amount	800,000	1,700,000	2,000,000	3,000,000
(4) Cumulative foreign amount	1,000,000	1,600,000	2,000,000	2,200,000
(5) Lesser of cumulative United States or cumulative foreign amount	800,000	1,600,000	2,000,000	2,200,000
(6) Reduced by aggregate amount (cumulative sum of (7) or (8), whichever is applicable, for prior years)	(0)	(800,000)	(1,400,000)	(2,000,000)
	800,000	800,000	600,000	200,000
(7) Amount taken into account for taxable years before 1987 (lesse r of (2) and (6))	800,000	600,000	n/a	n/a
(8) Amount taken into account for taxable years after 1986 (same as (6))	n/a	n/a	600,000	200,000

Example 4. Z, a domestic corporation, maintains a retirement plan for employees employed in its foreign branch office. The foreign branch computes its income under the profit and loss method Rev. Rul. 75–107, 1975–1 C.B. 32 (see § 601.601(d)(2)(ii)(*b*) of this chapter), in units of local currency, the FC. The plan is a combination book reserve and funded plan, but is considered a single plan under foreign law. The total retirement benefits that a participant is eligible to receive is the sum of the benefits provided by the qualified reserve plan and the qualified funded plan. Pursuant to § 1.404A–6, in the year the plan was adopted, *Z* made a separate qualified reserve plan and funded plan election with respect to each portion of the foreign plan. The assumed deductions under section 404A and appropriate foreign law for selected years, and the computations under this section which follow from the deductions, are shown in the following table—

	Qualified funded plan		Qualified reserve plan		Combined amount—qualified foreign plans	
	1984	1985	1984	1985	1984	1985
(1) Amount determined with respect to the qualified foreign plans under section 404A for the taxable year without regard to section 404A (d)	40,000	90,000	30,000	80,000		
(2) Amount allowed as a deduction under the appropriate foreign tax laws for the taxable year					60,000	185,000
(3) Cumulative United States amount	40,000	130,000	30,000	110,000		
(4) Combined cumulative United States amount (cumulative sum of (3))					70,000	240,000
(5) Cumulative foreign amount (cumulative sum of (2))					60,000	245,000
(6) Aggregate amount					0	60,000
(7) Lesser of combined cumulative United States amount or cumulative foreign amount ((4) or (5))					60,000	240,000
(9) Reduced by the aggregate amount for the qualified funded and reserve plan (cumulative sum of (10) for prior years)					(0)	(60,000)
(10) Amount taken into account for taxable year					60,000	180,000

Example 5. A qualified reserve plan is maintained by *M*, the foreign subsidiary of *N*, a domestic corporation. *M* computes its earnings and profits in units of the local currency, the FC. The taxable years of *M* and *N* and the plan year are the calendar year. *M* established the qualified reserve plan in 1984 and *N* made the elections described in § 1.404A–6. In that year, the reasonable addition to the plan reserve under § 1.404A–3 was FC750,000. However, the amount allowed as a deduction under the appropriate foreign tax laws for the taxable year was FC650,000. The difference between the amount taken into account under § 1.404A–3 and the deduction under the appropriate foreign tax laws, FC100,000, could not be taken into account for any succeeding taxable year under § 1.404A–3, but it may later reduce *M*'s earnings and profits pursuant to paragraph (a) of this section.

§ 1.404A–5 Additional limitations on amounts taken into account for qualified foreign plans.

(a) *Restrictions for nonqualified individuals*—(1) *General rule.* Notwithstanding any other provisions of §§ 1.404A–1 through 1.404A–7, no amount may be taken into account under section 404A for any contribution or amount accrued that is attributable to services performed either in the current or in a prior taxable year—

(i) By a citizen or resident of the United States who is a highly compensated employee (within the meaning of section 414 (q)) (or, for taxable years beginning before January 1, 1989, by a citizen or resident of the United States who is an officer, shareholder, or highly compensated (within the meaning of § 1.410(b)–1 (d)); or

(ii) In the United States, the compensation for which is subject to tax under chapter 1 of subtitle A of the Internal Revenue Code.

(2) *Determination of service attribution*—(i) *Not limited to actual service.* Service performed by individuals described in paragraph (a)(1)(i) of this section includes service credited to those individuals. Service performed in the United States includes service credited in relation (directly or indirectly) to any United States service.

(ii) *Amounts attributable to service performed in the United States.* The accrued benefit attributable to services described in this paragraph (a) is the excess, if any, of the total accrued benefit over the accrued benefit determined without credit for time spent performing services described in this paragraph (a) and without regard to the compensation levels for that time.

(b) *Records to be provided by taxpayer*—(1) *In general.* Notwithstanding any other provisions of §§ 1.404A–1 through 1.404A–7, no amount may be taken into account under section 404A for any contribution or amount accrued unless the taxpayer attaches a statement to its United States income tax return for any taxable year for which a qualified foreign plan maintained by an employer has United States tax significance. This statement must specify the name and type of qualified foreign plan; the cumulative United States amount, the cumulative foreign amount, and the aggregate amount with respect to the plan; the name and country of organization of the employer; and any other information the Commissioner may prescribe by forms and accompanying instructions or by revenue procedure.

(2) *Primary evidence.* The statement described in paragraph (b)(1) of this section and any required forms must be completed in good faith with all of the information called for and with the calculations referenced in paragraph (b)(1) of this section. Except as provided in paragraph (b)(4) of this section, one of the following documents must be attached to the United States income tax return—

(i) A statement from the foreign tax authorities specifying the amount of the deduction allowed in computing taxable income under the appropriate foreign tax law for the relevant year or years with respect to the qualified foreign plan; or

(ii) If the return under the appropriate foreign tax law shows the deduction for plan contributions or plan reserves as a separate identifiable item, a copy of the foreign tax return for the relevant year or years with respect to the qualified foreign plan.

(3) *Additional requirements.* The statement or return attached pursuant to paragraph (b)(2) of this section may be either the original, a duplicate original, a duly certified or authenticated copy, or a sworn copy. If only a sworn copy of a receipt or return is attached, there must be kept readily available for comparison on request the original, a duplicate original, or a duly certified or authenticated copy.

(4) *Secondary evidence.* Where the statement or return described in paragraph (b)(2)(i) or (b)(2)(ii) of this section is not available, all of the following information must be attached to the United States income tax return—

(i) A certified statement setting forth the cumulative foreign amount for each taxable year to which section 404A applies;

(ii) The excerpts from the employer's books and records showing either the change in the reserve or contributions made with respect to the plan for the taxable year to which section 404A applies; and

(iii) The computations of the foreign deduction relating to the plan to be established by data such as excerpts from the foreign law, assessment notices, or other documentary evidence.

(5) *Foreign language.* If the relevant returns, books, records or computations are not maintained in the English language, the taxpayer must furnish, upon request, a certified translation that is satisfactory to the District Director.

(6) *Additional information required by District Director.* If the taxpayer upon request of the District Director fails, without justification, to furnish any additional information that is significant, the provisions of section 982 will apply.

(7) *Authorized officer to complete documents.* The documents required by this section and by §§ 1.404A–6 and 1.404A–7 must be signed by an authorized officer of the taxpayer (as defined in section 6062 or 6063) who must verify under penalty of perjury that the statement and all other documents submitted are true and correct to his knowledge and belief.

(8) *Transitional rule—good faith effort.* For taxable years ending before August 5, 1993, a taxpayer will be treated as satisfying this paragraph (b) if it makes a good faith effort to provide reasonable documentation.

(c) *Actuarial requirements*—(1) *Reasonable actuarial assumptions.* Except as otherwise specifically provided in §§ 1.404A–2 and 1.404A–3 and this paragraph (c), in the case of a qualified reserve plan or a qualified funded plan under which benefits are fixed or determinable, no amount may be taken into account under section 404A unless costs, liabilities, rates of interest, and other factors under the plan are determined on the basis of actuarial assumptions and methods each of which is reasonable (taking into account the experience of the plan and reasonable expectations), or which, in the aggregate, result in an amount being taken into account that is equivalent to that which would be determined if each such assumption and method were reasonable, and that, in combination, offer the actuary's best estimate of anticipated experience under the plan. For plan years beginning before January 1, 1988, the preceding sentence is satisfied if costs, liabilities, rates of interest, and other factors under the plan are determined on the basis of actuarial assumptions and methods that are reasonable in the aggregate (taking into account the experience of the plan and reasonable expectations) and that, in combination, offer the actuary's best estimate of anticipated experience under the plan. Except to the extent required under that paragraph, the interest rate determined under § 1.404A–3(b)(4) may not be considered in determining whether other actuarial assumptions are reasonable in the aggregate for this purpose.

(2) *Full funding limitation.* Notwithstanding any other provisions of §§ 1.404A–1 through 1.404A–7, no amount may be taken into account under section 404A if the amount causes the assets in the trust (in the case of a qualified funded plan) or if taking into account the amount causes the amount of the reserve (in the case of a

qualified reserve plan) to exceed the amount described in section 412(c)(7)(A)(i).

§ 1.404A–6 Elections under section 404A and changes in methods of accounting.

(a) *Elections, changes in accounting methods, and changes in plan years*—(1) *In general*—(i) *Methods of accounting.* An election under section 404A with respect to a qualified foreign plan constitutes the adoption of a method of accounting if the election is made in the taxable year in which the plan is adopted. Any election under section 404A with respect to a preexisting plan, however, constitutes a change in method of accounting requiring the Commissioner's consent under section 446(e) and an adjustment under section 481(a). Additionally, any other change in the method used to determine the amount taken into account under section 404A (a), as well as the revocation of any election under section 404A, constitutes a change in accounting method subject to the consent and adjustment requirements of sections 446(e) and 481(a). This section provides procedures for obtaining the Commissioner's consent to make certain changes in methods of accounting under section 404A. Additionally, § 1.404A–7 provides special procedural rules applicable (along with the rules under this section) for retroactive and transition-period elections under section 404A.

(ii) *Changes not involving accounting methods.* Any change in treatment, adjustment, or correction described in § 1.446–1(e)(2)(ii)(b) (e.g., correction of computational errors) is not a change in accounting method. While a retroactive qualified funded plan election under § 1.404A–7(c) constitutes a change in method of accounting, a mere election to apply the effective date of section 404A under § 1.404A–7(b) retroactively does not necessarily result in a change in accounting method. Additionally, a retroactive election for funded foreign branch plans under § 1.404A–7(d) will not be treated as a change in method of accounting, except to the extent that the taxpayer took erroneous deductions under its method of accounting prior to the beginning of its open period. Finally, a change of actuarial assumptions will not be treated as a change in method of accounting for purposes of this section.

(2) *Single plan*—(i) *General rule.* Except as otherwise provided, the rules of this section regarding elections, revocations, and re-elections, and the adoption or change of a plan year, apply separately (i.e., on a plan-by-plan basis) to each plan that qualifies as a single plan (as defined in § 1.414(l)–1(b)). For purposes of this definition, a separate reserve maintained by an employer exclusively for its liability under a plan is considered a plan asset that is available exclusively to pay benefits to employees who are covered by the plan and to their beneficiaries. Although a plan may be treated as a reserve plan under foreign law, this treatment is not binding for purposes of section 404A and this section.

(ii) *Example.* The principles of this paragraph (a)(2) are illustrated by the following example:

Example. S is a wholly-owned foreign subsidiary of *P*, a domestic corporation. *S* maintains a deferred compensation plan under local law to provide benefits to its employees upon retirement based upon years of service and the highest five-year average salary. *S* decided to account for 70 percent of its deferred compensation liabilities through an unfunded book reserve (Plan One), and to account for the remaining 30 percent through a trust equivalent (Plan Two). All of the assets of Plan One and Plan Two were available for payment of liabilities under their respective plans, and were only available for payment of liabilities under their respective plans. Thus, when deferred compensation was paid to *S*'s employees, within the meaning of this paragraph (a)(2), 70 percent of the amount was paid by check drawn against the general assets of *S* and 30 percent of the amount paid was paid by check drawn on the assets of the trust equivalent. Pursuant to this section, *P* made a qualified reserve plan election for Plan One, which it defined as a plan of deferred compensation with liability for 70 percent of the amount of deferred compensation owing to each employee under *S*'s deferred compensation plan. In addition, it made a qualified funded plan election for Plan Two, which it defined as a plan of deferred compensation with liability for the remaining 30 percent. Because *S*'s reserve for its liability was treated as a plan asset with respect to 70 percent of the liability and the assets of the trust, Plan One met the requirements of a "single plan" under § 1.414(l)–1(b), and Plan Two was a separate "single plan". Thus, *S* could take into account only 70 percent of its liability to each employee under its deferred compensation plan when calculating the reasonable additions to the reserve under section 404A(c) for Plan One. Similarly, the full funding limitation and other calculations with respect to Plan Two may only be made with respect to 30 percent of *S*'s liability to each employee under the foreign deferred compensation plan.

(b) *Initial elections under section 404A*—(1) *In general.* The Commissioner's consent to elect initially under section 404A to treat a single plan as a qualified funded plan or as a qualified reserve plan is granted automatically if the taxpayer complies with the requirements of this paragraph (b). Except as provided in § 1.404A–7, an initial election under this section with respect to any qualified foreign plan may be made only for a taxable year beginning after December 31, 1979.

(2) *Time for making election*—(i) *Foreign branch plans.* Except as provided in § 1.404A–7, the initial election for a qualified foreign plan maintained by a foreign branch must be made no later than the time prescribed by law for filing the United States return (including extensions) for the first taxable year for which the election is to be effective.

(ii) *Foreign corporation plans.* Except as provided in § 1.404A–7, the initial election for a qualified foreign plan maintained by a foreign corporation must be made no later than the time allowed for making elections under §§ 1.964–1 and 1.964–1T. Thus, the election under section 404A may be deferred until the earnings and profits of the foreign corporation have United States tax significance, as defined in §§ 1.964–1 and 1.964–1T. United States tax significance may occur in a number of ways, including, for example, a dividend distribution, an income inclusion under section 951(a), a section 1248 transaction, a step-up of basis by earnings and profits for purposes of valuing assets for interest allocation purposes under section 864(e), or an inclusion in income of the earnings of a qualified electing fund under section 1293(a)(1).

(3) *Manner in which election is to be made*—(i) *Foreign branch plans.* In the case of a qualified foreign plan maintained by a domestic corporation, the initial election must be made by the taxpayer by attaching a list of plans for which section 404A treatment is desired to a return filed within the time prescribed in paragraph (b)(2)(i) of this section.

(ii) *Controlled foreign corporation plans.* If a qualified foreign plan is maintained by a controlled foreign corporation, the initial election under this section must be made in the manner prescribed by §§ 1.964–1 and 1.964–1T and must include a list of all plans for which the election is made.

(iii) *Noncontrolled foreign corporation plans.* If a qualified foreign plan is maintained by a noncontrolled foreign corporation, the initial election under this section must be made in the manner prescribed by §§ 1.964–1 and 1.964–1T and must include a list of all plans for which the election is made, as if the noncontrolled foreign corporation were a controlled foreign corporation. In applying the rules of §§ 1.964–1 and 1.964–1T, the term "majority domestic corporate shareholders" is substituted for the term "controlling United States

shareholders" wherever it appears in §§ 1.964–1 and 1.964–1T. The term "majority domestic corporate shareholders" has the meaning set forth in § 1.985–2(c)(3)(i).

(4) *Other requirements for election.* For each plan listed, pursuant to paragraph (b)(3) of this section, the taxpayer must designate whether it elects to treat the plan as a qualified funded plan or qualified reserve plan, and must designate a plan year. Additionally, for each plan listed, the taxpayer must disclose the amount of any section 481(a) adjustment, as well as the initial cumulative United States amount, the initial cumulative foreign amount, and the initial aggregate amount defined in paragraph (g) of this section. See § 1.404A–5(b) for rules on additional information required, signing and verifying required statements, and notices and forms necessary to elect under section 404A. Additionally, see § 1.404A–7(d)(1) for required agreement to assessment of tax for retroactive elections for funded foreign branch plans.

(c) *Termination of election when a plan ceases to be a qualified foreign plan*—(1) *In general.* An election under section 404A with respect to a foreign deferred compensation plan is terminated if at any time on or after the first day of the first taxable year for which the election is effective the plan ceases to be a qualified foreign plan by reason of a failure to satisfy the conditions of section 404A(e) (1) or (2). Thus, for example, the election is terminated (subject to the consent of the Commissioner) if more than 10 percent of the amounts taken into account under the plan are attributable to services performed by employees subject to United States federal income tax. As used in this section, the term "termination" refers only to situations under which a plan ceases to be a qualified foreign plan by reason of a failure to satisfy the conditions of section 404(e) (1) or (2). Thus, the term is distinguished from a voluntary revocation of an election (i.e., under paragraph (d)(1) of this section), which also causes a plan to cease to be a qualified foreign plan. Upon termination of an election under section 404A, a change in method of accounting is required. The conditional advance consent of the Commissioner is granted for this change in method of accounting. This conditional consent may be withdrawn, however, if the District Director determines that tax avoidance was a purpose of the termination or if the procedures in paragraph (c)(2) of this section are not satisfied.

(2) *Rules for changing method of accounting upon termination of election*—(i) *Time for making change*—(A) *Foreign branch plans.* Except as provided in § 1.404A–7, in the case of a plan of a foreign branch the change in method of accounting required upon termination of a section 404A election must be made no later than the time prescribed by law for filing the United States return (including extensions) for the taxable year in which the plan ceases to satisfy the requirements of section 404A(e) (1) or (2).

(B) *Foreign corporation plans.* Except as provided in § 1.404A–7, in the case of a plan of a foreign corporation the change in method of accounting required upon termination of a section 404A election shall be made no later than the first year after the termination in which the earnings and profits of the foreign corporation have United States tax significance, as defined in §§ 1.964–1 and 1.964–1T. See paragraph (b)(2)(ii) of this section for United States tax significance examples.

(ii) *Procedures for changing method of accounting upon termination of election*—(A) *Foreign branch plans.* The change in method of accounting required upon termination of a section 404A election with respect to a foreign branch plan must be made by attaching a statement to the return described in paragraph (c)(2)(i)(A) of this section disclosing the amount of any section 481(a) adjustment (required under paragraph (e) of this section and computed in accordance with paragraph (f) of this section) arising upon the change.

(B) *Controlled foreign corporation plans.* The change in method of accounting required upon termination of a section 404A election with respect to a controlled foreign corporation plan must be made in the manner prescribed by §§ 1.964–1 and 1.964–1T and must include disclosure of the amount of any section 481(a) adjustment (required under paragraph (e) of this section and computed in accordance with paragraph (f) of this section) arising upon the change.

(C) *Noncontrolled foreign corporation plans.* The change in method of accounting required upon termination of a section 404A election with respect to a noncontrolled foreign corporation plan must be made in the manner prescribed by §§ 1.964–1 and 1.964–1T and must include disclosure of the amount of any section 481(a) adjustment (required under paragraph (e) of this section and computed in accordance with paragraph (f) of this section) arising upon the change. In applying the rules of §§ 1.964–1 and 1.964–1T, the term "majority domestic corporate shareholders" is substituted for the term "controlling United States shareholders" wherever it appears in §§ 1.964–1 and 1.964–1T. The term "majority domestic corporate shareholders" has the meaning set forth in § 1.985–2 (c)(3)(i).

(d) *Other changes in methods of accounting and changes in plan year*—(1) *Application for consent.* Except as provided in paragraph (c) of this section or in § 1.404A–7, once an initial election under section 404A is effective with respect to a plan, the taxpayer must separately apply to obtain the express consent of the Commissioner prior to changing any method of accounting with respect to a foreign deferred compensation plan. Application for the consent of the Commissioner is required whether or not the method being changed is proper or permitted under the Internal Revenue Code and regulations thereunder. Any change in method of accounting not described in this paragraph (d)(1) must be made in accordance with the requirements of section 446(e) and the regulations thereunder. The procedures prescribed in this paragraph (d), however, are the exclusive procedures for making the following changes in method of accounting—

(i) Revocation of a section 404A election;

(ii) Re-election under section 404A following termination or revocation of a section 404A election;

(iii) Changing the treatment of a plan from a qualified funded plan to a qualified reserve plan (or the converse); or

(iv) Changing the actuarial funding method used to determine costs under a qualified funded plan.

(2) *Procedures for other changes in method of accounting*—(i) *Foreign branch plans.* To request consent to a change in method of accounting described in paragraph (d)(1) of this section, the taxpayer must file an application on Form 3115 with the Commissioner generally within 180 days after the beginning of the taxable year in which the change is requested to be effective. In the case of a revocation of an election under section 404A, however, the 180-day period in the preceding sentence is extended to the time prescribed by law for filing the United States return for the taxable year of the change.

(ii) *Foreign corporation plans.* For a controlled foreign corporation or a noncontrolled foreign corporation, a request for consent to revocation or to another change in method of accounting

must be made in accordance with the rules of §§ 1.964–1 and 1.964–1T.

(3) *Plan year.* A taxpayer must secure the consent of the Commissioner to change the plan year of a qualified foreign plan. Termination or revocation of a section 404A election will not effect a change in the plan year of the plan.

(e) *Application of section 481*—(1) *In general.* A change in method described in this section constitutes a change in method of accounting to which section 481 applies. Except as otherwise provided in this paragraph and in paragraph (f) of this section, this adjustment must be made in accordance with section 481 and the regulations thereunder in those circumstances. For purposes of section 481(a)(2), any change in method described in this section is considered a change in method of accounting initiated by the taxpayer.

(2) *Period of adjustment*—(i) *In general.* The section 481 (a) adjustment period is determined under the rules of this paragraph (e)(2).

(ii) *Election or re-election.* In the case of an election or a re-election following termination or revocation, the section 481(a) adjustment required by paragraph (e)(1) of this section must be taken into account ratably over a 15-year period, beginning with the first taxable year for which the election or re-election is effective. This section 481(a) adjustment period also applies to a change from a qualified funded plan to a qualified reserve plan.

(iii) *Termination or revocation of election and all other changes in method.* The adjustment required by paragraph (e)(1) of this section for all changes in method (other than those described in paragraph (e)(2)(ii) of this section), including changes in election from a qualified reserve plan to a qualified funded plan, must be taken into account ratably over a six-year period, beginning with the first taxable year for which the change is effective. If an unamortized section 481(a) adjustment amount (e.g., from a previous change) remains at the end of a change in method of accounting to which this paragraph (e)(2)(iii) applies, the net amount of all of the section 481(a) adjustments must be taken into account ratably over this six-year section 481(a) adjustment period.

(iv) *Acceleration of section 481(a) adjustment.* If the employer ceases to engage in the relevant trade or business at any time prior to the expiration of the applicable section 481(a) adjustment period provided in paragraph (e)(2)(ii) or (e)(2)(iii) of this section, the employer must take into account, in the taxable year of cessation, the balance of any section 481(a) adjustment not previously taken into account in computing taxable income (in the case of a branch) or earnings and profits (in the case of a foreign corporation). For purposes of this paragraph (e)(2)(iv), whether or not an employer ceases to engage in the trade or business is to be determined under administrative procedures issued under § 1.446–1(e). In applying those procedures, "employer" is to be defined in the same manner as "taxpayer" is defined under those procedures.

(3) *Allocation and source.* The amount of any net negative section 481(a) adjustment determined under this section and taken into account for a taxable year must be allocated and apportioned under § 1.861–8 in the same manner as a deduction or reduction in earnings and profits under section 404A. Any net positive section 481(a) adjustment that is taken into account for a taxable year first must be reduced by directly allocating to such adjustment the employer's section 404A expense that is subject to apportionment (including any amount that otherwise would be capitalized); to the extent a net positive section 481(a) adjustment exceeds the amount of the employer's section 404A expense for the taxable year, such excess must be sourced or otherwise classified in the same manner as section 404A deductions or reductions in earnings and profits are allocated and apportioned.

(4) *Example.* The principles of this paragraph (e) are illustrated by the following example:

Example. X, a domestic corporation, made an initial election under section 404A to treat an existing deferred compensation plan maintained by its foreign branch as a qualified reserve plan, effective beginning in *X*'s 1985 taxable year. *X*'s foreign branch maintains its books and records in FC, the functional currency. Previously, *X* had consistently used a permissible method of accounting with respect to the plan. The section 481(a) adjustment arising from *X*'s change in accounting method upon its section 404A election was a negative FC150,000. Beginning with its 1985 taxable year, *X* took into account a negative FC10,000 each year (FC150,000/15). Effective beginning in *X*'s 1988 taxable year, *X* received the Commissioner's express consent to change from a qualified reserve plan to a qualified funded plan. The section 481(a) adjustment attributable solely to the 1988 change was a positive FC132,000. Beginning with its 1988 taxable year, and for each of the five succeeding taxable years, *X* took into account a positive FC2,000, as computed below.

Negative 1985 section 481(a) adjustment	(FC150,000)
Less: 1985, 1986 & 1987 amounts taken into account	30,000
Subtotal	(120,000)
Positive 1988 section 481(a) adjustment	132,000
Net positive section 481(a) adjustment	12,000
Section 481(a) adjustment period	÷ 6
Net amount taken into account annually during section 481(a) adjustment period	FC2,000

(f) *Computation of section 481(a) adjustment*—(1) *In general.* For purposes of section 404A, except as provided in § 1.404A–7(f)(1)(ii)(C), the amount of the section 481(a) adjustment required under paragraph (e)(1) of this section equals—

(i) The Old Method Closing Amount; less

(ii) The New Method Opening Amount.

(2) *Old Method Closing Amount*—(i) *In general.* Except as otherwise provided in paragraph (f)(2) (ii), (iii), or (iv) of this section (or as otherwise prescribed by the Commissioner), the Old Method Closing Amount equals—

(A) The total of all past deductions taken with respect to liabilities under the plan; plus

(B) The net income earned directly or indirectly by any separate funding entity (e.g., account or trust) with respect to the plan, but only to the extent that such net income has not previously been taken into account in determining taxable income (in the case of a foreign branch) or earnings and profits (in the case of a foreign corporation); minus

(C) The total of all past payments under the plan made to plan participants and beneficiaries by the employer, the trust, or the separate funding entity.

(ii) *Taxpayer formerly using a reserve method*—(A) *In general.* If a taxpayer has consistently taken amounts with respect to the plan into account under a reserve method, the Old Method Closing Amount equals the closing reserve balance at the end of the closing year calculated under the taxpayer's reserve method. For purposes of the preceding sentence, a reserve method means a method of accrual based on the actuarial present value of expected future plan benefits.

(B) *Former qualified reserve plan.* To request the Commissioner's consent in the case of a former qualified reserve plan, the closing reserve balance must be adjusted for any unamortized increases or decreases to the reserve described in § 1.404A–3(c) that have not

yet been taken into account. For example, if the closing reserve balance is FC100,000, but FC10,000 of the closing reserve balance consists of an unamortized increase in the reserve that has not previously been taken into account due to the ten-year amortization requirements of § 1.404A–3(c), the Old Method Closing Amount is FC90,000.

(iii) *Taxpayer formerly using pay-as-you-go method.* If the taxpayer has consistently taken amounts into account with respect to the plan based only on actual payments of plan benefits to participants and beneficiaries, the Old Method Closing Amount equals zero.

(iv) *Taxpayer formerly using a funded method*—(A) *Payment to separate funding entity.* If the taxpayer has consistently taken amounts into account with respect to the plan based only on actual payments to a separate funding entity and on payments by the employer (but not by the funding entity) to plan participants or beneficiaries, the Old Method Closing Amount equals the balance in the separate funding entity at the end of the closing year, including amounts attributable, directly or indirectly, to net investment income that has not previously been taken into account in determining taxable income (in the case of a foreign branch) or earnings and profits (in the case of a foreign corporation).

(B) *Former qualified funded plan.* In the case of a former qualified funded plan, the Old Method Closing Amount generally equals the amount described in paragraph (f)(2)(iv)(A) of this section, adjusted, however, by—

(*1*) Reducing the amount properly to reflect any net limitations under section 404A (b) and (g) (e.g., the full funding limitation for a qualified funded plan) that were applied in determining amounts taken into account under the former section 404A method of accounting; and

(*2*) Increasing the amount properly to reflect any amounts that are not paid during the closing year but that are permitted to be taken into account in the closing year under section 404A(b)(2) (relating to payments made after the close of the taxable year).

(v) *Section 404A(d) limitation.* In computing the Old Method Closing Amount upon the termination or revocation of an election under section 404A, the limitations of section 404A(d) and § 1.404A–4 must be taken into account. Thus, if the Old Method Closing Amount is determined under paragraph (f)(2)(ii)(B) or (f)(2)(iv)(B) of this section, the amount otherwise determined under those paragraphs shall be reduced by applying the section 404A(d) and § 1.404A–4 limitations to the extent the cumulative United States amount under § 1.404A–4 exceeds the cumulative foreign amount under § 1.404A–4.

(3) *New Method Opening Amount*—(i) *Qualified reserve plan.* In the case of an election to treat a plan as a qualified reserve plan, the New Method Opening Amount equals the balance of the reserve as of the end of the last day of the closing year, calculated under the rules of section 404A(c) and § 1.404A–3 based on plan information and data as of that date. The New Method Opening Amount must be reduced (or increased) for any unamortized increases (or decreases) to the reserve described in section 404A(c)(4) and § 1.404A–3(c).

(ii) *Qualified funded plan.* In the case of an election to be treated as a qualified funded plan, the New Method Opening Amount equals the amount of funds in the trust as of the beginning of the first day of the opening year, adjusted as necessary to take into account the rules of section 404A (b) and (g). If the separate funding entity does not qualify as a trust under § 1.404A–1(e), the New Method Opening Amount in the case of a qualified funded plan is zero because there is no balance in a trust as defined in § 1.404A–1(e).

(iii) *Nonqualified plan.* In the case of any plan that ceases to be a qualified foreign plan (either by reason of the termination or revocation of a section 404A election), the New Method Opening Amount is zero.

(iv) *Section 404A(d) limitation.* In computing the New Method Opening Amount upon an election under section 404A, the limitation on deductions of section 404A(d) and § 1.404A–4 must be taken into account. Thus, if the New Method Opening Amount is determined under paragraph (f)(2)(i) or (f)(2)(ii) of this section, the amount otherwise determined must be reduced to the extent the cumulative United States amount computed under § 1.404A–4 exceeds the cumulative foreign amount computed under § 1.404A–4. See paragraph (g) of this section for initialization of amounts taken into account under section 404A(d).

(4) *Definitions and special rules*—(i) *Opening year.* For purposes of this section, the opening year is the first taxable year for which the new method of accounting is effective with respect to a plan. For example, in the case of an election to treat a foreign corporation plan as a qualified reserve plan beginning in 1989, the opening year is 1989, even though the election may not be made until 1994 pursuant to paragraph (b)(2)(ii) of this section.

(ii) *Closing year.* For purposes of this section, the closing year is the taxable year immediately preceding the opening year.

(iii) *Separate funding entity.* A separate funding entity described in paragraphs (f)(2)(i)(B) and (f)(2)(iv) of this section is any entity that satisfies the first requirement in the definition of the equivalent of a trust in § 1.404A–1(e) (segregation in a separate legal entity) and, in practice, also satisfies the third requirement in that definition (dedication to payment of plan benefits) with respect to benefits under the relevant plan.

(iv) *Special rules for certain foreign corporation plans.* In the case of a foreign corporation's plan for which no method has been used for some or all prior taxable years because no calculation of earnings and profits has been necessary for those years (see, e.g., paragraph (b)(2)(ii) of this section), the employer may assume that the old method has been consistent with any method actually used consistently in immediately prior years. If no calculation of earnings and profits has been made for prior years, in determining the Old Method Closing Amount, the taxpayer may assume the method used was a method described in paragraph (f)(2)(iii) of this section. This assumed method used in the calculation of the Old Method Closing Amount must actually be used by the taxpayer for all the prior taxable years to the extent reductions of earnings and profits for those years are ever determined with respect to the plan.

(v) *Reference to rules applicable in the case of failure to consider net investment income in computing section 481(a) adjustment.* The treatment of net investment income earned by a funding vehicle that has not previously taken into account by the taxpayer in determining taxable income (in the case of a foreign branch) or earnings and profits (in the case of a foreign corporation), and that is not properly considered (as required under paragraphs (f)(2)(i)(B) and (f)(2)(iv)(A) of this section) in determining the amount of the section 481(a) adjustment for purposes of section 404A, is determined under other applicable provisions, which may include sections 61, 671 through 679, and 1001.

(vi) *Certain section 481(a) adjustments treated as carryover contributions.* In the case of an election for a plan to be treated as a qualified funded plan, any net positive section 481(a) adjustment is treated as a carryover contribution (within the meaning of § 1.404A–2(d)(4)) to the extent that the adjustment is attributable to limits (that would be taken into account under § 1.404A–2(d)(4)) on the

amounts previously contributed to the trust under the plan that could be taken into account under section 404A.

(5) *Examples.* The principles of paragraph (f) of this section are illustrated by the following examples:

Example 1. Nonqualified reserve plan to qualified reserve plan. A foreign subsidiary of a domestic corporation established an irrevocable balance sheet reserve for pension expenses in 1981. The subsidiary maintains its books and records in FC, the functional currency. From 1981 through 1987, the taxpayer reduced earnings and profits of the foreign subsidiary by FC150,000, the amount of the pension liability which had accrued under the plan. This method of accounting was never challenged or changed by the District Director prior to the expiration of the statute of limitations for the 1981 through 1987 taxable years. Through December 31, 1987, the last day of the closing year, actual pension payments totalled FC15,000. For the 1988 taxable year, the taxpayer made an election for the plan to be treated as a qualified reserve plan. The reserve calculated under section 404A as of the first day of the 1988 taxable year, the opening year, and based upon employee census data as of that date, was FC175,000. The Old Method Closing Amount was FC135,000 (FC150,000 less FC15,000). The New Method Opening Amount was FC175,000. The section 481(a) adjustment was a negative FC40,000 (FC135,000 less FC175,000). This adjustment is to be taken into account over the 15-year section 481(a) adjustment period prescribed in paragraph (e)(2)(ii) of this section.

Example 2. Nonqualified reserve plan to qualified reserve plan. Assume the same facts as in *Example 1*, except that the reserve calculated under section 404A as of the first day of the 1988 taxable year and based upon employee census data as of that date was FC75,000. The Old Method Closing Amount was FC135,000 (FC150,000 less FC15,000). The New Method Opening Amount was FC75,000. The section 481(a) adjustment was a positive FC60,000 (FC135,000 less FC75,000). This adjustment is to be taken into account over the 15-year section 481(a) adjustment period prescribed in paragraph (e)(2)(ii) of this section.

Example 3. Nonqualified funded plan to qualified reserve plan. M, a domestic corporation, wholly owns *N*, a foreign corporation. *N* maintains its books and records in FC, the local currency. From 1981 through 1988, *N* maintained a nonqualified funded plan. During this period, *N* contributed FC55,000 to the separate funding entity administering the plan and reduced earnings and profits by FC55,000. The separate funding entity realized net income of FC17,000 from investment of plan assets and paid nothing to participants. None of the FC17,000 net investment income earned in the separate funding entity was taken into account in computing *N*'s earnings and profits. As of the last day of *N*'s 1988 taxable year, the closing year, the plan's fund balance was FC72,000, comprised of FC55,000 (excess contributions) and FC17,000 (investment income). The reserve calculated under section 404A as of the first day of the 1989 taxable year, the opening year, was FC100,000. Effective for *M*'s 1989 taxable year, *M* elected under section 404A to treat *N*'s funded plan as a qualified reserve plan. The Old Method Closing Amount was FC72,000. The New Method Opening Amount was FC100,000; thus, if, in the future, *N* pays FC100,000 to plan participants or beneficiaries, that FC100,000 will not again reduce *N*'s earnings and profits. The section 481(a) adjustment was a negative FC28,000 (FC72,000 less FC100,000). However, if the District Director later challenges and requires *N* to change its method of accounting for foreign deferred compensation used in determining its 1981 through 1988 earnings and profits in a taxable year prior to the 1989 taxable year, the section 481(a) adjustment could be changed from a negative FC28,000 to a negative FC100,000. Pursuant to the administrative procedures under section 446(e), the District Director, upon challenging the treatment of foreign deferred compensation in years prior to 1989, could require any necessary positive section 481(a) adjustment to be taken into account in one taxable year.

Example 4. Nonqualified funded plan to qualified funded plan. Y, a domestic corporation, wholly owns *X*, a foreign corporation. *X* maintains its books and records in FC, the local currency. From 1981 through 1988, *X* maintained a nonqualified funded plan. During this period, *X* reduced earnings and profits by contributions of FC55,000 to the plan. The plan paid participants FC30,000. As of the last day of *Y*'s 1988 taxable year, the plan's fund balance was FC29,000, comprised of FC25,000 (net contributions) and FC4,000 (interest income that was never previously taken into account in determining earnings and profits). Effective for *Y*'s 1989 taxable year, *Y* elected under section 404A to treat *X*'s funded plan as a qualified funded plan. The Old Method Closing Amount was FC29,000. The New Method Opening Amount was FC29,000. The section 481(a) adjustment was zero (FC29,000 less FC29,000). See *Example 3*, however, for the effects on the section 481(a) adjustment of a successful challenge to *X*'s method of accounting for foreign deferred compensation in years prior to 1989 by the District Director.

Example 5. Z, the wholly owned foreign subsidiary of *Y*, a domestic corporation, has maintained a reserve plan for its employees, beginning in 1981. *Z* maintains its books and records in FC, the local currency. Effective for 1984, *Y* elected under section 404A to treat the plan as a qualified reserve plan. The only section 481(a) adjustment required was to take into account the limitation under section 404A(d). In 1981 through 1983, prior to the section 404A election, *Z*'s earnings and profits were reduced by additions to the reserve. This method of accounting was never challenged or changed by the District Director prior to the expiration of the statute of limitations for the 1981 through 1983 taxable years. Thus, the Old Method Closing Amount equaled the balance in the reserve, which was FC300. To compute the New Method Opening Amount, the opening reserve took into account the lesser of the cumulative United States amount (FC300) or the cumulative foreign amount (FC90) as of the first day of 1984, the opening year. Thus, the New Method Opening Amount was FC90. The section 481(a) adjustment was therefore a positive FC210 (FC300—FC90); 1/15 of this amount, FC14 (FC210/15), is being taken into account as an increase in earnings and profits each year over the 15-year section 481(a) adjustment period that began in 1984.

Example 6. Nonqualified reserve plan to qualified reserve plan. Assume the same facts as in *Example 5* for all taxable years and the annual United States reduction, foreign reduction, cumulative United States amount, cumulative foreign amount and the section 481(a) adjustment shown below. The total annual reduction (or increase) in *Z*'s earnings and profits was as follows—

	1984	1985	1986	1987	1988	1989	1990
Amount determined under U.S. law with respect to the plan under section 404A for the taxable year without regard to section 404A(d)	FC(40)	FC(50)	FC(60)	FC(70)	FC(80)	FC(90)	FC(100)
Amount allowed as a deduction for the taxable year under the appropriate foreign tax laws	(70)	(260)	(50)	(40)	(30)	(20)	(10)
Cumulative U.S. amount	(340)	(390)	(450)	(520)	(600)	(690)	(790)
Cumulative foreign amount	(160)	(420)	(470)	(510)	(540)	(560)	(570)
Lesser of cumulative U.S. or foreign amount	(160)	(390)	(450)	(510)	(540)	(560)	(570)
Reduced by the aggregate amount	90	160	390	440	510	540	560
	(70)	(230)	(60)	(70)	(30)	(20)	(10)

	1984	1985	1986	1987	1988	1989	1990
Amount taken into account for the taxable year[1]	(70)	(230)	(50)	(70)	(30)	(20)	(10)
Positive section 481 adjustment	14	14	14	14	14	14	14
Total increase (reduction) in earnings and profits taken into account for the taxable year	FC(56)	FC(216)	FC(36)	FC(56)	FC(16)	FC(6)	FC(4)

[1] The limitation in § 1.404A–4(c) applies to taxable years 1984, 1985 and 1986. In 1986, the amount deductible under the appropriate foreign tax law was less than the lower of (1) the cumulative U.S. amount, or, (2) the cumulative foreign amount (then reduced by the aggregate amount).

(g) Initial section 404A(d) amounts—(1) *In general.* By making an election under section 404A, a taxpayer adopts section 404A(d) as part of its method of accounting. Section 1.404A–4 provides rules to apply the limitations of section 404A(d) in taxable years when an election under section 404A is in effect. This paragraph (g) provides rules to compute initial amounts under section 404A(d) in the opening year. These rules are based on the rules to compute the New Method Opening Amount in paragraph (f)(3) of this section.

(2) *Computation of amounts.* As of the first day of the opening year, the initial section 404A(d) amounts are as follows:

(i) The initial cumulative United States amount equals the New Method Opening Amount without regard to any reduction under paragraph (f)(3)(iv) of this section.

(ii) The initial cumulative foreign amount equals the New Method Opening Amount computed as though the appropriate foreign tax law were the new method of accounting and without regard to paragraph (f)(3)(iv) of this section.

(iii) The initial aggregate amount equals the lesser of—

(A) The initial cumulative United States amount; and

(B) The initial cumulative foreign amount.

(3) *Example.* The principles of paragraph (g) of this section are illustrated by the following example:

Example. A foreign subsidiary of a domestic corporation maintains its books and records in FC, the local currency. The subsidiary established a funded deferred compensation plan in 1983 but reduced earnings and profits on a pay-as-you-go basis. The plan year and the taxable year of the domestic corporation and the subsidiary are the calendar year. For the 1990 taxable year, the domestic corporation elected to treat the plan as a qualified reserve plan. The balance in the separate funding entity as of January 1, 1990, the first day of the opening year, was FC90,000. The initial United States cumulative amount (the opening reserve) was FC150,000. The initial foreign cumulative amount (the balance in the separate funding entity) was FC90,000. The initial aggregate amount was FC90,000 (the lesser of FC90,000 or FC150,000). Since the subsidiary reduced earnings and profits on the pay-as-you-go method, the Old Method Closing Amount was zero. The section 481(a) adjustment was a negative FC90,000 (zero less FC90,000 (the lesser of FC150,000 or FC90,000)).

§ 1.404A–7 Effective date, retroactive elections, and transition rules.

(a) *In general*—(1) *Effective date.* Except as otherwise provided in this section, section 404A applies to taxable years beginning after December 31, 1979.

(2) *Overview of retroactive elections for taxable years beginning before January 1, 1980*—(i) *Plans of foreign subsidiaries.* Section 2(e)(2) of Public Law 96–603 permitted a taxpayer to make section 404A apply retroactively for all of its foreign subsidiaries. Paragraph (b) of this section describes and provides the time and manner to make, perfect, or revoke this retroactive effective date election. If a retroactive effective date election was made, the taxpayer was also eligible to make a qualified funded plan election or a qualified reserve plan election effective retroactively for any of its subsidiaries' plans that met the requirements of § 1.404A–1(a) (other than paragraph (4) thereof) for the relevant period. Paragraph (c) of this section describes and provides the time and manner to make, perfect, or revoke these retroactive plan-by-plan elections for foreign subsidiaries.

(ii) *Plans of foreign branches.* Section 2(e)(3) of Public Law 96–603 permitted a taxpayer to make a qualified funded plan election retroactively for any plans maintained by a foreign branch that met the requirements of § 1.404A–1(a) (other than paragraph (4) thereof) for the relevant period. Paragraph (d) of this section describes and provides the time and manner to make this retroactive plan-by-plan qualified funded plan election for plans maintained by foreign branches.

(3) *Overview of special transition rules for election, revocation, and re-election.* Paragraph (e) of this section provides the time and manner to make and revoke qualified funded plan and qualified reserve plan elections for a taxpayer's transition period.

(b) *Retroactive effective date elections for foreign subsidiaries*—(1) *In general.* Section 2(e)(2) of Public Law 96–603 permitted a taxpayer to make section 404A effective during the taxpayer's open period. If the election was made, the taxpayer accepted section 404A (including, for example, § 1.404A–1(d)) as the operative law for all foreign subsidiaries (whether or not controlled foreign corporations) during the taxpayer's entire open period. If the election was made, section 404A applies to all distributions from accumulated profits (or earnings and profits) earned after December 31, 1970 (unless the election is revoked pursuant to paragraph (b)(3) of this section, if applicable). If accumulated profits were earned prior to January 1, 1971, a change in method of accounting is required for the foreign subsidiary's taxable year that ends with or within the first taxable year in the taxpayer's open period. A section 481(a) adjustment is required for amounts taken into account prior to the beginning of the foreign subsidiary's year of change and must be computed applying the rules of § 1.404A–6(f).

(2) *Time and manner to make, perfect, or revoke election.* The retroactive effective date election described in paragraph (b)(1) of this section is not effective unless the election was actually made no later than the time prescribed by law for filing the United States return for the first taxable year ending on or after December 31, 1980, including extensions (whether or not the time was actually extended for filing the taxpayer's return), and unless the taxpayer perfects the election by filing a statement indicating the taxpayer's agreement to perfect the election with an amended return for the first taxable year ending on or after December 31, 1980, on or before May 9, 1994. In order to be effective, the perfection must be made in the manner provided in § 1.404A–6(b)(3) (ii) or (iii). An election that is not perfected is considered retroactively revoked.

(3) *Requirement to amend returns*—(i) *In general.* In addition to the amended return required by paragraph (b)(2) of this section, the taxpayer must file any other amended United States returns that are necessary to conform the treatment of all items affected by the election or revocation to the treatment consistent with the election or revocation within the time period described in paragraph (b)(2) of this section. If no adjustments are necessary, the amended return required by paragraph (b)(2) of this section must contain a statement to that effect.

(ii) *Required statements.* All amended returns required by this paragraph (b)(3) must be accompanied by a statement containing—

(A) The open years, open period and retroactive period of the taxpayer;

(B) The taxable year for which the election is perfected or revoked;

(C) A statement that the election (or elections) are perfected or revoked pursuant to the authority contained in § 1.404A–7; and

(D) A signature and verification as provided in § 1.404A–5(b)(7).

(c) *Retroactive plan-by-plan elections for foreign subsidiaries*—(1) *In general.* Any taxpayer that makes a retroactive effective date election described in paragraph (a)(2)(i) of this section under the rules of paragraph (b) of this section may, at its option, also elect to treat any foreign plan of a subsidiary that met the requirements of § 1.404A–1(a) (other than paragraph (4) thereof) for the relevant period as a qualified funded plan or as a qualified reserve plan under section 404A, beginning in any taxable year of the foreign subsidiary that ends with or within the taxpayer's open period (or for any earlier taxable year beginning after December 31, 1971, for which earnings and profits of the subsidiary had no United States tax significance). Alternatively, the taxpayer may decide to make no such plan-by-plan election with respect to any particular plan or plans of any of its foreign subsidiaries. Rules similar to those contained in § 1.404A–6 (including, where applicable, the requirement to obtain the consent of the Commissioner) are used to effect such plan-by-plan elections. If the plan existed in a taxable year beginning prior to the first year for which the election was effective, a change in method of accounting is required for the year of the election. The year of change for purposes of computing the section 481 (a) adjustment is the first year that the election is effective.

(2) *Time and manner to make, perfect, or revoke election.* A taxpayer that is eligible to make a plan-by-plan election described in paragraph (c)(1) of this section may make or perfect such an election by attaching a statement to that effect on an amended return for the year that the election is to be effective on or before May 9, 1994. In order to be effective, the perfection of a plan-by-plan election must be made in the manner provided in § 1.404A–6(b)(3) (ii) or (iii). An election that is not perfected is considered retroactively revoked. Any election made or perfected under this paragraph (c) will continue in effect for taxable years beginning after the taxpayer's open period, unless revoked under paragraph (c)(4) or (e) of this section or § 1.404A–6.

(3) *Requirement to amend returns.* In addition to the amended return required by paragraph (c)(2) of this section, the taxpayer must file any other amended United States returns that are necessary to conform the treatment of all items affected by the election or revocation to the treatment consistent with the election or revocation. All amended returns must be accompanied by the statement described in paragraph (b)(3)(ii) of this section (substituting "made, perfected, or revoked" for "perfected or revoked" where applicable) and all of the information required by § 1.404A–6(b)(4) (and § 1.404A–6(c)(2)(ii), if applicable, in the case of a termination). If no adjustments are necessary, the amended return required by paragraph (c)(2) of this section must contain a statement to that effect.

(4) *Revocation after initial election and re-election permitted.* Any taxpayer that makes an initial election for any plan under paragraph (c)(2) of this section may, under the rules of that paragraph, revoke the election for any taxable year after the sixth consecutive taxable year for which the election is effective, and may re-elect for any taxable year after the sixth consecutive taxable year for which the election is not in effect (regardless of whether the election is not in effect due to revocation or termination of the election as defined in § 1.404A–6(c)(1)). The consecutive changes in method of accounting described in the first sentence of this paragraph (c)(3) must be made under the rules in § 1.404A–6 regarding the section 481(a) adjustment period. The Commissioner may approve a letter ruling request (see § 601.201 of this chapter) to shorten the six-year waiting period upon a showing of extraordinary circumstances.

(5) *Examples.* The principles of paragraphs (b) and (c) of this section are illustrated by the following examples:

Example 1. P, a domestic corporation, wholly owns two foreign subsidiaries, *S* and *T*. *S* and *T* maintain their books and records in FC, the local currency. Since 1978, *S* and *T* have maintained unfunded pension plans for their respective employees. *S* maintained two plans, Plan 1 and Plan 2, and *T* maintained one plan. The plan years and the taxable years of all three corporations are the calendar year.

(i) For 1978 and 1979, *P* reduced the earnings and profits of *S* and *T* by the amount of the pension liability that had accrued under the plans as follows—

Taxable year	S's plan 1	S's plan 2	T's plan
1978	FC30,000	FC5,000	FC70,000
1979	50,000	15,000	80,000
Total reduction in earnings and profits	FC80,000	FC20,000	FC150,000
Total reduction in earnings and profits:			
S	FC100,000		
T	FC150,000		

(ii) In 1981, *P* made a retroactive effective date election pursuant to section 2(e)(2) of Public Law 96–603 and paragraph (b) of this section for taxable years beginning after December 31, 1977, and ending before January 1, 1980, *P*'s open period. Thus, with respect to its open period, *P* has made section 404A the operative law for all distributions of earnings and profits (or accumulated profits) earned after December 31, 1970 for *S* and *T*. The

consequences of making or not making the retroactive plan-by-plan election under section 404A for each foreign plan will be determined as though section 404A had been in effect for those years. Accordingly, earnings and profits of *S* and *T* may not be reduced with respect to amounts accrued under their respective plans unless the plans met the requirements of § 1.404A–1(a) for those years in the open period.

(iii) *P* made a retroactive plan-by-plan election to treat *S*'s Plan 1 as a qualified reserve plan for *P*'s retroactive period. The amount taken into account under § 1.404A–3 for *S*'s Plan 1 calculated under section 404A was FC25,000 for 1978 and FC35,000 for 1979. No election under section 404A was made for *S*'s Plan 2 or for *T*'s plan. Thus, no amount of the accrued but unpaid pension liability attributable to *S*'s Plan 2 or to *T*'s plan may reduce *S*'s or *T*'s respective 1978 and 1979 earnings and profits. *P* amended its tax returns for 1978 and 1979 to reflect the correct reduction of earnings and profits of FC25,000 and FC35,000 with respect to *S*'s Plan 1 and no reduction for those years with respect to *S*'s Plan 2 or *T*'s plan. Since *S*'s and *T*'s plans were established during the open period, no section 481(a) adjustment is required.

Example 2. Q, a domestic corporation, has wholly owned *R*, a foreign subsidiary, since *R*'s formation in 1968. *R* maintains its books and records in FC, the local currency. Since 1968, *R* maintained an unfunded pension plan for its employees. The plan year and the taxable year of both corporations is the calendar year. *R*, since 1968, used a method of accounting under which it reduced earnings and profits by its accrued pension liability.

(i) *R*'s earnings and profits were earned and distributed to *Q* as follows—

Taxable year	Earnings and profits	Distribution of earnings and profits
1968	FC10,000	
1969	20,000	
1970	20,000	
Subtotal	50,000	
1971	30,000	
1972	30,000	
1973	30,000	
1974	30,000	
1975	30,000	FC200,000
Subtotal	150,000	
1976	40,000	
1977	40,000	
1978	40,000	
1979	40,000	
1980	40,000	
1981	50,000	
Subtotal	250,000	
Total	FC450,000	

(ii) In 1981, *Q* made a retroactive effective date election pursuant to section 2(e)(2) of Public Law 96–603 and paragraph (b)(1) of this section for its open period. As of December 31, 1980, *Q*'s open period included the taxable years 1975 through 1979. Thus, with respect to those taxable years, *Q* has made section 404A the operative law for *R*. The consequences of making or not making the retroactive plan-by-plan election under section 404A for *R*'s foreign plan will be determined as though section 404A had been in effect for those taxable years. Thus, the earnings and profits of *R* may not be reduced with respect to amounts accrued under *R*'s plan, unless the plan met the requirements of § 1.404A–1(a) for those taxable years.

(iii) *Q* made a retroactive plan-by-plan election to treat *R*'s plan as a qualified reserve plan effective beginning in 1971. Of the distribution of FC200,000 to *Q* in 1975, section 404A applies to FC150,000, because these accumulated profits (or earnings and profits) were earned in taxable years beginning after December 31, 1970 and were also distributed in 1975, within *Q*'s open period. However, section 404A does not apply to the FC50,000 distribution made from accumulated profits earned before December 31, 1970. Since *R*'s plan was established before *Q*'s open period, a section 481 (a) adjustment is required. This section 481(a) adjustment must be taken into account in determining earnings and profits beginning with the 1971 year of change.

(d) *Retroactive plan-by-plan qualified funded plan elections for certain plans of foreign branches*—(1) *In general.* Section 2(e)(3) of Public Law 96–603 permitted a taxpayer to make a qualified funded plan election retroactively for any plans maintained by a foreign branch that met the requirements of § 1.404A–1(a) (other than paragraph (4) thereof) for the relevant period. As a condition of making this election, a taxpayer is required to agree to the assessment of all deficiencies (including interest thereon) arising during those taxable years within the open period (even those taxable years that are not open years as defined in paragraph (g)(4) of this section) to the extent that the deficiencies arise from erroneous deductions claimed by the taxpayer with respect to all of the taxpayer's foreign branches that maintained a deferred compensation plan. For a taxpayer that agrees to the assessment of tax in an election under this paragraph (d), a change in method of accounting is necessary (and a section 481(a) adjustment is required in accordance with the provisions of § 1.404A–6) with respect to any erroneous deductions claimed by the taxpayer under its method of accounting in taxable years ending prior to the beginning of the open period. For such a change in method of accounting, the year of change is the first taxable year in the open period, and the method of accounting to which the taxpayer is required to change is the method permitted during the open period under this paragraph (d).

(2) *Amounts allowed as a deduction.* If an election under section 2(e)(3) of Public Law 96–603 was made under the rules of this paragraph (d), the aggregate of the taxpayer's prior deductions is allowed as a deduction ratably over a 15-year period, beginning with the taxpayer's first taxable year beginning after December 31, 1979. A fractional part of a year which is a taxable year (as defined in sections 441(b) and 7701(a)(23)) is a taxable year for purposes of the 15-year period.

(3) *Definitions*—(i) *Prior deduction*—(A) *In general.* The term "prior deduction" means a deduction with respect to a qualified funded plan (i.e., a plan that met the requirements of § 1.404A–1(a) for the relevant period, and with respect to which a qualified funded plan election was made under the rules of this paragraph (d)) maintained by a foreign branch of a taxpayer for a taxable year beginning before January 1, 1980—

(*1*) That the taxpayer claimed;

(*2*) That was not allowable under the law in effect prior to the enactment of section 404A;

(*3*) With respect to which, on December 1, 1980, the assessment of a deficiency was not barred by any law or rule of law; and

(*4*) That would have been allowable if section 404A applied to taxable years beginning before January 1, 1980.

(B) *Application of section 404A(d).* Because the prior deductions are limited by the amounts that may be taken into account under section 404A, the computation of those prior deductions for the relevant taxable years is subject to the limitations described in section 404A(d) and § 1.404A–4. However, once the aggregate of prior deductions is calculated, the aggregate, or any portion thereof permitted to be taken into account over the 15-year period of paragraph (d)(2) of this section, is not

subject to the limitations prescribed by section 404A(d) and § 1.404A–4.

(ii) *Erroneous deduction.* The term "erroneous deduction" means an amount that is not deductible under section 404(a) (including section 404(a)(5)), that was deducted on a taxpayer's income tax return with respect to a foreign deferred compensation plan.

(4) *Time and manner to make, perfect, or revoke election*—(i) *In general.* A plan-by-plan election described in paragraph (d)(1) of this section is not effective unless the election was actually made no later than the time prescribed by law for filing the United States return for the first taxable year ending on or after December 31, 1980, including extensions (whether or not the time was actually extended for filing the taxpayer's return), and unless the taxpayer perfects the election by filing a statement indicating the taxpayer's agreement to perfect the election with an amended return for the first taxable year ending on or after December 31, 1980, on or before May 9, 1994. In order to be effective, the perfection must be made in the manner provided in § 1.404A–6(b)(3) (ii) or (iii). An election that is not perfected is considered retroactively revoked. Any election under this paragraph (d) will continue in effect for taxable years beginning after the taxpayer's open period, unless revoked under paragraph (e) of this section or § 1.404A–6.

(ii) *Requirement to amend returns.* In addition to the amended return required by paragraph (d)(4)(i) of this section, the taxpayer must file any other amended United States returns that are necessary to conform the treatment of all items affected by the election or revocation to the treatment consistent with the election or revocation under this paragraph (d) within the time period described in paragraph (d)(4)(i) of this section. All amended returns must be accompanied by the statement described in paragraph (b)(3)(ii) of this section and all of the information required by § 1.404A–6(b)(4) (and § 1.404A–6(c)(2)(ii), if applicable, in the case of a termination). If no adjustments are necessary, the amended return required by paragraph (d)(4)(i) of this section must contain a statement to that effect.

(5) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

Example 1. (i) During its open taxable years 1977 through 1979, *X*, a domestic corporation, maintained a nonqualified funded plan for the employees of its foreign branch. In 1981, *X* made a retroactive effective date election and a retroactive plan-by-plan election to treat this plan as a qualified funded plan. The amounts deducted on *X*'s tax returns, the amount deductible under sections 404(a) and 404A (expressed in FC, the local currency) are as follows—

	1977	1978	1979	Total
Amount deducted on tax return	FC100	FC100	FC100	FC300
Amount deductible under section 404(a)	20	20	20	FC60
Amount deductible under section 404A	90	90	90	FC270

(ii) The assessment (including interest) for the open years 1977 through 1979 is based on adjustments to the erroneous deductions of FC240 (FC300 less FC60).

(iii) The amount of the prior deductions taken into account ratably over 15 years as provided in paragraph (d)(2) of this section, beginning in 1981, is a negative FC210 (FC60 less FC270).

(iv) No section 481(a) adjustment is required because *X* took no deductions with respect to the plan prior to the beginning of its open period.

Example 2. (i) *Z*, a domestic corporation, maintained a nonqualified funded foreign branch plan for its foreign employees, beginning in its 1965 (calendar) taxable year. In 1981, *Z* made a retroactive effective date election and a retroactive plan-by-plan election to treat this plan as a qualified funded plan. As of December 31, 1980, *Z*'s 1965 taxable year was closed, but its 1978 taxable year was open. The amounts deducted on *Z*'s tax returns, the amount deductible under sections 404(a) and 404A (expressed in FC, the local currency) are as follows—

	1965	1978	Total
Amount deducted on tax return.	FC20	FC80	FC100
Amount deductible under section 404(a).	5	6	FC11
Amount deductible under section 404A.	10	40	FC60

(ii) Under paragraph (d)(1) of this section, *Z* agreed to an assessment of deficiencies for its 1978 taxable year based on its FC74 (FC80–FC6) of erroneous deductions as defined in paragraph (d)(3)(ii) of this section.

(iii) The FC34 (FC40–FC6) of prior deductions is permitted to be taken into account as a deduction over the 15-year period beginning with its 1980 taxable year as provided in paragraph (d)(2) of this section.

(iv) Additionally, because *Z* took erroneous deductions under its method of accounting prior to the beginning of its open period, it is required to change to the method of accounting permitted during the open period, and must take a section 481(a) adjustment (determined under the snapshot method of § 1.404A–6(f)) into account over the 15-year section 481(a) adjustment period of § 1.404A–6(e)(2)(ii) beginning in its 1978 year of change. See paragraph (d)(1) of this section.

Example 3. A foreign branch which computes its income under the profit and loss method of Rev. Rul. 75–107, 1975–1 C.B. 32 (see § 601.601(d)(2)(ii)(b) of this chapter), in units of local currency, the FC, maintains a qualified funded plan. In 1980, the taxpayer was eligible to make the elections described in this section, and did so during the 1980 taxable year. The amount determined under paragraph (d)(3)(i) of this section after taking into account the limitations prescribed § 1.404A–4 (a) for the open period was FC1,500,000. For the 1980 taxable year, and as provided paragraph (d) of this section, FC100,000 of the prior deductions were deductible. The prior deductions allowed to be taken into account in the 1980 through 1994 taxable years are determined without regard to, and thus are not subject to, the limitations prescribed by § 1.404A–4 (a).

(e) *Special transition rules for election, revocation and re-election*—(1) *In general.* This paragraph (e) provides the time and manner for making and revoking qualified funded plan and qualified reserve plan elections for a taxpayer's transition period. A taxpayer may make an election, revoke an election, and re-elect to treat any plan that met the requirements of § 1.404A–1(a) (other than paragraph (4) thereof) for the relevant period as a qualified funded plan or a qualified reserve plan under this paragraph (e) for the transition period without regard to whether a retroactive election is made under paragraph (b), (c), or (d) of this section. However, an election made

under paragraph (c) or (d) of this section is deemed to continue in effect for taxable years beginning after December 31, 1979, unless revoked under paragraph (c) (4) of this section or this paragraph (e) or terminated or revoked under § 1.404A–6(f). See paragraphs (c)(2) and (d)(4)(i) of this section.

(2) *Time and manner initially to elect and revoke*—(i) *In general.* Taxpayers that wish to make an election under this paragraph (e) may have, but were not required to have, made a Method (1) or Method (2) election for the taxable year for which an election is made under this paragraph. Those taxpayers that wish to make (or perfect) an election under this paragraph (e) must attach a statement to that effect on an amended return for the year the election is to be effective on or before May 9, 1994. An election previously made that is not perfected is considered retroactively revoked.

(ii) *Requirement to amend returns.* In addition to the amended return required by paragraph (e)(2)(i) of this section, the taxpayer must file any other amended United States returns that are necessary to conform the treatment of all items affected by the election or revocation to the treatment consistent with the election or revocation under this paragraph (e) within the time period described in paragraph (e)(2)(i) of this section. All amended returns must be accompanied by the statement described in paragraph (b)(3)(ii) of this section (substituting "made, perfected, or revoked" for "perfected or revoked" where applicable) and all of the information required by § 1.404A–6(b)(4) (and § 1.404A–6(c)(2)(ii), if applicable, in the case of a termination). If no adjustments are necessary, the amended return required by paragraph (e)(2)(i) of this section must contain a statement to that effect.

(3) *Revocation after initial election and re-election permitted.* Any taxpayer that makes an initial election for any plan under paragraph (e)(2) of this section may, under the rules of that paragraph, revoke the election for any taxable year after the sixth consecutive taxable year for which the election is effective, and may re-elect for any taxable year after the sixth consecutive taxable year for which the election is not in effect (whether the election is not in effect due to either revocation or termination of the election as defined in § 1.404A–6(c)(1)). The consecutive changes in method of accounting described in the first sentence of this paragraph (e)(3) must be made under the rules in § 1.404A–6 regarding the section 481(a) adjustment period. The Commissioner may approve a letter ruling request to shorten the six-year waiting period upon a showing of extraordinary circumstances.

(4) Example. The principles of paragraph (e)(3) of this section are illustrated by the following example:

Example. (i) *L*, a domestic corporation, has wholly owned foreign subsidiary *M*, since *M*'s formation in 1971. M maintained a funded plan for its employees from 1971 through 1991. The taxable year of *L* and *M* is the calendar year. In 1981, *L* made a Method (2) election. Within 365 days after the publication of the final regulations in the **Federal Register**, *L* perfected its retroactive effective date election for all its foreign subsidiaries. *L*'s election terminated in 1975 due to its plan's violation of the requirements of section 404A(e)(2). Additionally, *L* perfected, revoked and re-elected on a plan-by-plan basis its election for *M*'s plan, as follows—

Plan-by-plan election effective	Plan-by-plan election terminated or revoked
1971–1974	1975–1981
1982–1987	1988–1993

(ii) A section 481(a) adjustment is required for the years of change 1975, 1982 and 1988.

(f) *Special data rules for retroactive elections*—(1) *Retroactive calculation of section 481 (a) adjustments*—(i) *General rule.* Retroactive elections may be made only if the taxpayer calculates the section 481 (a) adjustment required by § 1.404A–6 based on substantiation quality data. Substantiation quality data generally must be current as of the date of the change in method of accounting. Nevertheless, if contemporaneous substantiation quality data is not readily available, the taxpayer may calculate the section 481 (a) adjustment based on backward projections to earlier years from the first taxable year beginning before January 1, 1980, for which sufficient contemporaneous substantiation quality data is readily available. However, such projections must satisfy the substantiation requirements in paragraph (f) (1) (ii) of this section, however. Furthermore, the taxpayer may not use any of the approaches provided for under this paragraph (f) if circumstances indicate that the overall result is a material distortion of the amounts allowable.

(ii) *Substantiation requirement for retroactive reserves*—(A) *In general.* Although reasonable actuarial estimates and projections may be used, the calculation of the opening balance of the reserve for the first year for which a qualified reserve plan election under paragraph (c) (1) of this section is effective must nonetheless be based on some actual contemporaneous evidence. Thus, the opening balance may be based on actual aggregate covered payroll, the actual number of covered employees, or a contemporaneous actuarial valuation that used reasonable actuarial methods. For example, if the taxpayer has contemporaneous records of the number of covered employees and the aggregate covered payroll, it may estimate other actuarial information, such as average age and marital status, based on reasonable actuarial methods (e.g., using substantiation quality data as of another date and adjusting for actual or expected changes for the interim years). The resulting combination of actual contemporaneous evidence and reasonably estimated data may be used to calculate the opening reserve. If a contemporaneous actuarial valuation is used as the basis of an opening reserve, the results of the valuation must be adjusted to reflect any difference between the actuarial method used in that actuarial valuation and the unit credit method, as required by section 404A (c) and § 1.404A–3 (b).

(B) *Interpolation.* In cases where an taxpayer can meet the substantiation requirement of paragraph (f)(1)(ii)(A) of this section for some years, but cannot meet that requirement in intervening years (including the year of the change in method of accounting), the taxpayer may interpolate a reserve balance for the intervening years based on reasonable actuarial methods. In the absence of evidence to the contrary, it is assumed that a pro rata allocation of amounts to those intervening years is a reasonable actuarial method. This paragraph (f)(1)(ii)(B) does not authorize any interpolation for years in which other evidence indicates that it would cause a material distortion (such as a year during which the work force was on strike and no deferred compensation benefits were accrued). In addition, this paragraph (f)(1)(ii)(B) does not authorize extrapolation of reserve balances to years that are not intervening years between years that meet the substantiation requirements of paragraph (f)(1)(ii)(A) of this section.

(C) *Extrapolation.* If the first year for which the taxpayer is able to meet the substantiation requirements of paragraph (f)(1)(ii)(A) of this section ("the substantiation year") is later than the year of the change in method of accounting, a taxpayer may use the approach described in this paragraph (f)(1)(ii)(C) to determine the section 481(a) adjustments described in § 1.404A–6(f) in years prior to the substantiation year. Under this approach, the taxpayer's closing balance under its prior method as of the date of the change in the method of accounting is compared with the opening balance

in the substantiation year. If the closing balance exceeds the opening balance, the excess is the amount to be used in calculating the adjustment under section 481, as required by § 1.404A–6. However, if the closing balance of the taxpayer's reserve under its method used for years prior to the election under section 404A is less than the opening balance for the substantiation year, the opening balance as of the date of the change in method in accounting is assumed to be equal to the closing balance. Thus, if the closing balance is less than the opening balance for the substantiation year, there is no adjustment under section 481. In such a case, the difference between the opening balance as of the date of the change in method of accounting and the opening balance for the substantiation year is allocated to the years prior to the substantiation year based on reasonable actuarial methods using all available information.

(2) *Determination of reasonable addition to a reserve in interim years.* In the case of a qualified reserve plan that is using the interpolation option of paragraph (f)(1)(ii)(B) of this section or that is described in the last sentence in paragraph (f)(1)(ii)(C) of this section, none of the increase in the reserve in the intervening year is considered a reasonable addition to the reserve under § 1.404A–3(b). Thus, the entire amount of the increase must be considered an amount to be amortized over ten years under § 1.404A–3(c).

(3) *Protective elections.* For those taxpayers that relied on the prior position of the Internal Revenue Service by making a Method (1) election under which the section 481(a) adjustment was computed in a manner inconsistent with this section or by making a Method (2) election under which no section 481(a) adjustment was reflected in the original return, appropriate adjustments required by section 404A and its underlying regulations must be made on an amended return filed no later than May 9, 1994, for the first year the election is effective and for all subsequent affected years for which a return has been filed. If no adjustments are necessary, an amended return should be filed for the first year stating that no adjustments are necessary.

(g) *Definitions and special rules*—(1) *Method (1) election.* The term "Method (1) election" means an election that was made under Method (1) (as defined in Ann. 81–114, 1981–28 I.R.B. 21) (see § 601.601(d)(2)(ii)(*b*) of this chapter) by claiming the deduction or credit allowable under section 404A on the taxpayer's income tax return for the first taxable year ending on or after December 31, 1980, including extensions (or an amended return filed no later than the end of the extended time period prescribed in section 6081, whether or not such time was actually extended for filing the taxpayer's return).

(2) *Protective or Method (2) election.* The term "protective election" or "Method (2) election" means an election that was made under Method (2) (as defined in Ann. 81–114, 1981–28 I.R.B. 21) (see § 601.601(d)(2)(ii)(*b*) of this chapter) without claiming deductions attributable to a qualified foreign plan on the taxpayer's income tax return (or, in the case of foreign subsidiaries, without taking into account reductions of earnings and profits).

(3) *Open years of the taxpayer.* The term "open years of the taxpayer" means open taxable years beginning after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was not barred by any law or rule of law.

(4) *Retroactive period.* The term "retroactive period" means a taxpayer's taxable years (whether or not the making of a refund, or the assessment of a deficiency, was barred by any law or rule of law for any taxable year) in the following range—

(i) Any taxable year selected by the taxpayer between taxable years beginning after December 31, 1970 and before January 1, 1980 (the beginning taxable year); and

(ii) The last taxable year beginning before January 1, 1980 (the ending taxable year).

(5) *Transition period.* The term "transition period" means taxable years beginning after December 31, 1979, and before May 7, 1993.

(6) *Open period.* For purposes of this section, the term "open period" means, with respect to any taxpayer, all taxable years beginning after December 31, 1971, and beginning before January 1, 1980, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was not barred by any law or rule of law.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–10594 Filed 5–6–93; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[EE–14–81]

RIN 1545–AD81

Deductions and Reductions in Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporation; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations relating to the limitations on deductions and adjustments to earnings and profits (or accumulated profits) with respect to certain foreign deferred compensation plans.

DATES: The public hearing will be held on Tuesday, October 5, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, September 14, 1993.

ADDRESSES: The public hearing will be held in room 2615, Second Floor, 2600 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (EE–14–81), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 404A of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, September 14, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-10743 Filed 5-6-93; 8:45 am]

BILLING CODE 4830-01-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 93-2]

Digital Recording Devices and Media; Auditing of, and Confidential Access to, Statements of Account

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document is issued to advise the public that the U.S. Copyright Office in the Library of Congress is proposing regulations to implement portions of the Audio Home Recording Act of 1992. Section 1003 of title 17 of the United States Code imposes an obligation to make royalty payments on persons who import and distribute in the United States, or manufacture and distribute in the United States, any digital audio recording device or digital audio recording medium. In addition to remitting the royalties to the Copyright Office, the importer or manufacturer must file Statements of Account with the Copyright Office. Section 1003 also provides that the Register of Copyrights shall issue regulations to provide for the verification and audit of such statements and to protect the confidentiality of information contained in such statements. The effect of this proposed regulation is to provide for the access to and confidentiality of such statements. The Copyright Office also solicits comments about the form and content of regulations governing verification and audit of Statements of Account.

DATES: Public comments on the proposed regulation should be received on or before July 6, 1993. Reply comments should be received on or before August 5, 1993.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue, SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office Library of Congress, Washington, DC 20540. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Effective October 28, 1992, the Audio Home Recording Act (AHRA), Public Law 102-563, 106 Stat. 4237, created new statutory obligations in a new Chapter 10 of title 17 U.S.C. The AHRA provides solutions to the policy problems presented by consumer products that make nearly perfect copies of digital sound recordings. It (1) provides consumers an exemption for private noncommercial home recording of analog or digital sound recordings, (2) mandates that digital audio recorders restrict serial copying by technological means, and (3) requires that manufacturers and importers of digital audio recorders and media must file an initial notice of distribution, file statements of account, and pay royalties upon distribution in the United States of digital audio recording devices and media. The AHRA also directs the Register to issue regulations to provide for the verification and audit of such Statements of Account and to protect the confidentiality of the information contained in such statements and to provide for the disclosure, in confidence, of such statements to interested copyright parties.

In separate proceedings, the Copyright Office issued interim regulations governing the filing of notices of initial distribution (RM 92-6) 57 FR 55464 (November 25, 1992) and to establish requirements governing the filing dates, frequency of filing, and content of the Statements of Account that must be filed by persons exercising the statutory license (RM 92-8) 58 FR 9544 (February 22, 1993). In this proceeding the Office is taking a third step to implement the AHRA, by proposing rules for the disclosure and confidentiality of information contained in Statements of Account, and by soliciting public comment regarding the form and content of regulations governing verification and audit of Statements of Account.

Section 1003(c)(2) of the Audio Home Recording Act of 1992 provides in part, that the Register shall issue regulations to provide for the verification and audit of statements of account and to protect the confidentiality of the information contained in such statements. Such regulations shall provide for the disclosure, in confidence, of such statements to interested copyright parties.

Section 1001(7) defines an "interested copyright party" and creates four categories of persons or entities who may be given access to AHRA Statements of Account. The first category is the owner of the exclusive right under section 106(1) of title 17 to reproduce a sound recording of a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under title 17 that has been distributed.

The second category is the legal or beneficial owner of, or the person that controls, the right to reproduce in a digital musical recording or analog musical recording a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under title 17 that has been distributed.

The third category is a featured recording artist who performs on a sound recording that has been distributed.

The fourth category is any association or other organization which either represents persons specified in the first three categories, or is engaged in licensing rights in musical works to music users on behalf of writers and publishers.

2. Proposed Access Regulations

The general public is denied access to Copyright Office files of Statements of Account for Digital Audio Recording Products. Access will be granted to interested copyright parties and their duly authorized legal representatives in accordance with these regulations. Only those interested copyright parties named in section 1001(7) of title 17 U.S.C. shall have access to such information. They shall be required to sign a certification to limit the use of the information to verification functions under section 1003(c)(2) and any enforcement actions that may result from such verification procedures.

Importers and manufacturers will have access to their own Statements of Accounts.

Employers of the Copyright Office and the Copyright Royalty Tribunal who require statement of account information in the performance of their duties will also have access to such information.

The Office will provide a DART Statement of Account Access Form, which must be used by interested copyright parties, importers, or manufacturers for access to the statements. The completed form will contain certification of the identity of the requestor and the prospective use of the information. The Office provides the forms free of charge.

The Office will charge a fee of $10 to make a coy of a statement plus the statutory fee of $8 if the copy is to be certified, and $0.50 for each page of any other material in the statement file.

3. Verification and Audit

Pursuant to section 1003(c)(2) of title 17 United States Code, the Register of Copyrights shall issue regulations to provide for the verification and audit of AHRA Statements of Account. Although the AHRA does not explicitly state who shall verify and audit, the Copyright Office assumes the interested copyright parties as defined in section 1001(7) are entitled to verify and audit the Statements of Account. Presumably, one or more interested copyrights parties will select an independent certified public accountant to conduct the audit and verify the accuracy of the information disclosed in the quarterly and annual Statements of Account filed by manufacturers and importers with the Copyright Office.

The Senate version of the bill (S. 1623, 102d Congress, First Session) later enacted as the Audio Home Recording Act of 1992 contained detailed provisions regarding verification and audit which were dropped from the bill as passed. The Copyright Office generally understands that the Congress eliminated these detailed provisions in the interest of shortening the bill and in order to provide regulatory flexibility. The Office assumes that Congress did not intend to disapprove of S. 1623's detailed verification and audit provisions. Accordingly, the Copyright Office is inclined to adopt the relevant provisions of S. 1623 and the accompanying explanation in Senate Report 102–294, 102d Congress, 2d Session 55–57 (1992) as the framework for the regulations governing verification and audit of AHRA Statements of Account.

The Copyright Office is not proposing the details of a verification and audit regulation at this time. By this Notice, however, we solicit public comments and detailed proposals for the form and content of a verification and audit regulation.

In addition to general comment and detailed proposals, the Office solicits public comment on the following specific questions.

1. Does the Copyright Office have authority to prescribe regulations authorizing the audit of business records held by manufacturers and importers? If yes, how should that authority be exercised? Should the Office simply require that the business records be maintained for a certain period of years and be made available as specified in regulations to interested copyright parties?

2. Should the Copyright Office specify that "generally accepted audit standards" shall mean the auditing standards applied by the American Institute of Certified Public Accountants?

3. What is the extent of the Register's duty to determine the independence of an auditor? How can the Register's responsibilities be carried out?

4. How long should the Copyright Office retain the results of a verification audit?

5. What is a reasonable period to notify manufacturers and importers of an impending audit? To whom should the notice be given? What is a reasonable period of time for conducting the audit?

6. What is the Copyright Office's role in case of disputes among the parties regarding the conduct of an audit? For example, if an audit discloses that additional royalties are owed, should the Office take affirmative action to collect the royalties due, or will the interested copyright party or parties alone bear that responsibility?

7. Should the Copyright Office require the filing of "working papers" along with the results of a verification audit?

8. Should the scope of the audit be limited? If so, what limitations would be appropriate.

9. Who should bear the cost of a verification audit? Should the regulations allocate the costs on the same basis as originally proposed in S. 1623? If not, why not; what alternate solution should be adopted?

10. Should the audit be conducted no more than once a calendar or fiscal year, in accordance with the manufacturing party's basis of filing? Should the audit be conducted less frequently than on an annual basis? If so, how frequently should audits be conducted?

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Copyright; Digital audio recording products.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR chapter II in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation of part 201 would be revised to read as follows:

Authority: Section 702, 90 Stat. 2541, 17 U.S.C. 702; 201.29 is also issued under Pub. L. 102–563.

2. Section 201.29 would be added to read as follows

§ 201.29 Access to, and Confidentiality of, Statements of Account for Digital Audio Recording Devices or Media.

(a) *General.* This section prescribes rules pertaining to access to Statements of Account filed pursuant to section 1003(c) of title 17 of the United States Code, as amended by Public Law 102–563. The form and content of Statements of Account are governed by § 201.28 of these regulations.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (*i.e.*, "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

(b) *Definitions*—(1) A *"DART Statement of Account Access Form"* is the form provided by the Copyright Office for access to a digital audio recording product statement of account filed pursuant to 17 U.S.C. 1003, or a photocopy of said access form.

(2) *"Access"* to a DART Statement of Account Form consists of examining the Statement of Account Form, making notes of information contained on the form, or obtaining a certified or uncertified copy of the form from the Copyright Office.

(3) *The phrase "interested copyright party"* has the same meaning as the statutory phrase in section 1001 of title 17 of the United States Code, as amended by Public Law 102–563.

(c) *Persons allowed access to Statements of Account.* Access to quarterly and annual DART Statements of Account deposited under section 1003(c) of title 17 U.S.C. is limited to:

(1) Interested copyright parties or their duly authorized legal representatives;

(2) The manufacturer or importer who deposited the particular Statement of Account or its duly authorized legal representative;

(3) Staff of the Copyright Office who require access in performance of their duties under title 17 U.S.C., and,

(4) Staff of the Copyright Royalty Tribunal who require access in performance of their duties under title 17 U.S.C.

(d) *Requests for access procedure.* Requests for access to Statements of Account from interested copyright parties, or manufactures or importers, must be accompanied by a fully completed and signed "DART Statement of Account Access Form." Requests for access submitted by mail should be addressed to: Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557. Requests for access may be made in person, at the Licensing Division, room LM–457, Madison Memorial Building, First and Independence Avenue, between 8:30 a.m. and 5 p.m., Monday through Friday (except legal holidays).

(e) *Content of DART Statement of Account Access Form.* The DART Statement of Account Access Form shall include the following information:

(1) Identification by name of the Statement of Account to be accessed, including the quarter and year to be accessed.

(2) The name of the interested copyright party or manufacturer or importer on whose behalf the request is made. A full street address, not a post office box number, must be included.

(3) The name and address of the person making the request for access and his/her relationship to the party on whose behalf the request is made.

(4) The purpose for the request for access, whether it is for an actual or potential audit or verification of the statement, for inspection by the manufacturer or importer, or for some other reason.

(5) The actual signature of the attorney or authorized representative of the party requesting access.

(f) *Fees.* (1) DART Statement of Account Access forms are provided free of charge.

(2) The following fees must be paid:

(i) To obtain an uncertified copy of a DART Statement of Account, $10;

(ii) To obtain a certified copy of a DART Statement of Account, $18;

(iii) For each page of other file material, $0.50 per page.

(3) Payment of these fees may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to the Register of Copyrights. No requests will be processed until the appropriate filing fees are received.

Dated: April 22, 1993.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 93–10776 Filed 5–6–93; 8:45 am]

BILLING CODE 1410–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–45–1–5805; FRL–4652–9]

Conditional Approval of California's Substitute Program for the Clean-Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: EPA is proposing to conditionally approve the State of California's commitment to submit a substitute plan to "opt-out" of the Clean-Fuel Fleet program of the Clean Air Act (CAA or Act). The California Air Resources Board (CARB) requested EPA's conditional approval of its commitment to submit a substitute plan for the CAA Clean-Fuel Fleet program (fleet program) by the November 15, 1992 due date. The federal fleet program provisions, in section 182(c)(4) of the Act, require states, in order to opt-out of the fleet program, to submit a substitute program for all or a portion of the program[s] which achieve at least equal long-term emission reductions of ozone-producing and toxic air emissions. Provisions of the Act require certain states to revise their state implementation plans (SIPs) to create fleet programs. These fleet programs must require that, beginning with the 1998 model year, a specified percentage of new vehicles purchased by certain fleet owners (owners of 10 or more vehicles that are centrally fueled) be clean-fuel vehicles operated in states with the worst ozone or carbon monoxide nonattainment areas. The programs will promote clean-fuel vehicles, such as those using methanol, ethanol or compressed natural gas, reformulated fuel, or other vehicle/fuel combinations able to meet the tougher standards. EPA has determined that, in limited circumstances, it may accept committal SIPs to perform CAA requirements. See General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 [57 FR 13498 (April 16, 1992)] (General Preamble). In this Action, EPA proposes conditional approval under section 110(k)(4) of this commitment and thereby proposes to preserve the opportunity of California to opt-out of the Clean-Fuel Fleet program.

DATES: EPA will accept written comments on this NPR until June 7, 1993.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) for EPA consideration by addressing them to Public Docket No. CA–93–FT at the following address: U.S. EPA, Region 9, A–2–1, Attention: Docket No. CA–93–FT, 75 Hawthorne Street, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Mobile Sources Section, A–2–1, Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1227.

A copy of the committal SIP is available for inspection in this docket. The docket is available for public inspection from 8:30 until 4. EPA may charge a reasonable fee for copying docket materials.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this introduction is to describe the Clean Air Act fleet program in order to provide a context from which to view the opt-out committal SIP approval being proposed today.

A. The Fleet Program

On November 15, 1990, Congress enacted amendments to the 1977 CAA. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The fleet program is contained under part C, entitled "Clean Fuel Vehicles", of title II of the 1990 CAA, as amended. Part C was added to the CAA to establish two programs: a clean-fueled vehicle pilot program in the State of California (the California Pilot Test Program) and a national clean-fueled vehicle fleets program. The fleet program is to introduce (in 22 nonattainment cities) lower pollution emitting vehicles into centrally fueled fleets of vehicles in areas with the worst air quality problems. Congress chose centrally fueled fleets because operators of these fleets have more control over obtaining fuel than the general public. Additionally, the control which operators must maintain over their fleets simplifies the issues of maintenance and refueling of these special vehicles. Finally, because fleet vehicles typically travel more miles on an annual basis than do non-fleet vehicles, they provide greater opportunity to improve air quality on a per vehicle basis.

The CAA fleet program applies to those vehicles which are in a class for which clean fuel vehicle standards apply, and which are in covered fleets that are centrally fueled or capable of being centrally fueled.

Section 246 of the Act directs certain states containing "covered areas," as defined in section 246(a), to revise their state implementation plans to require that "at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operated in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area." Three vehicle classes are covered by the fleet program: light-duty vehicles and trucks (LDVs and LDTs) under 6000 lbs. gross vehicle weight rating (GVWR), LDTs between 6000 lbs and 8500 lbs GVWR and heavy-duty vehicles (HDVs) over 8500 lbs GVWR but under 26,000 lbs. Vehicles over 26,000 lbs. are not covered by the fleet program. Three types of clean fuel vehicles satisfy the purchase requirement: Low-emission vehicles (LEVs), ultra low-emission vehicles (ULEVs) and zero-emission vehicles (ZEVs)

The goal of the fleet program is to reduce emissions of non-methane organic gases (NMOG) (includes a reactivity adjustment) and oxides of nitrogen (NOx), and, to demonstrate the feasibility of using clean-fuel vehicles in centrally-fueled fleets.

II. EPA Evaluation and Proposed Action

Section 182(c)(4) of the Act allows states to opt-out of the Clean-Fuel Fleet Program by submitting for EPA approval a SIP revision consisting of a program(s) resulting in as much or greater long-term reductions in ozone-producing and toxic air emissions. EPA may approve such a revision "only if it consists exclusively of provisions other than those required under [this Act] for the area." Such SIP revisions were due by November 15, 1992. Section 182(c)(4) further provides that EPA is to approve or disapprove the revision by May 15, 1993, and that EPA is to publish the revision upon receipt, with such notice being deemed to be a notice of proposed rulemaking on whether or not to approve the revision.

EPA made the determination that states intending to opt-out of the fleet program should do so by committing by November 15, 1992, and should at that time submit a substitute plan. If EPA conditionally approves that commitment, the state will be required to submit a fully adopted SIP revision fulfilling that commitment by a date certain, but no later than May 15, 1994 (the deadline for submitting SIP revisions to implement the fleet program pursuant to section 246(a) of the Act). If the state fails to submit a SIP revision fulfilling its commitment, the conditional approval will be treated as a disapproval and the state will have an obligation to submit a fully-adopted SIP revision to implement the fleet program in accordance with section 246. EPA believes this approach is consistent with the provisions of the Act and will ensure that, by May 15, 1994, the deadline for the submission of the fleet program SIP revisions, a SIP revision either implementing the fleet program or a substitute achieving equivalent air quality benefits will have been submitted to EPA.

The State of California has submitted by the statutory deadline a commitment to adopt a substitute program to opt-out of the Clean-Fuel Fleet program. California currently contains six serious and above non-attainment areas for either one or both ozone and carbon monoxide and is therefore subject to the requirement. The nonattainment areas in California include: Los Angeles-South Coast Air Basin; Sacramento Metro; San Diego; San Joaquin Valley; Southeast Desert Modified AQMA; and Ventura County. California has proposed to revise its SIP to opt-out of the federal program by submitting California's low-emission vehicle (LEV) regulations as a substitute program. The SIP revision will commit California to achieve emission reductions equivalent to those predicted to occur with full implementation of the federal fleet program. A copy of California's commitment is available for public review at the address listed in the **ADDRESSES** section above. EPA is today proposing conditional approval of this commitment under section 110(k)(4) of the Act as part of the review process given to California's proposal to revise its SIP.

EPA will require much greater detail describing why and how the substitute program is sufficient to provide long-term reductions in ozone-producing and toxic air emissions equal to or greater than those provided by the federal fleet program in California's submittal to meet its commitment. A failure to submit the necessary detail in the SIP submittal would result in EPA disapproval. EPA expects that California will consider its reasonable further progress goals (as defined in section 171 of the CAA) in deciding whether to opt-out of the fleet program.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory regulatory requirements.

III. California's LEV Substitute Program

The California LEV regulations were adopted and approved in July 1991, by the Office of Administrative Law. The regulations apply statewide to passenger cars, light-duty trucks, and medium-duty vehicles. Beginning with model year 1994, each vehicle manufacturer will be required to meet an annual fleet average NMOG requirement for their light-duty vehicles that decreases with each succeeding model year. Beginning with the 1998 model year, LEV and ULEV emission levels will also be required for medium-duty vehicles. Tighter exhaust emission standards are established for transitional low-emission vehicles (TLEV), LEV, ULEV, and ZEV. Exhaust emission standards are identified for non-methane organic gases (NMOG), carbon monoxide (CO), NOx, particulate matter (PM), and formaldehyde (HCHO).

California estimates that, in total, its state regulations require more than "ten times as many LEVs than the federal program." California contends that its program will result in an additional four percent of new light-duty vehicles being

lower emitting ULEVs and ZEVs and that the introduction of LEVs prior to the 1998 model year will provide even greater emission benefits. The California program regulation does not have LEV standards for vehicles beyond 14,000 lbs., GVWR, while the federal program regulates HDVs through 26,000 lbs., GVWR. California contends that HDVs in this weight category in the South Coast Air Basin represent less than one percent of new vehicle purchases and that the net effect of emissions attributable to HDVs is more than offset by emissions reductions from other vehicle categories.

California has fulfilled SIP revision requirements for public notice through public hearings, workshops, and other administrative proceedings that have been held for the LEV program in accordance with the California Administrative Procedure Act.

IV. California Waiver Approval

On January 7, 1993, the Administrator of EPA granted California a waiver of federal preemption pursuant to section 209(b) to enforce motor vehicle emission standards and test procedures so that California may phase in more stringent LEV standards beginning with the 1994 model year. EPA's decision affects not only persons in California but also manufacturers outside the state who must comply with California's requirements in order to produce motor vehicles for sale in California. (For additional information, see 58 FR 4166, January 13, 1993.) This decision means the state can proceed phasing in and enforcing exhaust emission control standards for cars and trucks beginning with the 1994 model year that are more stringent than the Federal Tier I standards.

The California motor vehicle program (CMVP) was the first program in the United States to require a vehicle emission control program. In the Air Quality Act of 1967 (Pub. L. 90–148), Congress allowed California a waiver of the Air Quality Act's preemption section on motor vehicle emissions control. The 1977 amendments to the CAA expanded California's flexibility (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2(1977)) so long as California's motor vehicle standards are "in the aggregate" at least as protecting of public health and welfare as applicable federal standards. Automakers have produced the "California Car" since the early 1960's. Subsequent passage of federal laws during that decade included the federal vehicle emission control program (FVECP) and prohibited the states, with the exception of California, from adopting standards different from the federal program unless they adopt California's standards in accordance with section 177 of the Clean Air Act. California has since sought and received waivers to set its own vehicle standards.

V. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations less than 50,000.

Conditional approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, EPA certifies that this proposed rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. E.P.A.*, 427 U.S. 246, 256–266 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

This action has been classified as a Table 2 action by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Air pollution control for Hydrocarbons, Intergovernmental relations, Motor vehicles pollution, Nitrogen oxide, Reporting and recordkeeping requirements.

VI. Statutory Authority

42 U.S.C. 7401–7671q.

Dated: April 20, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–10833 Filed 5–6–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 721

[OPPTS–50585D; FRL–4171–7]

Amide of Polyamine and Organic Acid; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to health.

DATES: Written comments must be submitted to EPA by June 7, 1993.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substance covered in this SNUR is OPPTS–50585D–293. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 28, 1990 (55 FR 39899), EPA issued a SNUR establishing significant new uses for amide of polyamine and organic acid. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50585 (P–89–1062). This record

includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P-89-1062

Chemical name: (generic) Amide of polyamine and organic acid.
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: April 30, 1992.
Basis for revocation of section 5(e) consent order: The consent order for the chemical substance designated as P-89-1062 was revoked based on the results of a bioconcentration study submitted pursuant to the terms of the order. Following the Agency's review and analysis of the study, EPA determined, for purposes of section 5 of TSCA, that the PMN substance will not present an unreasonable risk of injury to human health and will not result in significant or substantial human exposure from ingestion of fish. Therefore, further regulation under section 5 is not warranted at this time.
Toxicity testing results: The test results indicated that the bioconcentration factor (BCF) for the PMN substance is 60. A BCF of 60 indicates that the PMN substance would accumulate in fish only at low levels. Consequently, human exposure to the PMN substance via fish ingestion no longer presents a potential health risk.
CFR citation: 40 CFR 721.293.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 30, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.293 [Removed]

2. By removing § 721.293.

[FR Doc. 93-10851 Filed 5-6-93; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-120, RM-8217]

Radio Broadcasting Services; New Boston, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Louis M. Basso, III proposing the allotment of Channel 236A to New Boston, Texas, as the community's second local FM service. Channel 236A can be allotted to New Boston in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 236A at New Boston are 33-27-36 and 94-25-18.

DATES: Comments must be filed on or before June 24, 1993, and reply comments on or before May 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marjorie R. Esman, Esq., Hardy and Carey, 111 Veterans Boulevard, suite 255, Metairie, Louisiana 70005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-120, adopted April 15, 1993, and released May 3, 1993. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-10754 Filed 5-6-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 174

[Docket No. HM-197; Notice No. 93-11]

RIN 2137-AC26

Hazardous Materials in COFC and TOFC Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to permit the use of certain portable tanks to transport hazardous materials that pose a relatively low or moderate degree of hazard in container-on-flatcar (COFC) service or trailer-on-flatcar (TOFC) service, without obtaining prior approval from the Associate Administrator for Safety, Federal Railroad Administration (FRA). This notice proposes to require persons holding approvals who are unable to meet the specified standards to submit a new application to the Associate Administrator for Safety, FRA.

The intended effect of this action is to facilitate domestic and international commerce and to reduce the need for obtaining written approvals for certain COFC and TOFC services.

DATES: Comments must be received on or before July 12, 1993.

ADDRESSES: Address comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward W. Pritchard, Telephone (202) 366-9178, Chief, Hazardous Materials Division, RRS-12, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-0897 or Hattie L. Mitchell, Telephone (202) 366-4488, Chief, Exemptions and Regulations Termination, DHM-12, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

Under §§ 174.61 and 174.63 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180), a rail carrier may not transport a cargo tank, portable tank, IM portable tank or multi-unit tank car tank containing hazardous materials in container-on-flat car (COFC) service or trailer-on-flat-car (TOFC) service, except under conditions approved by the Associate Administrator for Safety, FRA. These approvals generally are issued on a case-by-case basis.

On April 30, 1985, RSPA published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) titled "Shippers; Use of Cargo Tanks, Portable Tanks, IM Portable Tanks, and Multi-Unit Tank Car Tanks in COFC and TOFC Service," under Docket No. HM-197, Notice No. 85-2 (50 FR 18278). In the ANPRM, RSPA solicited comments and information to assist in the identification and development of safety criteria for COFC and TOFC service of tanks transporting hazardous materials. RSPA stated in the ANPRM that the safety criteria would be used as the basis to guide the case-by-case approval process or to establish regulatory standards. Specific comments were requested on the adequacy of means used to secure a highway chassis (trailer) or a container to a flatcar, and the trailer's potential vulnerability in COFC/TOFC service. Comments were also requested on other safety issues involving the double stacking of containers, securement and cushioning of trailers and containers, liquid surge prevention, tank thermal protection, tank puncture resistance, and train placement. The ANPRM also announced a public hearing that was held on June 11, 1985.

RSPA received about 20 written comments in response to the ANPRM, and about ten persons made oral presentations at the public hearing. These comments and presentations were made by representatives of trade associations, rail carriers, motor carriers, shippers, a cargo tank manufacturers association, and state enforcement agencies.

Commenters to the ANPRM objected to cargo tanks being allowed to be transported in TOFC service. The reasons most often cited included: (1) Absence of an extended framework offering protection to the cargo tank; (2) large surge forces during "humping" operations; (3) adverse center of gravity; (4) outage concerns; and (5) increased likelihood of lading being released through the safety relief devices. The National Tank Truck Carriers, Inc. (NTTC) pointed out that the rail environment is very different from the highway environment. NTTC stated that the continuous "rock and roll" of a flat car, when translated into lateral surge in the cargo tank, and the relationship to "tie down" mechanisms for securing the cargo tank to the rail car must be studied carefully. NTTC further stated that the humping impacts of partially loaded cargo tanks create large surge forces on the front and rear tank heads, which would need to be of heavier construction to survive these impacts. The Railway Progress Institute (RPI) expressed similar concerns and stated that cargo tanks in TOFC service are less stable and have different centers of gravity than tank cars. RPI and several other commenters recommended further study on the influence of outage on surging and on the release of lading through cargo tanks' pressure relief devices.

With regard to the transport of multi-unit tank car tanks (DOT specifications 106 and 110), FRA believes that less than ten units are being transported under FRA approval. In testimony presented at the June 11, 1985 public hearing, a representative of the

Association of American Railroads (AAR) stated that AAR was not aware of any COFC/TOFC movement of these units except in dry vans or trailers, where existing blocking and bracing practices are sufficient.

The public hearing and written comments to the ANPRM offered diverse views on the suitability of transporting portable tanks containing hazardous materials in COFC and TOFC service. With regard to COFC service, commenters expressed no opposition to the use of portable tanks to transport hazardous materials with a low or moderate hazard potential. Commenters stated that IM portable tanks in COFC service offer the safest and most economical method of transporting hazardous materials by rail. However, there were diverse opinions on the suitability of using portable tanks to transport hazardous materials with high hazards in COFC service. The reason cited most often by commenters was the need for portable tanks to have insulation or thermal protection and safety relief devices similar to those required for tank cars carrying similar hazardous materials.

With regard to the use of portable tanks in TOFC service, commenters expressed concern because two interface systems are used—the system between the tank and the vehicle chassis and the system between the vehicle chassis and the rail car. Several commenters expressed support for using portable tanks in TOFC service, but several other commenters opposed using this configuration until existing securement practices and end-of-car cushioning devices have been more thoroughly field-tested. Concerns about the securement of portable tanks in TOFC service were also raised in an earlier rulemaking proceeding under Docket HM-177 ("Public Hearing and Request for Comments on Transportation of Hazardous Materials in TOFC," January 26, 1981, 46 FR 8055). The presentations at the public hearing and the written comments to Docket HM-177 failed to document any adverse shipping experience or safety-related problems when transporting hazardous materials in TOFC service. Commenters stated that their own shipping experience revealed no evidence of excessive railcar "rock and roll" or securement problems with the two interface securement systems used for portable tanks. In view of the favorable comments supporting portable tanks in TOFC service, Docket HM-177 was terminated.

II. The FRA Approval Process

Under procedures followed by FRA, an applicant submits a complete application containing detailed information on a tank, its securement system, and other necessary data to support the application. Upon receipt of an application, FRA staff members review the submitted data to determine the extent to which the requested method offers protection to the tank and the suitability of the securement system.

FRA has issued approvals for transporting portable tanks containing hazardous materials in COFC/TOFC service for approximately 10 years. Since 1984, FRA has issued approvals where the applicant demonstrated use of an authorized portable tank and a proven securement system. For TOFC service, the approvals require the use of portable tanks having equipment for secure mating to a container trailer chassis, and the trailer chassis having standard ISO twist-lock pins and corner castings. For COFC service, the approvals require the use of portable tanks having equipment for secure attachment to a railroad container car equipped with an ISO standard COFC basic pedestal system designed for container support and securement, and the railcars having a cushioning system meeting the requirements of AAR Specification M-952, titled "Intermodal Container Support and Securement Systems for Freight Cars".

III. Features of This NPRM

Based on the merits of written and oral comments received in response to the ANPRM and the safety record achieved in transporting more than 50,000 portable tanks in COFC and TOFC service, RSPA proposes in this NPRM to authorize the transport of portable tanks containing low-to-moderate hazard materials in COFC and TOFC service under conditions prescribed in the HMR, without the need for an approval. Only those low-to-moderate risk materials having a bulk packaging authorization of § 173.240, 173.241, 173.242, or 173.243 would be authorized for transport in portable tanks in COFC or TOFC service. RSPA and FRA agree with commenters that portable tanks containing higher risk materials in COFC or TOFC service may need to meet certain additional safety standards. Therefore, those portable tanks would remain subject to the approval process for evaluation on a case-by-case basis.

As recommended by commenters, RSPA is proposing in this NPRM that all portable tanks and flatcars used in COFC or TOFC service would have to meet the requirements contained in AAR.600, "Specifications for Acceptability of Tank Containers", Chapter 4, of the AAR Manual of Standards and Recommended Practices, Section C—Part III. AAR.600 contains requirements on construction, certification of tank containers, approved materials, closures, safety relief devices, and marking. The trailer chassis used in TOFC service and the container support and securement systems used in COFC service would be subject to certain requirements contained in AAR specifications M-943 and M-952, of the AAR Manual of Standards and Recommended Practices, Section I. These performance specifications prescribe securement systems that permit standard ISO twist-locks. Therefore, RSPA and FRA believe that most configurations used in COFC or TOFC service under FRA approval would meet the requirements contained in these AAR standards, which are proposed to be incorporated into § 174.63. A new applicant or any person currently holding an FRA approval for the transport of a portable tank or an IM portable tank in COFC or TOFC service, who is unable to comply with the requirements prescribed in proposed § 174.63(a) and (b), would be required to submit a new request for approval to the Associate Administrator for Safety, FRA, stating the reason for the non-conformance.

Because of the strong concerns raised by commenters on the transport of cargo tank motor vehicles in TOFC service, cargo tanks would continue to be subject to the approval process. Cargo tanks are used on rare occasions in TOFC service. Also, because of the limited availability of experience data, the use of multi-unit tank car tanks in COFC and TOFC service would remain under FRA approval.

On February 28, 1991, FRA published a notice in the **Federal Register** (56 FR 8388), extending the expiration date of all existing approvals, granted under 49 CFR 174.61 and 174.63 for the movement of multimodal containers in TOFC and/or COFC service, until after issuance of a final rule under this docket. As proposed in this notice, all outstanding approvals issued under these sections will expire on the date stated in the approval letter or six months after the effective date of a final rule, whichever is later. Persons currently holding an FRA approval who are unable to comply with the requirements in proposed § 174.63 would have to re-apply for approval. Such persons would include those holding approvals for portable tanks and IM portable tanks containing hazardous

materials not authorized for packaging under §§ 173.240, 173.241, 173.242, and 173.243, and those holding approvals for cargo tanks or multi-unit tank car tanks transporting hazardous materials in COFC or TOFC service.

RSPA plans to address other issues raised in the ANPRM (e.g., pressure relief devices, identification/marking, thermal protection, puncture resistance, and special handling requirements) in future rulemaking actions.

IV. Section by Section Review

Section 171.7

In paragraph (a)(3), the table would be amended by removing the entry "AAR Specification for Tank Cars". The entry for "AAR Specification for Tank Cars, Specification M–1002, Section C" would be revised to show that this standard is contained in the AAR Manual of Standards of Recommended Practices and to include other applicable section references. A new entry would be added to incorporate by reference the AAR standard "Specially Equipped Freight Car and Intermodal Equipment," Section I, which is also contained in the AAR Manual of Standards and Recommended Practices.

Section 174.61

This section would be revised to contain requirements for transport vehicles and freight containers containing packages of hazardous materials. The section heading would be revised to read "Transport Vehicles and Freight Containers on Flatcars." Because the term "rupture" generally refers to failure of a packaging from internal pressure rather than the type of damage sustained from improper loading of packages within a transport vehicle or freight container, in paragraph (a), the words "rupture or" would be removed. The requirement currently in paragraph (c) that a cargo tank or multi-unit tank car tank containing hazardous materials may not be transported in COFC or TOFC service without prior approval would be redesignated as proposed § 174.63(d).

Section 174.63

This section would be revised to contain requirements for portable tanks, IM portable tanks, cargo tanks, and multi-unit tank car tanks transported by rail. In paragraph (a), certain minor editorial changes would be made to requirements that portable tanks and IM portable tanks must be designed and loaded so that they maintain their integrity during transportation. In addition, this paragraph would incorporate requirements for DOT 51, 52, 53, 56 and 57 portable tanks that are currently contained in paragraph (c). Proposed paragraph (b) would contain requirements for the transport of portable tanks and IM portable tanks in COFC or TOFC service. Paragraph (c), containing the proposed requirement that approval by the Associate Administrator for Safety, FRA, must be obtained for COFC or TOFC movements of portable tanks and IM portable tanks, would limit such approval to tanks not meeting the requirements specified in paragraph (a) or (b). Proposed paragraph (d) would retain the requirement currently contained in § 174.61(d) that cargo tanks and multi-unit tank cars tanks containing hazardous materials may only be transported in COFC or TOFC service after receiving approval of the Associate Administrator for Safety, FRA.

V. Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies

This proposed rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and (1) is determined not to be "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034); and (3) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). The rule proposed in this docket will impose no additional costs on the regulated industry and will bring benefit in the form of reduced information collection. A regulatory evaluation is available for review in the public docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism").

The Hazardous Materials Transportation Act (49 App. U.S.C. 1801–1819) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. Covered subjects include:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4)(A) and (B).

This proposed rule concerns the handling of hazardous materials. If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning this subject unless the non-Federal requirements are "substantively the same" (56 FR 20424, May 13, 1992) as the Federal requirements. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

The provisions of this proposed rule would impact shippers of hazardous materials by COFC/TOFC service and would have the net result of reducing costs to persons affected by a final rule. Based on available information, I certify that this rule would not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. The need to further evaluate economic consequences will be reviewed on the basis of comments submitted in response to this notice.

D. Paperwork Reduction Act

The requirements for information collection contained in current §§ 174.61 and 174.63 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–5111) under OMB Control number 2137–0558. The proposed revised information collection requirements are being submitted for approval to OMB. Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Transportation. All comments must reference the title for

this notice "Hazardous Materials in COFC and TOFC Service."

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

In consideration of the foregoing, 49 CFR parts 171 and 174 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 33 U.S.C. 1321; 49 CFR part 1.

§ 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes would be made:

a. The entry "AAR Specification for Tank Cars, Specification M–1002, 1988" would be removed from Column 1 and, in Column 2, captioned "49 CFR reference," the entries "173.31; 179.100" would be removed.

b. The entry "AAR Specification for Tank Cars, Specification M–1002, Section C—Part III, September, 1988" in column 1 would be revised to read "AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, 1990", and the entry in column 2 would be revised to read: "173.31; 174.63; 179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400."

c. The entry "AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, (800 Series), 1990" would be added in column 1 and the entry "174.63" would be added in column 2.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 33 U.S.C. 1321; 49 CFR 1.53(e), 1.53, app. A to part 1.

4. In § 174.61, paragraph (c) would be removed and the section heading and the first sentence in paragraph (a) would be revised to read as follows:

§ 174.61 Transport vehicles and freight containers on flat cars.

(a) A transport vehicle or freight container containing a hazardous material must be designed and loaded so that it will not become seriously damaged under conditions normally incident to transportation. * * *

* * * * *

5. Section 174.63 would be revised to read as follows:

§ 174.63 Cargo tanks, multi-unit tank car tanks, portable tanks, and IM portable tanks.

(a) A Specification 51, 52, 53, 56, 57, IM 101, or IM 102 portable tank may be transported inside a transport vehicle or container body provided the tank is secured with a restraint system that will prevent the tank from changing position, sliding into other tanks, or contacting the side or end walls (including doors) under conditions normally incident to transportation.

(b) A portable tank or IM portable tank may be transported in COFC service or TOFC service subject to the following conditions:

(1) The tank contains a material authorized to be packaged in accordance with § 173.240, 173.241, 173.242, or 173.243;

(2) The tank and flatcar conform to requirements in "Specifications for Acceptability of Tank Containers", (AAR 600), Section C-Part III, Chapter 4, of the "Specifications for Tank Cars", AAR Manual of Standards and Recommended Practices;

(3) The tank may not be in a double-stack;

(4) For TOFC service, the trailer chassis conforms to requirements in paragraphs 3, 4, 5, and 6 of AAR Specification M–943 "Container Chassis For TOFC Service", and the AAR Specification M–952 "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment";

(5) For COFC service, the container support and securement systems conform to requirements in Specification M–952 "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment"; and

(6) All securement fittings are fully engaged and in the locked position.

(c) A carrier may not transport a portable tank or IM portable tank that does not conform to paragraph (a) or (b) of this section unless approved for transportation by the Associate Administrator for Safety, FRA. Approvals in effect on February 28, 1991 for the transportation of portable tanks or IM portable tanks in TOFC or COFC service expire on the date stated in the approval letter or [6 MONTHS FROM THE DATE THE FINAL RULE IS ISSUED], whichever is later.

(d) A carrier may not transport a cargo tank or multi-unit tank car tank containing a hazardous material in TOFC or COFC service unless approved for transportation by the Associate Administrator for Safety, FRA.

Issued in Washington, DC on May 4, 1993, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–10829 Filed 5–6–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition to List the Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that listing of the spotted frog (*Rana pretiosa*) as threatened in some portions of its range is warranted but precluded by other higher priority listing actions.

DATES: The finding announced in this notice was approved on April 23, 1993. Comments and information may be submitted until further notice.

ADDRESSES: Questions, comments and additional information regarding this finding should be sent to Mr. Larry Shanks, Chief, Endangered Species and Environmental Contaminants, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Patricia Worthing at the Denver Regional Office (see **ADDRESSES** above), telephone (303) 236–7398.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a 90-day finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. If the finding is positive, the Service is also required to promptly commence a status review of the species. Section 4(b)(3)(B) requires that the Service make a 12-month finding as to whether the petition presenting substantial information is (i) warranted, (ii) not warranted, or (iii) warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species.

A petition dated May 1, 1989, from the Board of Directors of the Utah Nature Study Society was received by the Service on May 4, 1989. The petitioners requested that the Service add the spotted frog (*Rana pretiosa*) to the List of Threatened and Endangered Species and to specifically consider the status of the Wasatch, Utah, population.

The Service published a notice of a 90-day finding in the **Federal Register** (54 FR 42529) on October 17, 1990, indicating that there was substantial information to indicate that the petitioned action may be warranted. Concurrent with publishing the notice, the Service initiated a status review. The period of the status review was prolonged because, throughout its wide range, there was a lack of quantitative information documenting the spotted frog's current distribution and status. Additionally, the discovery that spotted frog genetics research was being conducted raised questions regarding the appropriateness of the current taxonomic classification of the various populations of spotted frog.

The Service sponsored an interagency workshop in 1991 in order to clarify the distribution, taxonomy, and current status of the spotted frog. The subject 12-month petition finding utilized information and comments provided at this workshop plus available literature and information obtained from university and agency personnel familiar with the species and the habitat conditions in specific areas.

The petitioners stated that "the spotted frog's present range in the lower 48 states is greatly reduced from its historic range," and that "the current status [of the species] is greatly reduced from historic times." The petitioners further indicated that the "scientific importance of the spotted frog is that this species lives in many disjunct populations that reflect Pleistocene populations."

Threats identified by the petitioners include loss of habitat (caused by dam and reservoir construction, alteration of drainage patterns, urban and agricultural use of water, and highway and bridge construction); impacts as a result of introductions of exotic species; lack of inventories of native wetland animals and insufficient impact analyses conducted prior to development; inadequate mitigation activities; and Federal and State laws and regulations that do not protect wetlands and riparian areas.

The two subspecies identified by the petitioners, *R. p. pretiosa* and *R. p. luteiventris*, are no longer generally recognized by the scientific community (Green 1991, Nussbaum et al. 1983). Currently, the spotted frog is considered a monotypic species, *Rana pretiosa*, throughout its range (Nussbaum et al. 1983). However, genetic studies currently being conducted by Green (1991). However, genetic studies currently being conducted by green (1991) suggest that the species may actually consist of an additional one or more species and subspecies.

Adult frogs have large, dark spots on their backs and pigmentation on their abdomens ranging from yellow to red (Turner 1959). Spotted frogs in Utah are reported to have fewer and lighter colored spots (Colborn, U.S. Fish and Wildlife Service, pers. comm., 1992; Shirley, Utah Department of Wildlife Resource, pers. comm., 1992). The spotted frog is closely associated with water (Dumas 1966, Nussbaum et al. 1983). Habitat includes the marshy edges of ponds, lakes, and slow-moving cool water streams) Licht 1974, Nussbaum et al. 1983) and cold water springs (Morris and Tanner 1969, Hovingh 1987a. Stebbins 1985 in Toone 1991).

The historic range of the spotted frog includes portions of Alaska, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and Alberta and British Columbia, Canada (Turner and Dumas 1972; Nussbaum et al. 1983; Hovingh 1986). The species' range is highly subdivided at its southern extent with various groups of frogs occurring in isolated habitats such as high elevation wetlands or in desert springs. This fragmented range indicates that there may be considerable, and previously undetected, genetic divergence among *R. pretiosa* populations, even to the extent that this taxon may actually represent a complex of similar species (Green 1991).

The present distribution of the spotted frog includes a main population in southeast Alaska, Alberta, British Columbia, eastern Washington, northeastern Oregon, northern and central Idaho, and western Montana and Wyoming. Additional disjunct populations occur in northeastern California, southern Idaho, Nevada, Utah, and western Washington and Oregon.

Based on geographic and climatic separation and supported by genetic separation as determined by Green (1991) and David Green (McGill University, pers. comm., 1992), the Service identifies the following distinct vertebrate populations of the spotted frog: (1) The main population (Alaska, British Columbia, Alberta, Wyoming, Montana, northern and central Idaho, eastern Washington, and northeastern Oregon), (2) Great Basin (southern Idaho and Nevada), (3) west coast (western Washington and Oregon and northeastern California), (4) Wasatch Front (Utah), and (5) West Desert (Utah). Green (1991) did not separate the two Utah groups. However, the Service identified the Wasatch Front and West Desert spotted frogs as two populations based primarily on geographic separation but supported by evidence of some genetic variation from Green (1991) and by other anecdotal evidence of possible morphological differences (Leon Colborn, pers. comm., 1992; David Green, pers. comm., 1992; Peter Hovingh, University of Utah, pers. comm., 1992). The southernmost populations (southern Idaho, Nevada, and Utah) are believed to be relict populations occurring in small patches of suitable habitat remaining since the last ice age. The extreme western population (western Washington and Oregon and northeastern California) is believed to be a separate ecologic form confined to the warmer, milder climatic conditions of the west coast. These population divisions may be modified due to redefinition of the taxonomy of the spotted frog based on final genetic results, or by additional scientific information.

The Service believes that each of the disjunct populations is isolated from each other and from the main population by large distances with intervening stretches of unsuitable habitat or by distinct climatic variations that form substantial geographic or ecological barriers. Each of these disjunct populations is thus separated from any other population throughout its entire life cycle and at all times of the year. These ecological and geographic barriers are believed to

effectively prevent any interchange between any of the populations.

The main population of spotted frogs (in Alaska, Alberta, British Columbia, eastern Washington and Oregon, northern and central Idaho, and western Montana and Wyoming) occurs over a large area with a variety of habitat conditions and threats. While there are activities occurring within this region that potentially impact spotted frogs, and while some declines have been documented or are suspected, spotted frogs are believed to be still abundant in many areas. However, the disjunct populations in the southern and western part of the species' range are either severely declining or nearly extirpated or are faced with significant threats altering or eliminating the species' habitat. Reduction, elimination, or alteration of wetland habitats has been a primary factor in each of these populations.

In the west coast population (western Washington and Oregon and northeastern California), spotted frogs have been nearly extirpated west of the Cascades from the Williamette Valley and Puget Trough) and have disappeared from most locations in the Cascades and in northeastern California (Nussbaum et al. 1983; Marshall 1989; Storm 1966 in McAllister and Leonard 1990; McAllister and Leonard 1991; Marc Hayes, Portland State University, pers. comm. 1992). Modification of river hydrology from completion of a series of dams in the Williamette Valley and the Puget Trough has significantly reduced the amount of shallow overflow wetland habitat historically utilized by the spotted frog (Marc Hayes, pers. comm., 1992; Kelly McAllister, Washington Department of Wildlife; pers. comm., 1992). According to Hayes (pers. comm., 1992), impacts to spotted frogs in the Cascades have resulted from grazing and from the construction of reservoirs which have inundated large marsh complexes and fragmented remaining marshes, thereby reducing the survival of spotted frogs in these areas. In northeastern California, Mark Jennings (California Academy of Sciences, pers. comm., 1992) indicates that grazing coupled with degraded water quality caused by irrigation and other agricultural activities have impacted spotted frog populations. Next to loss of habitat, Hayes (pers. comm., 1992) believes the second major factor affecting the west coast spotted frog population is the introduction and naturalization of nonnative predacious fishes and other nonnative aquatic species that are believed to prey on tadpoles of spotted frogs and other native western *Rana* species.

Spotted frogs of the Great Basin population (Nevada and southern Idaho) have undergone significant declines (Turner 1962; Peter Hovingh, pers. comm., 1992). Extensive loss of habitat has occurred from conversion of wetland habitats to irrigated pasture and dewatering of river areas by irrigation practices; in addition, there has been extensive impact on riparian habitats primarily due to intensive livestock grazing (Peter Hovingh, pers. comm., 1992).

In the Wasatch Front population in Utah, spotted frogs have undergone significant decline (Hovingh 1988; Dennis Shirley, pers. comm., 1992). Habitat loss and modification from reservoir construction and from urban and agricultural developments, compounded with predation by nonnative species, are the primary causes of the decline (Dennis Shirley, pers. comm., 1992).

While less habitat loss has occurred with the West Desert population of Utah than with the other southern and western populations, habitat availability is limited. Degradation of spring habitats and water quality from cattle grazing and other agricultural activities in these limited habitats are potential threats to the spotted frogs of this population (Hovingh 1987b; Peter Hovingh, pers. comm., 1992; Dennis Shirley, pers. comm., 1992).

Finding

The Act requires that the Service make determinations regarding listing solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts being made by States and others to protect the species. On the basis of the best available scientific and commercial information, the Service finds that the petitioned action to list the spotted frog throughout its entire range is not warranted.

The Service has the authority to list a distinct population segment of any vertebrate fish or wildlife species which interbreeds when mature. However, Congressional language indicates that the Service is "to use the ability to list populations sparingly and only when the biological evidence indicates that such action is warranted" (Senate Report No. 96–151, 96th Congress, 1st Session 7, 1979).

It is the opinion of the Service that, although the spotted frog appears to be common and abundant in its main population, it is known to be severely declining in the southern and western portions of its historic range. Based on the extensive loss of alteration of wetland habitat, compounded by the introduction of nonnative species, the Service finds that listing the west coast spotted frog population (western Washington and Oregon and northeastern California), the Great Basin population (Nevada and southern Idaho), and the Wasatch Front population (Utah) is warranted but precluded by work on other species having higher priority for listing. Based on the limited habitat and the potential for significant habitat destruction or alteration, the Service finds that the listing of the West Desert population (Utah) is also warranted but precluded.

In making this warranted-but-precluded finding for the four vertebrate populations identified above, the Service transfers these populations from Category 2 candidates to Category 1. The main populations of the spotted frog is retained in Category 2.

Section 4(b) of the Act states that the Service may make warranted-but-precluded findings only if it can demonstrate that (1) an immediate proposed rule is precluded by other pending proposals, and that (2) expeditious progress is being made on other listing actions. On September 21, 1983 (48 FR 43098), the Service published in the **Federal Register** its priority system for listing species under the Act. The system considers three factors in assigning species numerical listing priorities on a scale of 1 to 12. The three factors are magnitude of threat, immediacy of threat, and taxonomic distinctiveness.

As discussed above, the spotted frog faces threats primarily from habitat alteration and destruction, and predation and competition by nonnative species. The Service considers the magnitude of these threats in the west coast population, the Wasatch Front population and the Great Basin population to be high and imminent. As distinct population segments, the three populations of spotted frog have a lower listing priority than full species or monotypic genera under comparable threats. Therefore, the listing priority for these three populations is 3. The threats facing the West Desert population (Utah) are considered moderate to low. The listing priority for that population is 9. Service policy is to propose the highest priority species first. Priority 1 and 2 species currently warrant more immediate listing consideration than the spotted frog populations.

The Service believes that expeditious progress is being made on other listing actions. In fiscal year 1990 (October 1, 1989, to September 30, 1990), the Service proposed 106 species for listing and added 47 species to the lists of

endangered and threatened wildlife and plants. In fiscal year 1991 (October 1, 1990, to September 30, 1991), 87 species were proposed for listing and 52 species were added to the lists. In fiscal year 1992 (October 1, 1991, to September 30, 1992), 114 species were proposed for listing and 92 were added to the lists. As of March 31 in fiscal year 1993, the Service had proposed 79 species for listing and added 49 species to the lists. The Service attempts to increase listing efficiency through multi-species listing actions when appropriate.

Further investigation and biological research on the species status in all populations is encouraged. If data become available in the future indicating that the spotted frog in the main population may qualify for listing under the Act, or if further information becomes available to indicate a greater abundance of spotted frogs or a decrease in threats in any of the southern and western populations, the Service will reassess the status of these populations as necessary. More detailed information regarding the above decisions may be obtained from the Denver Office (see **ADDRESSES** above).

References Cited

A complete list of all references cited herein is available upon request from the Denver Office (see **ADDRESSES** above).

Author

This notice was prepared by Patricia Worthing (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: April 23, 1993.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 93–10813 Filed 5–6–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 87
Friday, May 7, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Stacel Rehabilitation and Salvage Timber Sale Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a timber salvage project designed to recover dead and dying timber and rehabilitate National Forest system lands is exempt from appeals under provisions of 36 CFR part 217.

SUMMARY: During forest surveys conducted in 1992, areas of insect and disease mortality of commercial sawtimber were identified in the Stacel Draw and Dry Gulch areas. In March 1993, the Fernan District Ranger, Idaho Panhandle National Forests, proposed salvage of the dead and dying timber and rehabilitation of several stands in the affected area.

The District Ranger has determined, through a Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber, to reduce the risk of catastrophic wildfire, and to rehabilitate the stands as quickly as possible for long term watershed stability.

EFFECTIVE DATE: Effective on May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Donald J. Bright; District Ranger; Fernan Ranger District; Idaho Panhandle National Forests; 2502 East Sherman Avenue; Coeur d' Alene, ID 83814.

SUPPLEMENTARY INFORMATION: In the fall of 1992, field surveys identified areas where significant timber mortality occurred from root disease and bark beetles in the upper reaches of Stacel Draw and Dry Gulch drainages. The stands in need of rehabilitation are located within lands designated as suitable for timber management and assigned to Management Area 1 (Idaho Panhandle Forest Plan, August 1987).

In March 1993, the Fernan District Ranger, Idaho Panhandle National Forest, proposed the salvage harvest of dead and dying trees in the area and rehabilitation of these stands. This proposal was designed to meet the following needs: (1) Reduce the spread of the bark beetle infestation; (b) reduce wildfire hazard by reducing fuel loading; (c) rehabilitate timber stands that are understocked due to root disease, and restock the sites to species less susceptible to root disease; and (d) recover dead and dying timber products before their commercial value deteriorates.

An interdisciplinary team was convened and scoping began in March 1993. Environmental issues were identified and are the basis for the environmental analysis documented in the project file. Two alternatives were analyzed a No Action Alternative and the Proposed Action.

The selected alternative will salvage approximately 425 MBF of dead and dying timber and rehabilitate approximately 40 acres. All salvage areas are accessible from existing roads. No road construction or reconstruction will occur in conjunction with this project.

This rehabilitation project and salvage is designed to accomplish the objectives as quickly as possible to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exists to exempt such decisions from review under this part.

Based on the analysis documented in the Stacel Rehabilitation and Salvage Timber Sale project file and the District Ranger's Decision Memo, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: April 30, 1993.

Larry O. Gadt,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93-10812 Filed 5-6-93; 8:45 am]

BILLING CODE 3410-11-M

Southern Region; Exemption From Appeal of the Decision To Salvage Storm Damaged Timber on the Jefferson National Forest, Wythe Ranger District, VA

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists, and notice is hereby given, to exempt from administrative appeal the decision to salvage wind thrown and damaged trees in the Stony Fork Creek area on the Wythe Ranger District of the Jefferson National Forest as a result of the severe snowstorm which occurred during the storm of March 13-14, 1993. Most of the affected timber is large white pine, many of which were either uprooted, broken off, rootsprung, or otherwise damaged (broken limbs or top). Warm weather is rapidly approaching which will create conditions conducive to the rapid spread of blue stain or infestation by wood borers. Either condition will soon render these trees unmerchantable for sawtimber if not salvaged quickly. Approximately 100 thousand board feet (MBF) of timber would be removed from about 37 acres of area which was severely damaged. Specifically, the salvaging of timber would take place in Compartment 6054, stands 1, 3, and 4, and Compartment 6055, stands 11 and 15.

EFFECTIVE DATE: May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this exemption should be directed to Jean P. Kruglewicz, Southern Region, Forest Service, USDA, 1720 Peachtree Road, NW., Atlanta GA 30367, phone (404) 347-4867.

SUPPLEMENTARY INFORMATION: On March 13 through March 14, a severe blizzard occurred in this area. High winds and heavy snows caused large white pine sawtimber trees to be severely damaged along State Route 717, a designated scenic byway (Big Walker Mountain Scenic Byway), on the Wythe Ranger District of the Jefferson National Forest. Most of the affected timber is lying on the ground. Along with the heavy damage to white pine, some pitch and Virginia pines were also affected, and some hardwood was hit and damaged by the falling pines. An estimated 100 MBF would be removed from 37 acres which were severely damaged. The primary objectives are to salvage and remove the damaged timber in these stands and to protect and rehabilitate the visual qualities of the scenic byway. Scenery viewing traffic along the scenic byway is typically higher during summer months. The Stony Fork Campground is also located along State Route 717 just to the west of the storm damaged area. Campground use and associated traffic will increase as warmer weather develops. All the stands to be salvaged are located in Management Area 7, which is suitable for timber production, per the Jefferson Land and Resource Management Plan, as amended.

In this area, white pine is usually harvested in the colder months to avoid blue stain fungal attack. White pine is commonly used in furniture and blue stain renders the wood unsuitable for this purpose. Stain can greatly devalue the wood or make it unsaleable. When warm weather arrives, wood borers readily attack down pines (particularly white pine) and can also render the wood unuseable. Any delay in removal of down and damaged pines will quickly result in their becoming unmerchantable for sawtimber.

An additional factor is the unsightliness of damaged and down timber, particularly the "browning up" of needles which follows. The prompt removal of this timber will help to preserve the scenic nature of this portion of the Big Walker Mountain Scenic Byway.

The District Ranger is the responsible official. The environmental analysis is currently being done and the environmental documentation is near completion. The decision will likely be documented in either a Decision Memo (per the Forest Service Environmental Policy and Procedures Handbook, Section 31.2) or Decision Notice. The environmental analysis will include methods of harvesting, mitigation measures, and any post salvage rehabilitation practices. Regeneration of the stand within the retention VQO area will take into consideration the scenic values. Maintenance of scenic values is the primary concern related to the timber salvage. The environmental documents and biological evaluation being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public.

Given the condition of the damaged timber with the onset of warm weather, the need for action is critical. Delay will result in both the loss of value of the presently merchantable timber and an adverse effect on scenery as viewed by scenic byway travelers and other traffic.

Dated: April 30, 1993.

Ralph F. Mumme,

Acting Deputy Regional Forester.

[FR Doc. 93-10764 Filed 5-6-93; 8:45 am]

BILLING CODE 3410-11-M

Exempt Decision for VV Salvage Sale From Appeal, Malheur National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the VV Salvage Sale, located on the Long Creek Ranger District, Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mark A. Boche, Forest Supervisor, Malheur National Forest, 139 N. Dayton Street, Phone (503) 575-1731; or Carol Cushing, Timber Management Planner, Long Creek Ranger District, 528 E. Main Street, John Day, Oregon 97845, phone (503) 575-2110.

SUPPLEMENTARY INFORMATION: Starting in 1991, western spruce budworm have infested a major portion of the Malheur National Forest. Much of the infestation is in stands of white fir and Douglas-fir. In the Summer of 1991, survey of the infested area was initiated to assess the damage to the resources. The survey identified about 1,554 acres needing treatment due to high insect damage and mortality.

Salvageable trees in the area averages 18 inches in diameter at breast height. Rapid drying of insect-killed trees has caused cracking or "checking," especially of the smaller diameter trees, which is expected to quickly reduce the opportunity to recovery merchantable sawlog material. Prompt salvage is needed to begin regeneration and restore desired stand health and wildlife habitat conditions.

The VV Salvage Sale, environmental analysis was started in June 1991. After public meetings, and contacts with individuals, State and Federal agencies, the following major issues were identified: Road management and forest health.

An interdisciplinary team of resource specialists developed three alternatives to analyze, including the No-Action Alternative. An environmental assessment has been prepared to disclose the effects of alternatives developed to meet the objectives of the proposed action and responds to the major issues. The proposed action would salvage about 1,293 acres of high insect-damaged stands to mitigate declines in big game wildlife cover and prevent future outbreaks of insects. This proposal will prevent the loss of approximately 9.8 million board feet of commercial timber resources.

Approximately 1.4 miles of new system roads would be constructed and closed following the project. A total of approximately 22 miles of existing open roads will be closed following the final implementation of the VV Access and Travel Management Plan. A majority of these road closures will be completed by 1996 by the Salvage Sale contractor.

This alternative protects and enhances riparian and aquatic habitat by establishing deferred entry buffers along streams. This alternative will also include a Forest Plan Amendment needed to keep open the existing 2010 road access to the top of Vinegar Hill which is located within the Vinegar Hill/Indian Rock Scenic Area.

Biological evaluations have been completed for all plant, wildlife and fish proposed, endangered, threatened and sensitive species within both project areas. The biological evaluation indicates that the project could proceed as planned.

The VV Salvage Sale and accompanying work are designed to accomplish Forest Plan objectives and provide restorative reforestation efforts as timely as possible. Based upon the environmental analysis and the need to expedite this salvage, I have determined that good cause exist to exempt the salvage sale portion of this decision from administrative appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such

as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Notice/ Finding of No Significant Impact for the VV Salvage Sale may be signed by the Malheur National Forest Supervisor. The salvage portion of project will not be subject to review under 36 CFR part 217.

Dated: April 30, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93-10807 Filed 5-6-93; 8:45 am]

BILLING CODE 3410-11-M

Canyon Creek Recovery and Rehabilitation, Kootenai National Forest, Lincoln County, MT; Cancellation of Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Environmental impact statement cancellation notice.

Notice is hereby given that the Fisher River District, Kootenai National Forest is withdrawing its plan to prepare an Environmental Impact Statement for the Canyon Creek Recovery and Rehabilitation project.

The Notice of Intent, published in the **Federal Register** of October 27, 1992, is hereby rescinded (FR document is FR 92-25974 filed 10-26-92).

FOR FURTHER INFORMATION CONTACT: Mike Johnson, Interdisciplinary Team Leader, Kootenai National Forest, 12557 Hwy 37, Libby, MT 59923; telephone (406) 293-7773.

Dated: April 1, 1993.

Jeffrey J. Scussel,

Acting District Ranger, Fisher River Ranger District, Kootenai National Forest.

[FR Doc. 93-10777 Filed 5-6-93; 8:45 am]

BILLING CODE 3410-11-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on:

Date: Wednesday, May 26, 1993, 9:30 a.m.-12 noon.

Location: Dean Acheson Auditorium, U.S. Department of State, Washington, DC.

The meeting is free and open to the public. However, notification by Friday, May 21, 1993, through the Advisory Committee's office is required.

Persons wishing to attend the meeting must call Theresa Graham Oakley or Susan Saragi, (703) 351-0244, or FAX (703) 351-0212. Persons attending must include their name, organization, birth date and social security number for security purposes.

Dated: April 29, 1993.

Louis C. Stamberg,

Office of Director (Acting), Office of Private and Voluntary Cooperation, Bureau for Food and Humanitarian Assistance.

[FR Doc. 93-10767 Filed 5-6-93; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 93-034. *Applicant:* Michigan State University, Department of Biochemistry, East Lansing, MI 48824-1319. *Instrument:* Quench Flow Apparatus, Model QFM-5. *Manufacturer:* Bio-Logic, France. *Intended Use:* The instrument will be used for experiments which are an integral part of a multidisciplinary approach (genetic, biochemical, and biophysical) to study structure-function relationships and dynamics of proteins. In addition, the instrument will be used in the graduate education program in the Department of Biochemistry. *Application Received by Commissioner of Customs:* April 2, 1993.

Docket Number: 93-035. *Applicant:* Texas A&M Research Foundation, Box 3578, College Station, TX 77843. *Instrument:* Submersible Fluorimeter, Model 6000 AQUATRACKA MkIII. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the chlorophyll content of seawater on site for the purpose of graduate student training and research. *Application Received by Commissioner of Customs:* April 2, 1993.

Docket Number: 93-036. *Applicant:* Rutgers - The State University of New Jersey, Cook College, Department of Nutritional Sciences, Thompson Hall, Lipman Drive, P.O. Box 231, New Brunswick, NJ 08903-0231. *Instrument:* Microvolume Stopped-flow Spectrofluorimeter, Model SX.17MV with Spares Kit. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used to follow the rate of transport of fats (fatty acids, cholesterol, monoglycerides) between membranes and between protein and membranes. *Application Received by Commissioner of Customs:* April 8, 1993.

Docket Number: 93-037. *Applicant:* Massachusetts Institute of Technology, Department of Earth, Atmospheric and Planetary Sciences, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Two Crystal Wavelength Dispersive Spectrometer, Model XM-86ADSXCE. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument is an accessory that will be used as part of an electron microprobe to perform non-destructive x-ray analysis of material surfaces by wavelength dispersive methods with spatial resolution of 1 to 2 microns. This microprobe will be used primarily by geologists to obtain quantitative analyses of crystalline and amorphous solids, and to determine element distributions in multiphase materials. In addition, the microprobe instrument will be used to determine the chemical composition of crystalline and glass products of experimental studies carried out at elevated temperatures and pressures on earth and planetary materials. The instrument will also be used for educational purposes in courses in which students will obtain hands-on practical experience as well as instruction in the theoretical aspects of quantitative chemical analysis by wavelength dispersive methods. *Application Received by Commissioner of Customs:* April 8, 1993.

Docket Number: 93-038. *Applicant:* Carnegie Mellon University, 5000 Forbes Avenue, Pittsburgh, PA 15213-3890. *Instrument:* Gas Concentration Analyzer, Model Epison II. *Manufacturer:* Thomas Swann Instruments, United Kingdom. *Intended Use:* The instrument will be used to measure the concentrations of the di-methylcadmium, di-ethyltellurium or

di-ethylzinc in hydrogen gas streams in an effort to determine whether or not this EPISON is sufficiently accurate and stable to allow process control. The objective is to measure continuously the concentration of reactants flowing into the research reactor. *Application Received by Commissioner of Customs:* April 8, 1993.

Docket Number: 93–039. *Applicant:* Princeton University, Department of Geological and Geophysical Sciences, Guyot Hall, Princeton, NJ 08544. *Instrument:* Isotope Ratio Mass Spectrometer, Model OPTIMA. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* The instrument will be used for analysis of CO_2, N_2 and O_2 which will be generated from diverse biological and geological materials in the following research projects: (1) vertebrate ecology and paleoecology; (2) terrestrial paleoclimatology and correlation; (3) paleoceanography; and (4) analysis of silicate, phosphate and oxide minerals for $^{18}O/^{16}O$. In addition, the instrument will be used for educational purposes in the courses: Environmental Isotope Geochemistry and Isotopic Paleoclimatology and Paleoecology. *Application Received by Commissioner of Customs:* April 8, 1993.

Docket Number: 93–040. *Applicant:* University of Rhode Island, Department of Ocean Engineering, Narragansett, RI 02882–1197. *Instrument:* Susceptibility Sensor and Electronics. *Manufacturer:* GEOTEK, United Kingdom. *Intended Use:* The instrument is an accessory to an existing core logging system that is used to analyze sediment core samples in a non-destructive fashion. In addition, the system is used extensively by undergraduates and graduate students in laboratory sections of various oceanology courses. *Application Received by Commissioner of Customs:* April 13, 1993.

Docket Number: 93–041. *Applicant:* Bowling Green State University, Bowling Green, OH 43403. *Instrument:* Photoelectron Microscope, Model PM-150. *Manufacturer:* Staib Instrumente GmbH, Germany. *Intended Use:* The instrument will be used in the Materials Science survey course 483, which teaches undergraduates some of the basic techniques of materials science. In addition, the instrument will be used in the thesis and dissertation work of graduate students, who need the instrument to do original research on thin film growth. *Application Received by Commissioner of Customs:* April 15, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–10860 Filed 5–6–93; 8:45 am]

BILLING CODE 3510–DS–F

Department of Commerce, NOAA; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–101. *Applicant:* U.S. Department of Commerce, NOAA, Galveston, TX 77551–5997. *Instrument:* (7) Power Packs for Fish Measuring Boards, Model BAT-1. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* See notice at 58 FR 4978, January 19, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated November 19, 1992 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–10861 Filed 5–6–93; 8:45 am]

BILLING CODE 3510–DS–F

U.S. Department of Commerce, NOAA, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92–103. *Applicant:* U.S. Department of Commerce, NOAA, Galveston, TX 77551–5997. *Instrument:* (3) Electronic Digital Fish Measuring Boards, Model FMB IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* See notice at 57 FR 39394, August 31, 1992. *Reasons:* The foreign instrument provides in situ logging of fish dimensions with concurrent entry of ancillary data which can be downloaded to a PC on return from the field. *Advice Received From:* National Institutes of Health, July 9, 1992.

Docket Number: 92–129. *Applicant:* North Carolina State University, Raleigh, NC 27695. *Instrument:* 2 Biological Nitrifying Filters for Aquaculture Use, Model 800. *Manufacturer:* Waterline, Canada. *Intended Use:* See notice at 57 FR 44360, September 25, 1992. *Reasons:* The foreign instrument provides a filtering reactor using small, grooved beads that are fluidized in a down-flow stream of water for comparing various nitrifying technologies. *Advice Received From:* U.S. Fish and Wildlife Service, January 13, 1993.

Docket Number: 92–115. *Applicant:* U.S. Department of Commerce, NOAA, Narragansett, RI 02882. *Instrument:* Data Acquisition and Logging System for Underwater Towed Body and Continuous Plankton Recorder System. *Manufacturer:* Chelsea Instruments Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 44361, September 25, 1992. *Reasons:* The foreign instrument is designed for use with existing towed ocean vehicles used to monitor environmental conditions such as water temperature, conductivity, depth and chlorophyll concentration. *Advice Received From:* National Institutes of Health, January 13, 1993.

Docket Number: 92–118. *Applicant:* North Dakota State University, Fargo, ND 58105. *Instrument:* Spectrofluorimeter, Model DX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 57 FR 44361, September 25, 1992. *Reasons:* The foreign instrument provides dual mixing quench capability and submillisecond deadtime. *Advice Received From:* National Institutes of Health, January 13, 1993.

Docket Number: 92–121. *Applicant:* The Alexandria Hospital, Alexandria, VA 22304. *Instrument:* Automatic Rapid Karyotyping System with Table, Model Cytoscan RK1. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* See notice at 57 FR 44362, September 25, 1992. *Reasons:* The foreign instrument provides a graphic display resolution of 768 x 575 pixels and a grey scale resolution of 64 levels. *Advice Received From:* National Institutes of Health, January 13, 1993.

Docket Number: 92–122. *Applicant:* County of Sacramento, Elk Grove, CA 95758. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* See notice at 57 FR 44362, September 25, 1992. *Reasons:* The foreign instrument provides: (1) best detectability and sensitivity with atmospheric ionization, (2) tandem MS/MS capability and (3) ppb detection limits. *Advice Received From:* National Institutes of Health, January 13, 1993.

Docket Number: 92–123. *Applicant:* The Graduate Hospital, Philadelphia, PA 19146. *Instrument:* Muscle Research System, Model OPT1S. *Manufacturer:* Guth Scientific Instruments, Germany. *Intended Use:* See notice at 57 44360, September 25, 1992. *Reasons:* The foreign instrument provides: (1) capability to measure contractile force to less than 2.0 mg, (2) estimation of shortening velocity in the 300 μm/s range and (3) stiffness measurement. *Advice Received From:* National Institutes of Health, January 13, 1993.

Docket Number: 92–130. *Applicant:* University of Oklahoma Health Sciences Center, Oklahoma City, OK 73104. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* Sciex, Canada. *Intended Use:* See notice at 57 FR 44360, September 25, 1992. *Reasons:* The foreign instrument provides: (1) best sensitivity for atmospheric pressure ionization, (2) LC/MS/MS capability and (3) flow rate to 200 μl/minute. *Advice Received From:* National Institutes of Health, January 13, 1993.

Docket Number: 92–137. *Applicant:* Vanderbilt University, Nashville, TN 37232–6600. *Instrument:* Hydraulic and Mechanical Microdrive System, Model MO-15M. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* See notice at 57 FR 48599, October 27, 1992. *Reasons:* The foreign instrument provides ranges of movement along the x, y, and z axes of 53, 28 and 38 mm, respectively. *Advice Received From:* National Institutes of Health, January 13, 1993.

Docket Number: 92–141. *Applicant:* Environmental and Occupational Health Sciences Institute, Piscataway, NJ 08855–1179. *Instrument:* Inductively Coupled Plasma Mass Spectrometer, Model VG PlasmaQuad. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 57 FR 54971, November 23 1992. *Reasons:* The foreign instrument provides simple spectra with detection limits of 10^{-6} (low mass) and 5.0×10^{-7} (high mass) and superior multi-element capability. *Advice Received From:* National Institutes of Health, February 9, 1993.

The National Institutes of Health and U.S Fish and Wildlife Service advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–10862 Filed 5–6–93; 8:45 am]

BILLING CODE 3510–DS–F

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 92–00015.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Refined Sugar Trading Institute, Inc. (RSTI) effective May 3, 1993. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 2023–483–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products: Refined sugar in various package forms, including but not limited to fifty kilo jute bags; and two pound, five pound, and twenty-five pound kraft paper bags.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), Canada, and Mexico.

Export Trade Activities and Methods of Operation

1. In connection with the export of the Products, the Members may exchange and discuss the following:

(A) Information about sales and marketing efforts in the Export Market; activities and opportunities for sales of Products in the Export Markets; selling strategies in the Export Markets; pricing in the Export Markets; projected demand in the Export Markets; customary terms of sale in the Export Markets; prices of Products for sale in the Export Markets; availability of Products for sale by non-Members in the Export Markets; and specifications for Products by customers in the Export Markets;

(B) Information about the quality, quantity, and prices of Products for export; the willingness to supply Products in quantities sufficient to meet an export sales opportunity; and source and delivery dates of Products offered for export;

(C) Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by the Members;

(D) Information about joint bidding and selling in the Export Markets and allocation of sales resulting from such arrangements among the Members

(E) Information about expenses specific to exporting to and within the Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales documentation, financing, customs, duties, and taxes;

(F) Information about U.S. and foreign legislation and regulations affecting sales in the Export Markets; and

(G) Information about the Members' export operations, including without limitation sales and distribution networks established by the Members' in the Export Markets, and prior export sales by the Members (including export price information).

2. The Members may jointly establish a selling price, or a "minimum margin" to be added to a world raw sugar price to arrive at a selling price, for the Products for sale in the Export Markets.

(A) Once determined, the selling price or minimum margin shall remain in effect until it is rescinded or superseded by all of the Members.

(B) Members may utilize the selling price or minimum margin in all of their sales of the Products in the Export Markets; provided, however, that no Member shall be obligated to utilize the selling price or minimum margin in such sales.

(C) If a Member makes a sale of the Products in the Export Markets at a price below the selling price, or does not use the minimum margin in a sale of the Products in the Export Markets, the Institute may require that such Member inform the other Members of such fact.

Members (Within the Meaning of Section 325.2(1) of the Regulations)

Domino Sugar Corporation, New York, NY

Savannah Foods and Industries, Inc., Savannah, GA

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither the Institute nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information relating to its or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, except (1) is such information is already generally available to the trade or public; or (2) on a transaction specific basis, a Member may purchase the Products from another member for export and discuss the price, quantity delivery, and all other terms of purchase as long as neither Member discloses, either directly or indirectly, the price, quantity, delivery, and other terms of sale of any other domestic transaction for the Products.

2. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products offered for sale in the Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing) shall only be in connection with actual or potential bona fide export transactions.

3. Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member. A Member may withdraw from coverage under this Certificate at any time by giving written notice to the Institute, a copy of which the Institute shall promptly transmit to the Secretary of Commerce and the Attorney General.

4. The Institute and the Members will comply with requests made by the Secretary of Commerce of behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities or Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

5. The Institute shall notify the Secretary of Commerce of any legislative or regulatory action subsequent to the date of issuance of this Certificate that materially affects the operation of the U.S. Government sugar programs (i.e., the domestic price support, re-export, and "section 22" programs). In the event of any such material change, the Institute shall establish to the satisfaction of the Departments of Commerce and Justice that the Export Trade, Export Trade Activities, or Methods of Operation of a person certified herein continue to comply with the standards of section 303(a) of the Act.

Protection Provided by Certificate

This Certificate protects RSTI, the Members, and their directors, officers, and employees acting on their behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified herein and carried out during the effective period of the Certificate in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits RSTI or the Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to RSTI by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion of the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of RSTI or the Members or (b) the legality of such business plans under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 Fed. Reg. 1786 (January 11, 1985).

In accordance with the authority granted under the Act and Regulations, this Certificate of Review is hereby granted to RSTI.

Dated: May 3, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93-10769 Filed 5-6-93; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to permit No. 723 (P77#45).

On March 18, 1993, notice was published in the **Federal Register** (58 FR 14560) that an application had been filed by the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038, to modify scientific research Permit No. 723 to allow for freeze-branding of harbor seals (*Phoca vitulina*).

Notice is hereby given that on May 3, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, et seq.), the NMFS issued a Permit for the above taking,

subject to certain conditions set forth therein.

The Permit is available for review by appointment in the following offices:

Office of Protected Resources, NMFS, 1335 East-West Highway, room 7330, Silver Spring, MD 20910 (301/713-2289); and

Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 (310-980-4016).

Dated: May 3, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-10800 Filed 5-6-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Modification No. 3 to Permit No. 772 (P475).

On March 5,1993, notice was published in the **Federal Register** (58 FR 12579) that an application had been filed by Ms. Dena Matkin, P.O. Box 22, Gustavus, Alaska 99826, to modify scientific research Permit No. 772 to: Extend its duration for an additional four years; increase the number of killer whales that may be inadvertently harassed to 400 annually; and authorize the inadvertent harassment of up to 100 humpback whales (*Megaptera novaeangliae*) annually during photo-identification studies. The subject animals of both species may be approached up to five times annually.

Notice is hereby given that on April 30, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a modification to Permit No. 772 authorizing the inadvertent harassment of the species/numbers of marine mammals described above, subject to certain conditions set forth therein.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, MD 20910 (301/713-2289); and

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Rd. Suite 6, Juneau, AK 99802 (907/586-7221).

Dated: April 30, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-10801 Filed 5-6-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Modification No. 2 to Permit No. 717 (P77#44).

SUMMARY: On March 16, 1993, notice was published in the **Federal Register** (58 FR 14203) that a request to modify Permit No. 717 had been submitted by Dr. Howard W. Braham, Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Building 4, Seattle, WA 98115.

Notice is hereby given that on May 3, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, et seq.), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the NMFS issued the requested modification to Permit 717 subject to the Special Conditions set forth therein.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, room 7330, Silver Spring, MD 20910 (301/713-2289);

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526-6150); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4016).

Dated: May 3, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-10802 Filed 5-6-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for a scientific research permit to take marine mammals (P278E).

Notice is hereby given that Dr. Brent S. Stewart, Hubbs-Sea World Research Institute, 1700 South Shores Road, San Diego, CA 92109, has applied in due form for a permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, et seq.), §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531-1543), and the regulations governing endangered fish and wildlife (50 CFR parts 217-222).

The applicant seeks authorization to study the effects of sonic booms on the hearing capabilities of pinnipeds (up to 10 elephant seals, *Mirounga angustirostris*; 10 California sea lions, *Zalophus californianus*; 10 harbor seals, *Phoca vitulina*; and 1 Guadalupe fur seal, *Arctocephalus townsendi*). These animals are rehabilitated beached/stranded animals currently held by Sea World.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Highway, room 7234, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicants and do not necessarily reflect the views of the NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4016).

Dated: May 3, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-10803 Filed 5-6-93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 3, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 336/636, 351/651 and 369–S are being increased by application of swing, reducing the limits for Categories 219 and 445/446 to account for the increases being applied. Also, the limit for Category 447, within the wool subgroup in Group II, is being increased for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23 1992). Also see 57 FR 24597, published on June 10, 1992; and 58 FR 17208, published on April 1, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 3, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on June 5, 1992 and March 26, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Indonesia and exported during the periods March 30, 1993 through June 30, 1993, in the case of Category 447; and July 1, 1992 through June 30, 1993, in the case of the remaining categories.

Effective on May 10, 1993, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted limit [1]
Levels in Group I	
219	4,306,954 square meters.
336/636	492,000 dozen.
351/651	383,500 dozen.
369–S [2]	693,642 kilograms.
445/446	25,270 dozen.
Subgroup in Group II	
447	4,084 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 29, 1993 (Category 447) and June 30, 1992 (the remaining categories).

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–10863 Filed 5–6–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Additions to procurement list

SUMMARY: This action adds to the Procurement List services to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 7, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 18, 1992, March 5, 12 and 26, 1993, the Committee for Purchase from People who are Blind or Severely Disabled published notice (57 FR 60176, 58 FR 12580, 13586 and 16402) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the services, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Grounds Maintenance
Bureau of Reclamation
Auburn Field Office
Auburn, California

Janitorial/Custodial
Naval Support Activity
(basewide except Commissary & Exchange facilities)

New Orleans, Louisiana
Janitorial/Custodial
U.S. Army Cold Regions Research and Engineering Laboratory
72 Lyme Road
Hanover, New Hampshire
Parts Machining
Fleet and Industrial Supply Center
Jacksonville, Florida

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93-10855 Filed 5-6-93; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 7, 1993.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action does not appear to have a severe adverse impact on the current contractors for the commodity and services.
3. The action will result in authorizing small entities to furnish the commodity and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List for production by the nonprofit agency listed:

Commodity

Bandage, Gauze
6510-00-582-7992
Nonprofit Agency: Elwyn, Inc., Elwyn, Pennsylvania

Services

Demilitarization of Military Hardware
Robins Air Force Base, Georgia
Nonprofit Agency: Family Support Alliance for the Mentally Ill, Inc., Warner Robins, Georgia
Janitorial/Custodial, Federal Building and U.S. Courthouse, 2 South Main Street, Akron, Ohio, Nonprofit Agency: Community Support Services, Inc. Akron, Ohio
Janitorial/Custodial, Poff Federal Building and Courthouse, 210 Franklin SW, Roanoke, Virginia, Nonprofit Agency: Goodwill Industries of Tinker Mountain , Inc. Troutville, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93-10856 Filed 5-6-93; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 7, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action will result in authorizing small entities to furnish the commodity to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Filter Element
4130-01-099-9351
Nonprofit Agency: Sheltered Work Services of Rome, Inc., Rome, Georgia

Beverly L. Milkman,

Executive Director.

[FR Doc. 93-10857 Filed 5-6-93; 8:45 am]

BILLING CODE 6820-33-P

COMMODITY FUTURES TRADING COMMISSION

Regulatory Coordination Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Regulatory Coordination Advisory Committee will conduct a public meeting in the Hearing Room on the B–1 level of the Commission's Washington, DC headquarters located at 2033 K Street NW., Washington, DC 20581, on Tuesday, May 25, 1993, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Discussion of Capital Issues
   a. SEC Concept Release regarding Capital Treatment of Derivatives
   b. CFTC Rule 1.19
   c. Risk Based Capital;
2. Discussion of Exemptions for Institutional Markets under section 4(c) of the Commodity Exchange Act;
3. Discussion of SEC Markets 2000 Study;
4. Discussion of Proposed Amendments to CFTC Rule 1.35 concerning Identification of Customer Orders and Order Allocation;
5 Presentation of CFTC Survey on Differential Treatment of Customers;
6. Reports of Working Groups and Discussion of Creation of New Working Groups;
7. Staff Reports, including Reports on Final Amendments to CFTC Rule 1.31 (Optical Disk Recordkeeping) and Proposed Amendments to CFTC Rule 4.5 (Exclusion from Registration as a Commodity Pool Operator); and
8. Timing of Next Meeting; Other Committee Business.

The purpose of this meeting is to solicit the views of the Committee on the agenda matters listed above. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objectives of the Advisory Committee are more fully set forth in the April 15, 1992 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Acting Chairman William P. Albrecht, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Regulatory Coordination Advisory Committee, c/o Ms. Nancy Yanofsky, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Ms. Yanofsky in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on May 4, 1993.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93–10866 Filed 5–6–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Advisory Committee To Develop On-site Innovative Technologies For Environmental Restoration and Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Federal Advisory Committee to Develop On-site Innovative Technologies for Environmental Restoration and Waste Management (DOIT Committee)

Date and Time: Tuesday, May 25, 1993; 1:30 p.m.–6 p.m.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

Contact: Dr. Clyde Frank, Deputy Assistant Secretary, Technology Development, EM–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6382.

Purpose of the Committee: The DOIT Committee will serve as the primary vehicle for recommending a program that can be adopted to implement a Memorandum of Understanding (MOU) regarding Environmental Restoration and Waste Management in western states. This memorandum of understanding was signed in July 1991 by representatives from the U.S. Departments of Defense, the Interior, and Energy, the U.S. Environmental Protection Agency and the Western Governors' Association (WGA) the latter representing twenty western states and territorial governors. The DOIT Committee will help to improve Federal environmental restoration and waste management efforts by identifying technology needs at Federal facilities in western states; identifying/assessing emerging technologies within the Federal and private sectors; identifying regulatory, institutional, or other governmental barriers to technology development; and identifying workforce planning/education requirements.

Tentative Agenda

1:30 p.m. Meeting opens—introductory remarks
- Presentation and review of results from General Criteria working group meetings
- Presentation and review of results from Mine Waste working group meetings
- Presentation and review of results from Mixed Waste working group meetings
- Presentation and review of results from Munitions Waste working group meeting
- Presentation and review of results from Waste at Military Bases working group meetings

Short Break
- Updates on Funding and Project Management
- Discuss agenda for June 22 meeting
- Open time for public comment

6 p.m. Meeting adjourns

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Clyde Frank's office at the address or telephone number listed above. Such statements will be subject to a 10 minute rule. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Committee Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 3, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–10845 Filed 5–6–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 93–31–NG]

DEKALB Energy Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting DEKALB Energy Company (DEKALB)

authorization to import up to 73 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after May 30, 1993, the date on which DEKALB's current blanket import authorization expires.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 29, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–10844 Filed 5–6–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–24–NG]

Western Gas Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authority to Western Gas Resources, Inc. (Western) to import up to 73 Bcf of natural gas from Canada and to export up to 73 Bcf of natural gas to Canada over two years. The term of the authorization will commence on the date of the first import or export delivery after April 30, 1993, when Western's current blanket authorization expires.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 29, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–10843 Filed 5–6–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. JD93–07448T Oklahoma–35]

State of Oklahoma; NGPA Notice of Determination By Jurisdictional Agency Designating Tight Formation

May 3, 1993.

Take notice that on April 26, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mississippi Lime (Meramec and Osage) Formation, underlying a portion of Woods County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 1, 2, 11 and 12 of Township 27 North, Range 18 West and Sections 25, 35 and 36 of Township 28 North, Range 18 West.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–10781 Filed 5–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–07446T Oklahoma–33]

Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1993.

Take notice that on April 26, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore and Woodford Formations, underlying a portion of Stephens County, Oklahoma, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as follows:

Township 1 North, Range 4 West
- Section 27: SW/4
- Section 28: S/2
- Section 29: SE/4
- Section 32: E/2
- Section 33: All
- Section 34: NW/4

Township 1 South, Range 4 West
- Section 4: All
- Section 5: E/2
- Section 8: E/2
- Section 15: All
- Section 16: All
- Section 17: E/2

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–10782 Filed 5–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–07447T Oklahoma–34]

Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1993.

Take notice that on April 26, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that they Sycamore and Woodford Formations, underlying a portion of Carter County, Oklahoma, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as follows:

Township 1 South, Range 3 West
- Section 32: E/2

Township 2 South, Range 3 West
- Section 4: W/2 and SE/4
- Section 5: E/2
- Section 9: N/2
- Section 10: All
- Section 11: W/2

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18

CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10783 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-07449T Texas-135]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1993.

Take notice that on April 26, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Wolfcamp Formation, underlying Terrell County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 7C and is described on the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Wolfcamp Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended area includes all or portions of the following surveys:

T.C. R.R. Co. Survey Block Y
Sections 202, 214-220, and 228-230
T.C. R.R. Co. Survey Block R
Sections 1-3
D. & S.E. Survey
Section 1
M.H. Goode Survey
Section 3
J.M. Arocha Survey
Section 329
G.C. & S.F. R.R. Survey Block 161
Sections 23-29, 29½, 30-31 and 34½
G.C. & S.F. R.R. Survey
Section 5
T.W.N.G. R.R. Co. Survey
Sections 331-332
I. & G.N. R.R. Co. Survey Block 2
Sections 75-77 and 77½

[FR Doc. 93-10795 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-5-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

May 3, 1993.

Take Notice that on April 29, 1993, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of May 1, 1993:

42nd Revised Sheet No. 4

Alabama-Tennessee states that this filing is an out-of-cycle purchased gas adjustment ("PGA") filing, the purpose of which is to correlate more accurately Alabama-Tennessee's projected gas costs with the rates of its upstream pipeline supplier, Tennessee Gas Pipeline Company ("Tennessee"). Alabama-Tennessee states that current spot market prices indicate that Tennessee's Transition Gas Inventory Charge ("TGIC") sales commodity rates, which are based on a spot index, will increase unexpectedly and substantially from those projected by Alabama-Tennessee in its out-of-cycle PGA filing that it submitted on March 31, 1993 in Docket No. TQ93-4-1. In addition to the increase in Tennessee's TGIC commodity sales rates, Alabama-Tennessee states that its filing reflects its use of the revised demand cost allocation ratio for computing the rates for jurisdictional sales customers that was agreed upon in the Joint Settlement filed on December 29, 1992 by Alabama-Tennessee and the Tennessee Valley Municipal Gas Association in Docket Nos. TQ92-5-1, et al., which the Commission approved by Letter Order dated February 24, 1993.

In addition to a waiver of § 154.22 of the Commission's Regulations so that its revised tariff sheet can be made effective as of May 1, 1993, Alabama-Tennessee has requested any other waivers of the Commission's Regulations that may be necessary to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10793 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-14-008]

Algonquin Gas Transmission Co.; Place Proposed Tariff Sheets Into Effect

May 3, 1993.

Take notice that Algonquin Gas Transmission Company (Algonquin) on April 19, 1993, pursuant to section 4(e) of the Natural Gas Act, as amended, has moved to place into effect on May 1, 1993, revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, as listed in Appendix A to the filing.

Algonquin states that the tariff sheets listed in Appendix A to the filing are being filed in order to place effect on May 1, 1993, the end of the suspension period in this proceeding, the rates filed herein on October 30, 1992, as adjusted to reflect Purchased Gas Costs tracking filings and tariff filings subsequent to the October 30, 1992 filing in this docket.

Algonquin respectfully requests waiver of any and all other Commission regulations to the extent necessary to permit the revised tariff sheets to become effective May 1, 1993, subject to refund.

Algonquin notes that a copy of the filing is being served upon each affected party and interested state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 395.211. All such protests should be filed on or before May 10, 1993. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10784 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-4-20-000 and TM93-12-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1993.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 29, 1993, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective May 1, 1993

3 Rev 16 Rev Sheet No. 21
3 Rev 16 Rev Sheet No. 22
2 Rev 12 Rev Sheet No. 25
3 Rev 16 Rev Sheet No. 26
3 Rev 16 Rev Sheet No. 27
3 Rev 16 Rev Sheet No. 28
2 Rev 16 Rev Sheet No. 29

Allgonquin states that the revised tariff sheets are being filed as part of Algonquin's Out-of-Cycle Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment pursuant to sections 17 and 39 of the General Terms and Conditions of Algonquin's FERC Gas Tariff. Algonquin also states that the purpose of the Out-of-Cycle filing is to reflect changes to Algonquin's suppliers' demand and commodity rates.

On October 30, 1992, Algonquin submitted a section 4 filing in Docket No RP93-14-000 in order to revise Algonquin's rates for jurisdictional services. the RP93-14-000 filing implemented the Commission decision in Docket Nos. RP86-41-000 et al., that Algonquin should return to an incremental rate design. The alternate tariff sheets submitted in Docket No. RP93-14-000 included a revised base cost of purchased gas. In addition, the PGA clause was modified to reflect incremental treatment of Algonquin's gas cost. In a Commission Order issued November 27, 1992 the alternate sales tariff sheets were accepted and suspended subject to refund, to be effective May 1, 1993.

Algonquin further states that the proposed purchase gas adjustments to Algonquin sales rate schedules reflect changes as of April 27, 1993 to Algonquin's suppliers' demand and commodity rates subsequent to the October 30, 1992 filing in Docket No. RP93-14-000.

Algonquin requests that the Commission approve the tariff sheets to become effective on May 1, 1993.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10792 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-3-000]

Arkla Energy Resources, a Division of Arkla, Inc.; Informal Settlement Conference

May 3, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on May 11, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Arnold H. Meltz (202) 208-2161 or Russell B. Mamone at (202) 208-0744.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10775 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR93-3-000]

Canadian Association of Petroleum Producers and the Alberta Petroleum Marketing Commission v. Lakehead Pipe Line Co., Limited Partnership; Complaint

May 3, 1993.

Take notice that on April 19, 1993, pursuant to sections 13, 15, and 16 of the Interstate Commerce Act (ICA) (49 App. U.S.C. 13, 15, and 16) (1988)), and Rule 206 of the Commission's Rules of Practice and Procedure, (18 CFR 385.206, the Canadian Association of Petroleum Producers (CAPP) and the Alberta Petroleum Marketing Commission (APMC) filed a complaint against Lakehead Pipe Line Company, Limited Partnership (Lakehead). CAPP and APMC allege Lakehead's transportation rates for 1993 are unjust and unreasonable, contrary to sections 13 and 15 of the Interstate Commerce Act, because they are based on a forecast of expected 1992 throughput which significantly understates both the actual 1992 throughout experience and currently anticipated 1993 throughput on the Lakehead system. CAPP and APMC further allege that relief is unavailable in the ongoing rate case in Docket No. IS92-27-000 because the record in that proceeding is limited to volumes derived from base year and test year methodologies that do not reflect actual or future performance.

CAPP and APMC request that Lakehead be directed to develop and charge rates from and after January 1, 1993 on a design throughput of at least 1,270,600 bbl./d, in addition and subject to other adjustments that may be required by the outcome of Docket No. IS92-27-000, and pay reparations in addition to any refunds ordered in Docket No. IS92-27-000. CAPP and APMC further request that this proceeding be consolidated with Docket No. IS92-27-000.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.214. All such motions or protests should be filed on or before May 24, 1993. Protests will be considered by the Commission in determining the action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection. Answers to this complaint shall be due on or before May 24, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10789 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-3-22-001 and TQ93-4-22-001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on April 29, 1993, filed the following tariff sheets for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

To be effective April 1, 1993:
Substitute Twenty-First Revised Sheet No. 32
To be effective May 1, 1993:
Substitute Twenty-Second Revised Sheet No. 32

CNG used the SFV rate methodology to develop the TF-GSS II rates in both the approved Twenty-First Revised Sheet No. 32 in Docket No. TQ93-3-22-000, and the pending Twenty-Second Revised Sheet No. 32 in Docket No. TQ93-4-22-000. By order issued March 31, 1993, in Docket No. RP93-80, the Commission rejected CNG's proposal regarding the application of the SFV rate design method to TF-GSS II rates. By the instant filing, CNG is reflecting the Commission's action in Docket No. RP93-80 by reinstating the TF-GSS II rates that were approved in Docket No. CP87-5 by order issued June 7, 1989.

CNG states that copies of this filing are being served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10791 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-6-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 3, 1993.

Take notice that Equitrans, Inc. (Equitrans) on April 29, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1993.

Fifth Revised Sub Forty-Second Revised Sheet No. 10
Sixth Revised Thirtieth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with §§ 154.308 and 154.304 of the Commission's Regulations and section 19 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the commodity cost of $0.4658 per Dth and no change in the demand cost. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.4724 per Dth.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on June 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 918 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10787 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-5-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 3, 1993.

Take notice that Equitrans, Inc. (Equitrans) on April 29, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective May 1, 1993:

Fourth Revised Sub Forty-Second Revised Sheet No. 10
Fifth Revised Thirtieth Revised Sheet No. 34

This filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect increases in the purchased gas costs of spot market purchases and Southwest supply purchases. The filing is necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the demand cost of $0.0905 per dekatherm (Dth) and an increase in the commodity cost of $0.8172 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.8154 per Dth.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on May 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on May 10, 1993. All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10773 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-6-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

May 3, 1993.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on April 29, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Out-of-Cycle PGA filing, which includes Forty-Ninth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective May 1, 1993. The revised tariff sheet reflects a current increase of $0.4651 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.6357 per Dth.

Kentucky West states that effective May 1, 1993, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.6700 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Pursuant to § 154.51 of the Commission's regulations, Kentucky West requests waiver of the thirty day notice requirement to permit the tariff sheet attached hereto to become effective on May 1, 1993. In addition, Kentucky West requests waiver of § 154.304 of the Commission's regulations and any other provisions of the Commission's regulations necessary to permit the attached tariff sheet to become effective on May 1, 1993.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-10786 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-293-000]

Questar Pipeline Co.; Request Under Blanket Authorization

April 16, 1993.

Take notice that on April 14, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93-293-000, a request pursuant to 18 CFR 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate the Naughton Tap Line Facilities to provide natural gas transportation service to PacifiCorp's Utah Power & Light Naughton Power Plant near Kemmerer, Wyoming. Such request was made under the blanket certificate authorization issued in Questar's Docket No. CP82-491-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Questar explains that the proposed Naughton Tap Line Facilities will extend approximately 13 miles from the northern terminus of Questar's Jurisdictional Interconnect (J.I.) No. 90 (the Muddy Creek Interconnect) to a proposed delivery point approximately one mile east of PacifiCorp's Utah Power & Light Naughton Power Plant. Questar proposes to construct and operate one 10-inch tap, a 10¾-inch O.D. tap line and a new delivery point, comprising meter and regulatory station facilities, at an estimated cost of $2 million. Questar states the PacifiCorp has agreed to provide Questar with a $1.2 million contribution in aid of construction for the Naughton Tap Line Facilities. It is further explained that Questar proposes to provide a 3,500 MMBtu per day minimum level of firm transportation service, for a period of 12 years, to PacifiCorp and will provide supplemental firm and/or interruptible transportation service, up to 20,000 MMBtu per day, for PacifiCorp through the proposed Naughton Tap Line Facilities.

Questar states that the Naughton Tap Line Facilities will be constructed to transport natural gas to the Naughton Power Plant as a supplement to coal firing to maintain sulfur dioxide emissions within allowable clean Air Act limits during periods when high-sulfur coal is burned.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-10794 Filed 5-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-322-000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

May 3, 1993.

Take notice that on April 29, 1993. Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93-322-000 a request pursuant to § 157.205 of the Commission's Regulations to modify the use of an existing delivery point to add Western Kentucky Gas Company (Western), a local distribution company, to serve forty-two new residential customers under Texas Gas' blanket certificate issued in Docket No. CP82-407-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to add the Whitney Wood Road delivery point at the same location as the existing Tommy Coulter farm tap located on Texas Gas' Glasgow 6-inch line in Barren County, Kentucky. Texas Gas states that Western would install a second meter at the existing delivery point, which currently serves the existing right-of-way grantor, to serve forty-two new residential customer an estimated 35 MMBtu of natural gas per day, with an annual maximum quantity of 3,360 MMBtu of natural gas. Texas

Gas states that the proposed delivery point would not require any new construction or alteration to existing facilities by Texas Gas. Western does not propose to increase either its currently effective D–1 or D–2 levels to serve these residential customers, it is indicated. Texas Gas states that the proposed additional delivery point would have no significant impact on Texas Gas' peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–10785 Filed 5–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–5–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1993.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on April 29, 1993, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventy-third Revised Sheet No. 10
Seventy-second Revised Sheet No. 10A
Fifty-fourth Revised Sheet No. 11
Forty-fourth Revised Sheet No. 11A
Forty-third Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective May 1, 1993. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.5807 per MMBtu from the rates set forth in the Quarterly PGA filed March 31, 1993 (Docket No. TQ93–4–18). No changes in the demand or SGN Standby rates are proposed in the instant filing.

Texas Gas states that copies of the filing were served on Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before May 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–10788 Filed 5–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–106–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1993.

Take notice that on April 29, 1993, Texas Gas Transmission Corporation, (Texas Gas) tendered for filing changes to its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2, First Revised Volume No. 2–A. Texas Gas states that the changes are reflected in the primary tariff sheets listed on Appendix A to the filing.

Texas Gas requests an effective date for the proposed tariff sheets of November 1, 1993, or earlier to the extent the Commission implements restructured services on the Texas Gas system prior to that date.

Texas Gas states that the proposed changes would increase revenues from jurisdictional sales and services by approximately $79.6 million, based on the twelve-month period ended January 31, 1993, as adjusted, compared with the underlying rates. Texas Gas states that the underlying sales rates are the base tariff rates as set forth on Texas Gas's FERC Gas Tariff, Original Volume No. 1, Seventieth Revised Sheet No. 10 and Sixty-ninth Revised Sheet No. 10A, Fifty-first Revised Sheet No. 11, Forty-first Revised Sheet No. 11A, and Fortieth Revised Sheet No. 11B, effective April 1, 1993, plus the current purchased gas adjustment. Texas Gas further states that the underlying transport rates are the rates set forth on Texas Gas's FERC Gas Tariff, First Revised Volume No. 2–A, Second Revised Sheet Nos. 10 and Fifth Revised Sheet No. 11, effective February 1, 1993.

Texas Gas notes that it is also submitting alternate tariff sheets listed on Appendix B to the filing which reflect rates and provisions applicable to services that will be effective after Order No. 636 restructuring.

Texas Gas states that the adjustments in rates are attributable to:

(1) An increase in the utility rate base;
(2) Increase in operating expense;
(3) Increase in rate of return and related taxes; and
(4) Revised system rate design quantities.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–10790 Filed 5–6–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4652–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 7, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: TSCA Section 4 Test Rules, Consent Orders and Test Rule Exemptions (EPA ICR No. 1139.04; OMB No. 2070–0033). This is a request for extension of the expiration date of a currently approved collection.

Abstract: Under section 4(c) of the Toxic Substances Control Act (TSCA), the EPA may require chemical manufacturers and processors to sponsor testing (e.g. for primary eye irritation, reproduction/fertility effects, dermal sensitization) of chemicals which may pose unreasonable health and environmental risks resulting from processing, distribution, use, or disposal. If a specific chemical requires testing, the Agency issues a test rule and consent order that describe testing procedures for the specific chemical. Respondents may apply for an exemption if other parties sponsor similar testing.

Prior to testing, respondents must notify the Agency and identify the testing organization as well as the testing plans. During and after testing, respondents must submit to the Agency reports of progress, testing procedures and testing results. In addition, respondents must keep records of testing procedures and testing results.

The EPA uses these data to assess the possible adverse effects of chemicals on human health and the environment.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 586 hours per response for test rules and consent orders and 2 hours per response for test rule exemptions. The recordkeeping burden is estimated to average 330 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Chemical manufacturers and processors.

Estimated No. of Respondents: 48 for test rules, consent orders and recordkeeping and 115 for test rule exemptions.

Estimated No. of Responses Per Respondent: 4 for test rules and consent orders and 1 for test rule exemption.

Estimated Total Annual Burden on Respondents: 128,582 hours.

Frequency of Collection: Semi-annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: May 3, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93–10835 Filed 5–6–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL-4651-7]

Agency Information Collection Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 7, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Region V: Great Lakes National Program Office

Title: Beach Closing Survey Report on the Great Lakes (EPA No. 0994.05; OMB No. 2090–0003).

Abstract: This ICR is an extension of an existing information collection in support of the Great Lakes National Program. Under section 104 of the Clean Water Act, the EPA Regional Administrator (Region V) is charged with the responsibility of studies with respect to the quality of the waters of the Great Lakes. The Beach Closing Survey collects information on beach closings from the counties and cities that border the Great Lakes on the American side.

Following the closing of beaches each fall, the EPA distributes the survey by mail to county/city public health officials tasked with maintaining records on beach closings in the area. Recipients of this short, twelve question survey will be asked to provide information that includes: (1) Any changes from the previous year operations and practices, (2) frequency of beach closings and water quality criteria violations, (3) beach closing procedures and permanent beach closings, and (4) the point of contact and agency responsible for water quality monitoring. The information provided by county/city officials is compiled by EPA and incorporated into an annual report to the International Joint Commission and agencies responsible for monitoring the water quality of the Great Lakes.

Burden Statement: Public reporting burden for this collection of information is estimated to average 0.5 hour per response including time for reading instructions, gathering information, and preparing written responses to survey questions.

Respondents: County or city public health officials.

Estimated Number of Respondents: 104.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: Annual.

Estimated Total Annual Burden on Respondents: 52 hours

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: May 3, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93–10836 Filed 5–6–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4651–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that

the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 7, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: 1993 Waste Treatment Industry Phase II: Landfills Screener Survey and Incinerator Screener Survey (EPA ICR No. 1644.01).

Abstract: The EPA's Office of Water is planning to administer a screener survey for the waste treatment industry, specifically landfills and incinerators. The sampling plan for this survey involves a census of owners/operators of all landfills and incinerators. This is a new data collection effort in support of technology-based effluent limitations guidelines for this industry pursuant to the Clean Water Act. Under court order, effluent limitations for this industry must be proposed by 12/31/95. Responses to the survey will be mandatory pursuant to section 308 of the Clean Water Act.

Upon approval of this ICR, the screener survey will be sent by mail to owners/operators of landfill or incinerator operations. The survey will ask for information on: (1) The type of landfill or incinerator, (2) the quality and type of wastes accepted for treatment, (3) the size of the landfill or incinerator, (4) the ownership and some general economic questions concerning the operation of the landfill or incinerator, (5) wastewater sources–quality and quantity, and (6) current wastewater treatment operations and disposal options.

EPA will use the information collected to determine which facilities are within the scope of this regulation, to characterize this industry, and to subcategorize this industry properly. Additionally, the information will be used to select a limited number of facilities for further studies thereby greatly reducing the burden on the industry overall.

Burden Statement: Public reporting burden for this collection of information is estimated to average 1.5 hours per response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the screener surveys.

Respondents: Landfill and incinerator operators/owners.

Estimated Number of Respondents: 12,000 owners/operators.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One-time.

Estimated Total Annual Burden on Respondents: 18,300 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: May 3, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93–10837 Filed 5–6–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4651–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 7, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Administration and Resource Management

Title: General Administrative Requirements for Assistance Program (ICR No. 938.05; OMB No. 2030–0020).

Abstract: This ICR is a reinstatement of an expired information collection that establishes the minimum management requirements for all recipients of EPA grants, fellowships, or cooperative agreements as required under 40 CFR parts 30, 31 and 33. These regulations implement OMB Circulars A–21, A–87, A–102, A–110, A–122, A–128, and A–133 and set forth the pre-award, post-award, and after-the-grant requirements for applicants. The information is used by EPA project officers, grant specialists, and finance officers to manage recipient programmatic and financial performance under all EPA assistance agreements.

Under this ICR, applicants/recipients must perform information collection activities that include: (1) Completing EPA assistance and related forms, and (2) providing other information, as required under 40 CFR parts 130, 131, and 133. In addition, recipients of awards must: (1) Establish an official record file of the award, (2) develop and submit interim and final progress reports, and (3) perform any additional recordkeeping as required under 40 CFR parts 130, 131, and 133.

Burden Statement: Public reporting burden for respondents subject to this collection of information is estimated to average 29 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Annual recordkeeping burden is estimated to average 3 hours per respondent.

Respondents: Individuals, State or local governments, Non-profit institutions, and small businesses that have received or are applying for EPA grants, fellowships, or cooperative agreements.

Estimated Number of Respondents: 5,071.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 163,871 hours.

Frequency of Collection: Quarterly, annually, and on specific occasions.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: May 3, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93–10838 Filed 5–6–93; 8:45 am]

BILLING CODE 6560–50–F

[ER-FRL-4620-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly Receipt of Environmental Impact Statements Filed April 26, 1993 Through April 30, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930142, FINAL EIS, FHW, OK, I-44 Reconstruction, I-44 Arkansas River Bridge to I-44/Broken Arrow Expressway/OK-51 Interchange, Funding and COE Section 404 Permit, Tulsa County, OK, Due: June 7, 1993, Contact: Gary E. Larsen (405) 231-4724.

EIS No. 930143, FINAL EIS, AFS, MT, Bob Marshall and Great Bear Wilderness Areas Noxious Weed Management Projects, Implementation, Flathead National Forest, Spotted Bear and Hungry Horse Ranger Districts, Flathead, Powell, Missoula and Lewis and Clark Counties, MT, Due: June 7, 1993, Contact: Greg Warren (406) 387-5243.

EIS No. 930144, DRAFT EIS, AFS, CA, Lowell Hill Area, Nevada City Ranger District and near Brandy City, Downieville Ranger District, Long-Term Soil Productivity Study, Implementation, Tahoe National Forest, Nevada and Sierra Counties, CA, Due: June 21, 1993, Contact: Martha Twarkins (916) 265-4531.

EIS No. 930145, FINAL EIS, AFS, ID, Stanley Basin Cattle and Horse Allotment Management Plan, Implementation, Sawtooth and Challis National Forests, Custer County, ID, Due: June 7, 1993, Contact: Terry O. Clark (208) 726-7672.

EIS No. 930146, FINAL EIS, AFS, MT, Beartooth Mountains Oil and Gas Exploration and Development Plan, Approval and Leasing, Custer National Forest, Beartooth Ranger District, Carbon, Park, Sweetgrass and Stillwater Counties, MT, Due: June 7, 1993, Contact: Carl Fager (406) 657-6361.

EIS No. 930147, DRAFT EIS, FHW, WI, US 10 Corridor between Waupaca and Fremont Transportation Improvement, from Anderson Road west of the WI-TH-54/49 Interchange to Brown Road and west of the Village of Fremont, Funding and COE Section 404 Permit, Waupaca County, WI, Due: August 5, 1993, Contact: Thomas J. Fudaly (608) 264-5940.

EIS No. 930148, DRAFT SUPPLEMENT, AFS, CA, Mount Vida Planning Area Integrated Resource Management Plan, Additional Information concerning Allocation of Marten Habitat, Consideration of an Uneven-Aged Harvest Alternative and a Revised Biological Evaluation, Modoc National Forest, Warner Mountain Ranger District, Modoc County, CA, Due: June 28, 1993, Contact: Douglas D. Schultz (916) 279-6119.

EIS No. 930149, DRAFT EIS, (SFW/NPS/AFS), SD, Conata Basin/Badlands Area Black-Footed Ferret Reintroduction, Implementation, Badlands National Park and Buffalo Gap National Grassland, Conata Basin, several counties, SD, Due: June 21, 1993, Contact: Douglas A. Searls (605) 224-8693. The US Department of the Interior's Fish and Wildlife Service and National Park Service and the US Department of Agriculture's, Forest Service are Joint Lead Agencies on this project.

EIS No. 930150, DRAFT EIS, FTA, CA, Los Angeles Eastside Corridor Transportation Improvement, Los Angeles Central Business District to just east of Atlantic Boulevard, Funding, NPDES and COE Section 404 Permits, Los Angeles County, CA, Due: June 21, 1993, Contact: Bob Hom (415) 744-3133.

EIS No. 930151, FINAL EIS, AFS, OR, Bornite Underground Copper Mine Project, Construction and Operation, Approval of Plan of Operation, Special-Use-Permit, NPDES Permit and COE Section 404 Permit, Willamette National Forest, Detroit Ranger District, Marion County, OR, Due: June 7, 1993, Contact: Vincent Puleo (503) 854-3366.

Dated: May 4, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-10849 Filed 5-6-93; 8:45 am]

BILLING CODE 6560-50-P

[ER-FRL-4620-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 19, 1993 Through April 23, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1993 (58 FR 18392).

Draft EISs

ERP No. D-AFS-J65200-MT Rating EC2, Little Snowies Vegetative Management and Public Access and Fire and Timber Management Practices, Implementation, Lewis and Clark National Forest, Musselshell Ranger District City Harlowton, Fergus and Golden Valley Counties, MT.

Summary: EPA had environmental concerns regarding the proposed project. EPA was concerned that improvements to impacted riparian areas may be offset by cumulative water quality effects resulting from the proposed activities. The final EIS should discuss the existing conditions for riparian areas that may be affected by the proposed actions and mitigation efforts designed to protect those areas.

ERP No. D-AFS-J65201-CO Rating EC2, Fish Creek Reservoir Enlargement, Special Use Permit, Routt National Forest, Steamboat Springs, Routt County, CO.

Summary: EPA had environmental concerns with the selection of alternatives related to the need for water supply, and the lack of mitigation detail and commitment. EPA believed that an alternative should be included that would address the dam safety and operation issues, puppy dog lake drainage issues, supply the project proponents with the necessary water supply, and result in the least amount of environmental damage (an environmentally preferred alternative). Given the available information EPA does not believe that the proposed project is needed at this time.

ERP No. D-AFS-J65202-MT Rating EC2, Buck-Little Boulder Timber Sales, Timber Harvest and Implementation, Bitterroot River, Bitterroot National Forest, West Fork Ranger District, Ravalli County, MT.

Summary: EPA had environmental concerns regarding the proposed project related to monitoring, road impact, wetland impact analysis, cumulative effects analysis and air quality. Additional information on these issues was requested.

ERP No. D-BLM-J67016-MT Rating EC2, Royal East Joint Venture Mineral Exploration Project, Plan of Operation Approval and Implementation, East Butte, Sweet Grass Hills, Liberty County, MT.

Summary: EPA had environmental concerns regarding the proposed project based on incomplete analysis of the impacts.

ERP No. D-COE-F35041-OH Rating EC2, Cleveland Harbor Navigation Channels Maintenance, Confined Disposal Facility (Site 10B 15 Year)

Construction and Use, Lake Erie, Cuyahoga River, Cuyahoga County, OH.

Summary: EPA expressed concerns regarding the possibility of contaminated sediment migration and resuspension, and the effects on recreation. EPA recommended that the US Army Corps of Engineers work with other agencies to reduce the volume of sediments reaching the navigation channel and consider the beneficial uses of uncontaminated sediments.

ERP No. D-FHW-F40331-WI Rating EC2, WI-TH-29 Improvement, from Chippewa Falls to Abbotoford and Marathon City in Martin Lane, Funding and Possible COE 404 Permit; Clark and Marathon Counties, WI.

Summary: EPA had environmental concerns regarding the actual acreage of wetlands to be impacted and what measures to minimize impacts to wetlands and terrestrial natural communities would be taken.

Final EISs

ERP No. F-AFS-J65190-WY Union Pass Road Relocation Project, Union Pass Road and Green River Lakes Road Connection, Approval and Implementation, Bridger-Teton National Forest, Pinedale Ranger District, Fremont, Sublette and Lincoln Counties, WY.

Summary: EPA had environmental concerns regarding monitoring and evaluation. The record of decision should address what methodology the forest service intends to employ to monitor the types of cumulative impacts documented in the FEIS.

ERP No. F-AFS-J65192-CO Trout Mountain Analysis Area Timber Harvest, Road Construction and Aspen Management Plan Projects, Implementation, Trout and Decker Creeks, Del Norte Ranger District, Rio Grande National Forest, Rio Grande and Mineral Counties, CO.

Summary: EPA had environmental concerns with the proposed project. It was requested that the Record of Decision be amended to include information regarding wetland resources. The ROD should also present a comprehensive analysis of monitoring plans to evaluate potential impacts associated with the proposed action.

ERP No. F-AFS-K65141-CA Last Chance Helicopter Timber Sale, Harvesting Timber and Road Construction/Reconstruction, Plumas National Forest, Greenville Ranger District, Plumas County, CA.

Summary: EPA expressed environmental concerns with the FEIS, in particular EPA strongly recommended that timber harvest proposals, in the degraded watershed should not proceed unless watershed restoration projects elsewhere in the watershed also proceed.

ERP No. F-BLM-J02023-WY Methel Hanna Basin Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment, Approval, Drilling Control, COE Section 404 and EPA RCRA Permits and Right-of-Way Grants, Carbon County, WY.

Summary: EPA had environmental concerns with the proposed project regarding the potential for produced water contaminating groundwater. In addition, surface water discharges should meet water quality standards for the stream that they enter.

ERP No. F-FHW-G40134-OK OK-82 Highway Construction, Red Oak to Lequire, Funding and Possible National Pollutant Discharge Elimination System Permit, Latimore and Haskell Counties, OK.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

ERP No. F-UAF-E11029-SC Myrtle Beach Air Force Base Disposal and Reuse, Implementation, Horry County, SC.

Summary: EPA believed that due to uncertainty associated with the ultimate uses of the Myrtle Beach Air Force Basin property, on-going interagency coordination and possibly further NEPA documentation may be required.

ERP No. F-USA-E11030-AL Redstone Arsenal Base Realignment, Transfer of Activities from US Army Armament, Munitions and Chemical Command, Rock Island, IL; Lexington-Bluegrass Army Depot, KY; Presido Army Base, San Francisco, CA and Harry Diamond Laboratories, Adelphi, MD to the Redstone Arsenal Base, Madison County, AL.

Summary: EPA continued to have environmental concerns regarding the potential traffic problems within and around the Redstone Arsenal resulting from the functional/ organizational changes.

Dated: May 4, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-10850 Filed 5-6-93; 8:45 am]

BILLING CODE 6560-50-P

[AMS-FRL-4652-6]

Motor Vehicle-Related Air Toxics Study; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the Motor Vehicle-Related Air Toxics Study.

SUMMARY: This action provides notice of availability of the Motor Vehicle-Related Air Toxics Study. This study is required by section 202(l)(1) of the Clean Air Act, as amended in 1990. A public review draft of the study was released on January 13, 1993 to provide interested parties with an opportunity to review the document and provide EPA with comments. Public comments received have been summarized in the final study, as required by section 202(l)(1).

EFFECTIVE DATE: The study was completed April 30, 1993.

ADDRESSES: To obtain a copy of the Motor Vehicle-Related Air Toxics Study for a nominal charge, please contact the Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487-4650. A copy has also been placed in the public docket.

Written public comments on the study and other materials relevant to this study have been placed in Docket No. A-91-19 by EPA. The docket is located at the U.S. Environmental Protection Agency, Air Docket Section [LE-131], 401 M Street SW., Washington, DC 20460, in room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 to 12 noon and from 1:30 p.m. to 3:30 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Penny M. Carey, U.S. EPA National Vehicle and Fuel Emissions Laboratory, EPSD-TSB, 2565 Plymouth Road, Ann Arbor, MI, 48105. Telephone: (313) 668-4355. Fax: (313) 668-4368.

SUPPLEMENTARY INFORMATION: Section 202(l)(1) of the Clean Air Act, as amended, directs EPA to complete a study by May 15, 1992, of the need for, and feasibility of, controlling emissions of toxic air pollutants that are unregulated under this Act and associated with motor vehicles and motor vehicle fuels. The Act provides that the study shall focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1,3-butadiene. In accordance with section 202(l)(1), the proposed study was made available for public review and comment and includes a summary of all comments.

Section 202(1)(2) also directs that, by May 15, 1995, EPA shall, based on the

study, promulgate (and from time to time revise) regulations containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.

This study satisfies the requirements of section 202(l)(1). Specific pollutants or pollutant categories which are discussed in this study include benzene, formaldehyde, 1,3-butadiene, acetaldehyde, diesel particulate matter, gasoline particulate matter, and gasoline vapors. Also discussed in a more limited fashion are certain of the metals and motor vehicle-related pollutants identified in title III of the Clean Air Act Amendments of 1990.

With respect to benzene, formaldehyde, 1,3-butadiene, acetaldehyde, diesel particulate matter, gasoline particulate matter, and gasoline vapors, the study discusses the chemical and physical properties of the pollutant, formation and control technology, emissions (including other emission sources), atmospheric reactivity and residence times, exposure estimation, EPA's carcinogenicity assessment, other views of carcinogenicity assessment, recent and ongoing research, carcinogenic risk, and non-carcinogenic effects form inhalation exposure. The study also describes the qualitative change in toxic pollutant levels with the use of alternative clean fuels, along with a summary of toxic emissions from nonroad mobile sources. The study also discusses the costs of various existing or future motor vehicle and/or fuel regulatory control programs and provides a qualitative discussion of the toxics benefits of these programs. Finally, the study discusses the major limitations and uncertainties that should be considered in reviewing the study.

This study attempts to summarize what is known about motor vehicle-related air toxics and to present all significant scientific opinion on each issue. This study provides an important foundation for further assessment and future regulatory decision making in this area, including decisions under section 202(l)(2) of the Act. While this study dies not resolve the various issues discussed herein and in the public comments, EPA will continue to explore and address these in the context of such future regulatory decision making.

The focus of the study is on carcinogenic risk. The discussion of non-carcinogenic effects of the toxics addressed in this study are less quantitative due to the lack of sufficient health data.

The study presents emission factors for motor vehicle pollutants that are classified by EPA as known or probable human carcinogens. Cancer risk estimates, based on exposure estimates and unit risk factors for each pollutant, are presented for the years 1990, 1995, 2000, and 2010. The study indicates that cancer risks tend to decrease from 1990 thru 2000 for the pollutants studied, but will begin to increase for 1,3-butadiene, acetaldehyde, from 2000 to 2010. For these pollutants, even though the per mile emission factors decrease from 2000 to 2010, the expected increase in vehicle miles traveled more than offsets this decrease. While this study characterizes these cancer risks and trends, it does not address the question of whether or how to regulate these motor vehicle related toxic emissions.

Comments on the public review draft of the study were received from the American Automobile Manufacturers Association (AAMA), American Petroleum Institute (API), Arco Chemical Company, California Air Resources Board (CARB), California Environmental Protection Agency (Cal-EPA), Chemical Manufacturers Association (CMA), Environ Corporation (prepared for the American Automobile Manufacturers Association, American Petroleum Institute, Engine Manufacturers Association, and the Association of International Automobile Manufacturers), Ford Motor Company, General Motors Corporation, Health Effects Institute (HEI), Konheim and Ketcham, Northeast States for Coordinated Air Use Management (NESCAUM), and Zephyr Consulting.

Public comments received are summarized in the final study. All of these public comments were considered by EPA and many of these comments were incorporated into the final version of the study. As stated previously, all comments will receive additional consideration by EPA during the subsequent regulatory decision making process.

Dated: April 30, 1993.

Jonathan Z. Cannon.

Acting Administrator.

[FR Doc. 93-10834 Filed 5-6-93; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50759A; FRL-4588-1]

Receipt of an Application for an Experimental Use Permit for a Transgenic Plant Pesticide; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the Federal Register of March 31, 1993, EPA announced the receipt of an application from Ciba-Geigy Corporation, Seed Division for an EPA Experimental Use Permit (EUP) for a transgenic plant pesticide. The document also established a 30-day comment period. In order to give all interested parties adequate time to submit comments, the comment period has been reopened.

DATES: Comments should be received by May 21, 1993.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP-50759 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Room 1128 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202, (703) 305-7690.

SUPPLEMENTARY INFORMATION: On January 19, 1993, EPA received an application for an EUP from Ciba-Geigy Corporation, Seed Division (Ciba Seeds), P.O. Box 12257, Research Triangle Park, North Carolina 27709-2257. That receipt was the third EUP application under the Federal Insecticide, Fungicide, and Rodenticide Act for testing with a pesticidal substance that is produced in a plant. The application was assigned EPA File Symbol 66736-EUP-R. Ciba Seeds proposes to test a

truncated version of the cryIA(b) δ-endotoxin (derived from the soil microbe *Bacillus thuringiensis*) as expressed in maize plants originating from crosses of descendants of two separate transformation events (Event 171 & Event 176) of the proprietary inbred line CG00526.

In the **Federal Register** of March 31, 1993 (58 FR 16827), EPA announced a 30-day comment period on Ciba-Geigy's proposed program. The original comment period closed on April 30, 1993; the comment period has been reopened to May 21, 1993.

Dated: May 4, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-10985 Filed 5-6-93; 8:45 am]

BILLING CODE 6560-50-F

FARM CREDIT SYSTEM INSURANCE CORPORATION

[BM-27-APR-93-02]

Policy Statement Concerning Financial Assistance to Operating Insured Banks

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Policy statement.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) by the Farm Credit System Insurance Corporation Board (Board) adopts a policy statement setting forth the circumstances under which financial assistance to operating insured institutions will be considered, and the terms and conditions that would likely be imposed in conjunction with the granting of assistance.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Carl R. Pfitzinger, Asset Assurance Manager, Farm Credit System Insurance Corporation, P.O. Box 9826, McLean, Virginia 22102-0826, (703) 883-4385, TDD (703) 883-4455.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement concerning financial assistance to operating insured banks is set forth below in its entirety:

Effective Date: Upon adoption.

Effect on Previous Action: None.

Source of Authority: Section 5.61 of the Farm Credit Act of 1971, as Amended (the Act); 12 U.S.C. 2277a-10.

Whereas, under section 5.61 of the Act, the Farm Credit System Insurance Corporation (Corporation) may provide financial assistance to operating insured banks:[1] (1) To prevent the placing of the bank in receivership or to assist a bank in danger of being placed in receivership, or (2) when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, to lessen the risk to the Corporation posed by such insured System banks under such threat of instability.

Therefore, the Farm Credit System Insurance Corporation's Board of Directors (Board) adopts the following policy statement:

In order for the Farm Credit System Insurance Corporation (Corporation) to provide assistance to any operating insured bank, the Corporation's Board of Directors must determine that either: (1) The amount of assistance is less than the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank) or (2) the continued operation of the bank is essential to provide adequate agricultural credit services in the area of operations of the bank.

Assistance to operating insured banks may be provided directly to the bank in danger of being placed in receivership, or to another insured bank qualified to merge with or acquire the failing bank.

The Corporation believes that proposals for assistance to operating insured banks under section 5.61 of the Act should be reviewed by the Corporation utilizing the following criteria:

1. The cost to the Corporation must be clearly less than other available alternatives.

2. All alternative sources of assistance must be explored in good faith prior to the Corporation's granting assistance.

3. The proposal must reasonably anticipate the viability of the recipient, including provisions for the attainment of an adequate level of capitalization within a reasonable period of time.

4. The proposal should provide for the eventual repayment of the assistance.

5. The proposal must provide for adequate managerial resources, and the Corporation's approval of business plans. Continued service of any Director or Senior Officer serving the assisted institution in a policy-making role, as determined by the Corporation, will be subject to approval of the Corporation. In addition, compensation arrangements covering Directors and Senior Officers must be approved by the Corporation.

6. The Corporation will consider on a case-by-case basis the nature of the financial assistance requested. Generally, assistance proposals should not anticipate the acquisition and servicing of assets from the assisted institution by the Corporation.

7. Fee arrangements with attorneys, accountants, consultants, and other parties incident to requests for financial assistance must be disclosed to the Corporation. Excessive fees are unnecessary and must be avoided; fee arrangements will be considered in evaluating the cost of the assistance request.

8. The Corporation retains the option of evaluating the assistance proposal within the context of a competitive bidding process and will consider soliciting interest from qualified acquirors.

9. An institution seeking operating institution assistance must consent to unrestricted on-site due diligence review by any potential acquiror that is determined by the Corporation to be qualified after consultation with the Farm Credit Administration.

10. The proposal must contain quantifiable limits on all financial items in the request.

11. The Corporation will evaluate the potential financial effect of the proposal on shareholders, uninsured creditors and the financial markets.

Dated: May 3, 1993.

Dated This 27th day of April, 1993.

By order of the Board.

Curtis M. Anderson,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 93-10831 Filed 5-6-93; 8:45 am]

BILLING CODE 6710-01-P

[1] As used in section 5.61, the terms "Insured System Bank" and "Bank" include each Production Credit Association and other Associations making direct loans under the authority provided under section 7.6 of the Farm Credit Act of 1971, as amended.

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 30, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20337, (202) 857-3800. For further information on this

submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0168

Title: Section 43.43—Reports of Proposed Changes in Depreciation Rates

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: On occasion reporting and triennially

Estimated Annual Burden: 12 responses; 10,000 hours average burden per response; 120,000 hours total annual burden

Needs and Uses: Section 43.43 of the Rules establishes the reporting requirements for depreciation represcription purposes. Communication common carriers with annual operating revenues of $100 million or more and found to be a dominant carrier as determined by the Commission must file information specified in § 43.43 before making any change in the depreciation rates applicable to their operated plant. The information filed is used by the Commission to establish the proper depreciation rates to be charged by the carriers. The information serves as the basis for depreciation studies and calculations made by the Depreciation Rates Branch, Common Carrier Bureau, in establishing the above mentioned rates. Without this information the validity of the carrier's depreciation policies could not be ascertained.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–10756 Filed 5–6–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Tampa Port Authority/Tampa Bay International et al.; Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200510–004.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc., Terminal Agreement.

Parties: Tampa Port Authority, Tampa Bay International Terminals, Inc.

Synopsis: The amendment extends the term of the Agreement through May 12, 1994.

Agreement No.: 224–200766.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Equipment Operating Agreement.

Parties: Tampa Port Authority ("Authority") Tampa Bay International Terminals, Inc. ("TBIT").

Synopsis: The Agreement provides for operation by TBIT of equipment owned by the Authority.

Agreement No.: 203–011411.

Title: Maersk/P & O/Sea-Land Discussion Agreement.

Parties: A.P. Moller-Maersk Line P & O Containers Limited Sea-Land Service, Inc.

Synopsis: The proposed Agreement permits the parties to discuss and exchange information on rates, charges, service items and other matters in the trade between U.S. Atlantic and Gulf coast ports and inland and coastal points in the United States via such ports and points on the Mediterranean Sea (excluding the West Coast of Italy, France and Spain), on the African coast of the Red Sea (including Djibouti), on the Black Sea, Asia (Japan/Myanmar range), all countries on the Indian Subcontinent, Somalia, Kenya, Tanzania, Portugal, Morocco, the Canary Islands; and inland and coastal points via such ports. Adherence to any agreement reached is strictly voluntary.

Dated: May 3, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–10778 Filed 5–6–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–63]

Criteria for Selecting Toxicological Profiles for Development

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of interim criteria; availability of background document; request for comments.

SUMMARY: This notice describes the criteria used by ATSDR to prioritize the development of toxicological profiles. The criteria will be used to both select new substances to profile and to determine which profiles should be updated. A background document (Criteria for Selecting Toxicological Profiles for Development) which provides more information on this process is available upon request (see **ADDRESSES**). Comments on this notice and the background document are requested. The criteria outlined herein will be used on an interim basis, subject to change based on comments received and experience gained during implementation of these procedures.

DATES: ATSDR considers these criteria to be of significant importance to the continuing development of the toxicological profiles. Therefore, public comments concerning this **Federal Register** notice will continue to be accepted throughout the Agency's development of the toxicological profiles.

ADDRESSES: Requests for the background document, "Criteria for Selecting Toxicological Profiles for Development," and comments on this notice and background document should be addressed to: Toxicology Information Branch/ATSDR–63, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Comments on this notice and the background document will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for Federal legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry G. Abadin, Toxicology Information Branch, Division of

Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-6304.

SUPPLEMENTARY INFORMATION: Section 104(i) [42 U.S.C. 9604(i)] of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [Pub. L. 99-499], directs the Administrator of ATSDR and the Administrator of the Environmental Protection Agency (EPA) to prepare a list of hazardous substances most commonly found at facilities on the National Priority List (NPL) and which, in their sole discretion, are determined to pose the most significant potential threat to human health. ATSDR is then to prepare toxicological profiles on these substances and assure the initiation of a research program to fill identified data needs associated with the substances.

The toxicological profiles provide an examination, summary, and interpretation of available toxicological and epidemiological studies on hazardous substances in order to ascertain the levels of significant human exposure to a given substance and the associated acute, subacute, and chronic health effects. Additional toxicological testing needed for this assessment is identified in the profiles and prioritized through activities with the Research Implementation Branch. Information discussed in these documents include: toxicokinetics; biomarkers of exposure, effect, and susceptibility; interactions with other chemicals; environmental fate; levels in environmental media and biological tissues and fluids; physical and chemical properties; analytical methods; information regarding production, import, export, use, and disposal; and other subjects. Additional information needed in these areas is also identified. The intended audiences for the toxicological profiles are the general public, environmental and health professionals in the private and public sector, and interested private organizations and groups.

As directed by CERCLA, section 104(i)(3) [42 U.S.C. 9604(i)(3)], ATSDR reviews previously-released profiles no less often than once every three years to determine if revision and republication (updating) are warranted. ATSDR has developed criteria for evaluating whether there is a scientific basis for updating a profile. ATSDR considers certain factors important in making this determination. These factors include the frequency of occurrence at NPL sites, toxicity, and potential for human exposure, as determined by the substances rank on the list of priority hazardous substances, and the availability of new information.

ATSDR will prioritize both the update of previously profiled substances and the preparation of profiles on new substances using these factors. ATSDR believes that this approach best serves the interests of public health and the informational needs of ATSDR and its constituents.

Frequency of Occurrence at NPL Sites, Toxicity, Potential for Human Exposure

A notice of the availability of the Priority List of 275 Hazardous Substances was published by ATSDR on October 28, 1992 (57 FR 48801). This list is based on the most comprehensive information currently available and is revised on an annual basis as additional information is gathered. Substances are ranked in order of priority based on the individual scores for their frequency of occurrence at NPL sites, toxicity, and potential for human exposure. A support document outlining the listing activity is available (see 57 FR 48801, October 28, 1992 for more information). The score and subsequent rank of a substance reflects the potential of the substance to impact human health and is a measure of these three factors combined and weighted equally.

Availability of Information

Substances being considered for update are assigned an information score based on new information in the scientific literature which has become available since the release of the profile. Studies will be reviewed to determine if they fill data needs or in some other way contribute to the reliability of risk assessment; particular emphasis will be placed on information that directly supports qualitative and quantitative conclusions associated with the derivation of minimal risk levels. Detailed procedures are described in the background document. A high score for a previously-profiled substance indicates that new studies have been located since the release of the profile which provide information expected to enhance the risk assessment process.

In determining the information score for new substances, ATSDR considers that developing a profile on a substance which has not been previously profiled will provide a new source of information for health assessors which was not previously available. Therefore, these substances will be assigned a maximum information score.

Final Score

The information score is combined and weighted equally with the previously calculated scores for frequency of occurrence at NPL sites, toxicity, and potential for human exposure to derive a "Profile Need Score." The substances are then prioritized for profile development based on this total score.

The actual prioritization of profile development may, at the discretion of ATSDR, be revised as appropriate based on the public health and informational needs of ATSDR, and the input of interested parties.

Other Considerations

Input from the general public, environmental and health professionals in the private and public sector, and interested private organizations and groups is used to ensure that no critical information has been overlooked.

ATSDR welcomes comments regarding both new and update profiles. Data from studies not generally available to ATSDR through the published literature are essential to the profile development process. Individuals and groups are encouraged to provide ATSDR with these studies.

Alternative approaches to estimating risk, such as Quantitative Structure Activity Relationships (QSAR) and Physiologically Based Pharmacokinetic Modeling (PBPK) will be considered for inclusion in future profiles. ATSDR is particularly interested in comments regarding the utility of these tools in assessing public health risks.

Dated: May 3, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93-10809 Filed 5-6-93; 8:45 am]

BILLING CODE 4160-70-P

Centers for Disease Control and Prevention (CDC)

Injury Research Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Times and Dates: 6 p.m.-9 p.m., May 23, 1993; 8 a.m.-5 p.m., May 24, 1993; 8 a.m.-12 noon, May 25, 1993.

Place: Summerfield Suites Hotel, 505 Pharr Road, Atlanta, Georgia 30305.

Status: Open 6 p.m.–7 p.m., May 23, 1993; Closed 7 p.m., May 23, 1993, through 12 noon, May 25, 1993.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters To Be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 7 p.m., May 23, through 12 noon, May 25, the committee will consider applications for Injury Control Research Centers (ICRCs), Research Program Project Grants, and supplements to existing ICRCs. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Director, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop K58, Atlanta, Georgia 30341–3724, telephone 404/488–4265.

Dated: May 3, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–10805 Filed 5–6–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committees; Notice of Meetings; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 22, 1993 (58 FR 21584). The document announced forthcoming meetings of public advisory committees for the Antiviral Drugs, the Ranch Hand, the Ophthalmic Devices Panel, and the Fertility and Maternal Health Drugs Advisory Committees. The document inadvertently stated that the Fertility and Maternal Health Drugs Advisory Committee would discuss changes in oral contraceptive labeling to reflect the current practice of conducting physical exams after medication has been started. It should have stated that physical exams are conducted "at times" after medication has been started. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Robin Thomas Johnson, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 93–9401, appearing on page 21584 in the **Federal Register** of April 22, 1993, the following correction is made: On page 21585, in the 2d column, in the 4th full paragraph, in the 7th line, the words "at times" are added after the word "exams".

Dated: May 4, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–10814 Filed 5–6–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Amended Program Announcement for Allied Health Project Grants for Fiscal Year 1993

The Health Resources and Services Administration (HRSA), announced the fiscal year (FY) 1993 Allied Health Project Grants in the **Federal Register** on September 24, 1992 (57 FR 44190). Since this announcement the Allied Health Project Grants program has been reauthorized by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. As a result of these amendments, changes have been made in (1) the section number, (2) the purpose, (3) funding preference, and (4) information requirement. These changes will be discussed in this notice.

Section Number

This program was previously authorized under section 796 of the Public Health Service (PHS) Act. This program is currently authorized under section 767 of the PHS Act.

Purposes

Section 767 authorizes the award of grants to assist in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Programs and activities funded under this section may include:

(1) Those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;

(2) Those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;

(3) Those that establish community-based allied health training programs that link academic centers to rural clinical settings;

(4) Those that provide career advancement training for practicing allied health professionals;

(5) Those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(6) Those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(7) Those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(8) Those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research; and

(9) Those that provide financial assistance (in the form of traineeships) to students who are participants in any such program; and

(A) Who plan to pursue a career in an allied health field that has a demonstrated personnel shortage; and

(B) Who agree upon completion of the training program to practice in a medically underserved community;

that shall be utilized to assist in the payment of all or part of the costs associated with tuition, fees and such other stipends as the Secretary may consider necessary.

To maximize program benefit, programs that provide financial assistance in the form of traineeships to students will not be considered for funding in FY 1993.

Funding Preference

The statutory preference identified in section 767(b)(2) and the statutory preference identified in section 791(a) of the PHS Act have been combined in the following preference which will be applied to Allied Health Project Grants for fiscal year 1993: Preference shall be given to qualified applicants that—

(A) Expand and maintain first-year enrollment by not less than 10 percent over enrollments in base year 1992; OR

(B) Demonstrate that not less than 20 percent of the graduates of such training programs during the preceding 2-year period are working in medically

underserved communities (high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities); OR

(C) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Additional information concerning the implementation of the preference identified in section 791(a) of the PHS Act has been published in the **Federal Register** at 58 FR 9570, dated February 22, 1993. The burden for collection of information to request this preference is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

It is not required that applicants request consideration for this funding preference. Applications which do not request consideration for the funding preference will be reviewed and given full consideration for funding.

Information Requirements Provision

Under section 791(b) of the PHS Act, the Secretary may make an award under the Allied Health Project Grants Program only if the applicant for the award submits to the Secretary information regarding the programs of the applicant. These requirements will be provided in the application materials. The burden for collection of this information is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

Questions regarding programmatic information should be directed to: Dr. Norman Clark, Program Officer, Associated Health Professions Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-02, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6763.

The *Catalog of Federal Domestic Assistance* number for this program is 93.191. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: April 30, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93-10766 Filed 5-6-93; 8:45 am]

BILLING CODE 4160-15-P

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1993:

Name: Council on Graduate Medical Education.

Time: June 2-3, 1993, 8:30 a.m.

Place: Conference Room G&H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: There will be presentations and discussions regarding the need to refine the Third Report recommendations in view of the Administrations proposed health care reform initiative and other developments. Status reports will be given and discussions will be held on Council on Graduate Medical Education initiatives such as Managed Care, Women in Medicine, etc. Also a period of public comment on the Third Report and status reports of the Council will be provided.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443-6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443-6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: May 3, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93-10815 Filed 5-6-93; 8:45 am]

BILLING CODE 4160-15-P

Guidance Regarding Section 602 of the Veterans Health Care Act of 1992; Limitation on Prices of Drugs Purchased by Covered Entities

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services provides the following guidance regarding section 602 of Public Law 102-585, the "Veterans Health Care Act of 1992" (the "Act"), which enacted section 340B of the Public Health Service (PHS) Act, "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary of Health and Human Services (the "Secretary") in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the average manufacturer price ("AMP") decreased by a rebate percentage. This notice advises manufacturers and covered entities of the terms of the Agreement, describes the criteria for the certification process required of certain entities, and alerts manufacturers who have not received an Agreement by mail of the manner in which to request one.

DATES: Section 340B was effective with respect to drug purchases on or after December 1, 1992. Agreements signed after that date are effective for purchases of covered outpatient drugs retroactive to December 1, 1992, for those entities included on the initial list of covered entities mailed to each manufacturer. For manufacturers that have not received an Agreement by mail, a written request for an Agreement should be submitted to the Drug Pricing Program within 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph. Chief Pharmacy Officer, Attn: Drug Pricing Program, Health Resources and Services Administration, Bureau of Primary Health Care, Rm 7A-55 Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20857, Phone: (301) 443-0004-6.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Act was designed to establish price controls to limit the cost of drugs to Federal purchasers and to certain grantees of Federal agencies. In 1990, Congress identified a problem with increasing drug prices and enacted the Omnibus Budget Reconciliation Act of 1990. This attempt at drug price control focused only on the Medicaid program

and established a best-price policy. Under the Medicaid drug rebate program, pharmaceutical manufacturers initially gave State Medicaid agencies the greater of a minimum 12.5 percent flat rebate of the average manufacturer price (AMP) or the difference between the AMP and the best price paid by the customer for single source or innovator multiple source drugs. To provide a phase-in period, the rebate amount was capped at a specific percentage of the AMP which increased from 1991 through 1993. Generic manufacturers gave States a ten percent of AMP flat rebate which will increase to 11 percent in 1994.

The Veterans Health Care Act is an attempt to provide Federal purchasers with a process whereby they will receive drug discounts or rebates. Section 601 of Public Law 102–585 amends the Medicaid rebate program, section 602 provides drug discounts primarily to certain grantees of the Public Health Service, and section 603 enacts a drug discounting process administered by the Department of Veterans Affairs for the benefit of several Federal agencies. This guidance addresses the program enacted by section 602.

II. Covered Entities

(a) Current Covered Entities

Section 602 of Public Law 102–585 enacted a new section 340B of the PHS Act. Pursuant to this new section, eligible entities are as follows (except as otherwise indicated, references are to sections of the Public Health Service Act):

1. Federally-qualified health centers (migrant, community and homeless health centers) as defined in section 1905(l)(2)(B) of the Social Security Act, 42 U.S.C. 1396d.

2. Health centers for residents of public housing funded under section 340A, 42 U.S.C. 256a.

3. Family planning projects receiving grants or contracts under section 1001, 42 U.S.C. 300.

4. An entity receiving a grant for outpatient early intervention services for HIV disease under subpart II of part C of title XXVI, 42 U.S.C. 300ff-51 *et seq.*

5. A State-operated AIDS drug purchasing assistance program receiving financial assistance under section 2616 of the Act, 42 U.S.C. 300ff-26.

6. A black lung clinic receiving funds under section 427(a) of the Black Lung Benefits Act, 30 U.S.C. 937(a).

7. A comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2).

8. A Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988, 42 U.S.C. 11701 *et seq.*

9. An urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act, 25 U.S.C. 1651 *et seq.*

10. Any entity, certified by the Secretary, receiving assistance under title XXVI of the Act, 42 U.S.C. 300ff *et seq.*, (other than a State or unit of local government or an entity described in #4).

11. Any entity, certified by the Secretary, receiving funds relating to the treatment of sexually transmitted diseases under section 318, 42 U.S.C. 247c, or relating to the treatment of tuberculosis under section 317(j)(2), 42 U.S.C. 247b, through a State or unit of the local government.

12. A "disproportionate share" hospital as defined in section 1886(d)(1)(B) of the Social Security Act, which (for the most recent cost reporting period that ended before the calendar quarter involved) had a disproportionate share adjustment greater than 11.75 percent, and which is (1) owned or operated by a State or local government, (2) a public or private nonprofit corporation formally granted governmental powers by a State or local government, or (3) a private nonprofit hospital with a State or local government contract to provide health services to low income individuals who are not entitled to benefits under Medicare or eligible for assistance under the State plan. The discount need not be provided for drugs which the hospital obtains through a group purchasing arrangement.

In the case of a covered entity that is a distinct part of a hospital, the hospital shall not be considered a covered entity unless the hospital is otherwise a covered entity, i.e., it meets the requirements of a disproportionate share hospital as determined by the Secretary under section 340B(a)(4)(L).

(b) Certification

Certain covered entities must be certified by the Secretary before they become eligible for the discount drug prices, section 340B(a)(7) of the PHS Act. The entities requiring certification are those that—

(a) receive grant funds related to the treatment of sexually transmitted diseases through a state or local government under section 318 of the PHS Act, 42 U.S.C. 247c,

(b) receive grant funds related to the treatment of tuberculosis through a state or local government under section 317(j)(2) of the PHS Act, 42 U.S.C. 247b, and

(c) are receiving assistance under title XXVI of the PHS Act, 42 U.S.C. 300ff *et seq.*, other than a State or unit of local government or grantee for HIV outpatient early intervention services (subpart II of part C of title XXVI of the PHS Act).

The criteria for eligibility include State certification that the entity does receive Federal grant funds and is an entity described in (a), (b), or (c) above. Information concerning the amount each entity expended for outpatient drugs in the preceding fiscal year (October 1, 1991, to September 30, 1992) is also required. These amounts are necessary to assist the Secretary in evaluating the validity of subsequent purchases of outpatient drugs at the discounted prices.

The respective PHS program directors for these entities have been asked to compile a list of the covered entities in their programs and include for each entity the estimated amount of outpatient drug purchases in the preceding year. They are asked to send this list and a form certification letter to the respective State program directors so that the State may certify the accuracy of the list.

The States are asked to return the certification letters to the respective PHS program directors. These letters, along with the drug purchasing information, will be kept on file so that they can be used for audit purposes.

In addition, section 340B(a)(7)(E) of the PHS Act requires a recertification process of these same entities. The respective PHS program directors will compile, on an annual basis, a list of eligible entities for the above categories (a), (b), and (c), will estimate the amount of outpatient drug purchases for each listed entity during the preceding fiscal year, and will include a recertification letter and the newly compiled list of entities in the grant renewal package for each State program director to complete and return.

(c) Possible Future Covered Entities

Section 340B also requires the Secretary to conduct a study concerning entities that receive funds from a State for mental health and substance abuse treatment services under subparts I or II of part B of title XIX of the PHS Act or under title V of such Act; or receive funds from a State under title V of the Social Security Act for outpatient maternal and child health services. The Secretary is directed to determine the feasibility of awarding these entities eligibility status and to submit this report to Congress by November 4, 1993

Covered drugs are outpatient drugs as defined in section 1927(k) of the Social Security Act. Section 1927(k)(2) generally includes within this term (*a*) a drug which can only be dispensed upon prescription, and (1) which has been approved for safety and effectiveness under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act, or (2) which was used or sold commercially in the United States before the enactment of the Drug Amendments of 1962 (or identical, related, or similar to such a drug) and which has not been the subject of a final determination by the Secretary that it is a "new drug," or (3) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined that there is a compelling justification of its medical need and for which the Secretary has not issued a notice of opportunity for hearing on a proposed order to withdraw approval of an application for such a drug because the drug is less than effective for some or all of its labelled indications; (*b*) a prescribed biological product other than a vaccine, licensed under section 351 of the PHS Act, and produced at an establishment licensed under such section to produce such a product; (*c*) insulin, certified under section 506 of the Federal Food, Drug, and Cosmetic Act; and (d) an over-the-counter drug, if it is prescribed by a person authorized to prescribe such a drug under State law.

Pursuant to the limiting definition of section 1927(k)(3) of the Social Security Act, a covered outpatient drug does not include any drug, biological product, or insulin provided as part of, or incident to and in the same setting as, any of the following (and for which payment is made as part of payment for the following and not as direct reimbursement for the drug): (*a*) Inpatient hospital services; (*b*) hospice services; (*c*) dental services, except drugs for which the State Medicaid plan authorizes direct reimbursement to the dispensing dentist; (*d*) physicians' services; (*e*) outpatient hospital service emergency room visits; (*f*) nursing facility services; (*g*) other laboratory and x-ray services; and (*h*) renal dialysis. A covered outpatient drug does not include any such drug or product which is used when there is no medically accepted indication.

IV. Calculation of the Drug Price.

To determine the price for a covered outpatient drug, the manufacturer shall calculate the average manufacturer price (AMP) for the drug and reduce it by the rebate percentage. Average manufacturer price is the average price paid to the manufacturer for the drug in the United States by wholesalers for the drug distributed to the retail pharmacy class of trade in the calendar quarter. The rebate percentage is the total per unit Medicaid rebate amount, section 1927(c)(1) and (2) of the Social Security Act, for the particular drug divided by the AMP. The Medicaid rebate calculation utilizes Best Price information which considers the lowest price available at which the manufacturer sells the covered outpatient drug to any wholesaler, retailer, nonprofit entity, or governmental entity within the United States in any pricing structure (as defined in section I(b) of the Pharmaceutical Pricing Agreement).[1]

To calculate the price for an over-the-counter or generic drug, the rebate percentage will be determined as if the rebate required under 1927(c) of the Social Security Act is based upon the percentages provided in section 1927(c)(4) of the same Act (i.e., calendar quarters between January 1, 1991 and December 31, 1993=10% and calendar quarters beginning on or after January 1, 1994=11%).

V. Manufacturers' Information.

(a) Effective Date of Implementation

Because the effective date of section 340B of the PHS Act with respect to drug purchases is December 1, 1992, and all Agreements signed with entities included on the initial list of covered entities are effective retroactive to that date, manufacturers should incorporate these pricing limitations in dealings with covered entities as of that date. If the manufacturer finds that a price adjustment is required, the manufacturer shall calculate any rebate (or credit) necessary to account for sales between December 1, 1992, and the date of the Agreement and shall either remit the rebate to the entity (or provide for the credit). Additional eligible entities, later included in the updated lists, will be eligible for drug discounts only for purchases on and after the date of their inclusion on the list.

(b) Definition of Manufacturer

The term "Manufacturer" has the meaning as set forth in section 1927(k)(5) of the Social Security Act and includes all entities engaged in—

(*1*) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

(*2*) the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

A manufacturer must hold legal title to or possession of the NDC number for the covered outpatient drug. Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

"Manufacturer" also includes an entity, described in (1) or (2) above, that sells outpatient drugs to covered entities, whether or not the manufacturer participates in the Medicaid rebate program. Furthermore, the Pharmaceutical Pricing Agreement provides that the term also includes any contractor who fulfills the responsibilities pursuant to the PHS drug pricing agreement.

The Department is aware that many covered entities purchase drugs from wholesalers, rather than directly from manufacturers. Manufacturers shall take the steps necessary to assure that the discounts required by this legislation are passed through the wholesalers to the covered entities.

(c) Pharmaceutical Pricing Agreement

A manufacturer must sign an Agreement with the Department agreeing not to charge a covered entity a price for a covered outpatient drug exceeding the AMP of the drug decreased by the rebate percentage. Signing the Agreement does not prohibit a manufacturer from charging a price for a covered outpatient drug that is lower than the maximum price that can be charged.

The Department mailed the Agreements December 15, 1992, priority mail, and requested, for participation in the discount program, a return of the signed agreement by January 6, 1993. If a manufacturer did not receive a copy of the Agreement, it must contact Ms. Alvarez at the address specified in the "Further Information" section of this notice within 30 days from the date of publication of this notice.

[1] For those drug manufacturers who are participating in the Medicaid Drug Rebate Program, calculation of the Medicaid unit rebate amount is based on the same formulas (per unit basic rebate amount and additional rebate amount for single source and innovator multiple source drugs or the per unit rebate amount for noninnovator multiple source or over-the-counter drugs) as used by Medicaid. Those drug manufacturers who are not participating in the Medicaid Drug Rebate Program should contact Ms. Marsha Alvarez at the address or telephone number listed in the "For Further Information Contact" section for information concerning rebate calculations. Sample calculations of a section 1927(c) rebate included in Enclosure C of the letter dated December 11, 1992, from the Administrator, Health Resources and Services Administration, should be disregarded.

(d) List of Eligible Covered Entities

A list of eligible covered entities has been mailed to each manufacturer along with the Agreement, and this list will be updated at least annually. Timely notification of additions to and deletions from the list of eligible covered entities will also be provided. A list of eligible subgrantees will be made available at a later date. The requirement for retroactive adjustments to December 1, 1992, will not apply to covered entities not included on the initial list.

(e) Drug Pricing Information Access

Those manufacturers that do not have a reporting requirement under section 1927(b)(3) of the Social Security Act for covered outpatient drugs must agree to submit, upon request, to the Department a list of all covered outpatient drugs purchased by covered entities, the average manufacturer prices (AMP), baseline AMP, Best Price calculations (if relevant), and information concerning the prices of the covered outpatient drugs distributed through a wholesaler. The manufacturer must further maintain all records relevant to the generation of these reports for a period of three years from the date of their creation. The Department will have reasonable access to the records of all participating manufacturers relevant to the manufacturer's compliance with the terms of the Agreement. Upon request, the Health Care Financing Administration (HCFA) will share AMP and (if relevant) Best Price information submitted under the Medicaid Rebate Agreement on covered drugs with the Secretary or her designee for the purposes of carrying out the agreement.

(The reporting and record-keeping requirements of this section are subject to the Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and will not be implemented until such clearance has been obtained.)

(f) Drug Utilization Information Access

A manufacturer will be permitted to audit the records of covered entities that directly pertain to a prohibition on the resale of drugs to persons not patients of the entity and a prohibition on possible duplicate discounts (i.e., Medicaid rebates, coupled with discounts allowable under the Act). This audit must be in accordance with procedures established by the Department relating to number, duration, and scope of audits and will be at the manufacturer's expense.

(g) Penalty Provisions

Pursuant to section 1927(a)(5)(A) of the Social Security Act, a manufacturer who does not sign, and keep in effect, an Agreement will not have met the requirements of section 1927(a)(5)(A).

If the Department finds, after notice and a hearing, that a manufacturer has failed to comply with the pricing requirement of section II(a) of this Agreement, has refused to submit drug pricing information requested by the Department, or has submitted false information, the Agreement will be terminated. As applicable, other penalties will be imposed.

VI. Covered Entities' Information

(a) Effective Date of Implementation

Covered outpatient drugs purchased on or after December 1, 1992, by a covered entity included on the initial list must be discounted pursuant to the formula in section 340B(a)(1) and (2) of the PHS Act. Agreements with manufacturers signed after December 1, 1992, will be effective retroactive to that date for covered entities included on the initial list; therefore, the manufacturer must calculate any price adjustments necessary and remit a rebate directly to the covered entity (or provide for a credit).

(b) Eligibility

The Department has provided a list of eligible entities to each manufacturer along with a copy of the Agreement and is notifying each covered entity of its eligibility to purchase drugs at the discounted prices. Each covered entity is encouraged to begin discussing the pricing provisions of section 340B of the PHS Act with manufacturers so that potential problems can be identified early and resolved.

(c) Drug Price Negotiation

Although the Department signs the Agreement with each manufacturer, the entity itself may continue to negotiate individual drug pricing agreements with each manufacturer. Nothing in the statute precludes group purchasing agreements or other arrangements not inconsistent with the Agreement, except for disproportionate share hospitals.

(d) Penalty Provisions

A covered entity is prohibited from reselling or otherwise transferring a covered drug to a person who is not the patient of the entity (section 340B(a)(5)(B) of the PHS Act). The statute provides further the drug purchases will not be subject to both the discount under section 340B and the Medicaid rebate under section 1927 of the Social Security Act (section 340B(a)(5)(A) of the PHS Act). The Secretary has decided to establish a mechanism within 120 days after the effective date of the Agreement to assure that covered entities comply with the prohibition on duplicate discounts and rebates. If the Secretary does not establish a mechanism within 120 days, the Secretary will apply the provisions of section 1927(a)(5)(C) of the Social Security Act.[2] If the Secretary finds, after notice and hearing, that a covered entity has violated either of these prohibitions, the covered entity shall be liable to the manufacturer of the covered drug that is the subject of the violation in an amount equal to the reduction in the price of the drug as described in section 340B of the PHS Act.

(e) Audit Provision

Each covered entity will be required to retain records of purchases of covered outpatient drugs under the Agreement and of any claims for reimbursement submitted for such drugs under title XIX of the Social Security Act. When a covered entity is making purchases through a wholesaler, it will be required to provide the manufacturer with information necessary to arrange for such purchases consistent with the terms of the Agreement.

A covered entity shall permit the Secretary and the manufacturer of a covered outpatient drug that is the subject of an Agreement to audit, at the Secretary's or manufacturer's expense, the records of the entity that directly pertain to the entity's compliance with the resale or duplicate discount prohibition.

VII. Confidentiality Provisions

Information disclosed by the manufacturer in connection with a request by the Department is confidential and, except as otherwise required, will not be disclosed by the Department in a form that reveals the manufacturer, or the prices charged by the manufacturer, except as necessary by the Department to carry out the provisions of the Act or to permit review by the Comptroller General.

The manufacturer shall hold audit information obtained from the covered entities confidential.

The Department shall require, under a reasonable schedule of implementation,

[2] Depending upon the type of mechanism developed, some covered entities may be required to refund a portion of the discount received from drug manufacturers prior to the establishment of the mechanism (e.g., discounts for covered outpatient drugs for which Medicaid reimbursement claims were submitted to State Medicaid agencies).

that covered entities not reveal confidential drug pricing information.

VIII. Nonrenewal and Termination Provisions

Unless otherwise terminated by either party, the Agreement will be effective for a period of one year and will be renewed automatically for additional successive terms of one year, unless the manufacturer gives written notice of intent not to renew. The manufacturer may terminate the Agreement for any reason, and the Secretary, after notice and hearing, may terminate the Agreement for good cause or a violation of the Agreement.

Dated: February 11, 1993.

Robert G. Harmon,

Administrator, Health Resources and Services Administration.

[FR Doc. 93-10816 Filed 5-6-93; 8:45 am]

BILLING CODE 4160-15-M

Notice Regarding Section 602 of the Veterans Health Care Act of 1992, Duplicate Discounts and Rebates on Drug Purchases

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102-585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

Section 340B(a)(5)(A) of the PHS Act provides that a drug purchase shall not be subject to both the discount under section 340B and a Medicaid rebate under section 1927 of the Social Security Act. The Department is directed to establish a mechanism to assure that covered entities comply with this prohibition. The purpose of this notice is to announce the mechanism that the Department is proposing and to invite public comment on the proposal.

DATES: The Health Resources and Services Administration is soliciting comments from the public on this proposed mechanism by June 7, 1993.

The Department will consider the comments and issue a final notice of the mechanism to be established. The Department presently intends that State Medicaid agencies will implement the procedures outlined below for outpatient drug claims paid by Medicaid beginning July 1, 1993, if PHS provides State Medicaid agencies with the Medicaid provider numbers for all covered entities by July 1, 1993.

With a July 1, 1993, effective date, all State Medicaid drug utilization data for the third calendar quarter due to manufacturers by November 30, 1993, would exclude rebates for discounted drugs sold to PHS covered entities. For claims paid by Medicaid prior to July 1, 1993, State agencies will bill manufacturers for rebates on all drugs paid by Medicaid.

ADDRESSES: Comments should be submitted to: Marsha Alvarez, R.Ph., Director, Drug Pricing Program, Bureau of Primary Health Care, Health Resources and Services Administration, Rm. 7A-55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Phone: (301) 443-0004

FOR FURTHER INFORMATION CONTACT: For further information please contact Marsha Alvarez, as cited above.

SUPPLEMENTARY INFORMATION:

Section 1927 of the Social Security Act provides that in order to receive payment under the Medicaid program for covered outpatient drugs, drug manufacturers must enter into and comply with rebate agreements with the Secretary on behalf of States or with States directly. Section 1927 was enacted by the Omnibus Budget Reconciliation Act of 1990 and was amended by section 601 of the Act. Section 602 of the Act creates a program under which drug manufacturers must provide discounts to "covered entities," which consist primarily of certain grantees of the Public Health Service and "disproportionate share" hospitals.

Section 340B(a)(5)(A) of the PHS Act reflects Congress' recognition that there is a potential for drugs purchased by a covered entity with a discount to be subject to a Medicaid rebate, if the drug is reimbursed by the Medicaid program. Accordingly, this section directs the Department to establish a mechanism to avoid the combination of the discount and the Medicaid rebate for the same drug purchases.

The Public Health Service has consulted with the Health Care Financing Administration (HCFA), which is responsible for the Federal administration of the Medicaid program, and proposes the following as the mechanism to comply with section 340B(a)(5)(A).

I. All-Inclusive Rates Per Encounter or Visit

Under "all-inclusive rates" (either per encounter or visit), drug purchases are not billed as separate cost items, and, therefore, there is no opportunity for a Medicaid rebate to be sought for the drugs, even if purchased with a section 340B discount. (See, for example, the reimbursement methodology for Federally Qualified Health Centers, sections 1861(aa) and 1905(l)(2) of the Social Security Act.) Accordingly, to the extent that covered entities develop all-inclusive rates, there is no possibility that the duplicate discount and rebate can occur.

II. Drug Purchases Not Reimbursed Under All-Inclusive Rate

For those drug purchases which are not reimbursed by Medicaid under all-inclusive rates, the Department proposes the following mechanism to avoid the duplicate discount and rebate. PHS has provided manufacturers a list of covered entities eligible for the discounts. (This list will be updated periodically.) PHS will provide the list to State Medicaid agencies with the Medicaid provider numbers for each covered entity in the respective State. The covered entities will provide these numbers to the PHS.

When a covered entity submits a bill to the State Medicaid agency for a drug purchase by or on behalf of a Medicaid beneficiary, the amount billed shall not exceed the entity's actual acquisition cost for the drug, as charged by the manufacturer at a price consistent with the Veterans Health Care Act of 1992, plus a dispensing fee established by the State Medicaid agency. This will assure that the discount to the covered entity will be passed on to the State Medicaid agency.

Based on the Medicaid provider number information furnished by PHS, the State Medicaid agency will create a separate provider file for claims from covered entities which are billing on a cost basis for drug purchases. The State Medicaid agency will exclude data from these provider files when generating the rebate bills to the manufacturers under the section 1927 program. Thus, the payment of duplicate discounts and rebates by the drug manufacturer will be prevented.

This mechanism is consistent with the Veterans Health Care Act and the limitations established in the Medicaid regulations, 42 CFR sections 447.331-447.334, which limit the amount the Medicaid State agency may reimburse providers. These regulations are designed to give States a certain amount

of flexibility in administering their drug payment programs, while encouraging prudent purchasing. A mechanism whereby the amount billed by covered entities for prescription drugs cannot exceed the actual acquisition cost plus a reasonable dispensing fee allows States to retain flexibility in their drug payment programs and to obtain the benefit of the cost savings established under the Act.

Dated: May 3, 1993.

Robert G. Harmon,

Administrator, Health Resources and Services Administration.

[FR Doc. 93-10817 Filed 5-6-93; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Center for Research Resources

AGENCY: National Center for Research Resources, NIH.

ACTION: Notice.

SUMMARY: The National Center for Research Resources (NCRR), NIH, is developing a strategic plan for critical research resources and technologies for biomedical and behavioral research supported by the NIH. As part of this effort, Dr. Judith L. Vaitukaitis, Director, NCRR, is requesting input from the broad scientific community to define the current state of research resources and technologies and to identify gaps and future needs.

DATES: Submit responses to Dr. Caroline Holloway (see below) on or before June 15, 1993.

FOR FURTHER INFORMATION CONTACT: Caroline Holloway, Ph.D., Director, Office of Science Policy, NCRR/NIH, 9000 Rockville Pike, Bldg. 12A, room 4047, Bethesda, MD 20892-1012, 301-496-2992, FAX 301-402-1775, E-Mail SPE@NIH.CU.GOV.

SUPPLEMENTARY INFORMATION: The NCRR's mission is to be a "catalyst for discovery" for NIH-supported investigators throughout the nation. To achieve advances that improve human health, these scientists require a broad range of technologies and other resources that enable research to thrive. Recognizing this need, the NCRR supports primary research to create and develop these critical technologies and resources, and provides them to researchers supported by other NIH components. The multidisciplinary nature of the NCRR's programs promotes collaborations within and across scientific disciplines, and provides quick, flexible approaches to new and emerging needs of both biomedical and behavioral investigators.

In its efforts to enhance the nation's research capacity, the NCRR addresses major research needs and issues including the following:

(1) Development of and access to cost-effective resources, sophisticated technologies, and state-of-the-art instrumentation, research facilities, devices, and materials that make possible major breakthroughs in basic and clinical research.

(2) Development of and access to well-defined experimental research models that include vertebrate and invertebrate animals, cellular systems, and nonanimal models such as mathematical models generated by high performance computers.

(3) Limits to the research capacity of the nation due to:

(a) The shortage of well-trained, independent clinical investigators;

(b) The underrepresentation of minority investigators and institutions in biomedical research, especially for research on diseases that disproportionately affect minority populations;

(c) The need for improvements in the public understanding of science and in the preparation of young students—especially minorities—to pursue careers in science; and

(d) The deterioration of research facilities and the demand for construction of new facilities to meet unusual or unique research needs.

In order to develop a strategic plan for critical resources and research technologies, the NCRR seeks answers to the following questions as they relate to the issues described above:

(A) Which research resources and technologies are most vital to your present research? How well do these meet your current needs?

(B) What are the most important basic and clinical research trends that will drive NCRR's future research portfolio? Which research technologies and resources will be critical? Why?

(C) Who would you recommend (including yourself) to serve as a panel member for NCRR's strategic planning process? Please list name, address, phone number, and specific area of expertise.

All interested parties are encouraged to respond. For comments prepared in writing, please limit the answers for each question to one single-spaced typed page. For questions A and B, use the following format:

- *Name, Affiliation, and Question Letter* (top of each page)
- *Abstract* (2-3 sentences)
- *Statement of the Issue*
- *Recommendations*
- *Rationale for Assigning High Priority*

Please send two copies of your response to Dr. Holloway (see address above). Pertinent information that supports your responses may be included as an appendix.

Dated: April 29, 1993.

Bernadine Healy,

Director, NIH.

[FR Doc. 93-10830 Filed 5-6-93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired, (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National*

Coalition for the Homeless v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; HHS: Judy Breitman, Chief, Real Property Branch, Dept. of HHS, Div. of Health Facilities Planning, Rm. 17A10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265; (These are not toll-free numbers).

Dated: April 30, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 05/07/93

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 9303, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219310300
Status: Unutilized
Comment: 1250 sq. ft., 1-story wood structure, needs rehab, most recent use—storage, off-site use only.

Arizona

Bldg. 70216, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310287
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70215, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310288
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70214, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310289
Status: Excess
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70212, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310290
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70220, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310291
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70218, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310292
Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 70217, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310293
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 80010, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310294
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.

Bldg. 31211, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310295
Status: Excess
Comment: 4459 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—admin.

Bldg. 84103, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310296
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.

Bldg. 67101, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310297
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom.

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.

Bldg. 90328, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635-
Landholding Agency: Army
Property Number: 219310299
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage.

Colorado

Bldg. T-803, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310269
Status: Excess
Comment: 1750 sq. ft., 1-story wood, possible asbestos, needs rehab, most recent use—admin., off-site use only.

Bldg. T-1641, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310270
Status: Excess
Comment: 3663 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T-1818, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310271
Status: Excess
Comment: 5310 sq. ft., 2-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T-2241, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310272
Status: Excess
Comment: 4070 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. T-2245, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310273
Status: Excess
Comment: 2508 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. T-2340, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310274
Status: Excess
Comment: 3663 sq. ft. 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2341, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310275
Status: Excess
Comment: 1750 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2342, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310276
Status: Excess
Comment: 2400 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2345, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310277
Status: Excess
Comment: 8044 sq. ft., 2-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T-2440, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310278
Status: Excess
Comment: 1750 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T-2441, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310279
Status: Excess
Comment: 1150 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T-2442, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310280
Status: Excess
Comment: 3404 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T-848, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310281
Status: Excess
Comment: 5419 sq. ft. 1-story wood, possible asbestos, needs repair, most recent use—classrooms, off-site use only.

Bldg. T-1444, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310283
Status: Excess
Comment: 3302 sq. ft., 1-story wood, possible asbestos, most recent use—chapel, off-site use only.

Bldg. T-3549, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310284
Status: Excess
Comment: 3030 sq. ft., 1-story wood, possible asbestos, excellent condition, most recent use—chapel, off-site use only.

Bldg. S-6233, Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219310286
Status: Excess
Comment: 24800 sq. ft., 2-story concrete block, possible asbestos, needs repair, most recent use—storage, off-site use only.

Georgia

Bldg. 517, Fort Gillem
Forest Park Co: Clayton GA 30051-
Landholding Agency: Army
Property Number: 219310314
Status: Underutilized
Comment: 455 sq. ft., 1-story concrete frame, needs rehab, most recent use—dispatch office, off-site use only.

Bldg. 611, Fort Gillem
Forest Park Co: Clayton GA 30051-
Landholding Agency: Army
Property Number: 219310315
Status: Underutilized
Comment: 3200 sq. ft., 1-story concrete/metal frame, needs rehab, most recent use—motor repair shop, off-site use only.

Bldg. 629, Fort Gillem
Forest Park Co: Clayton GA 30051-
Landholding Agency: Army
Property Number: 219310316
Status: Underutilized
Comment: 60 sq. ft., 1-story concrete frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4114, Fort Benning
Ft. Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219310407
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4117, Fort Benning
Ft. Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219310408
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4118, Fort Benning
Ft. Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219310410
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4125, Fort Benning
Ft. Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219310410
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4126, Fort Benning
Ft. Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219310411
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4129, Fort Benning
Ft. Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219310412
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4130, Fort Benning
Ft. Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219310413
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4137, Fort Benning
Ft. Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219310414
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4138, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310415
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4140, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310416
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4002, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310417
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4004, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310418
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4008, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310419
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4009, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310420
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4010, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310421
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4012, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310422
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4015, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310423
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4020, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310424
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4106, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310425
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4115, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310426
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4116, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310427
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4127, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310428
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4128, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310429
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4139, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310430
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4149, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310431
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4150, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number 219310432
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4030, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310433
Status: Unutilized
Comment: 7688 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4029, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310434
Status: Unutilized
Comment: 7688 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4017, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310435
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4112, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310436
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4119, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310437
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4124, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310438
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4141, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310439
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4136, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310440
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4131, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310441
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4108, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310442
Status: Unutilized

Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 1835, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310443
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4013, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310444
Status: Unutilized
Comment: 1884 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4007, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310445
Status: Unutilized
Comment: 1884 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4107, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310446
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 3072, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310447
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4001, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310448
Status: Unutilized
Comment: 1635 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4103, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310449
Status: Unutilized
Comment: 1635 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 3004, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310450
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4019, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310451
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4018, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310452
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 3003, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310453
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 3002, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310454
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4109, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310455
Status: Unutilized
Comment: 2253 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4014, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310456
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4006, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310457
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4135, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310458
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4123, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310459
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4111, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310460
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4040, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310463
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 4026, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310464
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 4067, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 4025, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310466
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 4110, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310467
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4122, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310468
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4134, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310469
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4021, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310470
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 2501, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310471
Status: Unutilized
Comment: 4073 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4060, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310472
Status: Unutilized
Comment: 16900 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4113, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310473
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—storage off-site use only.

Bldg. 10439, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310474
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10304, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310475
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10847, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310476
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10768, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310477
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2683, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310478
Status: Unutilized Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2504, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310479
Status: Unutilized Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only.

Bldg. 4035, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310480
Status: Unutilized Comment: 3375 sq. ft., 1-story, needs rehab, most recent use—recreation, off-site use only.

Bldg. 4027, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310480
Status: Unutilized Comment: 3750 sq. ft., 1-story, needs rehab, most recent use—recreation, off-site use only.

Bldg. 4066, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310482
Status: Unutilized Comment: 4388 sq. ft., 1-story, needs rehab, most recent use—recreation, off-site use only.

Bldg. 2422, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310484
Status: Unutilized Comment: 3328 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only.

Bldg. 4205, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310485
Status: Unutilized Comment: 3378 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only.

Bldg. 4031, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310486
Status: Unutilized Comment: 2381 sq. ft., 1-story, needs rehab, most recent use—exchange branch, off-site use only.

Bldg. 4121, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310487
Status: Unutilized Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.

Bldg. 4133, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310488
Status: Unutilized Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.

Bldg. 4143, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310489
Status: Unutilized Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.

Bldg. 4105, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310490
Status: Unutilized Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.

Bldg. 4005, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310491
Status: Unutilized Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.

Kansas

Bldg. T–2502, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310244
Status: Unutilized Comment: 3195 sq. ft., 1-story, wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2520, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310245
Status: Unutilized Comment: 3059 sq. ft., 1-story, frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2532, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310246
Status: Unutilized
Comment: 1327 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2535, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310247
Status: Unutilized
Comment: 3843 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2538, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310248
Status: Unutilized
Comment: 1327 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2539, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310249
Status: Unutilized
Comment: 1327 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2540, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310250
Status: Unutilized
Comment: 3186 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2549, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310251
Status: Unutilized
Comment: 3082 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2521, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310252
Status: Unutilized
Comment: 4826 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T–2522, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army

Property Number: 219310253
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2523, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310254
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2524, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310255
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2525, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310256
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2526, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310257
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2527, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310258
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2528, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310259
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2533, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310260
Status: Unutilized
Comment: 1327 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—admin.

Bldg. T-2541, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310261
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2542, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310262
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2543, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310263
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2544, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310264
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2545, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310265
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2546, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310266
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2547, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310267
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T-2548, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219310268
Status: Unutilized
Comment: 4826 sq. ft., 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Maryland

Bldg. 584
Fort George G. Meade
Chamberlain Ave.
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219310241
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame, needs rehab, most recent use—child support center.

Bldg. 594
Fort George G. Meade
9th Street
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219310242
Status: Unutilized
Comment: 1828 sq. ft., 1-story wood frame, needs rehab, most recent use—admin/child support.

Bldg. 2833
Fort George G. Meade
Earnie Pyle Street
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219310243
Status: Unutilized
Comment: 7670 sq. ft., 2-story wood frame, needs rehab, most recent use—administrative.

North Carolina

Dwelling 1
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923-
Landholding Agency: DOT
Property Number: 879120083
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Dwelling 2
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923-
Landholding Agency: DOT
Property Number: 879120084
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Dwelling 3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923-
Landholding Agency: DOT
Property Number: 879120085
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Oklahoma

Bldg. P-653, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219310303
Status: Unutilized
Comment: 3680 sq. ft., 1-story wood frame, needs rehab, most recent use—garage, off-site use only.

Bldg. T-3633, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219310304
Status: Unutilized
Comment: 5324 sq. ft., 2-story wood frame, needs rehab, most recent use—barracks, off-site use only.

Bldg. T-3635, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219310305
Status: Unutilized
Comment: 5324 sq. ft., 2-story wood frame, needs rehab, most recent use—barracks, off-site use only.

Bldg. T-3636, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219310306
Status: Unutilized
Comment: 5324 sq. ft., 2-story wood frame, needs rehab, most recent use—barracks, off-site use only.

Bldg. T-3649, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219310307

Status: Unutilized
Comment: 5324 sq. ft., 2-story wood frame, needs rehab, most recent use—barracks, off-site use only.

Bldg. T-3650, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219310308
Status: Unutilized
Comment: 5324 sq. ft., 2-story wood frame, needs rehab, most recent use—barracks, off-site use only.

Bldg. T-3652, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219310309
Status: Unutilized
Comment: 5324 sq. ft., 2-story wood frame, needs rehab, most recent use—barracks, off-site use only.

Bldg. T-3653, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219310310
Status: Unutilized
Comment: 5324 sq. ft., 2-story wood frame, needs rehab, most recent use—barracks, off-site use only.

South Carolina

Bldg. M2625, Fort Jackson
Ft. Jackson Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219310311
Status: Unutilized
Comment: 826 sq. ft., 1-story wood frame, needs rehab, most recent use—rental lodge, off-site use only.

Bldg. M2626, Fort Jackson
Ft. Jackson Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219310312
Status: Unutilized
Comment: 826 sq. ft., 1-story wood frame, needs rehab, most recent use—rental lodge, off-site use only.

Bldg. M2627, Fort Jackson
Ft. Jackson Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219310313
Status: Unutilized
Comment: 826 sq. ft., 1-story wood frame, needs rehab, most recent use—rental lodge, off-site use only.

Texas

Bldg. 56301, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310355
Status: Unutilized
Comment: 6768 sq. ft., 1-story wood frame, needs rehab, most recent use—hdqts. bldg., off-site use only.

Bldg. 56304, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310356
Status: Unutilized
Comment: 5760 sq. ft., 1-story wood frame, needs rehab, most recent use—admin. bldg., off-site use only.

Bldg. 56314, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310357
Status: Unutilized
Comment: 2295 sq. ft., 1-story wood frame, needs rehab, most recent use—admin. bldg., off-site use only.

Bldg. 56502, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310358
Status: Unutilized
Comment: 4396 sq. ft., 1-story wood frame, needs rehab, most recent use—clinic, off-site use only.

Bldg. 56807, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310359
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56806, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310360
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56803, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310361
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56801, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310362
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56826, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310363
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56823, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310364
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56821, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310365
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56811, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310366
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56841, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310367
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56831, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310368
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56827, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310369
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56846, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310370
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56843, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310371
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56851, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310372
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 56847, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219310373
Status: Unutilized
Comment: 450 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4569, Fort Bliss
El Paso Co: El Paso TX 79916-
Landholding Agency: Army
Property Number: 219310374
Status: Unutilized
Comment: 2154 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4576, Fort Bliss
El Paso Co: El Paso TX 79916-
Landholding Agency: Army
Property Number: 219310375
Status: Unutilized
Comment: 1803 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. 4580, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310376
Status: Unutilized
Comment: 2859 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4622, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310377
Status: Unutilized
Comment: 1832 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 5349, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310378
Status: Unutilized
Comment: 916 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5353, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310379
Status: Unutilized
Comment: 914 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5354, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310380
Status: Unutilized
Comment: 1070 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5416, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310381
Status: Unutilized
Comment: 129 sq. ft., 1-story metal frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 5418, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310382
Status: Unutilized
Comment: 1904 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg, off-site use only.

Bldg. 4625, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310383
Status: Unutilized
Comment: 1644 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4637, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310384
Status: Unutilized
Comment: 1830 sq. ft., 1-story wood frame, needs rehab, most recent use—admin./storage, off-site use only.

Bldg. 4658, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310385
Status: Unutilized
Comment: 949 sq. ft., 1-story wood frame, needs rehab, most recent use—store, off-site use only.

Bldg. 4660, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310386
Status: Unutilized
Comment: 972 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4661, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310387
Status: Unutilized
Comment: 963 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4675, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310388
Status: Unutilized
Comment: 2200 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. 4690, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310389
Status: Unutilized
Comment: 1104 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4775, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310390
Status: Unutilized
Comment: 2202 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 703, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310391
Status: Unutilized
Comment: 5330 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 1033, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310392
Status: Unutilized
Comment: 1713 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 1034, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310393
Status: Unutilized
Comment: 2054 sq. ft., 1-story wood frame, needs rehab, most recent use—education facility, off-site use only.

Bldg. 7180, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310394
Status: Unutilized
Comment: 645 sq. ft., 1-story, needs rehab, most recent use—auto garage, off-site use only.

Bldg. 7193, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310395
Status: Unutilized
Comment: 645 sq. ft., 1-story, needs rehab, most recent use—auto garage, off-site use only.

Bldg. 7183, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310396
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, candidate for Nat. Reg. of Historic Places, off-site use only.

Bldg. 7184, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310397
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only.

Bldg. 7185, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310398
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only.

Bldg. 7186, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310399
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only.

Bldg. 7187, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310400
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only.

Bldg. 7188, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310401
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only.

Bldg. 7189, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310402
Status: Unutilized
Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only.

Bldg. 7190, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310403
Status: Unutilized

Comment: 798 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only.

Bldg. T7191, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310404
Status: Unutilized
Comment: 798 sq. ft., 1-story needs rehab, most recent use—family housing, off-site use only.

Bldg. T7192, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310405
Status: Unutilized
Comment: 798 sq. ft., 1-story needs rehab, most recent use—family housing, off-site use only.

Bldg. 7194, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219310406
Status: Unutilized
Comment: 1593 sq. ft., 1-story needs rehab, most recent use—family housing, off-site use only.

Virginia

Bldg. T–229, Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219310301
Status: Underutilized
Comment: 4364 sq. ft., 1-story wood frame, needs rehab, most recent use—storage off-site use only.

Bldg. T–1069, Fort Monroe
Ft. Story Co: Princess Ann VA 23459–5000
Landholding Agency: Army
Property Number: 219310302
Status: Unutilized
Comment: 2095 sq. ft., 1-story wood frame, needs rehab, most recent use—storage off-site use only.

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence.

Suitable/Unavailable Properties

Buildings (by State)

Colorado

Bldg. T–641, Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219310282
Status: Excess
Comment: 3030 sq. ft., 1-story wood, possible asbestos, need repair, most recent use—scout bldg., off-site use only.

Bldg. T–6016, Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219310285
Status: Excess
Comment: 2988 sq. ft., 1-story wood, possible asbestos, most recent use—family center, off-site use only.

Georgia

Bldg. 2500, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310483
Status: Unutilized
Comment: 50390 sq. ft., 1-story, need rehab, most recent use—laundry facility, off-site use only.

Guam

Bldg. 99, Loran Station—C
Barrigada GU 96913–
Landholding Agency: DOT
Property Number: 879220002
Status: Excess
Comment: 3960 sq. ft. concrete block transmitting station with tower.

Maine

Mount Desert Rock Light
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Landholding Agency: DOT
Property Number: 879240023
Status: Unutilized
Comment: 1600 sq. ft., 2-story wood frame dwelling, needs rehab, limited utilities, limited access, property is subject to severe storms.

Little River Light
U.S. Coast Guard
Cutler Co: Washington, ME
Landholding Agency: DOT
Property Number: 879240026
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, well is contaminated, limited utilities.

Burnt Island Light
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Landholding Agency: DOT
Property Number: 879240027
Status: Unutilized
Comment: 750 sq. ft., 2-story wood frame dwelling.

Massachusetts

Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240024
Status: Unutilized
Comment: 1000 sq. ft., 2-story brick dwelling, large wave action with severe ocean storms.

Assistant Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240025
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, large wave action with severe ocean storms.

Texas

Brownsville Urban System
(Grantee)
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520–
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3500 sq. ft., 1-story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks.

Virginia

Bldg. T3004, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310317
Status: Unutilized
Comment: 2350 sq. ft., 1-story wood frame, needs repair, most recent use—clinic.

Bldg. T3022, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310318
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3023, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310319
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3024, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310320
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3026, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310321
Status: Unutilized
Comment: 3550 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3025, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310322
Status: Unutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3040, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310323
Status: Unutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3041, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310324
Status: Unutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3049, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310325
Status: Unutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3050, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army

Property Number: 219310326
Status: Unutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3029, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310327
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3030, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310328
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3037, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310329
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3038, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310330
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3039, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310331
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3042, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310332
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3043, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310333
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3044, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310334
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3045, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310335
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3046, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310336
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3047, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310337
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3048, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310338
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3051, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310339
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3052, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310340
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3053, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310341
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3054, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310342
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3027, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310343
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3028, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310344
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3031, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310345
Status: Unutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3032, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310346
Status: Unutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3033, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310347
Status: Unutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3034, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310348
Status: Unutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3035, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310349
Status: Unutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3036, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310350
Status: Unutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3057, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310351
Status: Unutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3055, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310352
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. TT3001, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310353
Status: Unutilized
Comment: 3302 sq. ft., 1-story wood frame, most recent use—chapel.

Bldg. TA3002, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310354
Status: Unutilized
Comment: 360 sq. ft., 1-story wood frame, most recent use—clinic.

Land (by State)

California

Remote Transmitter
Section 35
Red Bluff Co: Tehema CA 96080–
Landholding Agency: DOT
Property Number: 879010010
Status: Unutilized
Comment: 4 acres, paved road, current use—storage.

Florida

Parcel A & B
U.S. Coast Guard Light Station

Lots 1, 8 & 11, Section 31
Jupiter Inlet Co: Palm Beach FL 33420—
Location: Township 40 south, range 43 east.
Landholding Agency: DOT
Property Number: 879010009
Status: Unutilized
Comment: 56.61 acres, area is uncleared, vegetation growth is heavy, no utilities.

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 879310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only.

South Carolina

Bldg. #1 U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120096
Status: Unutilized
Comment: 2340 sq. ft., 1 story concrete block, most recent use—communications station.

Bldg. #2 U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120097
Status: Unutilized
Comment: 2050 sq. ft., 1 story concrete block, most recent use—communications station.

Land (by State)

Michigan

U.S. Coast Guard—Air Station
Traverse City Co: Grand Traverse MI 49684–
Landholding Agency: DOT
Property Number: 879120099
Status: Unutilized
Comment: 21.7 acres, most recent use—helo landings.

New Mexico

Land, LPN Service Bldg.
1015 Indiana School Road
Albuquerque Co: Bernalillo NM 87102–
Landholding Agency: HHS
Property Number: 579220001
Status: Unutilized
Comment: 0.2732 acres, underground lawn sprinker, most recent use—maintenance yard, secured w/chain link fence.

South Carolina

Land—U.S. Coast Guard
Folly Island Loran Station
Folly Island Co: Charleston SC 29401–
Landholding Agency: DOT
Property Number: 879120098
Status: Unutilized
Comment: 55 acres (88 acres submerged) tidal marshland, potential utilities.

Unsuitable Properties

Buildings (by State)

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120001
Status: Excess
Reason: Floodway.

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120002
Status: Excess
Reason: Floodway.

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120003
Status: Excess
Reason: Floodway.

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120004
Status: Excess
Reason: Floodway.

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120005
Status: Excess
Reason: Floodway.

Alaska

Bldg. 28
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210126
Status: Excess
Reason: Within airport runway clear zone, secured area.

Bldg. 24
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210127
Status: Excess
Reason: Within airport runway clear zone, secured area, within 2000 Ft. of flammable or explosive material.

Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210128
Status: Excess
Reason: Within airport runway clear zone, secured area, other.
Comment: Extensive deterioration.

Bldg. 94
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210129
Status: Excess
Reason: Secured area, other.
Comment: Extensive deterioration.

Bldg. 85
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210130
Status: Excess
Reason: Secured area, other.
Comment: Extensive deterioration.

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210132
Status: Excess
Reason: Secured area, within airport runway clear zone.
GSA Number: U–ALAS–655A.

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210133
Status: Excess
Reason: Secured area, within airport runway clear zone, within 2,000 Ft. of flammable or explosive material.

Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310014
Status: Unutilized
Reason: Secured area.

Bldg. S–3
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310015
Status: Unutilized
Reason: Secured area.

Bldg. S–16
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310016
Status: Unutilized
Reason: Secured area.

Bldg. 82
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310017
Status: Unutilized
Reason: Secured area.

Bldg. 86
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310018
Status: Unutilized
Reason: Secured area.

Bldg. 98
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310019
Status: Unutilized
Reason: Secured area.

Bldg. 524A
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310020
Status: Unutilized

Reason: Within airport runway clear zone, secured area.

Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310021
Status: Unutilized
Reason: Within airport runway clear zone, secured area.

California

Bldg. 10, USCG Support Center
Coast Guard Island
Alameda Co: Alameda CA 94501–5100
Landholding Agency: DOT
Property Number: 879210134
Status: Excess
Reason: Secured area.

Colorado

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Reason: Other environmental.
Comment: contamination.

Connecticut

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 879240031
Status: Unutilized
Reason: Floodway.

Florida

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 879210008
Status: Unutilized
Reason: Secured area, floodway.

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879230001
Status: Unutilized
Reason: Floodway, secured area.

LORAN "A" Station
Radio Beacon Hobe Sound
Jupiter Island Co: Martin FL
Landholding Agency: DOT
Property Number: 879230003
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Fuel Facility, Coast Guard
Miami Air Station, OPA Locka Airport
OPA Locka Co: Dade FL 33054–2397
Landholding Agency: DOT
Property Number: 879240004
Status: Unutilized
Reason: Secured area

Pyro & Paint Locker Bldgs.
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879240017
Status: Unutilized
Reason: Floodway, secured area

Hawaii

Bathhouse—Wailupe Quarters
U.S. Coast Guard
Honolulu Co: Honolulu HI 96821–
Landholding Agency: DOT
Property Number: 879240033
Status: Unutilized
Reason: Other, secured area
Comment: Extensive deterioration.

Maint. Shop—Wailupe Quarters
U.S. Coast Guard
Honolulu Co: Honolulu HI 96821–
Landholding Agency: DOT
Property Number: 879240034
Status: Unutilized
Reason: Other, secured area
Comment: Extensive deterioration.

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 879310005
Status: Excess
Reason: Secured area

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240005
Status: Unutilized
Reason: Floodway.

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240006
Status: Unutilized
Reason: Floodway.

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240007
Status: Unutilized
Reason: Floodway.

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240008
Status: Unutilized
Reason: Floodway.

Herron Neck Light
U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240028
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Burnt Coast Harbor Light
U.S. Coast Guard
Swans Island Co: Hancock ME 04685–
Landholding Agency: DOT
Property Number: 879240030
Status: Unutilized
Reason: Floodway.

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 879240032
Status: Unutilized
Reason: Floodway.

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240035
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Massachusetts

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 879240001
Status: Underutilized
Reason: Secured Area.

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 879240029
Status: Unutilized
Reason: Floodway, secured area.

Michigan

Bldg. 402, U.S. Air Station
Traverse City Co: Grand Traverse MI 49684–3586
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 2, Sardet Holland
Coast Guard
2388 Ottawa Beach Rd. SW
Holland Co: Ottawa MI 49424–
Landholding Agency: DOT
Property Number: 879240002
Status: Unutilized
Reason: Secured area.

Bldg. 1, Sardet Holland
Coast Guard
2388 Ottawa Beach Rd., SW
Ottawa MI 49424–
Landholding Agency: DOT
Property Number: 879240003
Status: Unutilized
Reason: Secured Area.

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 879240009
Status: Unutilized
Reason: Other, secured area
Comment: Extensive deterioration.

New York

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 879230005
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 605, USCG Station

Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240010
Status: Excess
Reason: Secured area.

Bldg. 606, USCG Station
Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240011
Status: Excess
Reason: Secured area.

Bldg. 607, USCG Station
Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240012
Status: Excess
Reason: Secured area.

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240020
Status: Unutilized
Reason: Secured area.

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240021
Status: Unutilized
Reason: Secured area, Other
Comment: Extensive deterioration.

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 879240022
Status: Unutilized
Reason: Secured area, Other
Comment: Extensive deterioration.

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 879310003
Status: Unutilized
Reason: Other secured area
Comment: Extensive deterioration.

North Carolina

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240018
Status: Unutilized
Reason: Secured area.

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240019
Status: Unutilized
Reason: Secured area.

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879310011
Status: Unutilized
Reason: Secured area.

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 879310002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Texas

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 879310012
Status: Unutilized
Reason: Secured area.

Paint Locker/Flammable Storage
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 879310013
Status: Unutilized
Reason: Secured area.

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway.

Virginia

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York, VA 23690–
Landholding Agency: DOT
Property Number: 879230004
Status: Excess
Reason: Secured area.

Damage Control Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240013
Status: Unutilized
Reason: Secured area.

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240014
Status: Unutilized
Reason: Secured area.

Storage Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240015
Status: Unutilized
Reason: Secured area.

Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 879310004
Status: Unutilized
Reason: Secured area.

Land (by State)

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone.

[FR Doc. 93–10660 Filed 5–6–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plans for the Sand Skink, Blue-Tailed Mole Skink, and the Lower Keys Marsh Rabbit for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of two draft recovery plans: the Sand Skink (*Neoseps reynoldsi*) and Blue-tailed Mole Skink (*Eumeces egregius lividus*) Recovery Plan and the Lower Keys marsh rabbit (*Sylvilagus palustris hefneri*) Recovery Plan. All three species are found only in Florida. The sand skink and blue-tailed mole skink are restricted to central Florida ridge scrub and associated habitats in Highlands, Polk, Lake, Marion, Osceola, and Orange counties. The Lower Keys marsh rabbit inhabits a few major keys (Boca Chica Key, Saddlebunch/Sugarloaf Key, and Big Pine Key) and small nearby islands in the Florida Keys. The Service solicits review and comment from the public on these draft plans.

DATES: Comments on the draft recovery plans must be received on or before July 6, 1993.

ADDRESSES: Persons wishing to review the draft recovery plans may obtain a copy by contacting the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 South Point Dr., South, Suite 130, Jacksonville, Florida 32216 (Telephone: 904–232–2580) or Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia, 30303 (Telephone: 404–331–6343). Written comments and materials regarding the plans should be addressed to David J. Wesley, Florida Field Supervisor, at the above Jacksonville, Florida address. Comments and materials received are available upon request for public inspection, by appointment, and during normal business hours at the above Jacksonville, Florida address.

FOR FURTHER INFORMATION CONTACT: Linda Finger at the Jacksonville,

Florida, address (Telephone: 904–232–2580).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery Plans describe actions necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The sand skink and blue-tailed mole skink are federally listed as threatened. Modification and destruction of central Florida upland habitats are the major threats to these species' survival. By some estimates as much as 90% of the Florida scrub ecosystem is already lost to residential development and conversion to agriculture (primarily citrus groves). Remaining scrub on private lands is especially vulnerable to destruction.

The sand skink is restricted to Marion, Orange, Osceola, Lake, Polk and Highlands Counties. The blue-tailed mole skink is known only from Polk, Highlands and Osceola Counties. Typical upland habitat for the sand skink and the blue-tailed mole skink consists of sand pine-rosemary scrub or longleaf-pine-turkey oak vegetation. An important factor in the distribution of both species is soil moisture as it relates to thermoregulation, egg incubation, and availability of prey. Although blue-tailed mole skinks and sand skinks can occur on the same site, the two species occupy slightly different microhabitats. Sand skinks eat mostly fossorial invertebrates and blue-tailed mole skinks eat mostly surface dwelling invertebrates. Protection of the two skinks from further habitat loss and degradation is the most important means of ensuring their continued existence. Comprehensive land acquisition initiatives that would protect areas occupied by the skinks are some of the management measures outlined in the recovery plan. It is not certain whether existing protected areas are adequate for their survival because many life history and population characteristics relevant to long-term survival are unknown.

The Lower Keys marsh rabbit is federally listed as endangered. This subspecies inhabits the buttonwood transition zone in the Lower Keys of Florida. Habitat destruction is the primary threat to the rabbit's survival, however, habitat degradation and human influenced mortality are also important. Current population estimates fluctuate between 150 and 400 rabbits on three keys and the small islands off these keys. Half of the existing marsh rabbit habitat is privately owned and unmanaged, the other half is federally owned. Ongoing protection of existing populations, and implementation of a reintroduction study are some of the management actions outlined in the recovery plan.

Public Comments Solicited

The Service solicits written comments on the two recovery plans described. All comments received by the date specified will be considered prior to the approval of the plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

David J. Wesley,

Field Supervisor.

[FR Doc. 93–10749 Filed 5–6–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[ID–030–00–4320–12]

Idaho Falls District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Idaho Falls District Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Thursday, June 17, 1993. Notice of this meeting is in accordance with Public Law 92–463. The meeting will begin at 9 a.m. at the Pocatello Resource Area Office located at suite 172, Federal Building, 250 South 4th Avenue, Pocatello, Idaho 83101. The meeting will be field tour of public lands near Bancroft in Bannock County.

The agenda for this meeting includes an Examination of the King Creek and North Canyon allotments. The board will discuss how Coordinated Resource Management Plans among Federal agencies and private land owners work to enhance the resource.

The meeting is open to the public, however interested persons must provide their own transportation for the field tour. Anyone wishing to bring an item to the attention of the Board should mail written material to be received at the address shown above prior to 4:30 pm, June 1, 1993.

Detailed minutes of the meeting will be maintained in the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401 and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday) within 30 days following the meeting.

Dated: April 29, 1993.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 93–10750 Filed 5–6–93; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–921–03–5440–10–ZAFA; AZA 23560]

Arizona, Conveyance of Mineral Interests Application; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correct legal description.

SUMMARY: On August 8, 1991, a notice of filing of conveyance of mineral interests applications was published in 56 FR 37717–8. On page 37718, under T. 8 S., R. 14 E., sec. 14 should be corrected to sec. 18, lot 1, NE¼, NE¼NW¼. This land is segregated from the public land laws, including the mining and mineral leasing laws until August 7, 1993 (one year from publication in 56 FR 37717–8).

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 650–0518.

Dated: April 28, 1993.

Evelyn Stob,

Acting Chief, Branch of Lands Operations.

[FR Doc. 93–10752 Filed 5–6–93; 8:45 am]

BILLING CODE 4310–32–M

[CA-942-5700-10]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, room E-2845, Sacramento, CA 95825, 916-978-4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Humboldt Meridian, California

T. 10 N., R. 8 E.—Dependent resurvey, metes-and-bounds survey, (Group 1107) accepted January 26, 1993, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

Mount Diablo Meridian, California

T. 15 N., R. 8 W. and T 16 N., R. 8 W.—Dependent resurvey and corrective dependent resurvey, (Group 1150) accepted January 5, 1993, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

T. 44 N., R. 6 E.—Supplemental plat of the NW ¼ section 19, accepted January 6, 1993, to meet certain administrative needs of the BLM, Susanville District, Alturas Resource Area.

T. 16 N., R. 10 W.—Dependent resurvey, (Group 1075) accepted January 19, 1993, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

T. 8 N., R. 8 E.—Supplemental plat of the NE ¼ section 14, accepted February 10, 1993, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 15 N., R. 9 W.—Dependent resurvey and subdivision of sections 1, 12, and 13, (Group 1084) accepted February 22, 1993, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

T. 16 N., R. 16 E.—Dependent resurvey, and metes-and-bounds survey of Tract 37, (Group 1114) accepted March 3, 1993, to meet certain administrative needs of the U.S. Forest Service, Tahoe National Forest.

Tps. 15 & 16 N., R. 16 E.—Dependent resurvey, and metes-and-bounds survey of Tract 41, (Group 1114) accepted March 3, 1993, to meet certain administrative needs of the U.S. Forest Service, Tahoe National Forest.

T. 16 N., R. 18 E.—Retracement, dependent resurvey, and subdivision, (California Group 1017 and Nevada Group 658) accepted March 9, 1993, to meet certain administrative needs of the U.S. Forest Service, Lake Tahoe Basin Management Unit.

San Bernardino Meridian, California

T. 8 N., R. 2 W.—Supplemental plat of sections 7, 8, and 18, accepted March 11, 1993, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: April 29, 1993.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 93-10751 Filed 5-6-93; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

Completion of Inventory of Native American Human Remains and Associated Funerary Objects From Washington County, RI, in the Possession of the Peabody Museum of Archaeology and Ethnology

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum from one site in Washington County, Rhode Island. Representatives of culturally affiliated Indian tribes are advised that these human remains and associated funerary objects will be retained by the Peabody Museum until June 7, 1993 after which they may be repatriated to lineal descendant or the culturally affiliated group.

The detailed inventory and assessment of human remains and associated funerary objects from this one Washington County site has been made by the Collections Managers and Curatorial Associates at the Peabody Museum in consultation with representatives of the Narragansett Tribe of Rhode Island.

The collection was retrieved from two graves on the Ninigret Burial Hill, also called the Indian Burial Hill in Charlestown, Rhode Island. Between 1857 and 1861 persons unknown dug up the northernmost grave, and around 1863 Usher Parsons, M.D., dug into the adjacent grave. Some human remains and associated funerary objects resulting from these activities eventually found their way into the collections of Brown University, and from there in 1923 to the Peabody Museum, Harvard, when Brown decessed its collections.

From the first grave came an adult female human cranium (PM 236-10/60374/471), a silver chain in two pieces, 2 fragments of brass soles and one leather sole, fragments of kettle bales, the remnant of a knife, 2 circle pins, one oval shaped metal ring, a fragment of glass, a hollow glass stem containing liquid, a silver or pewter vessel with handles and a link chain, and a corroded brass container (PM 23-6-10/94193-94200). From the second grave came an adult male human femur (PM 23-6-10/60375). There are no associated funerary objects with the femur.

The artefacts at the Peabody and other artefacts reported by Usher Parsons give a date for the northernmost burial as around 1660. This evidence when taken in conjunction with the name of the burial plot, historical and other local information reported by Usher and others is strong evidence that the individuals represented are Ninigret I, Sachem of the Iliantics, and an unmarried daughter.

In the years since the burials were made, the Niantics have merged with the Narragansett. There are believed to be descendants of Ninigret resident in the area today.

This notice has been sent to officials of the Narragansett tribe. Representatives of any other Indian group which believes itself to be descended from the individuals described above should get in touch with David Pilbeam, Peabody Museum, 11 Divinity Avenue, Cambridge, MA 02138, telephone: (617) 495-2248.

Dated: April 21, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93-10848 Filed 5-6-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: May 4, 1993.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) and (2) Flav-O-Rich, Inc., 10140 Linn Station Road, Louisville KY 40223
(3) Records are maintained in Atlanta, GA; Wilkesboro, NC; Bristol, VA; St. Petersburg, FL; Florence, SC; London, KY; Montgomery, AL; Greensboro, NC and Sylacauga, AL.
(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 93-10859 Filed 5-6-93; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 513]

Railroad Cost of Capital—1992

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On May 7, 1993, the Commission served a decision to update its estimate of the railroad industry's cost of capital for 1992. The composite cost of capital rate for 1992 is found to be 11.4 percent, based on a current cost of debt of 7.7 percent, a cost of preferred equity capital of 4.8 percent, a cost of common equity capital of 13.0 percent, and a 27.8 percent debt/1.3 percent preferred equity/70.9 percent common equity capital structure mix. The cost of capital finding made in this proceeding will be used in a variety of Commission proceedings.

EFFECTIVE DATE: May 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 927-6187 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: This proceeding to determine the railroad industry's cost of capital rate for the year 1992 was instituted by a notice published in the **Federal Register** on December 1, 1992, at 57 FR 56930, requesting comments. Comments were filed only by the Association of American Railroads. This decision adopts a cost of capital rate for 1992.

The cost of capital finding in this decision should be used to evaluate the adequacy of railroad revenues for 1992 under the standards and procedures promulgated in Standards for Railroad Revenue Adequacy, 3 I.C.C.2d 261 (1986). This finding may also be used in other Commission proceedings such as the prescription of maximum reasonable rate levels and proposed abandonments of rail lines.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry cost of capital finding by the Commission. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: April 28, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 93-10858 Filed 5-6-93; 8:45 am]
BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Roche Diagnostic Systems, Inc.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 31, 1993, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Branchburg, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Methadone (9250)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 7, 1993.

Dated: April 23, 1993.

Gene R. Haislip,
Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-10847 Filed 5-6-93; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations: Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of partially closed meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). A Notice of Establishment for the Commission is being published elsewhere in today's **Federal Register**. Pursuant to Section 10(a) of FACA, this is to announce the first meeting of the Commission which is to take place on May 24, 1993.

The purpose of the Commission is to investigate the current state of worker-management relations and labor law and make recommendations concerning changes that may be needed to improve productivity through increased worker-management cooperation and employee participation in the workplace.

Specifically, the Commission will be asked to address the following questions:

(1) What (if any) new methods or institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?

(2) What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance the cooperative behavior, improve productivity, and reduce conflict and delay? and

(3) What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?

TIME AND PLACE: The meeting will be held on Monday, May 24, 1993 from 10 a.m. to 4 p.m. in Conference Room N–3437 A–D in the Department of Labor, 200 Constitution Avenue, NW., Washington, DC

AGENDA: The agenda for the meeting is as follows:

(a) Introduction of Commission Members
(b) Legal Guidance from the Solicitor
(c) Presentation (statistical) by the Acting Commissioner of the Bureau of Labor Statistics on the make-up and nature of the current American workforce and worker-management relations, with projections to the year 2005
(d) Guidance to the Commission by the Secretary of Labor
(e) Discussion of Commission objectives, including to the extent practicable, delineation of specific tasks and projected time frames for achieving such objectives
(f) Ancillary items attendant to Commission activities

PUBLIC PARTICIPATION: The meeting will be open to the public from 10 a.m. to 12 noon and from 1:45 p.m. until 4 p.m. Seating will be available to the public on a first-come, first-serve basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 11 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–2318, Washington, DC 20210.

CLOSED PORTION OF THE MEETING: From 12 noon until 1:45 p.m. the Commission will meet in closed session in order to discuss internal personnel rules and practices of the agency, as well as personal information. This closing of the meeting is authorized by section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(2) and (c)(6). Personnel matters and personal matters are protected from disclosure by exemptions 2 and 6, respectively, of section 552b(c) of Title 5 U.S.C.

FOR FURTHER INFORMATION CONTACT: Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, room C–2318 Washington, DC 20210, (202) 219–9148.

Signed at Washington, DC this 4th day of May, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–10840 Filed 5–6–93; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

DEPARTMENT OF COMMERCE

Office of the Secretary

Commission on the Future of Worker-Management Relations; Establishment

After consultation with the Committee Management Secretariat of the General Services Administration, the Secretary of Labor and the Secretary of Commerce have determined that the establishment of the Commission on the Future of Worker-Management Relations is in the public interest. The Commission will report to both the Secretary of Labor and the Secretary of Commerce. In accordance with Executive Order 12838, the Office of Management and Budget has determined that compelling reasons of national and economic security justify the establishment of this Commission.

The Commission will study and advise the respective Secretaries on, among other things, how to enhance workplace productivity through labor-management cooperation and employee participation. Specifically, the Commission will be asked to address the following questions:

(1) What (if any) new methods or institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?

(2) What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay? and

(3) What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?

The Commission will consist of approximately ten individuals. The members will be drawn from and reflect the viewpoints of the academic community, workers, management, and the general public. The Commission will require up to one year to carry out its assignment and present a written report of findings jointly to the Secretaries of Labor and Commerce.

The Commission will function solely as an advisory body and in compliance with the terms of the Federal Advisory Committee Act and its charter will be filed under the Act.

Interested parties are invited to submit written comments regarding the establishment of the Commission on the Future of Worker-Management Relations. Such comments should be submitted to the Commission's Designated Federal Official, June M. Robinson, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–2318, Washington, DC 20210.

Signed at Washington, DC this 4th day of May, 1993.

Robert B. Reich,

Secretary of Labor.

Ronald H. Brown,

Secretary of Commerce.

[FR Doc. 93–10839 Filed 5–6–93; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and

are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 17, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 17, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 26th day of April, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Camco Products and Services (Co)	Houston, TX	04/26/93	04/16/93	28,583	Down hole oil tools & provide services.
Kobelco Stewart Bolling (ICWU)	Hudson, OH	04/26/93	04/17/93	28,584	Plastic rubber production machinery.
Campbell Tobacco Rehandling Co (Wkrs).	Mayfield, KY	04/26/93	04/13/93	28,585	Leaf tobacco.
Brinley Sportswear, Inc (ILGWU)	Medford, NY	04/26/93	04/15/93	28,586	Ladies' bathing suits.
Columbia Footwear Corp (UFCW)	Hazleton, PA	04/26/93	04/13/93	28,587	Casual footwear.
Carter Footwear, Inc (UFCW)	Wilkes-Barre, PA	04/26/93	04/13/93	28,588	Canvas & rubber footwear.
Country Cousins Shoes (UFCW)	Mocanaqua, PA	04/26/93	04/13/93	28,589	Casual shoes.
Columbia Aluminum (USWA)	Goldendale, WA	04/26/93	04/12/93	28,590	Aluminum.
Economy Industrial Corp (Wkrs)	Ambridge, PA	04/26/93	02/22/93	28,591	Casting machines.
Mida Corp (Wkrs)	Midland, TX	04/26/93	03/08/93	28,592	Computer sales and service.
Big Mac Welding, Inc (Co)	New Iberia, LA	04/26/93	04/09/93	28,593	Oil & gas production equipment.
ICI Seeds Research Group (Wkrs)	Kindred, ND	04/26/93	04/18/93	28,594	Seeds research.
Lineville Apparel Corp (Wkrs)	Atlanta, GA	04/26/93	04/15/93	28,595	Men's pants.
Lettsworth Oilfield Services (Co)	Baton Rouge, LA	04/26/93	04/19/93	28,596	Offshore services.
NERCO Oil & Gas, Inc (Co)	Houston, TX	04/26/93	04/02/93	28,597	Oil exploration, production & sales.
Occidental Chemical (Wkrs)	Jasper, FL	04/26/93	04/13/93	28,598	Phosphoric acid.
Specialty Industries & Sales (Co)	Big Spring, TX	04/26/93	04/15/93	28,599	Oilfield chemicals.
Homogeneous Metals, Inc (Wkrs)	Clayville, NY	04/26/93	03/30/93	28,600	Metal alloy for jet engine disc.
Industrial Steel Stamping (Wkrs)	Monroe, MI	04/26/93	02/11/93	28,601	Steel stampings.
Pennington Seismic Exchange, Inc (Co)	Tulsa, OK	04/26/93	04/14/93	28,602	Oil, gas exploration.
Pennington Seismic Exchange, Inc (Co)	Oklahoma City, OK	04/26/93	04/14/93	28,603	Oil and gas exploration.
Sallies Fashions (Wkrs)	Pittston, PA	04/26/93	03/29/93	28,604	Women's dresses.
Alcoa Electronic Packing (Wkrs)	Pittsburg, PA	04/26/93	04/12/93	28,605	R & D center.
Portland Unloading (USWA)	Portland, OR	04/26/93	04/12/93	28,606	Aluminum.
Occidental Chemical (Wkrs)	White Springs, FL	04/26/93	04/13/93	28,607	Phosphoric acid.

[FR Doc. 93-10824 Filed 5-6-93; 8:45 am]
BILLING CODE A510-30-M

[TA-W-28,316]

Callaway Safety Equipment Co. Inc., Levelland, TX; Affirmative Determination Regarding Application for Reconsideration

On April 16, 1993, a worker requested administrative reconsideration of the Department's Denial Notice for workers at the subject firm. The Department's Negative Determination was issued on March 4, 1993 and published in the **Federal Register** on March 22, 1993 (58 FR 15383).

The worker claims that Callaway's safety equipment for H2S gas which is installed at the drilling site is essential for the drilling of oil. The Texas Railroad Commission which governs drilling operations in Texas mandates that safety equipment for H2S gas must be installed at the drilling site on leases where H2S is known to be present or it will terminate the operation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this April 27, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93-10827 Filed 5-6-93; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-28,200]

Oloffson Corp., Lansing, MI; Negative Determination Regarding Application for Reconsideration

By an application dated March 29, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 15, 1993 and published in the

Federal Register on March 26, 1993 (58 FR 16419).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the workers produce capital equipment—computer numerically controlled (CNC) machine tools.

The Department's denial is based on the fact that the decreased sales or production criterion of the Group Eligibility Requirements of the Trade Act was not met. Sales and production of CNC machine tools did not decrease in 1992 compared to 1991.

It's stated that there is a lengthy period before the effects of foreign competition and reduced orders is reflected in lower sales. The company states that 1993 sales will be substantially reduced from that in 1992.

In order for a worker group to be certified for trade adjustment assistance, all three of the Group Eligibility Requirements of the Trade Act must be met—(1) a significant decrease in employment, (2) an absolute decrease in sales or production and (3) an increase of imports of articles that are like or directly competitive with those of the workers' firm. A failure to meet any one of the three criteria would result in a denial of eligibility to apply for TAA.

The Department would entertain a new petition in six months when new sales and production data are available.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC., this April 27, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-10825 Filed 5-6-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,892]

Reynolds Cable Plant, Longview WA; Negative Determination Regarding Application for Reconsideration

Local #369 of the Aluminum Brick and Glass Workers Union, after being granted a filing extension, requested administrative reconsideration of the Department's denial of trade adjustment assistance (TAA) benefits for workers of the subject firm producing 600 volt aluminum cable and medium voltage cable. Workers producing aluminum redraw rod and bare aluminum conductors were certified for TAA. The Department's notice of determinations was issued on January 6, 1993 and published in the **Federal Register** on February 2, 1993 (58 FR 6811).

The union claims that the entire facility at Longview should be certified for TAA because the loss of the rod mill to Canada affected everyone at the plant.

The investigation file shows that the workers are separately identifiable by departments. Workers producing 600 volt aluminum cable and medium voltage cable did not meet the increased import criterion of the Group Eligibility Requirements of the Trade Act.

U.S. imports of insulated electrical wire and cable without connectors declined absolutely in 1991 compared to 1990 and in the first nine months of 1992 compared to the same period in 1991.

The findings show that the aluminum redraw rod is used as a raw material component for the production of 600 volt aluminum cable and medium voltage cable. The certification of the redraw line, however, would not form a basis for the certification of workers producing insulated electrical wire and cable. Certification for workers producing components runs from the finished article, where workers are already certified for TAA, and where declines in sales or production of the finished article causes a reduced demand for the component, not the other way around from the component to the finished article.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this April 30, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-10826 Filed 5-6-93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions for the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and

supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume II

Kansas
KS93-21 (Feb. 19, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia
GA93-3 (Feb. 19, 1993)
Kentucky
KY93-1 (Feb. 19, 1993)
KY93-3 (Feb. 19, 1993)
KY93-4 (Feb. 19, 1993)
KY93-29 (Feb. 19, 1993)
Massachusetts
MA93-1 (Feb. 19, 1993)
MA93-2 (Feb. 19, 1993)
MA93-3 (Feb. 19, 1993)
MA93-5 (Feb. 19, 1993)
MA93-6 (Feb. 19, 1993)
MA93-7 (Feb. 19, 1993)
MA93-8 (Feb. 19, 1993)
MA93-9 (Feb. 19, 1993)
New Jersey
NJ93-2 (Feb. 19, 1993)
NJ93-3 (Feb. 19, 1993)
New York
NY93-13 (Feb. 19, 1993)
Virginia
VA93-9 (Feb. 19, 1993)
VA93-15 (Feb. 19, 1993)
VA93-17 (Feb. 19, 1993)
VA93-50 (Feb. 19, 1993)
VA93-78 (Feb. 19, 1993)
VA93-79 (Feb. 19, 1993)
VA93-81 (Feb. 19, 1993)
West Virginia
WV93-3 (Feb. 19, 1993)

Volume II

Illinois
IL93-1 (Feb. 19, 1993)
IL93-7 (Feb. 19, 1993)
Indiana
IN93-1 (Feb. 19, 1993)
IN93-2 (Feb. 19, 1993)
IN93-3 (Feb. 19, 1993)
IN93-4 (Feb. 19, 1993)
IN93-5 (Feb. 19, 1993)
IN93-6 (Feb. 19, 1993)
Kansas
KS93-1 (Feb. 19, 1993)
KS93-8 (Feb. 19, 1993)
KS93-12 (Feb. 19, 1993)
KS93-16 (Feb. 19, 1993)
KS93-18 (Feb. 19, 1993)
KS93-19 (Feb. 19, 1993)
KS93-20 (Feb. 19, 1993)
Louisiana
LA93-4 (Feb. 19, 1993)
LA93-5 (Feb. 19, 1993)
LA93-9 (Feb. 19, 1993)
LA93-16 (Feb. 19, 1993)
LA93-17 (Feb. 19, 1993)
Michigan
MI93-1 (Feb. 19, 1993)
MI93-2 (Feb. 19, 1993)
MI93-3 (Feb. 19, 1993)
MI93-5 (Feb. 19, 1993)
MI93-7 (Feb. 19, 1993)
MI93-12 (Feb. 19, 1993)
Minnesota
MN93-3 (Feb. 19, 1993)
MN93-5 (Feb. 19, 1993)
MN93-7 (Feb. 19, 1993)
MN93-8 (Feb. 19, 1993)
MN93-12 (Feb. 19, 1993)
MN93-15 (Feb. 19, 1993)
Nebraska
NE93-3 (Feb. 19, 1993)
NE93-5 (Feb. 19, 1993)
NE93-9 (Feb. 19, 1993)
NE93-11 (Feb. 19, 1993)
Ohio
OH93-1 (Feb. 19, 1993)
OH93-2 (Feb. 19, 1993)
OH93-12 (Feb. 19, 1993)
OH93-14 (Feb. 19, 1993)
OH93-28 (Feb. 19, 1993)
OH93-29 (Feb. 19, 1993)
OH93-34 (Feb. 19, 1993)

Volume III

Alaska
AK93-1 (Feb. 19, 1993)
California
CA93-1 (Feb. 19, 1993)
CA93-2 (Feb. 19, 1993)
CA93-4 (Feb. 19, 1993)
Idaho
ID93-1 (Feb. 19, 1993)
South Dakota
SD93-6 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Act, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 30th day of April 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93-10596 Filed 5-6-93; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: May 24-25, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation (NSF), 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence Goldberg, Program Director, Division of Electrical and Communications Systems, NSF, 1800 G Street NW., room 1151, Washington, DC 20550. Telephone: (202) 357–9618.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation and Research Equipment Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 4, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–10822 Filed 5–6–93; 8:45 am]

BILLING CODE 7555–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following two meetings.

Name: Special Emphasis Panels in Mechanical and Structural Systems.

Date and Time: May 25–26, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Contact Person: Dr. John B. Scalzi, Program Director, Large Structural and Building Systems, Telephone: (202) 357–9542.

Date and Time: June 8, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Surface Engineering and Tribology Program, Telephone: (202) 357–9542.

Types of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning unsolicited proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for various programs within the Division of Mechanical and Structural Systems as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 4, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–10823 Filed 5–6–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6659]

Petrotomics Co.; Final Finding of No Significant Impact Regarding Revised Source Material License SUA–551, to Allow Construction of Additional Evaporation Ponds at the Shirley Basin Mill, Located in Carbon County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to issue a revised source and byproduct material license which will authorize Petrotomics Company to construct additional evaporation ponds at the Shirley Basin mill by revision of Source Material License SUA–551.

2. Reasons for Final Finding of No Significant Impact

The Shirley Basin mill, owned and operated by Petrotomics Company, is a decommissioned uranium mill site. Activities authorized under SUA–551 include site reclamation and ground-water corrective actions. As part of Petrotomics Company's proposal to modify the ground-water corrective action program, the licensee requested authorization to construct two additional evaporation ponds on the existing, partially reclaimed tailings impoundment. The NRC staff evaluated the proposed evaporation pond design to assess the potential environmental impacts which could result if the proposed pond construction were approved. Documents used to prepare the evaluation include licensee submittals entitled "Corrective Action Modifications, Upper Wind River Sand" dated January 1992, and "Supplement to Applicant's Environmental Report for Expanded Evaporation System–Corrective Action Plan" dated November 1992. Other submittals necessary for the evaluation of the licensee's proposal include the Environmental Report for the Shirley Basin mill dated April 1, 1981, the Environmental Assessment issued in 1984 by the NRC, and information forwarded to the NRC by letters dated May 7, 1992, and January 8 and 13, 1993. Upon review of these documents, the Commission has determined that no significant impacts will result from the proposed activity. However, because of the NRC's concerns related to the proposed placement of two additional evaporation ponds on the partially reclaimed tailings impoundment, an Environmental Assessment was prepared. This document is cataloged as a Memorandum to File dated February 23, 1993.

The public was informed of the availability of the Finding of No Significant Impact by way of a March 4, 1993, Federal Register publication. A subsequent 45-day comment period expired April 23, 1993. No public comments were received on the proposed action.

In accordance with 10 CFR Part 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact in the **Federal Register**. Concurrent with this finding, the staff will issue the revised Source Material License SUA–551 for the Shirley Basin mill, Carbon County, Wyoming.

This finding, together with documents setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office located at 730 Simms Street, Suite 100, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 30th day of April 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 93–10821 Filed 5–6–93; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Request for Proposals

AGENCY: Physician Payment Review Commission.

ACTION: Notice.

The Physician Payment Review Commission is soliciting proposals to conduct a telephone interview survey of physicians about the Medicare program and the Medicare Fee Schedule. This notice describes the application procedures, general policy considerations, and criteria to be used

in reviewing applications for prospective grants and contracts submitted to the Commission.

Background on the Commission

The Physician Payment Review Commission was established in 1986 (Pub. L. 99–272) to advise the U.S. Congress on physician payment policy under Part B of the Medicare program. The 13-member Commission comprises physicians and other health professionals, health economists, health services research experts, and individuals representing the perspectives of Medicare beneficiaries, private payers, and others expert in the field of health policy. Supporting the Commission is a multidisciplinary staff with skills in research, policy analysis, and administration.

In 1990, the Commission's legislative mandate was substantially expanded to include topics beyond Medicare physician payment. Its responsibilities now include consideration of a broader set of interrelated policies affecting the financing, quality, and delivery of health services. The Commission submits an annual report to the Congress on March 31. It also submits a series of reports in May of each year concerning Medicare expenditures and fee updates, access to care, the financial liability of Medicare beneficiaries, and comments on the President's budget. At the same time, the Commission continues to monitor and make recommendations concerning the implementation and effects of the Medicare reforms enacted by the Congress in 1989.

Description of Proposal Topic

In 1992, the Medicare program underwent major changes stemming from the Commission's recommendations for physician payment reform that were enacted in the Omnibus Reconciliation Act of 1989. Three principal components of the reform were the development and implementation of a resource-based fee schedule, limits on balance billing of patients, and a system of Volume Performance Standards to control expenditures.

The resource-based Medicare Fee Schedule was first used in 1992 by the Health Care Financing Administration (HCFA) to pay physicians. The fee schedule is being phased in through 1995, so that in 1996 it will determine all Medicare physician payments. The change-over to the fee schedule entails numerous revisions in payment levels, billing codes, and related policies. Limits on balance billing of patients are intended to protect Medicare beneficiaries from bearing the burden of the shifts in payment levels occasioned by the fee schedule. These limits are now fully in place. The Volume Performance Standard system is intended to give physicians a collective incentive to reduce the rate of growth in the volume and intensity of services delivered per Medicare beneficiary. It affects the annual price update for Medicare physician fees by adding or subtracting from it the extent to which actual Medicare expenditure growth differed from the previously set target—the Volume Performance Standard—for that year. 1992 was the first year in which all three components of the payment reform legislation were in effect.

The Commission believes it important to monitor the effects of these changes on physicians, beneficiaries, and others. To accomplish this, the Commission conducts extensive primary and secondary data analyses and receives formal and informal testimony from interested parties. As part of its effort to gather information, the Commission contracted with Louis Harris and Associates in 1992 to conduct a telephone interview survey of physicians.

The survey instrument was developed jointly by Harris Associates and Commission staff. One thousand physicians were asked about the problems they experienced with different payers, including Medicare, changes in practice patterns and acceptance of new patients, their understanding of the Medicare Fee Schedule and Volume Performance Standards, problems with the fee schedule, coding and payment for visits and consultations, and demographic information. The telephone interviews were conducted during the summer of 1992. The results of the survey were reported in Chapters 5, 6, and 12 of the Commission's *Annual Report to Congress 1993*.

The 1992 survey of physicians was useful to the Commission and others in assessing the effects of changes in the Medicare program. The Commission intends to contract for a similar survey of physicians to be conducted beginning in the fall of 1993. The 1993 survey will include questions from the 1992 survey and additional questions to explore certain topics in greater detail. To assure comparability of the results to those of the 1992 survey, the methodology of the 1993 survey will be substantially the same as that used in 1992. The Louis Harris and Associates' report of their survey's methodology and findings can be obtained from the Commission. It is anticipated that the 1993 survey's interviews will last approximately 20 minutes each and that 1,000 interviews will be conducted.

The contractor will perform the following tasks:

1. Develop new questions for the survey in consultation with Commission staff and pilot test the full instrument.
2. Select a random sample of practicing nonfederal U.S. physicians.
3. Conduct the telephone interviews.
4. Deliver to the Commission a cleaned computer data file of the responses by December 1, 1993.
5. Deliver a draft report of the methodology and results of the survey to the Commission by December 31, 1993.
6. Deliver to the Commission the final written report of the survey's methodology and results by January 31, 1994.

The Commission plans to select a contractor by July 1993.

Formal Proposals

Proposals must conform to the requirements specified in the Commission's formal Request for Proposal, which can be obtained from the Commission. The following provides an outline of what will be expected to be submitted in a formal proposal:

1. Plans for developing and testing the survey instrument.
2. Plans for obtaining a random sample of physicians.
3. Methods to be used to obtain an adequate response rate, including consideration of payments to participating physicians.
4. Detailed description of how the interviews will be carried out, including the training of interviewers and methods to achieve reliable results.
5. Analysis plan.
6. Discussion of problems that may be encountered and strategies for resolving them.
7. Work plan including description of tasks, time schedule, and level of effort for key individuals and the number of days devoted to each task.
8. Description of organizational experience and resources, and the qualifications of key project staff.
9. Detailed budget providing justifications and explanations for amounts required for each task of the project.

It is anticipated that complete proposals must be received by the Commission by June 14, 1993 in order to be considered.

Review of Proposals

Proposals will be reviewed by a panel composed of at least three (3) individuals. Reviewers will score applications and make recommendations based on the criteria published in the Commission's Request for Proposals, Part IV, Section M, "Technical Evaluation and Criteria for Award."

General Information

Authority

The Commission's authority for making these awards is based on section 1845(c)(2)(B) of the Social Security Act (42 U.S.C. 1359w–1).

Regulations

General policies and procedures that govern the administration of contracts and grants are located in title 45 of the Code of Federal Regulations parts 74 and 92. Applicants are urged to review the requirements contained in these regulations.

Submission Address

Physician Payment Review Commission, 2120 L Street NW., suite 510, Washington, DC 20037.

Submission Deadline

It is anticipated that proposals must be received by the Commission by June 14, 1993.

Obligation

This solicitation in no way obligates the Commission to fund any applicant.

Contact: Paul B. Ginsburg, Ph.D., Director or Lauren LeRoy, Ph.D., Deputy Director, Physician Payment Review Commission, 2120 L Street NW., suite 510, Washington, DC 20037, (202) 653–7220.

Date: May 3, 1993.

Paul B. Ginsburg,

Executive Officer.

[FR Doc. 93–10780 Filed 5–6–93; 8:45 am]

BILLING CODE 6820–SE–M

Request for Proposals

AGENCY: Physician Payment Review Commission.

ACTION: Notice.

The Physician Payment Review Commission is soliciting requests for proposals (RFPs) from qualified organizations to provide programming services in support of the development, analysis, and documentation of large national data sets.

Background on the Commission

The Physician Payment Review Commission was established in 1986 (Pub. L. 99–272) to advise the Congress on physician payment policy under Part B of the Medicare program. The 13-member Commission is comprised of physicians, health economists, health services research experts, and individuals representing the perspectives of Medicare beneficiaries, private payers, nurses, and other experts in the field of health policy. Supporting the Commission is a multidisciplinary staff with expertise in research, policy analysis, and administration. They are responsible for conducting intramural empirical research expanding upon the Commission's recommendations to Congress on a variety of health policy issues.

Criteria for Proposals

Applicants are requested to submit proposals to provide computer programming and analysis in support of various projects on an as-required basis under the direction and supervision of a primary Project Officer and designated staff of the Commission. The following provides a basic outline of what should be included in a formal proposal:

1. Project title and objectives.
2. Applicant organization's background, qualifications, and available resources.
3. Detailed documentation on the ability of organization's staff in database development and programming, including techniques to be used and management capabilities.
4. A full description of the measures used to ensure security of proprietary data files.
5. A detailed analysis plan, including methods to be used, potential problems and resolution strategies.
6. Qualifications of key staff.
7. Organizational chart.
8. A detailed budget providing justifications for each category and amounts requested, including information on the contractor's administrative fees and indirect cost rate.

Applicants should have a demonstrated ability to provide programming support from their facility, and, on occasion, at the Commission's office. The Commission maintains a remote job entry unit (RJE) linked with the National Institutes of Health's mainframe computer support center. Applicants should have the in-house capability to (1) access NIH's mainframe support center, (2) provide back-up printer support when required, (3) receive and transmit facsimiles, and (4) provide pick-up and delivery services. All data analysis and programming tasks will support ongoing Commission activities. The subsequent RFP will include specific details on all tasks and subtasks to be accomplished by the selected contractor, which will include, but are not limited to, those outlined below.

Database Development

A critical component of this effort involves the applicant's ability to download and copy information from tape format to cartridges; create files; compare and reconcile file documentation with actual file structure; prepare descriptive statistical information on data variables; and provide various administrative and management tasks associated with such an effort. Applicants must demonstrate an ability to serve as a database archivist, capable of drawing and maintaining sample files from large national data sets; maintaining accurate logs and documentation on all files developed under the contract and to ensure the confidentiality of particular data sets when required. Principal databases will include the Health Care Financing Administration's (HCFA) Part B Medicare Annual Data files (BMAD I, II, III, and IV), and National Claims History (NCH) files. Additional data prepared by HCFA and other organizations will be included for analysis.

Data Analysis

Another major part of the overall effort is the ability of the applicant to create analysis or user files from source data bases. Such files will be compatible with statistical programming languages (e.g., SAS), as well as lower-level languages (e.g., PL/1 and FORTRAN). Applicants must be able to document analytic files, run verification checks, and develop programs to analyze various databases created during the period of the contract.

Submission of Proposals

Applicants will be given 30 days to submit a formal proposal. The deadline for proposals submitted under this notice is July 1, 1993.

Review of Proposals

Proposals will be reviewed by a panel composed of at least three (3) individuals. Reviewers will score applications, basing their scoring decisions and approval recommendations on the criteria published in the Commission's Request for Proposals, Part IV, Section M, "Technical Evaluation and Criteria for

Award." In addition to the recommendation of the review panel, the Commission may consider other factors in selecting which applicants will be asked to submit a formal proposal.

General Information

Number and Size of Project

There will be one contract awarded in response to this Request for Proposals.

Authority

The Commission's authority for making this award is based on section 1845(c)(2)(B) of the Social Security Act (42 U.S.C. 139w-1).

Regulations

General policies and procedures that govern the administration of all contracts awarded by the Commission are located in title 45 of the Code of Federal Regulations, parts 74 and 92. Applicants are urged to review the requirements contained in those regulations.

Submission Deadline

It is anticipated that proposals must be received by the Commission by July 1, 1993.

Submission Address

Physician Payment Review Commission, 2120 L Street NW., suite 510, Washington, DC 20037.

Obligation

This solicitation in no way obligates the Commission to fund any applicant.

Contact: Paul B. Ginsburg, Ph.D., Director or Sally Trude, Ph.D., Senior Analyst, Physician Payment Review Commission, 2120 L Street NW., suite 510, Washington, DC 20037, (202) 653-7220.

Dated: May 3, 1993.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 93-10779 Filed 5-6-93; 8:45 am]

BILLING CODE 6820-SE-M

RESOLUTION TRUST CORPORATION

Corrected List of Thrifts in RTC Conservatorship and Receivership

AGENCY: Resolution Trust Corporation.

ACTION: Notice of conservatorships and receiverships.

SUMMARY: The Resolution Trust Corporation (RTC) on April 8, 1993 [58 FR 18234] published a listing of certain thrift institutions in RTC conservatorship and receivership. That listing contained certain errors, and consequently the RTC is publishing a corrected list which supersedes the listing of April 8, 1993.

DATES: This publication includes all institutions under RTC supervision from August 10, 1989 through March 19, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Acting Contractor Ethics Program Manager, Office of Ethics, 202-416-2029; Andrew Fay, Ethics Specialist, Office of Ethics, 202-416-2132; and Carl Gold, Counsel, Division of Legal Services, 202-736-0728. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Resolution Trust Corporation on April 8, 1993 [58 FR 18234] published a listing of thrift institutions in RTC conservatorship and receivership. The list was compiled by the RTC and was provided only for purposes of compliance with the Statement of Policy on Contracting with Firms with Related Entity Defaults on Financial Obligations (July 23, 1992 [57 FR 32841], amended on November 19, 1992 [57 FR 54503]). The list was published as a means of informing firms which wish to do business with the RTC, but which may have related entities in default on obligations owed to thrifts in conservatorship or receivership to the RTC. The list was intended to be a compilation of those thrift institutions and only those thrift institutions.

The list contained the names of 35 thrifts which are not under RTC control and consequently should not have been included on the list. Defaults on obligations owed to those 35 institutions are not defaults coming within the above-referenced Policy and are not obligations considered to be owed to the RTC. The RTC regrets this error and any confusion resulting from it.

The list which follows represents a corrected version of the list published on April 8, 1993 and supersedes that list.

RTC THRIFTS

Bank No.	Name	City	St.
8236	ABQ Federal Savings Bank	Albuquerque	NM
7915	Abraham Lincoln FSA	Dresher	PA
8396	Acadia S&L Assoc., A FSA	Crowley	LA
7884	Action FSB	Somers Point	NJ
7948	Advanced FSB	Northridge	CA
8463	Alamo FSA of Texas	San Antonio	TX

RTC THRIFTS—Continued

Bank No.	Name	City	St.
7761	Alexander Hamilton FS&LA	Paterson	NJ
7939	Alpha Indian Rock FS&LA	Philadelphia	PA
8338	Alpine Savings, A FS&LA	Steamboat Springs.	CO
8230	Altus FSB	Mobile	AL
7832	Ambassador FS&LA	Tamarac	FL
8441	American Fed. S&L Assoc	Albuquerque	NM
8262	American Fed. Sav. Assoc. of Iowa	Des Moines	IA
8505	American Fed. Sav. Bank	Austin	TX
8664	American FSB	Sanford	ME
8641	American Home S&L Assoc., F.A	Edmond	OK
8565	American Interstate SA, FA	Los Angeles	CA
8886	American Pioneer FSB	Orlando	FL
8465	American S & LA of Brazoria	Lake Jackson	TX
8397	American S&L Assoc., FA	New Orleans	LA
7753	American SA of Mt. Carmel, FA	Mt. Carmel	IL
8525	American Sav. of Colo. A FS&LA	Colorado Springs.	CO
8514	American Savings, A FS&LA	Salt Lake City	UT
7895	American SB, FSB	Ada	OK
8368	American Security FS&LA	Chicago	IL
7816	Amerifederal SB, FSB	Lawrenceville	NJ
7722	Amerifirst FSB	Miami	FL
8572	Amerimac Sav. Bank, FS	Hillsboro	IL
8470	Ameriway Savings	Houston	TX
7814	Amigo FS&LA	Brownsville	TX
8376	Anchor Federal S&L Assoc	Kansas City	KS

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8293	Andrews S&LA, FA	Andrews	TX
7751	Arcanum FSA	Arcanum	OH
8833	Arkansas FSB, FA	Little Rock	AR
8281	Arlington Hghts Sav Assn, F.A	Arlington Heights.	IL
8328	Arrowhead Pacific Fed Sav Bank	San Bernardino	CA
8660	Aspen Savings Bank F.S.B	Aspen	CO
7806	Atascosa SA	Jourdanton	TX
8254	Atlanta FSA	Atlanta	TX
7840	Atlantic Financial FSB	San Francisco	CA
8661	Atlantic Financial Savings, FA	Bala Cynwyd	PA
8672	Atlantic Permanent FSB	Norfolk	VA
7752	Augusta FSA	Baltimore	MD
8585	Austin FS&LA	Austin	TX
8305	Baldwin County Fed Sav Bank	Robertsdale	AL
8411	Baltimore Fed Financial FSA	Baltimore	MD
8571	Banc Iowa Fed. Sav. Bank	Cedar Rapids	IA
8460	Bancplus FSA	Pasadena	TX
8888	Bank USA Savings Association	Silvis	IL
8478	Bankers S&L Assoc	Galveston	TX
8292	Bannerbanc FS&LA	Garland	TX
7909	Bay FSB	West Palm Beach.	FL
8504	Bayshore FSA	La Porte	TX
7887	Beach FSB	Huntington Beach.	CA
7736	Beacon FSA	Baldwin	NY
8475	Bedford Savings Assoc	Bedford	TX
7893	Bell FSB	Upper Derby	PA
8456	Benjamin Franklin FSA	Houston	TX
8549	Bexar Savings Assoc	San Antonio	TX
8208	Birmingham FSB	Birmingham	AL
8620	Black Hawk S&L Assoc. F.A	Rock Island	IL
8415	Blue Valley Fed S&L Assoc	Kansas City	MO

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8291	Boonslick S & LA	Boonville	MO
8353	Brickellbanc Sav. Assoc	Miami	FL
8454	Bright Banc Sav. Assoc	Dallas	TX
8542	Broadview Federal Sav Bank	Cleveland	OH
8260	Broken Arrow Savings Assoc., FA	Broken Arrow	OK
8803	Brookhaven FS&LA	Brookhaven	MS
8656	Brookside Federal S&L Assoc	Los Angeles	CA
7882	Burleson County FSA	Caldwell	TX
8553	Cabrillo Fed Savings Bank	San Jose	CA
8865	Caguas-Central Fed Sav Bank of PR	Caguas	PR
8622	Capital Fed. S&L Assoc	Little Rock	AR
8616	Capital City FSA	Austin	TX
7731	Capital Federal Bank for Savings	Chicago	IL
8207	Capitol FS&LA	Aurora	CO
8694	Capitol-Union FSA	Baton Rouge	LA
8598	Caprock Fed. S&L Assoc	Lubbock	TX
7949	Carrollton Hmstd Assn, FA	New Orleans	LA
8602	Carteret FSB	Newark	NJ
8420	Cass FS & LA of St Louis	Florissant	MO
8477	Centennial Fed S&L Assoc	Greenville	TX
7764	Center S&LA, FA	Clifton	NJ
8267	Central FSB	Long Beach	NY
8401	Central S&L Assoc, F.A	New Orleans	LA
8422	Central S&L Assoc	Jackson	MS
8469	Central Texas S&L Assoc	Waco	TX
7836	Centre SA, FA	Arlington	TX
8229	Centrust Federal Savings Bank	Miami	FL
8543	Century Fed. Sav. Bank	Trenton	TN
7772	Century FSB, FSB	Chicago	IL
8492	Century S&L Assoc	Baytown	TX
8637	Certified FSA	Georgetown	TX

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8889	Charter Fed. Sav. Assoc	Stamford	CT
8822	Charter Savings Bank, FSB	Newport Beach	CA
8870	Charter SB, FSB	Hattiesburg	MS
7924	Chase FS&LA	Philadelphia	PA
8566	Cherokee Valley FSA	Cleveland	TN
8369	Chillicothe Fed S&L Assn	Chillicothe	IL
8608	Chisholm FSA	Kingfisher	OK
8610	Cimarron FSA	Muskogee	OK
7967	Citadel FS&LA	Charleston	SC
7834	Citizens & Builders FS, FSB	Pensacola	FL
7860	Citizens FSA	Jacksonville	FL
8538	Citizens Homestead FSA	New Orleans	LA
8487	Citizens of Texas S&L Assoc	Baytown	TX
8621	Citizens S&LA of Springfield, F.A	Springfield	IL
7827	Citizens Security Bank, FA	Borger	TX
8303	City Fed. S&L Assoc	Birmingham	AL
8334	City Federal S&L Assoc	Oakland	CA
8527	City S&L Assoc	Westlake Villa	CA
7847	City S&LA	San Antonio	TX
8507	City Savings Assoc	League City	TX
7865	City Savings, F.S.B	Bedminster	NJ
8581	Civic FSB	Portsmouth	OH
8270	Clinton S&LA	Clinton	OK
8852	Clyde Federal Savings Association	North Riverside	IL
7907	Coastal FSB	New London	CT
7852	Cobb FSA	Marietta	GA
8298	Colonial Federal Savings Association	Prairie Village	KS
8659	Colonial FSA	Roselle Park	NJ
7890	Colonial FSB	Cranston	RI
8275	Colonial S&LA, F.A.	Cape Girardeau.	MO
8386	Colonial SA of America	Liberal	KS
8868	Colony FSB	Monaca	PA
8530	Colorado S&L Assoc.	Englewood	CO

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8567	Colorado Savings Bank, F.S.B.	Sterling	CO
7919	Columbia Banking FSA	Rochester	NY
8632	Columbia Fed. Homestead Assoc.	Metairie	LA
8341	Columbia Fed. Savings Bank	Westport	CT
8639	Columbia FS&LA	Webster	TX
7712	Columbia FSA of Hamilton	Hamilton	OH
7790	Columbia S&LA, FA	Beverly Hills	CA
7745	Comfed SB, FA	Lowell	MA
8461	Commerce FSA	San Antonio	TX
8595	Commercial S&L Assn., FA	Hammond	LA
8457	Commonwealth Fed Sav Assn	Houston	TX
8617	Commonwealth FS&LA	Fort Lauderdale	FL
8269	Commonwealth FSA	New Orleans	LA
7952	Commonwealth FSB	Manassas	VA
8317	Commonwealth S&L Assoc.	Osceola	AR
8517	Community Fed S&L Assn.	Newport News	VA
8356	Community Fed S&L Assoc.	Tampa	FL
8628	Community Fed Sav. Assoc.	Bridgeport	CT
8294	Community Federal Savings Bank	East Moline	IL
8217	Community FS & LA	St Louis	MO
8519	Community S&L Assoc.	Fond Du Lac	WI
8449	Concord-Liberty Fed. S&L Assn.	Monroeville	PA
8361	Concordia Fed Bank for Savings	Lansing	IL
7879	Connecticut FS&LA	Hartford	CT
8800	Constitution Federal Savings Assoc.	Tustin	CA

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8445	Continental FS&LA, FA	Oklahoma City	OK
8544	Continental Savings, A FS&LA	Bellaire	TX
8257	Cooper River FSA	North Charleston.	SC
7776	Cooperative FSB	Westmont	IL
7817	Coral Coast FSB	Boynton Beach	FL
8850	Coral S&LA, FA	Coral Springs	FL
7807	Coreast FSB	Richmond	VA
8596	Cornerstone Fed Sav Assn.	Houston	TX
7818	County Bank, FSB	Santa Barbara	CA
8657	Crest Fed. S&L Association	Kankakee	IL
7974	Crestline FS&LA	Crestline	OH
8605	Cross Roads FS&LA, FA	Checotah	OK
7856	Danbury FS&LA	Danbury	CT
7899	Davy Crockett FS&LA	Crockett	TX
8495	Deep East Texas Sav Assn	Jasper	TX
8425	Delta Fed. S&L Assoc.	Drew	MS
7930	Delta FSB	Westminster	CA
8394	Delta S&L Asoc., F.A.	Kenner	LA
8627	Denton Federal S&L Assoc.	Denton	TX
8831	Deposit Trust Federal Savings Bank	Monroe	LA
8515	Deseret S&L Assoc., F.A.	Salt Lake City	UT
7723	Desoto FS&LA	Mansfield	LA
7713	Dryades S&LA, FA	New Orleans	LA
8520	Durand Fed. S&L Assoc.	Durand	WI
8653	Duval FSA	Jacksonville	FL
8589	East Texas S&L Assoc., F.A.	Tyler	TX
7746	Eastern FS&LA of Sayville	Sayville	NY
7733	Edison FSA	New York	NY
8895	El Paso FSA	El Paso	TX
8402	Elmwood Fed. S&L Assoc.	Harahan	LA
8436	Elysian Fed. Savings Bank	Hoboken	NJ

RTC THRIFTS—Continued

Bank No.	Name	City	St.
7866	Empire FS, FSB	Hammonton	NJ
8277	Empire of America FSB	Buffalo	NY
8836	Ensign FSB	New York	NY
8399	Enterprise Fed. S&L Assoc.	Marrero	LA
8839	Enterprise Federal, F.S.A.	Clearwater	FL
8805	Enterprise S&LA	Compton	CA
7743	Enterprise Savings Bank, FA	Chicago	IL
8432	Equitable Fed. Sav. Bank	Fremont	NE
8804	Equitable FS & LA	Columbus	NE
8340	Equity Fed. Savings Bank	Denver	CO
8405	Evangeline Fed S&L Assoc.	Lafayette	LA
7918	Evergreen FS&LA	Charleston	WV
8548	Excel Banc Sav. Assoc.	Laredo	TX
7849	Executive Banc SA, FA	New Braunfels	TX
7830	Executive SB, FSB	Marina Del Rey	CA
8698	Fairmont Federal Savings Association	Fairmont	MN
8539	Family Fed. S&L Assoc.	Shreveport	LA
8667	Family Federal Savings Association	Dallas	OR
7809	Family S&LA, FA	Seattle	WA
8446	Family Saving Bank, F.S.B.	Sapulpa	OK
8243	Far West FSB	Portland	OR
7711	Far West S&LA, FA	Newport Beach	CA
7961	Federal SA of Virginia	Falls Church	VA
8551	Fidelity Fed. Sav. Assoc.	Port Arthur	TX
8421	Fidelity Fed. Sav. Bank	Corinth	MS
8649	Fidelity Federal Sav. Assoc.	Galesburg	IL
7833	Fidelity FS&LA	Austin	TX

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8864	Fidelity Savings Bank, F.S.B.	Danville	IL
8418	Financial Fed. S&L Assoc.	Joplin	MO
8846	Financial FS & LA	Fresno	CA
7843	Financial Savings of Hartford, FSB	Hartford	CT
8347	Financial Security S&L Assn.	Delray Beach	FL
8844	First America FSB	Longmont	CO
8692	First America Savings Bank, F.S.B.	Fort Smith	AR
7905	First American FSB	Tucson	AZ
8259	First American FSB	Greensboro	NC
8866	First American FSB	Santa Fe	NM
8681	First Atlantic FSA	Plainfield	NJ
8285	First Bankers Trust & SA, F.A.	Midland	TX
8323	First California Sav. FSA	Orange	CA
8483	First Capital SA of Texas	Houston	TX
8808	First Citizens SLA, FA	Fort Pierce	FL
8407	First City Fed S&L Assoc.	Baton Rouge	LA
7812	First City FSB	Lucedale	MS
7903	First Commerce SB, FSB	Lowell	IN
8486	First Equity Savings Assoc., F.A.	Tomball	TX
8312	First Fed. S&L Assoc.	Fayetteville	AR
8315	First Fed. S&L Assoc.	Malvern	AR
8344	First Fed. S&L Assoc.	Largo	FL
8357	First Fed. S&L Assoc.	Atlanta	GA
8359	First Fed. S&L Assoc.	Summerville	GA
8393	First Fed. S&L Assoc.	Shreveport	LA
8398	First Fed. S&L Assoc.	New Iberia	LA
8404	First Fed. S&L Assoc.	Baton Rouge	LA
8409	First Fed. S&L Assoc.	Eunice	LA
8568	First Fed. S&L Assoc.	Americus	GA

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8606	First Fed. S&L Assoc.	Bakersfield	CA
8635	First Fed. S&LA of Brenham	Brenham	TX
8532	First Fed. S&LA of Colorado Springs	Colorado Springs.	CO
8380	First Fed. S&LA of Hutchinson	Hutchinson	KS
8447	First Fed. S&LA of Seminole	Seminole	OK
8417	First Fed. S&LA of Southeast MO	Cape Girardeau.	MO
8345	First Fed. S&LA of the Florida Keys	Key West	FL
8673	First Fed. Sav. Assoc. of York	York	NE
8554	First Fed. Savings Bank	East Alton	IL
8301	First Federal Bank of Alaska SB	Anchorage	AK
8697	First Federal Sav. Assoc. of Bluefield	Bluefield	WV
8244	First Federal Savings Assoc	Las Vegas	NM
8299	First Federal Savings Association	Warner Robins	GA
8668	First Federal Savings Bank	Diamondville	WY
8869	First Federal Savings Bank and Trust	Kansas City	MO
8249	First Federal Savings, F.S.A	New Braunfels	TX
8827	First Federal SB, FSB	Ashburn	GA
8863	First FS & LA	San Antonio	TX
8382	First FS & LA of Coffeyville	Coffeyville	KS
8240	First FS & LA of Pittsburgh	Pittsburgh	PA
8251	First FS & LA of Wichita Falls	Wichita Falls	TX
7701	First FS&LA	Mt. Vernon	OH
7740	First FS&LA	Pontiac	MI
7741	First FS&LA	Temple	TX
7796	First FS&LA	Dallas	GA

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8893	First FS&LA	Beaumont	TX
8233	First FS&LA of Andalusia, FA	Andalusia	AL
8630	First FS&LA of Central Indiana	Anderson	IN
8223	First FS&LA of Creston, FA	Creston	IA
8534	First FS&LA of Estherville & Emmetsburg	Estherville	IA
7708	First FS&LA of Fargo, FA	Fargo	ND
7732	First FS&LA of Pittsburg, FA	Pittsburg	KS
7951	First FS&LA of Russell County, FA	Phenix City	AL
7744	First FS&LA of Seminole Co, FA	Sanford	FL
8231	First FS&LA of Thief River Falls	Thief River Falls.	MN
7888	First FS&LA of Toledo	Toledo	OH
7956	First FSA	Lewiston	ME
8234	First FSA	Winnfield	LA
8263	First FSA	Lubbock	TX
8634	First FSA	Borger	TX
8810	First FSA of Breaux Bridge	Breaux Bridge	LA
8210	First FSA of Chickasha	Chickasa	OK
8228	First FSA of Conroe	Conroe	TX
8218	First FSA of Nacogdoches	Nacogdoches	TX
8286	First FSA of Newton	Newton	KS
7756	First FSA of Raleigh	Raleigh	NC
8877	First FSA of Tuscola	Tuscola	IL
7748	First FSA of Waynesboro	Waynesboro	TN
7760	First FSA of Wewoka	Wewoka	OK
7785	First FSB	Huron	SD
8204	First FSB of Annapolis	Annapolis	MD
7934	First FSB of Georgia, FA	Winder	GA
8381	First FSB of Kansas	Wellington	KS
7702	First FSB of South Dakota	Rapid City	SD

RTC THRIFTS—Continued

Bank No.	Name	City	St.
7892	First FSB of Zion	Zion	IL
8636	First Garland Fed. S&L Assn	Garland	TX
8821	First Guaranty FS & LA	Hattiesburg	MS
7927	First Home FSA	Pittsburg	PA
8812	First Jackson FSB	Jackson	MS
7707	First Jersey Savings, FA	Wyckoff	NJ
8395	First Louisiana Fed. Sav. Bank, F.A.	Lafayette	LA
8867	First Network Federal Savings Bank	Los Angeles	CA
7966	First Newport FSB	Newport Beach	CA
7891	First Northern Cooperative Bank	Keene	NH
8387	First of KS Savings, a FS & LA	Hays	KS
7938	First Ohio SB, FSB	St Bernard	OH
8590	First S&L Assoc., FA	Waco	TX
8203	First S&L Company, FA	Massillon	OH
7885	First SA, FA	Paragould	AR
8497	First Sav Assn of Southeast Texas	Silsbee	TX
8307	First Sav Bank of Alabama, FA	Hamilton	AL
8308	First Sav of Arkansas, FA	Little Rock	AR
8408	First Sav of Louisiana FSA	La Place	LA
8226	First Savings Association, F.A.	Bismarck	ND
8373	First Savings of America A FS & LA	Orland Park	IL
8640	First Savings of Laredo, F.A.	Laredo	TX
7862	First SB of Hempstead, FSB	Hempstead	TX
8820	First SB of New Orleans, FSB	Metairie	LA
8466	First South FSA	Port Neches	TX

RTC THRIFTS—Continued

Bank No.	Name	City	St.
7957	First South FSB	Columbia	SC
8819	First Southwest FS&LA	Tyler	TX
8279	First Standard Federal Savings Assoc.	Fairmont	WV
8467	First State Fed Sav Assn	San Antonio	TX
7869	First State SA	Sedalia	MO
8314	First State Sav. Bank FSB	Mountain Home	AR
8351	First Venice S & LA	Venice	FL
8271	Firstcentral Federal Savings Bank	Chariton	IA
7782	Flagler FS&LA	Miami	FL
8211	Florida FSB, FSB	St Petersburg	FL
8403	Fontainebleau Fed Sav Bank	Slidell	LA
8662	Fortune Financial Fed. S&L Assoc.	Copperas Cove	TX
8324	Founders Federal S&L Assn.	Los Angeles	CA
8856	Franklin FSA	Ottawa	KS
8342	Freedom S&L Assn, A FS&LA	Tampa	FL
8687	Freedom SA, FA	Columbus	OH
8392	French Market Homestead FSA	Metairie	LA
8682	Frontier Federal Savings Bank	Belleville	IL
8857	Frontier FSA	Walla Walla	WA
7792	Frontier SA	Las Vegas	NV
8502	FSA of the Southwest	Kilgore	TX
8215	Fulton FSA	Atlanta	GA
7703	Future FSB	Louisville	KY
8326	Gateway Fed Savings Bank	San Francisco	CA
8220	Gem City FS & LA	Quincy	IL
8629	General Federal Savings Bank	Miami	FL
8545	General Savings Assoc.	Henderson	TX
7886	George Washington FSA	Jonesboro	TN
7771	Germaniabank, A FSB	Alton	IL

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8540	Germantown Trust Sav Bank	Germantown	TN
8412	Gibraltar S&L Assoc, FA	Annapolis	MD
8558	Gibraltar Savings Bank F.S. B.	Seattle	WA
8557	Gibraltar Savings, F.A.	Simi Valley	CA
8459	Gill Savings Assoc.	San Antonio	TX
7837	Gold Coast FSB	Plantation	FL
7906	Gold River SB	Fair Oaks	CA
8510	Golden Circle SA, FSB	Corsicana	TX
8509	Golden Triangle S & LA	Bridge City	TX
7793	Goldome FSB	St Petersburg	FL
8825	Grand Prairie FS & LA	Stuttgart	AR
7705	Great American FSA	San Diego	CA
8862	Great American S & LA, F.A.	Corinth	MS
8224	Great American S&LA, FA	Oak Park	IL
8428	Great Atlantic Sav. Bank FSB	Manteo	NC
8885	Great Life F.S.A.	Sunrise	FL
8582	Great Plains Savings Assoc., F.A.	Weatherford	OK
8570	Great Southern Fed S&L Assn	Savannah	GA
8878	Great West, A FSB	Craig	CO
8289	Greenwood FS & LA	Greenwood	MS
8597	Guadalupe S&L Assn., F.A.	Kerrville	TX
8304	Guaranty Fed. S&L Assoc.	Birmingham	AL
7819	Guaranty FSA	Warner Robins	GA
8684	Guaranty Savings Bank, FSB	Fayetteville	NC
7928	Guardian FSA	Huntington Beach.	CA
8569	Habersham Fed. S&L Assoc.	Cornelia	GA
8600	Hallmark S&L Assoc., FA	Plano	TX
7788	Hansen FSA	Hammonton	NJ
7838	Hansen FSB	Palm Beach Gardens.	F_

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8851	Haven S & LA, F.A.	Winter Haven	FL
8586	Hearne Building & Loan Assn., F.A.	Hearne	TX
8826	Heartland S&LA	La Mesa	CA
8689	Henderson Home S & LA, F.A.	Henderson	KY
8427	Heritage Fed. S&L Assoc.	Monroe	NC
7815	Heritage FSA	Lancaster	PA
8872	Heritage FSA	Lamar	CO
7805	Heritage FSB	Richmond	VA
8248	Heritage FSB of Omaha	Omaha	NE
8626	Heritage Savings Assn, FA	Jerseyville	IL
8552	Heritagebanc Sav. Assoc.	Duncanville	TX
7791	Hidalgo S&LA	Edinburg	TX
8541	Hill Financial Sav. Assn.	Red Hill	PA
7734	Hollywood FSB	Hollywood	FL
8665	Home F.S.B. of Worcester	Worcester	MA
8316	Home Fed. S&L Assoc.	Mountain Home	AR
8584	Home Fed. S&L Assoc.	Memphis	TN
8370	Home FS & LA of Centralia	Centralia	IL
7738	Home FS&LA of Harlan	Harlan	IA
7749	Home FS&LA, FA	Algona	IA
7963	Home FSB	Norfolk	VA
8296	Home FSB, FA	Waukegan	IL
8879	Home Owners Savings Bank F.S.B.	Boston	MA
8577	Home S&L Assoc., F.A.	New Orleans	LA
8232	Home SA of Kansas City	Kansas City	MO
8302	Home Savings Bank, FSB	Anchorage	AK
8363	Home Savings, A FS&LA	Joliet	IL
8883	Home SB, FSB	Salt Lake City	UT
7728	Home Unity FS&LA	Lafayette Hill	PA
7913	Homebank FSA	Gilford	NH
7933	Homefed Bank, FA	San Diego	CA
7926	Homestead FSA	Middletown	PA

RTC THRIFTS—Continued

Bank No.	Name	City	St.
7978	Homestead FSA	San Francisco	CA
8276	Hometown FSA	Winfield	IL
8887	Hometown Savings Bank, FSB	Delphi	IN
8390	Horizon Fed. S&L Assoc.	Metairie	LA
8583	Horizon Financial, FA	Southampton	PA
8227	Horizon Savings Bank, F.S.B.	Wilmette	IL
8494	Humble S&L Assoc.	Humble	TX
8829	Huntington FS & LA	Huntington Beach.	CA
8537	Illinois Savings Bank, FA	Peoria	IL
8206	Imperial Federal Savings Association	San Diego	CA
8310	Independence Fed S&L Assn.	Batesville	AR
8526	Independence S&L Assoc.	Vallejo	CA
7880	International FS&LA	North Miami Beach.	FL
8823	Investment FS & LA	Woodland Hills	CA
8860	Investor Savings Bank, FSB	Nashville	TN
8843	Investors Federal Savings Bank	Deerfield Beach.	FL
7917	Investors FSB	Richmond	VA
7954	Irving FB for savings, FSB	Chicago	IL
8272	Irving FS&LA	Paterson	NJ
7936	Irvington FSB	Baltimore	MD
7964	Jacksonville FSA	Jacksonville	FL
8473	Jasper Fed. S&L Assoc	Jasper	TX
7868	Jefferson FS&LA, FA	Birmingham	AL
8476	Jefferson S&L Assoc	Beaumont	TX
8237	Jennings FSA	Jennings	LA
7844	John Hanson SB	Beltsville	MD
8884	Jonesboro FSA	Jonesboro	LA
8638	Karnes County FS&LA	Karnes City	TX
8490	La Hacienda Savings Assn	San Antonio	TX

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8594	LaFayette S&L Assn., FA	Gretna	LA
8238	Lakeland Savings Bank, F.S.B	Detroit Lakes	MN
8311	Landmark Sav. Bank, FSB	Hot Springs	AR
7759	Larchmont FS&LA	Larchmont	NY
7935	Lemont FSA	Lemont	IL
8450	Liberty Bell Sav. Assoc	Beaver Falls	PA
8499	Liberty County FS&LA	Liberty	TX
8837	Liberty Federal Savings Bank	Huntington Park.	CA
8350	Liberty FS & LA	New Port Richey.	FL
7960	Liberty FSB	Warrenton	VA
8578	Liberty Savings Bank, FSB	Randallstown	MD
8683	Liberty SB, FSB	Marietta	OH
8367	Libertyville Fed S&L Assn	Libertyville	IL
7977	Life FSB	Baton Rouge	LA
8896	Life FSB	Clearwater	FL
8451	Lincoln Fed. S&L Assoc	Mt Carmel	TN
8531	Lincoln Federal S&LA	Miami	FL
8560	Lincoln S&L Assoc, FA	Irvine	CA
8677	Louisiana SA	Lake Charles	LA
8838	Louisiana SB, FSB	Kenner	LA
7898	Ludington FSB	Ludington	MI
8364	Madison County Fed S&L Assn	Granite City	IL
8313	Madison Guaranty S&L Assn	McCrory	AR
7762	Mainstay FS, FSB	Red Bank	NJ
7820	Malibu SB, FSB	Malibu	CA
7928	Marine View FSB	Middletown	NJ
8253	Marshall FS & LA	Marshall	TX
8806	Merabank Federal Savings Bank	Phoenix	AZ
7896	Mercantile FSB	Southaven	MS
7720	Mercer FSB	Trenton	NJ
8871	Merchants and Mechanics FS&LA	Springfield	OH

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8801	Mercury FS & LA	Huntington Beach.	CA
8488	Meridian Savings Assoc	Arlington	TX
8464	Meritbanc Savings Assoc	Houston	TX
8335	Mesa FS & LA of Colorado	Grand Junction	CO
8685	Metrobank FS&LA	Palisades Park	NJ
8438	Metropolitan Fed S&L Assn	Denville	NJ
8624	Metropolitan Financial FS & LA	Dallas	TX
8679	Metropolitan FS&LA, FA	Nashville	TN
8346	Miami Savings Bank	Miami	FL
8576	Mid Kansas S&L Assoc. F.A	Wichita	KS
8419	Mid Missouri S&L Assn, FA	Boonville	MO
8385	Mid-America Fed S&L Assoc	Parsons	KS
7726	Mid-America FS & LA	Columbus	OH
8444	Midland-Buckeye Sav., A FS&LA	Alliance	OH
8433	Midwest Fed. S&L Assoc	Nebraska City	NE
8690	Midwest Federal Savings Bank of Minot	Minot	ND
8365	Midwest Home FSB	Belleville	IL
8521	Midwest Sav. Assn., FA	Minneapolis	MN
8366	Midwestern Sav. Assoc	Macomb	IL
8480	Mission SA of Texas	San Antonio	TX
8880	Mississippi Savings Bank, F.S.B	Batesville	MS
8416	Missouri Sav. Assoc., FA	Clayton	MO
8337	Modern Fed. S&L Assoc.	Grand Junction	CO
7765	Monycor FSB	Barron	WI
8688	Moultrie Savings Bank, FSB	Moultrie	GA
8523	Mountainwest S&L Assn, A FS&LA	Ogden	UT
8458	Murray Fed. S&L Assoc.	Dallas	TX
8874	Mutual Aide S&LA	Manasquan	NJ

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8221	Mutual S&LA, FA	Weatherford	TX
8287	Nassau FS & LA	Princeton	NJ
8235	Nassau S & LA	Brooklyn	NY
8894	New Age FSA	St Louis	MO
8297	New Athens FS & LA	New Athens	IL
8599	New Braunfels S&L Assn, FA	New Braunfels	TX
7965	New England FSA	Wellesley	MA
8579	New Guaranty Fed S&L Assn.	Taylor	MI
7859	New Merabank Texas, FSB	El Paso	TX
8607	New Metropolitan FSB	Hialeah	FL
8580	New Mexico FSA	Albuquerque	NM
7797	Newton SB, FSB	Newton	NJ
8434	Nile Valley Fed S&L Assoc.	Scottsbluff	NE
8601	North American FSA	San Antonio	TX
8817	North Carolina S & LA, F.A.	Charlotte	NC
8435	North Jersey Federal Savings Assoc.	Passaic	NJ
8216	North Texas FSA	Wichita Falls	TX
8818	Nowlin FSA	North Richland Hills.	TX
8890	Nutley S&LA	Nutley	NJ
7804	Oak Tree FSB	New Orleans	LA
8430	Occidental Nebraska SB, FSB	Omaha	NE
8282	Old Borough FS&LA	Trenton	NJ
7941	Old Stone FSB	Providence	RI
8695	Olympic FSA	Berwyn	IL
8529	Otero S&L Assoc.	Colorado Springs.	CO
8830	Pacific Coast FSA of America	San Francisco	CA
8320	Pacific Savings Bank	Costa Mesa	CA
8511	Padre Federal Sav. U Loan	Corpus Christi	TX
7983	Palm Beach FSA	Palm Beach Gardens.	FL
8491	Palo Duro FS&LA	Amarillo	TX

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8841	Pan American FSB	San Mateo	CA
8593	Parish Fed. S&L Assoc.	Denham Springs.	LA
8496	Park Cities Savings Association	Dallas	TX
8258	Pelican Hmstd & SA	Metairie	LA
8824	Peninsula S & LA	South San Francisco.	CA
8651	People's Homestead SB, FSB	Monroe	LA
8410	Peoples FS & LA of Thibodaux	Thibodaux	LA
7889	Peoples FSA	Bay St. Louis	MS
7910	Peoples FSA	Ottumwa	IA
8274	Peoples FSA	Bartlesville	OK
7750	Peoples FSB	New Kensington.	PA
8575	Peoples Heritage Sav, A FS&LA	Salina	KS
8614	Peoples S&L Assoc, FA	Streator	IL
8384	Peoples S&L Assoc.	Parsons	KS
8591	Peoples S&L Assoc., F.A.	Hampton	VA
8414	Peoples Sav. Assoc., F.A.	St Joseph	MI
8513	Permian S&L Assoc.	Kermit	TX
8330	Perpetual Sav Assn, A FS&LA	Santa Ana	CA
7920	Perpetual SB	Mclean	VA
8306	Phenix Fed S&L Assn, F.A.	Phenix City	AL
7946	Piedmont FSA	Manassas	VA
8858	Pima FS&LA	Tucson	AZ
8288	Pioneer Federal Savings Bank	Clearwater	FL
7706	Pioneer FS & LA	Marietta	OH
8573	Pioneer Savings, F.A.	Plymouth	IN
8587	Plano S&L Association, F.A.	Plano	TX
8431	Platte Valley Sav., A FS&LA	Gering	NE
7911	Plymouth FSA	Plymouth	MA
7982	Polifly FS&LA	New Milford	NJ
7971	Potomac FSB	Silver Spring	MD
7841	Preferred SB, FSB	High Point	NC
7783	Professional FSB	Coral Gables	FL

RTC THRIFTS—Continued

Bank No.	Name	City	St.
7900	Progressive SB, FSB	Pasadena	CA
8246	Progressive SB, FSB	Natchitoches	LA
7775	Prospect Park FSB	West Paterson	NJ
8669	Provident SA, FA	Casper	WY
8881	Rancho Bernardo Fed. Savings Bank	San Diego	CA
8609	Red River FS&LA, FA	Lawton	OK
8631	Red River S&L Assoc	Coushatta	LA
8816	Remington Federal Savings Association	Elgin	TX
8423	Republic Bank for Sav., FA	Jackson	MS
7955	Republic FSB	Matteson	IL
7851	Republic SB, FSB	Rockville	MD
8462	Resource Savings Assoc	Denison	TX
8400	River City Fed Sav Bank	Baton Rouge	LA
7777	Riverside SB, SLA	Riverside	NJ
8339	Rocky Mountain S&L Assn	Woodland Park	CO
8212	Royal Oak FS & LA	Randallstown	MD
8332	Royal Oak S&L Assoc	Manteca	CA
8533	Royal Palm Fed S&L Assoc	West Palm Beach.	FL
8500	Rusk Fed. S&L Assoc	Rusk	TX
8503	Sabine Valley S&L Assoc	Center	TX
8670	Salamanca Federal Savings Assoc	Salamanca	NY
8550	San Antonio Sav Assn, FA	San Antonio	TX
7932	San Clemente FSB	San Clemente	CA
7789	San Jacinto SA, FA	Bellaire	TX
8439	Sandia Fed. Sav. Assoc	Albuquerque	NM
8213	Santa Barbara FS&LA	Santa Barbara	CA
7704	Santa Paula S&LA	Santa Paula	CA
8618	Saratoga FS&LA	San Jose	CA

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8309	Savers SA, A FS&LA	Little Rock	AR
8489	Savings of Texas Assoc	Jacksonville	TX
8559	Seabank Fed. Savings Bank	Myrtle Beach	SC
8592	Seasons Federal Savings Bank	Richmond	VA
7980	Second National FSA	Salisbury	MD
8615	Security Fed. S&L Assoc	Peoria	IL
8468	Security Fed. Savings Assn	Texarkana	TX
8625	Security Fed. Savings Association	Garden Grove	CA
8284	Security Federal Savings Association	Richmond	VA
8807	Security Federal Savings Bank	Carlsbad	NM
8671	Security Federal Savings, FSB	Columbia	SC
8245	Security First FS&LA	Daytona Beach	FL
7937	Security FS&LA	Jackson	MS
8849	Security FS&LA	Waterbury	CT
8848	Security FS&LA of Albuquerque, FA	Albuquerque	NM
7875	Security FSA	Panama City	FL
7984	Security FSB	Vineland	NJ
8389	Security Homestead FSA	New Orleans	LA
8319	Security S&L Assoc	Scottsdale	AZ
8840	Sentinel FS & LA	Phoenix	AZ
7773	Sentry FSA	Norfolk	VA
7863	Sentry SB, FSB	Nyannis	MA
8378	Shawnee Fed. S&L Assoc	Topeka	KS
8899	Shenandoah FSA	Martinsburg	WV
8604	Sierra S&L Assoc., FA	Beverly Hills	CA
8633	Silver Savings Assoc., FA	Silver City	NM
8360	Sioux Valley S & LA	Cherokee	IA
8536	Skokie Fed S&L Assn., FA	Skokie	IL
8655	Sooner Federal Savings Assoc.	Tulsa	OK

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8391	South S&L Assoc., F.A.	Slidell	LA
8508	Southeast Texas FSA	Woodville	TX
8876	southeastern Federal Savings Bank	Laurel	MS
7842	Southeastern FSB	Charlotte	NC
8501	Southeastern Sav. Assoc.	Dayton	TX
8348	Southern Floridabanc FS & LA	Boca Raton	FL
7710	Southern FS	New Orleans	LA
7962	Southern FSA of Georgia	Atlanta	GA
8891	Southern FSB	Gulfport	MS
8481	Southmost S&L Assoc.	Brownsville	TX
8498	Southside Fed S&L Assoc.	Austin	TX
8561	Southwest Fed. Savings Assoc.	Los Angeles	CA
8280	Southwest FSA	Dallas	TX
8522	Southwest S&LA, FA	Phoenix	AZ
8663	Southwestern Federal Savings Assoc.	El Paso	TX
7854	Sovereign SB, FSB	Palm Harbor	FL
8471	Spindletop Sav. Assn, F.A.	Beaumont	TX
8479	Spring Branch S&L Assoc.	Houston	TX
7902	Springfield FSA	Springfield	PA
8225	St Louis County Savings Association, F.A.	Ferguson	MO
8654	St. Charles FSA	St. Charles	IL
8892	Standard FS&LA	Columbia	SC
7979	Standard FSA	Gaithersburg	MD
8512	Standard FSA	Houston	TX
8202	State FSA	Tulsa	OK
8426	State Mutual Fed S&L Assn.	Jackson	MS
7894	State Savings, FSB	Jackson Heights.	NY

RTC THRIFTS—Continued

Bank No.	Name	City	St.
7858	Statesman Federal Savings Bank	Waterloo	IA
8547	Suburban Savings Assoc.	San Antonio	TX
7735	Summit First S & LA, FA	Summit	IL
8443	Sun Country SB of New Mexico, FSB	Albuquerque	NM
8861	Sun Federal Savings Association	Fort Dodge	IA
8528	Sun S&L Assoc.	Parker	CO
8379	Sun Savings Asoc., F.A.	Kansas City	KS
8563	Sun State S&L Assn., FSA	Phoenix	AZ
8612	Sunbelt FS, FSB	Dallas	TX
7714	Superior FSA	Cleveland	OH
8290	Superior SB, FSB	Nacogdoches	TX
8650	Surety Federal Sav. Assoc.	El Paso	TX
7857	Surety FS&LA, FA	Morganton	NC
8256	Sweetwater FS & LA	Rock Springs	WY
8588	Taylorbanc FED S&L Assn.	Taylor	TX
8875	Tennessee FSB	Cookeville	TN
8406	Terrebonne S&L Assoc, FA	Houma	LA
8897	Taxarkana FS&LA, FA	Texarkana	AR
7839	Texas Commercial SA	Sulphur Springs.	TX
8873	Texas FSA	San Antonio	TX
8658	Texas Western Fed. Savings Association	Houston	TX
8814	Texasbanc FSB	Conroe	TX
8388	The Barber County S&L Assn.	Medicine Lodge	KS
8201	The Benj. Franklin FS & LA	Portland	OR
8546	The Duncan S&L Assoc.	Duncan	OK
8295	The Federal Savings Banc, FA	Arlington	TX
7781	The Federal SB, FSB	Atlanta	GA
7725	The First, FA	Orlando	FL
8876	The Garnett S&L Assoc.	Garnett	KS

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8901	The Guardian Bank, A FSB	Boca Raton	FL
8564	The Guardian Fed S&L Assn.	Bakersfield	CA
8214	The Hiawatha Federal Sav. Assoc.	Hiawatha	KS
7780	The Overland Park FS&LA	Overland Park	KS
8493	Timberland FSA	Nacogdoches	TX
8815	Time FS&LA	San Francisco	CA
8383	Topeka Sav., A FS&LA	Topeka	KS
7950	Transohio FSB	Cleveland	OH
8678	Travis FS&LA	San Antonio	TX
7876	Trident FS&LA, FA	Newark	NJ
8482	Trinity Valley S&L Assoc.	Cleveland	TX
7808	Trustbank FSB	Tysons Corner	VA
7870	Tuskegee S&LA, FA	Tuskegee Institute.	AL
7940	Ukrainian FS&LA	Philadelphia	PA
8331	Unified Savings, A FS&LA	Northridge	CA
8623	Unifirst Bank for Sav., A FS&LA	Jackson	MS
8318	Unipoint Fed Savings Bank	Trumann	AR
8809	United Federal Savings, F.A.	New Orleans	LA
8300	United FS&LA	Vidalia	LA
7867	United FS&LA, FA	Jonesboro	AR
8247	United FSA of Iowa	Des Moines	IA
7801	United FSB	Vienna	VA
7877	United FSB	Smyrna	GA
8696	United FSB	Prestonsburg	KY
8453	United Guaranty Fed Sav Bank	Tullahoma	TN
7742	United Home Federal	Toledo	OH
8853	United S&L of Trenton, F.A.	Trenton	NJ
7767	United Sav. of America, FA	Melbourne	FL
8241	United Savings Bank, FSB	Windom	MN
8691	United Savings of America	Chicago	IL

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8882	United Savings, FSB	Patterson	NJ
7881	Unity FS&LA, FA	Beverly Hills	CA
8524	Universal S&LA, A FS&LA	Scottsdale	AZ
8474	Universal Sav. Assoc.	Houston	TX
8455	University Fed Sav. Assoc.	Houston	TX
8619	Uvalde FS&LA	Uvalde	TX
8336	Valley Federal S&L Assoc.	Grand Junction	CO
8652	Valley Federal Sav. Assoc.	McAllen	TX
7810	Valley FS&LA	Van Nuys	CA
8442	Valley Savings Bank, FSB	Roswell	NM
8377	Valley Savings, A FS&LA	Hutchinson	KS
8252	Vanguard SB, FSB	Vandergrift	PA
7803	Vermilion FSB	Abbeville	LA
8268	Vermont SA, FA	Timonium	MD
8556	Victoria SA, FSA	San Antonio	TX
8484	Village Savings FSB	Houston	TX
8485	Vision Banc Sav. Assoc.	Kingsville	TX
7945	Vista FSA	Reston	VA
7986	Vista FSA	Canoga Park	CA
8242	Volunteer FSA	Little Ferry	NJ
8327	Washington S&L Assoc.	Stockton	CA
8562	Westco Savings Bank, FSB	Wilmington	CA
8205	Westerleigh FS&LA	Staten Island	NY
8855	Western Empire FS&LA	Yorba Linda	CA
7931	Western FS&LA	Glenview	IL
8472	Western Gulf S&L Assoc.	Bay City	TX
8603	Western S&L Assoc., FA	Phoenix	AZ
8255	Westland FS&LA	Rawlins	WY
8859	Westport Federal Savings Bank	Hanford	CA
8321	Westwood S&L Assoc.	Los Angeles	CA
7914	White Horse FS&LA	Trenton	NJ

RTC THRIFTS—Continued

Bank No.	Name	City	St.
8273	Whitestone FS&LA	Whitestone	NY
8854	Williamsburg FS&LA	Salt Lake City	UT
8674	Wilshire FS&LA	Los Angeles	CA
8835	Windsor FSA	Austin	TX
8666	Yorkridge-Calvert FSA	Pikesville	MD
7864	Yorkville FS&LA	Bronx	NY
8278	Yorkwood FS&LA	Maplewood	NJ

By order of the Executive Committee.

Dated at Washington, DC, this 3rd day of May, 1993.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 93–10774 Filed 5–6–93; 8:45 am]

BILLING CODE 6714–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Management Training Report.

Form No.: SBA Form 888.

Frequency: On Occasion.

Description of Respondents: Attendees at SBA sponsored training.

Annual Responses: 16,000.

Annual Burden: 2,656.

Dated: May 3, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–10820 Filed 5–6–93; 8:45 am]

BILLING CODE 8025–01–M

[License # 02/02–0408]

Interstate Capital Co., Inc.; License Surrender

Notice is hereby given that Interstate Capital Company Incorporated ("ICC"), 149 Madison Ave., Rm 805, New York City, New York, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). ICC was licensed by the Small Business Administration on October 22, 1980/Reissued October 29, 1982.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 22, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 29, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–10762 Filed 5–6–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0189]

Kitty Hawk Capital Limited Partnership; License Surrender

Notice is hereby given that Kitty Hawk Capital Limited Partnership ("Kitty Hawk"), 1640 Independence Center, Charlotte, NC, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Kitty Hawk was licensed by the Small Business Administration on July 23, 1980.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 28, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 28, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–10761 Filed 5–6–93; 8:45 am]

BILLING CODE 8025–01–M

Green Mountain Capital, L.P., Issuance of a Small Business Investment Company License

In the matter of Green Mountain Capital, L.P., Route 1, Box 1503, (corner of Blush Hill Rd. & Route 100), Waterbury, Vermont 05676 (License No. 01/01–0357).

On September 17, 1992, a notice was published in the **Federal Register**, stating that an application has been filed by Green Mountain Capital, L.P., with the U.S. Small Business Administration (SBA) pursuant to § 107.102 of the Regulations for a license to operate as a small business investment company.

Interested parties were given until close of business October 17, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–0357 on March 30, 1993 to Green Mountain Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: April 28, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–10763 Filed 5–6–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1805]

Secretary of State's Panel on El Salvador; Meeting

The Department of State announces an open meeting of the Secretary of State's Panel on El Salvador on May 26, 1993 from 1:30 p.m. to 4:30 p.m. in room 2925B, the East Auditorium, Department of State, 22201 C Street, NW., Washington, DC 20520.

The Panel is examining the conduct of the Department of State in light of the issues raised by the United Nations Truth Commission. The Panel's review

will include an examination of the Department's and Embassy's human rights reporting, the degree to which full and objective inquiries into abuses by both sides in the conflict in El Salvador were conducted, and the approach taken by the Department to Congressional and public inquiries on these issues.

This meeting will provide a forum for all interested members of the public, as well as representatives of the executive and congressional branches of government to provide their views to the Panel. Discussion will focus on the period 1980–1991.

Members of the general public may attend the meeting and join in the discussion, subject to the direction of the Chairman. Admittance will be limited to the seating available (approximately 200). In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Arrangements must be made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise Ms. Sherry Booth, or Ms. Eileen Kazanowski, Department of State, Washington, DC; telephone 202–736–4517, by providing their name, title, organization name, social security number and date of birth. All attendees must use the C Street entrance to the building and present a photo I.D. is required.

Dated: May 4, 1993.

B. Lynn Pascoe,

Executive Director, Secretary of State's Panel on El Salvador.

[FR Doc. 93–10804 Filed 5–6–93; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

For-Hire Motor Carriers of Passengers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of interpretation.

SUMMARY: This notice is intended to clarify the Federal Highway Administration's policy relating to for-hire transportation of passengers and to make subject carriers aware of the applicable regulations and potential penalties for non-compliance. Businesses operating passenger-carrying commercial motor vehicles in interstate commerce, and receiving direct or indirect compensation for their transportation services are for-hire motor carriers subject to the minimum financial responsibility requirements in 49 CFR part 387. If the passenger-carrying capacity of the vehicles operated by such motor carriers is 16 or more, including the driver, they are also subject to the remainder of the Federal Motor Carrier Safety Regulations. Non-business entities which are conducting for-hire operations are also subject to these regulations.

EFFECTIVE DATE: This policy is currently in effect.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Price, Office of Motor Carrier Standards, (202) 366–4009, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Since 1935, the Federal government has been regulating, for safety purposes, interstate transportation performed by for-hire carriers of property and passengers, and private carriers of property.

In 1982, Congress passed the Bus Regulatory Reform Act (Pub. L. 97–261, 96 Stat. 1102, 49 U.S.C. 10927) which mandated that the Secretary of Transportation establish regulations to require minimum levels of financial responsibility applicable to for-hire motor carriers of passengers. In revising the statutes governing motor carriers of passengers, Congress recognized the benefits of a safe, sound, competitive and fuel-efficient motorcoach system to the nation's economy and national defense, as well as its vital contribution to the transportation needs of the elderly, handicapped and the poor.

In the Motor Carrier Safety Act of 1984 on October 30, 1984 (Pub. L. 98–554, 98 Stat. 2832, 49 U.S.C. App. 2501 et seq.), Congress defined the FHWA's jurisdiction on the basis of vehicles being operated in interstate commerce. The stated purposes of the 1984 Act were to (1) promote the safe operation of commercial motor vehicles; (2) minimize dangers to the health of operators of commercial motor vehicles; and (3) assure increased compliance with traffic laws and with the commercial motor vehicle safety rules. Congress expanded the definition of "commercial motor vehicle" (CMV) in section 204 of that Act (49 U.S.C. App. 2503) to include any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property if (a) such vehicle has a gross vehicle weight rating of 10,001 or more pounds; (b) such vehicle is designed to transport 16 or more passengers, including the driver; or (c) such vehicle is used in the transportation of hazardous materials which require a placard. Consequently, any entity operating a commercial motor vehicle, as defined in that Act, in interstate commerce, unless exempt, would be subject to the FMCSRs. The FHWA, therefore, determined that private transportation of passengers in a "commercial motor vehicle" would, for the first time, be subject to the FMCSRs, and initiated a rulemaking to propose elimination of the exemption of such transportation from those regulations. (See 54 FR 7362, February 17, 1989.) This rulemaking has not been completed.

The purpose of this notice is to clarify existing policy to the effect that certain entities providing transportation services, which by their very nature are for-hire, are not private carriers of passengers. These entities have already been and continue to be subject to regulation by the FHWA under authority dating back to the Motor Carrier Act of 1935 and the Bus Regulatory Reform Act of 1982.

Current Regulations

The Federal Motor Carrier Safety Regulations (FMCSRs) are contained in Title 49, Code of Federal Regulations, parts 350 through 399. The regulations in parts 390–399 set minimum safety standards for motor carriers and drivers involved in interstate commerce in areas such as driver qualification, licensing, hours of service, inspection and maintenance, parts and accessories and operating rules.

The minimum levels of financial responsibility for for-hire motor carriers of passengers are found in part 387, subpart B. These levels are set at $5,000,000 for any vehicle with a seating capacity of 16 passengers or more, and $1,500,000 for any vehicle with a seating capacity of 15 passengers or less.

Private carriers of passengers, i.e., other than for-hire carriers, are presently exempt from all of the FMCSRs, except the Commercial Driver's License (CDL) requirements in part 383.

Pursuant to the CDL regulations, all drivers of commercial motor vehicles, as defined in the 1986 Act, must be tested and licensed according to the Federal standards.

Statement of Policy

The FHWA is issuing this Notice to clarify its policy regarding certain businesses, including hotels and car rental agencies operating shuttle bus services, and outdoor recreation

operations such as whitewater rafters and scuba diving schools transporting patrons to or from a recreation site. These operations constitute for-hire motor carriage of passengers. "For-hire motor carrier," defined at 49 CFR § 390.5, means a person engaged in the transportation of goods or passengers for compensation. "Compensation," as used in the context of a business enterprise, includes both direct and indirect payment for the transportation service provided. It need not mean "for profit." Moreover, as for-hire motor carriers of passengers, these businesses are subject to the financial responsibility requirements of 49 CFR part 387. The FHWA believes this policy is consistent with its responsibilities for commercial motor vehicle safety inherited from the Interstate Commerce Commission in 1967, and also conforms with the stated purposes of the Motor Carrier Safety Act of 1984.

The FHWA is also reiterating its policy that certain non-business entities, even churches or other eleemosynary organizations, when operating as a for-hire carrier of passengers, have always been subject to the FMCSRs. This means that when a church offers charter bus operations to the general public, and charges a fee for such service, it is operating as a for-hire carrier and must comply with the FMCSRs, including the Financial Responsibility requirements in part 387.

Basis for Policy

Three factors are critical in determining if a motor carrier of passengers is for-hire, and therefore subject to the FMCSRs and the financial responsibility requirements. These factors are:

1. The motor carrier provides point-to-point interstate transportation of passengers in a commercial motor vehicle for a commercial purpose;
2. The motor carrier is compensated, either directly or indirectly, for the transportation service provided; and
3. The point-to-point transportation service is generally available to the public at large.

All three of the above factors must be present before a motor carrier of passengers will be considered for-hire.

The following hypothetical examples are offered as illustrations to help clarify the determining factors:

First Example

A scuba diving school in Virginia, whose primary business function is the certification of trained scuba divers, offers scuba classes to the general public. The school charges a fee of $2500.00 for a nine week course which includes instruction, equipment rental, certification fees, and transportation, via the school's motorcoach, to Florida for the final phase of the certification process. None of the $2500.00 fee is specifically earmarked for the transportation service provided, and the business bookkeeping does not reflect any portion of the $2500.00 fee reserved for transportation.

In this example all three of the determining factors can be answered in the affirmative: (1) The business provides point-to-point transportation between Virginia and Florida in a commercial motor vehicle in furtherance of a commercial venture; (2) the business is indirectly compensated for the transportation service which is included in the $2500.00 class fee; and (3) the scuba school's certification program, which includes transportation, is available to the general public. As a result, the school's transportation service constitutes for-hire motor carriage of passengers, subject to the FMCSRs and the financial responsibility requirements.

Second Example

A church in Tennessee advertises, e.g., in the local newspapers, radio, etc., that it is offering package bus tours to Disney World in Florida for a stated fee. The offering is open to the public, and the net proceeds will be used to offset the expenses for regular church activities (i.e., charitable purposes).

In this example, although the church would not ordinarily be considered a business, once it engages in the charter bus enterprise, it is operating as a business offering transportation services for-hire in interstates commerce. It receives direct compensation for the transportation services provided, and, even though the proceeds will go to another church purpose, which may be charitable, there is no question that the church intended to make money from the venture. If the church charged a fee only large enough to cover its expenses, it would not actually be receiving compensation for the transportation service provided, but would only be recovering the costs of a church sponsored activity. Finally, the church is offering these services to a large segment of the public-at-large through its advertisement in local newspapers and radio. If the church offered the excursion only to members of its congregation, then the element of holding out to the general public would be missing.

Educational Activities

The FHWA's primary method for providing educational and technical assistance is through on-site reviews. FHWA investigators examine various documents during these reviews, including, among others, documents establishing driver qualification, licensing, hours of service, and inspection, maintenance, and operating condition of vehicle safety equipment, and proof of financial responsibility.

Following an on-site review, a carrier is assigned one of three safety ratings: (1) Satisfactory; (2) Conditional; or (3) Unsatisfactory. The results of the review and the safety fitness rating help the FHWA determine if the carrier should be entered into a selective priority grouping for further reviews and audits.

Section 385.21 of the FMCSRs requires all unrated motor carriers to file a Motor Carrier Identification Report, Form MC–150, with the FHWA. The purpose of the report is to identify previously unidentified motor carriers and to assist the FHWA in prioritizing such carriers for reviews.

Those for-hire carriers identified in this policy notice, which have not filed an MC–150 may obtain that form from the FHWA's Office of Motor Carriers in their state of domicile, together with an Educational and Technical Assistance (ETA) package designed to assist carriers in complying with the FMCSR.

Once completed, the MC–150 should be sent to the FHWA's Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

Enforcement

Any person who violates provisions of the Federal Motor Carrier Safety Regulations may be subject to the civil and criminal penalties found at 49 U.S.C. 521.

Any person, other than an employee who acts without knowledge, who knowingly violates the minimum levels of financial responsibility requirements of 49 CFR part 387 shall be subject to the civil penalties found in 49 U.S.C. 10927 (note). The specific penalty structure, set forth in the Bus Regulatory Reform Act of 1982, is restated at 49 CFR 387.41.

Current FHWA enforcement policies are such that initial reviews generally do not lead to enforcement actions. However, the Motor Carrier Safety Act of 1990 (Pub. L. 101–500, section 117, 104 Stat. 1218 (1990)) requires that an enforcement action be initiated any time certain violations are discovered and can be documented. The Motor Carrier Safety Act of 1990 also requires that all for-hire motor carriers of passengers who receive an "unsatisfactory" safety rating, on or after January 1991, take actions necessary to improve their safety rating to conditional or satisfactory within 45 days or cease transportation. The Act gives the carrier the opportunity to take corrective actions

necessary to improve the "unsatisfactory" rating to a "conditional" or "satisfactory" within those 45 days.

(23 U.S.C. 315; 49 CFR 148; 49 CFR 387)

Issued on: May 3, 1993.

E. Dean Carlson,

Executive Director.

[FR Doc. 93-10846 Filed 5-6-93; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 29, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0049
Form Number: CF 7533
Type of Review: Extension
Title: Inward Cargo Manifest for Vessels Under Five Tons, Ferry, Train, Car, Vehicle, etc.
Description: Vessels under five tons and any vehicle carrying merchandise and arriving from a contiguous country must report their arrival in the United States and produce a manifest on CF 7533 listing the merchandise being conveyed.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 20,000
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 41,650 hours

OMB Number: 1515-0060
Form Number: CF 1300
Type of Review: Extension
Title: Master's Oath of Vessel in Foreign Trade
Description: Customs Form 1300 is used by the master of a vessel to attest the truthfulness of all other forms associated with the manifest. The form also serves to record information on tonnage tax to prevent overpayment of that tax.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 12,000
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 21,991 hours

OMB Number: 1515-0071
Form Number: CF 26
Type of Review: Extension
Title: Report of Diversion
Description: Customs Form 26 is used by vessel owners, masters or agents when requesting a diversion of a vessel or to petition for relief from penalties incurred as a result of unlawful diversion or both.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 1,400
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 233 hours

OMB Number: 1515-0116
Form Number: None
Type of Review: Extension
Title: Marking Serially Numbered Substantial Holders or Containers
Description: The marking is used to provide for duty-free entry of holders or containers which were manufactured in the United States and exported and returned without having been advanced in value or improved in condition by any process or manufacture. The regulation also provides for duty-free entry of holders or containers of foreign manufacture if duty has been paid before.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 12
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 90 hours

OMB Number: 1515-0151
Form Number: None
Type of Review: Extension
Title: Foreign Trade Zone Annual Reconciliation Certification and Recordkeeping Requirement
Description: Each Foreign Trade Zone operator will be responsible for maintaining its inventory control in compliance with statute and regulations. The operator will furnish Customs an annual certification of his compliance.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 171
Estimated Burden Hours Per Respondent: 20 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 199 hours
Clearance Officer: Ralph Meyer (202) 927-1552 U.S. Customs Service Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW. Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-10770 Filed 5-6-93; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

April 29, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0177
Form Number: IRS Form 4684
Type of Review: Extension
Title: Casualties and Thefts
Description: Form 4684 is used by all taxpayers to compute their gain or loss from casualties or thefts and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 300,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hour, 12 minutes
Learning about the law or the form—10 minutes
Preparing the form—58 minutes

Copying, assembling, and sending the form to the IRS—35 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 870,000 hours
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93-10771 Filed 5-6-93; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

April 30, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0127
Form Number: IRS Form 1120-H
Type of Review: Revision
Title: United States Income Tax Return for Homeowners Associations
Description: Homeowners associations file Form 1120-H to report income, deductions, and credits. The form is also used to report the income, deductions, and credits have been correctly computed. The form is also used for statistical purposes.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeeper: 60,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hours, 14 minutes
Learning about the law or the form—5 hours, 9 minutes
Preparing the form—12 hours, 59 minutes
Copying, assembling, and sending the form to the IRS—2 hours, 9 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 1,890,000 hours
OMB Number: 1545-0796
Form Number: IRS Form 6524
Type of Review: Revision
Title: Office of Chief Counsel Application
Description: The Chief Counsel Application form provides data we deem critical for evaluating attorney applicant's qualifications such as LSAT score, bar admission status, type of work preference, law school, class standing. SF-171 does not provide this information.
Respondents: Individuals or households
Estimated Number of Respondents: 3,000
Estimated Burden Hours Per Respondent: 18 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 900 hours
OMB Number: 1545-0996
Regulation ID Number: EE-113-82 NPRM
Type of Review: Extension
Title: Required Distributions from Qualified Plans and Individual Retirement Plans
Description: The proposed regulations provide rules regarding the minimum distribution requirements applicable to section 403(b) contracts and accounts. Such minimum distribution rules do not apply to benefits accrued before January 1, 1987.
Respondents: State or local governments, Non-profit institutions
Estimated Number of Recordkeepers: 1
Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 1 hour
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93-10772 Filed 5-6-93; 8:45 am]
BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

University Affiliations Program: Application Notice for Fiscal Year 1994

AGENCY: USIA.

ACTION: Notice—Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional partnerships between U.S. and foreign universities and colleges with a demonstrated commitment to internationalization of their academic programs. The University Affiliations Program seeks to promote institutional relationships through grants for the exchange of faculty and staff for a period of not less than three years. The exchange visits to all partner institutions must be for one month or more. The only exception to the minimum length of stay is for planning visits. Three-month or one-semester visits are preferred, and proposals with longer lengths of stay will be more competitive. Exchange visits will involve at least one of the following activities: Teaching, lecturing, research, and faculty and curriculum development directly related to the purpose of the affiliation. The ideal and most competitive proposals will constitute a well-reasoned combination of all of these activities. USIA grant funds must not exceed $120,000. A modest amount of the grant total can be allocated for educational materials. Up to 20% of the total grant award can be applied to direct administrative costs.

Proposals will be accepted either to establish new affiliations or to allow for innovation and strengthening of existing partnerships not previously funded by the University Affiliations Program or similar linkage programs funded by other U.S. government agencies. Proposals for technical or development assistance projects and feasibility studies to plan affiliations will not be considered. Research proposals must include collaboration by researchers from both institutions and be linked to substantial participation in graduate-level seminars.

The competition, as described in separate geographic area programs, is limited to selected countries and academic disciplines which represent USIA's geographic and academic priorities for the University Affiliations Program. Subject to the availability of funds, approximately 20 grants will be awarded for Fiscal year 1994.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. Foreign institutions are encouraged to consult with the U.S. Information Service (USIS) office and/or Fulbright Commission in their countries about the proposed project.

DATES: Deadline for proposals: Proposals must be received by 5 p.m. Washington, DC time on November 8, 1993. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents be accepted which are postmarked on November 8, 1993 but received at a later date. It is the responsibility of all grant applicants to ensure that their proposal is received by the above deadline. Grant activities should begin not later than September 1, 1994.

ADDRESSES: The original and 14 complete copies of the proposal should be submitted by the deadline to the address below. Note that this is a change in address for proposal submissions only. USIA University Affiliations Program, c/o AED, 1255 23rd Street, NW., Suite 100, Washington, DC 20037.

CONTACTS FOR FURTHER INFORMATION: For general information and requests for application packets, which include all necessary forms and guidelines for preparing budgets, interested institutions should contact Ms. Camille Barone or Ms. Deborah Trent at (202) 619–5289, or write to the address below. Note that this is a change in procedure. Proposals should not be mailed to this address: University Affiliations Program, Office of Academic Programs, U.S. Information Agency, 301 4th Street, SW., rm. 349, Washington, DC 20547.

SUPPLEMENTARY INFORMATION:

Overview

Authority for the University Affiliations Program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. USIA strives to accomplish this goal by promoting affiliations between U.S. and foreign institutions of higher education.

Pursuant to the Agency's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden estimate, to USIA Clearance Officer, M/ADD, room 624, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

(Information collection involved in this program has been cleared by OMB Approval Number 3116–0179, expiration date 12/31/95.)

Guidelines

Eligibility

In the U.S., participation in the program is open to accredited two-year and four-year colleges and universities, including graduate schools. Consortia of universities and/or community colleges, individually or as systems, are also eligible. Overseas, participation is limited to recognized degree-granting institutions of post-secondary education and internationally recognized and highly regarded independent research institutes. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium. Participants (representing the U.S. institution) traveling under USIA grant support must be U.S. citizens; and (representing the foreign institution) citizens, nationals, or permanent residents of the country of the foreign partner, who are qualified to hold a valid passport. In the case of a partnership with an institution in one of the Newly Independent States, foreign participants with citizenship in any of the NIS will be eligible.

The Agency invites proposals from eligible Historically Black Colleges and Universities (HBCUs) and other institutions in the U.S. with significant minority student enrollment. Consortia of universities including such institutions are also encouraged to apply.

Proposed Budget

A comprehensive line item budget must be submitted with the proposal by the deadline. The budget must not exceed $120,000. Matching funds are not required, but cost sharing is encouraged. Specific guidelines for budget preparation are available in the application packet.

Note: Grants awarded to eligible institutions with fewer than four years' experience in conducting international exchange programs will be limited to $60,000. Budget submissions from these institutions must not exceed this amount.

Ineligibility

A proposal will be deemed technically ineligible if:

1. It does not fully adhere to the guidelines established herein and in the application packet, including budgetary requirements;
2. The proposal is not received by the deadline;
3. The length of the proposed program is not three years;
4. The proposal is not submitted by the U.S. partner;
5. One of the partner institutions is ineligible;
6. The foreign geographic location is ineligible;
7. The project involves a partnership with more than one country (with the exception of the North American trilateral component);
8. The field of study is ineligible;
9. A detailed narrative is not included;
10. A comprehensive line item budget is not included; or
11. The project budget for costs charged against grant funds exceeds $120,000.

Geographic Area Programs

The program invites proposals for two-way projects only (involving the U.S. and one foreign country) except for the trilateral (Canada-U.S.-Mexico) exchanges. Proposals can focus on one or more eligible academic disciplines.

Africa

—Eligibility is open to all sub-Saharan African countries. Eligible academic disciplines are limited to the social sciences, humanities, the arts, business administration, education/educational administration, and environmental studies. Proposals which focus on democratic institution building, including economic reform, and proposals which focus on conflict resolution are also encouraged.

American Republics

—Eligible countries and academic fields are limited to: Argentina (economics; education); Bolivia (business administration; economics; journalism); Brazil (environmental studies; humanities; social sciences); Colombia (American studies); El Salvador (American studies; business administration; humanities; social sciences); and Uruguay [business administration; economics; education (including educational reform)].

East Asia/Pacific

—Eligible countries are limited to: Australia, Hong Kong, Japan, Korea, Mongolia, New Zealand, Peoples Republic of China, Philippines, Singapore, and Western Samoa. Eligible academic disciplines are

limited to the social sciences, humanities, the arts, education, and environmental studies. Proposals in *American studies are also encouraged.

Europe

Eastern/Central/Western Europe

—Eligible countries are limited to: Albania, Bulgaria, Estonia, Hungary (for Hungary note specified fields below), Latvia, Lithuania, Macedonia, Malta, and Romania.

For E/C/W Europe, eligible academic disciplines are limited to the social sciences, American studies/area and country studies, education, and environmental studies. Possible areas within those disciplines include but are not limited to communications/journalism, library science, sociology, and social work. Proposals which focus on conflict resolution are also encouraged. (Note: For Hungary, proposals will be accepted in American studies, communications/journalism, educational administration, and political science. Proposals dealing with American studies and political science should specifically target the development of a doctoral program at a Hungarian institution in these fields.)

Newly Independent States of the Former Soviet Union

—Eligibility is limited to the following NIS countries: Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia (limited to institutions outside Moscow and St. Petersburg), Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

For the Newly Independent States, eligible academic disciplines are limited to the social sciences, humanities, the arts, and environmental studies. Possible areas within those disciplines include but are not limited to communications/journalism, library science, sociology, and social work. Proposals in Islamic or *American studies or proposals which focus on conflict resolution are also encouraged.

North Africa/Near East/South Asia

—Eligible countries/regions are limited to: Algeria, Bahrain, Egypt, India, Jordan, Kuwait, Morocco, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, Sri Lanka, Sudan, Syria, Tunisia, United Arab Emirates, West Bank, and Yemen. Eligible academic disciplines are limited to the social sciences, humanities, the arts, business administration, communications/journalism, education, and environmental studies. Proposals in Islamic or *American studies or proposals which focus on conflict resolution are also encouraged.

North American Trilateral Exchanges: Canada-U.S.-Mexico

The Agency also invites proposals for three-way projects linking an institution in the U.S. with institutions in Canada and Mexico. Eligible academic disciplines are: The arts, humanities, comparative education and culture, business and trade, economics, and environmental studies.

*American studies includes the fields of American history, civilization, literature, social sciences, and the arts.

Application Requirements

Proposals must be submitted within the deadline and conform to the selected countries and academic fields identified under the geographic area programs. The proposal package should include one original and 14 complete copies and all required documentation. Proposals should be presented as follows:

1. *A proposal cover sheet* (in addition to the Bureau cover sheet) with names of both institutions, name of foreign country, project directors including their addresses, telephone and fax numbers, and academic field(s) of proposal. A sample cover sheet format is included in the application packet.

2. *An executive summary* (abstract) of proposed project, not to exceed two double-spaced pages.

3. *A narrative*, not to exceed twenty double-spaced pages, including (a) brief, concise descriptions of institutions and participating academic departments or schools; (b) a detailed description of the proposed affiliation program, including names and qualifications of designated project directors; (c) a statement of need for the proposed program; (d) a detailed plan and chronology of exchange activities, including who will travel, when, where, and how activities will occur for each of the three years; (e) the program's anticipated benefits to participating institutions; (f) evidence of the institutions' commitment to the internationalization of their academic programs, e.g. through international partnerships, student exchanges, etc.; (g) a plan for institutional evaluation of the project; and (h) evidence that the partnership is likely to continue after the USIA grant expires.

4. *A comprehensive line item budget* for the three-year program, outlining specific expenditures and sources from which funds are anticipated. Detailed information concerning eligible and ineligible items and required budget format is available in the application packet.

5. *Documentation of institutional support* for the proposed linkage, including signed letters of endorsement from the U.S. and foreign institutions' presidents, chancellors, or directors, making specific reference to the 1994 University Affiliations Program and committing their participating institution(s) to maintaining their exchange participants on salary and benefits during the exchange. A general letter of support or an agreement between the two institutions without reference to the maintenance of salaries and benefits will not fulfill this requirement.

A grace period will be granted to applicants for the submission of the foreign letter of support only. One original and 14 copies of the letter must be received by 5 p.m. Washington, DC time on November 22, 1993. A sample letter of endorsement and commitment is included in the application packet.

6. *Brief academic resumes*, not to exceed two single-spaced pages each, of participating faculty/staff from both institutions, clearly indicating level of language skills, overseas experience, knowledge of prospective partner country, relevant scholarly and non-scholarly travel, publications, professional memberships, and research activities.

Note: *All pages in excess of the two-page limit will be discarded.*

7. *A list of past and present international institutional linkages* (for the U.S. partner). Include linkages supported by USIA and other U.S. government agencies. Also note any pending grant applications submitted to other USIA programs.

Review Process

The University Affiliations Program review process is conducted in three stages: Technical, academic, and Agency. Proposals will be deemed technically eligible only if they adhere to the guidelines established herein and in the application packet. Applicants will be notified of the status of their proposals following technical review. Technically eligible proposals will be forwarded for advisory review to ad hoc panels of academics with area and discipline expertise. All proposals recommended for funding will be reviewed in the Agency by the Office of Academic Programs, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA contracting officer.

Review Criteria

Academic Review Criteria

Proposals are reviewed by independent academic peer panels with geographic and discipline expertise which make recommendations to the Agency based on the following criteria:

1. Soundness of proposal indicating academic quality, as reflected by a clear statement of program goals and means to accomplish the goals, and detailed description of project with statement on how the proposed project will be implemented.
2. If the proposal requests support for an established active linkage, evidence that the University Affiliations funding would result in innovation in the exchange relationship.
3. Promise of the production of new skills/knowledge and advancement of scholarship in fields covered by the program.
4. Evidence of strong mutual benefits to the institutions involved in the exchanges.
5. Feasibility of the program plan as it relates to the stated goals and selected topics and activities.
6. Academic quality of credentials/experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required).
7. Length of exchange visits in furtherance of project goals. Longer visits up to a full academic semester are generally preferred.
8. Evidence of strong institutional commitment by participating institutions.
9. Evidence of a strong commitment to internationalization of their academic programs by participating institutions.
10. Evidence of mutual advancement of cultural and political understanding of the countries or geographic areas represented in the partnership through development of individual and institutional ties.
11. For proposals focused on research as its primary activity: Inclusion of collaboration by researchers from both institutions, linked to substantial participation in graduate-level seminars.
12. Presentation of a detailed evaluation plan.
13. Evidence that the partnership is likely to continue after the expiration of the USIA grant.

Agency Review Criteria

USIA will consider for further review only those proposals recommended by academic review panels. Agency considerations will be based on:

1. Academic quality, reflected in academic review panel's comments and recommendations.
2. Feasibility of program plan.
3. Advancement of mutual cultural and political understanding between the countries or geographic areas represented in the partnership.
4. USIA overseas post assessments of need and feasibility.
5. Promise of long-term impact.
6. Cost-effectiveness.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: May 3, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-10828 Filed 5-6-93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 87
Friday, May 7, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—May 12, 1993.

PLACE: Main Hearing Room—800 North Capitol Street, NW., Washington, DC 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED: Portion open to the public.

1. Petition No. P7–92—Motor Vehicle Manufacturers Association of the United States, Inc. and Wallenius Lines, N.A.—Joint Application for Exemption from Certain Requirements of the Shipping Act of 1984 for Certain Limited Shipments of Passenger Vehicles—Consideration of the Record.

Portion closed to the public:

2. Petition No. P8–92—The Shipbuilders Council of America—Petition for an Investigation of, and for Section 19 Relief from, Italian Subsidies for Carnival Cruise Line Passenger Vessels—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.

[FR Doc. 93–10969 Filed 5–5–93; 12:38 pm]

BILLING CODE 6730–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 4:35 p.m., Tuesday, May 4, 1993.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTER CONSIDERED: Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 5, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–10970 Filed 5–5–93; 12:38 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m. May 17, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center recordkeeping and agency liaison.
2. Benefits administration.
3. Investments.
4. Participant communications.
5. Approval of the minutes of the last meeting.
6. Thrift Savings Plan activities report by the Executive Director.
7. Approval of the update of the FY 1993–FY 1994 budgets.
8. Investment policy review.
9. Review of additional Thrift Savings Plan funds.
10. Audit recommendations and reports.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Date: May 5, 1993.

John J. O'Meara,
Secetary, Federal Retirement Thrift Investment Board.

[FR Doc. 93–11005 Filed 5–5–93; 2:30 pm]

BILLING CODE 6760–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Wednesday, May 12, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 4, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–10949 Filed 5–5–93; 9:53 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on May 5, 1993 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(A)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, May 5, will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272–2000.

Dated: May 5, 1993.

Jonathan G. Katz,
Secretary.

[FR Doc. 93–10940 Filed 5–5–93; 4:26 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 87
Friday, May 7, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[Docket No. 920409-3047]
RIN 0648-AD12

Fishery Conservation and Management; Foreign Fishing; Atlantic Sharks

Correction

In rule document 93-9641 beginning on page 21931 in the issue of Monday, April 26, 1993, make the following correction:

§ 678.4 [Corrected]

On page 21946, in the second column, in § 678.4(j), in the second line, "valid" should read "invalid".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Brainerd-Crow Wing County Regional Airport/Walter F. Wieland, Field, Brainerd, MN

Correction

In notice document 93-9084 beginning on page 21209 in the issue of Monday, April 19, 1993, the subject heading is correctly set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

[T.D. 93-32]

Customs Service Field Organization; Vicksburg, MS

Correction

In rule document 93-9963 appearing on page 25933 in the issue of Thursday, April 29, 1993, make the following correction:

In the third column, at the bottom, the title for Michael H. Lane should read "Acting Commissioner of Customs" and the title for John P. Simpson should read "Deputy Assistant Secretary of the Treasury".

BILLING CODE 1505-01-D

federal register

Friday
May 7, 1993

Part II

Department of Justice

Antitrust Division

United States v. Airline Tariff Publishing Company, et al.; Public Comments and Response on Proposed Final Judgment; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 92-2854 (GHR), D.D.C.]

United States v. Airline Tariff Publishing Company, et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *Airline Tariff Publishing Company, et al.*, Civil Action No. 92–2854 (GHR), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Airline Tariff Publishing Company; *et al.*, Defendants. Civil Action No. 92–2854 (GHR).

United States' Response to Public Comments

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Introduction

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d) (the "APPA" or Tunney Act"), the United States responds to public comments on the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on December 21, 1992, when the United States filed a Compliant charging eight major domestic airlines [1] and the Airline Tariff Publishing Company ("ATP") with violations of the antitrust laws. The first count of the Complaint alleges that each of the airline defendants engaged in various combinations and conspiracies with other of the airline defendants and co-conspirators. These combinations and conspiracies consisted of agreements to fix prices by increasing fares, eliminating discounted fares, and setting fare restrictions. The Complaint alleges that these agreements were reached using the computerized fare dissemination services of ATP to exchange proposals, negotiate fare changes, and trade fare increases in one or more markets for fare increases in other markets (or to other fare types). As a result of these agreements, consumers paid higher fares for airline tickets.

The second court of the Complaint alleges that the airline defendants, ATP, and co-conspirators engaged in a combination and conspiracy consisting of an agreement to create, maintain, operate, and participate in the ATP fare dissemination system in a manner that unnecessarily facilitates the ability of the airline defendants and their co-conspirators to coordinate changes to their fares. As a result of this agreement, consumers have paid higher prices for airline tickets.

The Complaint seeks an injunction barring the defendants from entering into agreements with one another with respect to fares, and from disseminating the information concerning proposed changes to fares that has enabled them to increase prices collusively and illegally.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement ("CIS"), and a stipulation signed by two of the defendants, United Air Lines, Inc. ("United") and USAir, Inc. ("USAir"), for entry of the proposed Final Judgment. The proposed Final Judgment embodies all of the relief sought in the Complaint.

As required by the APPA, on December 29 and 30, 1992, respectively, United and USAir filed with this Court a description of written and oral communications on their behalf within the reporting requirements of section 15(g) of the APPA. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposal were published in the Washington Post for seven days over a period of two weeks beginning January 3, 1993. The proposed Final Judgment and CIS were published in the **Federal Register** on January 12, 1993. 58 FR 3971–79 (1993).

The 60-day period for public comments commenced on January 13, 1993 and expired on March 15, 1993.[2] The United States received over 700 comments on the proposed Final Judgment, the overwhelming majority of which are letters from travel agents.[3] A number of travel industry trade associations, consumer groups, and several consumers also submitted comments.[4] Five of the non-settling defendants jointly submitted comments expressing their dissatisfaction with the government's decision to initiate this antitrust enforcement action and with the relief provided by the decree to which United and USAir have consented.[5] Finally, United and USAir submitted brief comments to clarify a description in the CIS of one of the provisions of the proposed Final

[1] American Airlines, Inc., Alaska Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and USAir, Inc.

[2] The United States has treated as timely all comments that it received up to the time of the filing of this response.

[3] Of these, almost 400 are form letters circulated by the Association of Retail Travel Agents ("ARTA") or travel agencies.

[4] Comments were received from the American Society of Travel Agents ("ASTA"), the National Business Travel Association ("NBTA"), Association of Corporate Travel Executives ("ACTE"), American Travel Affairs Council ("ATAC"), ARTA, The Independent Travel Technology Association, the National Consumers League, and Public Citizen.

[5] Comments of Airline Tariff Publishing Company, Alaska Airlines, American Airlines, Delta Airlines and Trans World Airlines. While Continental and Northwest did not join in these comments, for brevity these comments are hereinafter referred to as "Comments of the Litigating Defendants." We are skeptical of arguments by non-settling defendants that a decree consented to by their co-conspirators will be harmful to consumers. If it were true that the decree would deprive consumers of valuable information about United and USAir, the litigating defendants would benefit. The only way that entry of the decree will harm the interests of the litigating defendants is if it will effectively inhibit their ability to reach price fixing agreements with United and USAir. The Tunney Act was not intended to enable non-settling defendants to attempt to force co-conspirators who have withdrawn from a conspiracy to re-join it.

Judgment. Those comments are being filed with the Court along with this response.

I. Background

The filing of the complaint in this action was preceded by an extensive three year investigation of the airlines' pricing conduct. In the course of that investigation, the Department reviewed thousands of pages of internal airline documents, analyzed hundreds of actual and proposed fares exchanged by the defendants, interviewed and deposed dozens of current and former airline employees, interviewed travel agents, visited travel agencies, met extensively with representatives of the airlines and ATP and reviewed their written legal submissions, attended presentations and examined studies submitted by the defendants' economic consultants, and consulted with airline and economic experts in the government or retained by the government. In addition, the government drew on information it had obtained in connection with other airline investigations that it has conducted, including investigations of computer reservations systems ("CRSs") used by travel agents.

Based on the information collected, the government concluded that the airlines had used ATP to communicate among themselves to reach price fixing agreements and to coordinate fare increases. The airlines' primary means of communication are first and last ticket dates and footnote designators.[6]

By disseminating fares with first ticket dates (that is, fares that are not actually for sale), the airlines are able to exchange complex fare proposals, negotiate the precise details of fare increases, and delay the actual implementation of fare increases until all airlines have reached a consensus. Similarly, by placing last ticket dates on fares, the airlines can negotiate the withdrawal of fares. Footnote designators and ticketing dates facilitate the negotiation process by enabling the airlines to strike deals, trading increases to certain fares or in certain markets for increases to other fares or in other markets, or communicate to competitors that certain fares are responses to another airline's fares in another market.

Consumers pay a substantial price for the airlines' communication tools—higher fares than would otherwise prevail—and receive little countervailing benefit from them. Because ticket dates are used by the airlines to negotiate, not to notify consumers about fare changes, they are by their nature extremely unreliable and of minimal value to consumers. Footnote designators have no consumer value since they are never disseminated to travel agents or consumers through CRSs.

A key provision of the proposed Final Judgment, and the one that has received the most attention in the public comments, would prohibit United and USAir (the settling defendants) from "disseminating any first ticket dates, last ticket dates, or any other information concerning the defendant airline's planned or contemplated fares or changes to fares." This provision bars, with limited exceptions, the settling airlines' use of first and last ticket dates, and would prohibit the airlines from devising alternative means that would allow them to communicate their future pricing intentions.

The ban on the settling airlines' use of first ticket dates is absolute. The fares that the settling airlines' disseminate, whether in ATP, a CRS, or elsewhere, will be the actual price of tickets for consumers. The settling airlines may continue to use last ticket dates to advertise promotional fares, subject to certain restrictions described in section V(D) of the proposed Final Judgment. They will continue to be able to disseminate, via ATP or other means, any actual changes to their current fares.

The proposed Final Judgment also contains general prohibitions on agreements between airlines "to fix, establish, raise, stabilize, or maintain any fare." This provision prohibits the settling airlines from any further price fixing whether by the means alleged in the Complaint or by other means violative of the Sherman Act.

II. Legal Standards Governing the Court's Public Interest Determination

In passing the Tunney Act, Congress sought to prevent abuses of the consent decree process arising from the alleged judicial "rubber stamping" of proposed decrees said to favor economically powerful defendants. See, *e.g.*, S. Rep. No. 298, 93rd Cong., 1st Sess. 5 (1973) ("By definition, antitrust violators wield great influence and economic power. They can often bring significant pressure to bear on government, and even on the courts, in connection with handling of consent decrees.") By eliminating the perceived "excessive secrecy" of the consent decree process, Congress intended to ensure that antitrust violators do not use their economic power to obtain "back room deals" or to pressure the government or courts to accept inadequate decrees. Hearings on H.R. 9703, H.R. 9947, and S. 782, Consent Decree Bills Before the Subcomm. on Monopolies and Commercial Law of the House Judiciary Committee, 93d Cong. 1st. Sees. 40 (1977) (hereinafter "*Hearings*") (Statement of Senator Tunney). *See also United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 148 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983). In addition, the procedural requirements of the Tunney Act are intended to ensure that the Justice Department has access to information from the widest spectrum of persons with knowledge of the issues bearing on the consent decree, and to create a public record of the reasoning behind the government's consent to the decree. Hearings at 40 (Testimony of Senator Tunney).

The issue in a Tunney Act proceeding is whether the relief provided by the decree adequately protects the public interest, not whether the government could have proved the violation alleged in the complaint.[7] Thus, in conducting the public interest analysis under the Tunney Act, courts have consistently refused to consider "contentions going to the underlying claims and defenses." *United States* v. *Bechtel Corp.*, 648 F.2d at 666. See also *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 n.2 (D. Mass. 1975) ("The decree is to be tested on the basis of the relief provided, on the assumption that the government would have won"); *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. at 150 (the public interest determination under the Tunney Act is concerned solely with remedies).

"The 'public interest' test must take its meaning from the nation's antitrust laws." *United States* v. *Western Electric Co.*, 900 F.2d 283, 308 (D.C. Cir. 1990) (*per curiam*). See also *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. at 149. In an antitrust case, a remedy serves the public interest only if it "effectively pr[ies] open to competition a market that has been closed by defendants' illegal restraints." *United States* v. *Dupont & Co.*, 366 U.S. 316, 323 (1961), *quoting International*

[6] First ticket dates indicate future dates at which fares are scheduled to become effective. The airlines often change the first ticket date to an earlier or later time than originally announced, or withdraw the fare altogether before the first ticket date arrives. Last ticket dates indicate future dates at which fares currently offered for sale may be withdrawn. The airlines often change the dates to an earlier or later time than originally announced, or withdraw the fare before its last ticket date. Ticketing dates are ordinarily found in footnotes that are appended to one or more fares, and the airlines often use the same footnote designator on different fares to show links or connections between fares or markets.

[7] As the Court stated in *United States* v. *Bechtel Corp.*, 648 F.2d 660, 663 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1981), "[w]e cannot decide whether the complaint stated a cause of action without violating the rule against reviewing the merits of consent decrees."

Salt Co. v. *United States*, 332 U.S. 392, 401 (1947). Thus, the Court must determine first whether the decree remedies the antitrust violation by restoring competition and preventing future violations of the law.

An antitrust decree must "leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place." *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. at 150. *See also United States* v. *DuPont*, 366 U.S. at 323. Courts are required "to decree relief effective to redress the violations, whatever the adverse effect of such a decree on private interests," *United States* v. *DuPont*, 366 U.S. at 326, and a court may consider factors other than a decree's effect on competition only in choosing among *effective* remedies. *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. at 149–50 and n.81.[8]

Although the Tunney Act requires the Court to make an independent determination that a decree is in the public interest, the Court's role is considerably more limited than its role in formulating relief after trial. *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. at 151. Congress intended to preserve the viability of the consent decree process by avoiding lengthy and protracted judicial proceedings that would essentially duplicate a trial on the merits, and therefore, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *United States* v. *Bechtel*, 648 F.2d at 666; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127 (C.D. Cal. 1978). The Court's role is to ensure that the government has not breached its duty to the public in consenting to the decree, and to determine whether the decree is "within the reaches of the public interest." *United States* v. *Bechtel*, 648 F.2d at 666. *See also United States* v. *Western Electric Co.*, 900 F.2d at 309; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127; *United States* v. *Gillette Co.*, 406 F. Supp. at 716.

III. Public Comments

A. Merits of the Complaint

A number of comments, most notably those of the litigating defendants, were critical of the United States' decision to file this lawsuit. As explained above, however, the focus of the public interest analysis under the Tunney Act is whether the relief provided by the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. Thus, comments challenging the merits of the Complaint raise neither factual nor policy arguments justifying a judicial refusal to enter the proposed Final Judgment.[9] Nevertheless, because some of these comments reveal (or may contribute to) public confusion about the allegations in the Complaint, we address them briefly.

A number of comments suggest that recent financial losses in the airline industry either prove that price fixing did not occur, or should constitute a defense to the allegations of the Complaint because they justify the defendants' behavior. This argument has no basis in law, logic, or economics. Financial losses are no more proof of the absence of price fixing than high profits would be proof of illegal conduct. (These comments make no mention of the airlines' record profits in 1988, a year also within the time period covered by the Complaint.)

Illegal price fixing occurs not only in a prosperous economy, but in a recessionary one as well. In good times, profits are higher, and in bad times, losses are lower, than if there were open competition. Business and leisure travelers, many of whom also have been hard hit by the recession, are entitled to the benefits of competition all of the time, whatever the state of the domestic economy.

Other comments suggest that the Complaint seeks to prevent the airlines from engaging in conduct that is common in many industries, and question why the airlines should be treated differently. For example, some comments contend that advance announcements of price increases occur in other industries, and that the airlines' practices are no different.[10] These commenters misapprehend the allegations in the Complaint. The Complaint does not allege that advance announcements of fare changes are illegal; rather it alleges that the airlines exchanged detailed information about their future pricing intentions in order to fix prices. It also alleges that the airlines' agreement to create and participate in a data dissemination system has enabled them to coordinate more frequently, successfully, and completely, leading to higher fares.

To prevent the settling airlines from continuing this illegal conduct, the proposed Final Judgment would prohibit advance announcement of fare changes for a period of ten years. It is well established that relief should include prohibitions on the means by which the violation was accomplished where necessary to prevent recurrence of the violation. Actions that are "entirely proper when viewed alone may be prohibited." *United States* v. *United States Gypsum Co.*, 340 U.S. 76, 90 (1978). *See also United States* v. *American Tel. and Tel. Co.*, 552 F.Supp. at 150 n.80 and cases cited therein.

The litigating defendants argue that the Complaint alleges nothing more than that the defendants engaged in "follow-the leader" or parallel pricing; in other words, observing each others prices and deciding that it is in their interest to charge the same price.[11] The

[8] The Act provides that in determining whether a proposed final judgment is in the public interest, the Court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

[9] ASTA contends that because this case is "novel," the Court should refuse to enter the decree until after a trial on the merits. Comments of ASTA at 6–10. Unfortunately, there is nothing novel about competitors communicating and collaborating to limit competition. Neither is it surprising that the modes of communicating have kept pace with available technology, going from face-to-face exchanges to telephonic exchanges to computer exchanges. While it is true that no court has ever analyzed an information exchange of the scope, scale and sophistication of the airlines, there is nothing "novel" about inferring price fixing agreements from information exchanges, particularly those involving future prices, or determining that an information exchange has the purpose or effect of reducing competition. See, *e.g.*, *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 441 n.16, 457 (1978); *United States* v. *Container Corp.*, 393 U.S. 337 (1969); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, 906 F.2d 432, 445–50 (9th Cir. 1990); *United States* v. *Foley*, 598 F.2d 1323 (4th Cir. 1979).

[10] Many of these comments refer to the practice of supermarkets or department stores of advertising the ending date of a special sale or promotion. These commenters appear unaware that this type of advertising is specifically permitted under the terms of the decree. *E.g.*, Comments of Travel Associates, El Cajon, CA; Comments of World Travel, Butte, MT; Comments of Kay Travel Service, Mokena, IL. Section V(C) of the proposed Final Judgment provides that the airlines would be permitted to advertise the last ticket date for promotional fares, subject only to restrictions intended to prevent them from devising "advertising" methods that enable them to engage in an ongoing dialogue about future fare changes. Moreover, these restrictions apply only when a defendant airline is advertising a last ticket date—the airlines remain free to advertise and market their services and fares in any other manner they choose, including advertising that a fare is available only for a limited period of time.

[11] Some comments draw an analogy between the airlines' conduct and one corner gas station lowering or raising prices and others following suit.

Complaint, however, does not allege that the airlines violated the law by engaging in parallel pricing; it alleges that the airlines exchanged information about the prices each would like to charge in the future and that fare levels were determined by agreement. The airlines did not simply match increases previously announced by other airlines, or withdraw increases when competitors failed to match them. Rather, they used the fare information disseminated through ATP to engage in complex negotiations about fare changes, to trade increases in different markets in order to induce competitors to increase fares they otherwise would not have increased, and to threaten or punish competitors who did not agree to increase fares or deviated from coordinated fares.

To illustrate some of the types of negotiations and coordination that form the basis for the Complaint, and demonstrate how they differ from mere parallel pricing, we describe two fairly typical instances in which the airlines agreed to increase fares.

1. Agreement on Flight-Specific Discounts

In one example, an airline wanted to limit the availability of discounts used by business travelers in a particular heavily-traveled market to specific flights but was unable to obtain this result by reliance on mere "parallel, interdependent pricing." The airline offered the discounts, with no last ticket date, on only two flights. A competitor, however, decided to offer them on all its flights in the market, rather than matching the limited discounts. The soliciting airline then expanded its discounts to all flights in the market. To communicate its proposal that the availability of the discounts be restricted, the soliciting airline added a last ticket date to the discount fares a few days away and refiled the discounts restricted to two specific flights with a first ticket date of the following day. As an inducement for the competitor to agree to restrict the discounts, the soliciting airline filed similar discounts in a second heavily-traveled market that was important to the competitor, using the same footnote designator and same last ticket date for the fares in both markets to show the relationship between the fares.

The soliciting airline thus conveyed to its competitor (and other airlines not involved in the negotiations) its offer to withdraw the discounted fares in the competitor's market if the competitor restricted the availability of the discount fares in the first market to specific flights. The competitor accepted this proposal by immediately restricting the availability of the discounts to specific flights (with no advance notice to consumers), whereupon the soliciting airline immediately withdrew the discounts in the competitor's market, before the last ticket date it had placed on the fares arrived. As a result of this agreement, many travelers in the first market paid as much as $138 more for a roundtrip ticket than they otherwise would have paid.

2. Agreement on Discount Fares Used by Business Travelers ("Junk Fares")

In another incident involving numerous heavily-traveled routes, one airline proposed to eliminate certain discount fares used by business travelers, commonly referred to by the airlines as "junk fares." [12] Several airlines communicated their agreement to this proposal by also filing to eliminate the fares altogether, but one dissenting airline proposed instead to increase the junk fares by ten dollars each way. One of the airlines supporting the first proposal expressed its dissatisfaction with this counterproposal by briefly lowering the junk fares by ten dollars each way in markets very important to the dissenting airline, using a last ticket date only a few days away. However, when some other airlines began to match the counterproposal to increase fares by ten dollars (instead of eliminate them), the punishing airline withdrew the lower fares immediately (before the last ticket date on the fares) and also filed to increase fares by ten dollars. At that point, another airline proposed yet a third alternative—to increase the junk fares twenty dollars each way. Throughout the negotiation process, the airlines continuously altered the first ticket dates of the proposed increases, and kept scorecards on which airlines were supporting which proposal, with what first ticket date, until they had reached a consensus. Eventually, all the airlines agreed to the third proposal; and the twenty dollar increase went into effect. (One airline estimated that this increase would generate an additional $7 million/month for that airline alone.)

The foregoing are examples of the way the airlines use ATP to negotiate specific price fixing agreements with respect to specific fares. As indicated in the CIS, the evidence in this case is replete with examples where airlines have reached similar agreements with respect to fares. These agreements increased fares for both business and leisure travelers, often in major markets, and often for extended periods of time. In addition, the airlines' daily exchange of detailed price information facilitates coordination of fare changes by enabling the airlines to identify mutually beneficial fares, and to detect and punish deviations from those fares, leading to higher prices.

B. Effectiveness of the Relief Provided by the Proposed Final Judgment

The litigating defendants and a few other commenters contend that parallel, interdependent pricing will exist in the airline industry whether or not the airlines use first and last ticketing dates, and that therefore the consent decree is not in the public interest. The decree, however, does not seek to enjoin parallel pricing; [13] it seeks solely to enjoin the riskless negotiation of complex price-fixing agreements and the highly effective coordination of fare changes described above.

Without ticketing dates, it will be much more difficult for the airlines to engage in such negotiations, and the prevalence of anticompetitive coordination will decrease significantly. If an airline attempts to increase fares, it will be unable to obtain advance assurance that competitors will implement similar increases, and thus will be less likely to attempt to increase its fares without regard to its costs. In addition, an airline will not be able easily, and relatively costlessly, to indicate that increases it proposes to take in certain markets or on certain fares are conditioned on competitors taking increases in other markets or on other fares. It will become more risky and costly to punish a competitor for decreasing certain fares or refusing to increase other fares.

Consider, for example, how the decree would have affected the airlines' ability to reach the same agreements or achieve the same coordinated outcome in the incidents described above. In the incident involving flight-specific discounts, how would the airline that solicited the agreement have conveyed its proposal that its competitor limit the discounts to specific flights? How would the airline have induced its competitor to go along? If the airline

E.g., Comments of Heritage Travel, Fairborn, Ohio; Comments of Travel House, Inc., Cincinnati, Ohio. This analogy misses the point: gas stations display, and their competitors react to, current prices, not proposals for future prices.

[12] "Junk fares" are one-way fares that are discounts off of full coach and that have minimal restrictions, thus making them very attractive to business travelers.

[13] Section V(G) of the proposed Final Judgment makes it clear that in unilaterally determining its fares, an airline defendant may consider all publicly available information relating to the fares of other airlines.

simply filed matching discounts in the market where it preferred flight specific fares, its competitor would not know that it wanted to limit the fares to specific flights. If the airline also filed the same discount in a second market, but with no last ticket date, the competitor might think that the airline simply decided that the discount was a good idea that should be extended beyond its original scope.

The incident that led to a twenty dollar increase to "junk fares" also illustrates how mere parallel pricing would not enable the airlines to achieve the same anticompetitive outcome. In this incident, first and last ticket dates and footnote designators enabled the airlines maintain their existing fare structure as they negotiated over three simultaneous proposals to increase fares: (1) To eliminate the discounts, (2) to increase them by ten dollars each way, and (3) to increase them by twenty dollars each way. In addition, ticketing dates enabled one airline to communicate its disapproval of another airline's lower, counterproposal (by filing low fares in that airline's important markets with a last ticket date a few days away), while simultaneously communicating to its competitors its continued support for the proposal to eliminate the fares altogether by maintaining last ticket dates on the original discounts.

Without ticketing dates, the only way for an airline to communicate through ATP its desire to eliminate the discounts would be for the airline to actually eliminate the fares. Because such a move would increase the lowest fare available to some business travelers in a large number of markets by as much as $100 or more each way, it is unlikely that any airline would do so without advance assurance that its competitors would implement the same increase.

Moreover, without ticketing dates, it would be extremely difficult for the airlines to communicate displeasure and attempt to induce or coerce a more reticent competitor to agree to a larger increase. Thus, if a dissenting airline increased its fares by only ten dollars, the risk of losing traffic to that airline would constrain other airlines to keep their fares at or near the same level. There would be no easy way for a competitor to coerce or encourage the dissenter to increase its fares an additional ten dollars. If the competitor increased fares by twenty dollars, the dissenting airline would have a fare advantage and thus would be under no pressure to raise fares; if the competitor refused to increase fares at all, there would be no way for the dissenting airline (and others) to know that the competitor wanted an even larger increase, rather than no increase at all; if it tried to threaten or punish the dissenting airline by lowering fares in other markets, the dissenting airline would have no way of knowing that the punishing airline wanted to raise fares, and other airlines might simply match the reductions and abandon their efforts to raise fares at all.

C. Value of First and Last Ticketing Dates to Consumers

Many commenters expressed concern that the proposed final Judgment's prohibition of the dissemination of first and last ticket dates will make fare changes unpredictable to the detriment of consumers. They believe that the ticket dates provide consumers with valuable information for making travel plans. The premise underlying most of these comments is that the airlines' current exchange of first and last ticket dates enables consumers to purchase tickets before fares increase or to delay purchases until after fares decrease. These comments reflect fundamental misconceptions about the information airlines currently disseminate and the impact of the decree on the ability of airlines to provide price protection to consumers.

Ticketing dates have neither the purpose nor effect of protecting consumers from unanticipated fare changes. None of the defendants has a policy or consistent practice with respect to the number of days in advance of a fare change it puts a last ticket date (or corresponding first ticket date) on fares. Whether a defendant airline places a last ticket date on a fare two weeks in advance, one week in advance, one day in advance, does not use a last ticket date at all before increasing fares, or increases fares before the last ticket date arrives, depends not on the amount of time necessary to ensure that consumers are protected from unexpected increases, but on how much (or how little) time is necessary to reach agreement with its competitors.[14]

Contrary to the assertions of a number of the commenters,[15] the defendant airlines do not announce discount fares in advance of their effective date. Indeed, they often go to great lengths to ensure that no one outside of their pricing departments learns of a new promotion until the promotion is put into effect. Thus, consumers and travel agents currently cannot determine whether they should delay purchasing tickets because ticket prices are about to go down. The decree would not change the current situation with respect to advance notice of fare reductions.

Even when airlines use ticketing dates and consumers know about the ticketing dates associated with a fare (which is by no means assured), those dates may have little relevance to consumers' decisions about when to purchase their tickets. Because the airlines use "yield management programs" to constantly adjust the number of seats available at certain fares for particular flights,[16] the fares actually available to consumers change from moment to moment with no notice whatsoever. Thus, the fact that a consumer is told that the last ticket date for a discount fare is one or two weeks away does not mean that seats will be available at the fare when the consumer calls back to reserve seats, even if the last ticket date is accurate. To be assured of obtaining the fare, a consumer must make a reservation at the time he or she learns a seat is available at the fare.

When consumers have made a reservation for a seat at a specific fare, they must abide by any ticketing rules associated with the fare, regardless of last ticket dates. For most discount fares, this means that the ticket must be purchased within 24 hours of the reservation being made. Thus, the airlines' use of last ticket dates does not give consumers of most discount fares "breathing room between the day a reservation is made and the date of purchase."[17]

Finally, and most importantly, even when consumers have the ability to delay purchasing their tickets, they cannot rely on ticketing dates. Although most commenters appear not to realize it, ticketing dates are extremely inaccurate.[18] The degree of inaccuracy varies from airline to airline, from market to market, and from fare to

[14] When the airlines do use last ticket dates, they often place them on fares so close to the day that the fare is to expire that consumers have no real opportunity to learn about them. Tellingly, none of the airlines even attempts to call consumers who have booked directly with them to inform them about last ticket dates that have been added to fares.

[15] See, *e.g.*, Comments of NBTA; Comments of Woodside Travel Trust, Alexandria, VA; Comments of Rex Travel, Chicago, IL.

[16] The ability of consumers to purchase tickets for a particular flight is always limited by the number of seats on the plane. Yield management systems, however, limit the availability of seats at different discount fares even when there are seats remaining on the flight.

[17] See Comments of Public Citizen at 6.

[18] Some commenters have the misconception that ticketing dates are guarantees. *E.g.*, Comments of Gillette, St. Paul, MN; Comments of ACTE, Summit, N.J. Others believe that they are accurate "most of the time," Comments of ASTA at 16, or tell consumers "approximately" when fares will increase. Comments of Argosy Travel, Portsmouth, N.H. *But see* Comments of All About Travel, Gardnerville, NV.

fare.[19] However, the evidence available to the Department shows that, depending on the airline and the market, ticket dates are inaccurate anywhere from 25 to 90 percent of the time. On average, ticketing dates are inaccurate approximately 50 percent of the time.[20] Moreover, when ticket dates are inaccurate, they tend to be very inaccurate. When last ticket dates are wrong, more than half of the time they are off by over two weeks, and more than one-third of the time they miss the mark by a month or more. Thus, ticketing dates do not tell consumers or travel agents even the approximate date that fares are going to increase.

A specific example of the information consumers see during the course of the airlines' negotiations is a useful illustration of how little value ticketing dates have to consumers. During the airlines' negotiations over "junk fares" described in Section III.A.2 above, a consumer who had a reservation to purchase a ticket at a discount fare on one of these airlines, and was informed of each change made to that fare, would have learned the following information on the following days:

August 10—You must purchase your discount ticket no later than August 15; after that, you must pay the full coach fare.

August 14—Now you must purchase your ticket no later than August 18.

August 17—Now you must purchase your ticket no later than August 22.

August 18—Hopefully, despite previous warnings, you have still not purchased your ticket, because you can now purchase your ticket for ten dollars less each way than the original price. You can purchase the ticket at this price as late as August 22; after that, you must pay the full coach fare.

August 22—Despite the representation that the lower fare would be available through today, you can no longer purchase your ticket at the lower fare. You can purchase your ticket at the original fare, and there is no last ticket date associated with the fare.

August 23—Now you must purchase your ticket no later than August 29; after that, the fare will be ten dollars more each way.

August 24—You still must purchase your ticket no later than August 29, but now the fare is scheduled to increase by twenty dollars each way.

August 30—Now you must purchase your ticket no later than September 6.

September 7—If you did not purchase your ticket yesterday, you now may purchase your ticket as late as September 8.

September 9—Again, if you did not purchase your ticket yesterday, you now may purchase your ticket as late as September 11.

September 12—Your ticket now costs twenty dollars more each way.[21]

As is evident from the discussion above, the airlines continuously change the fares available to consumers, and ticket dates are of little value in assisting consumers in predicting when fares will increase or decrease. Travel agents or consumers who see a first or last ticket date on a fare are seeing only one piece of information from a complex and ongoing dialogue among airlines. Because they lack the computer programs, staffs of pricing analysts, and access to certain information the airlines share among themselves, neither travel agents nor consumers have any way of assessing whether any given last ticket date is an initial proposal by an airline to increase fares, an acceptance of another airline's proposal, a counterproposal, or a threat against, or punishment of, an airline that has failed to agree with a proposed increase.

Nor do they know whether the increase or withdrawal of the fare is contingent upon a competing airline (or airlines) taking some other action with respect to other fares in the same or different markets, or whether all relevant airlines have agreed to take that action. It is thus virtually impossible for a travel agent or consumer to evaluate the reliability of any particular ticketing date. The absence of a last ticket date on fares tells consumers little, and the presence of a last ticket date on an existing fare or a first ticket date on a future fare means only that an airline is probably involved in negotiations with its competitors to eliminate or increase the fare, and that may or may not happen sometime in the future. In other words, the most that a consumer can reasonably infer from a last ticket date is that a fare is "in play."

Because all of the defendant airlines have a policy that fares are subject to change without notice until the ticket is actually purchased, ticketing dates do not even give consumers "a window of opportunity within which to consummate a travel purchase at a lower existing price level." Comments of ASTA at 15. Although it is true, as ASTA observes, that ticket dates are extended more often than they are shortened (airlines often need additional time for negotiation to obtain agreement to increase or eliminate fares), the airlines do not hesitate to withdraw a fare prior to a posted last ticket date, or without any notice, in order to reach agreement or coordinate fare changes.

All of this is not to say that no consumer ever is able to use a last ticket date to avoid a fare increase. A consumer who learns about and relies upon a ticket date, and thereby avoids an agreed upon or coordinated fare increase may benefit, if the additional costs incurred from losing the flexibility to make changes in his or her itinerary are not greater than the increase.[22] But all consumers who do not learn about the last ticket date or who must purchase their tickets afterward are harmed. That some consumers benefit from advance warning of fare increases does not mitigate the harm to all other consumers who pay higher fares as a result of collusion and coordination by the airlines made possible by their use of ticketing dates. This is particularly true given that the airlines have it within their power to protect consumers from unanticipated fare increases through means that would not contribute to price fixing or facilitate anticompetitive coordination.

Under the decree, consumers' decisions about when to purchase their tickets from the settling airlines will not be based on unreliable and even misleading information. Consumers will know that fares can change at any time, and will weigh the benefits of protecting themselves against a fare increase by purchasing immediately against the benefits of retaining flexibility by delaying their purchases. Because the airlines will be less able to coordinate fare increases, fares overall will be lower, and increases to fares will be less likely to take place simultaneously on all airlines serving a market. Thus, when fares do increase, the increase is more likely to be cost based, and there is likely to be at least some period of time during which other airlines

[19] Determining exactly how inaccurate is a difficult and labor intensive process, because until several months ago historical records of these dates were found only in paper tariff pages.

[20] A study that the defendants submitted to the Department in the course of the investigation that analyzed a sample of ticketing dates also found that they were inaccurate fifty percent of the time. See also Comments of Omega Travel, Fairfax, VA, estimating that last ticket dates are wrong fifty percent of the time.

[21] This example follows the changes to the level and ticketing date of one fare, for one airline, in one market, during the airlines' negotiations. A consumer with a reservation on a different airline would have seen slightly different information, but it would have been no more valuable in predicting fare changes.

[22] Consumers who need to make changes to their itineraries after they have purchased their ticket usually must pay penalties. Often these penalties are greater than the increase in the fare. Travel agents also incur costs when consumers make decisions in reliance on inaccurate ticketing dates. *See* Comments of Omega Travel, Fairfax, VA.

continue to have lower fares available for purchase.

Further, the proposed Final Judgment would not prohibit a settling airline from making a general statement to the effect that it intends to increase fares sometime soon, for whatever reason, thus providing travel agents and consumers with essentially the same information they get now. And if the airlines truly want to protect consumers from unanticipated fare increases, the airlines are free to guarantee for some period of time the price consumers are quoted when they make a reservation.[23]

D. Alternatives to the Proposed Final Judgment

A number of commenters expressed concern about price fixing by the airlines, but requested that the government devise some form of relief to prevent the airlines from colluding on fares that would not prohibit the use of first and last ticketing dates.[24] These commenters ask the government to do the impossible. Ticketing dates are the language that the airlines use to talk to one another about fares, and when consumers learn about last ticket dates, they are simply overhearing a snippet from the airlines' ongoing conversations. The only way to stop the airlines from discussing and agreeing upon fares is to stop these conversations. Once the conversation is stopped, there are no snippets for consumers to overhear; there is no way to allow the airlines to continue to talk about fares and nevertheless prevent them from reaching anticompetitive agreements with respect to those fares.

The only two alternatives suggested by commenters—that the decree regulate airline fares,[25] or that the decree require airlines to abide by their ticketing dates for a certain period of time[26]—would not serve the public interest. In addition to being entirely beyond the scope of this proceeding, reregulation would be contrary to the policies underlying both the Sherman Act and the Airline Deregulation Act of 1978 that competitive market forces should determine the price, quality, and array of services in the airline industry. Consumers have reaped substantial benefits as a result of airline deregulation. The objectives of this suit and the proposed Final Judgment are to ensure that consumers enjoy all of the benefits of competition.

The second alternative, requiring the airlines to actually implement announced fare changes, would be less effective in preventing collusive pricing than the proposed Final Judgment, would create inefficiencies in airline pricing, and would be difficult to enforce. First, this approach would not prevent the airlines from communicating connections between different fares or different markets. Moreover, the approach would be effective in preventing extended negotiations over fare changes only if the airlines were required to implement fare changes for a substantial period of time. This would mean that once an airline changed fares in a market, it would be prohibited from responding to actual changes in costs, demand or competitive conditions in the market for some period of time. Such restrictions on actual prices would interfere with the efficient functioning of the market, with adverse effects for consumers and airlines alike. For example, once an airline announced that a promotional fare would end, it would not be able to extend the fare even if it turned out to be more successful than anticipated, or even if a competitor decided to match the sale but for a longer period of time. Similarly, if an airline increased its fares and then found that demand for its flights dropped dramatically, it would be prohibited from reducing its fares.

In contrast, the proposed Final Judgment will not restrict in any way the airlines' ability to charge any fare at any time, or to change their fares as often as they wish, whether in response to changes in demand, costs, or the competitive environment in which they are operating. It in no way dictates or limits the fares that the airlines actually charge for their tickets. Thus, it does not require the government or the Court to engage in price regulation.

E. Comments on the Clarity of the Proposed Final Judgment

A few commenters found certain provisions of the decree ambiguous, and based on the perceived ambiguities, expressed concerns about the costs of enforcing the decree. Mr. Emord and Mr. McCombs asked whether the decree would prohibit airlines from announcing changes to be made in services such as meals or frequent flyer programs. The decree clearly would not prohibit such announcements. The relevant portions of the decree prohibit announcements of future changes in "fares," and "fare" is defined to mean "the price charged for domestic passenger transportation by any airline, and any rules, restrictions, terms, or conditions governing availability of such price* * *." Section II(H). Because meals and frequent flyer programs are neither the "price" nor "rules, restrictions, terms, or conditions governing the availability or use of such price," the decree would not prohibit airlines from disseminating information concerning planned changes to these amenities.

Public Citizen is concerned that in section V(C) of the proposed Final Judgment, the advertising exception to the prohibition on last ticket dates, terms such as "media of general circulation" and "mass mailings" are undefined. As a result of negotiations with the defendants, the language in this section of the decree intentionally was written to provide some flexibility, but the settling defendants should have no difficulty determining what conduct is prohibited by the decree.[27] Not every term in a consent decree, or statute for that matter, need be defined. For example, the Tunney Act itself requires the government to publish a summary of the consent decree and CIS in newspapers "of general circulation" in the District where the case has been filed, but does not define the term. 15 U.S.C. 16(c). The meaning of this phrase and others mentioned by Public Citizen can be determined by examining the decree in the context of the complaint and the contemporaneous understandings of the parties, which are reflected in part in the CIS.

This section of the proposed Final Judgment is a response to the airlines' contentions that the advertisement of a specific last-ticket date generates significantly more consumer demand than a general statement that fares are available for a limited time only, and that some discount fares would never be offered if the airlines were prohibited from generating this demand. The section gives the settling airlines the flexibility to engage in such advertising, using new types of promotions or new methods of advertising, while

[23] One major airline, America West, already guarantees the fare at which a reservation is made until the end of the following day.

[24] Public Citizen, for instance, has taken the position that injunctive relief is necessary to insure that the airlines do not continue their anticompetitive pricing practices, Objections of Public Citizen, Ralph Nader and Center for Responsive Law, In re: Domestic Air Transportation Antitrust Litigation, No. 1:90-CV-2485-MHS, (N.D. Ga.), but although it has filed comments opposing the proposed Final Judgment, it has proffered no alternatives.

[25] *E.g.*, Comments of Gulf Power Company, Pensacola, FL.

[26] Comments of Law Offices of Tanzman & Kaplan, Marina Del Rey, CA; Comments of Omega World Travel, Fairfax, VA.

[27] The restrictions on the dissemination of fare information apply to the defendant airlines, not to travel agents. A travel agent cannot violate the decree by disseminating any fare information, and need not attempt to determine whether a defendant airline's advertisements satisfy this section of the decree. Some of the comments suggest some confusion in this regard. *E.g.*, Comments of Public Citizen at 7.

preventing them from circumventing the decree and using advertised last ticket dates to engage in relatively costless negotiation. Thus, the advertising must be in media of general circulation or mass mailings and must be "designed to reach a meaningful number of potential consumers likely to purchase the promotional fare."[28]

F. Effect of the Proposed Final Judgment on Travel Dates

Some comments discussed the airlines' current practice of charging different fares during peak and off-peak travel periods, and expressed concern that they would no longer be able to schedule their travel during off-peak periods to take advantage of lower fares.[29] The proposed Final Judgment, however, does not prohibit the airlines from making different fares applicable to travel at different times, including travel beginning sometime in the future, provided the fares are currently available for sale. Indeed, section V(F) of the decree provides: "The dissemination of travel dates, in and of itself, does not constitute a violation of this Final Judgment." Thus, the proposed Final Judgment should not affect the settling airlines' current practices with respect to travel dates.[30]

G. Impact of the Proposed Final Judgment on the Travel Industry

A number of commenters expressed concern that the decree will create confusion, causing consumers to stop flying. This concern is misplaced. First, the fares available to consumers already change constantly with little or no notice—the elimination of computerized negotiation of fare increases among airlines is unlikely to appreciably add to any consumer confusion about changing fares. More importantly, as ASTA discusses in its comments, deregulation of the domestic airline industry has led to a proliferation of airlines, routings, fares, fare restrictions, and special services. The array of fares and services offered, although perhaps confusing, appears not to have suppressed travel. Rather, the lower prices brought about by deregulation have unleashed consumer demand for airline travel. In short, competition leads to lower airfares, and lower airfares lead to increased demand for airline travel. Because the decree will impede collusive increases to fares, the decree should lead to more consumers flying, not fewer.[31]

Many travel agents also expressed concern that if airlines do not use ticketing dates, consumers will no longer patronize travel agencies and instead will deal directly with the airlines. In part, this fear seems to stem from the mistaken belief that travel agents would not learn of the information disseminated by airlines through advertising until after the advertisements appeared, with the result that consumers would be calling travel agents with questions about fares that the agents would be unprepared to answer.[32]

Nothing in the decree would require airlines to disseminate ticketing dates through mass media prior to disseminating that information through ATP to computer reservations systems. The only section of the decree that relates to advertising is section V(C), which makes a limited exception to the blanket prohibition on last ticket dates when the ticketing date accompanies a promotional fare and is advertised. The language in the decree is intended to allow the airlines to disseminate ticketing date information on promotional fares through ATP and CRSs to coincide with the appearance of advertisements. The decree does not prevent the airlines from informing travel agents through ATP and computer reservation systems of any information that they are simultaneously conveying to consumers through advertisements.

Other travel agents expressed concern that consumers will lose confidence in them if they do not have ticketing dates and cannot tell consumers when discounts will end or fares will increase. Because the ticketing information travel agents have now is unreliable, and even misleading, it is unlikely that the lack of that information will cause consumers to lose confidence in travel agents. Many knowledgeable travel agents have always counseled their clients that fares are subject to change without notice and must be purchased immediately to guarantee the fare.

As ASTA points out in its comments, travel agents' share of domestic airline ticket sales has increased dramatically under deregulation. Consumers have found that travel agents provide a valuable service, and there is no reason to believe that will change. Travel agents will continue to offer consumers the ability to compare the fares of different airlines or for different destinations, learn about restrictions applicable to fares, schedules, and the availability of seats at particular fares, make reservations, and purchase tickets.

The decree will cause some changes in pricing practices—indeed, that is its objective. The prospect of these changes understandably creates concern among the travel agent community about their future. ASTA and many individual travel agents expressed similar concerns in 1977 during the CAB's Investigation into the Competitive Marketing of Air Transportation, CAB Docket 36595, which led to the deregulation of airline travel marketing. Those concerns proved to be unfounded. At that time there were approximately 18,000 travel agencies in the United States responsible for only 38 percent of airline ticket sales; today, fifteen years later, there are over 36,000 travel agencies responsible for over 70 percent of airline ticket sales.

H. First Amendment Objections

The litigating defendants and at least one other commenter [33] contend that the proposed Final Judgment violates the public's First Amendment right to receive information about USAir and United's future pricing intentions.[34] This argument is frivolous.

It is well established that a party may waive its constitutional rights, provided the waiver is made voluntarily with full understanding of its consequences. *D.H. Overmyer Co.* v. *Frick Co.*, 405 U.S. 174, 184–87 (1972). No one contends that USAir or United did not voluntarily and

[28] This provision would not be satisfied, for example, by "mass mailings" to all employees of the pricing departments of major airlines, or a practice of always advertising last ticket dates for all fares in the International Herald Tribune. Advertising a sale applicable on roundtrip travel originating at Washington Dulles Airport in the Washington Post would be permissible; advertising the same promotion in the Los Angeles Times would not.

[29] *E.g.*, Comments of Mary Margaret Watson, Metairie Louisiana; Comments of Penn Hills Resort, Analomink, PA.

[30] Section III(D) of the decree would prohibit airlines from using travel dates as a means of circumventing the decree's prohibitions on communicating with their competitors with respect to future fare changes. For example, if the airlines began posting currently available fares that applied to travel one year and two weeks from the date they were announced, engaged in successive rounds of negotiation until all airlines had the identical fares for travel beginning in one year, and then each changed the travel date to the current year, the Department would consider that use of travel dates a violation of Section III(D).

[31] National Consumers League and the litigating defendants fear that the decree's restrictions on last ticket dates will discourage discounting. Neither explains why, absent collusion among the airlines, fares will not be responsive to changes in cost, demand, or competition, resulting in fare increases at some times and fare discounts at others.

[32] *E.g.*, Comments of Travel Agent Services Inc., El Paso, Texas; Comments of Professional Travel, Dalton, Georgia; Comments of V.P. Sun Travel, El Paso, Texas.

[33] Comments of Jonathan W. Emord and Harold K. McCombs.

[34] The litigating defendants also appear to argue that the proposed final judgment violates USAir and United's First Amendment rights to disseminate ticketing dates. The airlines lack standing to raise this issue. See *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1139–40 (C.D. Cal. 1978).

knowingly agree to the proposed Final Judgment.[35]

Because USAir and United have voluntarily consented to restrictions on their ability to disseminate their future pricing intentions, there is no "speech" for the public to hear on this matter. See *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 756–57 (1976) ("Freedom of speech presupposes a willing speaker."). Clearly, the public has no First Amendment right to force USAir and United "to speak" when they have chosen not to speak,[36] and the litigating defendants have no First Amendment right to force USAir and United to communicate with them about their future pricing intentions.[37]

I. Potential Conflicts With DOT Regulations

The litigating defendants, ASTA, and ATAC contend that entry of the proposed Final Judgment could create a conflict between the proposed Final Judgment and the Department of Transportation's ("DOT") regulations governing computer reservations systems,[38] DOT's regulation of international fares,[39] or some other regulations that DOT might some day adopt pursuant to its authority under section 411 of the Federal Aviation Act.[40] These comments suggest that the Court solicit the views of DOT.

The Department of Justice has consulted with DOT, another executive agency, on this matter, as it often does in matters involving issues related to airline competition. It will continue to do so. There is no basis for requiring two different executive branch agencies to present the views of the United States in this matter.

Any imagined potential conflicts between the decree and DOT's rulemaking authority are not ripe for adjudication. As Judge Green observed in *United States* v. *American Tel. and Tel. Co.*:

> The Supreme Court has admonished the lower courts not to adjudicate potential conflicts between an antitrust decree and a federal regulatory statute until there is a concrete case or controversy in that respect. *Otter Tail Power Co.* v. *United States*, 410 U.S. 366, 377 (1973).

552 F. Supp. at 211. *See also United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1139 (C.D. Cal. 1978) (potential conflict with regulatory scheme does not bar a court from ordering appropriate antitrust relief).

J. United and USAir's Comments on the CIS

United and USAir both submitted comments relating to the government's description in the CIS of Section IV(D) of the proposed Final Judgment. Section IV(D) of the Final Judgment prescribes the dissemination of a "fare that is intended solely to communicate a defendant airline's planned or contemplated fare or contemplated changes to fares." In the CIS, the government described Section IV(D) as proscribing "fares that, although technically available currently for sale, will not, as a practical matter, be considered by consumers." Both United and USAir contend that this description is overly broad, and that the language of the decree does not prohibit them from disseminating fares unlikely to be purchased by consumers provided that there is a legitimate business purpose for those fares. We agree.

Section IV(D) is intended to prevent the settling airlines from publishing fares that, while technically available for sale, are intended to communicate an airlines' pricing intentions to its competitors without risk and virtually without cost to the airline. The decree would not prohibit the dissemination of fares that have some other, legitimate purpose, but nevertheless are unlikely to be purchased by consumers, for example, fares used solely for prorate purposes.

IV. Conclusion

The Department has carefully considered each of the comments it received. Nothing in the comments has altered the United States' conclusion that the proposed Final Judgment is in the public interest.

None of the comments suggest that the Department has succumbed to political pressure and consented to a decree that is inadequate to redress the harm caused by the defendents' illegal conduct. Nor has any commenter proposed alternative relief that would better serve the public interest. In addition, none of the comments presented facts or arguments that the government had not already considered in its initial decision to consent to the decree.

The proposed Final Judgment provides all of the relief requested in the Complaint against USAir and United without the substantial expense of a trial. The relief provided by the decree will leave United and USAir without the ability to resume the actions that constituted the antitrust violation. Thus, the government has not breached its duty to the public in consenting to the decree. Entry of the decree is in the public interest.

Respectfully submitted,

John W. Clark, *Acting Assisting Attorney General.*

Joseph H. Widmar, *Director of Operations.*

Mark C. Schechter
Roger W. Fones
Mary Jean Moltenbrey
Donna N. Kooperstein
Michael D. Billiel
D.C. Bar #394377
Jill A. Ptacek
Bradley S. Lui
D.C. Bar #425033

Attorneys, Transportation, Energy, and Agriculture Section, 555 Fourth Street, NW., Washington, D.C. 20001, (202) 307–6349

Dated: April 8, 1993.

[35] Indeed, there is precedent for entering consent decrees that restrict First Amendment rights. In 1985, in a civil antitrust suit against American Airlines and its chairman, Robert L. Crandall, arising out of Mr. Crandall's solicitation of a price fixing agreement with a competitor of American, the defendants consented to entry of a decree that prohibited certain communications concerning fares. *United States* v. *American Airlines, Inc.*, 1985–2 Trade Cas. (CCH) ¶ 66,866 (N.D. Tex. 1985).

[36] In cases where the Supreme Court has found that there is a protected right to receive commercial communications, there has been a source willing to provide such information. *E.g., Central Hudson Gas & Electric* v. *Public Service Commission*, 447 U.S. 557 (1980) (electric utility brought suit seeking lifting of ban on promotional advertising to its customers); *Bates* v. *State Bar of Arizona*, 433 U.S. 350 (1977) (attorneys sought lifting of ban on advertising of services and prices to potential clients); *Linmark Associates, Inc.* v. *Willingboro*, 431 U.S. 85 (1977) (real estate company brought action against township seeking repeal of restrictions on use of "For Sale" signs); *Carey* v. *Population Services International*, 431 U.S. 678 (1977) (mail order company sought lifting of ban on advertising for nonprescription contraceptives).

[37] Although the ability of a court to impose the challenged restrictions after a trial on the merits is not at issue in this proceeding, a court, in imposing remedies in antitrust actions that "avoid a recurrence of the violation and . . . eliminate its consequences," *National Society of Professional Engineers* v. *United States*, 435 U.S. 679, 697–98 (1978), may "impinge upon rights that would otherwise be constitutionally protected." *Id. See also Hartford Empire Co.* v. *United States*, 323 U.S. 386, 428 (1945) (ordering dissolution of trade association and prohibiting defendants from joining a trade association after association was used for anticompetitive purposes). The issue in the cases cited by commenters was not appropriate relief in an antitrust case, but whether regulatory restrictions on speech infringed First Amendment rights.

[38] The purpose of DOT's CRS regulations is to prevent CRS owners from using CRS market power to limit competition in airline markets. The CRS regulations prohibit discrimination in the way CRS's display flight and fare information for different airlines and in the prices they charge airlines, and prohibit certain agreements between CRS owners and travel agents. They have nothing whatsoever to do with the fares airlines charge, let alone the airlines' use of first and last ticketing dates.

[39] It is unclear how rules related to international tariffs, which can be agreed upon in a legal cartel, and which may be reviewed by foreign governments pursuant to bilateral agreements and by DOT pursuant to statute, could come into conflict with a decree relating to domestic airline fares.

[40] 49 U.S.C. 1381.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing United States' Response to Public Comments to be served upon counsel in this matter in the manner set forth below:

By hand:

Michael Doyle,

Michael Kenny, Alston & Bird, 700 Thirteenth St., NW., Suite 350, Washington, DC 20005–3960 for defendant American Airlines, Inc.

Henry C. Thumann,

Debra A. Valentine, O'Melveny & Meyers, 555 Thirteenth Street, NW., Washington, DC 20004–1109, for defendant United Air Lines, Inc.

Charles F. Rule, Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, DC 20044 for defendant USAir, Inc.

Paul M. Ruden, American Society of Travel Agents, Inc., 1101 King Street, Alexandria, Virginia 22314, for American Society of Travel Agents, Inc.

By first class mail, postage pre-paid:

Mark Leddy,

Michael J. Byrnes, Cleary, Gottlieb, Steen & Hamilton, 1752 N Street, NW., Washington, DC 20036

Jonathan B. Hill, Dow, Lohnes & Albertson, 1255 Twenty-third Street, NW., Washington, DC 20037, for defendant Airline Tariff Publishing Company.

James V. Dick,

Marshall Sinick, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, NW., Washington, DC 20044, for defendant Alaska Airlines, Inc.

Irving Scher, Weil Gotshal & Manges, 767 Fifth Avenue, New York, NY 10153

Peter D. Isakoff, Weil, Gotshal & Manges, 1615 L Street, NW., suite 700, Washington, DC 20036, for defendant American Airlines, Inc.

Donald L. Flexner, Crowell & Moring, 1001 Pennsylvania Avenue, NW., Washington, DC 20004–2595, for defendants Continental Airlines, Inc., and Northwest Airlines, Inc.

James R. Weiss, Preston Gates Ellis & Rouvelas Meeds, 1735 New York Ave., NW., suite 500, Washington, DC 20006.

Emmet J. Bondurant II,

Edward B. Krugman, Bondurant, Mixson & Elmore, 1201 West Peachtree Street, NW., 39th Floor, Atlanta, Georgia 30309, for defendant Delta Air Lines, Inc.

Thomas Demitrack, Jones, Day, Reavis & Pogue, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114

James E. Anklam, Jones, Day, Reavis & Pogue, 1450 G Street, NW., Washington, DC 20005–3939, for defendant Trans World Airlines, Inc.

Dated: April 8, 1993.

Bradley S. Lui,

DC Bar #425033, Attorney, Antitrust Division, U.S. Department of Justice, 555 Fourth St., NW., Washington, DC 20001, (202) 307–6396.

A. Porter Travel Service, South Branch 216/726–9066, Fax 216/726–7727, Suite 160, Southwoods Executive Centre, 7655 Market Street, P.O. Box 3639, Youngstown, Ohio 44512.

February 12, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St., NW., Washington, DC 20001.

Re: Department of Justice Lawsuit Against the Airlines.

Dear Mr. Schechter: We at A. Porter Travel Service are very opposed to the above mentioned lawsuit. If the consent decrees are approved, we will not be able to be prepared or to notify our clients and give them the personalized service of providing them with the best possible fare.

In this already chaotic industry of ours, we feel these decrees would make it even worse. It would be impossible for agents to quote accurate fares. If the airlines wouldn't be able to advise us of an increase or end of a discount sale, in advance, how are we suppose to properly service our clients. Not to mention how angry they'd get when we quoted them a rate and 24 hours later it wouldn't be valid.

Please take the above concerns into consideration.

Sincerely,

Nancy Pietra,

A. Porter Travel Service.

AAmerican Travel, Inc., 402 Main Street, Bedford, IA 50833, 712–523–2464, Fax 712–523–3502.

February 25, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St., NW., Washington, DC 20001.

Re: Airline litigation.

Dear Mr. Schechter: Should the consent decrees signed by major airlines be implemented, consumers and travel agencies would both be harmed.

Travel agencies would lack the basic information necessary to assist their consumers in making informed decisions.

Since the consent decrees have been signed, we have already had a number of instances in our office where a client was economically harmed by our inability to provide him with information regarding the ending date of airline fare specials. Should the consent decrees be enforced, we expect to see this trend escalate to the detriment of travel consumers.

Sincerely Yours,

Julia M. Travis,

President.

Acacia Travel Inc., 4250 Pacific Highway, San Diego, CA 92110 (619) 225–1233, Telex: 4950610, Fax: 619–226–4003.

February 15, 1993.

Mark C. Schechter,

Dept. Of Justice, Room 9104, 555 4th St. NW., Washington, DC 2001.

Dear Mr. Schechter, In Regard to the Lawsuit Against the Airlines.

This lawsuit, with its various ramifications, I believe is unfair and should not be continued.

I do not believe that the U.S. Government should interfere with private industry in this particular way, which could easily end up with the government in charge of airline fare price adjusting.

Fair competition should be allowed in order to keep prices down, and so far the airlines have been providing low fares to travelers. Such action proposed by the Dept. of Justice could end up with negative results to our industry, which is basically small business which the government has said they want to support.

Please cancel this proposed lawsuit.

Thank you,

Keith Tucker,

Co-owner.

ABC Travel

March 12, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Sir: I can't believe that the advance notice of fare increases or the date for the end of discount sales looms so big as price fixing that the traveling public is going to suffer one more time by government interference.

The travel agent's ability to counsel their clients about fares far outweighs the justice department deciding who is looking at whose fare when.

Please consider what your action will do to the traveling public.

Thank you,

Sincerely,

Merrywayne Elvig,

Manager.

Ace Travel Agency, Inc., 107 N. 4th Street, P.O. Box 866, Coeur d'Alene, Idaho 83814, Phone (208) 667–5451, Fax (208) 664–9280.

March 5, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: In reference to the lawsuit against the airlines and fare quotes in CRS systems I would like to add my own two cents worth.

I manage a family owned travel agency which my parents opened in 1957. I have been actively involved with it for over 16 years. Over these years I have seen a lot of changes in the airline industry. I realize that government is trying to improve how it is being run for the benefit of U.S. travelers, but I believe that the proposed change in how air fares are published and how they are programed in CRS systems is wrong.

It's bad enough right now how travel agents across America (where the vast majority of travelers book and buy their airline tickets) must explain the various rules and restrictions of the plethora of fares to a sometimes disbelieving and confused traveler. Now the possibility arises that when Joe Public calls to inquire about a fare to see his Uncle Henry 2000 miles away that fare will be guaranteed about as long as his phone

call. Joe calls Uncle Henry that night and finds out what dates would be best for a visit. The next day when Joe calls his travel agent back he is told, "Gee, sorry, Joe. That fare was replaced with a new, higher fare since yesterday."

Had Joe known (had his agent been able to advise him) that the fare quoted was going out the window that day, maybe he would have tried to reach Uncle Henry before days end. As it is now, agents can be relatively sure that a fare is going to last for x number of days. This gives Joe a break and lets him check when he can visit Uncle Henry without the possibility that he'll get hammered on a fare the next day.

The average (non frequent) traveler has a hard enough time figuring out airline fares and rules. Any legislation of this kind will only complicate matters. Leave well enough alone. Travel agents provide travelers with as much help as possible on fares and legislation such as this will not benefit the traveling public.

Sincerely,

David K. Walker,

Manager.

Action Technologies, P.O. Box 58668, Philadelphia, PA 19102–8668, Tel: (215) 988–0352, Fax: (215) 567–1681.

March 4, 1993.

U.S. v. Airline Tariff Publishing Co., Mark Schechter,

Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, room, 9104,

US Department of Justice, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schecter: I am writing to ask that you act to reverse the decision that has forced airlines to remove from airline reservations systems the information that determines when a fare is valid. This alteration forces my travel agent to quote a fare that is not guaranteed unless I purchase the ticket at the moment of reservation.

I schedule travel for the Chairman of my company; he travels over 100,000 miles a year on domestic flights. The net result of this decision is that I am unable to plan travel and travel costs intelligently.

Although I am sure you had the best interest of the public in mind in favoring this decision, it appears that the winner will be the airline at the cost of the traveler.

Please reverse this decision.

Sincerely,

Rachel Budd

Action Travel, 3200 Davie Boulevard, Twin Oaks Plaza, Ft. Lauderdale, FL 33312, (305) 584–0997.

February 17, 1993.

Mr. March C. Schechter,

Department of Justice, Rm 9104, 555 4th St. NW., Washington, DC 20001.

Re: Department of Justice lawsuit against airlines.

Dear Mr. Schechter: To not provide the public with advance announcements of fare increases and/or decreases and how long a fare will be in effect is the worst thing the Justice Department could do.

Our clients are primarily low to middle class. They rely on these sales heavily. To not know the parameters of a sale means the difference on whether they will be able to travel or not travel because they need time to arrange their finances.

To not know how long a fare will be in effect, means we can't give commercial clients insight on when they would buy tickets to suit their scheduling and business appointments.

This ruling will only make our jobs more difficult which I didn't think possible.

Ultimately, it's the traveling public that is going to suffer.

If the Justice Department's travel account is managed as well as we help our commercial accounts manage theirs, then you are going to see large over runs on your travel budget if fare parameters are not published.

Government budgets along with everyone else's budgets are being cut or held as is to offset the new increases in taxes, but your proposal will eliminate the only possible way anyone can manage travel costs.

Does this make sense? I think not.

Sincerely,

Mary Ellen da Silva,

CTC, President.

Action Travel Center, Main Office: Benchmark Office Center II, 5900 Harper Road, Solon, OH 44139, (216) 248–8388 (Corporate Travel), (216) 248–4949 (Leisure Travel), 1–800–854–0601, Fax 216–248–4082.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Action Travel adamantly opposes the Department of Justice demand to stop providing customers and travel agents with announcements of fare increases.

The entire professional travel agent community will be impaired by this move. Having the US Government regulate the price of air tickets is like moving backwards in time. It didn't work before and it certainly won't work in the future! For the consumer and the travel agent not being able to advise clients when to purchase tickets before price increase is unreal and a horrible hardship for the consumer.

There has to be another way to stop airline price fixing. Don't make the consumer pay. You want more consumers to fly, not less!

Sincerely,

Arlene M. Goldberg,

President.

Action Travel Inc., P.O. Box 700, Minden, LA 71058–0700, (318) 377–4420.

February 22, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: This agency is protesting the consent decree agreed to by United Airlines and USAir.

Eliminating validity dates from airfare listings will increase the already existing confusion in the minds of the consumer.

This is not the solution to the problem.

Sincerely,

Pam Bloxom,

CTC, Owner-Manager.

Adams Travel Agency, 59 North Street, Auburn, NY 13021, (315) 253–4411, Fax (315) 253–6235.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Airline Anti-Trust Suit and Current Consent Decrees.

Dear Sir or Madam: Please, please, please—reconsider what you are trying to do. Making the airlines withhold any announcement of fare decreases is stupid. They don't exactly announce them now! Making them withhold notice of when lower fares are going to end will not hurt anyone but the clients and the travel agents. The clients need time, once they hear about a lower fare, to consider their options and plan their trip(s). We, the travel agents, need time to contact all our clients, and do all the bookings that need to be done. All this—in addition to keeping up with regular business.

The ticket buying public is a very savvy group nowadays. They know that the airlines will need a quick surge in cash flow at various times. They know lower fares will come out, and they wait for them. Only the business traveller, who generally cannot afford to wait, is out of luck.

If you really want to hurt the airline industry and make them be more fair to the buying public. I would suggest ordering them to create fair and solid tariffs for each city fare—and making them stick to them. That way, people will learn that there won't be any "specials" coming out and will buy tickets as needed. The travel industry would become more reliable and solid.

Please think about the consequences, real—not perceived, That your actions will create. If you're not sure what would really happen—talk to the travel agents who have to deal with this nonsense everyday.

Thank you.

Sincerely:

Tami Renner,

Manager.

Adios Travel, 10440 Clairemont Mesa Boulevard, San Diego, California 92124–1320, 619–268–1088, 800–477–1088, Fax 619–268–1928.

17 February 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: As a travel agency owner I am very concerned about the lawsuit the Department of Justice has filed against most of the major airlines, alleging price fixing through advance notification of fare increases in our computers.

I can see the thought process of the D.O.J., but a telephone works just as well in this case. The value of our knowing the validity dates of the fares is that we can then advise our clients when they will expire and what they will go up/down to, every client asks these questions. Now we will have to rebook the whole ticket and get the new fare.

We hope you will consult with the American Society of Travel Agents (A.S.T.A.)

and any other organization that actually deals in every day travel.

Thank you for your consideration.

Sincerely,

Meris E. Pittman,

Owner.

Ae'rea Travels, 9214 South Commercial Avenue, Chicago, Illinois 60617, Area Code (312) 221-5900.

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear: Mr. Schechter: I am writing regarding the consent decrees that would prohibit travel agents from advance announcements of fare increases and discount sales.

If these consent decrees are approved, travel agents will be severely impaired from providing their clients with complete and professional travel counseling.

Please consider this letter, Our agency's formal opposition to the above-mentioned consent decrees and to the federal court becoming the price regulator for the Airline Industry.

Sincerely,

Debra M. Bolanos,

Management.

Afari Travel Centre, Complete Travel Arrangement, 617 Sudderth, Charleston Square, Ruidoso, New Mexico 88345.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Mr. Schechter: we, owners and agents of the above travel agency, wish to voice our opposition to the Department of Justice anti-trust suit regarding consent decrees. Without the knowledge of first and last ticket dates in the CRSs we would be in the dark as to how best to advise our customers regarding the best and cheapest method of air travel. Our customers would be perplexed regarding when and how to prepare for vacations, business meetings, etc. Figuring air travel and prices today are difficult enough without the handicap of trying to outguess the airlines in when a first date starts and when it will end. After all, the American air traveler is the final judge of our hectic industry.

Again, we wish to ask the court to reject the consent decrees.

Sincerely,

R.W. Eggers,

Owner.

Air and Sea Travel With Joline, P.O. Box 033459, 322 Fifth Avenue, Indialantic, Florida 32903-0459, (407) 724-2400.

February 15, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing you in regard to the Department of Justice consent decrees relating to proposed restrictions on the airlines involving fare increases and publication of eligible dates on discounted airline fares.

The American Public deserves the right to secure the best possible fare for their travel. It is only fair that they be made aware of any fare increases so they can plan their trip accordingly.

With the economy in such dire shape the traveling public is entitled to know the "window" of dates for any special fares the airlines might offer for travel. It would be impossible to serve our clients satisfactorily if we cannot give them the beginning and ending dates for the fares between the cities of origin and destination for the travel dates required.

I have been in the travel agency business for 42 years. Granted the airlines have been fixing prices but passing these consent decrees will be detrimental to the passengers and hurt them, not the airlines.

Please advise the Judge that we adamantly oppose them.

Sincerely,

Joline Berg.

Air, Land & Sea Travel, Inc., 2850 Metro Drive, Suite 308, Bloomington, Minnesota 55425, Telephone (612) 854-5425.

February 15, 1993.

Mr. Mark C. Schechter,

Dept. of Justice, 555—4th St. NE, Rm., 9104, Washington, DC 20001

Dear Mr. Schechter: It has been brought to my attention that you are attempting to stop travel agents from providing our customers with advance notice of fare increases and discount sales. This is a service that is extremely important to us, and I strongly believe that is time for the government and the courts to stop interfering with our business. I believe a ruling for the airlines and travel agent is of the utmost importance.

Sincerely,

Thomas P. Gray,

President.

Air, Land, Sea, Travel & Tours Inc., 803 Plainfield Road, Joliet, Illinois 60435, (815) 727-5383.

February 16, 1993.

Department of Justice,

Room 9104, 555 4th Street, NW., Washington, DC 20001.

Attention: Mark C. Schneider. I would like to express my concern with the demands of the Department of Justice to require airlines to stop providing travel agents with advance announcements of fare increases and the end of discount sales.

Not only do I feel that this is a requirement which would be deleterious to thousands of independent Travel Agencies, leading to the necessity of massive ticket rewriting, greatly increasing time and expense, surely adversely impacting the opinion of clients as to the knowledge and helpfulness of travel agents, it certainly seems to me that my government, by this action, is intruding into private business in an unnecessary, harmful, unfair, and even improper manner and extent.

Sincerely,

Jane R. De Witt,

Owner, Air, Land & Sea Travel.

Air-Sea, The Travel Company, 3436 Tongass Avenue, Ketchikan, Alaska 99901 (907) 225-9491

March 2, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Re: Justice Department action against airlines—price fixing

Dear Mr. Schechter, Travel Agencies, such as mine, book and ticket the majority of airline tickets purchased in the United States. The Airlines have worked with the various Computer Reservation System operators and Travel Agents to develop an efficient and effective airline reservation and ticketing distribution network. The timely (same day) availability of new or updated fares is critical to the operation of our business. In order for airlines to make this information available to the distribution network at the time of fare publication and release, the computer coding and programming must be submitted prior to the change or introduction.

Any limitations placed on the airlines that may hinder their ability to release fares and rules regarding the fares at the same time the fare is published to the public would effectively cripple the airline industry and the distribution network (travel agencies) established to book and sell airline seats. Public confidence in the distribution network would be severally damaged should immediate access to newly released fares and their rules be lost or hindered in any way.

I urge yourself and the Justice Department to reconsider the recent actions taken against the airlines and to withdraw from any action. Further regulation of the industry can only be harmful, driving up costs and damaging public confidence in the nations airlines.

Sincerely,

Brian R. Cole,

Division Manager.

Comments of Airline Tariff Publishing Company, Alaska Airlines, Inc., American Airlines, Inc., Delta Air Lines, Inc., and Trans World Airlines, Inc. on the Proposed Consent Decree Between the Department of Justice and United Airlines, Inc. and USAir, Inc.

United States of America, Plaintiff, v. Airline Tariff Publishing Company, et al., Defendants, Civil Action; No. 92-2854(GHR).

Pursuant to 15 U.S.C. 16, Airline Tariff Publishing Company ("ATPCO"), Alaska Airlines, Inc., American Airlines, Inc., Delta Air Lines, Inc., and Trans World Airlines, Inc. submit their comments on the proposed Consent Decree between the Department of Justice ("DOJ") and United Airlines, Inc. and USAir, Inc. For the reasons set forth below, the proposed Consent Decree is not in the "public interest," as required by U.S.C. 16(e), and therefore should not be approved by the Court.[1]

[1] Pursuant to the Court's Scheduling Order dated March 4, 1993, the parties hereto reserve the right to file a reply memorandum to the DOJ's responses to public comments.

I. Introduction

The DOJ's proposed Consent Decree will deprive retail customers of air transportation services of valuable price information that the airlines have communicated to them for more than 50 years. The proposed Consent Decree will impose a blanket prohibition on the practice of giving customers advance notice of fare increases by specifying the "first ticket date" on which tickets will be sold at a higher price, as well as a blanket prohibition on the practice of communicating through ATPCO to customers the "last ticket date" that they will be able to purchase tickets at discounted prices. The restriction on last ticket dates will especially hamper the ability of the airlines to offer special promotional fares to their customers.

The crux of the proposed Consent Decree is contained in section IV.(B), which enjoins the airlines from:

> disseminating any first ticket dates, last ticket dates, or any other information concerning the defendant's planned or contemplated fares or changes to fares.

This broad ban on the communication of vital price information would effect a truly fundamental change in the airline industry.

Thus, in more than one respect, "this is not an ordinary antitrust case." *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd*, 460 U.S. 1001 (1983). Since the Supreme Court issued its opinion in *Sugar Institute* v. *United States*, 297 U.S. 553(1936), it has been lawful for firms to announce future price increases to their customers. Here, the essence of the proposed Consent Decree is the prohibition on the use of first and last ticket dates, which are simply the methods by which airlines communicate (i) future fare increases and (ii) the last dates of fare sales to their customers and to travel agents, upon whom the airlines depend for the sale of approximately 80% of all airline tickets. The DOJ's decision to challenge this practice is puzzling because the airlines have communicated this fare information to their customers for more than 50 years. Indeed, beginning in 1938, with the passage of the Civil Aeronautics Act, until January 1, 1983, the effective date of the tariff provisions of the Airline Deregulation Act, the airlines were required by law to give advance notice of fare increases. The Airline Deregulation Act did not purport in any way to make this practice illegal, but rather left each airline free to determine for itself whether to continue to use first and last ticket dates as a way to communicate future fare increases to customers. Because this practice benefits consumers and travel agents, each of the airlines has unilaterally continued this practice.

The airlines communicate advance notice of fare increases as well as other important fare information through computer reservations systems and ATPCO. As the DOJ admits, ATPCO and computer reservations systems are an efficient and cost effective way to communicate numerous daily fare changes made by the airlines. See United States' Objections and Responses to Defendants' First Set of Requests for Admissions, Nos. 24, 158 and 201 (the DOJ's Admissions referred to herein are attached as Exhibit "A"). ATPCO's programs provide, through computer reservations systems, fare information to more than 36,000 travel agents. *Id.* at No. 166.

> ATPCO currently distributes fare and related information through electronic and print media to approximately 271 air carriers and to approximately 1,700 non-carrier subscribers, including travel agencies, large corporations and government agencies . . .

Id. at No. 164. Finally, the DOJ admits that ATPCO's programs, services, and products are publicly available to anyone requesting and paying for them on a nondiscriminatory and entirely equal basis. *Id.* at No. 203. Simply put, ATPCO provides a tremendous service to consumers because it provides a central source for the public collection, organization, dissemination, and preservation of fare information for subscribers.

The airlines communicate first and last tickets to their customers through ATPCO. The DOJ admits that it does not even contend that each use of first and last ticket dates constitutes a violation of the Sherman Act. *Id.* at Nos. 81 and 84. The DOJ's overly broad proposed regulatory remedy, however, would prohibit the dissemination of all first and last ticket dates through ATPCO.

The DOJ, ostensibly under the guise of the "public interest," seeks to effect a fundamental change in the ways in which airline fares are communicated to consumers, yet it concedes that it has not undertaken any economic studies of the expected financial impact of the proposed Consent Decree on consumers. See Memorandum of the United States in Opposition to Motions of American Society of Travel Agents, Inc. for Leave to Intervene for Production of Studies, and for an Extension of Time for Public Comment, at 9.[2] The DOJ, apparently, has also failed to consult with the travel agency industry, consumer groups, airline industry groups, and the Department of Transportation in order to evaluate the impact of the proposed Consent Decree on air transportation services and related industries.

The "public interest," however, is not a legal abstraction. Here, the most directly affected segment of the "public" consists of travel agents and consumers of air transportation services. The "interest" involved concerns the so-called benefits they will receive by being deprived of their First Amendment right to learn when air fares will increase and the financial impact the proposed Consent Decree is expected to have on them.

The DOJ's failure to conduct an analysis of the financial impact of the proposed Consent Decree on consumers is especially troubling in light of its admission that real air fares have declined by as much as 31% since the airlines were deregulated in 1983 and are lower than at any time in history. See United States' Objections and Responses to Defendants' First Set of Requests for Admissions, No. 237.[3] The Assistant Attorney General in charge of the Antitrust Division, James Rill, stated on September 13, 1991, two years into the Division's investigation that:

> [A]irline deregulation has increased dramatically the competitiveness of that industry. The Department of Transportation now estimates fares to be about 31 percent below what they would have been had regulation continued, *a savings to airline passengers of more than $15 billion annually.* And service has improved. * * *

Id. at No. 237(c)(emphasis added). The DOJ admits that Mr. Rill's statements were authorized, were made within the scope of his authority, and were true when made. The DOJ also admits that the Defendant airlines offered thousands of discount fares during the time that they allegedly conspired to bilk their customers by maintaining fares at artificially high levels. *Id* at No. 102. The DOJ would nonetheless, in the absence of any empirical support, have this Court impose a regulatory pricing mechanism on an industry that is engaged in fierce price competition and losing billions of dollars annually while consumers are saving $15 billion annually—and would impose this brave new world in the name of the public interest.

[2] The DOJ, moreover, conceded in its Competitive Impact Statement, at 30, that it did not consider any "determinative" documents, as defined in 15 U.S.C. 16(b), in formulating the proposed Consent Decree.

[3] The DOJ also admits that the average price for all U.S. domestic air passenger transportation was below the average total cost of all of the airlines that provides such service during the alleged conspiracy period. *See* United States' Objections and Responses to Defendants' First Set of Requests for Admissions, No. 78.

But, the proposed Consent Decree is contrary to the public interest for three fundamental reasons.

1. The proposed Consent Decree assumes that there has been a violation of Section One of the Sherman Act, 15 U.S.C. 1. The DOJ, however, cannot cite a single case that has ever held that advance notice of retail price increases (a) will support an inference of conspiracy, or (b) is anticompetitive or illegal. Cutthroat competition, bankruptcies, and declining prices have been the recent hallmark of the airline industry, not price gouging and excessive profits.

2. The proposed Consent Decree is directly contrary to the financial interests of the "public" it purports to help. Consumers will now be deprived of any warning of fare increases with no offsetting benefits as a result of the restriction on their First Amendment rights.

3. The proposed Consent Decree violates the First Amendment because it is an overly broad prohibition of lawful conduct that prohibits the airlines from communicating vital price information to their customers. First and last ticket dates are merely the... means by which advance notice of retail prices is communicated to consumers, and the DOJ does not even contend that each use of first and last ticket dates violates the Sherman Act. The proposed Consent Decree, therefore, is not a narrowly-tailored restriction on First Amendment speech.

II. Advance Notice of Future Fare Increases Does Not Violate the Sherman Act

Advance notice of retail price increases has been held to be a legitimate, pro-competitive business practice in an unbroken line of cases extending over a period of 50 years. These cases include controlling decisions of the Supreme Court. *See, e.g., United States* v. *Sugar Institute,* 217 U.S. 553, 602–03 (1936); *Catalano Inc.* v. *Target Sales, Inc.,* 446 U.S. 643 (1980)("[A]dvance price announcements are perfectly lawful."); *United States* v. *Citizens & Southern Nat'l Bank,* 422 U.S. 86, 113 (1975)("the dissemination of price information is not . . . a *per se* violation of the Sherman Act"). *See also Reserve Supply* v. *Owens-Corning Fiberglass,* 971 F.2d 37, 53–54 (7th Cir. 1992)(affirming summary judgment in favor of defendant); *In re Petroleum Products Antitrust Litig.,* 906 F.2d 432, 448 n. 14, 9th Cir. 1990); *E.I.du Pont de Nemours & Co.* v. *FTC, 792 F.2d 828* (2d Cir. 1984); *United States* v. *General Motors Corp.* 1971–2 Trade Cases ¶ 75,253 (E.D. Mich. 1974). In stark contrast, the DOJ can cite no case that has ever held that advance notice of retail price increases violates Section One of the Sherman Act.

The DOJ admits that "when the defendant airlines announced future fare increases during the alleged conspiracy period, those fares concerned retail prices." United States' Objections and Responses to Defendants' First Set of Requests for Admissions, No. 219. This admission is critical because no case has ever held that consciously parallel decisions on the part of competitors to give advance notice of their intention to raise retail prices on a specified date in the future will support an inference of conspiracy. See especially *In Re Petroleum Products Antitrust Litig.,* 906 F.2d at 448 n.14:

> Our conclusion would necessarily be different were the appellants' inference of a price-fixing conspiracy based on the dissemination or advertising of retail prices; permitting an inference of conspiracy from such evidence would make it more difficult for retail consumers to get the information they need to make efficient market decisions.

The DOJ's proposed Consent Decree also erroneously assumes that the use of first and last ticket dates causes parallel prices. That assumption is manifestly false. Parallel pricing, or interdependent pricing,[4] exists in the airline industry because it is a concentrated industry in which price information is nearly perfect and, because each competitor provides a commodity-like service, consumers are especially price sensitive. See *Cement Manufacturers Ass'n* v. *United States,* 268 U.S. 588, 605 (1925)("uniformity of price will inevitably result from active, free and unrestrained competition, . . . [particularly] in the case of standardized product * * *"). Indeed, the DOJ admits that, "[i]f an airline increases a fare on a city-pair route that is serviced by another airline with identical or similar service, and the other airlines do not increase their fare, the airline that increases its fare risks losing customers to the other airlines." United States' Objections and Responses to Defendants' First Set of Requests for Admission, No. 44. Simply put, in the absence of an alleged conspiracy or the use of first and last ticket dates, parallel pricing would still exist in the airline industry.

The abolition of first and last ticket dates, therefore, will not "cure" the problem of parallel pricing, nor will it make it appreciably more difficult to occur. See Reserve Supply Corp., 971 F.2d at 50 ("it is close to impossible to devise a judicially enforceable remedy for 'interdependent pricing'. How does one order a firm to set its prices without regard to the likely reaction of its competitors?" (quoting *Clamp-All Corp.* v. *Cast Iron Soil Pipe Inst.,* 851 F.2d 478, 484 (1st Cir. 1988) (citations omitted))). Experience in the airline industry demonstrates beyond cavil that parallel, interdependent pricing will exist whether or not the Court approves the proposed Consent Decree.

This fact should be critical to the Court's determination of whether the proposed Consent Decree is in the public interest. If parallel, interdependent pricing will exist even if the proposed Consent Decree is approved, what is the benefit to the public of depriving consumers of advance warning of future fare increases? What is the benefit to consumers of prohibiting airlines from telling their customers when sales of discount fares will end? In the total absence of any economic studies, why should the Court believe that cutting off the free flow of pricing information to consumers is in their financial interest? The Defendants respectfully submit that the DOJ has not—because it cannot—supply the Court with satisfactory answers to these questions, and thus cannot show that proposed Consent Decree is in the public interest.

III. The DOJ Has Failed To Demonstrate That Consumers or any Member of the "Public" Will Benefit by the Proposed Consent Decree

It is undisputed that the proposed Consent Decree will deprive consumers and travel agents of pricing information that they have relied on for more than 50 years. It is undisputed that real air fares have declined by as much as 31% since the airlines were deregulated in 1983. It is undisputed that the airlines have offered thousands of discount fares during the past few years. It is undisputed that consumers have saved $15 billion annually since deregulation. It is undisputed that the airlines have lost billions of dollars since the DOJ began its investigation into the pricing practices in the airline industry.

It is disputed whether the proposed Consent Decree will confer benefits on the most affected members of the public whose interests the DOJ would champion: travel agents and consumers. And it is the very "public" that disputes the wisdom of this Consent Decree. The American Society of Travel Agents, Inc. ("ASTA") challenges the proposed Consent Decree because it "will disrupt

[4] "Interdependent pricing" has most recently been defined as "the phenomenon of sequential competitive pricing decisions that are made (1) in response to the ones preceding it and (2) in the hope of expectation of the ones that follow it." Petroleum Products, 906 F.2d at 442 n.5. This pricing behavior is perfectly lawful because, as the Supreme Court has recognized, "the fact that competitors may see proper, in the exercise of their own judgment, to follow the prices of another manufacturer, does not establish any suppression of competition or show any sinister domination." *United States* v. *International Harvester Co.,* 274 U.S. 694, 708–09 (1927).

the flow of valuable travel planning information to tens of millions of consumers." Comments of ASTA, at 4. Public Citizen, Inc., a nationwide consumer advocacy group, opposes the proposed Consent Decree because they question whether "the public will be better off if the Government wins." Comment of Cornish F. Hitchcock, aviation specialist for Public Citizen, quoted in the New York Times, Feb. 26, 1993, at c. 3. In fact, Mr. Hitchcock has opined that this "is a dopey lawsuit that should never have been brought." Chicago Sun-Times. March 1, 1993, at 41.

So what empirical support has the DOJ marshalled to meet these challenges to show the financial benefits that will flow from its proposed regulatory pricing regime? *Nothing*. The Competitive Impact Statement is absolutely silent as to the expected financial impact of the proposed Consent Decree, and the DOJ has recently conceded that it has not undertaken any economic studies on the expected impact of consumers. In light of the overwhelming evidence against the proposed Consent Decree, and in light of the opposition to the Decree by the public, the Court should conclude that it is not in the public interest.

IV. The Proposed Consent Decree Violates the First Amendment

The DOJ seeks a broad ban on the use of all first and last ticket dates because, it alleges, their use *sometimes* leads to unlawful price-fixing agreements. As noted earlier, the DOJ admits that not all uses of first and last ticket dates violate the Sherman Act. *See* United States' Objections and Responses to Defendants' First Set of Requests for Admission, Nos. 81 and 84. Instead of distinguishing the few incidents when the DOJ alleges that the suspect practices violate the Sherman Act from the numerous incidents when the DOJ concedes that they do not, and then tailoring the requested restrictions to fit only the alleged unlawful practices, the DOJ has opted instead for a much broader restriction on First Amendment speech rights.

To determine whether a governmental restriction on commercial speech is permissible under the First Amendment,[5] courts employ the four-pronged analysis initially articulated by the Supreme Court in *Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York*, 447 U.S. 557 (1980). This analysis includes

(i) [T]he speech "must concern lawful activity and cannot be misleading;"
(ii) "[T]he asserted governmental interest [must be] substantial;"
(iii) "[T]he regulation [must] directly advance [ ] the governmental interest asserted;" and
(iv) "[T]he regulation [must not be] more extensive that is necessary to serve that interest."

447 U.S. at 566. As the Supreme Court held in *Board of Trustees of the State University of New York* v. *Fox*, 492 U.S. 469, 480 (1989), the DOJ's proposed Consent Decree must be "narrowly tailored to achieve the desired [governmental] objective."

The proposed Consent Decree fails the first prong of the *Central Hudson* test because the advance announcement of fare increases is lawful. The proposed Consent Decree also fails to implicate a substantial governmental interest. Although the DOJ has a substantial interest in preventing price fixing, there is a major difference between that interest and the interest the DOJ attempts to advance here in prohibiting communications regarding fare increases. *Cf. Maple Flooring Mfg. Ass'n.* v. *United States*, 268 U.S. 563, 582 (1924) ("[i]t is the consensus of opinion of economists and of many of the most important agencies of government that the *public interest is served* by the gathering and dissemination, in the widest possible manner, of information with respect to the production and distribution, costs and prices in actual sales, * * *") (emphasis added). This is especially true considering that the DOJ attempts to impose an absolute ban on an entire category of speech that benefits the public the DOJ ostensibly seeks to protect.

Finally, the proposed Consent Decree is not "narrowly tailored" to achieve the DOJ's purported objective. In *Central Hudson*, the government sought to ban an electric utility from employing any advertising that promoted the use of electricity. The Supreme Court struck down the regulation, concluding that the absolute prohibition on promotional advertising was more extensive than necessary to achieve the stated governmental objectives of energy conservation and fairness and efficiencies in rates (although both interests were deemed to be substantial).

Here, the DOJ's proposed Consent Decree will ban the use of all first and last ticket dates, even though the DOJ admits that not all uses of first and last ticket dates violate the Sherman Act. The DOJ, simply put, has made no effort to tailor its proposed restriction to fit the conduct it believes is unlawful.[6] See In re R.M.J., 455 U.S. 191, 203 (1982) (restrictions on speech may not "place an absolute prohibition on * * * potentially misleading information * * * if the information also may be presented in a way that is not deceptive"). At a minimum, therefore, the DOJ should be made to distinguish between those uses of first and last ticket dates that it alleges are unlawful and those that are not, and then tailor its remedy to fit the alleged anticompetitive conduct.

Finally, consumers of air transportation service have a First Amendment "right to receive information and ideas." *Stanley* v. *Georgia*, 394 U.S. 557, 564 (1969). Here, information concerning future fare increases is clearly in the public interest, because consumers have the right to make informed purchasing decisions based upon information concerning when air fares will increase.

> So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable.

Virginia Pharmacy Board v. *Virginia Citizens Consumer Counsel*, 425 U.S. 748, 765 (1976). As the Supreme Court further noted in *Virginia State Board of Pharmacy*, 425 U.S. at 763, "[a]s to the particular consumer's interest in the free flow of commercial information, that interest may be as keen, if not keener by far, than his interest in the day's most urgent political debate."

Most recently, the Supreme Court recognized the causal relationship

[5] Commercial speech is "expression related solely to the economic interests of the speaker and its audience." *Central Hudson Gas & Electric* v. *Public Service Commission of New York*, 447 U.S. 557, 561 (1980) (citing *Virginia Pharmacy Board* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 762 (1976)). Although the Defendants believe that the proposed Consent Decree constitutes a restriction on "pure" speech, for the purposes of these Comments only, the Defendants will assume that the proposed Consent Decree's prohibition on first and last ticket dates involves commercial speech.

The proposed Consent Decree is also a content-based restriction on speech—*i.e.*, it singles out a certain type of speech for regulation—and thus must serve a "compelling governmental interest" and must be narrowly tailored to further that purpose. See *Consolidated Edison Co.* v. *Public Serv. Comm'n*, 447 U.S. 530, 540 (1980) (applying strict scrutiny standard to rule that imposed only small incremental cost on speech of public utilities). The DOJ has no legitimate interest, much less a compelling interest, in completely banning lawful speech.

[6] First Amendment rights require the Court to tailor a remedy to fit the circumstances of the particular case, even if the Court believes an antitrust violation has occurred. See National Society of Professional Engineers v. United States, 435 U.S. 679, 697–98 (1978).

between the communication of air fare information and lower prices.

[I]t is clear as an economic matter that state restrictions on fare advertising have the forbidden significant effect upon fares. Advertising "serves to inform the public of the * * * prices of products and services, and thus performs an indispensable role in the allocation of resources. * * * [w]here consumers have the benefit of price advertising, *retail prices often are dramatically lower than they would be without advertising.*"

Morales v. *Trans World Airlines, Inc.*, 112 S. Ct. 2031, 2039–40 (1992) (quoting *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 364, 377 (1977)). The proposed Consent Decree's prohibition on the use of first and last ticketing dates strips consumers of their right to receive this critical retail price information.

V. The Proposed Consent Decree Conflicts With the Rule-Making Authority of the Department of Transportation

The restrictions imposed by the proposed Consent Decree would usurp the rulemaking and enforcement authority of the Department of Transportation ("DOT") to regulate the dissemination and display of fare information through computerized reservations systems and ATPCO. See *United Airlines, Inc.* v. *Civil Aeronautics Board*, 766 F.2d 1107, 1110 (7th Cir. 1985) (the DOT has broad power to issue rules to carry out policies set forth in the Federal Aviation Act, and the DOT's issuance of rules regarding the dissemination of fares and other information through computerized reservations systems "reserv[es] to the [DOT] the responsibility for preventing deception of airline passengers"). Pursuant to 49 U.S.C. App. 1381, the DOT is authorized to issue cease and desist orders in the public interest to enforce the prohibition against "unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof." Further, in the exercise of its powers and duties, the DOT must consider to be in the public interest, *inter alia*, the "availability of a variety of adequate, economic, efficient and low-price services by air carriers, * * * the prevention of unfair, deceptive, predatory or anticompetitive practices in air transportation, and the avoidance of * * * conditions that would tend to allow one or more air carriers * * * unreasonably to increase prices, reduce services, or exclude competition in air transportation." 49 U.S.C. App. 1302(a)(7).

Since its inception, the DOT has exercised its broad authority to regulate the dissemination of fare information. See *e.g.*, 14 CFR parts 255 and 256 (regulating the dissemination and display of fare information through computer reservation systems). As discussed above, prior to the effective date of the Airline Deregulation Act in 1983, the DOT required airlines to give advance notice of fare increases. Rather than prohibiting such notice after deregulation, the DOT gave the airlines the discretion to continue the practice. The DOT continues to require advance notice of fare changes in other contexts. For example, carriers operating in domestic air transportation are required to give consumers notice of certain contract of carriage terms. 14 CFR part 253. Section 253.7 requires, with respect to "any terms restricting refunds of the ticket price, imposing monetary penalties on passengers, or *permitting the carrier to raise the price*, * * * conspicuous written notice of the salient features of those terms on or with the ticket" (emphasis added).

The DOT also requires advance notice of fare changes for international tariffs. International fares must be filed at least 30 days in advance. 14 CFR 221.160(a)(1). The "expiration date shall be shown" on every tariff, 14 CFR 221.31(a)(10), and all changes in tariffs "shall be indicated" by "uniform amendment symbols" to denote increases, reductions or other changes, 14 CFR 221.114(a). There is no requirement of widespread advertising of international tariff changes before they can take effect.

The Federal Aviation Act, and the regulations promulgated thereunder, show that regulation of the dissemination of advance fare information is within the jurisdiction of the DOT. The requirements of advance notice of international fares, and of the use of codes and symbols similar to those currently used by the Defendants, moreover, is a clear indication that such practices further the policies of the DOT. Thus, there is every reason to believe that the DOT has rule-making and enforcement jurisdiction over the restrictions imposed by the proposed Consent Decree. Because of these complex conflicts issues, the Defendants submit that it would be prudent for the Court, pursuant to 15 U.S.C. 16(f)(2, to solicit the views of the Department of Transportation on this issue.

Conclusion

For all of the foregoing reasons and on the authorities cited, the proposed Consent Decree does not satisfy the Tunney Act's requirement that it be in the public interest. See 15 U.S.C. 16(e). The Defendants therefore respectfully request that the Court not approve the proposed Consent Decree between the United States and United Airlines, Inc. and USAir, Inc.

Respectfully submitted, this 15th day of March, 1993.

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United States' Objections and Responses to Defendants' First Set of Requests for Admissions

United States of America, Plaintiff, v. Airline Tariff Publishing Company, et al., Defendants. Civil Action No. 92–2854 (GHR).

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, plaintiff, United States of America ("Government"), based on information known to or readily obtainable by the Government at this stage of the litigation, response to Defendants' First Set of Requests for Admission as follows:

Request 1. There were over 50,000 city-pairs served by the Defendant airlines for U.S. domestic air passenger transportation during the period April 1988 to the present.

Response: Admits.

Request 2. There were thousands of city-pairs served by the Defendant

airlines for U.S. domestic air passenger transportation during the period April 1988 to the present.

Response: Admits.

Request 24. ATPCO and computer reservation systems are an efficient method of informing consumers of the many daily fare changes made by the Defendant airlines for U.S. domestic air passenger transportation.

Response: The Government objects to this request on the grounds that it is vague, ambiguous, and misleading. The Government admits that ATPCO and computer reservation systems are an efficient method of informing consumers of the fares available for sale each day by the Defendant airlines for U.S. domestic air passenger transportation.

Request 44. If an airline increases a fare on a city-pair route that is serviced by another airline with identical or similar service, and the other airlines do not increase their fare, the airline that increases its fare risks losing customers to the other airlines.

Response: Admits.

Request 78. The average price of all U.S. domestic air passenger transportation was below the average total cost of all the airlines providing such transportation during the period April 1988 to the present.

Response: Admits.

Request 81. Plaintiff does not contend that the Defendant airlines violated Section One of the Sherman Act each time they used first ticket dates during the period April 1988 to the present.

Response: The Government objects to this request on the grounds that it is vague and ambiguous. The Government admits that it does not contend that each use of a first ticket date constituted a separate violation of Section One of the Sherman Act.

Request 84. Plaintiff does not contend that the Defendant airlines violated Section One of the Sherman Act each time they used last ticket dates during the period April 1988 to the present.

Response: The Government admits that it does not contend that each use of a last ticket date constituted a separate violation of Section One of the Sherman Act.

Request 102. There were thousands of discount fares offered by the Defendant airlines during the period April 1988 to the present.

Response: Admits.

Request 158. ATPCO's principal function is to collect and distribute, in a cost effective manner, domestic and international passenger and cargo rate information for approximately 271 carriers worldwide.

Response: Admits.

Request 164. ATPCO currently distributes fare and related information through electronic and print media to approximately 271 air carriers and to approximately 1,700 non-carrier subscribers, including travel agencies, large corporations and government agencies, including the General Services Administration, the Department of the Army, the U.S. Department of Transportation, the National Transportation Agency of Canada and the Civil Aviation Authority of the United Kingdom.

Response: Admits.

Request 165. ATPCO's programs provide through computer reservation systems fare information to more than 36,000 travel agencies.

Response: Admits.

Request 201. ATPCO services to carriers and subscribers are an efficient and cost effective means of distributing identical domestic fare information to purchasers of air carrier services throughout the world.

Response: Admits.

Request 203. ATPCO's programs, services, and products are publicly available to anyone requesting and paying for them on a nondiscriminatory and entirely equal basis.

Response: Admits.

Request 219. When the Defendant airlines announced future fare increases during the alleged conspiracy periods, those fare announcements concerned retail prices.

Response: Admits.

Request 237. That each of the following statements were made by the individual named below on the dates indicated within the scope of his official duties as an officer of the United States and was true at the time the particular statement was made:

Response: The Government objects to this request in its entirety on the grounds that it is compound and complex, and that it is irrelevant. The Government further objects to this request on the grounds that the statements are misleading because they are incomplete and taken out of context. Subject to and without waiving its objections, the Government responds separately to each subpart of this request.

(a) By Samuel K. Skinner, Secretary of Transportation, to the National Press Club, Washington, DC, January 23, 1991:

(i) "Every credible analysis of airline competition in the 1980s has declared deregulation a success * * *. [D]eregulation has provided major benefits for American travelers."

Response: The Government admits that this statement was made by Samuel K. Skinner within the scope of his duties as an officer of an agency of the United States government, and that the statement was true at the time it was made.

(ii) "First, airline travel is much less expensive * * *. [R]eal airline fares have declined by an average of 28 percent since 1981 * * *. [A]ir travel is now accessible to millions of low-and middle-income Americans."

Response: The Government admits that this statement was made by Samuel K. Skinner within the scope of his duties as an officer of an agency of the United States government. The Government admits that the statements that "airline travel is much less expensive" and "air travel is now accessible to millions of low- and middle-income Americans" were true at the time they were made. After reasonable inquiry, information known to or readily obtainable by the Government is insufficient to enable it to admit or deny that the statement "real airline fares have declined by an average of 28 percent since 1981" was true at the time that it was made.

(iii) "[L]ast month almost 92 percent of the new travelers flew on discounted fares.

Response: The Government admits that this statement was made by Samuel K. Skinner within the scope of his duties as an officer of an agency of the United States government. After reasonable inquiry, the information known to or readily obtainable by the Government is insufficient to enable the Government to admit or deny that this statement was true at the time that it was made.

(iv) "Three times as many passengers now travel in truly competitive markets—those served by three or more airlines—than did in 1978.

Response: The Government admits that this statement was made by Samuel K. Skinner within the scope of his duties as an officer of an agency of the United States government. The Government denies that this statement was true at the time that it was made insofar as it states that the fact that a market is served by three or more airlines makes such a market truly competitive. The Government admits that in January 1991, three times as many passengers traveled in markets served by three or more airlines than did in 1978.

(b) By Jefferson N. Shane, Assistant Secretary of Transportation for Policy and International Affairs, Remarks Before the Aviation Subcommittee of the Senate Committee on Commerce, Science, and Transportation Concerning

U.S. Aviation Policy, September 11, 1991:

(i) "[T]he Department has studied carefully the competitiveness of the U.S. Airline Industry."

* * * * *

"We are convinced that * * * vigorous competition will continue to produce quality service at low prices * * *." Id. at 1–2.

Response: The Government admits that this statement was made by Jefferson N. Shane within the scope of his duties as an officer of an agency of the United States government. The Government admits that the statement "[T]he Department has studied carefully the competitiveness of the U.S. Airline Industry" was true at the time it was made. The Government admits that the statement "We are convinced that * * * vigorous competition will continue to produce quality service at low prices * * *," was an accurate statement of the Department of Transportation's belief at the time it was made.

(ii) "[T]he evidence continues to show that the industry structure continues to be very competitive." Id. at 4.

Response: The Government admits that this statement was made by Jefferson N. Shane within the scope of his duties as an officer of an agency of the United States government. The Government can neither admit nor deny that this statement was true at the time it was made because it does not know what evidence the statement refers to.

(iii) "[T]he domestic airline industry structure that has evolved during deregulation is fundamentally more competitive than at any time in the past * * *." Id. at 5.

Response: The Government admits that this statement was made by Jefferson N. Shane within the scope of his duties as an officer of an agency of the United States government. The Government can neither admit nor deny that the statement was true at the time it was made because the statement is vague and ambiguous. To the extent this statement means that the domestic airline industry is fundamentally more competitive currently than the industry was prior to deregulation, the Government admits that this statement was true at the time it was made.

(iv) "Our continuing analysis of fares confirms the fundamentally competitive nature of the domestic airline industry * * *. [as] reflected by the continued decline in domestic fares * * *. [A]verage air fares adjusted for inflation had declined by 26 percent by 1988 * * *. that real fare decline now totals 31 percent. As it stands now, inflation adjusted domestic air fares are lower than at any time in history." Id. at 5.

Response: The Government admits that this statement was made by Jefferson N. Shane within the scope of his duties as an officer of an agency of the United States government. The government admits that the statement "Our continuing analysis of fares confirms the fundamentally competitive nature of the domestic airline industry * * *. [as] reflected by the continued decline in domestic fares * * *." accurately reflected the analysis and conclusions of the Department of Transportation at the time it was made.

(c) By James Rill, Assistant Attorney General, Antitrust Division of Department of Justice, Before the Advisory Commission on Conferences, September 13, 1991:

"[A]irline deregulation has increased dramatically the competitiveness of that industry. The Department of Transportation now estimates fares to be about 31 percent below what they would have been had regulation continued, a savings to airline passengers of more than $15 billion annually. And service has improved * * *." Id. at 3.

Response: The Government admits that this statement was made by James Rill before the Advisory Commission on Conferences in Ocean Shipping within the scope of his duties as an officer of an agency of the United States government. The Government admits that the statement was true at the time that it was made.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Comments of Airline Tariff Publishing Company, Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., and Trans World Airlines, Inc. on the proposed consent decree between the Department of Justice and United Airlines, Inc. and USAIR, Inc. to be served upon counsel in this matter as follows:

Via Hand Delivery

Mark C. Schechter, Donna N. Kooperstein, Mary Jean Moltenbrey, U.S. Department of Justice, Antitrust Division, 555 4th St., NW., Room 9104, Washington, D.C. 20001.

Via First Class Mail

Emmet J. Bondurant, II, Edward B. Krugman, Bondurant, Mixson & Elmore, 1201 W. Peachtree St., NW., Atlanta, GA 30309, Counsel for Defendant Delta Air Lines, Inc.

Mark Leddy, Cleary, Gottlieb, Steen & Hamilton, Rue de la Loi 23–Bte 5, 1040 Brussels, Belgium.

Thomas Demitrack, Jones, Day, Reavis & Pogue, North Point, 901 Lakeside Ave., Cleveland, OH 44114, Counsel for Defendant, Trans World Airlines, Inc.

Donald L. Flexner, Crowell & Moring, 1001 Pennsylvania Ave., NW., Washington, D.C. 20004, Counsel for Defendants, Northwest Airlines, Inc., and Continental Airlines, Inc.

Henry C. Thumann, O'Melveny & Myers, Suite 1060, 400 South Hope St., Los Angeles, CA 90071–2899, Counsel for Defendant, United Air Lines, Inc.

Paul M. Ruden, American Society of Travel Agents, Inc., 1101 King St., Alexandria, VA 22314, Counsel for American Society of Travel Agents, Inc.

Jonathan B. Hill, Dow, Lohnes & Albertson, 1255 23rd St., NW., Suite 500, Washington, DC 20037, Counsel for Defendant, Airline Tariff Publishing Company.

James Dick, Squire, Sanders & Dempsey, 1201 Pennsylvania Ave., NW., Suite 500. Washington, D.C. 20004, Counsel for Defendant, Alaska Airlines, Inc.

Charles F. Rule, Covington & Burling, Suite 1009B, 1201 Pennsylvania Ave., NW., Washington, DC 20004, Counsel for Defendant, USAir, Inc.

This 15th day of March, 1993.

Michael P. Kenny

American Hotel & Motel Association, 1201 New York Avenue, NW., Washington, DC 20005–3931, Tel. 202/289–3120, Fax 202/289–3185

Educational Institute of AH&MA, 1407 So. Harnson Road, East Lansing, MI 48823, Tel. 517/353–5500, Fax 517/353–5527

March 15, 1993.

The Honorable George H. Revercomb, *U.S. District Court, room 4311, Third and Constitution Ave., NW., Washington, DC 20001.*

Re: U.S. vs. Airline Tariff Publishing Co., et al.

Dear Judge Revercomb: As a part of the travel industry, we are very concerned about the terms of the consent decree in the case of *U.S. vs. Airline Tariff Publishing Co., et al.*

Under this decree, airlines would be prohibited, in most instances, from conveying the effective dates of fare changes to the traveling public and travel agents. While we understand that the issues and alleged practices being addressed by the Dept. of Justice are highly technical and complex, the proposed consent decree is far too proscriptive in our view. This monumental change in the air transport marketplace could only be justified by the most compelling of evidence under the most egregious of circumstances.

We don't feel that the many issues raised in this proceeding, and the implications for millions of consumers and the beleaguered airline industry, could be adequately addressed by today's deadline for public comment. Both the Administration and Congress are actively investigating possible modes of governmental intervention to help shore up the dire financial conditions of this country's major airlines. It would appear that the proposed consent decree could only impose greater financial hardships, and would be working at cross-purposes with these other branches of the federal government.

There are a great many questions raised by this consent decree. We respectfully request that you extend the period for public comment so that members of the travel industry have the opportunity to give this matter the close inspection it deserves.

Thank you for your consideration.

Sincerely,

James E. Gaffigan,

Vice President, Governmental Affairs.

January 20, 1993.

Adriane G. Greene,

Chairman ARTA, Association of Retail Travel Agents, 1745 Jeff Davis Highway, Suite 300, Arlington, VA 22202-3467.

Dear Adriane: Thank you for your FAX. Unfortunately I have to disagree with the wording. It suggest that we travel agents now have advance warning of what the airlines are doing. I think we can agree that we do not have that.

What he have, occasionally, is the file "intentions" of the carriers. I think we can both agree that intentions do not cause actions.

I do agree that forcing the carriers to post their rates in the newspapers prior to filing in ATP is absurd. You are correct, the government has no idea of the ramifications of what they are doing.

Sincerely,

Randy Webster, Owner, Al About Travel, Gardnerville, NV 89410.

Practice random kindness and senseless acts of beauty.

All About Travel, Stratton Center, 1532 Hwy. 395, P.O. Box 428, Gardnerville, NV 89410, (702) 782-8122.

February 24, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Re: United States vs Airline Tariff Publishing Company Action No. 92 2854

Dear Mr. Schechter: The prohibitions the Department of Justice is placing on the airlines is harmful to consumers and travel agencies. For Travel Agents to properly serve our clients we must have every resource available, and this includes all fare information.

The Department of Justice feels the airlines must inform the media prior to any detailed fare information being loaded into computer reservations systems. Travel Agents sell an average of 85% of all airlines seats so Travel Agents need access to all price information first. Furthermore, as you are probably painfully aware, the media is notorious for providing incomplete and wrong information. Travel Agencies are in every community, accessible to all, and are able to answer questions about all airlines.

Travel Agents working in full service travel agencies are professionals who care and service a vast number of consumers. Much of our service is to offer options on fares. It is obvious that neither Travel Agents nor our clients will be well served if we cannot inform them to when a fare is scheduled to be increased. Likewise, Travel Agents need to know when discount fares are scheduled to end because Travel Agents are expected to have that information.

If the airlines have to inform the media first of any fare changes, as the Department of Justices proposes, it will further erode consumer confidence in the Travel Agency distribution system.

Please consider the inconvenience you are placing on the consumer and the negative impact of Travel Agencies. Full service travel agencies are being put at a marketing and service disadvantage. The proposed final judgment is not in the best interest of the traveling public.

Sincerely,

Randy Webster,

Owner.

All Continents Travel Service, 826 St. Joe Street, P.O. Box 8061, Rapid City, South Dakota 57709, 1-800-334-0697, (605) 342-5863, FAX (605) 342-1136

Mark C. Schechter,

Dept. of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: This letter is in reference to the ongoing price fixing suit against major airlines. To us as travel Agents the absence of Effective, Expiration or ticketing dates hinders our ability to serve the consumer, and puts us in a bad situation. We could only basically tell clients that the prices is good today but may be higher tomorrow, we don't know. Many times clients do not make a decision right away and call us back, How happy do you think they would be if they call us right back a day later and prices have gone up? People on all categories will be affected, including those who are on a fixed income or limited budget. The consumer will be hurt, they will be mad, and we are in the middle of that bad situation, and we will have to say the Justice Dept. and Govt. made the airlines take out that information. I understand some of the problems involved in price fixing, from our point of view this information does help us, help the consumer. We urge you to drop this suit so that Airlines can give us this valuable information and we can continue to help the consumer, not leave them out in the cold without information.

Thank you for your time.

Sincerely,

Mike LaCroix,

All Continents Travel.

All Inclusive Travel, 975 Savannah Highway, St. Andrews Center, Charleston, South Carolina 29407, (803) 571-4930, Fax: (803) 571-4933.

March 1, 1993.

Mr. Mark Schechter,

U.S. Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Re: Airline Antitrust Suit

Dear Mr. Schechter: Please be advised that I am wholly against the Consent Decree being sought in the referenced matter. The dates which the airlines put in the computer are a necessary part of business and leisure travel plans, where one can purchase airline tickets before any price increase and save much money.

The last thing our economy needs is for consumers to have to pay higher ticket costs in this price volatile market simply because the DOJ makes planned increases a "secret."

Please reconsider this policy for the good of the US consumer and the ailing airline industry.

Very truly yours,

Pamela B. Subjek,

President.

All Travel, Inc., 7 East Northwest Highway, Palatine, Illinois 60067, Phone (312) 991-7300.

February 19, 1993.

Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: I am the owner of All Travel, and as a small business owner, am finding it most difficult to maintain a profitable company in today's very difficult economic climate.

As a full-service travel agency, the primary benefit we have to offer our clients is service! We believe in going the extra mile for all our clients. It is by this method that we are able to attract new clientele and retain our existing ones.

The proposed consent agreement that the Justice Department would have with the major domestic carriers forcing them to abolish all first ticketing dates and most last ticketing dates is harmful to both my agency and especially our clients.

We would no longer be able to advise our clients of impending fare changes nor assist them with their travel planning by recommending when it would be financial advantageous to purchase tickets. This decree also negatively impacts on the well-being of my agency because it removes one of the best marketing incentives available to us to stimulate business.

Therefore, in the best interests of consumers and small business persons, I urge you to reconsider your decision and not require the carrier affected by the anti-trust litigation to withhold data on effective fare dates.

I appreciate your consideration of this request.

Yours truly,

Patricia C. Heise,

President.

All Travel Designs Inc., 2250 State Rd. 580, Clearwater, Florida 34623, (813) 797-6662, Fax (813) 716-8356, (800) 226-8005.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear M. Schechter: We in this office would like to strongly voice our objections to the intrusion into our industry by the government by blocking the fare information normally sent through our computer reservation systems as to pricing restrictions and dates thereof.

Not only is this a deterrent to the airline industry in offering the best fares and service but blocks professional agents from offering the most complete and accurate travel counseling.

We would hope that as representatives of the people you will now listen to the voice of those of us who are interested in participating in this profession to the best of our abilities.

Most sincerely,

Louise Gould,

Agent/Owner.

All Ways Travel, 13601 N. 19th Ave., Suite #3, Phoenix, AZ 85029, (602) 866-WAYS, Fax (602) 866-0638

February 24, 1993

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter,

Please be advised that this agency is opposed to the consent decrees being approved by the federal judge.

Sincerely,

Karen Rose Roice,

Owner All-Ways Travel.

All World Travel Service, Inc., FAX: (513) 222-2765 USA; Main Office: 111 West First Street, Dayton, Ohio 45402, 513/222-1220

February 16, 1993

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street Northwest, Washington, DC 20001.

Dear Mr. Schechter: We just received information that the U.S. Department of Justice filed suit against 6 airlines for the way they file fares in their CRS Systems. We understand that no advance notice for new fares will be permitted, or last ticketing date or termination date of promotion fares will be given.

We wish to give our opinion as veteran travel agents whose only interest is that of our customers, the above ruling will only complicate our lives and hinder our capability to serve our clients.

We sincerely hope that the Justice Department will evaluate the effect of their ruling on the travel agent and the consumer before passing judgement.

Sincerely,

All World Travel Service, Inc.

Wes. S. Hamdan,

President & CEO.

Al's Travel Service, Complete Travel Service, 59 Court Street, Plattsburgh, N.Y. 12901-2888, Phone (518) 561-3320, Fax (518) 561-3328

February 16, 1993

Mark C. Schechter,

Dept. of Justice, room 9104, 555 45h St. NW., Washington, DC 20001.

Dear Sir: It has been called to my attention that consideration is being given to the prevention of ADVANCE NOTICE OF FARE CHANGES & CONDITIONS TO TRAVEL AGENTS.

We cannot serve the traveling public without offering this information.

Please do not take action against major airlines (and travel agents) which provide this information to the traveling public.

Thank you,

Albert Mazula,

Owner.

Ambassador Travel, Ltd.

Prangeway Center, 1094 S. Koeller Dr., Oshkosh, WI 54901, (414) 236-7777.

February 24, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

As owners of a small travel agency we would like to express our concern over the decrees that say that airlines cannot provide us with the information concerning fare increases or end of sales.

Do you have any idea at all what this does to us. We have already had this happen to us . . . . we quote a fare in the morning . . . the clients stop in after work to finalize their travel plans along with hotel, etc. and the fare has gone up $40.00. Well you know what happens . . . we EAT the $40.00 . . . now we have a $238.00 ticket which we only make in commissions about $13.00 . . . so in fact we loose that $13.00 as well as another $27.00 . . . . and when it is a family of 4 . . . it is 4 times that amount.

Maybe "big" corporate offices of government people do not care if their fare went up 10 or 20 or 50 dollars . . . the middle class traveler who SAVES AND PLANS HIS OR HER OR THEIR VACATION DOES CARE!!! Sometimes these fares go from $250.00 up to $420.00 . . . . . I kid you not!!!!!!! How can we sell!!!!!! Stores can advertise their product on sale for 2 weeks or 10 days or from this date to that date . . . why can't airlines????? I cannot seem to understand the difference or why on earth it is not the right thing to do????? Why is our business so different from any store selling a product . . . . even McDonalds can have 99¢ burgers for 12 days or so!!! WHY CAN'T OUR CUSTOMERS KNOW WHEN FARES ARE SUPPOSE TO GO UP OR HOW LONG A FARE WILL BE ON SALE???????

Please please write and explain this to me . . . . I cannot for the life of me try to explain it to any customers . . . . They think I am crazy and making this up!!!!!!!!!!!!!!!!!! Help us out!!!! Help us to survive!!!!!!!! And please explain why on earth government is in all of this anyhow!!!!! Doesn't government have enough things to do in this country without messing with things that were okay!!! Let the Department of Justice handle real things that concern the United States of America . . . not airline sales!!!

Sincerely,

Nina and Rocky Leib,

Owners, Ambassador Travel Ltd.

Amerian Hotel & Motel Association

James E. Gaffigan,

Vice President, Governmental Affairs,

1201 New York Avenue NW., Washington, DC 20005-3931, Tel. 202/289-3120, Fax 202/289-3185

Educational Institute of AH&MA, 1407 So. Harrison Road, East Lansing, MI 48823, Tel. 517/353-5500, Fax 517/353-5527

Hand Delivery

March 15, 1993

The Honorable George H. Revercomb,

U.S. District Court, room 4311, Third and Constitution Avenue NW., Washington, DC 20001

Re: U.S. vs. Airline Tariff Publishing Co., et.al.

Dear Judge Revercomb: As a part of the travel industry, we are very concerned about the terms of the consent decree in the case of *U.S. vs. Airline Tariff Publishing Co., et.al*

Under this decree, airlines would be prohibited, in most instances, from conveying the effective dates of fare changes to the traveling public and travel agents. While we understand that the issues and alleged practices being addressed by the Dept. of Justice are highly technical and complex, the proposed consent decree is far too proscriptive in our view. This monumental change in the air transport marketplace could only be justified by the most compelling of evidence under the most egregious of circumstances.

We don't feel that the many issues raised in this proceeding, and the implications for millions of consumers and the beleaguered airline industry, could be adequately addressed by today's deadline for public comment. Both the Administration and Congress are actively investigating possible modes of governmental intervention to help shore up the dire financial conditions of this country's major airlines. It would appear that the proposed consent decree could only impose greater financial hardships, and would be working at cross-purposes with these other branches of the federal government.

There are a great many questions raised by this consent decree. We respectfully request that you extend the period for public comment so that members of the travel industry have the opportunity to give this matter the close inspection it deserves.

Thank you for your consideration.

Sincerely,

James E. Gaffigan,

Vice President, Government Affairs.

cc: Aubrey King, Travel & Tourism Governmental Affairs Council

bcc: Mark C. Schechter, DOJ

Comments of the American Automobile Association, Inc.

In Re: United States of America v. Airline Tariff Publishing Company, *et al.* In the United States District Court for the District of Columbia, Civil Action #92-2854.

Communications with respect to this document should be sent to:

Allan F. Plank,

Managing Director.

Robert M. Housley,

Director, Travel Administration.

Charles S. Andrews,

Manager, Travel Agency Industry Programs.

AAA Travel Services, American Automobile Association, Inc., 1000 AAA Drive, Mail Stop 100, Heathrow, FL 32746-5063, TEL (407) 444-7876, FAX (407) 444-7823.

Comments of the American Automobile Association, Inc.

In Re: United States of America v. Airline Tariff Publishing Company, *et al.* In the United States District Court for the District of Columbia, Civil Action #92–2854.

The American Automobile Association (AAA) appreciates the opportunity to submit comments concerning the proposed consent decree attached to the Justice Department's price-fixing suit against eight U.S. airlines.

AAA offers travel agency services to more than 30 million members and the general public through over 800 travel agency locations in the United States. In 1992, AAA travel agencies booked more than 2.7 million domestic air passengers which represented over $750 million in sales.

AAA believes the Justice Department's proposed consent decree would force major domestic airlines to eliminate first ticketing dates and, in some cases, last ticketing dates from travel agents' and air carriers' fare information in computer reservation systems. AAA therefore must state our opposition to the consent decree.

AAA is particularly concerned about the anti-consumer message the Justice Department is sending in proposing this consent decree. Airline customers usually want to know ahead of time when prices will rise, so they can plan their travel and buy their tickets before the increase takes effect.

Similarly, to take advantage of a sale, airline consumers want to know when it will take effect and expire. In a recent AAA travel agency focus group, one consumer explained that his family is able to take as many airline trips as they do because they ask their travel agency to watch for "good fare deals." Then they purchase an airline ticket when they know the fare will be the best value.

Under the Justice Department's proposal, travel agents and airline personnel will be unable to professionally counsel such consumers, and an airline passenger's ability to plan ahead will be stripped away. The consumer may pay a higher fare than he would have had to, regardless of what source he contacts. Or he may find the fare system so confusing and unpredictable that he will spend his discretionary dollars on other products than travel.

AAA is concerned that in attempting to "fix" the airline price signaling problem, the Justice Department has punished instead airline passengers by depriving them of the information they need and desire about when fare prices will rise and fall, or when an airfare sale starts and ends.

Consumers of other products—from groceries to automobiles—have easy access to advance price information on those products. To deprive air consumers of the same information when they purchase air travel is illogical and ultimately unfair to them. Rather than having complete information on air fares before making a purchase, consumers will be forced to purchase an already expensive product with no indication of whether its price will rise or go on sale the next day.

AAA believes this scheme will lead to confusion and controversy.

Air travel consumers prefer dealing with travel agencies in purchasing airline tickets (over 80 percent of all airline travel is booked by travel agents) for numerous reasons. They trust the agent to find the price, routing, time of flight that fits their needs and rely on their agent to help them plan other portions of the trip. When consumers ask an airline or travel agent "what will the fare be tomorrow?" under the Department's consent decree regime, and are told "I don't know," consumer confidence in the professionalism of the travel industry will be severely undermined.

The consent decree adversely affects corporate travel, as well. At a time when corporations are seeking to lower their expenses, the proposed change in "fare-list" rules will dramatically affect cost-control efforts. In a recent study of corporate travel managers (Teletec, Inc.) familiar with the Department's proposal, almost 70% said the pending rules would impede or make impossible efforts to find the best possible fares for their travelers.

Under the consent decree, fare changes can be announced in CRSs provided the fares have been advertised in the general media. This is of little use, because airlines are seeking to lower, not increase, advertising costs and expenses in general. Moreover, the delay between the time the fare is advertised and when it is loaded into the CRSs would result in a situation where the air travel consumer knows about the price change before airline & travel agents, creating even more confusion and controversy.

The Department of Transportation recently released data showing that consumer complaints to the government about overall airline service reached an all-time low in 1992. However, complaints about fares increase 6.4% over 1991. The DOT states that fare complaints represent the biggest change in any of DOT's complaint categories during the last three years, and likely reflects the roller coaster ride that fare levels and ticketing rules have experienced.

AAA firmly believes that the Justice Department's proposed consent decree will simply exacerbate the confusion, and therefore the complaints, about fares.

In short, AAA is convinced that the Justice Department's proposed consent decree will deny travelers the basic air fare information they need, and to which they are entitled, in order to make informed air travel purchases. The consent decree does not advance the interests of airline consumers or, the travel industry.

The proposed consent decree is, in AAA's opinion, worse than the problem it seeks to solve. While the system now in place may not work perfectly, it serves the public's needs better than the proposed consent decree.

AAA therefore urges the Justice Department to rescind its consent decree and give this issue further consideration. AAA recommends that the Department study closely whether the current system of price advertising and information truly provides a disservice and represents actual harm to air travel consumers. The Department needs to measure the potential harmful impact on air travel consumers of its proposed consent decree against the actual harm to consumers under the current system.

Wherefore, AAA respectfully requests the Department to consider its above comments.

Respectfully submitted,

Allan F. Plank,

Robert M. Housley,

Charles S. Andrews

American Society of Travel Agents

1101 King Street, Alexandria, VA 22314 USA, (703) 739–2782 • Telex 440203/760–7718 ASTA UC • FAX (703) 684–8319

March 16, 1993.

Mark C. Schechter,

Esquire Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Re: United States v. Airline Tariff Publishing Company, et al., No. 92–2854 (GHR)—Tunney Act Proceeding

Dear Mr. Schechter: Enclosed for filing in the above matter are the Comments of the American Society of Travel Agents, Inc.

This document is being filed one day late with the approval of Ms. Kooperstein.

Respectfully submitted,

Paul M. Ruden,

Senior Vice President, Legal & Industry Affairs.

United States of America, Plaintiff, v. Airline Tariff Publishing Company, et al., Defendants. Civil Action No. 92-2854 (GHR).

Comments of the American Society of Travel Agents, Inc.

Pursuant to section 16(d) of the Antitrust Procedures and Penalties Act,[1] the American Society of Travel Agents, Inc. ("ASTA") submits these comments in opposition to the proposed consent decrees with United Airlines, Inc. and USAir, Inc. These comments are accompanied by the Affidavit of Richard C. Knodt, Executive Vice President and Chief Operating Officer of ASTA, attesting to the facts asserted herein.[2] Pursuant to the Court's order dated March 8, 1993, ASTA does wish to participate in any hearing held in this Tunney Act proceeding.

ASTA is by far the largest trade association of travel agents in the world. ASTA's domestic agency membership alone is about 10,000 domestic agency owners representing a majority of the agency locations in the United States. ASTA's agency members, along with non-member agencies, sell 80 percent of domestic air transportation and thus are the first line of contact between the airlines and most of their customers.

During 1992 alone, travel agents reported to the airlines the issuance of 155 million tickets and other traffic documents worth $47.5 billion in total fares, of which $35.6 billion were domestic fares.[3] Given travel agents' market share of 80 percent of domestic sales, total domestic air transportation sales for 1992 were $44.5 billion.[4] This is the general measure of the scope of impact of the consent decrees in this case, were the practices set forth there to become the rule for the entire domestic industry.

As Judge Greene observed in *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.C.D.C. 1982), *aff'd*, 460 U.S. 1001 (1983),[5] "this is not an ordinary antitrust case." *Id.* at 151. The outcome of these proceedings will directly impact the entire domestic air transportation system, including all major domestic airlines and all of the 32,000 travel agency locations that sell 80 percent of domestic air transportation. At stake are billions of pieces of information used by tens of millions of air travel consumers to plan their travel and to try to optimize the value of the air travel services they buy. The resolution of the consent decrees at issue here will affect the efficiency, among other things, of hundreds of millions of transactions during the ten-year life of the decrees. The restrictions of the consent decrees that deprive consumers of valuable travel planning information, must, if the laws of economics still apply, reduce the demand for air transportation at a time when federal policymakers are seeking ways to save the industry from total financial collapse.

There are also issues in this case of conflict between the restrictions imposed by the consent decrees and the federal policies underlying regulation by the Department of Transportation of airline computer reservations systems. There are issues involving the future role of the Court as a price regulator in an industry that has, by Congressional mandate, been freed from price regulation. Again referencing Judge Greene, "a subject of this importance should not be decided solely by an agreement between the Department of Justice and a single [two in this case] company." *Id.* at 152, n. 86.

The pricing practices challenged in these proceedings by the Department of Justice have been in regular use by the airlines for more than a decade with no hint of objection from anyone. Indeed, the government has indicated that these practices were expected to occur, were economically desirable and were entirely lawful.[6]

ASTA submits, therefore, that the Court should not complete its evaluation of the consent decrees until it has heard the proof of the Department of Justice that the underlying conduct alleged in this case is a violation of the antitrust laws. As discussed in detail below, there is no legal basis for the demands to revise industry pricing practices that led to these consent decrees in the first place. Yet the consent decrees will disrupt the flow of valuable travel planning information to tens of millions of consumers. Such a fundamental change in the way air travel is sold in the United States should not be judicially sanctioned until some substantial reason, beyond the willingness of two airlines to agree to it merely to avoid litigation, has been established.

If the Court decides nonetheless to continue the Tunney Act proceeding to closure, ASTA opposes approval of the consent decrees in their present form for the following reasons:

* The decrees will deprive the public of important information they need to plan their travel in a cost effective way and get the best value for their money.

* Withholding information is the economic equivalent to raising the price. By making it harder for consumers to make informed travel decisions, i.e., by raising consumer search costs, the government proposal will cause many consumers to forego the travel experience altogether.

* Many consumers who experience surprise increases in prices will be deterred from traveling.

* The public that has for years bought 80 percent of its domestic travel from travel agents wants and needs what travel agents have offered—complete, timely and accurate information about fares and services. The consent decrees would eliminate or severely curtail the "complete" and the "timely" components of this service.

* The Department of Transportation regulates the computer reservations systems that travel agents use. Those regulations are designed to ensure that travel agents, and the traveling public, have access to the most timely, complete and accurate information in making their purchasing decisions. The consent decrees go in the opposite direction by preventing complete and timely information from reaching the public. If the decrees are approved, we will have two government agencies working at cross purposes.

* The domestic airlines lost $8 billion over the past three years. Government resources should be devoted to moving the demand curve up, not to creating more obstacles for consumers who want to travel. The decrees will impose enormous advertising costs on an airline that tries to inform the public about ending dates for discount fares.

* The decrees will place a federal judge in the role of price regulator for the airline industry, in potential or actual conflict with the federal agency that has statutory responsibility for the airline industry.

* Under the decrees, future fare information will become "insider information," analogous to insider information in the securities business, and requiring the expenditure of much

[1] Hereafter generally called the "Tunney Act."

[2] Attached as Exhibit A.

[3] Airlines Reporting Corporation ("ARC") Statistical Information for 1992 Year End Statistics, issued January 19, 1993, by ARC.

[4] We have calculated the total for domestic sales because, to our knowledge, the figure for domestic air sales is not separately reported by the airlines in any public source.

[5] Hereafter referred to as the "AT & T case."

[6] See 46 FR 46787, 46789, September 22, 1981. As far as ASTA is aware, the DoJ never objected to the use of first and last ticket dates in any regulatory proceeding before either the Civil Aeronautics Board or the Department of Transportation, they being the agencies with statutory authority during all relevant prior periods to address the legal and economic appropriateness of such practices.

government time and money to enforce when there are leaks, as there inevitably will be.

ASTA does not condone price fixing. The travel agency industry primarily consists of very small businesses, and travel agents do not support anti-competitive collective action by the largest producers of the services they sell. If the Department of Justice can prove that illegal price fixing has occurred in the airline industry, such conduct should be stopped. We have seen no evidence on which to address that issue. ASTA's comments here are directed at the remedy established by the consent decrees.

We are also handicapped in evaluating the decrees because DoJ has declined to disclose the data which it regards as "determinative" of the appropriateness of the remedies it has secured by agreement with two airlines. ASTA will file a reply to DoJ's response to these comments. Perhaps the "determinative" facts and other information will have been disclosed by then.

I. The Court Should Defer Ruling on the Consent Decrees Until it Has Heard the Evidence on the Legality of the Challenged Conduct Because There is no Legal Foundation for the Proposed Revisions in Industry Pricing Practices; the Consent Decrees Are Therefore Not in the Public Interest

Because of the benefits to consumers and travel agents of advance notice of retail fare changes, the Court should be extremely wary of approving the consent decrees until it is satisfied that the conduct challenged in the lawsuit is illegal. If the Court believes that deferral cannot be ordered because of considerations favoring prompt resolution of settlements, it should then condition its approval of the proposed decrees on the removal of the ban against the prior public announcement of future retail fare changes. That action can be taken without disadvantaging the airline signatories to the consent decrees. This approach would give the Court the opportunity to fully evaluate the legal issues before placing its imprimatur on a sweeping disruption of industry pricing practices that have been in place without challenge for more than a decade since deregulation of domestic airline pricing in 1978.

There is clear precedent for the Court to require that the proposed decree be modified as a condition of the Court's approval. In *United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 131, 217 (D.D.C. 1982), *aff'd sub. nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), Judge Greene conditioned his approval of the AT&T consent decree on the requirement that the proposed decree be modified to: (1) Permit the Bell Operating Companies to sell customer premises equipment (*Id.* at 224–25); (2) preclude AT&T from entering the field of electronic publishing (*Id.* at 224); (3) enable the court to approve the plan of reorganization of the Bell system (*Id.* at 217); and (4) confirm the court's authority to initiate enforcement proceedings *sua sponte* (*Id.* at 217).

In addition, the Court should consider existing case law on the issue of whether the relief requested by the government is in the public interest. In determining whether the relief proposed in an antitrust consent decree would be in the "public interest," the Court must determine whether the relief would "further antitrust policies" by having a positive effect on competition. *U.S.* v. *AT&T, supra*, 552 F. Supp. at 150.

Decisions of the Supreme Court and other federal courts recognize that the prior announcement of retail price changes promotes free competition (and, therefore, is in the public interest).

In *Sugar Institute* v. *United States*, 297 U.S. 553 (1936), the Supreme Court modified a district court decree so as to no longer prohibit the public announcement of future price changes by the sugar industry. The Court found a Section 1 violation where, unlike here, competitors entered into a price-fixing agreement by committing to adhere to publicly-announced prices. The Court upheld an injunction against further price-fixing, but refused to "throw the baby out with the bath water" by also prohibiting the announcement of future price changes. Recognizing that such announcements not only do not threaten the competitive process, but in fact *"may be helpful in promoting fair competition,"* the Court eliminated proposed provisions in the district court decree that would have restricted the dissemination of "current or future prices" and the [g]iving [of] any prior notice of any change or contemplated change in prices." *Id.* at 602–03 (emphasis added).

The Court emphasized that:

> In ending [the illegal price-fixing], *the beneficial and curative agency of publicity should not be unnecessarily hampered.*

Id. at 601 (emphasis added).

More recently, the Ninth Circuit acknowledged that to condemn (and thereby prohibit) "dissemination or advertising of retail prices" would be contrary to the interests of consumers because it would make it more difficult for retail consumers to get the information they need to make efficient market decisions. Re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation, 906 F.2d 432 (1990), *cert. denied*, _____U.S._____, 111 S. Ct. 2274 (1991).

The Seventh Circuit also has recognized recently that advance notice of retail price changes is important to protect consumers in an industry where, as in the domestic airline industry, consumers have economic reasons to plan their purchases "well in advance." *Reserve Supply Corp.* v. *Owens-Corning Fiberglass Corp.*, 971 F.2d 37 (7th Cir. 1992). In upholding the insulation industry practice of announcing price increases in advance, the court recognized that:

> *[T]hese announcements served an important purpose in the industry.* Many of Owens-Corning's and CertainTeed's *customers resold insulation* to other customers or bid on building contracts *well in advance* of starting construction, and, therefore, *required* sixty days' or more advance *notice of price increases* * * *.

Id. at 54 (emphasis added). Similarly, the airlines, public announcement of future fare changes "serves an important purpose in the industry" because, among other things, many consumers like to purchase their air travel "well in advance, in order to take advantage of the savings offered through fares requiring advance-purchase."

That the public announcement of price changes is in the public interest is also borne out by the historical practice of the Justice Department Antitrust Division to exclude from antitrust consent decrees any prohibition on the advance publication of prices. For example, the decree in *United States* v. *The Cleveland Builders Supply Co.*, 45 FR 50,997–98 (July 31, 1980), excepted from an injunction against communicating with competitors about the prices or terms of sale of ready-mixed concrete the "[a]dvertising to the public or trade generally present *or future prices.*"[7] Similarly, in *United States* v. *White Ready-Mix Concrete Co.*, 45 FR 56,947–48 (Aug. 26, 1980), the decree allowed defendants to "advertis[e] to the public or trade generally present of *future prices* at which, or terms or conditions upon which ready-mix concrete is being or will be sold or offered for sale."[8] *See also United States* v. *Hercules, Inc.*, 45 FR 85,840–41 (Dec. 30, 1980) (prohibition against the exchange of prices a producer "intends to charge or is considering" shall not apply to

[7] Emphasis added.

[8] Emphasis added.

information disseminated in the form of a press release or public announcement); *United States* v. *Container Corp. of America*, 1970 Trade Cases (CCH) para. 73,091, 88,267 (M.D.N.C. 1970) (decree prohibited the exchange of price lists "unless such has been made generally available to customers"); *United States* v. *Societe Nationals Des Poudres et Explosifs*, 46 FR 3,671, 3,672 (Jan. 15, 1981) (barring defendants from exchanging any information concerning future prices "unless such information has previously been disseminated to the trade at large in the form of a press release, price lists or other public announcement").

Thus, both the courts and the Antitrust Division have repeatedly recognized that the advance notification of planned retail price changes is procompetitive, and, therefore, very much in the public interest. The obverse is equally true: By seeking to ban the public announcement of future retail price changes, the Antitrust Division has proposed a form of relief that is contrary to the public interest.

II. The Consent Decree Will Significantly Diminish Consumer Welfare by Raising Search Costs, by Devaluing the Counseling Services on Which Most Consumers Rely, and by Defeating Consumer Expectations

The airline industry has been characterized by, indeed plagued by, unrelenting price competition since deregulation of the industry in 1978. Prices and terms of fares change on a daily basis. Discounts in the 30 to 50 percent range have been commonplace. "Sales" of one sort or another are a weekly, sometimes daily, occurrence, as airlines seek a competitive price advantage for the few extra passengers that will make the difference between profit or loss on a flight. The competition has been so intense that the domestic airlines have lost $8 billion during the 1990–1992 period, more money than the industry earned in its entire prior history.

Consumers have found themselves utterly bewildered by the complexity and rapid change of services and prices in this market. The price sensitive traveler, the leisure traveler with numerous options and planning requirements that must be coordinated, the business traveler trying to manage his travel costs, and the consumer who requires additional services, such as hotel accommodations and car rentals, require assistance that cannot routinely be obtained through airline-owned distribution outlets. At the same time consumers clearly prefer to obtain their travel information and all related travel services from a single source.

One of the major consequences of those facts is that consumers purchase only 20 percent of their air transportation directly from the airlines. The other 80 percent is, and has been for many years, purchased from independently owned retail travel agencies that meet the public's need for an expert, reliable, stable and convenient source of travel information and tickets.[9] These travel agencies sell tickets for all airlines, and provide their clients with information and advice, make reservations, write and deliver tickets, notify customers of schedule changes, issue boarding passes, sell travel-related insurance and other travel products.

As air travel options increase and change in today's competitive market, the services performed by the accredited travel agent have assumed even greater importance to the traveling public. The professional agent, who represents all carriers but is beholden to no single one, has the unique ability to give consumers the best travel value available in the marketplace. The consumer may take advantage of that expertise without paying extra for the privilege. This opportunity is more important to consumers than ever because the market has vastly increased air travel options while simultaneously creating pressure on each airline to restrict its own delivery of information and service to its own line. The professional agent, representing all major airlines, is the only source of travel services offering speed, convenience, objectivity and full service.

Travel agents are known in the trade as "travel counsellors," because the most important function that they perform is to evaluate travel options and to give advice to consumers about how to get the best value for their dollar. Even when price alone is judged to be the key factor in a consumer's purchase decision, in economic terms it is "value for the money spent" that drives the consumer's choices.

The travel agent's counselling role is generally regarded as the primary reason why, in the confusing marketplace unleashed by deregulation of the airlines, consumers have flocked to travel agencies as their preferred source of information and ticket distribution.[10] According to the latest survey, over half of all non-business travelers seek an agent's guidance on choice of destination and a larger share require consultation on choice of airline.[11] Even in the non-discretionary business travel segment, more than 40 percent of clients seek the agent's assistance on selection of airline and related services.[12]

Virtually all travel agencies today are equipped with computers that provide the agents with up-to-the-second information on fares and services.[13] As the role of automation for fast access to rapidly changing fare, schedule and accommodation information has increased,[14] so has the importance of the agent's role as travel counselor and information manager. The pricing diversity and constant change that now prevails in the market has increased the chances of a consumer's getting what he wants, but this can happen only if timely and complete information can be delivered to the traveler.

The retail travel agency distribution system has conferred many benefits on the airlines. It is low-cost, ubiquitous and efficient. Most importantly, by making it easy to obtain information and buy and receive tickets, the travel agency system increases the demand for air transportation. From a public policy standpoint, the agency system is competitively important because competition among producers of air transportation is more perfect as the

[9] The 80 percent figure is an estimate, generally accepted throughout the industry as reliable. The agencies' market share for domestic travel only in 1991 was actually 77 percent, but the agencies' share of international travel is generally believed to approach 90 percent. It is highly likely that travel agencies sell more than 80 percent of domestic *discounted* tickets. The industry's acceptance of the 80 percent overall share is, therefore, believed to be highly reliable.

[10] Travel agencies' market share for domestic sales was only 38 percent in 1977, the year before deregulation. Initial Decision of R. Yoder, served June 1, 1982, at Appendix C, Table 2, p. 1 (in Investigation into the Competitive Marketing of Air Transportation, Civil Aeronautics Board Docket 36595).

[11] Travel Agency Survey 1992, conducted bi-annually by Louis Harris & Associates, at 17 (hereafter referred to as the "Harris Survey"). The Harris Survey has been taken eleven times and was relied upon heavily by the Civil Aeronautics Board in its monumental investigation of the airline-travel agency-consumer relationship, entitled the Investigation into the Competitive Marketing of Air Transportation, CAB Docket 36595. The Survey is published each year as a special supplement to Travel Weekly magazine and is widely accepted as definitive within the industry.

[12] Travel agency sales of air transportation for the year 1992 totalled $47.5 billion. There are no scientific figures available for other travel segments, but it is generally believed that travel agents account for 95 percent of cruise sales, 30 percent of hotel room nights, 85 percent of packaged tours, and 55 percent of car rentals.

[13] Harris Survey at 17.

[14] In adopting the first CRS regulations, the Civil Aeronautics Board noted that there were "no real substitutes for CRS's from the travel agent's perspective because the systems are so much more efficient than other methods of exchanging information." Regulation ER–1385, served August 16, 1984, effective November 14, 1984, at 10, *aff'd*, *United Airlines, Inc.* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985).

accuracy and timeliness of information available to potential consumers is increased.

The primary benefit of this system is, however, conferred upon consumers who get ease of access, full inventory of services and the accumulated expertise of the 32,000 agency locations in the United States. Since the travel agency is paid by the travel industry supplier rather than by the consumer directly, dealing with this distribution system is particularly simple and valuable for the consumer.

One of the key information elements for consumers in this environment is the travel agent's knowledge of when prices will change. It is customary in the business that the airlines announce major price increases in advance. This is done by establishing through CRS services a "first ticket date," the first time when a sale of that fare may occur and be bound by issuance of a ticket. While not all of these announcements come to fruition, this information tells the travel agent and the price-sensitive consumer that one of the most important parts of his purchase criteria may change adversely on a certain date. Since future price increases are almost never advanced in time from the originally announced date, the consumer knows with some certainty that he has a window of opportunity within which to consummate a travel purchase at the lower existing price level.

Similarly, it is normal that when an airline establishes a discount fare, it will indicate in the CRS the date by which that price must be secured by issuance of the ticket. After that date, the consumer is at risk of a price increase resulting from termination of the discount. Once again, not every discount fare termination date remains as originally announced, but it is extremely unusual that a termination date is advanced to a point nearer in time from that originally posted. Consumers, therefore, can generally rely upon "last ticket dates" as substantially accurate indicators of the day on which prices may rise.

From the consumer's standpoint, the value of knowledge about first and last ticket dates does not require that every bit of the information be immutable. There are occasions when these dates are changed by the airlines in response to competitive conditions in the marketplace. Sometimes, even without the consent decrees, consumers get "caught" by an unexpected price change resulting from changes in the previously announced plans of the airlines. Most of the time, however, consumers can rely upon announced plans by the airlines either to raise fares or terminate existing discounts.

"Most of the time" in this context is crucial. The end result of the airlines' pricing actions is, in the travel agent segment alone, about 155 million transactions per year. A very large share of those transactions are affected in any given year by preannounced increases or terminations of discounts. Over the ten year life of the consent decrees, the number of consumers who would be able to rely successfully on airline pre-announcements, absent the consent decrees, is in the tens of millions on the two consenting airlines and in the hundreds of millions if the consent decrees become the rule for the entire industry.[15]

For those consumers who today can rely upon pre-announcements, the effect of the consent decrees is to place the airline ticket transaction into the category of a gamble. Take the case of a family of four planning a vacation. It is very common that the planning of such a trip will involve multiple calls to the travel agency over a period of a week or more. This occurs because the planning requires coordination of many elements and choices. Often one parent will be the primary contact with the travel agency. That person must discuss the agent's advice and information with the other parent who may in turn have to discuss options for departure and return dates with an employer. Those dates are crucial in many cases to the existence of, and amount of, available discounts. Sudden and unpredictable changes in the advice from the agent create doubts in the consumer's mind about the reliability of the agent and the integrity of the airline.

The number and variety of scenarios like this are legion. Many couples travel with other couples on vacations. Coordination among them takes time. There are the vast number of senior citizens and other limited income groups for whom budget considerations are paramount.

Consumers faced with such planning problems do not expect and often cannot tolerate adverse financial surprises. For most Americans the price of such a trip is a controlling factor, if not the controlling factor. The prospective travelers may have a range of prices that they can afford, but at some point price becomes prohibitive. Today almost all leisure travelers plan their trips well in advance of travel and are thus able to use a discount fare of some kind. If the price surges without warning, these travelers may elect not to travel at all or may decide to take a shorter trip. In a market in which discounts of 30 to 50 percent have become commonplace, the economic penalty facing our family of four could easily run into many hundreds of dollars and in some cases over a thousand dollars.

The "family of four" example is not the worst of the many scenarios in which sudden and unpredictable increases in fares can result in defeating the prospective travelers' price expectations with the result being cancellation of the entire travel plan. Group travel, for example, now represents a large share of the leisure travel market. Such groups are typically generated by churches, civic organizations and other affiliated groups. Group travel is particularly attractive to senior citizens.

At the inception of the effort the group may only be a few people who are working with a travel agent to explore arrangements that might be attractive to a larger group. The price for groups under about 40 persons is usually a published (in CRS) discount for group travel. After obtaining the initial quotes on price and travel program components, the group leaders then attempt to stimulate interest among others in their affiliated activity. Groups typically cannot be ticketed until the group is fully formed and the final group size is known. Under the consent decrees, while group formation is being completed, the entire group is exposed to the risk of price increases that can easily force cancellation of the entire group.

The consequences for the travel and tourism industry are clear. The inability to rely upon quoted prices and information about their continued availability will cost the industry huge revenues and damage the industry's credibility in the eyes of consumers. These losses will spread well beyond the travel agency and airline industries. The deterrent effect of the consent decrees on the demand for air transportation will ripple through the tourism sector, affecting revenue expectations of the hotel, car rental, cruise and all other industries involved in the chain of services delivered to the traveler.

While it can be argued that anecdotal "horror stories" about the effects of the consent decrees in particular cases do not make a nightmare, the basic principles of economics and marketing teach that the placement of obstacles in

[15] The pendency of the lawsuit behind these consent decrees has led at least three other airlines to adopt the consent decree procedures while they continue to litigate the case. The impact of the consent decrees is thus far wider in practice than just the pricing practices of the two airlines that have signed the decrees.

the path of the consumer considering a purchase are the functional equivalent of a price increase. It is also similar to the biasing of the display output of the computers that travel agents rely upon for fare information. The Civil Aeronautics Board, in adopting the anti-bias CRS regulations said that "bias causes substantial consumer injury in that it deprives consumers of the opportunity to take advantage of lower fares * * *." ER–1385, *supra*, at 17. The uncertainty created by the consent decrees is of a kind with these obstacles.

The anecdotal examples are typical of what will occur throughout the industry. On an industry-wide basis, over tens of millions of transactions during the ten year life of the consent decrees, these obstacles can only have the effect of depressing demand.

The impact of the consent decrees will not, however, be uniformly felt. Many of the largest corporations will be able to negotiate "private" fares with the airlines, thereby immunizing themselves from the risk of unexpected increases in travel costs and shifting the burden of paying the airlines' costs to those travelers who are unable to exchange volume commitments for special, "off tariff" discounts. It is also likely that influential travel agents and influential clients will sometimes be able to obtain retroactive relief from surprise fare increases by negotiating with the airlines. The frequent users of first class service on an airline, for example, are not likely to be refused special relief when they demand it.

The result of this process will be that the large user and the well connected user will be relieved from the economic burdens of the consent decrees while the infrequent user and those without the right level of influence will bear the load. This means that ultimately the latter groups will pay higher fares while other similarly situated will pay less.

Since deregulation occurred in 1978, the public has been subjected to a dazzling display of open market competition which may be unparalleled in any other industry. Much of this competition has been characterized as "cutthroat" and consumers appear to have benefitted in the sense that extraordinary "sales" of air travel have become routine. While most leisure travel is booked far in advance of planned travel, many consumers have learned to wait for sales to occur before making their final commitment and having the tickets issued against final payment.[16] They have come to expect that information about fare increases and discount terminations will be available to them and have learned to "play the market" in search of the best deals. This approach to buying depends upon the availability of complete and timely information that has been available primarily through the travel agency distribution system.

The consent decrees will plainly impair consumers' ability to obtain complete and timely information about fare changes in the future. Announcements of future fare increases are banned absolutely. Announcements of the end of discounts are banned unless certain advertising restrictions are met. It must be true, however, that the advertising rule will result in a major curtailment of the information flow to consumers. The airlines change fares and fare rules every day. Some nights the number of fare changes runs into the hundreds of thousands.

While major "sales" are likely to continue to be advertised, the airlines cannot possibly afford to advertise every change in discount terminations. The result will be less information for consumers. To the extent that airlines are able to increase the amount of advertising to permit the continued use of discount termination dates, industry costs will rise. These costs will have to be recovered through higher fares if the airlines are to stay in business.

III. The Consent Decrees Are Inconsistent With the Purposes of the Department of Transportation Regulations Governing Computerized Reservations Systems

In 1984 the Civil Aeronautics Board adopted a comprehensive set of regulations to govern the operation of CRS services. 14 CFR part 255. The purpose of the government's intervention into this otherwise unregulated segment of the industry was, in major part, to assure that information delivered to travel agents and thus to the traveling public, was timely, complete and accurate. The rules abolished the use of biased displays of fare information on the travel agents' computer screens because bias "deprives consumers of the opportunity to take advantage of lower fares" by denying them the "opportunity to select flights with full knowledge of fare and service offerings." Regulation ER–1385, served August 16, 1984, effective November 14, 1984, at 17, *aff'd, United Airlines, Inc.* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985).

In order to stop the delivery of information that distorted consumer choices, the CAB adopted a system of rules to control the neutrality of CRS displays. 14 CFR part 255. After reviewing the effects of those limited rules over a five-year period, the Department of Transportation, on December 7, 1992, adopted a vastly expanded regime of CRS regulations. This is not the place to review the details of the new regulations, but it is clear that the core structure and philosophy of this unusual government intervention in the marketplace was that consumers, and those from whom they obtain their information, should have access to data that is as timely, complete and accurate as possible. The regulations thus further prohibit bias of CRS displays, control the loading of airline information updates into CRS, and in general assure nondiscriminatory treatment of the airlines who use CRS to convey their information to travel agents.

We well recognize that the issues addressed by the CRS regulations are somewhat different than those raised by DoJ's suit against the defendant airlines. However, just as the Federal Aviation Act confers such price regulation authority as remains (after deregulation) upon the Department of Transportation, the DoT is the agency with responsibility for the information flow that makes more perfect airline competition possible. DoT's policy has been to assure that more and better information reaches consumers while the DoJ philosophy embodied in the consent decrees is to reduce the information reaching consumers. And the consent decrees do this in a context that is regulatable, if at all, by another federal agency.

ASTA believes that the approaches of DoJ and DoT are in fundamental conflict, and that it is not in the public interest to approve a consent decree regime that creates and fosters such conflicts. Thus, any additional control over industry information flows that DoJ wants to assert through enforcement actions under the consent decrees will have to be adjudicated by the Court. Similarly, the Court will likely be faced with claims by one airline that another has violated the decree in some way.

The Court will thus be placed in the position of pricing overseer of the airline industry. DoT will independently be enforcing its CRS regulations, with the continuing potential for conflict between DoT's pro-information approach and DoJ's anti-information approach.

[16] It was formerly possible for a traveler to make payment and have the tickets issued without risk, since the airlines were generally willing to permit tickets to be reissued without penalty at any lower fare adopted after initial ticketing. Now many discounted tickets can only be reissued or changed by paying a penalty or surcharge to the airline.

Among the cases that may come before the Court are issues of improper disclosure of future pricing plans. These may take the form of inadvertent "leaks," or they may be cases in which DoJ believes that the information was deliberately disclosed to the public. In either case, the Court will become involved in the equivalent of "insider information" cases, analogous to the enforcement of the securities laws governing trading on inside information.

This prospect illustrates the pitfalls of restricting commercial speech through prior restraints. We are not saying that there are no circumstances under which such restraints can be imposed, but the Court should be very leery of becoming the equivalent of an administrative agency with on-going regulatory responsibilities for an industry's pricing practices. We foresee a period of prolonged conflict and uncertainty arising from the tension between creative and aggressive marketing and pricing practices occurring in the environment created by the consent decrees.

IV. Price Guarantees Based Upon Reservations, as Proposed by DOJ, are Unworkable and Will Not Avoid the Problems Created by the Consent Decrees

The Department of Justice stated in the Competitive Impact Statement that the consent decrees will not prevent the airlines from protecting passengers against unanticipated fare increases. DoJ's example of such protection is "guaranteeing fares at the time a reservation is made." 58 FR 3971, 3978.

ASTA does not believe that this suggestion, the only one DoJ made, is feasible. If consumers were told that fare protection could be had by simply making a booking, with no commitment to have that booking ticketed, consumers would surely do so. We have no doubt about that. The trouble is that many of those bookings would have to be changed and many would not be consummated through ticketing at all. In times of substantial fare change activity, actual or perceived, consumers would be especially prone to take such protection. Indeed, a consumer who was uncertain about his plans might be able, if he were creative enough, to make numerous reservations that he never expected to use but which, under DoJ's proposed rule, would serve as fare protection while he decided which reservation to use.

This approach to curing the anti-information component of the consent decrees would impose massive inefficiencies upon travel agents and upon the airlines. Many transactions would be "created" in the CRS systems that had no real purpose other than fare protection. Consumers with more definite plans would find that many seats were already reserved, when in reality those reservations were made solely for fare protection purposes.

In order for this approach to fare protection to work for consumers, the airlines would also have to abandon the "ticket within 24 hours of booking" rule that is now commonplace in their tariffs. Alternatively, consumers would call their travel agent every day to cancel one "fare protection reservation" and make another one that would be good for 23.9 hours.

It would be convenient to think that such a simple device as "protect on the reservation" would resolve the issues of consumer harm arising from the consent decrees, but the airline industry is too complex for such facile solutions. Inventory control has serious implications for the airline cost structure and for airline and travel agency marketing to consumers. Any system that increases the unreliability of blocking of inventory by consumers is inefficient and will simply force overall fares higher. It makes no sense and is not in the public interest.

V. Conclusion

The manifest burdens that the consent decrees will impose upon consumers and the major adverse economic impact they will lay upon the tourism industry raise compelling questions about the "public interest" in the consent decrees. ASTA well understands that the consenting airlines do not wish to become involved in the underlying litigation. That is, presumably, why they settled. Settlements should certainly be encouraged.

There is, however, an overriding concern here in that the consent decrees are de facto setting the standard for industry conduct. If the Court approves them, the effect will likely spread even faster, while the issue of the illegality of the challenged conduct will not be tried until next year. ASTA believes that an accommodation can be found between the desire of the settling carriers to escape the litigation and the need to assure that industry pricing practices do not harm the traveling public and the rest of the industry, and that the evaluation of the consent decrees should be suspended while DoJ is put to its proof against the other airlines. If that is not possible, the Court should order the modification of the consent decrees (to eliminate the prohibition on disclosure of first and last ticketing dates) or their outright disapproval.

Respectfully submitted:

Paul M. Ruden,

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United States of America, Plaintiff, v. Airline Tariff Publishing Company, et. al., Defendants. Civil Action No. 92-2854 (GHR).

Affidavit of Richard C. Knodt

Richard C. Knodt, having first been sworn, deposes and states as follows:

1. I am, and have been since July 1, 1992, the Executive Vice President and Chief Operating Officer of the American Society of Travel Agents, Inc. (ASTA). I previously held the same position between 1982 and 1984.

2. Prior to re-joining ASTA, I was president and founder of RHK, Inc., Travel Organization, a California travel company consisting of a five-office retail travel agency, a marketing firm focusing on special interest cruise groups, and a contract management and consulting division. I also founded the California Travel Academy which was later acquired by Ask Mr. Foster, a nationwide retail travel agency, as a prototype in the development of a network of travel schools. I have worked all of my professional life in the travel agency business and am familiar with the methods by which airline tickets are marketed and sold in the United States.

3. I am a graduate of the University of Wisconsin, Eau Claire, with a bachelor's degree in business administration and management, and I serve as Vice Chairman and a member of the Board of Trustees of the Institute of Certified Travel Agents, Inc.

4. The facts set forth in the attached Comments of the American Society of Travel Agents, Inc. are true and correct to the best of my knowledge, information and belief.

Subscribed and sworn to before me this 15th day of March, 1993.

Richard C. Knodt

Nancy L. Dobberman,

Notary Public

Certificate of Service

I hereby certify that I have caused a copy of the foregoing COMMENTS OF THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC. to be served upon counsel of record in this matter this 16th day of March, 1993, by first class mail, as set forth on the attached list.

Paul M. Ruden

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February 15, 1993

Mr. Mark C. Schechter,
Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Dear Mr. Schechter: The Department of Justice has filed a lawsuit against U.S. airlines alleging price fixing through advance announcements of fare changes.

I request that the lawsuit be dropped. It must be obvious that, if airlines had been fixing prices, they wouldn't be in such terrible financial shape.

If airlines are unable to post fare change dates in our computer reservation systems, it will diminish the ability of travel agents to properly inform their customers.

Sincerely,

W.H. Gillison,
President, Oregon Chapter.

United States of America, Plaintiff, v. Airline Tariff Publishing Company, et al., Defendant. Civil Action No. 92–2854 (GHR).

Comments of American Travel Affairs Council

On January 12, 1993, the Department of Justice, Antitrust Division gave notice of a proposed Consent Decree in the above captioned case and invited public comment. The proposed Consent Decree would enjoin United Air Lines, Inc. and USAir, Inc. for a period of ten years from, *inter alia*, "disseminating any first ticket dates, last ticket dates, or any other information concerning the defendants' planned or contemplated fares or changes to fares." With the limited exception of promotional fares where an expiration date is published in the mass media at the time such fares are first offered for sale to the public, the proposed decree would prohibit the two named air carriers from announcing future price changes. For example, the Consent Decree would prohibit each of the two named carriers from publicly announcing that fares between named city-pairs will be changed for tickets issued after a particular date. All fare changes will become effective immediately upon being announced to the public.

The American Travel Affairs Council, Inc. (ATAC) is a non-profit association comprised of four large consortiums of retail travel agencies: Space & Leisure Time, Inc. (SPACE), Travel Industry Marketing Enterprises, Inc. (TIME), TRAVELSAVERS and GEM National Association of Travel Agencies. Each of these consortiums represents its subscribers in negotiations with suppliers, provides professional education and training, and develops marketing opportunities for its subscribing travel agencies. ATAC was formed for the purpose of providing a focus on common industry problems facing its members and their subscribers and to present the views of ATAC members and their subscribers to governmental authorities. The four members of the Council have a combined agency following of more than 7,440 retail travel sales locations with in excess of $23 billion in annual travel sales. ATAC opposes the proposed Consent Decree and urges the Court to defer action on the decree until there is a final decision applicable to all defendants. Now that a new Attorney General has been appointed and confirmed, ATAC requests that the Department of Justice undertake a further policy review of the proposed Consent Decree and its impact on consumers.

The proposed Consent Decree will have a major impact upon consumers and on travel agencies which issue in excess of 85% of the tickets for travel on the two named carriers. Travel agencies are also the principal source of information to consumers concerning air carrier prices, terms of carriage, schedules, seat availability and other matters of competitive significance. ATAC believes that the proposed Consent Decree will actually be harmful to competition and therefore contrary to the public interest. It appears that the proposed remedy is worse for consumers than the alleged violations.

The Department of Justice has alleged that the carriers have signaled proposed fare changes to one another in a manner that has resulted in de facto agreements among competing carriers affecting price. ATAC takes no position on the merits of the case. However, it should be noted that in many industries it is common for producers to announce price changes in advance. For example, automobile manufacturers sometimes announce price increases to take effect at the beginning of the next model year without any substantial change in the product. This kind of announcement can make it easier for consumers to shop and can stimulate demand: "Buy now before the price goes up." Sometimes competitors announce their own price changes. In some cases the first firm withdraws or changes the announced increase. Presumably, prices settle at a market level.

Competition is enhanced when consumers have the maximum information to select from available alternatives. The proposed Consent Decree will deprive consumers and their travel agents of valuable information. Consumers often call their travel agents to obtain price quotes in advance of booking. Under the proposed settlement decree it would be more difficult for travel agents to assure customers that fares quoted today would be good for tickets issued tomorrow. Consumers would be limited in their ability to shop and to plan.

Business travelers often call travel agents for price quotes before setting meeting places or dates or for budgeting purposes. For example, a company might decide to hold a sales meeting and bring together sales personnel from a number of cities. Should the meeting be held in Cleveland, St. Louis or some other city? The corporation would request that its travel agency provide fare quotes between different city pairs before deciding on a meeting time and place or even whether to hold the meeting at all. Absent the Consent Decree, business travelers would usually have advance notice of fare increases. With the Consent Decree fares quoted one day might not be available the next, and planning will be chaotic. Many travel agencies have already had numerous customer complaints about fares quoted one day not being available the next.

The situation could be worse for individual travelers. They will often request fare quotes to different destinations before deciding on vacation plans. The ability of consumers to "shop" for air fare bargains will be impeded if the dissemination of price information is inhibited by the Consent Decree. Since the demand for air transportation service is elastic, difficulties in shopping will lead to a reduced consumer demand.

The proposed cure appears to be worse than the problem addressed by the Complaint. The Department of Justice alleges that the publication of price changes with future effective dates leads to de facto understandings among competing carriers as to price. As noted above, however, the publication of price changes with future effective dates provides valuable information to consumers and enhances competition. The proposed Consent Decree will inhibit demand and cause chaos in the market without really solving the alleged problem.

Competitors in every industry monitor one another's price and how the market responds to price changes. Under the proposed Consent Decree, price changes would become effective immediately upon their publication in computer reservation systems. Carriers will monitor price changes by competitors, and carriers publishing price changes will monitor whether competitors also change prices. Depending on competitive reaction, prices will change from day to day until a price satisfactory to all carriers is reached. Within a matter of days the public will have the same pricing as if there were no Consent Decree. In the meantime, however, consumers and travel agents will be faced with one uncertainty after another.

Despite partial deregulation, air carriers remain "common carriers" and occupy a special place in the economic fabric of the Country. The withholding of valuable information from consumers and the periodic pricing uncertainty will be more harmful to the public interest than the practices alleged in the Complaint. If the Court ultimately finds that the practices alleged in the Complaint are in violation of the Sherman Act, some other remedy that is less harmful to consumers should be devised.

In addition to depriving consumers of valuable information and possibly causing confusion in the market, the proposed Consent Decree will create an administrative burden for the Court. The proposed Consent Decree leaves open numerous questions. It would prohibit the dissemination of information concerning planned or contemplated fares or changes to fares. An airline ticket represents a bundle of services purchased by the consumer. Even though a fare remains unchanged, the value of the consumer's purchase will depend on numerous factors related to price. For example, will the Consent Decree prohibit the carriers from announcing that at a specified future date meals will no longer be provided on certain flights? That would be the equivalent of a ten dollar price increase for many consumers. What about an announcement that beginning at some future date purchasers of full "Y" class coach tickets will be seated in first class on a space available basis? That would be the equivalent of a price decrease for many consumers. And, what about frequent flyer and other bonus programs? Frequent flyer awards are a form of rebate, i.e., price adjustment. Would the Consent Decree prohibit announcements of increased miles or enhanced awards beginning on a specified future date. Would the Consent Decree prohibit any advance announcement that a frequent flyer program was being discontinued? That would be the same as a major price increase for many of the carriers' best customers! What about the price of on board amenities? Would the carriers be allowed to publish advance notice of a change in beverage or movie prices?

While the above items might seem petty, they are each important to some consumers and affect the total cost paid by consumers for air transportation. Moreover, the airlines have vigorously competed with one another over amenities to be included in the price of an airline ticket. The Court would be required to exercise ongoing supervision over the Consent Decree and would function much like a regulatory agency.

The Airline Deregulation Act of 1978 did not completely deregulate the nation's airlines. The Department of Transportation retains considerable regulatory authority, including the authority under section 411 of the Federal Aviation Act, 49 U.S.C. Appx. 1381, to take action in cases of "unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof." The proposed Consent Decree establishes a regulation concerning how air carrier price changes are to be published and disseminated to the public. That is a matter clearly within DOT's jurisdiction under Section 411.[1] The questions noted above concerning services included in the price of an airline ticket are also within DOT's area of expertise. While DOT's authority under Section 411 does not necessarily preclude the Department of Justice from initiating actions under the antitrust laws, the Court should withhold action on the proposed Consent Decree until DOT provides its view to the Court.

The proposed Consent Decree would be applicable to only two carriers. Other major carriers have declined to accept the Consent Decree preferring a decision on the merits. If the Court should ultimately find that the practices alleged in the Complaint do not violate the antitrust laws, the industry will be faced with a situation where two major carriers are restricted for ten years in how their price information may be presented to the public while other carriers are under no such restriction. This will be an unfortunate situation for travel agents and the public.

[1] Recently, in *Morales* v. *Trans World Airlines, Inc.*, _____U.S. _____, 119 L. Ed. 2d 157 (1992) the Supreme Court addressed the question whether the states could adopt consumer protection guidelines to prevent deceptive advertising of air carrier prices. The Court held that such guidelines were precluded by the preemption provision of 49 U.S.C. § 1305(a)(1) and specifically noted that DOT retains authority over such practices. It seems clear that the Court intends for DOT to exercise jurisdiction over the manner in which airline prices are presented to the public.

Competition is enhanced when all competitors are free to provide maximum information to the public.

For the foregoing reasons, ATAC believes that the public interest requires that the proposed Consent Decree not be approved. If it is ultimately determined that the practices alleged in the Complaint are violative of the antitrust laws, ATAC urges the Court to fashion remedies which do not inhibit consumers' ability to obtain information. At a minimum, the Court should withhold approval of the proposed Consent Decree until the underlying case is finally determined and the Department of Transportation has reviewed the matter and reported to the Court.

Dated: March 12, 1993.

Respectfully submitted,

Ronald A. Santana,

Chairman, American Travel Affairs Council, Inc., 25 S. Riverside Avenue Croton on Hudson, NY 10520 Tel. 914/271-9000

Barry Roberts,

(Bar #77990) Roberts & Hundertmark 35 Wisconsin Circle Suite 350 Chevy Chase, Maryland 20815 Tel. 301/656-3395.

American Travel, Inc., Corporate Offices, P.O. Box 12100, 7840 Washington Av., Kansas City, Kansas 66112, Fax: 788-3970, 913/788-7997, 800/827-7997

February 22, 1993.

Department of Justice:

Attention: Mark C. Schechter, Room 9104, 555 4th Street, NW., Washington, DC 20001.

I am writing in regard to lawsuit filed against most of the major airlines.

This action will strip the segement of the American public that uses the airlines for business and leisure travel of their ability to make informed decisions on the best fares available.

This is another attempt to break the airlines and destroy the travel agency industry.

Their efforts should be used to resolve the corruption in their own back yard, which would take the burden off not just a segement of the populace, but help everyone in the USA.

Please direct this letter to the judge who is reviewing the consent decrees.

Sincerely,

Carroll Christine,

Owner.

American Travel Pro, 2754 Compass Drive, Suite #370, Grand Junction, Colorado 81506, Telephone (303) 241-1119, Fax (303) 241-0400, Toll Free 1-800-344-7007

March 3, 1993.

Mark C. Schechter, Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: U.S. v. Airline Tariff Publishing Co., et al.

Dear Sir: It is, I believe, quite apparent to most reasonable people that some fare forecasting practices have violated at least the spirit of the laws against price fixing. However, overreacting to this may very well create other even more adverse conditions for consumers. I would like to suggest a balance that I feel would best serve the interests of all concerned.

RE: *Advertising fare reductions prior to their effective date.*

This practice should be done away with. However, I see no problem in advising consumers of when a discounted fare is scheduled to expire. This is very common in most industries.

RE: *Advertising fare increases prior to their effective date.*

This practice is healthy, productive and beneficial to the consumer. It encourages consumers to buy before a price increase. It also prevents the situation where a traveler reserves a ticket at one price and prepares to purchase it within 24 hours and then finds that the price has increased overnight without warning. This is unfair to the consumer. Every other business I can think of is able to warn their customers of anticipated price increases. This is very helpful to consumers in their decision process of whether or not to buy today.

I trust the Department of Justice and the presiding Judge can appreciate the fact that giving advance notice of fare *increases* is one of the most powerful tools travel agents have for best serving the interests and needs of their customers. I trust you will keep this in mind in your decision.

I sincerely appreciate you taking the time to consider my viewpoints and suggestions in this matter.

Yours truly,

Bradley G.M. Decker,

Owner.

Ames Travel Service, 604 Carew Tower, Cincinnati, Ohio 45202 (513) 651-1700, Telex: 4951341, FAX: (513) 651-5241

February 15, 1993.

Mark C. Schechter, Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Lawsuit Against the Airlines

Dear Mr. Schechter:

I am writing you to voice my serious concern about a consent decree that is being reviewed in regard to legislation which will greatly hinder the way in which I handle my travel agency and the way in which my agents and I service our clients.

If we are forced to stop providing our customers with advance announcements of fare increases and stop providing our customers with advance announcements of the end of discount sales, we will be doing them a great disservice. Is it possible that it may even be a crime for travel agents to provide this information to our clients?

As this consent decree is being reviewed, I urge you to study this and study the ramifications that will come if this decree is granted. I strongly object, along with other members of our industry, to this government intrusion into my business.

Thank you very much for your attention to this letter. All of us in the travel industry will be awaiting the decision to be made.

Sincerely,

Ames Travel Service

Nancy Heffner Donovan,

President.

March 11, 1993.

Mr. Mark C. Schechter, Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Sir: We already have too much Government control in most industries. Let's not have any more slapped on the Airline industries, they are already struggling for survival as it is.

Very Sincerely,

Paul W. Anderson,

Noni F. Anderson,

655 Antelope Loop, Prescott, AZ 86301.

Anderson-Elerding Travel Service, Inc., Corporate Office: 309—1st Avenue North, P.O. Box 2185, Great Falls, MT 59403 (406) 761-0700, TOLL-FREE 1-800-452-0700 (Inside Montana).

March 1, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

ear Mr. Schechter: I would like to direct you attention to the lawsuit against most of the major airlines, alleging that they fixed prices by signaling each other of their pricing plans through advance announcements of fare increases and other fare changes.

I am concerned, as I believe if this consent degree is approved, my ability as a professional travel agent to provide my clients with complete travel counseling will be impaired. I believe the customer needs some kind of advance announcement regarding discount sales.

Respectively,

Barbara L. Moe,

President, Anderson-Elerding Travel Services, Inc.

Antioch Travel Agency, 425 Lake Street, Antioch, IL 60002, (708) 395-0665, FAX (708) 395-0687.

February 12, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

ear Mr. Schechter, I am writing to stress my concern over the governments meddling in the airline industry. The consent decree that states that airlines must stop providing customers (and travel agents) with advance announcements of fare increases and the advance announcements of the end of discount sales, I find just horrifying. Stores put out flyers weekly telling us when their sale starts and ends. . . . Is this price fixing? If you were to deal with the traveling public daily as we do, you would know that the first question out of their mouth when there has been a fare decrease is why were we not advised of this change or they feel we are trying to pull something over on them because they just called yesterday and was given a lower fare. This does not just affect the airlines, it also affects my job as a travel consultant. I realize the industry needs some type of guidance, but I feel someone who knows the travel industry is better suited. The government is not in touch enough to

make these decisions. I wish my job was sitting on capitol hill just making misguided decisions that had no effect on me, but I don't. I'm the little guy just trying to keep my head afloat and my business out of bankruptcy. Business is hard enough today . . . Our government that is supposed to stand for us does not need to make it any harder. I strongly oppose this consent decree and would greatly appreciate if you could relay my concerns.

Sincerely,

Kathy Zeman.

Anytime Anywhere Travel, Inc., 3816 South Bristol, Santa Ana, CA 92704, Phone (714) 957–1888, FAX (714) 957–0633.

Mark C. Schechter, Department of Justice Room 9104, 555 4th Street, SW., Washington, DC 20001.

Dear Mr. Schechter: We urge you to disapprove the consent decrees which would prevent travel agents from receiving advance notice of airline fare increases and discounts.

We need advance notice in order to provide our clients with the best service. We do not believe that the government should be the price regulator for the airline industry.

Sincerely,

Harriet Roop and Leah Franklin,

Owners, Anytime Anywhere Travel

Apollo Travel Inc., P.O. Box 1169, 15835 S.W., Boones Ferry Rd., Lake Grove, Oregon 97035 (503) 635–7766

February 16, 1993.

Mark C. Schecter, Department of Justice, Room 9104, 555—4th Street, NW., Washington, DC 20001.

Dear Mr. Schecter: We are concerned about the Justice Department action against the U.S. airline carriers in regard to the advance notice of fares, their originating date, and final ticketing date.

We feel this is an important feature for our clients who need to make plans in advance and want to have the latest information on lowest fares. We do not see this as any fixing of price but a tool for the public to use in their planning and for travel agencies to assist them in doing so.

It is the most efficient way in which information can be available to the traveling public. This would be a great disservice and probably create a climate of less travel by both leisure and business travel. We find our clients, commercial and vacation travelers all to be interested in the best available fares.

Please give this great consideration.

Very truly yours,

B. Joan Pearson,

Owner-Manager.

April One Film Company, P.O. Box 196, Calistoga, CA 94515.

March 23, 1993.

Dear Mr. Schechter: I applaude the Justice Department's recent rulings re: airline fare publishing practices.

The sleazy price fixing shenanigans, exorbitant fares in an era of stable or falling petroleum prices, and the poor, often negligent service of the airline industry is long overdue for review, overhauling, and perhaps re-regulation. Likewise, the crying game of the American Society of Travel Agents over the rulings is only the death rattle of a group that realizes it's 'special' relationship to the airlines is about to change—a relationship of complicity in the here-to-fore institutionalized rip-off of the consumer. I, for one, go out of my way to avoid any contact at all with a travel agent. As a group with tremendous influence, I hold travel agents responsible for a world wide trend of increased prices to travelers.

What the major carriers want is simple: they want no one to observe them as they drive all competition into the ground (at recent congressional hearings, the major carriers suggested changes to the bankruptcy laws that would prohibit Chapter 11 encumbered airlines from cutting fares as a measure to continue flying—thereby cutting into the profits of rivals * * *). They want bewildered, complacent consumers to call lazy, uncaring travel agents for the latest dictates of the airlines themselves. No questions asked; take it or leave it * * *

What these major carriers should offer to consumers is also simple: we want fast, efficient, safe, and courteous service at a fair, guaranteed price. I personally have no interest in attacking the free enterprise of a company to do business and make a profit, but 'flying the friendly skies' has become an expensive and unpleasant joke perpetrated by an industry out of control.

Sincerely,

Jon Axhelm

Aquarius Travel Management, Executive Offices, 209 Middlesex Turnpike, Burlington, MA. 01803 (617) 273–9074 FAX (617) 270–9859.

February 19, 1993.

Mr. Mark Schechter, Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; our clients expect us to be knowledgeable and prescient, and they trust and have confidence that we are acting in their best interests. How can we maintain this relationship if all we can say to them is buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers what prices will be in effect when they travel or when a fare would expire. This is depriving the consumer of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortchanged and victimized by another capricious DOJ ruling. They do not deserve that! Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide to their clients. As a professional travel consultant I oppose the ruling and am making my concerns known via this letter.

Sincerely,

Aquarius Travel Management,

Patricia A. Gagnon, Ph.D, CTC

Director of Client Services

Arcade Travel Service 118 South York, Elmhurst, Ill. 60126, 708–832–0700, Fax: 708–832–0304

February 12, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 335 4th Street, NW., Washington, DC 20001

Re: Department of Justice Lawsuit Against the Airlines

Dear Mr. Schechter: The pending consent decree requiring the airlines to stop providing its customers with advance notice of fare increases and notice of the end of discount fare will impair our ability to provide our client complete and professional travel counseling. The professional travel agent is the largest customer of the airlines; over 80% of all purchases of airline tickets are sold by travel agents. We require certain tools necessary for the professional counseling of our clients, the traveling public. Advance announcements of fare increases as well as advance notification of dates of special fares or promotions are some of the key tools in selling travel.

Our clients rely on the professional travel agent for the best possible expenditure of their travel dollars and leave it in our hands to take care of them. We are the professionals in selling travel and without the necessary tools, (notification of fare increases as well as advance notification of dates pertaining to special fare promotions; just to mention a few). We will not be in a position to serve the public nor protect our clients travel dollars.

The ability of the travel agent to have access to advance notification of dates of special fares or promotions is vital to the servicing of the consumer and saving the client valuable travel dollars.

Sincerely,

Dale A. Carlson,

President.

Argosy Travel, 125 Mirona Road, Portsmouth, NH 03801, (603) 436–1900, Fax (603) 436–9041

March 2, 1993.

Mark Schechter,

Department of Justice, Room 9140, 555 4th Street, NW., Washington, DC 20001

Dear Mr. Schechter, I am writing this letter to inform you I strongly disagree with taking out the expiration dates of airlines fares out of our computer system.

It is hard enough working with the airline fares in the first place, when they can charge higher prices, add promotions and delete schedules anytime they feel like it. At least when they have an expiration date in the system we can inform the public approximately when the increase will be. By airlines removing these dates it will cause us a lot more work. We will have to price each client and call individually.

If you need more information or if I can be of help, please feel free to contact me.

Sincerely,

Cindy Murphy,

Manager.

Argosy Travel, 32 Main Street, West Orange, New Jersey 07052, 201–736–1400, Fax: 201–736–5797

Mr. Schechter, I am writing in opposition to the recent consent decree being forced on the US airlines in regard to price fixing through the computers. Travel agents and

their clients rely on the accuracy of the fare information contained in the computer reservation systems. By preventing the carriers from publishing first and last ticketing dates for fares, or setting parameters for sale fares, the Justice Department is punishing the consumer. How can we competently advise our clients as to when to purchase a ticket, when it could easily be pulled at any time. The traveling public is very confused by the present system already, this action further cloud some awfully muddy water.

What major retailer in this country doesn't advertise "Sale Monday Only" and let the public know well in advance. Supermarkets always put their news circulars out a week before to let the public know exactly when products are on sale. Maybe Macy's never told Gimbals, but I'm sure they read each others ads. Are we going to punish the public because airlines make this information available by computer? That's the message that this action gives.

This consent decree is blatantly anti consumer. I hope the Justice Department will review this action and truly serve the public interest. Thank you for your attention.

Sincerely,

Paul M. Kaplan,

Arrow Travel Center West, Inc., 5549 E. Grant Rd., Tucson, Arizona 85712, (602) 886–8121

March 1, 1993.

Mark C. Schechter,
Department of Justice,
Room 9104, 555 4th Street NW., Washington, DC 20001

Dear Mr. Schechter: First, I apologize that this is not typewritten, but I find the only time I have is during the 10 pm news. I know you are busy—but more importantly, I am busy!! trying to keep my little business competitive and service oriented. If the airlines are forced to withhold that information, you will, in effect force most travel agencies to lose that service offering. Just think, when we're out driving our cars, we are never sure when the light will change—but at least we get the "yellow" light of notice.

Please consider/reconsider the decree—and don't force this upon all of us. It is a challenging and rewarding business—now—but I fear it may become regulated if these decrees are approved.

Thank you for your time.

Sincerely,

Christine Mane,

Co-Owner.

Arrow Travel Center West, Inc., 5549 E. Grant Rd., Tucson, Arizona 85712, (602) 886–8121

February 17, 1993.

Mark C. Schechter,
Department of Justice, Room 9104,
555 4th Street NW.,
Washington, DC 20001

Dear Mr. Schechter: It has been brought to our attention that the Department of Justice has filed a lawsuit against most of the major airlines, alleging that they fixed prices by signalling each other of their pricing plans through advance announcements of fare increases and other fare changes. We have been informed that two airlines have already felt compelled to sign consent decrees in order to avoid additional legal costs and risks even though they adamantly oppose what the Department of Justice is demanding.

We certainly cannot understand why the airlines should be treated any differently than any other business. All other businesses are allowed to advertise their sales with start and finish dates. It would be very difficult to explain to customer that we don't know when a sale is ending. No other business doesn't tell a customer when a sale will be over.

Our office is most definitely opposed to this type of ruling and would hope that second thoughts would be given to this matter.

Sincerely,

Harlan Reed,

Owner.

ACTE, Association of Corporate Travel Executives, 570 Springfield Avenue, Summit, NJ 07901, (800) ACTE NOW FAX 908–273–2343

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Chairman, Warner-Lambert Co.

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Exxon Corp.

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Robert C. Vaiden,
Ciba—Geigy Corp.

Thom R. Watson,
Bristol-Myers Squibb Co.

March 4, 1993.

Mr. Mark C. Shechter,
Department of Justice,
555 Fourth Street NW., Room 9104,
Washington, DC 20001

Dear Mr. Shechter: The enclosed document is the position of the Association of Corporate Travel Executives (ACTE) concerning the action of the Department of Justice following the anti-trust suit against eight major U.S. airlines.

Please note that we request a 60 day extension of the period for public comment on this letter.

Thank you for your consideration and cooperation.

Sincerely,

David R. Murphy,

President.

Guy C. Thomas,

Chairman, Government Relations Committee.

cc: The Honorable George H. Revercomb, U.S. District Court, Service List.

Association of Corporate Travel Executives

ACTE position on the proposed Department of Justice Consent Decree against eight major U.S. Airlines

The Association of Corporate Travel Executives (ACTE) is a nonprofit Business Travel Industry Association whose members include Corporate Travel Managers from major U.S. and international companies, Executives from the Hotel, Rent a Car, Airline, Limousine and Cruise Lines Industries, Travel Agents, Travel Consultants, and University Instructors and affiliated organizations. ACTE wishes to go on record as opposing the position of the Department of Justice in seeking a consent decree against the major U.S. Airlines relating to advance announcements of pricing changes including eliminating all first ticketing dates and most last ticketing dates on domestic fares.

The position of ACTE is that the action by the Department of Justice is contrary to the best interest of the traveling public, specifically the individual traveler, corporate traveler and all consumers including travel agents and other businesses associated with the travel industry. Further, this action would place the airlines in a position to immediately react to an UP market by raising prices without notice as they would not be bound by previously announced pricing schedules. In no way will the proposed regulations solve any of the issues that were originally meant to be addressed by the Department of Justice lawsuit but would rather have a harmful effect on the economic viability of the business travel market.

ACTE also feels that an extension of the "public comment period" by 60 days would allow for a more comprehensive dialogue on the merits of issues involved in the above stated action.

For additional information please contact Guy C. Thomas, Chairman, Government Relations Committee, ACTE, 570 Springfield Avenue, Summit, NJ 07901.

Astral Travel Service

895 Bergen Avenue, Jersey City, New Jersey 07306 (201) 653–2600

March 31, 1993

Mr. Mark C. Schechter,
Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Dear Mr. Schechter: I cannot understand the logic the Department of Justice has applied in order to prevent the carriers from setting parameters for "Sale" fares. It seems to be contrary to the very purpose of the Justice Department rulings in general. Only the consumer suffers; the very person you

should be trying to protect. Do you want to help the consumer get the lowest price or do you want them to pay the highest price, because of the lack of information?

Hopefully, the Justice Department will review this action and correct it accordingly to serve the public interest.

Sincerely,

Howard S. Pollock, CTC.,

Astral Travel Service.

Astro Travel

1317 E. Katella Avenue, Orange, California 92667, (714) 771-0501, FAX (714) 771-4045.

16 February 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter; Re: Lawsuit against the airlines for alleged price-fixing.

The members of this agency strongly protest against the Department of Justice's decision prohibiting airlines from providing advance announcements of fare increases and with the end of discount sales.

This action would not only cripple the travel industry but would also be unfair to the end user (the consumer).

While it is true the airlines need to be controlled, this measure does more harm than good.

Sincerely yours,

Steven G. Hall,

President.

Dorothy Messnick,

Vice-President Group Sales.

Judy Fox,

Manager.

Astro Travel & Tours, 926 N. Monroe St., Tallahassee, Florida 32303, Telephone: (904) 222-2023, FAX: (904) 561-6088.

February 19, 1993.

Mr. Marc C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I have been made aware of the lawsuit that has been filed against most major airlines alleging they fixed prices, by signalling each other of their pricing plans through advance announcement of fare increases and other fare changes.

I am very concerned as a travel agent that my ability to provide my customer with needed information will be in jeopardy. Without this information, the travelling public will not be able to make informed decisions. If the airlines are prohibited from allowing the public to know about discounts or changes in fares in advance, the consumer will be greatly harmed.

I urge you to consider the damage to the consumer, and withdraw this action.

Sincerely,

Charlie W. Hunter, *CTC,*

Vice President/General Manager.

Atlas Travel Bureau, Inc.

134 N. La Salle St., Chicago, IL. 60602, (312) 332-6441.

February 18, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Re: Lawsuit Against the Airlines

Dear Sir: I am writing this letter to you to let you know that we adamantly oppose the decree that stops the airlines from giving travel agents and any airline employee advance notice of changing airfares!! How can you expect us to provide our customers with up to date information along with the service they are accustomed to. It causes more work in the long run for everyone when tickets have to be reissued and revisions need to be made. This is also an expense that we all bear. Please do not let this happen! We need to have some advance warning to be effective in our jobs!

I sincerely hope you take every letter and comment into consideration when you do make a decision.

Thank You.

Sincerely,

Marjorie Binder,

President.

Julie M Noesen,

Manager.

Auburn Travel Bureau, Inc., Metcalf Plaza, P.O. Box 369, Auburn, NY 13021, Telephone: (Office) 315 255-1726; (Residence) 315 685-5843; Fax: 315 253-9651

Expert Professional Travel Service for Business and Pleasure, Group and Ski Specialists, W. Dudley Livingston, Jr., President; Mrs. Nona L. Livingston, Vice President

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Your Honor: The airline industry, together with their partners, the travel agents, have been experiencing difficult times of late. One area of concern, the "consent decree", threatens all involved to operate in an atmosphere of doubt and apprehension.

If the industry is prevented from filing advance notice of fare increases/decreases and prevented from advising agents and the traveling public of the terms and conditions of travel, the airlines, travel agents, and the public are subject to doubt, unreliability, and suspect ethical business practices. This is not a viable atmosphere for the public or the industry to operate in.

We strongly urge to disapprove these "consent decrees" and permit the industry, and especially the traveling public, to operate with full disclosure of the product they are purchasing.

Very truly yours,

W. Dudley Livingston

The United States Justice Department,

Antitrust Division, 10th Street and Constitution Avenue, NW., Washington, DC 20530.

Gentlemen: I have learned of new regulations proposed by the Department of Justice (DOD) that could have very damaging consequences for travel agents and the traveling public. It has to do with *U.S.* v. *Airline Tariff Publishing Co., et al.*

I am not writing to express a view on the merits of the Justice Department's lawsuit against the airlines, but to call to your attention the remedy proposed by the DOJ. It seems obvious that if the terms of this remedy are applied to the entire airline industry, that consumers would be prevented from having sufficient information to plan their travel and get the best deal for their dollar.

In today's economic climate, vacation travel plans are based on the best bargains available. Under the proposed DOJ regulations, airlines and travel agents would be prohibited from providing consumers with advance announcement of fare increases. Individuals might make reservations for a family vacation, for example, only to find when they called back a few days later to purchase the tickets that their fare had increased. The same scenario would apply to informing the consumer of the expiration date for discount fare promotions.

Should the DOJ proceed with this suit, increased costs would evolve due to inefficiencies and increased litigation costs, which would ultimately be passed on to you and me in the form of higher priced tickets. To me, the consumer becomes the targeted loser; something the DOJ sorely overlooked.

Sincerely,

Dawn M. Bigelow,

Office Manager, Avenues to Travel, 7352 N. Oracle Road, Tucson, Arizona 85704.

January 11, 1993.

Dear Sir: It is a source of deep concern for those of us who live in South Florida why Delta Airlines is permitted a nonstop monopoly between West Palm Beach and Atlanta. Their price fixing has forced many of us not to afford airline tickets "to and from".

As a government agency you should be aware that this airline is taking advantage of senior citizens and everyone else for that matter.

I am not signing my name as I think others who are more hale and hardy should come forward. Please look into this.

Distressed in Riviera Beach

Bellingham Travel

200 West Chestnut, 733-1270, 384-1252, P.O. Box 128, Bellingham, WA 98227

March 5, 1993.

Mark Schechter,

Department of Justice, room 9104, 555 Fourth Street NW., Washington, D.C. 20001.

Dear Mr. Schechter: I am writing in regards to the suit filed against most of the major airlines alleging price fixing via announcements of fare increases and other fare changes. We strongly resent the governments intrusion into this area and believe this suit should be dropped immediately.

If this continues and you are successful it will greatly affect our level of service to our clientele and our ability to provide our clients complete and professional travel counseling and accurate information.

Please be advised of our objections and see that they reach the proper channels.

Sincerely,

Frank Zurline,

President.

Bentley World-Wide Travel Agency
315 West Galena Boulevard, Aurora, Illinois 60506

March 11, 1993.

Mark Schechter,
Chief, Transportation, Energy and Agriculture Section—Antitrust Div., Justice Department, 555 Fourth Street NW., suite 9104, Washington, D.C. 20001.

Dear Mr. Schechter: (Scream!) Please don't do that to us! As a travel agent the proposed consent decree by the Justice Department that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings would be terrible for us! But even more important, it would be a terrible disservice to our clients.

At present we have the dates readily at hand in the computer that fares must be ticketed by. So we can tell a client that the fare, for instance, from Chicago to New York is $330.00 but must be ticketed by March 31st. The client can then make his plans accordingly. But, if this were taken away, our clients could miss out on the cheaper fares if the airline decides to take it off the market over night.

On behalf of our clients please reconsider this measure. Thank you very much for your consideration in this matter.

Sincerely,

Doris Pittman,

Vacation Specialist, Bentley Travel.

Bentley World-Wide Travel Agency
315 West Galena Boulevard, Aurora, Illinois 60506

March 11, 1993.

Mark Schechter,
Chief, Transportation, Energy and Agriculture Section—Antitrust Div., Justice Department, 555 Fourth Street, NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: (Scream!) Please don't do that to us! As a travel agent the proposed consent decree by the Justice Department that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings would be terrible for us! But even more important, it would be a terrible disservice to our clients.

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On behalf of our clients please reconsider this measure. Thank you very much for your consideration in this matter.

Sincerely,

Robyn K. Anderson

Bently World-Wide Travel Agency
315 West Galena Boulevard, Aurora, Illinois 60506

March 11, 1993.

Mark Schechter,
Chief, Transportation, Energy and Agriculture Section—Antitrust Div., Justice Department, 555 Fourth Street, NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: (Scream!) Please don't do that to us! As a travel agent the proposed consent decree by the Justice Department that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings would be terrible for us! But even more important, it would be a terrible disservice to our clients.

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On behalf of our clients please reconsider this measure. Thank you very much for your consideration in this matter.

Sincerely,

Nancy A. Delaney

Bentley World-Wide Travel Agency
315 West Galena Boulevard, Aurora, Illinois 60506

March 11, 1993.

Mark Schechter,
Chief, Transportation, Energy and Agriculture Section—Antitrust Div., Justice Department, 555 Fourth Street, NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: (Scream!) Please don't do that to us! As a travel agent the proposed consent decree by the Justice Department that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings would be terrible for us! But even more important, it would be a terrible disservice to our clients.

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On behalf of our clients please reconsider this measure. Thank you very much for your consideration in this matter.

Sincerely,

Nancy Readey

Bentley World-Wide Travel Agency
315 West Galena Boulevard, Aurora, Illinois 60506

February 24, 1993.

Mark Schechter,
Chief, Transportation, Energy and Agriculture Section—Antitrust Div., Justice Department, 555 Fourth Street, NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: It has recently come to my attention that the Justice Department has issued a proposed consent decree that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings. This would be disastrous to my company!

As owner of Bentley Travel, I wish to go on record to protest in the strongest possible terms, this proposed resolution of the price-fixing lawsuit against those carriers. The effective dates of fares are vital pieces of information that my agents need to have access to if we are to have the ability to properly assist travelers with their planning.

Travel agencies do not have a tangible product to sell. What we have to offer our clients is service! To remove one of the prime pieces of information our clients require for them to be able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, will injure both consumers and travel agencies.

Your consideration of this request is greatly appreciated.

Sincerely,

Linda C. Spinozii,

President.

Fax Transmittal
To: Adriane Greene, Chairman ARTA
From: Beyond the Bay, Eunice Perine

On Friday, January 22nd, a client came into our office to have us issue a ticket for a reservation she had booked directly with United Airlines the previous day. She was told by United that she must purchase her ticket no later than Friday, January 22nd or she would loose the fare of $583.00.

We entered the dates and flights she had booked into our computer and were unable to come up with the fare United had quoted her. We called United reservations, had them pull up the booking and were told that the fare had gone up overnight and even though the United reservation agent had told her she could purchase her ticket on Friday, they could no longer honor the fare. The new fare was $673.00. The client was very upset so we called our United sales agent and apprised her of the circumstances. She was sympathetic and said she would document the record so that the client could get the lower fare. She also informed us that we could not issue the ticket, that the client would have to go to the United ticket office down town San Francisco and have them issue the ticket. Of course this meant we would loose our commission.

Our client went to the United ticket office after work and was told that the record had not been documented and they could not issue the ticket at the lower fare. On Monday morning, taking time off her job, the client reappeared in our office. Again, we called our United sales agent who promised to document the record. The client had to go back to the United ticket office to purchase her ticket.

Secondly, we have many clients that are non-profit environmental associations. These

associations have minimal budgets for travel and are always looking for the least expensive fares. Whenever the airlines lower their fares for a limited time, we immediately fax all of our clients with a "Fare Alert" (copy enclosed). This allows our clients to book future travel and take advantage of the airline "sales". You can see how the DOJ proposal would hurt these clients.

I have been in the travel business since 1964 and have seen politicians and civil servants do some pretty dumb things. I must say however, that this action by the Department of Justice is the most stupid of all. I'm sure that the person who concocted this rule must have an I.Q. of at least 60 if you stretch it 20 points.

Beyond the Bay, An Excellent "Full Service" Travel Agency, 726 Polk Street, San Francisco, CA 94109

Discover The Best Of All Worlds
5021 France Avenue South, Minneapolis, MN 55410, Tel (612) 927-9961, Fax (612) 927-9203

February 15, 1993.

Mark C. Schechter,
Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing in reference to the recent lawsuit against most of the major airlines alleging that they fixed prices through price signalling.

Our travel agency, and many others that I have spoken to in the retail travel industry are extremely disappointed in this allegation and extremely opposed to the consent decrees.

In our business, since deregulation of the airlines, it has become increasingly difficult for us to act as professionals by providing our clients with complete and accurate information. This has occurred primarily because the airlines, if anything, attempt to make last minute announcements of airfares to avoid having their competition copy their fare structure.

If the Department of Justice is able to require that the airlines no longer provide us with advance announcements of fare increases and stop providing us with information regarding the end of discounts, we will be at a further disadvantage in providing our clients with professional advice regarding the purchase of their tickets.

It will also jeopardize our reputation if we provide a quotation, the customer calls back a day later, to find that an airfare has substantially increased, and we did not advise them, since we were not aware of this possibility.

Your consideration in making a decision that reflects the representation of the travel industry as a whole would be greatly appreciated. I will look forward to hearing about your final decision.

Sincerely,

Kathryn Raimer,

CTC Manager.

Bordiere Travel Service
294 Main Street, New Britain, CT 06051, New Britain 229-2001

March 1, 1993.

Mr. Mark Schechter,
Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Please be advised that Bordiere Travel Service, a member of The American Society of Travel Agents, is opposed to the federal court approval of consent decrees.

Our clients and agents will be deprived of useful planning information if this decree is enacted.

Very truly yours,

Patricia K. Bordiere,

CTC Pres., Bordiere Travel Service.

Borrelli Travel Service, Inc.
One Lincoln First Plaza, P.O. Box 40600, Rochester, New York 14604-4600, (716) 232-2110, FAX # (716) 232-5347

February 18, 1993.

Mark C. Schechter,
Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Schechter: I felt it necessary to respond to the Department of Justice, in regards to the consent decree which the airlines are being coerced into signing. The consent decree prohibits the airlines from providing customers and travel agents with advance announcements of fare increases and the ending of discounted sales.

I am not only amazed but confused at this recent occurrence. This decree makes absolutely no sense! The airlines are actually being penalized for providing the public with information that may save them money? Why would the government be opposed to any advance notice to the customer and travel agent regarding the beginning and ending of lower fares?

If anything, in the past we have been faulted by our clients for not giving them warnings of fares going down, and for charging them higher prices. I feel at this point our clients are going to question our integrity and professionalism. Are they going to fully comprehend that it is due to the government prohibiting any advance notice of fare decreases to our agency that we are not able to inform them properly?

I would appreciate the Department of Justice to consider this matter more carefully before they come to a rash decision.

Thank you for the opportunity extended to our agency to respond to this recent development.

Sincerely,

Frank Borrelli,

CTC Vice President.

Boscov's Travelcenter
Reading Mall, 4500 Perkiomen Avenue, Reading Pennsylvania 19606, (215) 779-8640, FAX: 215-370-3737

February 19, 1993.

Mr. Mark C. Schechter,
Department of Justice, Room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: If the Justice Department's price fixing lawsuit against the airlines were necessary the airlines would be enormously successful; in fact, they are not. Why is it desirable to harry an industry which is already operating on thin margins, and doesn't have an improved earnings picture in the foreseeable future.

All new fares should be required to show when these fares go into effect and when they terminate. No merchant can successfully retain customers' loyalty if he doesn't allow all customers to know when his sales begin and end. Failing to do so produces outcrys of favoritism, bait and switch, unfair business practices. Department stores and other fierce merchandising retailers have frequent sales; they always announce the duration of the sale. Wouldn't that be a sensible yardstick?

The attempt to impose restrictions on an industry, airline and retail travel agency, by a regulatory body not familiar with it is presumptuous and ill advised. I encourage the Justice Department to withdraw their attempt at market place restriction.

The traveling public wants to know how long it can contemplate on a trip and the airfare quoted. If we were to operate in the mode that this decree describes, the travelers would be akin to stock market traders. Travel is a leisure industry, and dealing with it should not produce the anxiety that participating in the stock market does.

Sincerely,

Ike Matza,

President.

Greater Boston Convention & Visitor Bureau, Inc.
P.O. Box 490, Prudential Tower, Suite 400, Boston, MA 02199, (617) 536-4100, Fax (617) 424-7664.

March 1, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section, Department of Justice, room 9104, 555 Fourth Street NW., Washington, DC 20001.

Dear Mr. Schechter: The Greater Boston Convention & Visitors Bureau is a nonprofit organization that represents more than 1,000 companies across New England that are involved in promoting tourism.

We are very much opposed to the proposed consent decree developed by the Department of Justice in U.S. v. Airline Tariff Publishing Co. case.

The impact of that decree in the real world will be catastrophic. Our travel and tourism industry is already impacted by user fees, taxes, and regulations that continue to constrain growth. We do not need another poorly conceived, illogical, and theoretical approach to dealing with the problems faced by our industry.

Government officials should be looking at ways to stimulate travel and tourism in order to reap the economic benefits our industry provides. This consent decree would do the exact opposite. The end result would be further confusion on the part of the traveling public, reduced demand, slower economic growth, and higher unemployment.

I would hope that the DOJ would put this proposed solution on hold and give the tourism industry more time to formulate alternative courses of action.

Thank you for your consideration.

Very truly yours,

Patrick B. Moscaritolo,

President and CEO.

Boyce Travel Service
216 Dayton Street, Ridgewood, NJ 07450, (201) 447-5511.

December 29, 1992.

Mr. Mark Schechter,

Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Room 9104, U.S. Department of Justice, 555 4th St. NW., Washington, D.C. 20001.

Dear Mr. Schechter: If the airlines have been stupid enough to fix prices, they of course should pay any penalties the law allows. If they have only been responding to competition it is a totally different story.

However if the penalty applied to the airlines forces undue hardship on Travel Agencies and the travelling public the thrust of the Justice Department should be more of a penalty to the airlines without the ensuing damage to Travel Agencies and the Travelling Public. To wit: Eliminating expiration dates for fares would force agencies to insist on instant ticketing for all fares! This in turn would mean a traveler reserving a coach seat for 6 months or more down the road, perhaps hard strapped for credit or cash at the present time, would be forced to pay for the ticket at the time of reservation. I am surprised that consumer advocates have not voiced this in print yet.

A more equitable solution to alleged price fixing is to actually force airlines to fix fares, a suggestion I made to ATC when deregulation appeared. That is allow any airline to set any fare—but make the fare hold for a month or two or six (number of months is not a real factor). Thus if airline A lowered the fare from point A to Point B to $300.00 and had to hold that fare for 30 days, Airline B could lower their fare to $250.00 and have a 30 or 29 day advantage. The same is true for raising fares. In this case the price leaders would be taking a great risk that market conditions actually warranted the change in fares. This would be competition! And in a short time the fixing of prices would be based on real market factors, not predatory or fire sale tactics.

There may be, and probably are, other ways to fix this problem. But the airlines interpretation of what your Department wants suggests Chaos!

Cordially,

William J. Dillon,

Owner/Manager.

Brecksville Travel Service, Inc.

7700 Chippewa Road, Brecksville, Ohio 44141, (216) 526–8990, FAX (216) 526–7813.

February 12, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter, I would like to express my objection to the Lawsuit Against the Airlines. I do object to the government intrusion into my business.

How can I provide my clients complete and professional travel counseling if I cannot provide them with advance announcement of fare increases, or an announcement of when a discount sale will be ending.

If I were to shop in any RETAIL store, purchasing clothing, food, or whatever, I would know when a sale would be starting and ending, as this information is also placed in all the local media—NEWSPAPER—RADIO—TV. Don't you know also when men's clothing, and your favorite appliance, or Automobile is on sale, and take advantage of that purchase ???

Thank you for your understanding.

Sincerely,

Noreen A. Slezak-Butano,

President.

Brennan Travel, 433 Metairie Road, Suite 218, Metairie, Louisiana 70005, Telephone (504) 835–3200, Telex 4963032.

March 9th, 1993.

Department of Justice, Washington, DC.

Gentlemen: Brennan Travel truly believes that if the consent decrees are finalized and the Department of Justice wins the lawsuit, travel agents and consumers will be deprived of useful travel planning information. The Justice Department's position would place a federal judge in the role of price regulator for the airline industry. This whole concept is detrimental to the consumer.

Very truly yours,

(Mrs.) Brennan Bridgeman-Baumer,

President, Brennan Travel.

Brennan Travel

433 Metairie Road, Suite 218, Metairie, Louisiana 70005.

March 24th, 1993

Department of Justice, 555 Fourth Street, NW., room 9104, Washington, DC 20001.

Attention: Mark C. Schechter

Re: Price Fixing Lawsuit

Gentlemen: This most recent price fixing lawsuit against the airlines hurts the consumer more than the airlines. It seems that during the last anti-trust suit, the attorneys figured out an easy way to receive hard cash while the public must be happy receiving only paper coupons.

Despite this fact, the public is still being penalized by the possible new ruling. Previously, travel agents could advise their clients if there were a few days grace within which to ticket. Now, the fares can go up overnight without warning. While it is true that travel agents do make a percentage off of the total amount of the tickets, at Brennan Travel we strive to get the lowest possible fare for our clients in all matters.

I strongly urge you to reconsider your decision and take a hard look at really who is being hurt by this ruling.

Very truly yours,

(Mrs.) Brennan Bridgeman-Baumer,

President, Brennan Travel.

Brewer, Deaton & Bowman

Attorneys at Law, 107 West Market Street, Post Office Drawer B, Greenwood, Mississippi 38930.

February 26, 1993.

The United States Department of Justice, Anti-Trust Division, Washington, D.C. 20530.

Re: Airline Price Fixing Litigation

Gentlemen: As a member of the traveling public, it appears that the United States Department of Justice in its airline price fixing litigation has again arrived at results allowing the government to "win" at the expense of the traveling public. The restrictive terms of your orders limiting access to fare information to the day given is quite punitive to the traveling public and appears to only benefit the airlines. With guaranteed reservations and fare information, the traveling public had time to plan travel.

Individuals who are required to pay for their own travel as opposed to government lawyers whose travel is paid for by the taxpayers are quite concerned with having a reservation and guaranteed rate for more than twenty-four hours in order to coordinate plans. The only affect of the new procedures will be to discourage air travel which is hardly needed in today's depressed airline industry.

I request that this comment be forwarded to the United States District Court in Washington, DC, to be included in the public comments it receives prior to approving this punitive agreement.

Very truly yours,

Billy B. Bowman

29045 15th Place South, Federal Way, WA 98003

March 8, 1993.

Mr. Mark Schechter,

Room 9104, US Department of Justice, Antitrust Division, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Filing a lawsuit against the airlines for conspiring to fix prices is really grasping at straws in the wind! Your actions will do nothing but cost the airlines and, ultimately, the consumers a bundle of money. As usual no one but the lawyers stand to gain anything.

Forcing the airlines to comply with your consent decree for imagined discretions will not only cost the airlines lost revenue but will greatly inconvenience the consumers. If the airlines have been conspiring to fix prices they have done a terrible job of it.

If you wish to do some good for the airline industry and airline passengers, put some teeth into the bankruptcy laws. Allowing perpetually bankrupt airlines to stay in business is destroying the entire industry and making a mockery of the intent of bankruptcy laws.

In closing, I feel that there are a lot more fertile grounds where lawyers can make their money rather than mining an already troubled industry. Try the oil companies!

Sincerely,

John J. Briggs

Browne's Travel

5315 East Broadway, suite 107, Tucson, Arizona 85711, (602) 745–1622, Fax (602) 745–9494

February 13, 1993.

Mr. Mark C. Schechter,

Department of Justice—Room 9104, 555—4th Street, NW., Washington, DC 20001.

Re: Department of Justice, Lawsuit against the airlines.

Dear Mr. Schechter: Our travel agency objects to the current lawsuit your department has filed against the airlines and which will affect the entire travel industry.

Starting-and-end fare dates need to be available to the agency community. This is a very helpful tool for us to be able to shop for the best fares for our clients.

Under the consent decree, consumers would be the big losers. Our ability, as travel consultants, to provide our clients complete and professional travel counseling will be impaired.

Brown's Travel does object to the lawsuit your department has filed against the airlines.

Sincerely,

Ginny Shouse,

Owner.

Buena Park Travel
7918 la Palma Avenue, Buena Park, California 90602, (714) 827-5890, (714) 236-0268 fax.

February 15, 1993.

Mark C. Schechter,
Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: As a working travel agent whose agency is actively involved in the sale of airline tickets, I cannot help being alarmed at the excessive diligence of the Justice Department in regard to alleged airline "price fixing". I am very much opposed to your prosecution of the airlines on this matter, since it directly bears on the information and advice I am able to offer my clients.

In recent years it has been a great blessing that improved computer reservation systems give us more information to aid our customers in making purchase decisions based on the available effective and expiration dates of various fares. While these have always been subject to capricious change by the airlines, we have been able to offer a guideline at the very least.

Perhaps you ought to look into regulating the cost of lettuce at our local supermarket; it seems equally appropriate. And please consider that eliminating this information from our systems will do nothing to affect airline pricing—their systems can instantly respond to other airline changes. And, if airlines are gouging the public, why are they losing billions and laying off thousands? In your attempt at price regulation (something we all thought the government had abandoned), the attorneys are the only winners. Airline prices were a lot higher when the CAB made the rules.

Sincerely,

Ellie Knight,

CTC President.

Burger Travel Service
517 Bank One Building, Youngstown, OH 44503-1584, (216) 744-5035.

February 15, 1993.

Mr. Mark C. Schechter,
Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Lawsuit filed against airlines alleging fixing prices.

Dear Mr. Schechter: We are very concerned about the lawsuit filed against the airlines in regard to price fixing.

May we advise that this is definitely not price fixing—and what the Department of Justice is planning to do would be a major disservice to the travel agents and to the clients who use the airlines. The clients and the travel agent need the information in order to properly advise their clients.

After 60 years in the travel business, we feel that we must let you know that we object to this government intrusion into our business.

Sincerely yours,

Debra J. Burger,

CTC.

Burke Travel, Inc.
719 State Avenue, P.O. Box 1195, Kansas City, KS, 66117-0100.

February 17, 1993.

Mr. Mark Schechter,
Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter, I am writing to express my disapproval of the actions taken recently by the Justice Department against several major airlines, with respect to price signalling, and fixing. The decree offered to the airlines would make our jobs as travel advisors substantially more difficult than they are now, and would harm consumers by not allowing them to make fully informed decisions regarding their travel plans. No price would be valid past today, creating instant chaos in our industry.

The system as it is now seems to work well for the travelling public—they travel more often by air, and less expensively than at any time in history. One need only look at the average fare and amount of service within Europe to realize what a convenience and bargain our air travel system is. Price competition among U.S. airlines is indeed fierce; the recent losses sustained by the industry attest to that.

I am opposed to this decree as it would unnecessarily burden everyone involved, with no one, especially the consumer, gaining anything.

Sincerely yours,

Robert Burke,

CTC, Vice President, Burke Travel, Inc.

Caldwell Travel
Westlake Holiday Inn, 1100 Crocker Road, Westlake, Ohio 44145, (216) 899-9999.

Feb. 12, 1993.

Mr. Mark C. Schechter,
Dept. of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Mr. Mark C. Schechter: We are writing to express our opinion regarding a possible consent decree that would stop airlines from advance announcements of fare increases and end of discount sales.

It has been our experience that this would be a disservice to our clients. It would appear to be another intrusion of government in the travel business. We cannot see that it would serve the travel public.

Please consider our objection to the decree.

Sincerely,

Carolyn W. Caldwell

Cameron Park Travel, 3490 Palmer Drive, Suite J, Cameron Park, CA 95682.

March 4, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section Antitrust Division, Department of Justice, 555 4th Street NW, room 9104, Washington, DC 20001.

Re: United States vs Airline Traffic Publishing Company Action No. 92 2854

Dear Mr. Schechter: We are a small agency that employs four people in a rural community. It is difficult for us to make a profit in this business and keep our doors open. The reason travel agents are successful is that we offer a higher level of customer service than the airlines (800) reservation services can.

If your proposed actions go into place—we will be the last to know about fare changes. As it is, it is often the case that an advertisement comes out in the paper before the reservation systems have loaded the fares, and the rules.

I don't understand why you people feel that our industry should be judged by rules that don't apply to other retail business. How often do you see ads for merchandise that says "price effective from March 5 for three days only". If it's ok for Walmart it should be OK for United Airlines.

Please reconsider your actions—this is not in the best interest of the public.

Sincerely,

Judy Harvey,

Owner.

Cape Cod Travel of Hyannis & Orleans Inc. (A Separate and Independent Business Entity), 88 Falmouth Road, Route 28, P.O. Box 520, Hyannis, MA 02601, 485 Route 134, Harney's Plaza, P.O. Box 217, South Dennis, MA 02660, Route 6A, P.O. Box 267, North Truro, MA 02652.

March 5, 1993.

Mr. Mark Schechter,
Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; our clients expect us to be knowledgeable and prescient, and they trust and have confidence that we are acting in their best interests. How can we maintain this relationship if all we can say to them is buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortchanged and victimized by another capricious DOJ ruling. They do not deserve that! Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide to their clients. As a professional travel consultant I oppose the ruling and making my concerns known via this letter.

Sincerely,

Kelley A. Sullivan,

Vice President.

Capraro N.E.W.S. Travels, 39225 Grand River, Farmington Hills, Michigan 48335-1532 (313) 474-6397.

February 24, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Re: United States vs Airline Tariff Publishing Company; Action No. 92-2854.

Mr. Schechter: Another INJUSTICE to the travel agent community. When will the people who make decisions which affect our industry take the time to understand how our industry works before going to such extremes to force legislation which is detremental and unfair?

The prohibitions the Department of Justice is placing on our nation's ailing airlines is harmful to consumers and small business. How is it that we can be expected to fully perform the responsibilities of our position if we lack such pertinent information? And, why this type of proposal on our industry and NOT any other? When I see a department store sale on television and in the newspeper, they are allowed to advertise the ending date. Travel agents are professionals who care. We sell approximately 85% of all airline seats. We should be the first with access to all airline price information. It is obvious that neither travel agents nor our clients will be well served if we cannot inform them to when a fare is to be increased.

Please reconsider the inconvenience you are placing on the consumer and the negative impact on our business. We are being placed in a marketing and service disadvantage. The proposed final judgement is not in the best interest of the traveling public.

Sincerely,

Grace A. Capraro

Captain Jim's Travel, 5120 South Cicero Ave., Oak Forest, Illinois 60452, Telephone (708) 687-6800.

Feb. 15, 1993.

Mark C. Schechter,

Dept. of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: We understand that the Department of Justice is asking the airlines to stop providing the public with advance announcements of fare increases and advance announcements of the end of fare discount sales.

As active members of the travel industry we oppose the consent decrees you are considering.

The traveling public would be harmed rather than helped by the consent decrees. The airlines—based on public response—and not the federal court should be its own price regulator.

Please consider our objections. We have the interests of the traveling public and the travel industry foremost in mind.

Sincerely,

Jim Smat

Captain Jim's Travel, 15120 South Cicero Ave., Oak Forest, Illinois 60452, Telephone (708) 687-6800.

February 13, 1993.

Mark C. Schechter,

Dept. of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Re: Dept of Justice Lawsuit Against the Airlines.

Dear Mr. Schechter: How can we save our customers' money if we cannot even tell them when a fare will expire?

Please do not legislate any more regulations. Travel agencies are dropping like flies by the wayside. Every year our rents, salaries and office expenses go up but we are not able to pass these costs on to the customer because we cannot raise our commissions and we are not allowed to charge more for the air tickets. The only thing we can try to do is to sell more tickets.

Please we are begging for assistance.

Sincerely,

Shirley Smat,

Manager.

FAX 708 687 6852

Caramar International Travel Corporation, 909 Willis Avenue, Albertson, New York 11507, 516-248-1677, Telex: 495-1623, Fax: 516-741-6359.

February 23, 1993.

Mr. Mark C. Schechter,

Department of Justice, Anti-Trust Division, 555 4th Street, N.W., Washington, D.C. 20001.

Re: US vs. Airline Tariff Publishing Co. Action #922854

Dear Sir: On behalf of our clients who are entitled to know about projected new fares, applicable dates of travel and ticketing under the new fares,—AS QUICKLY AS POSSIBLE—I ask the following of the Department of Justice:

Since travel agents sell about 85% of all airline seats

Since most travel agents are small business people

Since we must have access to all price information—before it is published in the media

Since we—the travel agency community—are located all over the United States, in small towns and cities where we are easily accessible to the traveling public and are able to and do respond to questions from the traveling public about all airlines/all fares

Since travel agencies service a vast number of consumers

Since travel agencies offer options to our clients on the multitude of fares available (printed in our CRTs)

That the Department of Justice *not do a disservice* to the traveling public by not allowing the travel agency community to have access to advanced fare information, its terms and conditions. The traveling public cannot—I repeat, cannot—read all of the rules/regulations/advanced ticketing, etc., for all airlines servicing the same city pairs. It is palpably impossible for them to do so since they *do not have access to all of the information*, even when they read it in the media.

The CRT systems in place in the majority of travel agencies around the country operate efficiently giving travel agents information on fare savings, etc. which they transmit to their clients. If you take that away from agencies you will have done a grave disservice to the consumers and to thousands of small businesses countrywide.

Thank you for your attention to the above and I trust that you will consider the effects on both the consumer and small business before moving on this Action.

Attached is a partial list of clients/agents who have signed a petition agreeing with my position set forth.

Sincerely yours,

Marilyn Radovsky,

President.

Caramar International Travel Corporation.

February 23, 1993

Petition to: Department of Justice, Anti Trust Division, Washington, DC

I am opposed to the Department of Justice preventing the airlines from informing travel agencies and consumers of applicable travel dates/valid ticketing dates for projected new fares. It will make it more difficult for the traveller to plan ahead in order to utilize the lowest and best possible fares. It is urgent that the fare and ticketing information remain available to travel agencies and therefore to the travelling public.

Name	Address
[Illegible]	205 3RD Ave., 14-C NYC 10003.
[Illegible]	287 Willets Rd., [illegible] NY 11507.
Elizabeth [Illegible]	67 Prospect Ave., Hewlett, NY 11557.
Marisa Rossero	257A East 17th St., Hunt. Sta. NY 11746.
Joan Guerrieri	25 Cambridge St., Malverne, NY 11565.
Clare Robbins	1748 Aladdin Ave., New Hyde Park, NY 11040.

Caribbean Holidays, 612 Bellevue Way NE., Suite 220, Bellevue, Washington, 98004, (206) 451-1678, (800) 828-9204, Fax (206) 454-3467.

February 16, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555-4th Street NW., Washington DC, 20001

Dear Mr Schechter: Concerning the lawsuit against the airlines, alleging that they fixed prices by signalling each other of their pricing plans through advance announcements of effective dates, I have only one question * * *

What is the difference between, say, United Airlines saying that a certain fare will be effective only until a future date than say, SILO saying that a sale on a Sony TV is effective until a future date?

If department stores can have a sale with low prices until the 1st of March, why can't the airlines.

To be fair to the airlines you would have to stop all industries from stating effective dates on prices * * *

Please pass these comments on to the judge who is reviewing the consent decrees.

Thanking you in advance, I remain

Sincerely yours,

Peter F. Bishop, CTC

Carlson Travel Network, 62 West Plaza Square, Winona, MN 55987-3431, (507) 452-1990, FAX (507) 452-2877.

March 4, 1993

Mark C. Schechter

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001

Dear Mr. Schechter: I am writing in strong opposition to the Department of Justice lawsuit against major airlines alleging price fixing through advance announcements of airfare changes.

The current injunction prohibiting airlines from advance announcement of fare increases and, with some exception, prohibiting the advance notice of the end of discount sales greatly impedes our ability in the travel agency community to render accurate and efficient service to our clients.

Airlines are constantly changing and revising their fares, and for those of us who serve the public fairly, we simply must be able to advise our clients with current, accurate information on travel costs. Not knowing when fares will be changed not only places us in the position of not being able to provide travelers with adequate service, but it also further serves to confuse increasing numbers of passengers. I believe airlines will continue to publish airfares based on competition. I urge consideration of allowing for advance announcement of fare increases and discount sales so that we at the distribution level can also remain competitive!

Sincerely,

J. Christopher Knecht,

President, CTN/Nelson Travel Service.

Carlson Travel Network®, Chippewa Valley Travel, Corporate Office, 345 Frenette Drive, Chippewa Falls, Wisconsin 54729, (715) 726–9782, Fax (715) 723–1205.

February 15, 1993

Mark C. Schechter

Department of Justice, Room 9104, 555 Fourth Street NW., Washington, DC 20001

Dear Mr. Schechter: We are very concerned with the Department of Justice's decision to restrict pricing information to travel agents.

It is appropriate to tell our customers when a special price (sale) will start and even more appropriate to inform them as to when the special will expire.

If information is restricted through your enforcement of a no advance announcement rule, the consumer will once again fall victim to your protection. How can we inform people of their choices if we are not privilege to information.

We ask your consideration in abandoning your ruling to restrict pricing information to travel agents.

Sincerely yours,

Dennis L. Heyde,

President.

Carlson Travel Network, Gulf Breeze Travel, Inc., 1100 Gulf Breeze Parkway, Gulf Breeze, FL 32561, Phone 904–932–9276, Fax 934–1089; 17 W. Garden St., Pensacola, FL 32501, 904–433–7268, Fax 432–5463.

Dear Sir: We do not agree with the decrees by the Federal Courts. We in the travel industry need this information to provide to our clients what is going on in the travel industry. If we don't keep it like it has been, then what do travel agents have to offer their clients in the services area. Only thing they would have would just be sale tickets and not have the extra services to offer. I do not think the courts could be able to tell the airlines and travel agents what they can and cannot do. Basically the government would be taking over our industry. What next, when cruise lines want to have fare reduction?

[Illegible]

Carlson Travel Network, Vantage Travel, 1913 South Osprey Avenue, Sarasota, Florida 34239, (813) 365–2500, Fax (813) 951–2488.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, N.W., Washington, DC 20001

Ref: Department of Justice Lawsuit against the airlines.

Dear Mr. Schechter: Please forward this letter to the judge who is reviewing the consent decree requiring that airlines must:

. . . stop providing customers with advance announcements of fare increases.

. . . stop providing customers with advance announcements of the end of discount sales.

As a small business whose primary business is selling airline travel domestically and internationally to individual clients and businessmen who need this service. Our clients are like most people who are looking for the best possible deal and best possible price for their airline transportation. They solicit our service so we can provide to them the current and anticipated airline fare increase or decrease in the marketplace.

In the age of FAX machines and computer reservation systems, we presently have this information at our fingertips and are able to disseminate this information in an unbiased manner. This type of service is really the Hallmark of the Travel Agency business. This is the reason a customer/client will come to a Travel Agency to do the shopping for them and advance information from the individual airlines is critical to the welfare of the Travel Agency profession.

I subscribe to the spirit of the deregulated airline environment and do object to more government intrusion and restrictions into the airline and travel agency business. If the consent decrees are approved by the Department of Justice this will have a very negative impact on the service levels as well as the ability to provide the best possible travel related information the public demands. This ruling will not benefit the traveling public or the travel agency profession. Please reconsider and withhold your ruling on the consent decrees.

Sincerely,

William Kaplinski,—

President.

Carlson Travel Network, Wickenburg Travel Agency, 2001 West Wickenburg Way, P.O. Box 21059, Wickenburg, Arizona 85358, (602) 684–7891, Phoenix (602) 271–4122, Fax (602) 684–7893.

Dear Mark C. Schechter, We feel that we need as much information as possible to correctly price the airline tickets we sell. The airlines have been deficient on the side of too little information rather than too much in our opinion. Please do not add to our burden by closing our information sources.

Sincerely yours,

Sue Tackelson

Cave Springs Travel, 4101 Mexico Road, St. Peters, Missouri 63376, 313–441–5400, 314–278–5222, 1–800–247–CAVE, FAX 314–441–7453.

February 18, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001

Dear Mr. Schechter: As an owner of a travel agency, I would like to state that I am against your lawsuit alleging that most of the major airlines have fixed prices and to make them stop providing advance announcements of fare increases and to stop providing the end of the discount sales.

Our business is 80 percent leisure traveler who will look for all of the bargins available. If your lawsuit is successful, the consumer will be greatly harmed and not travel if they can't make full informative decisions about air fares.

I urge you to reconsider the lawsuit.

Sincerely,

Melba O'Connell, *CTC DS*

Owner

Carrousel Travel Group, 6625 Lyndale Avenue S., Minneapolis, MN 55423, Fax (612) 866–9644.

February 15, 1993

Mr. Mark C. Schechter

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Re: Lawsuit Against the Airlines

We are extremely upset with the recent Justice Department decision to unnecessarily involve itself in our business. The allegation that airlines signal pricing intentions via advance announcements of fare increases and other fare changes lacks validity.

Actually this system benefits the consumer and provides them with the best information to obtain the lowest fare possible. Our responsibility is to provide our customers with information that allows them to make intelligent decisions regarding their air travel. Consumers and their travel agents will be the big losers if we are unable to notify them about dates of fare increases or deadlines for taking advantage of airfare savings. We hope that the court will see things through the eyes of travel agents and air travel consumers. Please do not limit our ability to help consumers! Leave the pricing and fare notification procedures alone!!

Sincerely,

Neal Kraemer,

Carrousel Travel Group.

Charlie B. Travels, 77 E. Main Street, Newark, Delaware 19711, phone 302/368–9151–2.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001

Dear Mr. Schechter: This letter is in response to the Department of Justice's law suite against airlines for supposed price fixing.

As a travel agent for the past thirty years, I have watched as our transportation system

has been practically obliterated by government meddling. Once again, a person or persons, in this case the Justice Department, totally ignorant of the workings of the industry or of its service to the traveling public, is meddling where it does not belong.

If you apply the same restrictions to all businesses, you will succeed in bringing America's productivity to a standstill. Please, you have done enough harm to a dying industry. If you feel you must act in the public interest, please become educated in the ways of the industry you are trying to regulate.

We consider ours to be a full service travel agency in the business of advising our clients of the very best fares available. You are taking that ability away from us.

I would like to offer an open door to anyone making decisions on your behalf to learn more about the industry first hand. Please come walk a week in my shoes and meet the people we are supposed to serve. If you would like to know more about us, please contact Senator Biden or Congressman Mike Castle, both of Delaware.

Please help us, don't hurt us! The restriction of advance announcements of fare increases/decreases is ill-advised and not in the public interest.

Looking forward to seeing someone from your office in our office.

Sincerely yours,

Charlie Friswell,

President.

Convention & Visitors Bureau of Greater Cleveland
3100 Terminal Tower, Cleveland, Ohio 44113, (216) 621–4110.

March 15, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section, Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to bring to your attention an action that was taken during the end of the Bush Administration that, if implemented, could have significant economic consequences for our industry as well as for the traveling public.

The Department of Justice, on December 21, 1992, entered into a consent decree with USAir and United Airlines to settle charges of price fixing through the computerized codesharing network. The consent decree prohibits airlines from informing either travel agents or the public about the dates of fare increases and, in most cases forbids them from conveying information to agents or the public relating to the last date of discount sales. The remedy could have a severe impact on the travel and tourism industry, the country's third largest.

I strongly believe these prohibitions will deprive the traveling public of valuable travel planning information and could result in consumers having to pay higher fares and, therefore, travel less. This would also negatively impact the financial health of our industry, including the already struggling airlines.

Now is a time for the nation to rebuild the economy. Tourism is the key. Therefore, I urge the Department of Justice to consider the negative impact that this action will have on one of America's leading growth industries—tourism.

Sincerely,

Dale R. Finley,

President.

Decatur Alabama Old State Bank Museum
925 Bank Street, P.O. Box 2349, Decatur, Alabama 35602.

March 12, 1993.

Mr. Mark C. Schechter,
Chief Transportation, Energy & Agriculture Section, Department of Justice, Room 9104, 555 Fourth St. NW., Washington, DC 20001.

Re: U.S. vs Airline Tariff Publishing Co., et. al.

Dear Mr. Schechter: I would like to declare my opposition to the recent development by the Justice Department with regards to the decree that prohibits airlines and travel agents from providing ticket purchases with first and last ticketing dates for fares.

This will force travelers to purchase their tickets immediately in order to get the fare quoted at that time. This will particularly put hardships on business executives, senior citizens who must depend on others to make their travel arrangements, as well as the general traveling public.

This new regulation will make traveling planning even more difficult and may make potential travelers decide to spend their discretionary income on other things besides travel.

As President of the Alabama Association of Convention & Visitors Bureaus, I have talked to many across the state in the travel industry and we are concerned that this decree will defiantly harm the tourist industry.

We would appreciate your help in this matter.

Kindest regards,

(Ms.) Jerry Paasch,

Executive Director

March 12, 1993.

Mr. Marc C. Schechter,
Chief Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Re: United States vs Tariff Publishing Company Action No. 92 2854

Dear Mr. Schechter: The prohibitions the Department of Justice is placing on the airlines is harmful to consumers and small businesses. For travel agents to properly serve our clients we must have every resource available, and this includes all fare information.

The Department of Justice feels the airlines must inform the media prior to any detailed fare information being loaded into our computer reservation systems. However, the DOJ does not clearly define general media, further confusing matters.

Travel agents sell an average of 85% of all airlines seats and need to have access to all price information. We are in every community, accessible to all and able to answer questions about all airlines. Can you imagine a customer entering Macys with a newspaper ad and telling the salesperson the price of the suit he wishes to buy.

Travel agents are professionals who care and service a vast number of consumers. Much of our service is to offer opinions and options on fares. An example of the hardship that will be placed on the consumer is exemplified by the following:

On February 8th our clients, Ms. Misselwitz and Ms. Sanders booked themselves with United Airlines (locater 66R6CX and 67E2T1) for travel to Kona on February 14th. They were quoted a rate of $359 each and told that tickets must be purchased by February 10th and the fares were not guaranteed until tickets were purchased. Our clients replied that they would purchase tickets through our agency. The next morning, in accordance with their wishes, we called United Airlines to claim the record for ticketing. We were told that the rate was now $1100, and that the fare they had booked had expired at midnight. In other words, they had only 4½ hours to purchase their tickets.

It is obvious that neither travel agents nor their clients will be well served if we cannot inform them as to when a fare is to be increased. We constantly need to be aware of all the travel scams and be vigilent against them. One of the tips we offer (ASTA) is to avoid high pressure sales offers that do not allow TIME FOR EVALUATION.

In my estimation this decision will encourage this type of high-pressure salesmanship and further endanger the already weak travel industry.

Please reconsider the inconvenience you are placing on the consumer and the negative impact on our small business. The proposed final judgment is not in the best interest of the traveling public.

Sincerely,

Sylvia Rodriguez,

President.

Charlotte Convention & Visitors Bureau,
122 East Stonewall St., Charlotte, NC 28202–1838, (704) 334–2282, 800–231–4636, Fax: (704) 342–3972.

March 11, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy, and Agriculture Section, Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: The mission of the Charlotte Convention & Visitors Bureau is to maximize the economic impact of the travel and tourism industry on our community. Our ability to perform that mission will be significantly impaired if the proposed consent decree developed by the Department of Justice in the U.S. vs. Airline Tariff Publishing Company case is allowed to stand.

In the state of North Carolina the travel and tourism industry is worth $7.5 billion to our economy. For the Charlotte area that figure is $1.5 billion and we can account for nearly 33,500 jobs which support our local travel and tourism industry.

We feel very strongly that a rapidly-growing industry such as the travel and tourism industry should not be further burdened by stifling regulations. Instead, we

feel that a more positive approach would allow us to continue to generate jobs and economic stimulus on a local, statewide, and national level.

I would ask, on behalf of the 450 businesses that we represent that the proposed consent decree not be implemented and that a more productive solution be sought. Thank you for your understanding and consideration of our position.

Sincerely,

Melvin Tennant,

President & CEO.

State of Colorado
Office of the District Attorney, Denver.

March 11, 1993.

Mark C. Schechter,
Chief, Transportation, Energy & Agriculture Section, Rm 9104, Antitrust Division, Dept. of Justice, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: I am a consumer protection official who has some occasion to travel and always tries to get the best fare to save tax or non-profit dollars. I have noted recently that the basic ingredient of informed decision-making, information, is becoming scarcer when it relates to fares. A little research has led me to the outcomes of U.S. versus Airline Tariff Publishing Company, et al. and the consent decree signed with United Airlines, my usual choice of carrier. I note their is a public comment period open only until March 15. I'm guessing that if those in the consumer business are ignorant of the situation, its possible impacts and consequences, then the real consumers, the travelling public, are probably totally in the dark.

I would request an extension of the comment period for an additional 60 days so a full discussion of consequences, manifest and latent, can be aired. Thank you for your consideration.

Yours Sincrely,

Clair E. Villano,

Director, Consumer Fraud Division.

Convention & Visitors Bureau, Inc.
200 Civic Center Drove, Charleston, WV 25301.

March 11, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section, Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Re: U.S. vs Airline Tariff Publishing Co., et. al.

Dear Mr. Schechter: Tourism and travel is one of the major bright spots in the economy of West Virginia and the entire United States. In my opinion, should the consent decree proposed in this case become government policy, it will harm travel and tourism by causing the cost of travel to rise. The traveler will no longer have the capability of knowing about special fares, or the starting or ending dates of any special airline discount fares.

Even if, as was charged in the suit, the airlines were engaged in coordinating fares, this "solution" will not correct the problem. In a free market economy, as soon as a price becomes known, all competitors are aware of it and can adjust their prices accordingly. This proposed "solution" will not keep the airlines from adjusting fares to meet the competition, but will merely keep the consumer from being aware of price changes, up or down, and therefore being able to take advantage of this knowledge to reduce their cost of travel.

To protect the traveler and to allow those of us in the tourism industry to continue to promote travel and tourism and get more Americans to spend more money traveling, and to enable this industry to continue to be a major factor in the economic recovery, I strongly urge you to have this suit withdrawn and to allow United Airlines and USAir to withdraw their agreement to the consent decree.

Sincerely,

Bill Rogers,

President.

Clarement Travel Services
Goddard Emporium
54 Pleasant Street, Claremont, NH 03743.

March 10, 1993.

Mr. Mark Schechter,
Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The recent changes in the airline faring structure have clearly removed our ability to anticipate price changes in the industry.

Professional travel agents are responsible for booking over 80% of all airline tickets. Our clients expect and demand that we be knowledgeable and able to give them the most reliable information regarding current air fare possibilities. The travel agency community has built the trust and confidence of the traveling public that we are acting in their best interests. How can the travel agent maintain this relationship if we cannot tell our customers what prices will be in effect when they travel, or when a particular fare will expire?

This arbitrary concern for airline signaling of price changes is depriving the customer of the ability to benefit from the real advantage of a deregulated airline environment. Consumers are the ones being victimized by this Department of Justice ruling, for they will no longer be able to determine the effective use of their own resources.

Providing effective date information with ticket price information is a value added service that the travel agent industry must be able to provide to their clients. As a professional travel consultant, I oppose the ruling and urge that it not be implemented.

Sincerely,

Walter L. Fawcett,

President.

This letter to the editor appeared in the *Prescott Courier* yesterday, March 10, 1993. My son and I consider this consent decree deplorable!

Eileen Dalzen,
HC61 Box 1796, Dewey, AZ 86327.

Travel counseling would be impaired by lawsuit.

Editor: The Department of Justice has filed a lawsuit against most of the major airlines, alleging that they fixed prices by signalling each other of their pricing plans through advance announcements of fare increases and other fare changes.

Two airlines have already felt compelled to sign consent decrees in order to avoid additional legal costs and risks even though they adamantly oppose what the Department of Justice is demanding. The consent decrees require that the airlines must:

- Stop providing customers and travel agents with advance announcements of fare increases.
- Stop providing customers and travel agents with advance announcements of the end of discount sales (with some exceptions).

If the consent decrees are approved by the federal judge who is reviewing the consent decrees, then the ability to provide complete and professional travel counseling will be impaired! It may even be a crime to provide this information to clients.

These rules are only the beginning. Under the consent decrees the federal court becomes the price regulator for the airlines industry.

The law requires the judge to withhold a ruling on the consent decrees until public comments have been received. The deadline for public comments is March 15, 1993. The American Society of Travel Agents (ASTA) will be filing a brief in opposition to the consent decrees, but the government should hear from you directly. Write the judge a few short lines expressing your objections to this government intrusion into business and the traveling public.

Letters should be directed to Mark C. Schechter, Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001. The Department is required to forward all comments to the judge reviewing the decrees.

Joyce Bunch CTC,

The Travel Connection.

Compass Travel, A World-Wide Travel Service
4201 North 16th Street, Suite 150, Phoenix, Arizona 85016, (602) 266–5390, FAX (602) 266–0013

March 4, 1993.

Mark C. Schechter,
Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001

Dear Mr. Schechter: I am writing in opposition to the plan that the airlines not provide passengers with advance notice on fare increases and/or the end of discount ticket sales.

In my experience I find it is extremely important for customers to have such knowledge before making a decision to purchase their ticket.

Sincerely,

Betsy Fredrickson,

Owner/Manager.

Deluxe Travel Ltd.,
Downtown Office, 102 California Avenue, Reno, NV 89509, PH. (702) 323–4644, FAX (702) 323–3561

March 1, 1993

Mr. Mark Schechter,
Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001

Dear Mr. Schechter: I oppose the price fixing anti trust law suit brought against the major airlines.

I feel in the long run the law suit will hurt the consumers and the public.

I am in complete opposition of this class action law suit.

Yours truly,

José M. Brito,

Manager.

Destinations, a Travel Company
P.O. Box 705, 202 West King Street, East Berlin, PA 17316, (717) 259–8611, FAX (717) 259–9154

February 27, 1993

Mr. Mark Schechter,
Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001

Ref. Lawsuit against the airlines

If the airlines are to continue to operate they'll need to be able to price their product—(service) in a free competitive marketplace without the interference of the government. I don't know why so many of the airlines are failing to make a profit do you? It would seem to me that this would be the area in which government should become involved. Why not set up an agency to investigate the cause of such massive losses. Let's face it, without the services of our major airlines *and* raillines we are no longer a world leader.

The airline industry is out of control. However, it cannot be fixed by discontinuing advance announcements of fare increases and indeed it will be impossible for any agency to operate in any degree of efficiency or profitability without expiration date of discount sales.

Rather than a lawsuit against the airlines I think the government should be helping them!

Sincerely,

Yvonne S. Lau,

CTC, Owner/Manager Destinations.

Creative Travel Service Inc., 260 Morris Avenue, Springfield, New Jersey 07081, (800) 344–3383 (201) 467–3383 FAX (201) 467–4781

February 25, 1993

Mark C. Schechter,
Department of Justice, Room 9104, 555 4th Street N.W., Washington, D.C. 20001

Mr. Schechter: I am writing in opposition to the recent decree being forced on the US airlines in regard to price fixing through the computers. Travel agents and their clients rely on the accuracy of the fare information contained in the computer reservation systems. By preventing the carriers from publishing first and last ticketing dates for fares, or setting parameters for sale fares, the Justice Department is punishing the consumer. How can we competently advise our clients as to when to purchase a ticket, when it could easily be pulled at any time. The traveling public is very confused by the present system already, this action further clouds some awfully muddy water.

What major retailer in this country *doesn't* advertise "Sale Monday Only" and let the public know well in advance. Supermarkets always put out their news circulars the week before to let the public know exactly when products are on sale. Maybe Macy's never told Gimbels', but I'm sure they read each others ads. Are we going to punish the public because airlines make this information available by computer? That's the message that this action gives.

This consent decree is blatantly anti-consumer. I hope the Justice Department will review this action and truly serve the public interest. Thank you for your attention.

Sincerely,

Iris Citron,

President

Mr. Mark C. Schechter,
Chief Transportation, Energy & Agriculture Section, Department of Justice, room 9104, 555 Fourth St. NW., Washington, DC 20001

Re: United States vs. Airline Tariff Publishing Company Action No. 92–2854

Dear Mr. Schechter: Travel agents are professionals who care and service a vast number of consumers. Much of our service is to offer opinions and options on fares. It is obvious that neither travel agents nor our clients will be well served if we cannot inform them to when a fare is to be increased. Likewise, we need to know when discount fares will end because we frequently call our clients if we know there is a special fare available for a limited time period. If the airlines have to inform the media first of any fares changes, as the Department of Justice proposes, it may well discourage sales.

Please consider the inconvenience you are placing on the consumer and the negative impact on our small business. We are being put at a marketing and service disadvantage. The proposed final judgment is not in the best interest of the traveling public.

Sincerely,

Brika Kochey,

Owner, Conn Travel of Morristown.

February 24, 1993.

Mr. Mark C. Schechter,
Fax #202–514–4371,
Chief Transportation, Energy & Agriculture Section, Department of Justice, room 9104, 555 Fourth St. NW., Washington, DC 20001.

IN RE: Action No. 92–2854

This "Action" has been given a great deal of time and attention by this agency.

Our conclusions are:

This action is unnecessary.
This action is without any merit—whatsoever.
This action is absolutely counter-productive.

This action will not accomplish any improvement gain in the travel industry. But it does add another needless measure to affect the traveler and the travel agencies.

We urgently request that this action be abolished and at once.

Cruise Director's Travel, Inc.
Correct Service, Inc., D.M. Lipscomb, Ph.D., P.O. Box 1680, 8715 271st NW—Suite 1, Stanwood, Washington 98292, Fax (206) 629–3755, Phone (206) 629–4865

February 22, 1993.

Mr. Mark C. Schechter,
Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I have been apprised that your department is investigating whether the computer-based airline schedule/price quoting capability amounts to price-fixing.

As a very frequent business traveller, I rely upon my Travel Agent to provide the most up-to-date information upon which I plan my travel schedules and budget. To eliminate the current ability to provide me with a range of options would be to seriously impair the assistance I receive from my Travel Agent.

As a layman, the parameters as I understand them are temporal in nature. That is, knowledge of changes in price scheduling are available expeditiously through the computer system. The same information would be available through other means of information dissemination, albeit more slowly. The latter system has been in place since airline tickets have been sold and were never regarded to be price-fixing. Why, then, is it considered that the same process—only more speedy—is now labeled price-fixing?

In this time of fiscal austerity and trimming of governmental costs, I nominate the above-mentioned activity for elimination as being an unnecessary waste.

Sincerely,

David M. Lipscomb, Ph.D.,

Consulting Audiologist.

Chips Travel, Inc., 3950 Church Street, Evanston, IL 60203, 312/673–5660 or 312/539–0260

February 20, 1993.

Mark C. Schechter,
Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: I am opposed to the current lawsuit requiring airlines to stop providing customers (and travel agents) with advance announcement of fare increases or advance announcements of the end of discount sales.

This type of regulation is an intrusion into my business and has worked great hardship upon my self and my staff. We can never be certain of a fare, and it makes promotional work very difficult, decreasing business as a whole.

Yours truly,

Helen Binder,

CTC Owner and Manager.

Cooper Travel Service, Inc., 125 S. 8th Street, Columbia, Missouri 65201, (314) 443–3138

February 19, 1993.

Mr. Mark C. Schechter,
Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: In regards to the price fixing lawsuit against the airlines, I ask, how different is airline pricing from any other retailers pricing strategy in this country? When Wal Mart lowers its price on floor mats, Target and K Mart follow suit. Gasoline prices in my area change together. So why are you trying to cause more problems to an industry that has lost $8 Billion the last 30 months. You think the airlines have been over charging?

In most cases airlines are lowing air fares to match the competition. Using the CRS only allows the airlines to react immediately thus benefiting the consumer. With this immediate information travel agents contact clients that are waiting for specials. But they need to know for how long the fare is valid so they can plan. This encourages people to purchase airline tickets at the lowest possible cost. The lawsuit will result in less buying information for potential travellers. The net result is fewer travellers paying higher than necessary airfares.

Sincerely,

J. Daniel Stookey II,

CTC President

Creative Travel Agency, Inc., 2240 N Rock Rd, Suite 104, Wichita, KS 67226

February 18, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Although we understand your concern for avoiding price fixing by the airlines, and we concur that price fixing is detrimental to the best interests of the public, to stop allowing first and last sale-date ticketing in the computer systems would be more detrimental to the public than the current system.

Our system allows holding a reservation for 24 hours for a customer before it has to be ticketed. If you force the airlines to withdraw first and last days from the computer, we cannot serve our clients because we cannot properly advise them of a deadline to purchase.

If your interests are in protecting the public, perhaps requiring definite sale termination dates (rather than a system that allows over-night discontinuing of a sale or an arbitrary extension) would be of more benefit to the public. Making people play "Russian Roûlette" in guessing whether they can purchase a ticket at a sale price (and remember that these are mostly excursion, non-refundable tickets) is not in the interests of the people you are trying to protect.

As travel agents, our job is to find the best price for our clients and to advise them of restrictions and deadlines. Travel agencies have access to all airlines' prices that are in the computers. Removing the information we need to advise our clients will benefit no one—unless it is the individual carriers who *will* know their last ticketing dates!

Sincerely,

Kathleen McNerney,

Owner.

Dee Whitley, *CTC,*

Manager.

Pat English,

Travel Consultant.

Loretta Engels,

Travel Consultant.

Angie Frey,

Travel Consultant.

Crossroads Travel, P.O. Box 278, Olathe, Kansas, U.S.A., 66051–0278, (913) 829–1555, Street Address: 2063 East Santa Fe, Olathe, Kansas, U.S.A. 66062–1608

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Re: Department of Justice Lawsuit against the airlines.

Please forward my comments to the judge in charge of the case.

It is my understanding that one of the points of the lawsuit is to stop the airlines from providing advance notice of fare increases and to stop providing the advance announcement of the end of discounted fare sales to the public and to the travel agency distribution network.

I believe that these types of restrictions would harm consumers and not allow an informed decision by withholding important buying information.

Now I'm not an antitrust expert but one usually equates price fixing with an industry that is making a fortune off an unprotected public, so where is the logic in this. Airfares have not been fixed at one everincreasing level, they change all the time in each direction. Deregulation back in 1977 was to make the marketplace more competitive, and this action will restrict the airlines from communicating the specific thing the government wanted, competitive changes, to the buying public and the travel agency distribution system.

Sincerely,

William Craig,

Partner, Travel Consultant, Crossroads Travel.

Columbus Tour & Travel

P.O. Box 176, 1559 23rd Avenue, Columbus, NE 68601, (402) 563–3606.

February 17, 1993.

To: Mark C. Schechter, Department of Justice

Re: Lawsuit Against the Airlines

Dear Mr. Schechter, As the owner and manager of Columbus Tour and Travel, I am concerned about the discussion the Department of Justice has been having concerning the information we as an agency and, our clients as consumers of airline travel products will have to work with. It is extremely important for us to be able to advise our clients when a fare is due to expire. It is extremely important for our clients to have time to make a decision concerning their travel plans.

As an example:

1. I call a valued client.
2. Inform him of a special fare available for travel to Florida.
3. He checks with his family and makes arrangements for their family vacation.
4. At this point he calls our agency and I have to tell him that fare expired while he was checking their calendars.

This puts both the agency and the consumer in a very awkward position. However, if I am able to inform him that there is a special fare available for purchase until a certain date, he would be able to make plans based on solid information.

Likewise, if there is going to be a price increase our clients need to know in order for them to make their travel arrangements and avoid additional charges.

It is important that we not lose track of the fact that we are providing a service to our clients and if we do not have the information available to direct him toward a fully informed decision, we are not able to do our job.

Please take into consideration the *needs* of the *consumer* when making your decisions. Without consumers we have no airline travel They need to be informed and the agencies are the supplier of this information.

Thank you for your attention to these comments.

Sincerely,

Karen Senften,

Owner/Manager, Columbus Tour and Travel.

Columbia Travel

84 Green Street, Hudson, New York 12534, (518) 828–1549, FAX 518–828–1549.

February 16, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW. Washington, DC, 20001.

Re: Oppose Government Intervention on Airline Fares and Ticketing Dates.

Gentlemen: We wish to express a strenuous objection to a US District Court decision that they restrict airlines from mentioning first and last ticketing dates on airline tickets.

We are a small travel business in a community where precise and factual travel information is passed on to our clients. They depend on us to provide them with sound advise, good service and economical fares. If advance information given to us by airlines were no longer allowed, how are we, as professional travel counselors, able to serve our clients with good, sound, money saving advice on air travel.

If the US District Court imposes a restriction on airline fares and ticketing dates, not only all our customers would lose out in these economically difficult times, but most small businesses like ours would be in jeopardy.

Sincerely,

H. Jon Collins (Mrs.)

Owner.

Choose To Cruise

760 Main Street, Pennsburg, PA 18073.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, Rm 9104, 555 Fourth St. NW., Washington, DC 20001.

Dear Judge Schechter: I am writing to request your re-evaluation of your suit against the airlines which would in effect stop them from providing travel agents—and the public—with advance announcements of fare increases and termination dates.

This is unnecessary interference into our business and will do a dis-service to the traveling public. Please give this careful consideration.

Sincerely yours,

Sharon N. Sidler,

CTC, President.

City Plaza Travel

16051 Tampa Palms Blvd. W., Tampa, FL, 33647.

February 15, 1993.

Mark C. Schechter,

Dept. of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir, This is a letter of objection regarding the recent lawsuit against the airlines. I do not feel this is price fixing.

We as travel agents need to tell our clients when a fare is effective and when it will expire.

Please forward this letter to the judge reviewing the consent decree.

Sincerely,

Dick Toth,

President.

Chima Travel Bureau, Inc.,

1650 W. Market Street, Akron, Ohio 44313–7060, (216) 867–4770, Telex #49571332, Fax 216–867–4281.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, 555 4th Street, NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: As an owner/manager of Chima Travel, an Agency whose origin dates back to 1918, I felt that it was my duty to write you indicating my displeasure with the new Consent Decrees that are being considered by the Justice Department.

Before deregulation, when we had a great airline service and extremely reasonable rates, airlines were required to advise travel agents and the public thirty (30) days prior to any tariff changes—whether increases or decreases—and thirty (30) days advance notice for schedule changes.

The consent decrees the Department of Justice is proposing, such as:

—Stop providing customers (and travel agents) with advance announcements of fare increases.

—Stop providing customers (and travel agents) with advance announcements of the end of discount sales (with some limited exceptions).

This will create additional chaos in an already chaotic airline and travel industry.

These decrees will have absolutely *NO* benefit to the consumers (travelers) and will make it impossible for my employees and all other travel agents to properly do our jobs.

Very truly yours,

C.P. Chima,

CTC President

Chima Travel Bureau, Inc.,

118 W. Streetsboro Road, Suite 1, Hudson, Ohio 44236–0237; Hudson (216) 656–2500, Akron (216) 650–1429, Fax (216) 342–0017.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter, I am writing to express my views concerning the consent decrees signed by two major airlines, in order for them to avoid additional legal costs and risks. I am adamantly opposed to the government intervention into my profession. This will greatly hamper my ability as a travel agent to provide my clients with the professional service my clients so greatly deserve, and which we have worked hard to attain.

I feel this lawsuit is ludicrous. Once again, I object to the government's intrusion into my business, by having the airlines sign the consent decrees. I ask for a stop to this immediately! Thank you.

Cordially yours,

Lance S. Chima,

CTC Manager.

Curtis Travel, 7030 S.E. Milwaukie Avenue, Portland, Oregon 97202, (503) 231–0244.

February 12, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schecter: The Department of Justice filing of a lawsuit against the U.S. airlines requiring them to withhold pertinent information on the time limitation on airfare is and has caused us to lose face with many of our clients.

This filing has made it impossible to plan business trips and vacations. You must purchase the ticket now to be sure the fare is not raised or gone altogether. We must be able to know a last ticketing date and last travel date. Most retail advertising has an effective date and a "valid until" date.

This filing causes the airlines to keep secret a very important part of our planning for our customers. By providing our customers with advance announcements of the end of discount sales, we can give them a short time to get organized with the information we are able to provide. By taking away the ability for the customer to plan, we will all suffer from the loss of tourism revenue and related spending.

Travel agents provide over eighty percent of travel purchased in the United States. None of us can afford the loss of not being able to plan ahead.

Sincerely,

Richard B. Curtis,

Curtis Travel.

7535 Bridle Pines Lane, Pensacola, FL 32526.

March 5, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I understand that the U.S. Dept. of Justice is trying to prevent the airlines from warning travel agents and consumers in advance of airline price increases. I am a secretary with a major corporation. My people do a lot of traveling and I make their arrangements, as well as track their costs and assure we are staying within our travel budget. Unfortunately, because my engineers must respond to problems in the field, travel arrangements cannot always be finalized until the last moment and frequently require changes. This new ruling will make it even more difficult for me to plan, much less budget for, most of our travel. I want and need to continue to receive information about future ticket fare changes from my travel agent.

Thank you.

(Mrs.) N.V. Dupuis

Eagle Travel Agency, 1177 College Blvd., Pensacola, FL 32504

March 3, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001

Dear Sir: We take pride in the exceptional service we give our clients. In fact our reputation is built on the quality of that service.

We strongly oppose any ruling limiting the information we receive from the airlines concerning fares.

Not only will this inhibit us from giving the service our clients expect but it will limit the choice of the consumer when purchasing airline tickets.

As we see it this is the first step to regulating the airlines. If that is the purpose then regulate the fares, not the information regarding the fares.

Sincerely,

Gail B. Williams,

Owner.

Sandra L. Laverty,

Manager.

Richard LeBlanc,

Jorja L. Piearson,

Stephanie Larrieu,

Eileen Boyd,

Shelia McKinney,

Jennifer Mansfield,

Patricia Boehlert,

Alise Collins,

Employees.

Earth Travelers, Inc., 683 Dick Road, Cheektowaga, NY 14225, (716) 685–2900

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing about two major concerns that directly effect me as a small businessman (a retail travel agency).

1. The latest consent decrees awaiting approval by a federal judge to prevent the airlines from providing advance announcements of fare increases and advance announcements of the end of discount sales.

These two consent decrees against the airlines (if passed) will greatly impair my ability to provide both my corporate and leisure clients with complete professional travel counseling which is the main crux of my business.

2. I would like the A.R.C. (Airlines Reporting Corporation) to discontinue the selling of A.R.C. Sales Lists to every major airline in the industry. Each airline now knows every aspect of my business because they purchase a weekly/monthly report from the Airline Reporting Corporation which greatly effects my override commissions. About 3000 travel agents feel the same way. An airline should have the information on our sales with their airline *not* every airline we sell. They currently compare us with how many dollars we are giving their competition not how well we are selling their air seats. This should be considered an "invasion of privacy" and should be stopped immediately.

Your comments will be appreciated. Your action will help travel agents around the world.

Sincerely yours,

Daniel J. Drejas,

President & C.E.O., Earth Travelers, Inc.

Edgewood Travel Agency, Inc., 969 Main Street, Walpole, MA 02081, 617/668-2236.

March 3, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; and our clients expect us to be knowledgeable and know before hand, and they trust and have confidence that we are acting in their best interests. How can we maintain this relationship if all we can say to them is to buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers what prices will be in effect when they travel or when a fare would expire. This is depriving the customer of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortchanged and victimized by another capricious DOJ ruling. They do not deserve that! Providing effective date information with ticket price information is a *value-added* service that the travel industry must be able to provide their clients. As a professional travel consultant I oppose the ruling and am making my concerns known via this letter.

Very truly yours,

Betty A. Rignanese,

Co-Owner/Manager.

EG&G, Inc., 45 William Street, Wellesley, MA 02181-4078, Tel. (617) 237-5100.

March 4, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Opposition to Justice Department Ruling on Expiration of Air Fares.

Dear Mr. Schechter: The recent ruling by the Justice Department to prohibit airlines from announcing fare adjustments/changes in advance through the travel agency automation systems—while well intended—is misguided, a disservice to consumers and to put it simply—a bad decision.

This prohibition deprives the purchaser from information it has become accustomed to and is necessary as part of their decision making process. It also puts the travel agent—who is today ticketing over 80% of all airline tickets issued—in a very untenable position, now being deprived of providing the consumer with information the consumer expects. The travel agent again is put in the middle.

I have a perspective as a former travel agency owner, as a consumer, and currently as a corporate travel manager. From each vantage point, this decision is ill-conceived. Yes, the airlines signal their intent on pricing but the benefit to consumers far outweighs any "anti-trust concept" especially when one recognizes that within 24 hours of any announced *or* unannounced pricing change, all major competitors have matched fares anyway. What's the point?

Please rethink this decision. Let us believe that there will finally be some understanding of the way the travel industry operates if not from DOT then perhaps from the DOJ.

Very truly,

Thomas F. McCabe,

Director of Travel Management, EG&G, Inc.

N.B. Your efforts and those of other relevant government departments would clearly be better spent devising a process which would preclude airlines operating in Chapter 11 from disrupting the marketplace with low-ball fares to generate cash. This is a problem—a real problem—not the imagined difficulty of providing the consumer too much information.

The El Paso Convention & Performing Arts Center, Greater El Paso Civic, Convention & Tourist Center, One Civic Center Plaza, El Paso, TX 79901, 915 534-0600. 800 351-6024, In Texas 800 592-6001 FAX 915 532-2963 TELEX 765-022 CVB-ELP.

March 18, 1993.

Mr. Mark C. Schechter,

Chief Transportation, Energy & Agriculture Section, Department of Justice—room 9104, 555 Fourth Street NW., Washington, DC, 20001.

Dear Mr. Schecter: On behalf of the Convention and Visitors Bureau of The City of El Paso, we wish to inform you of our disagreement with the Department of Justice consent decree that will prohibit airlines and travel agents from providing purchases with first and last ticketing dates for fares. This consent decree is a result of the lawsuit brought against eight airlines that were charged with price fixing through the computerized reservations network.

We feel that this decree would no longer protect the rate for an airfare. Example: Individuals could make reservations for a family vacation, only to find when they called back a few days later to purchase the tickets that their fare had increased.

Airlines and travel agents would be prohibited from informing consumers of the end date for discounts fare promotions. Regulatory confusion could result if the DOJ wins its suit. The government would become involved in an endless round of new rules and regulations. This is due to the fact that the airlines have so many ways to communicate pricing information. A Federal Judge would, in effect, become chief price regulator with additional regulations and rules. The cost would increase which would lead to higher ticket prices.

Mr. Schechter, our new president and his administration have said they wish to limit government and streamline the bureaucracy. This decree appears in all aspects to be counter to this new direction.

If you need additional information or assistance, place feel free to contact me.

Tom Caradonio,

Executive Director.

Before the Antitrust Division, Department of Justice

In re: *United States of America*, Plaintiff, v. *Airline Tariff Publishing Company, et al.*, Defendants. Civil Action, No. 92-2854 (GHR)

Comments in Opposition to the Proposed Final Judgment and Comparative Impact Statement

On January 12, 1993, the Department of Justice (DOJ), pursuant to 15 U.S.C. 16(b)-(h), invited public comments in the above-captioned proceeding on the merits of its Proposed Final Judgment (PFJ) entered into by consent of United Air Lines, Inc. and USAir, Inc. (Consenting Parties), 58 FR 3971 (January 12, 1993). The undersigned hereby submit these comments on their own behalf, as concerned citizens.

Under the terms of the PFJ, the Consenting Parties are prohibited from announcing prospective changes in fare amounts and the duration of those fare changes, PFJ at IV(B), V(D), except that announcements of the date on which a fare will cease to be effective is permitted but only through mass media, PFJ V(C).

This comment focuses exclusively on the restrictions set forth in PFJ Sections IV(B) and V (C), (D) as they affect consumers of ticket price information.[1]

For the foregoing reasons, the DOJ should either withdraw the PFJ or rescind Sections IV(B) and V (C), (D).

I. PFJ Sections IV(B) and V (C), (D) Deny Consumers Vital Airline Price Information

By prohibiting the Consenting Parties from announcing future fares and the duration of these fares, the PFJ denies consumers information essential to airline trip scheduling. Ease of access to airline fares prices is critical to consumers who must shop for the best ticket prices. This includes virtually everyone who flies, the prudent business traveler, budget conscious families, and especially the poor and people on fixed income who, although infrequent fliers, may only be able to afford airline transportation during periods when fares are reduced and may require foreknowledge of fare reductions to make preparations for their trips.

By effectively requiring the Consenting Parties to announce fare changes the moment they occur, the PFJ eliminates the primary purpose of travel agents and denies consumers who must shop for low fares freedom of choice. Under the PFJ, travel agents must present consumers with a "take it or leave it" proposition, because they lack

[1] This comment does not address the merits of DOJ's underlying civil antitrust suit against Alaska Airlines, American Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, Trans World Airlines, United Air Lines, USAir and the Airline Tariff Publishing Company pursuant to 15 USC 1.

information needed to counsel consumers about the prudence of buying promptly to avoid fare increases or of waiting for lower fares. Likewise, the PFJ forces consumers to make airline ticket purchases in ignorance, for they are denied information needed to assess possible fluctuations in pricing conditions that could redound to their benefit or detriment. In fact, under the PFJ, although a low fare booked today could be gone tomorrow when the ticket is sold, ticket buyers are kept ignorant of this fact until the actual time of sale.

The PFJ's lone exception does not ameliorate these harms to the public. The exception permits announcements through the mass media of dates when current prices will cease to be effective, but it leave consumers in a quandary, for they are not permitted to know what future fares will be or how long they will remain in effect.

II. PFJ Sections IV(B) and V (C), (D) Violate the First Amendment

In the absence of the underlying suit, the Consenting Parties were willing communicators of future ticket price information and, of course, the public willing recipients of it. The PFJ obstructs the free exchange of commercial price information between the Consenting Parties and the public to the distinct disadvantage not only of the airlines but, as these comments set forth in Section I, *supra*, of travel agents and ticket consumers.

Communicators and recipients alike have cognizable First Amendment rights. *See Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 756 (1976) ("Freedom of speech presupposes a willing speaker. But where a speaker exists . . . the protection afforded is to the communication, to its source and to its recipient both."). Moreover, the Supreme Court understands the importance of consumer price information, reasoning that the consumer's interest in the free flow of commercial information may be "as keen, if not keener by far, than his interest in the day's most urgent political debate." *Id.* at 763. Truthful price advertising has thus been protected under the First Amendment against numerous attempts by the government to suppress its dissemination. *See, e.g., Shapero* v. *Kentucky Bar Ass'n*, 486 U.S. 466 (1988); *Bolger* v. *Youngs Drug Product Corp.*, 463 U.S. 60 (1983); *Bates* v. *State Bar of Arizona*, 433 U.S. 350 (1977); *Virginia State Board of Pharmacy*, 425 U.S. 748.

In recognition of the central role truthful commercial speech plays for consumers, the Court in *Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n of New York*, 447 U.S. 557, 566 (1980), adopted a four-part test to evaluate government action against such speech. This test was modified thereafter in *Board of Trustees of State University of New York* v. *Fox*, 492 U.S. 469, 480 (1989).

Under the test, such government action will be held constitutional if it (1) regulates commercial speech; (2) promotes a substantial governmental interest; (3) directly advances that interest; and (4) is not more extensive in its regulation of speech than is necessary to serve that interest. *Central Hudson Gas & Electric Corp.*, 447 U.S. at 566. Concerning the fourth part of the test, the *Fox* Court held a regulation not more extensive than necessary when it is a "reasonable fit" between the ends advanced and the means chosen. *Fox*, 492 U.S. at 480.

In this case the speech, price information, is of a kind deemed "commercial" by the Court in several cases, including those cited *supra*. The government's interest in ending restraints of trade pursuant to the Sherman Act is of a kind found substantial (even in the face of weighty First Amendment concerns). *See Associated Press* v. *United States*, 326 U.S. 1 (1945). However, the prohibition on announcing future fares and the duration of those fares does not directly advance the government's interest in prohibiting restraints of competition in violation of section 1 of the Sherman Act. Indeed, such restraints could well take place through secret communications even if the Consenting Parties abide by the public strictures contained in the PFJ. While restriction of future fare announcements may encumber some efforts by the airlines to maintain a dialogue about future fares, it is neither a necessary nor a sufficient means to prevent a conspiracy to restrain competition. Hence, it cannot be said to *directly advance* the government's interest.

Likewise, the ban on future fare announcements lacks a reasonable fit with the government's interest in eliminating restraints of competition. The means chosen in the PFJ, suppression of all future price announcements, heavily burdens commercial speech in order to silence that subset of it (future prices communicated to aid in price collusion) which is a byproduct of the activity the government seeks to prevent (restraint of competition in violation of the Sherman Act). The Court has explained that it reviews "with special care regulations that entirely suppress commercial speech in order to pursue a non-speech related policy." *Central Hudson Gas & Electric Corp.*, 447 U.S. at 566 n.9. Because the commercial speech at issue has vital consumer benefits and because the government has at its disposal more direct means to prohibit collusive activities in restraint of competition (not least of which is the underlying suit), the PFJ's wholesale suppression of future fare information does not have a "reasonable fit" with DOJ's Sherman Act goals.

Accordingly, PFJ Sections IV(b) and V(C), (D) fail the four-part test used to evaluate regulations of commercial speech and should therefore be eliminated on First Amendment grounds.

III. Conclusion

In light of the adverse impact on consumers of airline price information and their First Amendment rights effectuated by PFJ Sections IV(B) and V(C), (D), the DOJ should either withdraw the PFJ or rescind the offending sections.

Respectfully submitted, this 15th day of March, 1993.

Jonathan W. Emord,
D.C. Bar No. 407414, Attorney at Law, 3969 Valley Ridge Drive, Fairfax, VA 22033.
Harold K. McCombs
D.C. Bar No. 911131, Attorney at Law, 1820 Jefferson Pl., NW., Washington, DC 20036.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Comments in Opposition to the Proposed Final Judgment and Comparative Impact Statement to be served upon counsel listed below on the date listed below.

Mark C. Schechter, Chief, Transportation, Energy, and Agriculture Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 9104, Washington, DC 20001

Served this 15th day of March, 1993.

Jonathan W. Emord.

Service List

Mark Leddy, Cleary, Gottlieb, Steen & Hamilton, 1752 N Street, NW., Washington, DC 20036

Jonathan B. Hill, Dow, Lohnes & Albertson, 1255 Twenty-third Street, NW., Washington, DC 20037

Marshall Sinick, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, NW., Washington, DC 20044

Peter D. Isakoff, Weil, Gotshal & Manges, 1615 L Street, NW., suite 700, Washington, DC 20036

James R. Weiss, Preston Gates Ellis & Rouvelas Meeds, 1735 New York

Avenue, NW., suite 500, Washington, DC 20006

Emmet J. Bondurant II, Bondurant, Mixson & Elmore, 1201 Peachtree Street, NW., 39th Floor, Atlanta, GA 30309

Thomas Demitrack, Jones, Day, Reavis & Pogue, North Point, 901 Lakeside Avenue, Cleveland, OH 44114

Michael J. Byrnes, Cleary, Gottlieb, Steen & Hamilton, 1752 N Street, NW., Washington, DC 20036

James V. Dick, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, NW., Washington, DC 20044

Michael Doyle, Alston & Bird, 700 Thirteenth Street, NW., Suite 350, Washington, DC 20005

Donald L. Flexner, Crowell & Moring, 1001 Pennsylvania Avenue, NW., Washington, DC 20004–2595

James E. Anklam, Jones, Day, Reavis & Pogue, 1450 G Street, NW., Washington, DC 20005–3939

Edward B. Krugman, Bondurant, Mixson & Elmore, 1201 West Peachtree Street, NW., 39th Floor, Atlanta, GA 30309

Irving Scher, Weil Gotshal & Manges, 767 Fifth Avenue, New York, NY 10153

Henry C. Thumann, O'Melveny & Meyers, 400 South Hope Street, Los Angeles, CA 90071–2899

Paul Ruden, American Society of Travel Agents, Inc., 1101 King Street, Alexandria, VA 22314

Charles F. Rule, Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, DC 20044

"End Well" Travel Inc., 3212 Watson Blvd., Endwell, NY 13760, (607) 754–0550.

February 16, 1993.

Mark C. Schechter,

Dept. of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: We are writing in opposition to the stand that the Department of Justice has taken in regard to fixed pricing by the airlines.

If the consent decrees are approved by the federal judge who is reviewing the consent decree, our ability to provide our clients complete and professional travel counseling would be greatly impaired. This could even put us in a position of committing a crime.

We will be following this decision with great interest because of the seriousness of the effect on the travel industry. It could even force the closing of many agencies.

Sincerely,

Betty R. Rogers,

Owner.

Endres Travel Service Inc., Lafayette Court, 465 Main Street, Buffalo, NY 14203, phone 716/856–0191, Nationwide Toll-Free 1–800–852–6543, FAX 716/856–0779, TELEX 91239.

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: For over 40 years Endres Travel Service has served the needs of our clients in Buffalo and Rochester. Our clients depend upon us to advise them of airfare increases and discounts. We in turn have been in business all these years and continue to broaden our business base because we offer our customers the best values for their money.

We adamently oppose the proposed consent decrees that will drastically impair our ability to provide the counseling of our clients so vital in our business.

President Clinton has pledged to reduce government intrusion into business, the exact opposite of this effort of these current consent decrees.

Business, especially small business, represented by Endres Travel and thousands of others like us need all the support government can provide not under cutting our ability to service and expand our business which is what the consent decrees do!

Respectfully,

Herman John Endres Jr.,

President, Endres Travel Service Inc.

Especially 4 U Travel & Tours, 7440 E. Main Street, Ste. 2A, Mesa, AZ 85207, (602) 985–4200, Phoenix (602) 264–9712, FAX (602) 396–2849.

March 1, 1993.

Mark Schechter,

Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Re: Department of Justice Lawsuit against the airlines.

Dear Mr. Schechter: I feel it would hurt our ability to advise our clients on what's the best purchase for them if we were blind to what was going to happen with the airlines. I feel it is not hurting us to be informed as to what an airline is going to do with their airfares.

Sincerely,

Sabrina Lozier-Gonzales.

Eugene-Springfield, Oregon, Convention & Visitors Bureau, Inc., 305 West 7th, P.O. Box 10286, Eugene, OR 97440, 503–481–5307.

March 12, 1993.

Mark C. Schechter, Chief,

Transportation, Energy, & Agriculture Section, Department of Justice, Room 9104, 555 Fourth St., NW., Washington, D.C. 20001.

Re: U.S. vs. Airline Tariff Publishing Co., et. al.

Dear Mr. Schechter: The consent decree proposed by the Department of Justice could do serious harm to the visitor industry. If airlines and travel agents are prohibited from providing ticket purchasers with first and last ticketing dates for fares, it could dramatically affect the travel plans for those purchasers.

We urge you to reconsider this issue.

Sincerely,

Linda A. Weston,

Executive Director.

Executive Service Travel, Inc., 3803–A State Rd. 26 East, Lafayette, IN 47905, 317–448–6566.

February 23, 1993.

To: Department of Justice, Mark C. Schechter, Room 9104, 555 4th St. NW., Washington, DC 20001.

From: Johnette Davidson/Owner-President, Executive Service Travel.

Re: Fare Filings Within CRS Systems Constitutes Price Fixing by Airlines.

As the owner of a travel agency who is hardpressed to get and keep customers, I find it unbelievable the Federal Government is now going to make it impossible for our travel agency industry to serve the traveling public by removing applicability dates, ticketing deadline dates, and expiration dates on fares! We already sound like double-talking commen when it comes to airfares. Just how do you propose we handle this situation to each and every traveler: "This airfare is only good if your purchase your ticket today . . . no I can't guarantee the fare even until this time tomorrow . . . you must buy it now or risk a possible fare increase."

You are creating an impossible situation for the travel agency industry which sells over 80% of all airline seats!!!

We cannot function in such an environment.

We must have functional dates on airfares in our CRS systems!

Sincerely,

Johnette Davidson,

President.

Exec-U-Travel, Inc., 1309 E. Montclair, Springfield, MO 65804, (417) 882–2011.

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice (Room 9104), 555 4th Street, NW., Washington, DC 20001.

Dear Sir: Let this letter serve as this agency's strong objections to approving the consent decrees in the current federal lawsuit against the airline industry concerning fixed pricing through CRS signaling.

As a representative of our clients travel needs, we feel that our customers will be harmed and without the ability to make an informed travel decision, might opt to reduce their travel or not travel at all. The industry does not need judicial price regulation which is an outcome of these consent decrees.

Sincerely,

A.W. Blume III,

President/Owner.

Fairview Travel Center, Inc., 21695 Lorain Road, Fairview Park, OH 44126, (216) 333–4660.

March 5, 1993.

Mark Schechter,

Dept. of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Being a Travel Agent, I feel strongly against the proposed ruling to prevent airlines from providing complete fare information and first and last ticketing deadlines.

I use this information to inform our clients that the rates are due to change and need to be ticketed in order to obtain a particular fare. The Client is grateful I can relay this information to them, and possibly prevent them from fare increases.

This is valuable information necessary to our sales, and I object to government interference in this matter.

Sincerely,

Nancy Larson,

Travel Consultant.

Fairview Travel Center, Inc., 21695 Lorain Road, Fairview Park, OH 44126, (216) 333–4660.

February 24, 1993.

Mark Schechter,

Dept. of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Mr. Schechter, As a travel agent for the past 17 years, manager for 10 years and soon to be owner, I strongly oppose government interference.

Proposed rulings to prevent airlines from providing complete fare information, advance announcements and ticketing deadlines to both consumer and agent is a great disservice. We use those ticketing deadlines to advise clients that rates are due to change. In most cases they do change, and the client is thankful that we were able to advise them, and save them fare increases. If rates drop at a later date, we also advise that tickets can be reissued and prices refunded. All airlines hold to this rule also.

Please let free enterprise work its course. Please allow the airlines and agents to increase and decrease prices as markets and circumstances dictate, not federal dictates.

Thank-you.

Bonnie Leitch.

Fair Winds Travel

March 1, 1993.

Mr. Mark Schechter,

Department of Justice, 555 4th Street NW., Room 9104, Washington, DC 20001.

Dear Mr. Schechter: I have learned of new regulations proposed by the Department of Justice that could have very damaging consequences for travel agents and for the traveling public. I have included a background document prepared by our professional association, the American Society of Travel Agents, in regard to *U.S.* vs. *Airline Tariff Publishing Co. Et.Al.*

I am not writing to express a view on the merits of the Justice Department's lawsuit against the airlines, but to call to your attention the remedy proposed by the Justice Department. It seems obvious that if the terms of this remedy are applied to the entire airline industry, that consumers would be prevented from having sufficient information to plan their travel and get the best deal for their dollar.

I believe that, at the very least, the Justice Department should extend the period of public comment for the consent decree described in the attachment, because I know that most travel agents and members of the general public are not yet even aware of the severe consequences of the decree. We need more time to study this issue. Any help you could provide us in making this happen would be very greatly appreciated.

Sincerely,

Jean K. Capouya,

President.

March 1, 1993.

Mr. Mark C. Schechter,

Chief Transportation, Energy & Agriculture Section, Department of Justice, Room 9104, 555 Fourth St. NW., Washington, DC 20001.

Dear Mr. Schechter: We are very strongly opposed to the consent decrees now in litigation by the Department of Justice.

This would put an unfair burden on the airlines, and, most particularly, their passengers and travel agents.

Please reconsider this action.

Sincerely,

Mary Jane Roberts,

Farwest International Travel, Inc.

Fayway Travel, Inc., 13044 Bustleton Avenue, Philadelphia, PA 19116–1698, (215) 676–3525, Telex 495–72650, Fax (215) 667–7100.

February 17, 1993.

Mr. Mark Schechter,

Depart. of Justice, Room 9104, 555 4th St NW, Washington, DC 20001

Dear Mr. Schechter: I object to the consent decree which you are requiring the airlines to sign regarding announcement of fare increases. Airlines cannot be run like a K Mart. A degree of regulation is necessary to create order in this very complicated industry.

Unfortunately, laws are passed by legalists, not travel agents, who eventually bear the burdens of these laws passed by men not familiar with the intricacies of the industry.

Very truly yours,

Fay Malissa,

President, Fayway Travel.

Fielding Travel Inc., 771 East Lancaster Avenue, P.O. Box 295, Villanova, PA 19085, (215) 527–8450.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: It has come to my attention that consent decrees have already been signed to date by two airlines which, if approved by a Federal judge, would prevent the airlines from providing advance notice of fare increases and termination of discount sales. While the Department of Justice alleges that the major airlines are engaged in price fixing, I don't think the consent decrees were well thought out.

It is rare indeed to have price fixing on the downside since promotional pricing structures are well kept secrets until introduced. Price fixing on the upside is usually the culprit since no business wants to lose customers to a competitor's lower pricing structure. It is difficult to believe the airlines can be accused of successful price fixing when we have already lost over 80% of our carriers to bankruptcy and/or buyouts.

For the retail travel agency these consent decrees must work against our industry and are again not well thought out. For example, we develop trips for clients nine months to a year in advance to their departure and air costs are an integral part of this planning. The consent decrees would bar us from being able to advise our client of their package costs and could possible make us liable, under the law, if we did advise them.

These consent decrees are not well thought out and their side effects on the entire travel community could be very detrimental. Doesn't the Department of Justice have somebody with some marketing expertise that could point out these errors of judgement before they become fact.

Sincerely,

Richard M. Fielding.

First World Travel of La Mesa, 7520 El Cajon Blvd., Suite 302, La Mesa, CA 91941, (619) 461–9111, Fax (619) 461–4721, 1–800–453–7780.

February 17, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Department of Justice, Lawsuit Against the Airlines.

Dear Mr. Schechter: The staff and myself adamantly oppose the federal courts proposal to remove first and last day ticketing from our computer systems. It is imperative we have this information available to us in order to effectively serve our clientel.

I feel this is an unwarranted intrusion of the government into the private sector and suggest the Department of Justice become more knowledgable of the intricacies of the travel business before they enact laws without considering all the consequences.

Sincerely,

Susan L. Hatch,

President.

Flying Dutchman, 519 So. 6th Street, P.O. Box 487, Sunnyside, WA 98944, (509) 837–6600.

February 16, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

I would like to voice my objection to the proposal of stopping advance notice of fare increases to agents and customers as well as providing us with the end of discount sale dates. This would create a lack of service to our customers and would make it impossible for us to correctly quote any type of air fare. Many times a person will ask for the difference in price if they purchase a ticket today versus next week or next month and without that information for us to accurately quote a rate would be virtually impossible.

I feel this proposal would inhibit my ability to serve my customers and is jeopardizing my business as a whole. Travel and tourism is the largest in this country and a proposal of this nature would cause irreparable damage. Please reconsider this proposal.

Sincerely,

Debby Van Belle,

Owner.

February 12, 1993.

Department of Justice, room 9104, 555 Fourth St. NW., Washington, DC 20001.

Attention: Mark C. Schechter

Dear Judge Schechter: I am writing to you as a travel agency owner in regards to the consent decrees for the airlines.

It renders us impotent with our clients to have no knowledge of fare increases nor advance notices of discount sales from the airlines. Our clients look to us as their agents to keep abreast of these matters and relay the information to them, so that they can benefit from the best savings possible.

I am respectfully requesting that you consider this matter. I am writing you today on behalf of travel agents and on behalf of the consumer. It would be a disaster to have no foreknowledge. So much time would be wasted, nonproductively and cause such frustration for the airlines, the travel agency and the consumer.

I am asking you to consider this issue very carefully and not to approve the consent decree.

Respectfully submitted,

Jan Wickersham,

President/CEO, Foresight Travel Management Corporation.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, Rm. 9104, 555 Fourth St. NW., Washington, DC 20001.

Reference: Against Consent Decrees.

With *constructive* government policies travel & tourism can double by the year 2005.

We at Fort Orange Travel are adamantly opposed to the Dept. of Justices' consideration of consent decrees. This will undoubtedly have an adverse affect on our personal business and tourism in general by preventing us from providing complete and professional travel counseling to our valued clients. Please reconsider—No Consent Decrees.

Mary Ann [Illegible],

Owner-operator, Fort Orange Travel.

4 Seasons Travel, Inc., P.O. Box 851, 130 W. Clark St., Albert Lea, MN 56007, Telephone 507–373–2473, FAX 507–373–1850.

February 19, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Please forward these lines of disatisfaction to the judge in charge of the consent of decrees for the latest price-fixing suit filed against major U.S. Airlines.

We feel it is a dis-service to the consumer to eliminate information regarding the implementation and dis-continuance of specific prices of airline tickets. Other types of retail establishments frequently advertise when sale prices for their products will be dis-continued, yet no action has been taken against them.

In a time when most major airlines are struggling for survival, it is amazing that the justice department would spend time, money, and energy attacking them for price fixing! Isn't price fixing something normally done by major corporations that use the practice to make money, not loose money?

Please use your better judgement and stop this damaging suit that would be detrimental to the airlines, travel agencies, and ultimately the consumer.

Thank you.

Sincerely,

Thomas L. Atwood,

Sales Manager.

4 Seasons Travel, Inc., 1133 19th Avenue, North, P.O. Box 2862, Fargo, N.D. 58108, Phone (701) 293–8113.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Department of Justice Lawsuit Against the Airlines.

Dear Mr. Schechter: I do not feel it is necessary for the Department of Justice to rule in favor of consent decrees:

A. Stop providing customers (and travel agents) with advance announcements of fare increases.

B. Stop providing customers (and travel agents) with advance announcements of the end of discount sales (with some limited exceptions).

The airline industry has suffered major losses in the past few years and I feel that these decrees would only add to their losses as well as to the travel agent industry.

Very truly yours,

Norma Aggergaard,

Mgr., 4 Seasons Travel, Inc.

Four Star Travel, 4849 N. Scott, Suite 18, Schiller Park, IL 60176, (708) 678–2080.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room, 9104, 555 4th St. NW., Washington, DC 20001.

Re: Department of Justice Lawsuit against the Airlines.

Dear Sir, We strongly urge to stop the government from interfering with our ability to be professional travel advisors to our clients by opposing what the Department of Justice is demanding from Airlines, which is an intrusion into our business.

Very truly yours,

Edward H. Atchu,

President.

Frain Camins & Swartchild, 300 West Washington, Chicago, IL 60606, Telephone 812–444–9797, FAX 312–444–9398.

February 10, 1993.

U.S. Department of Justice,

Judiciary Center Building, Room 9104, 555 Fourth St., NW., Washington, DC 20001.

Attention: Mr. Mark C. Schechter, Chief, Transportation, Energy & Agriculture.

Re: Proposed pricing regulations—airline industry.

Gentlemen: As a frequent traveller, who flies in excess of 50,000 annually, I am extremely dependent upon my travel agent. As a business person, I do not have time to peruse newspapers or other media in search of the lowest fare, but rather depend upon the services of my qualified travel agent to keep me apprised of the latest goings on in the industry. I would expect that my real estate clients would depend upon me for that same level of service and information in their search for property.

Please let this letter go on record as my stance as being vehemently opposed to the requirement that changes in price for airline tickets be distributed in the media before any other means, including travel agent reservation systems. This would be a discredit to the travel agency industry and a disservice to those of us who travel frequently on business.

Thank you very much for your attention to this matter.

Sincerely,

Roger F. Ruttenberg,

Senior Vice President—Retail Group, Frain, Camins & Swartchild, Inc.

Franklin Travel Agency

February 12, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001

Re: Lawsuit against the airlines.

Dear Mr. Schechter: I am dismayed by the heavyhanded consent decrees disallowing airlines from announcing fare increases and sale ends. It is your opportunity to break away from Bush administration liberal regulations and resulting economic stagnancy. It is the economy, Mr. Clinton . . . if it does well because you bureaucrats loosen the shackles (and lower taxes), it will improve then you-all will get reelected. If typical counterproductive meddling continues, the economy will limp or collapse and you may not finish the term!

Your choice.

Very truly yours,

Bill Owen,

President.

Frontier Travel, 3601 C Street, Suite 234, Anchorage, AK 99503, (907) 562–2213.

February 25, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: As a travel agency owner and manager and important customer of the airlines, I am writing to let you know that I vehemently oppose the lawsuit the Department of Justice has filed against the airlines alleging that they are price fixing. The consent decree you are asking these already suffering airlines to sign is totally unfair to them and to us, the customers.

Our job as travel professionals is to provide complete and accurate travel information to our clients. We have made major investments into CRS systems to provide this information. To inhibit fare information would be an absolute crime to the traveling public. And the most concerning factor of this consent decree is that the federal court becomes the price regulator of the airline industry.

It is my opinion that if the Department of Justice truly wishes to serve the citizens of

this country in a positive manner then they should take a look at the bankruptcy laws and the absolute misuse of them in regards to the travel industry. I am still trying to understand how an airline can operate in Chapter 11 and be allowed to bottom out the price in a market, all in the name of fair competition.

Please back off of your price fixing lawsuit against the airlines. You will destroy the integrity of the travel industry.

Sincerely,

Sally Huntley,

Vice President.

Fox Travel, 440 Carew Tower, 441 Vine Street, Cincinnati, OH 45202, (513) 621-6000, Fax: (513) 621-3802.

February 15, 1993.

Mr. Mark C. Schaechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schaechter: We would like to urge you not to prohibit the airlines from providing us with advance announcements of fare increases and the end of discount sales.

It is already very difficult for small independent travel agencies to keep clients and operate profitably. One of the services we provide is to let us customers know when fares are scheduled to increase and they often buy tickets when they know a fare increase is eminent. Our letting clients know when a discount sale is ending also motivates them make firm reservations and purchase tickets.

We hope that you will see fit to rule against this additional intrusion into our business.

Sincerely, Fox Travel Inc.

Susan M. Closson,

President,

Galley of Travel, Inc., 125 White Spruce Blvd., Southview Commons, Rochester, NY 14623, Tel: 427-0920, Fax: (716) 427-8166.

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: As a dedicated travel agent trying to make a living, I have to protest the consent decrees the Department of Justice is demanding.

I have been in business for 20 years and pride in the fact that I can provide my clients with quick and accurate information on all their travel needs, especially airfares. It is hard to understand how the advance announcement of fare increases and advance announcement of the end of discount sales will affect price fixing. It will only result in confusion and mistrust, as well as loss of credibility. Consumers will be greatly affected and the travel agent industry will be dealt one more blow.

Limited reregulation of the airline industry may seem to be one solution to the problems we have encountered in the past few years; however, the consent decree issue seems an irrelevant one in lieu of so many other important issues.

I urge you to reconsider this decision and strongly express my objection to this latest government intrusion into my business.

Sincerely,

Lila A. Ford,

President.

Gaslight Travel, Inc.

February 17, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to express my opinion concerning the Department of Justice lawsuit against the airlines. We believe that the Consent Decrees signed by some airlines will harm the consumers, travel agencies and the airlines.

If airlines and Travel Agencies are required to stop providing customers with advance notices of fare increases or dates discount sales will end, then customers will be harmed if they can't make a fully informed decision. Even now when prices increase without notice consumers get angry and many do not travel at all. If they do not travel at all, airlines and travel agencies will be harmed.

On behalf of our customers, the airlines and ourselves we strongly disagree with the limitations currently being considered on advance price notifications.

Sincerely,

David S. Harris,

President.

The First Church of Christ, Scientist, 175 Huntington Avenue, Boston, MA 02115, Telephone (617) 450-2000.

March 12, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to protest the decision of the Department of Justice that prevents the airlines from announcing fare adjustments in advance of first ticketing dates. Many of our employees travel on business. It is a necessity that we budget for these trips. And it is of the greatest benefit to have advanced notice of reduced fares, so as to take advantage of them.

This decision will not only penalize businesses, but will hurt the airline industry, in that almost never can a business buy immediately on learning of a reduced fare. Free enterprise allows "sales" prices to be advertised ahead in all other arenas; citing the Sherman Act in this particular instance strikes me as discriminatory.

Thank you for your attention.

Sincerely,

Harley L. Gates,

Controller.

Gateway Travel Centre, 12225—28th Street North, St. Petersburg, FL 33716, (813) 572-7700, FAX (813) 572-7457.

March 12, 1993.

Mark C. Schechter:

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: Gateway Travel would like you to be aware of our opinion of the new consent decree the Justice Department would have the airlines sign.

Perhaps you do not understand what the consumer is currently faced with when purchasing an airline ticket.

(a.) The average consumer is purchasing the deeply discounted airfares which are "non-refundable".

(b.) As the rules are now written by the airlines, these "non-refundable" fares must be purchased 24 hours after reservations are made.

(c.) The average airline ticket price starts at $300.00 per person.

(d.) The average consumer (not including the business traveler with an expense account) purchases airline tickets to visit friends and/or relatives. Time is needed to co-ordinate schedules.

This new decree would force the average consumer to make a decision for a "non-refundable" high-ticket investment in less than 24 hours. The current 24-hour requirement is already hardship enough.

We would like the Justice Department to explain the consumer benefits provided, by prohibitions airlines from publishing information regarding increases and/or final sale dates for airfares. How can a situation, where airfare quotes can only be guaranteed until midnight that day, be considered fair to the consumer?

We feel the pricing structure used by the airlines is "competitive pricing", as each company is offering the same product: transportation. If the Justice Department views this pricing as "price fixing", we are most interested in your plans for curtailing such in other businesses, such as the oil industry for a start.

Regards,

Gateway Travel Centre, Inc.

Georgetown Travel, 20 West Main Street, Georgetown, MA 01833, Telephone (617) 352-2425.

March 9, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets: our clients expect us to be knowledgeable and prescient, and they trust and have confidence that we are acting in their best interests. How can we maintain this relationship if all we can say to them is buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers what prices will be in effect when they travel or when a fare would expire. This is depriving the consumer of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortchanged and victimized by another capricious DOJ ruling. They do not deserve that! Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide to their clients. As a professional travel consultant I oppose the ruling and am making my concerns known via this letter.

Sincerely,

Earlene K. Chadwick,

Owner/manager of Client Services, Georgetown Travel Agency Inc.

Gillette

March 3, 1992.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Re: Department of Justice Lawsuit against Airlines.

Dear Mr. Schechter: It has come to my attention that a lawsuit has been filed against most major airlines to stop advance announcements of fare increases and discount sales endings. I do not agree with this decision.

Because this discount information is passed on to us by our travel agent, we are able to save money on short-term trips and wisely plan major business trips that are made by our employees. In 1992, our facility spent roughly $200,000.00 on travel in the U.S. The dollars that we saved from notification of airline rate changes was significant. It is beneficial to us to receive the guaranteed rates without having the ticket run at the time of reservation. This gives us flexibility to change flight dates if necessary to accommodate our needs.

On behalf of the St. Paul Manufacturing Center, please be notified that we are very much against this consent decree and do not feel the federal court should become the price regulator for the airline industry.

Sincerely,

Elida R. Olson,

Travel Coordinator.

McKinstry Cruise & Travel Division, Global Express Travel, 120 West Dayton, Edmonds, WA 98020, (206) 771–4466.

February 17, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Will the "tampering" by the U.S. Government into the private business affairs of airlines ever cease? The latest example is the decree which you are requiring major U.S. airlines to sign regarding the method of showing fares in CRS systems. I do not understand how the listing of fares can constitute "price fixing". On the contrary, it would appear that the system which you require through the decree will lead to much greater confusion about prices * * * so far as the general public, as well as travel agents, is concerned.

It is hard enough for travel agents to cope with the constantly changing airfare picture. This simple fact should indicate that there is no "price fixing". Nothing stays constant for very long. It is not uncommon for there to be two or three price changes in a single market in a given *day*.

We cannot serve the general public effectively unless we know all of the rules and restrictions associated with airline ticket prices. How can we get along without being able to know readily through our computer what the last date to ticket a fare is. The public will be irate if they are not given a firm parameter regarding when tickets need to be issued before prices are changing. How does this differ for a sale in any retail store which is advertised to end on a given day? How would it be if the public wasn't told when prices were going to change after a sale. Wouldn't they be a bit more than upset to go to the store and find out that the sale ended last night ("without notice").

From my vantage point as a travel agent, I find the contents of the proposed CRS decree to be very obstructive to our ability to provide a proper level of service to our clientele. I would ask that this whole matter be reevaluated.

Sincerely yours,

Sam McKinstry,

President.

Globe International Travel, Meidinger Square, P.O. Box 1529, Jamestown, ND 58402–1529, (701) 252–5757.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Re: Airline price announcements Ending Dates of airline rates.

Attention: Judge * * * reviewing the consent decrees—Let us do what is best for the customer.

From my viewpoint, it would be impossible to give customers good information which they need to make a decision if the airlines were restricted from giving advance announcements of airfare changes. It would be difficult to give good service if we cannot tell a client when an air fare will be discontinued.

Put yourself in their place * * * because you too are the customer. Compare it to the many inserts in your Sunday paper * * * each perhaps advertising film, juice, toothpaste, filters for your furnace. Each one tells you when the sale is over. The prices may be the same but at least I know that if I want to take advantage of the sale, I have an allotted time to do so. Some of the brands might be different just as airline companies are different but I might like going to one store over another just as a client might choose one airline over another. The bottom line is service.

What is the difference if they advertise the same price? They all have different schedules * * * different attitudes * * * different perks * * * and it is most important that the customer be the beneficiary of good information.

Do not put the customer at a disadvantage. Give us, the travel agents, the tools to provide the best service for our customers by giving them the information they need to make a decision. The prices being the same matters not. Some airlines are creative in the fare structure. If the others copy * * * so what.

Jackie Tarpinian,

Owner/Manager.

Globe Travel, 58 Perinton Hills Mall, Fairport, NY 14450, 716–223–8330, 800–356–5855.

February 19, 1993.

Att. Mark C. Schechter,

Department of Justice, 555 4th St. NW., Washington, DC 20001.

To whom it may concern: The Department of Justice has filed a lawsuit against most major airlines, alleging that they fixed prices by signalling each other of their pricing plans through advance announcements of fare increases and other fare changes. The Justice Department alleges this is being done via the computer systems vital to travel agencies to conduct business.

Two major airline have felt compelled to sign consent decrees in order to avoid a costly legal battle. This consent decree requires that airlines must:

Stop providing customers (and travel agents) with advance announcements of fare increases.

Stop providing customers (and travel agents) with advance announcements of the end of discount sales with some limited exceptions.

If the consent decrees are approved by the federal judge who is reviewing the consent decrees, our ability to provide our clients complete and professional counseling will be impaired. It possibly could be a crime for travel agents to provide this information to clients. The decree if approved would leave the American public at a great disadvantage and in the long run make for more expensive air travel.

I feel this would be government intrusion and interference in an area of our business that is a detriment to our operation of our business. Rather than help the American public this would hurt them.

We should also take a look at the present financial status of all our airlines and we can conclude that if price fixing was in their plan it has not worked.

In your deliberations I ask you to keep the above in mind.

Sincrely yours,

Donald I. Wickham.

Gotaas World Travel, 542 South Dearborn Street, Chicago, IL 60605, Telephone: (312) 939–2904.

February 15, 1993.

Mr. Mark Schechter,

Department of Justice, 555—4th Street, NW., Washington, DC 20001.

Re: Department of Justice, Lawsuit Against the Airlines.

Dear Mr. Schechter: As a Travel Specialist, I cannot properly service my clients without advance announcements of fare increases and date for ending discounts. Our clients invariably want the cheapest airfares and discounts are a valuable sales tool.

As an illustration, about two weeks ago our computer showed a fare of $252.00 with no expiration date shown and that the ticket must be issued within 24 hours. The next morning when I issued the ticket, the fare came out in excess of $360.00. I called the airline who explained this particular fare expired at Midnight and that the fault was the Department of Justice and the federal court for forcing this on the airlines.

My client was furious at me. As a travel specialist, I was the innocent victim of a bad law.

As a practical matter, how can we do our job without advance warning of changes in air fares???

Sincerely,

Patricia Timm,

Mgr.

Greaves Travel Inc., 311 S. Wacker Drive, Suite 950, Chicago, IL 60606, Tel: (312) 726–3222, Fax (312) 408–8070.

February 16, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Lawsuit Against the Airlines.

Dear Sir: We are constrained to write to you in connection with the forthcoming ruling on the above matter.

We understand that the Department of Justice has filed a lawsuit against most of the major airlines, alleging that they fixed prices by signaling each other of their pricing plans through advance announcements of fare increases and other fare changes.

This is absurd and we must express our concern in this matter. Apart from the fact that the decrees required by the Department of Justice will prevent Travel Companies such as ourselves from providing our clients with professional service, these decrees will be detrimental to the general traveling public as a whole.

If the argument put forward is correct then surely no company, including retail stores, can advertise a sale or special offer, if that advertisement states the duration of such a sale, as by your departments definition, that store or retail outlet will be giving advance notice of pricing to its competitors.

In closing we would like you to consider the fact that true price fixing would normally allow the parties involved to make excessive profits. This is obviously not the case as the airline industry as a whole is unprofitable and making substantial losses. Any action to further restrict this industry will damage it severely and could well result in the bankruptcy of more airlines. This would lead to fewer competing airlines and ultimately higher fares, to the detriment of the traveling public, the exact opposite of the Department of Justices intentions.

We sincerely hope that common sense will prevail and this lawsuit will be dismissed.

Yours sincerely,

Shahrookh R Cambata,

President.

Green Bay Area Visitor & Convention Bureau, Inc., P.O. Box 10596, Green Bay, WI 54307–0596 (414) 494–9507, Fax (414) 494–6868.

March 15, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, DC 20001.

After reviewing the Department of Justice consent decree that will prohibit airlines and travel agents from providing ticket purchasers with information on ticketing dates and fares, we have determined that this would be extremely detrimental to the tourism industry. We do not feel that such a procedure should be considered price fixing, rather a service. Such a system would be a disservice to our "tourism industry" customers who travel by air. For personal and corporate budgeting purposes fare effective and expiration dates are crucial to travel planning. Therefore, this information is very important to us in the travel industry to maintain our continued growth and economic viability.

Sincerely,

James A. Van Matre,

Director of Tourism.

February 23, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street, NW., Room 9104, Washington, DC 20001.

Dear Mr. Schechter: I am the owner of a travel agency, and wanted to express my strong disagreement with your action regarding the publishing of tariffs by the airlines. In order to adequately serve our clients, we need to know when the fares will be changing—so that we can help our clients save money. I can't see how you are helping the average consumer with this ill-conceived attack on the airlines and our industry. In the first place, if the airlines were actually involved in price-fixing, they would not be losing billions of dollars and going bankrupt. In the second place, your proposed "solution" to the "problem" will only hurt the customer and those of us who serve them. Think of us as you would an independent insurance agent. We need to have access to the various fares and expiration dates if we are to be able to look for the best deal for our clients.

In today's tough economic climate, it is extremely difficult to remain in business as a small independent travel agency. Please consider the impact that your actions will have on businesses like mine and the people that I employ. Far from being a price-fixing, price-gouging industry, air travel today is a real bargain in terms of prices seen only ten or fifteen years ago.

Those of us who operate full service, ARC appointed agencies generally pay very high prices for the computer reservation systems that we MUST have if we are going to be able to do business and properly serve our clients. Now you propose to remove one of the most vital pieces of information from the systems that we are paying hundreds of dollars a month for. Please leave this system alone and direct your energies into an area where the consumers are actually being injured—such as the rampant proliferation of travel scams operated by unscrupulous con artists.

Sincerely,

James E. Klug,

Greene Travel.

GSS Travel Tours & Tickets, P.O. Box 8923, Tacony Station, 6809 Torresdale Avenue, Philadelphia, PA 19135, Phone (215) 338–7575.

February 16, 1993.

Subject: The feds vs. the airlines.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: The problem with these "letter-writing" campaigns is the fact that bureaucratic recipients too often consider them the pleas of the special interests, and in the new Clinton Administration, there is a implied tone that the special interests will have a difficult time moving inside that "Loop" everybody seems to be talking about so as to sound really "in" and "fed"-like.

The problem with these letter-writing campaigns is that the effort is to call off the dogs.

So, in a few words, call off the dogs.

Unfortunately, the feds are doing something just as "gross" as our wonderful Pennsylvania Attorney General Ernie Preate, who, in an alleged move to advance his candidacy for Governor and get alot of ink, put a bunch of deputies (presumably for big buckos in state funds) on the assignment of attempting to sandbag travel agents in Pennsylvania, and then "expose" them for erratic (but pre-conceived and allegedly devious) handling of airline fares.

On that occasion, I wrote a nine-page letter to good ole Ernie, telling him on page after page how he was nutty as a fruitcake, or words to that effect.

He and his staff simply started with an incorrect premise, and sought not only to "prove" it but expand upon it. In short, Ernie Preate was a fool. He didn't know what he was getting into. There was no "service" to the taxpaying public, the citizenry. At the same time, he fostered an erroneous assumption to the extent that he amplified the falsity. Subsequently, I received a response going on page after page with state documentation, and the only thing I can say, other than the Attorney General's report was completely off base, is that I never heard any more about the "investigation" by that great prober, Ernie Preate. I had told Ernie to stay the hell out of the travel agency business; he didn't have any idea what he was talking about.

As for your gig, federal government, get the hell out of the regulatory industry. There is entirely too much government as everybody knows, and we don't need Big Brother filing lawsuits against airlines alleging price fixing when the airlines, year after year, have difficulty making the numbers come out satisfactorily to stay in business.

Again, in this instance, the federal government is using implied muscle to eight-ball airlines, which already have too many problems to try to keep up with this court BS. It is unfortunate that two airlines already have signed consent decrees, just to save themselves legal fees. (Certainly, I applaud the (losing) Republicans in the last election for scoring the profligate legal profession. And as it turned out, more than half of the new Administration's key appointments are attorneys!)

Get real. What the Department of Justice has done is not unlike the action of Ernie Preate. The goddam sacrosanct federal anti-trust laws certainly are applicable in many areas of industry and society, but they should not be applied universally, every time a federal lawyer thinks so. This is where human beings come in.

And when you consider Harrisburg and Washington, the quest for human beings

amidst the bureaucrats sometimes is a fruitless search. You have too many lawyers in your shop, and they have too much idle time and have to find new ways to "earn their pay".

What you Big Brothers want is to have the U.S. court regulate airline prices.

You want to stop what had been considered routine in the industry (advance announcement of fare increases, and advance word on the end of discount fire sales). This is a very basic tool for efficiency for the travel agent, the airlines and the traveling public. It is not a tool for manipulation, as it appears you allege. We, as travel agents, need to know what the hell is going on, and we need to sound/appear knowledgeable when we discuss travel with a client. We can't do this if the state, and now the feds, are trying to get into our offices, and tell us how to run things. Stay the hell out of my travel agency.

The job is tough enough, with so many changes amidst far more competition than you preceive. It is, without question, dog eat dog as it is. And you want to get back regulating fares? That's what part of this is about.

Before you go off half-cocked, you really ought to investigate (perhaps with a Bob Woodward type, not a bunch of fee-grabbing attorneys), just what it is you think is the problem.

In conclusion, travel agents and the people we serve need to know about upcoming fare increases, and dates when fare discounts are to be withdrawn. That's anti-trust? You guys went to too many law classes. You just don't know what the travel agent's job is, just as Ernie didn't, and presumably still doesn't, although apparently now he is not chasing travel agents but rather gubernatorial campaign funds.

Price fixing?

Go to hell.

Find out the facts.

And just maybe take a look at those anti-trust laws. Should they be that sacrosanct that you guys can come off as kingmakers and world-wide regulators?

What you really have to understand, and I'm going to say it s-l-o-w-l-y for you, is that you do not understand what you are trying to do. You have done an Ernie Preate. You have started with a falsity, and enlarged it bigtime.

Erie Preate, re-visited.

Sincerely yours,

John Pierron,

CTP.

P.S. You don't have to sneak out the side door of the U.S. courtroom. Just tell 'em Ernie Preate got a nine-pager, and your shortcomings were summed up in three.

Gulf Power Company, 500 Bayfront Parkway, Post Office Box 1151, Pensacola, FL 32520, Telephone 904 444–6111.

March 4, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Our travel agency, according to existing contract must provide our employees the lowest cost airline fare possible within time frame allowed. To do this, they frequently must reissue tickets for pending travel due to upcoming fare reductions. On the other hand, we often purchase tickets in advance for pending travel to avoid an upcoming fare increase. It is vitally important to us to be able to take advantage of such changes.

We understand from a Gannett News release that your department has ruled that the airlines can no longer signal via centralized computer their intention to raise fares. This may constitute price fixing; however, we the customer is placed in a posture of not knowing what a trip is going to cost until it is too late to change plans. Unless the fare is advertised (and only a small percentage of fares are advertised), we could make a reservation one day and find out when ticket is issued a few days later that the fare has gone up—without warning. Many times the cost of the fare determines whether a trip can be made. Our travel budget for our various locations is referenced every time travel is considered. Your action plays havoc with our budget and our travel requirements.

If price fixing must be dealt with, please take action to regulate the airline fares, not the information on fares.

Your action not only inhibits our travel plans, but also the ability of our travel agency to live up to the terms of our contract.

Sincerely,

Joseph C. Gilstrap, C.P.M.,

Senior Buyer.

Gulliver's Travel, Inc., 1211 Golf Road, Rolling Meadows, IL 60008–4202, (708) 364–6990, Fax (708) 364–0583.

February 17, 1993.

Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., Suite 9104, Washington, DC 20001.

Dear Mr. Schechter: I am the owner of Gulliver's Travel, and as such, one of the countless hundreds of thousands of small business persons in this country trying to maintain a profitable company in today's difficult economic climate.

As a full service travel agency, the primary benefit we have to offer our clients is service! My company subscribes to the philosophy of going that extra mile for our clients. It is by achieving this goal that we are able to attract new clients while retaining existing ones.

The proposed consent agreement that the Justice Department would have with the major domestic carriers forcing them to abolish all first ticketing dates and most last ticketing dates is harmful to both my agency and just as importantly, our clients.

We would no longer be able to advise our clients of impending fare changes, nor assist them with their travel planning by recommending when it would be financially advantageous to purchase tickets. This decree also negatively impacts on the well-being of my agency because it removes one of the best marketing incentives available to us to stimulate business.

Therefore, in the best interests of consumers and small business persons, I respectfully request that you reconsider your decision and not require the carriers affected by the anti-trust litigation to withhold data on effective fare dates.

Your consideration of this request will be greatly appreciated.

Sincerely,

Thomas R. Schedler,

President.

Happy Traveler, El Toro Road Lake Forest, CA 92630, (714) 830–8817, (714) 830–8811, (714) 586–2737 FAX, 22481–C.

January 22, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 Fourth St. NW., Washington, DC 20001.

Re: Lawsuit Against the Airlines.

To Whom It May Concern: As a business owner I am writing to let the judge who is reviewing the lawsuit against the airlines know that I *oppose* the consent decrees required of the airlines. This action would definitely impair our ability as a travel agency to provide our clients with complete and professional counseling if we are unable to provide basic travel information to our clients. It's outrageous that start and end fare dates would not be available to the agency. Travel agents and their clients need to know this information to make intelligent and informed choices in air travel arrangements without the unannounced "surprises" of fare increases, etc. Clients look to us for our expertise and knowledge to guide them. This is the value-added service that we provide to our customers. I urge you—don't take this way from us!

Sincerely,

Danuta Alle,

Owner.

H.J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230–0057.

February 25, 1993.

Attorney General William P. Barr,

Department of Justice, 10th & Constitution Avenue, NW., Suite 5111, Washington, DC 20530.

Re: Airline Pricing Investigation: Civil Action 92–2854 U.S. District Court, District of Columbia.

Dear Attorney General Barr: In addition to the comments you received from the National Business Travel Association, I'd like to add some further information on the way it will affect the H.J. Heinz Company.

If the above civil action goes through, it will make us issue tickets at the time reservations are made versus at the time of travel thereby causing the company loss of cash flow.

When we receive information on pending price increases we check to see if we have any reservations falling into the price increase parameters. Tickets are issued at that time to save the pending fare increase. This will no longer be applicable so will increase our cost of travel.

We will also be subject to increased clerical workload as more tickets will be issued, reissued, voided and refunded. We will also be subject to the $25–50 change/refund fee that will have to be paid on many of the tickets to be changed or refunded. Based on the annual number of tickets issued

here, this could cost us at least an additional $9,675/year.

The majority of businesses in operation today (including ours) usually have some type of sale. These sales almost always include a starting date and an ending date. Why should airlines be any different?

Sincerely,

Lois Biondo,

Manager-Travel Services.

Heinz Kretschmer Travel Bureau, Inc., 1600 Sylvania Ave., Toledo, OH 43612, (419) 478–8212, Fax (419) 478–5514.

February 13, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW. Washington, DC, 20001.

Dear Sir: I am very disturbed by the recent lawsuits against the airlines by your department. I feel that the consent decrees being required by the justice department from the airlines will severely limit my ability to provide complete and professional travel counseling to my clients.

Sincerely,

Charmaine Cook,

President.

Helft World Travel, LTD.—Luray Travel Bureau

January 3, 1993.

FAX to: Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Dept. of Justice, Washington, DC, via FAX (202) 514–4371.

Re: US vs. Airline Tariff Publishing Company, Action No. 92–2854.

Dear Mr. Schechter: I have reviewed the proposed restrictions of information in fare displays of computerized reservation systems which travel agents subscribe to, which the Department feels have served as a means of signalling between carriers to determine when a impending fare change will be offset by a like change by a competitor for the same city pair.

The proposal is founded on the mistaken notion that travel agents can function in a vacuous environment in counseling a client on a variety of choices of airline tariffs and the public has neither the right to know when a fare is either in or out of force.

The travelling public in the end is to suffer, since the lack of this information which drive the thirst for it, merely elsewhere. I submit to you that there will be other means quickly found to fill the void you intend to artificially create.

These proposed rule changes you would impose on seller and buyer come from a childlike ignorance in the how the true world market functions and reduce the market place to impotence. Your undertaking also presupposes that travel agents are unimaginative automatons, mere scribes in the reservations-ticketing phase of travel.

I submit that a more knowledge based inquiry would quickly reveal how ill conceived this proposal is. It deprives the seller of a necessary parameter to conduct business in an impartial manner, since we are not a dealer based representative of any one carrier. It would quickly debilitate an otherwise well functioning small and mostly woman owner business and deny the travelling public business information it has a right to know of.

Very truly yours,

W. Helft,

Minst Lon, Managing Director.

This fax is unsigned on account that it was prepared using a PC text process and PC installed fax modem.

Hemisphere Travel, Inc., 694 Milwaukee Avenue, Palwaukee Plaza, Prospect Heights, IL 60070, (708) 541–7575 Suburban, (312) 631–1344 Chicago, 800–323–6439 Toll Free, Fax (708) 541–7602.

February 17, 1993.

Mr. Mark C. Schechter,

Dept. of Justice, Room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing in regard to the Justice Departments lawsuit against the airlines.

This intrusion by the government will adversely affect our ability to provide customers with complete and professional travel counseling. This not only will affect our business, but I feel the government has no right interfering in this at all. I heartily urge you to find against the Department of Justice in this matter.

Sincerely,

Jack H. Golen,

President, Hemisphere Travel, Inc.

Herald Travel Service, 79 West Monroe Street, Chicago, IL 60603, Phone (312) 236–4622, Fax (312) 236–5156.

February 17, 1993.

Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., Suite 9104, Washington, DC 20001.

Dear Mr. Schechter: We are in the business of rendering service to our clients, the consumer; and these clients rely on us to give them advice and professional knowledge about purchasing airline tickets. The fact that over 80% of airline tickets sold in the United States are now handled by travel agents indicates the confidence we have earned over the years.

The proposed consent agreement that the Justice Department would have with the major domestic carriers, forcing them to abolish all first and last ticketing dates is harmful to our clients.

We would no longer be able to advise our clients of impending fare changes, nor assist them with their planning by letting them know when it is advantageous to purchase tickets. This makes us and our service much less effective and marketable.

In the best interest of consumers and small business persons, we ask that you reconsider your decision to require the affected carriers to withhold data on effective fare dates.

Sincerely,

Harold D. Crandus,

President, Herald Travel Service, Inc.

Roslyn C. Crandus,

Treasurer.

Heritage Travel, I.B. Davis, Inc., 327 North Broad Street, Fairborn, OH 45324 USA, 513–879–5444.

February 16, 1992.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

In Re: Lawsuit Against the Airlines.

Dear Mr. Schechter: I write this letter to you, pertinent to the above, with a request that my comments be forwarded to the judge who will be reviewing the attending consent decree.

I am aware of the facts surrounding the Department of Justices' lawsuit filed against the major airlines. The end result of the consent decree signed by two of the airlines (in order to avoid further court costs) does seem, on the surface, a way to stop any implied price fixing.

As travel agents we are obliged to keep our customers (both vacation and corporate) fully aware of impending rate increases and the end of special fare offers. The only way this is possible is through the timely information we receive through our computer systems. While we recognize that as the thousands of travel agencies are made aware of this information competitive airlines can and do receive this information, also. How this equates to price fixing is not obvious to the undersigned. I do note that as one corner gas station lowers (or raises) the price of gas the others follow suit; this is also true of grocery items (advertised or otherwise). And, we are convinced this "matching" of prices is true in most "open" businesses. (Car "rebates", Appliance stores and the like.)

Were the government to carry this consent decree to its logical conclusion all commercial businesses who react to competitive advertising could be accused of price fixing. The real problem with disallowing the use of airline computer systems to disseminate information to the potential customer through travel agencies is that while it may very well delay competitive pricing by a day, in the process it will hurt the traveler who can not get information on which to make timely judgements pertinent to his or her travel needs and/or costs.

While we heartily support the government's efforts to stop price fixing, what the consent decree does, (if indeed the airline were "price fixing") is only delay it by a few hours. I must admit that I agree with the president of one airline who said "if we are price fixing, we are doing a lousy job of it as we lost seven billion dollars".

We hope you will reconsider the decree's verbiage and allow our industry to do the job for its travelling customers by not cutting out our only timely source of information. It is apparent that the "cure" the government has decided on has enough "side effects" to "kill the patient".

Very Truly yours,

Iris B. Davis,

President.

Higgins' Travel Service Ltd., P.O. Box 269, 310 S. Barstow St., Eau Claire, WI 54701, (715) 834-2686—FAX (715) 834-2160.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to express my concern regarding the lawsuit recently filed by the Department of Justice against most major airlines.

The lawsuit deals with airlines notifying the public via their CRS systems of the dates air fares take effect and expire. Such information is critical to the traveling public. Without the ability to know when the fares expire we cannot inform our clients. This puts us in the position of telling our customers they must drop what they are doing and purchase the ticket on the day the fare was quoted or run the risk of losing that particular rate.

This is not at all a workable or realistic solution. I urge the Department of Justice to discontinue the lawsuit and allow airlines to share this vital information with each other and the traveling public.

Sincerely,

Joel C. Higgins,

President.

Highland Travel, 158 Railroad Street, St. Johnsbury, VT, 05819, 802-748-8306.

March 8, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: This letter is written to express dismay with the recent DOJ backed changes to the airlines fare filing system. With carriers now complying with your consent decree on airlines pricing, I agree with the Continental spokesman who said the consent decree is "not consumer friendly because it is confusing and withholds information from consumers". The DOJ has effectively made an end run around the consumer's right to receive the best fare. It would appear that your myopic obsession with airline price fixing has resulted in a tackle of the CONSUMER. Congratulations on a touchdown for DOJ, no, for the airlines, no, for the consumer, no, wait a minute, which goal post was the DOJ kicking for anyway?

Sincerely,

Ann R. Mills,

Vice President, Highland Travel, Inc.

Hill's, 1500 - 4th Street North, St. Petersburg, FL 33704, Telephone (813) 896-7461.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Hill's Travel Service wishes to go on record as strongly protesting the proposed consent decrees which would forbid airlines to provide advance announcement of fare increases or the discontinuance of fares.

Such practices would seriously interfere with our ability as travel agents to provide adequate information to our customers and would constitute a total unjustified intrusion by government into the conduct of our business.

It is essential that the Department of Transportation recognize in advance the serious harm that the consent decrees would cause the travel industry. We will very much appreciate any assistance that you are able to provide in preventing this harmful action.

Yours truly,

Jean Hill Franklin.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Just as America's airlines are the basic form of point-to-point public transportation today, so are the travel agencies the basic method for distribution of airline tickets.

With your recent suit against major airlines, alleging price fixing etc., you are virtually blackmailing the airlines to cave in and accept your allegation—as well as cutting off the travel agents from knowing what is going on!

Does it seem right for the airlines to keep their distribution network in the dark?

We have been through a "deregulation" period of taking the government out of the price setting for the airlines. The end results are questionable—has it helped our airline industry? But it is really questionable that you now have the courage to step up and tell the airlines they cannot tell their distribution system (travel agencies) what their marketing plans are!

The "market place" was to be the determinent in the success of a given airline. Now the airlines have an additional burden—that of defending themselves from your suits.

Your "airline management by lawsuit" seems unfair. Would you consider changing your mind about this? As a travel agent looking for ways to make the airlines more successful and helping them out of the sea of red ink, I would hope so.

Cordially,

James R. Ward,

Hinsdale Travel Service, Inc.

Holiday Inn, 13351 S.R. 535, P.O. Box 22362, Lake Buena Vista, FL 32830, (407) 239-4500, 1-800-FON-MAXX, FAX: (407) 239-7713.

March 5, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555—4th Street, NW., Washington, DC 20001.

Subject: Department of Justice Lawsuit Against the Airlines.

Dear Mr. Schechter: This letter is to state my objection to the government's intrusion into the hospitality industry. The Department of Justice's demand that airlines stop providing customers and travel agents with advance announcements of fare increases and end of discount sales can and will drastically damage the hotel business. These rulings will only be the beginning, soon the federal court will become the price regulator for the airline industry and from there, possibly the hotel industry.

I am most definitely *opposed* to the consent decree.

Regards,

Dawn L. Chesko,

Director of Sales.

Holiday Travel, 2112 West 25th Street, Holiday Plaza, Lawrence, KS 66047, 913-841-8100, 1-800-346-4387, FAX 913-841-0077.

February 22, 1993.

Dear Sir: By latest statistics, the travel agency community issues 85% of all airline tickets in the USA today. Consumers count on us for information regarding restrictions, fares and routing. We are the marketing network for the airlines.

To not have the knowledge of advance announcements of fare increases and last ticketing dates at our fingertips, will greatly cripple our ability to market our perishable product. It would be like trying to sell some type of machinery or computer product without directions for assembly included with the purchase. Our discerning and more knowledgeable clientele, demand answers and deserve information to make intelligent decisions for their travel itineraries.

We have lost too many airlines in the past few years. Surely the carriers will monitor themselves in the free market. The competition is so stiff. Please allow free enterprise to work. The competition itself will weed out the weak. We are the sales force . . . for us to be hampered without knowledge would be sheer folly. We train daily to advise the consumer, please don't take our tools away from us.

The federal court does not need to be the price regulator for the airline industry. Please do not allow this industry to be crippled further by taking away the ability of the travel agency community to be the informational and dependable advocate of the consumer. Knowledge and trust are our keys for survival. We differentiate by our creativity of this knowledge.

I urge you to deny the consent decrees that are before you.

Sincerely,

Ruth Hughes, CTC,

President, Holiday Travel, Inc.

Mr. Mark C. Schechter,

Chief, Transportation Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., Room 9104, Washington, DC 20001.

Re: United States vs Airline Tariff Publishing Company Action No. 92 2854.

Dear Mr. Schechter: For travel agents to properly serve our clients we must have every resource available, and this includes all fare information. The prohibitions you are placing on the airlines is harmful to my client and my business.

We sell 85% of all airline seats . . . why would we not be the first informed of any detailed fare information. We are in every community, accessible to all and able to answer all questions. Don't tie my hands.

My business is service. Much of our service is to offer opinions and options on fares. I inform clients when increases are apparent or

when special fares occur. This allows them to benefit from special discount offerings. If the airlines have to inform the media first of any fare changes, you will discourge sales and cause considerable confusion.

Please consider the inconvenience you place on the consumer and the negative impact on my small business. The proposed final judgment is not in the best interest of the traveling public.

Sincerely yours,

Anita A. Johns,

President, Holiday Travel.

Holiday Travel International, 12239 U.S. Route 30, North Huntingdon, PA 15642, (412) 863-7500, FAX (412) 863-7590, USA (800) 775-7111.

Mr. Mark C. Schechter,

Chief, Transportation, Antitrust Division, Department of Justice, 555 Fourth St. NW., Room 9104, Washington, DC 20001.

Re: U.S. vs Airline Tariff Publishing Company Action No. 922854.

Dear Mr. Schechter: Contrary to most responses that I have seen including ASTA and ARTA, I believe that the actions that you are taking regarding the pricing of the airlines is a positive step. I believe that putting an expiration date on any airline fare is a signal to other carriers to follow the originator's guidelines, of when and how much. Eliminate these signals so that pricing would be determined by demand and not carrier collusion.

I do feel that travel agents should have advance information from the airlines for any new fares, so that we could be ready to service the public.

Sincerely yours,

Phil Petrulli,

President.

Homestead Travel Inc., 7 West Main Street, P.O. Box 304, Hummelstown, PA 17036-0304, (717) 566-9561, Group Sales 566-3763, Nationwide 1-800-635-8749, FAX (717) 566-2162.

March 3, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Re: Department of Justice Lawsuit Against the Airlines.

Dear Mr. Schechter: I want to express my agency's concern and disagreement with the fact the Department of Justice is considering approval to the airlines which will allow them to stop providing their customers and travel agents with advance announcements of fare increases.

We are equally concerned with airlines being authorized to discontinue announcements to their customers and travel agents of the end of discount sales, with some limited exceptions.

If the decision of the federal judge is to authorize consent to the airlines, Homestead Travel's ability to provide its clients with complete and professional travel counseling will be seriously impaired.

We are appealing to the Department of Justice and the federal judge hearing the case to weigh heavily the overwhelming hardship that will be placed upon the traveling public and the travel agency community if approval in the matter is extended to the airlines.

Thanking you in advance for consideration to our appeal I remain,

Respectfully yours,

Robert N. Kelley,

President.

Homewood Travel Service, Inc., 18118 Dixie Highway, P.O. Box 1699, Homewood, IL 60430, Phone: (708) 799-5218, FAX. (708) 799-9265.

March 3, 1993.

Mr. Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., Suite 9104, Washington, DC.

Dear Mr. Schechter: I am the owner of two travel agencies, and as such, one of the countless hundreds of thousands of small business persons in this country trying to maintain a profitable company in today's difficult economic climate.

As a full service travel agency, the primary benefit we provide for our clients is service! We all believe that in today's business environment, if everyone is "the best", then being best is not good enough any longer. Thus, it is critically important that we have all of the ammunition available to us to service our customers needs. In this business, as in many others, we not only have to retain our old client base but we must augment it with new customers all of the time.

The proposed consent agreement that the Justice Department would have with the major domestic carriers forcing them to abolish all first ticketing dates and most last ticketing dates is harmful to both my agencies and equally so, to our valued customers.

We would no longer be able to advise our clients of impending fare changes, nor assist them with their travel planning by recommending when it would be financially advantageous to purchase tickets. This decree also negatively impacts on the well-being of my agencies because it removes one of the best marketing incentives yet available to us to help stimulate additional business.

Therefore, in the best interest of consumers and small business persons, I respectfully request that you reconsider your decision and act positively by not requiring the carriers affected by the anti-trust legislation to withhold data on effective fare dates.

Your consideration of this request will be greatly appreciated.

Sincerely yours,

Arthur Stark.

February 23, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., Room 9104, Washington, DC 20001.

Re: United States vs. Airline Tariff Publishing Company Action No. 92 2854.

I'm certain you are receiving faxes from all over the country regarding the Department of Justice action number referenced above; what I'm not certain of is your understanding of the perception of the travel agent as a professional.

The requirement being handed down by the Department of Justice in that the media must be informed prior to any detailed fare information being sent through the existing, computer reservations systems can only harm the travel community; a community made up of many small, family-owned businesses. The essential component of the industry is service, backed and supported by current, complete information from knowledgeable, professional agents. How can we maintain this status if the media passes along sketchy, incomplete fare information to an uneducated public, as opposed to the direct lines of communication to the airlines from which we agents now benefit? We cannot advise, compare, warn, suggest alternatives—all the functions of a good, competent travel consultant.

Mr. Schechter, we must be allowed to continue to function as we have in the past—the first line of communication and information in the travel industry for the public. We must have complete information on fares and rules as they change—increases, expiration dates, time limits, regulations; we must be allowed to be the professionals we fight so hard to be.

Thank you for your time and attention.

Sincerely,

Dawn E. Hurlburt,

President, Horizon Travel.

March 12, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, DC 20001

Dear Mr. Schechter: The consent decree filed by your department, which will prohibit airlines and travel agents from providing ticket purchasers with first and last ticketing dates for fares will punish those who travel, as well as many cities for which travel and tourism is a major economic factor.

To enforce the decree will result in a reduction of travel due to an increase in the cost of travel. It will also require the creation of still another federal bureaucracy to enforce it.

If the Department desires to serve the traveling public, you must rescind the decree and allow the airlines and travel agents to provide the traveling public with all available information.

Cordially,

Don Raulie,

Executive Director, Hot Springs.

House of Travel, Inc., 1800 S. Glenstone, Empire Bank Bldg., Springfield, MO 65804, 417 883-5244, 1-800-627-6267

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Dear Mr. Schechter: I am concerned with the degree of involvement that the Department of Justice has assumed concerning airlines' "price-fixing"

If providing dates as to when airline discount fares will end is price fixing, wouldn't that apply to any sale of any retail or service industry that has a specified time period for a sale?

It is becoming extremely difficult to do business and consumers are becoming disgruntled and negative about an industry that cannot be counted on. As travel agents, we cannot provide the quality of service that our customers should expect if we are prohibited from informing them of fare changes that would affect their travel decisions.

Sincerely,

Linda Simon,

President, House of Travel.

Hudson's Travel Service

February 22, 1993.

Mr Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001

Dear Mr. Schechter Don't throw the travel industry into further chaos and profit losses!! If we allow the consent decree regarding banning advance airline pricing announcements and end date of discount sales to be approved, that's exactly what will happen.

The general public will feel we are "hiding" rates from them to create more profit. More confusion will come to an industry that is already so complex and difficult for clients to understand. Taxes, taxes, taxes and now this! Please stop this insanity!

Sincerely,

A. Carlene Howe,

ASTA President Michigan Chapter

Hyatt Travel Service Inc., Sheridan Hopkins Professional Park, 7 Hopkins Road, Williamsville, NY 14221-3584.

February 16, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001

Dear Mr. Schechter: It has come to my attention that the Department of Justice has filed suit against the major airlines alleging price fixing. Since the consent decrees that two of the airlines have already felt compelled to sign are now being reviewed, I am hoping that the Judge also considers these two points:

1. The decree inhibits my ability to provide my client complete and professional travel counseling.

2. Federal courts have no business being the price regulators for the travel industry

Yours truly,

Patricia Ryan Hyatt,

President, Hyatt Travel Service, Inc.

Hyways and Byways Travel Service Inc., 18 South Eastbourne Avenue, Tucson, AZ 85716, (602) 326-4373.

February 12, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, DC 20001

Dear sir: Stop, Stop, Stop, the Federal Government interference with the airlines!!!!!!

We vehemently oppose the decree to stop providing customers and travel agents with the advance fare increases and the advance information pertaining to the ending dates of discount sales.

This action cripples the travel agent from providing good service and is extremely unfair to the public (our clients.)

Sincerely,

Sandra Thompson,

Owner/Manager.

Ideal Tours Inc., 9245 S.W. 157 Street, Suite 103, Miami, FL 33157-1975, Phone: (305) 253-7066, USA: 800-283-3066, Fax: (305) 253-8559.

February 26, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, 20001

Whereas the travel agent community encounters more and more obstacles to serve the general pubic is entitled to.

And considering that de-regulation has been proven to be a complete disaster for those active in this industry

We therefore would request your attention to the fact that we as Ideal Tours vehemently oppose Federal court approval of concent decrees as signed by United Airlines and USAIR or whichever other airline has or will initiate such case as the price-fixing case.

We have already enough problems.

Thank you very much for your prompt attention.

Siegfried Guth,

General Manager, Ideal Tours Inc.

Imperial Travel Service, Indiana's Complete Travel Company P.O. Box 6009, Lafayette, IN 47903, (317) 447-9321, FAX NO. 317/448-4981.

February 16, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Dear Mr. Schechter: I understand the Department of Justice has filed a law suit against most of the major airlines for alleged price fixing.

From the information that comes into my office only (one) airline is making money and this is Southwest.

If the airlines are fixing prices then why should we stop them when American lost 935 million last year—Delta (365) million.

It would seem to me that if these airlines are fixing prices then the price fixing isn't working as intended in the face of these losses, which has been a total opposite result that occurs with price fixing.

I don't believe that making the Federal Government the price regulator which would follow for the airline industry, would accomplish anything more than to establish another bureaucratic system which finally will never work and would end only in adding to the cost of air travel. We need to kill off bureaus rather than start new ones up.

I believe the system should remain as it now is, without further government intervention.

Very truly yours,

Robert Q. Calloway,

Board Chairman.

Independent Travel Technology Association, 3333 K Street, NW., Suite 110, Washington, DC 20007, (800) 452-ITTA.

March 15, 1993.

Mark C. Schechter,

Transportation, Energy and Agriculture Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 9104, Washington, DC, 20001.

Re: United States vs. Airline Tariff Publishing Company *et al.*, Civil Action No. 92-2854, (D.D.C.) (Revercomb, J.)—Comments of The Independent Travel Technology Association on the Proposed Consent Decree Between The United States and USAir And United Air Lines.

Dear Mr. Schechter: Pursuant to section 16 of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the Independent Travel Technology Association ("ITTA") submits these comments in opposition to the proposed Final Judgment between the United States Department of Justice ("DOJ") and USAir, Inc. and United Air Lines, Inc. (hereinafter "the "Consent Decree") entered in the United States District Court for the District of Columbia.

For the reasons set forth below, ITTA objects to that portion of the Consent Decree which prohibits the airlines from providing advance notice of fare changes through the use of first and last ticket dates. The elimination of the advance notice is not in the public interest and will deny valuable information to travel agents' consumers. In light of the anti-consumer impact, ITTA specifically requests that the DOJ either abandon the lawsuit pending in the United States District Court for the District of Columbia (*United States* v. *Airline Tariff Publishing Co.*, Civ. No. 92-2854 (D.D.C.) (Revercomb, J.)) or, alternatively, modify the proposed Consent Decree so as to ensure that the travel industry and the consumer continue to enjoy the valuable information provided by the industry's use of first and last ticket dates.

ITTA

ITTA is a trade association founded in 1992 by 24 leading travel technology companies and travel agencies. ITTA's current membership includes travel technology companies, travel agencies, providers of travel services, (*e.g.*, airlines, hotels, car rental agencies), and individuals interested in travel technology. ITTA is dedicated to the advancement of travel technology and information systems.

Software Programs

Some of ITTA's members develop and market low fare search software, which assists travel agencies in finding the lowest available fare for a particular traveler's itinerary. Travel agents and corporate customers use these software programs to repeatedly scan all fares, rules and footnotes contained in the Computer Reservation System ("CRS") and other critical databases to ensure that the passenger pays the lowest

possible fare available prior to departure. Currently, more than 20 companies are developing and marketing these programs and hundreds of companies use these or similar programs to provide the travelling public with low cost airfare. ITTA estimates that the annual volume of airline tickets that are currently subject to low fare search procedures is over $5 billion.

The first and last ticket dates are an important factor in the ability of the program to locate the low fare for the traveler. In fact, they are essential items of a quality control program, which are aimed at providing consumers with low cost air fare. ITTA members developed these programs in response to the demonstrated demand of travel agencies and consumers to achieve the lowest fares. Consumers use agencies because of the efficiency of utilizing a central source of information about airline fares and services. However, before the development of low fare search software, agencies could not be certain, in the deregulated airline environment, that they had provided their clients the absolute lowest fare from the hundreds of fares that might be available in a single city-pair. However, by utilizing computer software marketed by ITTA's members, travel agencies routinely take advantage of the first and last ticket dates to provide their customers with the lowest possible fare.

How the Programs Work and Related Benefits

Generally, most passengers make a flight reservation some time prior to actually purchasing the ticket. Once the itinerary has been booked, many travel agents and corporate consumers use low fare search software to automatically scan the CRS and other critical data bases to determine whether, among the thousands of fares in the system, a lower fare has become available for the booked itinerary. The data bases are enormous, containing as many as 50 million fares at any one time and incorporating 100,000 daily changes that affect fare levels. The low fare search process is robust, reviewing numerous elements of the fare structure, including routings, rules, footnotes, legal connecting times, and flight availability. The first and last ticket dates are an integral part of this process.

When a lower fare is found, the passenger is either automatically rebooked at the lower fare, or his name—commonly referred to as passenger name record or PNR—is placed on a queue, *i.e.*, an electronic mailbox, for a reservation agent to call the passenger and rebook the travel. Some programs also identify less expensive alternative routings, *e.g.*, rerouting over a different hub, and place the PNR on a queue for the agent to call the passenger and ask if the new routing is acceptable. If a ticket has already been issued, the PNR is placed on a queue for reticketing.

Besides assisting consumers to achieve the lowest fare, other quality control programs find the first ticket date of a future fare increase which allows agents to forewarn customers of such an increase. Many travel agents use the low fare software to search the CRS for PNRs which fall within the parameters of the fare increase—for example, with respect to flights departing after the fare increase date in a city-pair to which the fare is applicable. These PNRs are placed in queues in the CRS, which are then distributed to individual agents, who call passengers and inquire whether they desire to have the tickets issued prior to the fare increase. During the period between the publication of a fare increase in the critical data bases and the first date of ticketing of the higher fare, travel agents will often issue thousands of tickets at the pre-existing fare, saving clients substantial amounts of money.

The availability of last ticket dates allows travel agents using computer software to postpone ticketing customers until the last day of the low fare, allowing the customer to postpone committing funds and minimizing credit card finance charges. On a daily basis, the agent will run the low fare computer programs to scan the CRS or other critical data bases to see what fares expire that day. This information will be placed in a queue for the travel agent to call the customer to inform him of the need to pay for the ticket or lose the quoted fare. Some quality control software also faxes this information directly to the consumer.

The efficiency of low fare search software has allowed major travel agencies to offer "low fare guarantees" to commercial clients. Such guarantees commit agencies to refund the difference, or some multiple thereof, between the fare offered and another low fare available in the market for the traveler's specific itinerary. Agencies with such policies typically run low fare searches on each itinerary several times before ticketing.

Thus, as explained above, first and last ticket dates have important consequences in the real world of travel. The airlines use of first and last ticket dates allows travel agents to save consumers millions of dollars by issuing tickets prior to the first ticket date of a fare increase and on or before the last ticketing date of a sale or discount fare. They also allow airlines to engage in sophisticated management of their fare inventories. Without this ability, carriers would not be able to offer the highly differentiated fare structure that provides such low fares for personal and leisure travel.

Implications of Eliminating Advance Price Announcements

The terms of the proposed Consent Decree, which prohibit the advance announcement of price changes, will adversely affect the value and usefulness of the low fare software development and marketed by ITTA members. Without first and last ticket dates, the computer software will be unable to make note of pending fare changes—either up or down,—thereby eliminating one of the major components of low fare searches. Without such knowledge, the travel agent will not be able to provide its customer with a guarantee of the lowest fare, eliminating a major benefit of our software. Moreover, the consumer will be required to commit his funds at an earlier date or risk losing their opportunity to purchase tickets at the quoted fare.

The terms of the Consent Decree will not only adversely effect the economic profitability of ITTA's members, but if approved, the Consent Decree would have a detrimental effect on ITTA's customers—the travel agencies and the traveling public. Currently, travel agents quote a fare for the requested itinerary and inform the customer how long the fare will be available. This provides the consumer with the opportunity to see if a lower fare becomes available, as well as, allowing the traveler to delay committing credit until a later date. Between the time the reservation is made and the ticket purchased, the agent is always looking for a less expensive fare, often using the software marketed by ITTA members. Moreover, travel agents continue to search for lower fares even up until the time of departure.

The ban on first and last ticket dates means that the travel agents—ITTA's customers—will not be able to tell consumers how long the fare will last or when a new fare promotion will begin. Thus, there will be no guarantee that the fare booked today will be the one available when the customer goes to purchase the ticket. This is likely to lead to situations where a family makes reservations for a vacation based on a quoted fare only to find that the promotion has ended when it goes to purchase the tickets a few days later, leading to distrust of the industry, hostile feelings toward the travel agents, and possibly reduced travel.

The net result will be that the consumer loses. He can either purchase the ticket immediately, securing the quoted fare, and run the risk of missing a later discount. In addition, by purchasing the ticket early, he loses the availability of credit or cash. Conversely, the consumer could opt to delay ticketing but without any guarantee that the quoted fare will be available when she goes to purchase the ticket. Thus, she runs the risk of paying higher fares.

For the travel agent, this process likely will result in greater inefficiencies and more costs, which means lower productivity and profits. It is quite likely that customers upon learning of a lower fare will request their travel agent to cancel the original ticket and reissue a new one at the lower fare, even if a small penalty is charged or assessed. These extraneous transactions will cost the agent both time and money, preventing the agent from focusing on its main objective—providing consumers with necessary travel arrangements. Moreover, travel agencies that rely on "low fare guarantees" to attract and retain customers will either have to a) reimburse customers or b) discontinue practice. Thus, the elimination of advance announcements will raise the marginal cost of selling tickets.

Conclusion

The requirement in the proposed Consent Decree prohibiting the use of first and last ticket dates is not in the public interest. Rather, it will hurt the very consumer the DOJ alleges to be protecting by the lawsuit and will undermine the economic value of the low fare search programs marketed by ITTA members. For these reasons, ITTA opposes the consent decree and respectfully requests that the Department of Justice either drop the suit against the industry or, alternatively, modify the proposed Consent Decree to allow the consumer to continue to

benefit from the use of first and last ticket dates.

ITTA appreciates the opportunity to submit these comments, and believes it and its members should be part of future reviews of this rule or similar studies. If you have any questions, please do not hesitate to contact us.

Respectfully submitted,

Jeffrey D. Hoffman,

Chairman, Independent Travel Technology Association.

Instron Corp., 100 Royall Street, Canton, MA 02021, (617) 828–2500, Telex–924434, Facsimile (617) 575–5750.

March 8, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Dear Mr. Schechter: I notice in the media the recent ruling by the Department of Justice regarding airline pricing intentions which are allowed to be passed on to the traveler.

In the role of Travel Manager for my firm, I'm disenchanted with the ruling. It will increase paperwork substantially, not only for our travel agent, but for my accounting staff and all our traveling employees. Under the new rulings, we have to order tickets immediately after we book the flight since this is the only way we can be guaranteed the fare. Because changes are an every-day event in business, we get large numbers of tickets that have to be canceled and credits that have to be obtained and recorded.

I appreciate anything you can do to have this ruling reversed.

Very truly yours,

Annemarie Altman,

North America Controller Instrom Corp.,

International Leisure Resources, Inc., 1542 Barclay Blvd. Buffalo Grove, IL 60089, Phone: (708) 215–1385, Fax: (708) 215–1389.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001

Re: Airline Consent Decrees.

Dear Mr. Schechter: I have just read a memorandum issued by A.S.T.A. regarding the lawsuit brought against most of the major airlines by the Department of Justice. Through this memorandum, I have only just realized the impact such "consent decrees" would have on my ability to provide the best counseling to my clients as to when they should consider buying their airline tickets.

Through this advanced information supplied by the airlines, either through their Computer Reservation Systems or through printed media, I am able to consider certain strategies as to the arranging of their itineraries. If this information is suppressed and/or made illegal for me to divulge to my clients, it would effect them through my inability of knowing when something better may be down the road. This effect could then be realized in higher fares and/or severe penalties for their itineraries.

I would appreciate your considering the effects on the general public with reference to the above mentioned issues, if these "consent decrees" were implemented.

Sincerely,

Keith M. Trombetta,

Vice President.

Irish Cruise & Travel, Inc., 6330 SW Beaverton-Hillsdale Hwy., Portland, OR 97221, 503–297–9363.

February 16, 1993.

To: Judge reviewing the consent decrees, Department of Justice Lawsuit Against the Airlines.

Dear Judge: I am writing to you in opposition, as to my understanding, of the decree under your review issued to the major airlines by the Department of Justice.

The fundamental changes instituted by the decree to fare filing in the CRS would cause inaccurate disclosure of fares and fare rules needed to effectively do my job as a travel consultant.

The manner in which airline companies set their airfares in the CRS does not constitute price fixing. In fact, it is no different than any other price setting in our free-market system. Other industries know in advance of new fares, special rates, the dates of their commencement and termination. Why should the travel industry be subjected to such regulation when it is critical to the way in which we do business?

I also understand that under the decree the federal court becomes the price regulator for the airline industry. I object to this government intrusion into our business, keep this industry in a free-market environment!!!

Please help resolve this lawsuit on behalf of travel agents, travelers and airlines.

Sincerely,

Bonnie Beth Reed,

Travel Agent.

Irish Cruise & Travel, Inc., 6330 SW Beaverton-Hillsdale Hwy., Portland, OR 97221, 503–297–9363.

February 12, 1993.

Mark C. Schechter

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Judge: We in the travel business have had enough problems for the past few years without you stopping the little bit of advance information we get and can pass on to our clients about lower fares. If you pass this you should set only one fare and not let any airlines have a sale or be competitive at all. We agree that something needs to be done with the fares but this is not the answer. Please review this with extreme caution. Thank You.

Sincerely,

Arlene D. Irish,

Manager, Irish Cruise & Travel.

Irish Cruise & Travel, Inc., 6330 SW Beaverton-Hillsdale Hwy., Portland, OR 97221, 503–297–9363.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001

Re: Department of Justice, Lawsuit against the Airlines.

Dear Mr. Schechter: I am writing from the point of view of the travel agent. As a travel agent, I am opposed to the consent decrees for the airline pricing that the federal judge is considering approving. The travel business is in business to sell. Like all other businesses who sell product and service they know in advance how must their product will sell for and when the price will change. With the new consent decrees being considered we will not have the same selling privilege of all other businesses. This is totally unfair and is being monitored by the government and not by free enterprise.

Please reconsider carefully before being so rash as to limit our selling ability.

Sincerely,

Lynda D. McCord,

Travel Agent.

Iseri Travel Agency, Orient & Hawaii Tour Specialists, P.O. Box 100, Ontario, OR 97914, Phone (503) 889–6488.

February 12, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Re: Price fixing lawsuit against airlines.

I would like to voice my opinion in opposition to the action taken against major airlines.

First, let me explain that we are paid on a commission basis by airlines, tour companies, car rental companies, hotels, etc. We charge nothing additional to our customers for using our expertise in arranging their travel. Our sole source of income is from the suppliers. As such, our competitive edge is knowing our suppliers and market and using this knowledge to best advantage for the benefit of our client.

Airlines depend on travel agencies for the majority of their bookings, so we, and our clients, have a great deal at stake when major changes in the industry take place. Your actions have seriously impaired my ability to properly advise my clients. When I'm asked "when is the fare going up?", "when is the fare going down?", "should I reserve now?", my only safe answer is "I DON'T KNOW". Travel agents are professionals and as such should have access to pertinent information so we don't have to offer such an unprofessional answer.

We not only sell what our suppliers provide, we sell a degree of service unobtainable from any other source. Our clients bring repeat business and referrals in our door because of this degree of service. Elimination of advance notifications will only hurt American consumers.

It also seems to me that price fixing in the U.S. airline industry is not the problem that some people make it out to be. I have found that consumers have a keen sense for what is reasonable and what isn't where air fares are concerned. When prices rise, we sell fewer tickets, airlines fill fewer seats. Consumers know how much is too much. When fares drop, sales increase, planes are more full. When prices are cut in half (May '92), consumers go wild; they know it's a "killer deal". I believe that the consumer has a lot of control on pricing that airlines only wish they could harness.

One further note on fare wars. When a fare war begins, we are flooded with calls. We take messages and return calls to the overflow. With your new rules, we'll be working until midnight every night since we won't know if the fare is expiring or not. Every day it will be a continual process of "I don't know" answers and keeping our entire staff on overtime until midnight every night (Saturdays and Sundays included) not knowing if a fare is ending. You'll no doubt see a lot of consumers suing travel agents and airlines because they missed out on a fare. We are all busy enough without facing this prospect. Furthermore, I can't afford the overtime.

After all this "deregulation" here we have consent decrees which place our airlines under price regulation by the federal court. "Regulation under deregulation" * * * not an efficient concept.

Thanks for your consideration and for taking the time to review my opinions.

Sincerely,

Mike Iseri.

I.T.I. Travel, 2700 West Broadway, Tucson, AZ 85745, (602) 882-6000.

February 25, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: There is no justice in the lawsuit alleging that the airlines are fixing prices by signalling each other of their pricing plans.

It is important that we, as travel agents, be able to advise the consumers when new fares are going into effect and when they will be expiring. Our efforts to serve the consumers in a professional and helpful manner have been difficult enough since deregulation. This latest intrusion into our business will make it even more impossible for us to represent the interests of the very consumers the courts are trying to protect.

I am adamantly opposed to this ill advised consent decree requiring the airlines to stop providing advance announcements and discontinued dates on fares.

Sincerely,

Mary Gilliam, CTC,

President.

Jan Cave Travel, Newport Square, suite 103, 4625 East Bay Drive, Clearwater, FL 34624, Telephone (813) 531-7706, Fax (813) 531-5555.

February 15, 1993.

Department of Justice

Re: Consent decrees—in opposition—by U.S. Airlines.

Please direct this letter to Mark C. Schechter at the Department of Justice.

As a travel agency that will be affected by the consent decrees signed by two airlines thus far, that would require the airlines to: (1.) Stop providing customers with advance announcements of fare increases, and (2.) stop providing customers with advance announcements of the end of discount sales.

We oppose these decrees. This is complete Government regulation of our business. Please note our strong opposition and send this letter on to the judge who is reviewing the consent decrees.

Yours Truly,

Jan Cave,

Owner and President of JTC of Pinellas, Inc dba Jan Cave Travel, a corporation located in the state of Florida.

Jan Whistler Travel, Ltd., (708) 398-5660, FAX (708) 398-5681.

February 12, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am most concerned that two major air carriers have felt compelled to sign the consent decrees of the Department of Justice Lawsuit Against the Airlines in order to avoid additional legal costs and risks!

I strongly object to the government intruding in my business. In today's austere climate, my clients are very attuned to obtaining the most for less. I and my staff must be able to keep our clients informed by providing the most professional information available. Without advance announcements of fare increases and advance knowledge of the end of discount sales, our clients will be left with the impression that we know very little about the product we are selling, and they will be right!

Every department store, car dealership, computer store, or any provider of consumer goods has sales where the end of the discount sales are announced. If the DOJ feels the airlines are signaling each other their pricing plans then the entire core of marketing in the United States would be affected!

We do not want a client calling us every day to see if the fare has gone up, we do not want to provide incomplete information to our clients and we do not want our clients to make uninformed decisions.

The travel industry does not need the federal court to become a price regulator for the airline industry. Please register our agency's strong opposition to this proposed action.

Sincerely,

Dorothy M. Kucera, CTC,

President

2491 Tee St., Las Vegas, NV 89122.

Dear Sir: I am writing to protest your action to force the airline industries to stop its current system of setting and announcing fares.

Your proposal would cut tourism drastically; and since Nevada is a "tourism state" our economy would suffer significantly; we are dependent on tourism—visitor dollars. Travel agents would be unable to inform the public when fares were to be increased.

Your action would lead to inefficiencies and increased litigation costs which would then be passed on to us—the consumers in the form of higher tickets.

Sincerely,

Nora T. Jansen.

March 15, 1993.

Ms. Earlene L. Causey,

President and CEO, ASTA—American Society of Travel Agents, 1101 King Street, Alexandria, VA 22314.

Re: Opposition to Consent Decree, U.S. vs. Airline Tariff Publishing Co.

Dear Earlene: As Publishers of JAXFAX Travel Marketing Magazine, a 20-year-old travel industry trade publication distributed to 26,000 U.S. travel agencies having a combined readership of over 125,000 American retail travel agents, I wish to go on record as opposing court approval of the consent decree resulting from the lawsuit filed by the U.S. Department of Justice against eight U.S. airlines and the Airline Tariff Publishing Company.

As a management employee of two major U.S. airlines for over 16 years and as a travel industry publisher for the past 20 years, I am convinced that the Federal Government, acting through Federal judges, should not be placed in the position of having to regulate the airline fares as to their "fair value" or for any other purpose.

The supposition that major airlines are in secret collusion to set airfare levels is not realistic and—in fact—simply not possible, given the hundreds of thousands of fares currently in effect between domestic U.S. cities and from/to U.S. and foreign cities.

I consider myself an 'expert' in such matters and believe very strongly that travel agents and consumers should have full access to advance dates of fare announcements and equally important, should be made aware of 'end dates' for discount fare promotions.

JAX FAX,

Travel Marketing Magazine.

Jeanne's Travel Inc., 9605 Anderson Lake Parkway, Eden Prairie, MN 55344, (612) 941-0590.

February 23, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 4th St NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing in response to the price fixing lawsuit filed against the airlines. I feel it necessary to advise you of the negative implications this will have for the traveling public.

In order for travel agents to provide the most timely information to our customers it is necessary to advise them of the impending changes in the fare market. Most people are unable to make immediate reservations and ticket purchases without making some type of planning with family, work, business associates etc. Without advance notice of fare many people will lose out on special fares that do not have expiration dates on them. We also will not be able to advise what the "new" fare will be after a fare change. This too is a disservice to our clients. In not being able to out clients of changes not only will the traveling public lose out, but also the travel agent is unable to provide the best service possible for our customers.

Please reconsider the implication of this lawsuit. I believe it is in the long run not benefiting the public.

Sincerely,

Patty Dressen, CTC,

Manager.

TLC Travel Service, 760 Main Street, Pennsburg, PA 18073, (215) 679–4135, (215) 234–8057, (215) 432–7808.

February 16, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 Fourth St. NW., Washington, DC 20001.

Dear Judge Schechter: I am writing to stress to you how vehemently I object to the government's interference in my business by asking the airlines to stop providing travel agents—and the public—with advance announcements of fare increases and termination dates.

How do you expect us to provide our clients with complete and professional travel counseling without this information?

Please think again before filing suits against the airlines or asking them to sign consent decrees. This is unnecessary interference into our business and we hope you will reconsider your decision.

Sincerely,

Sharon N. Sidler, CTC,

President.

JMB Travel Agency/Cruise Center, 5620 North Kolb Road, Tucson, AZ 85715.

February 25, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 Fourth Street NW., Washington, DC 20001.

Dear Mr. Schechter: Regarding the DOJ lawsuit against the airlines, we strongly resent having our hands tied. We cannot offer the consumer the best and lowest fare and the consumer satisfaction that we promised if it becomes a crime to inform our clients of the starting and ending fares. Why is this any different from notifying the consumers when the Walgreen ad expires. We do not understand your reasoning.

Sincerely,

June M. Barry,

Mgr.

Judy Peil Travel Inc., 147 North Meramec Avenue, Saint Louis, MO 63105, 314–726–2577, FAX: 314–726–2128, TELEX: 216–662.

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 901, 555 Fourth Street NW., Washington, DC 20001.

Dear Mr. Schechter: It has come to my attention that the Consent Decrees under consideration by the judge in your Price-Fixing suit against the major airlines require that airlines stop providing advance announcements of fare increases and the expiration of discount fares. This will cause irreparable damage to our clients.

The ability to tell clients that they must purchase a ticket before a certain date in order to have the lowest quoted fare is probably the most important service that we can render It is invaluable for them to be able to plan their large expenditures with certainty. Many people plan their vacations and other travel around these dates.

Please forward my comments to the judge presiding over this case.

Sincerely,

L.H. Hamilton, II,

Director of Marketing.

Kansas State Travel Service, 226 Poyntz, Manhattan, KS 66502–0102, Telex 988397, Fax 913–537–7104.

February 17, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 Fourth Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing in strong opposition to the consent decrees resulting from the Department of Justice lawsuit against the airlines.

If the consumer doesn't have access to the beginning and ending dates of airfare changes, they will be deprived of information needed to make the proper decisions with their travel plans. It would be unfair to withhold this information from the traveling public.

Sincerely,

Terry Pearson,

President.

Kay Travel Service, 19912 S. Wolf Road, Mokena, IL 60448, (708) 479–2494.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: I have been a travel agent for the past sixteen years and have owned my own agency for the past ten years. My agency has grown from a staff of two to a staff of seven during the past ten years. I feel that this growth is due to professionalism, honesty, and concern for our client's well-being. As the airline industry has become more and more volatile, our jobs have become increasingly difficult. We daily update our information through our computer system, the newspapers, and the trade magazines to try to provide our customers with the best possible service.

I am very concerned that the consent decrees that the airlines are signing due to the price-fixing lawsuit will be very detrimental to travel agents and consumers alike. If we are not allowed to know the expiration date of sale airfares, we will be forced to put pressure on our clients to purchase their tickets when they make their reservation. I feel that this is very unfair to the customer, since many of these discount fares are totally nonrefundable. The customer should be allowed the courtesy to know when a fare expires, so they can make their plans accordingly. It is unfair to the travel agent, because it makes us appear incompetent and/or high pressure sales persons. We will be unable to perform our job professionally without being able to give the customers important information such as the expiration date of a fare.

Department and grocery stores are able to advertise their sales with expiration dates, so why can't the airlines do the same? I hope you will consider the effect of these consent decrees on the travel agents and the consumers when you make your final ruling. Thank you for your time and consideration.

Sincerely,

Sharon Varel.

Kelly N-I Travel, 6352 S.W. Capitol Highway, Portland, OR 97201, Phone 503–244–1158, FAX 503–244–6928.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Sir: You are reviewing the consent decrees furnished by airlines in response to the Department of Justice suit inferring price fixing.

I wish you had insight into the workings of this industry, where we work as long and as hard for every dollar earned as any field in this free society. You would then understand the fragile nature of what we do. The number of failed agencies (and airlines) each year give witness to this.

To approve the decrees would damage us further, as well as the people we work for—the consumers.

I urge you not to approve the decrees in this form.

Sincerely,

Clayton K. Gross,

CTC.

Capt. Guy Kleess, 4015 West Lake Creek, #21, Jackson, WY 83001, (307) 733–8816.

Mr. Mark Schechter,

Chief of Transportation, Energy & Agricultural Section, Department of Justice, Room 9104, 555 Fourth St., NW., Washington, DC 20001.

Dear Mr. Schechter: As an independent businessman and a taxpayer I would like to comment on the federal government's airline anti-trust suit.

My work involves a great deal of flying at my own expense. Being able to know which airlines are offering discounted fares in advance has been a great deal of help in keeping my expenses at a reasonable level. Operating without advance notice of discounted fares would place a large economic burden on me.

As a taxpayer I resent the federal government spending my hard earned money on what I consider a frivolous suit. I was able to obtain tickets at reasonable rates last year. The airlines named in the suits lost money last year. How was I hurt by their actions last year? If they were acting as a cartel or a monopoly they certainly were not very effective. On the contrary the general public was well served by the airlines being able to operate in an unregulated free market system.

I would like to see the Justice Department drop the suit against the airlines. Your time and my money could be better spent on other matters.

Sincerely,

Capt. Guy Kleess.

March 15, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section, Department of Justice, Room 9104, 555 Fourth Street NW., Washington, DC 20001.

Dear Mr. Schechter: The Greater La Crosse Area Convention and Visitors Bureau is a nonprofit organization that represents companies across the Midwest that are involved in promoting tourism.

We are very much opposed to the proposed consent decree developed by the Department of Justice in the U.S. v. Airline Tariff Publishing Co. case.

The impact of that decree in the real world will be catastrophic. Our travel and tourism industry is already impacted by user fees, taxes, and regulations that continue to constrain growth. We do not need another poorly conceived, illogical, and theoretical approach to dealing with the problems faced by our industry.

Government officials should be looking at ways to simulate travel and tourism in order to reap the economic benefits our industry provides. This consent decree would do the exact opposite. The end result would be further confusion on the part of the traveling public, reduced demand, slower economic growth, and higher unemployment.

La Crosse Area Convention & Visitors Bureau.

LaCrosse Convention & Visitor Bureau.

I would hope that the DOJ would put this proposed solution on hold and give the tourism industry more time to formulate alternative courses of action.

Thank you for your consideration.

Very truly yours,

Doug Fox,

Executive Director.

Lake Bluff Travel Center, 30 E. Scranton Ave., Lake Bluff, IL 60044, (708) 295-1590, FAX (708) 295-1376.

March 1, 1993.

Mark C. Schechter,
Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: The lawsuit filed by the U.S. Government against most major airlines for price fixing could represent an unwarranted intrusion on the business of not only the airlines but also on that of many independent U.S. travel agents, who sell as much as 80% of all airline tickets. If the Government prevails, we understand travel agents will be inhibited from properly serving their customers by advising of forthcoming fare increases or the end of discount ticket sales. Travel agents would, in effect, be in the awkward position of being unable to professionally advise their clients on a timely basis as to the best and most economical fares. The Federal Court, rather than the airlines themselves, would thereby become the price regulator for the industry. Particularly in view of the present financial performance of the airline industry, this suit is counter-productive in stimulating airline competition and in returning the industry to financial health.

Very truly yours,

Ilse Crager-Lambert,

Pres. Lake Bluff Travel Center.

Lakeland Travel Agency, 32 Main Street, P.O. Box 636, Netcong, NJ 07857, (201) 347-5577.

February 19, 1993.

Mark C. Schechter,
Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Mr. Schechter: I am writing in opposition to the recent consent decree being forced on the US airlines in regard to price fixing through the computers. Travel agents and there clients rely on the accuracy of the fare information contained in the computer reservation systems. By preventing the carriers from publishing first and last ticketing dates for fares, or setting parameters for sale fares, the Justice Department is punishing the consumer. How can we competently advise our clients as to when to purchase a ticket, when it could easily be pulled at any time. The traveling public is very confused by the present system already, this action further cloud some awfully muddy water.

What major retailer in this country *doesn't* advertise "Sale Monday Only" and let the public know well in advance. Supermarkets always put out their news circulars the week before to let the public know exactly when products are on sale. Maybe Macy's never told Gimbals', but I'm sure they read each others ads. Are we going to punish the public because airlines make this information available by computer? That's the message that this action gives.

This consent decree is blatantly anti consumer. I hope the Justice Department will review this action and truly serve the public interest. Thank you for your attention.

I remain;

Sincerely,

Thomas J. Romano, CTC,

President.

LDI, Ltd., 251 North Illinois Street, Suite 1800, Indianapolis, IN 46204-1953.

March 4, 1993.

The Honorable Mark C. Schechter, Justice,
Department of Justice, 555 4th Street NW., Room 9104, Washington, DC 20001.

Dear Judge Schechter: As a corporate client, we depend heavily on our travel agent to be informed and current regarding airline fares and procedures. It is incumbent upon any business to fly as economically as possible, and without hassle.

I am protesting the recent lawsuit filed by the Department of Justice against the airlines which states: Stop providing customers and travel agents with advanced announcements of fare increases. Stop providing customers and travel agents with advanced announcements of the end of discount sales (with limited exceptions).

The effect of the proposed policies by the Justice Department will have a significant impact on the value of service provided by our travel agent. Simply stated, it deprives us, as a consumer, of useful travel planning information and will serve to depress consumer demand.

The proposed action places the Justice Department in the role of price regulator for an industry that is already depressed.

Beyond these issues, this action is in direct opposition to our national interest in restoring a healthy economy. Why propose policies that further restrict a business's ability to compete, and put limitations on established levels of service expected by customers?

As a company with locations throughout the United States, LDI, Ltd. appreciates the watchdog responsibilities of the Justice Department. However, it is necessary to strongly express our concern regarding the impact these proposed policy changes will have. Your cooperation in listening to these concerns is important to all corporate travelers.

Sincerely,

Andre B. Lacy,

Chairman, Chief Executive Officer and President.

9404 Shipboard Ct., Las Vegas, NV 89117.

March 12, 1993.

Mark C. Schechter,
Chief of Transportation, Energy and Agriculture Section, Department of Justice, Room 9104, 555 Fourth Street NW., Washington, DC 20001.

Dear Sir: I'm writing because I'm unalterably opposed to the contemplated new fare rule making it illegal for the airlines to give advance notice to travel agents and consumers of fare changes.

I'm a retired travel agent and can tell you from experience that advance notice was the only way to service your clients properly and also avoid unfairly gouging a client due to price changes daily. This process helped keep airline prices in line.

I also object strenuously to not allowing travel agents to write the new tickets using the vouchers the airlines will give those who paid for tickets and travelled during the time of the anti-trust suit period. All the judge will be doing is giving the airlines a new promotion making this judgment or settlement a farce. The vouchers should be good on any airline involved in the suit and ought to be handled through travel agents or the airline at the consumers option.

Please tell the judge it is a mistake to pass the rule as stated above and don't price the average consumer out of airline travel.

Jean Lentini,

9404 Shipboard Court, Las Vegas, NV 89117-0242.

Lewis Travel Service, P.O. Box 400, 700 S.E. Kane St., Roseburg, OR 97470, (503) 673-6621, Telex 5106009226.

February 15, 1993.

Mr. Mark C. Schechter,
Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Department of Justice, Lawsuit against the major Airlines.

Dear Mr. Schechter: We are protesting the proposed action by the Justice Department to compel the airlines to hide effective dates of air fares.

This proposed action limits our ability to provide the consumer with important information and works very much to the detriment of travel agents and in particular to the consumer by withholding this vital information.

We protest this unprecedented government intrusion into our business. It is inconceivable how the government under the guise of protecting the consumer from price fixing, attempts to keep the consumer ignorant of what and when to purchase.

This memo is to be forwarded to the Honorable Judge who will be ruling on the consent decrees by the Airlines. Thank you.

Hans Spross,

Owner, Lewis Travel Service.

Lincoln School of Commerce, 1821 K Street, Lincoln, NE 68508, (402) 474–5315 or (800) 742–7738.

February 23, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: As a travel educator, ASTA member and former travel agent, I am concerned about the lawsuit that alleges price-fixing by airlines through advance notices of fare changes and oppose the consent decrees that will require the airlines to stop providing consumers with this advance notice.

I don't understand how advance notification of fare increases and expiration dates can harm the consumer. The computer reservation systems are tools that travel agents use to secure reservations for these consumers, as well as revenue for the airlines and income for their agencies. Reliance on the CRS to provide up-to-date information, including specific date restrictions on fares, is critical to our industry.

The airfares are volatile enough. By eliminating advance notice of fare increases and expiration dates, travel agents will not be able to make recommendations, and travelers will not be able to make fully-informed decisions. Unfortunately, many travelers will elect to "wait-and-see" what happens to the airfares, possibly resulting in *not* traveling at all.

Please listen to the professionals in the travel industry, that tell you that these consent decrees are not in the best interest of the consumer.

Sincerely,

Leslie Huerta,

Department Head, Tour & Travel.

Lyndhurst Travel Consultants, Inc., 5148 Mayfield Road, Lyndhurst, OH 44124.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to you on behalf of the staff of Lyndhurst Travel Consultants, Inc.

This staff is in definite opposition to the consent decree.

The travel industry has done nothing but get worse since the deregulation years ago. It has made it almost impossible to be a profitable business. The paperwork involved with the reissues of airlines tickets when the airlines have their fare wars, is ridiculous.

Now that things are deregulated, it is important that we be able to have a knowledge of effective and expiration dates for the different fare levels and also for the last date of issue for those fares. It is the only means we have of providing a complete and professional travel counseling service.

If this decree is what you want the airlines to comply to, then you should have never deregulated it years ago.

Sincerely,

Esther E. Samuelson,

General Manager.

LilliMar Travel Inc., 768 Johnson Highway, Norristown, PA 19401, (215) 275–2111.

March 5, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Hurrah for the Department of Justice. It is about time someone tried to take control of this mess we call the Airline Industry.

First, let me identify myself. My partner and I have been in business for 12 years and for 12 years we have tried to hold on by the tip of our teeth like pit bulls. We are and have been members of ASTA.

We want you to know that we are in favor of more control in order to bring some sanity into the airline industry. Besides the pricing, let me mention another few horrors.

1. Over crowding on airline flights. Most travel like the old stearage days. Few can afford business or first class. It is a horror for elderly people with aching bones. Tall people, fat people, sick people, paranoid people. No room to move for proper circulation. This is INHUMAN.

2. The planes are dirty.

3. Not enough restrooms for the amount of people they carry. Business and First Class is a different story. It is a case of STEARAGE again for the masses.

4. The food is unsanitary and tasteless. It used to be a part of a nice trip to have lunch or dinner on board. NO MORE.

I sincerely hope that you will be able to affect some change. It would seem to me that this great United States, should have an air industry worthy of the Great Country, it represents.

You have our agency's support,

Sincerely,

Lily Giuffrida,

President,

Marion Brandon,

Treasurer.

Magellan Travel, Inc., 4146 Crossgate Drive, P.O. Box 36300, Cincinnati, OH 45236, (513) 793–9500, FAX: 513–793–7632, Telex: 495–26–47.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Lawsuit Against the Airlines.

Dear Mr. Schechter: I am writing you to voice my serious concern about a consent decree that is being reviewed in regard to legislation which will greatly hinder the way in which I handle my travel agency and the way in which my agents and I service our clients.

If we are forced to stop providing our customers with advance announcements of fare increases and stop providing our customers with advance announcements of the end of discount sales, we will be doing them a great disservice. Is it possible that it may even be a crime for travel agents to provide this information to our clients?

As this consent decree is being reviewed, I urge you to study this and study the ramifications that will come if this decree is granted. I strongly object, along with other members of our industry, to this government intrusion into my business.

Thank you very much for your attention to this letter. All of us in the travel industry will be awaiting the decision to be made.

Sincerely,

Jackqueline M. Mack, CTC,

President.

Maha Travel International, Inc., 2701 North Rocky Point Drive, Tampa, FL 33607, Telephone: (813) 289–2525, Fax: (813) 286–2137.

Mark C. Schechter,

Dept of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

February 15, 1993.

Dear Mark: I am a concerned travel agent who feels the law you are trying to pass is ridiculous. It should not be up to the courts to control airline fares and pricing. The travel industry already has enough problems, we do not need any more to add to the burden of our job. So, please, stay out of this!

Sincerely,

Patricia K. Caldevilla,

Manager.

Mainline Travel, 14525 Highway 7, Minnetonka, MN 55345, 612–933–5700 FAX 612–939–0569.

February 18, 1993.

To: Department of Justice,

From: Ivar Siquveland, CTC.

Re: Lawsuit against the airlines.

The recent lawsuit filed by the Department of Justice against the major U.S. airlines recently appears to be one of the most ridiculous suits in recent years. If this method of marketing and pricing (through the computer) is an example of anti-trust price fixing violation then why are all the carriers struggling. It would seem to me that if price fixing were a problem then the airlines would be profitable rather than bankrupt or on the verge thereof. Furthermore, if this in fact, is an example of price-fixing wouldn't every department store that announces their 3 day sales in the newspaper be in violation.

This suit, if successful would eliminate the opportunity for the travelling public to make informed and logical decisions regarding their travel plans. It is absurd and one more

way the government will regulate the citizens of this "free" nation.

Ivar Siqveland, CTC.

Mainline Travel, 300 Prairie Center Drive, Eden Prairie, MN 55344-5382, 612-941-5400 1-800-950-1952 FAX 612-941-6940.

February 15, 1993.

Mark C. Schechter,
Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: As a member of the great field of tourism, I personally feel that the airlines are having a most difficult time, as well as the retail agent, in keeping our collective heads above water.

It would seem to me that perhaps, the government should deal on more constructive issues and not try to strike another blow at the airline industry.

In other words, please reconsider the "consent decree that the airlines must stop providing their customers with advance announcements of fare increases and also, stop announcing the end to discount sales". Please realize that we do need advance information because service is our business.

Please refrain from government intrusion into my business.

Yours sincerely,

Ms. Marva Nelson, CTC, DS.

P.S. The letters stand for Certified Travel Consultant and Destination Specialist—both indicate advance study of 4 years.

Mainline Travel, 680 Pittsford-Victor Road, Pittsford, NY 14534, 716-248-2530, FAX 716-248-2709.

February 15, 1993.

Mr. Mark C. Schechter,
Department of Justice, Room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: My agency is in the top 10 in Rochester, New York. We are a $5MM plus agency, and we are experiencing many complaints from business and leisure travellers relating to our inability to provide advance announcements of fare increases as well as notice about the end of such prices.

The Department of Justice should stay out of such areas!

The airlines would surely fight back, but several have already given in to avoid the high cost of litigation. They are financially strapped and can't afford an expensive battle.

I hope you receive many such letters from concerned companies.

Sincerely,

Buck Schottland,

President.

Majestic Travel Ltd., 6116 Mulford Village Drive, Rockford, IL 61107, (815) 226-8900, FAX (815) 226-0261.

February 18, 1993.

Mr. Mark C. Schechter,
Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing this letter to express my *opposition* to the consent decrees limiting our knowledge of fares for the airlines. This is a direct intrusion into our business. We pride ourselves in our ability to provide our clients with the best service and cost control for their travel dollar. The pending lawsuit severely curtails our ability to give complete and professional travel counseling. Under no circumstances should the federal court become the price regulator for the airline industry, or any other industry, for that matter.

Sincerely,

Lisa L. Wilhelmsen,

President.

Maki Travel Center, Inc., 5202 Washington, Downers Grove, IL 60515, (708) 852-8803, Fax (708) 852-8904.

February 19, 1993.

Mark Schechter,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., Suite 9104, Washington, DC 20001.

Dear Mr. Schechter: As the owner of MAKI TRAVEL CENTER, I am one of countless hundreds of thousands of small business persons in this country trying to maintain a profitable company in today's difficult economic climate.

As a full-service travel agency, the primary benefit we have to offer our clients is service! My company subscribes to the philosophy of going that extra mile for our clients. It is by achieving this goal that we are able to attract new clients while retaining existing ones.

The proposed consent agreement that the Justice Department would have with the major domestic carriers, forcing them to abolish all first ticketing dates and most last ticketing dates is harmful to both my agency and, just as important, our clients.

We would no longer be able to advise our clients of impending fare changes nor assist them with their travel planning by recommending when it would be financially advantageous to purchase tickets. This decree also negatively impacts the well being of my agency because it removes one of the best marketing incentives available to us to stimulate business.

Therefore, in the best interests of consumers and small business, I respectfully request that you reconsider your decision and not require the carriers affected by the anti-trust litigation to withhold data on effective fare dates.

Your consideration of this request will be greatly appreciated.

Sincerely,

Connie A. Semaitis,

President.

February 21, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW, Room 9104, Washington, DC 20001.

Re: United States vs. Airline Tariff Publishing Company Action Number 92 2854.

Dear Mr. Schechter: I was advised today by my travel agent of the above proposed legislation. As a consumer and frequent traveler I am not happy with the restrictions this will place on my travel agent. I fully rely on my travel agent for my travel needs and I do not wish the burden of being the one to inform my agent of what fares currently exist versus my agent being the first to know. What's the sense in this?

It is my understanding that travel agents issue over 85% of the airline tickets in this country, thus I am not alone in my dependence (voluntarily) on my travel consultant's expertise. It is my opinion that the proposed legislation will hamper my travel agent's ability to provide me with the information I require. As a consumer and businessperson I am against this legislation.

Sincerely,

John Maller,

Owner, Ross McArthur Salon.

The Mark Travel Corp., 8907 North Port Washington Road, Milwaukee, WI 53217, (414) 351-3553.

March 12, 1993.

Mr. Mark C. Schechter,
Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Department of Justice Lawsuit Against the Major Carriers—Consent Decree.

Dear Mr. Schechter: The Mark Travel Corporation, headquartered in Milwaukee, Wisconsin, is the owner of a number of travel related divisions, including Funway Holidays Funjet, a domestic and international tour operator, and Vagabond Travel, a chain of five local travel agencies. Accordingly, we interact with the major carriers as both a wholesaler and retailer. Similarly, we conduct business as both a seller of air transportation and a tour operator partner with many of the major carriers. The Mark Travel Corporation appreciates the opportunity to submit its comments regarding the proposed consent decree between the Department of Justice ("DOJ") and the major carriers which would effectively prohibit advance announcements of fare increases and of start and end dates of sales promotions.

As a tour operator, our Funway Holidays Funjet division sells both charter air and scheduled commercial air packages to travel agents nationwide. The Department of Transportation ("DOT") governs charter air transportation and requires specific disclosure of sale terms and conditions, including promotional dates, for purposes of consumer protection. While the DOT has recently examined softening the charter air regulations involving escrowing of monies and contract provisions, it is still a paramount concern that the consumer is well apprised of the terms and conditions of the charter air package he or she is purchasing.

It appears from the consent decree requirements that the same consumer protection interest is lacking in the regulation of commercial air. While the DOJ may have concluded that the major carriers were engaging in price fixing by signaling fare changes to each other over their computer reservations systems, it has not considered the effect of not requiring the carriers to post and comply with specific start/end dates for sales promotions. We believe that while the supposed signaling may be curtailed, the ability to change start/end dates and essentially cut off sales promotions on a split second will be used by the major carriers to the detriment of travel agents and consumers.

We understand that this requirement will not apply to media advertising. This exception may effectively deter the carriers from engaging in print advertising, especially since the costs are high and carriers are looking for areas to cut cost. The carriers will then have the maximum flexibility in promoting sales over their computer reservations systems and the travel agents and consumers will be in the dark as to how long a particular promotion will last and whether to book quickly.

Tour operators who operate scheduled commercial and charter air packages will also be at a disadvantage in reacting to the marketplace and maintaining their competitive status. If the major carriers do not engage in print advertising, then tour operators, as well, will have to speculate as to the pricing component and sales duration of these carriers' programs. Charter air operators certainly have to feel at a significant disadvantage since they have to comply with extensive disclosure requirements regarding their own sales promotions as mandated by DOT regulations.

The trade press has regularly reported that certain carriers are rather begrudgingly responding to fare changes, often times complaining that carriers protected by bankruptcy laws have been given too much life. Given the turbulent time that the aviation industry is currently weathering and the varying effects that the major carriers are experiencing, it is difficult to imagine collusive and pervasive price fixing on the part of the major carriers stemming from the signalling of fare changes in computer reservations systems. These airline pricing practices have been in place in one form or another since deregulation and are furthermore found in other industries as competitive and volatile as the airline industry.

While leisure travel has maintained its popularity, today's consumers remain cautious about spending. They are also knowledgeable about their rights. Furthermore, they are looking for the best deal. This is the profile of the people travel agents are servicing today. Travel agents are trying to accommodate them by searching out the best deal, but the agents still have to relay their options with a multitude of conditions, including restrictions regarding advance booking and refundability, deposit requirements, cancellation fees, and additional surcharges and taxes. The Department of Justice's proposed consent decree will now add to this list of conditions the fact that the travel agent has no idea how long a particular promotion will run and whether the carriers are proposing price changes. A reasonable consumer may begin to question the usefulness and service orientation of the travel agent.

The Mark Travel Corporation maintains that the effect of the consent decree's provisions will be of the greatest detriment to the consumers, who will be unable to plan their travel with the knowledge that they purchased their tickets at the most advantageous time. Since fare increases would occur without warning to consumers, a fare quoted or booked today may not be available when the ticket is bought tomorrow.

The Mark Travel Corporation appreciates your consideration of its comments.

Very truly yours,

Greg R. Takehara,

General Counsel, The Mark Travel Corporation.

Martin's Travel, 12821 Mountain Avenue, Chino, CA 91710, (714) 591–8491, 2764 Hamner Avenue, Norco, CA 91760, (714) 279–6180.

February 24, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, D.C., 20001.

Dear Sirs: We at Martin's Travel want to express our objection to this government intrusion in our business. By filing this lawsuit against most of the major airlines, alleging that they fixed prices by signalling each other of their pricing is ridiculous and effects all of this in the Travel Business. If this is approved we won't be able to provide our clients complete and professional travel counseling.

Sincerely,

Barbara Martin.

Office of Travel & Tourism, 100 Cambridge Street, Boston, MA 02202, (617) 727–3201, FAX: (617) 727–6525.

March 5, 1993.

Mr. Mark C. Schechter,

Chief, Transportation Energy, and Agriculture Section, Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, D.C., 20001.

Dear Mr. Schechter, I am writing you today to express my concern about the proposed consent decree, resulting from the recent U.S. v Airline Tariff Publishing Company.

I am the Travel Trade Services Coordinator for the Massachusetts Office of Travel and Tourism, the state agency mandated with the promotion of the Commonwealth of Massachusetts as a tourist destination. The advent and implementation of such a policy would most certainly be detrimental to tourism throughout the United States.

The public must be given ample time to assess and comment on the DOJ action, as they are the ones who will be most directly affected. Although the ultimate objective of the action is to protect the public interest, as written it will only serve to confuse and complicate the fare issues, thus adversely affecting the entire industry.

It is not my intention to say that changes are unnecessary, simply that the decree, as written, will serve to damage the industry and anger the public.

The government should be looking for ways to stimulate the travel and tourism industry which has as much potential to provide economic benefit to all areas of the country as any other industry. I ask that time be given for the industry to seek alternative solutions to this problem which could have a less detrimental effect than the proposed DOJ action.

I thank you for your time and consideration.

Sincerely,

Fred Clifford,

Travel Trade Services Coordinator, Massachusetts Office of Travel and Tourism.

Office of Travel & Tourism, the Commonwealth of Massachusetts, 100 Cambridge Street, Boston, MA 02202, (617) 727–3201, FAX: (617) 727–6525.

March 24, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing in response to the proposed consent decree developed by the Department of Justice in the U.S. v. Airline Tariff Publishing Co. case.

As the Director of the Massachusetts Office of Travel and Tourism, the state's marketing office, we are very much opposed to this consent decree for several reasons. As it stands now, the travel and tourism industry is effected by rules and regulations on airfare, car rentals, accommodations and just about anything related to the business. Imposing more restrictions and constraints on the travel industry would severely limit the business and inhibit economic growth. More regulations would lead to increased costs and inefficiencies passed directly on to the consumer, thus, resulting in fewer travelers, decreased revenues and eventually unemployment.

Our goal in this business should be to make travel accessible, uncomplicated and attractive for the consumer. More confusion and higher costs imposed on an already highly regulated industry would be destructive. We urge the government to work with the industry, not only assisting the consumer, but serving as a catalyst, spurring increased travel.

We hope that the Department of Justice reviews this case with all the consequences in mind and will work with the travel and tourism industry professionals to formulate a solution that could benefit all.

Sincerely,

Sarah Graham Mann,

Director, Massachusetts Office of Travel and Tourism.

Mary Lohan McNellis, 560 Braemar, Naperville, IL 60563.

February 3, 1993.

Dear Mr. Schechter, On 2/28 I read an article in the Chicago Tribune regarding the suit filed by the Justice Department concerning airfare.

Yesterday I placed a 24 hour hold on 7 tickets for a family vacation. The ticket agent told me that the fare would probably expire at midnight tonight. The quoted fare sounds quite reasonable so I appreciated her warning. Because of that warning I was able to urge all members of my family to see if they can get vacation time. If I did not know about the possible expiration of the fare I might have felt less urgency in finalizing my plans.

Medfield Travel Service, Inc., 511 Main Street, P.O. Box 126, Medfield, MA 02052, Boston (617) 326–7295, Medfield (617) 359–7953.

March 3, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; our clients expect us to be knowledgeable and precient, and they trust and have confidence that we are acting in their best interests. How can we maintain this relationship if all we can say is buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers what prices will be in effect when they travel or when a fare would expire. This is depriving the consumer of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortchanged and victimized by another capricious DOJ ruling. They do not deserve that. Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide to their clients. As a professional travel consultant I oppose the ruling and am making my concerns known via this letter.

Yours very truly,

Helen M. Reynolds,

Owner/Manager, Medfield Travel Service, Inc.

Mercury International Travel, Inc., 10 Rockefeller Plaza, New York, NY 10020, Phone 212–586–4081, FAX 212–265–5998, Telex 4955044 MERC UI.

February 23, 1993.

Mr. Mark C. Schechter,

Chief Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: I attach a suggested letter from ARTA, an Association of Retail Travel Agents of which we are a member.

Suffice it to say, that if you as an individual were calling upon anyone in any industry to provide a "best service" you most certainly would wish them to have full background information at their disposal.

The fact is that the DOJ is simply not applying a professional mentality in their approach to this specific program. Oversight by government has some value but without proper judgment it is totally destructive and this is the situation in this instance.

Very truly yours.

William B. Parkinson,

CTC Chairman of the Board.

January 20, 1993.

FAX, 703 413 2225,

Association of Retail Travel Agents, Attn: Adriane D. Green.

In response to your Fax concerning the unwarranted position of the Department of Justice regarding airline price fixing, we agree with your comments 100% and were in fact wondering how best we could present our objections to the interception of our responsibilities towards our clients and indeed to the airlines.

Obviously the U.S. Department of Justice is trying to prevent the airlines from warning and advising travel agencies and consumers in advance of airline price increases or decreases. Obviously we must be totally against this because it will make it virtually impossible to plan and budget travel arrangements. It is imperative that we continue to receive the information as soon as it is determined by the airlines as to applicable fare changes and any other pertinent information which permits us to properly serve our clients.

We would add that if the Department of Transportation is "doing their job" they will communicate this information to the Department of Justice and ask them to discontinue interfering with their responsibilities as they are obviously working cross purposes.

Extremely concerned.

William B. Parkinson, CTC

Chairman of the Board, Mercy International Travel, Inc.

Middlebury Travel, 9 College Street, Middlebury, VT 05753, Telephone (802) 388–6768, In-State toll free 800–640–6768, FAX 802–388–2994.

March 22, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; our clients expect us to be knowledgeable and prescient, if all we can say to them is buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers what prices will be in effect when they travel or when a fare would expire. This is depriving the consumer of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortened and victimized by another capricious DOJ ruling. They do not deserve that! Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide to their clients. As a professional travel consultant I oppose the ruling and am making my concerns known via this letter.

Sincerely,

Terry Parker,

Manager, Middlebury Travel Management.

February 21, 1993.

Mr. Mark C. Schechter,

Chief Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 4th Street NW., room 9104, Washington, DC 20001.

Re: United States v. Airline Tariff Publishing Company Action Number 92 2854.

Dear Mr. Schechter: I was advised yesterday by my travel agent of the above pending legislation. As a frequent traveler I must protest the restrictions that will be placed on my travel agent in providing me with fare information.

I rely on my travel agent to know the fares and all restrictions. I do not wish to have to open the newspaper and figure it out myself; that is why I employ the services of a travel agent. I understand that travel agents issue over 80% of the airline tickets in this country, thus I am not alone in my desire to rely on my travel consultant's expertise. It is my opinion that the proposed legislation will hamper my travel agent's ability to provide me with the information I require on a weekly basis. I want to go on the record as a consumer against this legislation.

Sincerely,

David Midlick,

President.

Monroe Travel, Monroe Plaza 19983, SR 2 Monroe, WA 98272, 206–794–7887, 800–527–7390.

February 19, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I object to government intrusion into my business in regards to airline regulation where they cannot

a. provide customers with advance announcements of fare increases or

b. provide customers with advance announcements of the end of discount sales.

With these new laws we cannot as travel agents provide our clients complete and professional travel counseling.

Please reconsider this new law.

Sincerely,

Deryn J. Fulton,

Owner, Monroe Travel.

Mooretours International Inc., 132 West 9th, P.O. Box 507, Hays, Kansas 67601, 913/625–7515, or 913/625–7600, Fax 913/625–7574.

February 18, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Hon. Mark C. Schechter: I am writing to express my concerns regarding the proposed restrictions to be placed on airlines regarding pricing. If these restrictions are imposed, our customers will be harmed and greatly limit their travel if we are not able to give them information to enable them to make fully informed decisions. We do not need more restrictions on an industry already so heavily burdened and struggling to survive in today's market.

Sincerely,

Georgia Moore,

President, MooreTours International Inc.

Mooretours International Inc., 132 West 9th, P.O. Box 507, Hays, Kansas 67601, 913/625–7515, or 913/625–7600, Fax 913/625–7574.

February 20, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Hon. Mark C. Schechter: I wish to express my concerns regarding the proposed restrictions to be placed on airlines regarding pricing, the advance notice of fare increases, decreases etc.

If these restrictions are imposed, our customers will be harmed and greatly limit their travel if we are unable to give them information to enable them to make informed

decisions regarding their travel plans. We deal with individuals in our area who are concerned about the costs of services and will not travel if they are not given all information pertaining to the choices available to them.

Our industry is already heavily burdened with rules and regulations. We do not need more regulations in today's market.

Sincerely,

Kate Schmidtberger,

Office Manager.

Moore Travel, 530 First Street, Encinitas, CA 92024, (619) 436–1168.

March 2, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9102, 555 4th Street NW., Washington DC 20001.

Dear Mr. Schechter, This is to inform you that the agents at this agency object to the consent decrees which would allow airlines to stop providing customers and travel agents with advance announcements of fare increases and that also allows them to stop providing customers and travel agents with advance announcements of the end of discount sales.

We feel that these decrees are an intrusion upon our ability to provide our clients the most complete and professional service.

We would appreciate your taking these comments into consideration.

Sincerely,

Yoland Wallig,

Owner/Manager.

Jane Fischer,

Travel consultant.

Kaley Martinez,

Travel Consultant.

Brenda Scott,

Travel Consultant.

Carol LeBoef,

Travel Consultant.

Morris Travel, Corporate Headquarters, 240 East Morris Avenue, Salt Lake City, Utah 84115–3200; 801/487–9731; Fax 801/483–6677.

March 15, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Department of Justice, Room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Re: *United States* v. *Airline Tariff Publishing Co., et al.;* Civil Action File No. 92–2854.

Dear Mr. Schechter: On behalf of Morris Travel, and as a consumer, I am writing to voice my strong opposition to the lawsuit filed by the Department of Justice against the airlines and the proposed Consent Decree that the government is seeking to impose on the industry. In our view, the Consent Decree would have a profound negative impact on consumers, our customers, and the travel industry. As you no doubt are aware, agencies such as ours are the main connection between the passenger and the airline, and not incidentally, we are the individuals who have to deal with the traveling public and we are held accountable by our customers. We respectfully request the decree not be approved by the court.

Morris Travel is a full-service travel agency headquartered in Salt Lake City, Utah. We currently operate 22 offices in Utah and Idaho, employing over 400 people and generating in excess of $140 million in annual sales.

We understand that the Consent Decree would prohibit the domestic carriers from giving advance notice of fare increases to passengers and travel agents. In addition, we understand that the Consent Decree would place severe restrictions on the ability of airlines to run short-term sales and notify consumers when they will end. These prohibitions, we believe based upon our experience, would have a devastating effect on consumers, the industry and our business, for several reasons.

First, neither airlines nor travel agents would be permitted to warn passengers and potential passengers of the date of a pending airfare increase. This prohibition will undoubtedly result in many persons who make reservations for a trip at a quoted price being forced to pay more for the ticket because prices went up, without notice, before purchasing the ticket. Any suggestion that travelers can protect themselves by simply purchasing the ticket at the time the reservation is made is not an acceptable solution. Many travelers change their reservations several times before actually purchasing the ticket, while many others simply do not have the money available to purchase the tickets at the time the reservation is made.

One of the services we regularly offer our customers is advice of pending fare increases. Through our newsletters and "blast faxes" we advise customers when an airline is planning an increase and suggest they buy now and save. This is of particular concern with the many small and family owned businesses in Utah and Idaho. There is a pioneer ethic here and the vast majority of our business travelers are from the small and family owned enterprises. Cash flow and cost savings are everything to these companies. By allowing a traveler the ability to hold off ticket purchase, we help their cash flow, and in many cases, reduce interest payments on their credit line.

I received a call today from a client expressing their frustration of their inability to plan their travel purchases effectively as they feel they must now buy everything on the spot. This company regularly changes reservations prior to departure. Morris Travel now must issue and deliver tickets with every change to prevent unknown fare increases. This is costly to our agency as we receive no additional compensation for our work, time, and expense.

Perhaps the most serious consequence of the proposed rule changes prohibiting advance notice of pending airfare increases is the inability of travel agents to advise clients savings for their companies.

Second, consumers would be denied any information about when a promotional or lower fare, would end—unless an airline advertised the same information in media of general circulation. Because of the high cost of advertising, airlines would be unable to publicize more than a fraction of promotional fares. We believe that many promotional fares may never be initiated by the carriers because of this additional cost. Moreover, if the advertising is meant to provide notice to the passenger or travel agencies such as ours, I can tell you that we sell tickets over a very wide section of the country and reviewing advertising, or attempting to keep track of advertisements, is not a realistic means of providing information to us or the traveling public. Certainly advertising in Salt Lake will not tell travelers in Los Angeles about a fare to Chicago that may be available, and neither will advertising in Salt Lake provide information to a passenger in Tokyo who is flying to Los Angeles. This requirement of the Consent Decree seems like a needless and thoughtless exercise.

Of particular concern to consumers and agents in the Mountain West is the distance many must travel to purchase airline tickets. Given the many credit card scams and the liability of agents who take credit card sales over the telephone, most agencies will only accept credit card sales when the actual plastic card is presented. Inasmuch as airlines will not be permitted to advertise effective dates for their discount promotions, many consumers are concerned they will miss unknown ticketing deadlines. They are afraid the promotion will end before their check can arrive in the mail or before they are able to drive to a travel agency. Although this is the exception and not the rule, some customers are forced to drive anywhere from 100–200 miles round-trip from rural areas.

Without knowing the effective ticketing dates, rural consumers are disadvantaged and sometimes realistically prohibited from taking advantage of discount travel offers.

As travel agents we are placed in the uncomfortable position of not being able to really take care of our clients and advise them regarding fares. We can only say, "This is the price today and I have no idea when this offer will expire." Perhaps it is not a pressing concern for those in a metropolitan area, but for agents and consumers in geographically displaced areas, the proposed rules are a nightmare.

Third, consumers would be denied the ability to plan and budget their vacations. Many consumers that our agency deals with prefer to postpone purchasing airline tickets until the last moment in order to minimize their credit card finance charges. Under the new policy proposed by the government, consumers could do this only at the risk of being forced to pay a higher fare.

Fourth, we believe that the remedy sought by the Department of Justice would actually increase the cost of airline travel. As noted above, curtailing the discount promotional fares would directly cost consumers more. In addition, this re-regulation of the industry proposed by the Department of Justice would undoubtedly increase the airlines' cost of doing business, which would ultimately be passed on to consumers.

Our clients rely on our professional advice and assistance in helping them to secure their air travel at affordable prices. Prohibiting advance announcements will severely limit the information we can provide to our customers, who in turn will be unable to make informed decisions. As I indicated, we are the ones who hear directly

from our customers about their complaints. Since some of the airlines have started not using first and last ticket dates we have experienced customer complaints implicating Morris Travel as the source of not providing ticketing date information. In particular, clients are unable to purchase their air tickets at times convenient to them but feel compelled to rush in that day. In some cases, we see people forgoing travel because of their inability to purchase tickets in a timely and convenient manner. This is particularly true in rural Utah and Idaho.

We therefore respectfully request that the Consent Decree not be approved, and that the airlines continue to be allowed to advise the public in advance before fares go up and before promotional fares are terminated. The information we presently receive, even though on occasion it may be changed, at least gives us and our customers information upon which we can advise them that a fare may end and a new fare may appear. The system you have proposed leaves us in the blind.

Sincerely,

Larry Gelwix,

Executive Vice President, Industry Relations.

MTA Travel, Inc., General Offices, P.O. Box 1079, Holland, Michigan 49422–1079, 616–396–1492.

February 15, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Judge Schechter: It has come to our attention that the Department of Justice is alleging that most of the major airlines are price fixing through signaling each other of pricing plans. We do not understand why the airline industry is being singled out for advising its clients and travel agents when the "sale is over", when other businesses do this routinely.

If the airlines were guilty of price fixing through collaboration, the prices would be set high enough to enable them to make a profit. No other industry demonstrates such foolhardy fairness to our clients as to reissue higher priced tickets at lower prices because fares have been lowered.

In order for us to service our clients we must and should know when sale prices will be terminated and fares increased. We object to this government intrusion into our business where it has no benefit to the public but puts an undue restraint on an already essential, struggling industry.

Respectfully,

Kenneth N. Zuverink,

Director of Marketing.

6318 Apple Lane, Freeland, WA 98249–9463.

08 March 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 – 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: It has come to my attention that the Department of Justice is preparing to file a suit against the major airlines, alleging price-fixing by them.

Although now retired and my frequent business travels are over, I still intend to do a lot of traveling by air, and depend on my travel agent to provide me with the latest information on best schedules and prices.

The planned suit by the Justice Department, as I understand it, will halt advance information to the travel agents, thereby negating timely and necessary information for them to be passed on to me, their client, for my benefit.

I submit the planned suit is unnecessary and contrary to the best interests of the consumer.

Sincerely yours,

Jan Denis Mulder.

Muscatine Travel, 104 W. Second Street, Muscatine, Iowa 52761; Phone (319) 263–9131, 1–800–543–9036.

February 23, 1993.

Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., Suite 9104, Washington, DC 20001.

Dear Mr. Schechter: It has recently come to my attention that the Justice Department has issued a proposed consent decree that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings. This would be disastrous for my company.

As the manager of Muscatine Travel, I wish to go on record to protest in the strongest possible terms, this proposed resolution of the price-fixing lawsuit against those carriers. The effective dates of fares are vital pieces of information that my agents need to have access to if we are to have the ability to properly assist travelers with their planning.

Travel agencies do not have a tangible product to sell. What we have to offer our clients is service! To remove one of the prime pieces of information our clients require for them to be able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, will injure both consumers and travel agencies.

Your consideration of this request is greatly appreciated.

Sincerely,

Fran Johnston,

Manager.

Naperville Travel Bureau, Washington at Gartner, Naperville Plaza, Naperville, Illinois 60540; (708) 375–0400.

February 19, 1993.

Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., Suite 9104, Washington, DC 20001.

Dear Mr. Schechter: It has recently come to my attention that the Justice Department has issued a proposed consent decree that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings. This would be disastrous for my company!

As the owner of Naperville Travel, I wish to go on record to protest in the strongest possible terms, this proposed resolution of the price-fixing lawsuit against those carriers. The effective dates of fares are vital pieces of information that my agents need to have access to if we are to have the ability to properly assist travelers with their planning.

Travel agencies do not have a tangible product to sell. What we have to offer our clients is service! To remove one of the prime pieces of information our clients require for them to able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, will injure both consumers and travel agencies.

Your consideration of this request is greatly appreciated.

Sincerely,

Robert H. Poole,

President, Naperville Travel Bureau.

National Business Travel Association, Inc., 1650 King Street, Suite 301, Alexandria, VA 22314; (703) 684–0836, FAX (703) 684–0263.

March 11, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: *U.S.* v. *Airline Tariff Publishing Co.;* Proposed Final Judgement and Competitive Impact Statement.

Dear Mr. Schechter: These comments are submitted by the National Business Travel Association (NBTA), regarding the Proposed Final Judgement and Competitive Impact Statement (CIS) referred to above which was published in the **Federal Register**, Vol. 58, No. 7 (Tuesday, January 12, 1993).

NBTA is the largest U.S. Association representing volume commercial purchasers of travel services in all 50 states as well as internationally. Major U.S. airlines estimate that business travelers account for 40% of all seats purchased, and nearly 60% of total revenues. Direct Members include 889 travel managers for corporations, other companies, associations, and partnerships, as well as non-profit, multinational, and other organizations. Affiliated members include nearly 6,400 business professionals and 41 regionally based organizations. By most recent estimates, NBTA members account for nearly $30 billion in total annual travel purchases, including airline transportation.

NBTA is a membership organization, and monitors public policy issues which are directly relevant to our members, including possible changes in regulations, such as the Department of Justice (DOJ) Proposed Final Judgement.

NBTA and its members support a vigorously competitive and financially viable air passenger transportation system. Competitive air passenger pricing is vital to assure that reasonable choices are available

for business consumers and all other travelers. A healthy and vibrant air transportation industry is essential both U.S. and worldwide commerce.

NBTA has reviewed the Proposed Final Order and CIS from that perspective. NBTA has not had access to DOJ data, research, or studies underlying its allegations of anti-competitive behavior and cannot comment on the validity of the Department's allegations or conclusions.

NBTA is strongly opposed to collusive and/or other anti-competitive behavior which might result in higher fares for business travelers. However, as now structured, the proposed Final Judgement will have a substantial impact on NBTA members and all other travelers.

Unless Revised, the Decree Will Unfairly Increase Business Air Costs

When airlines announce fare increases, either system-wide or for specific city-pairs, agencies can scan all existing Passenger Name Records (PNRs) for records that involve that airline or city pair. When they identify PNRs which have not been ticketed[1] agencies can issue tickets to lock in the lower fare prior to the scheduled first ticketing date.

The converse practice is also possible. Agents can review all tickets scheduled to be ticketed before a fare decrease to determine whether a delay in ticketing might result in savings for their customer.[2] These practices help produce meaningful savings for our members and all business travelers.

For example, in the last "Fare War" last May and June, agencies specializing in commercial travel management (as well as many retail agencies) were required to work many long hours to accommodate requests, analyze PNRs, and re-issue tickets in order to produce savings for clients. Hundreds of thousands or millions of tickets were either delayed until the first ticketing dates of announced discounts or canceled and re-issued to realize millions of dollars of savings.

Business travelers and their companies need advance information on fares in this era of repeated business fare increases and numerous restriction on ticketing. We need to know beforehand whether fares are or are not effective, especially in planning meetings and other scheduled business activities. Surprises in the form of unexpected fare increases would be highly disruptive and costly.

Accordingly, NBTA opposes the specific remedy proposed in the decree as impractical and contrary to the interests of business travelers and their companies. However, there may and should be alternative techniques and regulatory oversight to avoid the harmful effects alleged in this case.

NBTA appreciates the opportunity to submit these comments, and believes it and its members should be a part of future reviews of this rule and similar studies. If you have any questions, please do not hesitate to contact me in order to arrange a meeting with the NBTA.

Respectfully yours,

John H. Hintz

President, NBTA.

National Business Travel Association, Inc., 1650 King Street, Suite 304, Alexandria, VA 22314; (703) 684–0836.

[1] Fares are "locked in" at time of actual ticketing.

[2] Agencies also can review tickets which have been issued but not used to determine whether it might be cost effective to contact travelers and ask them if they want to return their ticket and have it refunded and reissued at a lower price.

January 8, 1993.

Mr. Bradley Lui,

Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 9104, Washington, DC 20001.

Re: Airline Pricing Investigation: Civil Action No. 92–2854, U.S. District Court, District of Columbia.

Dear Mr. Lui: On behalf of the National Business Travel Association (NBTA), I would like to thank the Department of Justice for its invitation to comment on the Department's airline pricing investigation and proposed Final Judgment in the above captioned action.[1]

NBTA is the nation's largest association of corporations, partnerships, non-profit organizations and other purchasers of commercial airline transportation. NBTA supports a vigorously competitive, safe and financially viable airline passenger system. We also support elimination of anticompetitive and/or collusive behavior which may result in artificially high fares charged to businesses or other consumers of airline transportation.

We believe it is important, however, that the Department recognize procompetitive aspects of the current system. Agencies specializing in business travel compete for commercial users by assisting in savings achievement. One important technique is to analyze announced fare changes and determine whether their clients can benefit from immediate ticketing, in the case of announced fare increases, or delated ticketing, in the case of announced fare decreases. This practice allows companies to "lock in" savings available through lower fares scheduled to expire, or avoid higher prices by issuing tickets before higher fares take effect. In both cases, the ability of competitive agencies to react to data published in the CRSs results in needed savings for our members. Advance notice in pricing changes, especially increases, is also important in selection of carrier.[2]

NBTA has not conducted independent studies or had access to the research, evidence and findings on which the Justice Department based its case. We cannot comment on the veracity of allegations in the Complaint and related documents. However, to the extent the activities described in the Complaint may have occurred, NBTA recognizes that proposing fare changes which are never offered for sale could be used to dissuade potential competitors from initiating or lowering fares, particularly in hubs dominated by a single carrier.

[1] This letter supplements our initial inquiry by my letter of December 15, 1992 to Attorney General Barr.

[2] While we rely on agencies to assist in flight and fare information, we control and select choice of supplier in most cases.

To the extent that anticompetitive pricing practices by the defendant airlines occur, NBTA supports restrictions to reduce the ability of carriers to engage in such conduct. We are concerned, however, that prohibition of all first and last ticketing dates may prevent our members from achieving important savings by responding to announced fare changes.

To the extent carriers formally (United, USAir) or informally (Northwest) agree to follow the rules in the proposed Final Judgment, it will be important for the Department to monitor continuously city-pair markets. The Department should gather data to see whether fares in hub markets tend to decrease in line with fares in other more competitive markets, and, more generally, whether consumers benefit overall through lower fares.

NBTA welcomes this opportunity to comment on the Department's pricing investigation and related civil action. We believe we have an important continuing role to assist the Department in review of the effectiveness of this Judgment on our members, as commercial purchasers of air transportation.

Should the Department be interested in meeting with me and members of our Association to discuss these matters further, we would be pleased to be available.

Sincerely,

John H. Hintz,

President.

In the United States District Court for the District of Columbia

Civil Action No. 92–2854(GHR)

Comments and Objections of National Consumers League to Proposed Consent Decree

United States of America, Plaintiff, versus Airline Tariff Publishing Company, et al., Defendants.

The National Consumers League hereby submits its Comments and Objections to the Proposed Consent Decree in the above-referenced action. The National Consumers League ("League") has represented consumer interests in the United States for 94 years. As discussed in our letter to the Court dated February 19, 1993, the League believes that the proposed Consent Decree between the Department of Justice and United Airlines, Inc. and USAir, Inc. ("Consent Decree") must be evaluated in light of its anticipated adverse financial impact on United States consumers of air travel.

The Consent Decree would eliminate the use of first-ticket dates. First-ticket dates are presently used by the airlines to communicate to consumers notice of future price increases. This price information is extremely beneficial to air travelers, because it allows them to determine when they need to reserve and purchase tickets to take advantage of the lower prices. Make no mistake: air travel is a substantial purchase, and consumers are able to achieve cost savings when they have advance notice of fare increases. For any other service or product, a consumer knows when sales and discounts begin and end and can make wise

purchasing decisions based on this information.

If consumers are stripped of this price information, they will have no notice of increases in price and may be caught by surprise, to their detriment. For example, consumers may call their travel agents to make reservations for a family trip, only to learn when they call to purchase the tickets the next day that the price has increased.

The League has the same concern for consumers' welfare with respect to the Consent Decree's prohibition of the use of last-ticket dates. Last-ticket dates allow air travel consumers to know the last date by which they must purchase their ticket in order to receive the benefits of promotional fares. Without last-ticket dates, consumers may make airline reservations on one day, based on an existing promotional fare, only to learn when they call to purchase the tickets the next day that the promotional fare is no longer available.

We fear that the Consent Decree will substantially reduce or even eliminate the availability of discounted fares, because airlines can use a last-ticket date only if it is advertised in conjunction with the fare's first availability in media of general circulation or through mass mailings. The League anticipates that the inefficiency and added cost of the required mass media advertising will deter the airlines from offering the same quantity of promotional fares as they have in recent years. On one hand, sudden cancellations of promotional fares will anger consumers and ruin business relationships between travel agents and their customers. On the other hand, where the airlines choose to advertise last-ticket dates, the added cost will undoubtedly be passed on to consumers. Consumers lose either way.

In sum, the prohibition on the flow of information of advance notice to consumers of fare changes denies consumers the opportunity to seek the most competitive fares on the basis of a range of acceptable travel time for the consumer. With the knowledge of first and last ticket dates, consumers can adjust their travel dates and/or purchase dates in order to take advantage of the lowest fares. Without this information, consumers must "roll the dice" in deciding when to purchase their tickets. The Consent Decree clearly denies consumers the ability to make informed purchases of air travel.

The Consent Decree would also drastically limit consumers' First Amendment access to information that is vital to their purchasing decisions. For example, consumers will have *no* notice of fare increases and therefore no ability—as they currently have—to buy tickets before the prices of tickets go up. The Consent Decree's First Amendment restrictions would no doubt result in increased costs to the airlines which would inevitably be passed on to consumers. The League, therefore, submits that the Consent Decree will have a substantial negative financial impact on consumers.

For all of the above reasons, the National Consumers League hereby objects to the Consent Decree and respectfully requests that the Court deny approval of the Consent Decree.

This 15th day of March, 1993.

Respectfully submitted:

Linda F. Golodner,

President, National Consumers League, 815 - 15th Street, NW., Washington, DC 20005.

Certificate of Service

I hereby certify that a copy of the foregoing Comments and Objections of the National Consumers League to the proposed consent decree were served this 15th day of March, 1993 on all persons listed on the attached service list:

Linda F. Golodner.

Peter D. Isakoff; Weil, Gotshal & Manges, 1615 L Street, NW., suite 700, Washington, DC 20036; for defendant American Airlines, Inc.

Donald L. Flexner; Crowell & Moring, 1001 Pennsylvania Avenue, NW., Washington, DC 20004–2595; for defendants Continental Airlines, Inc. and Northwest Airlines, Inc.

James R. Weiss; Preston Gates Ellis & Rouvelas Meeds, 1735 New York Avenue, NW., suite 500, Washington, DC 20006; for Delta Air Lines, Inc.

James E. Anklam; Jones, Day, Reavis & Pogue, 1450 G Street, NW., Washington, DC 20005–3939; for defendant Trans World Airlines, Inc.

Emmet J. Bondurant II, Edward B. Krugman; Bondurant, Mixson & Elmore, 1201 West Peachtree Street, NW., 39th Floor, Atlanta, Georgia 30309; for defendant Delta Air Lines, Inc.

Thomas Demitrack; Jones, Day, Reavis & Pogue, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114; for defendant Trans World Airlines, Inc.

Irving Scher; Weil Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153; for defendant American Airlines, Inc.

Henry C. Thumann; O'Melveny & Meyers, 400 South Hope Street, Los Angeles, California 90071–2899; for defendant United Air Lines, Inc.

Charles F. Rule; Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, DC 20044; for defendant USAir, Inc.

This 15th day of March, 1993.

Linda F. Golodner.

To: Mr. Mark C. Schechter.
From: Jorg Holzle.

Date: February 23, 1993.

Mr. Mark C. Schechter,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Subject: United States vs. *Airline Tariff Publishing Company*

Dear Mr. Schechter: The Department of Justice proposes to prohibit airlines from disclosing detailed fare information in their computer reservation systems prior to disclosing such information in print media.

We feel very strongly that such a prohibition is harmful and detrimental to the public at large and the travel agents on whom a vast majority of air travelers rely for accurate price information.

The argument that airlines misuse their computer reservation systems to signal price changes to competitors shows gross ignorance of the realities of the electronic market place in a deregulated air traffic environment. (Besides, why could an announcement in print media not send the same signal?)

No, Mr. Schechter, we as travel agents don't want the government to burden us with this handicap. We are operating in a market in a constant state of flux. Over 80% of airline tickets are sold through travel agents. The flying public relies on us for the most up-to-date fare information. We must know when a fare goes into effect, when it expires. And we must know this the moment it becomes effective. Otherwise we can be accused of misleading the public, we lose the confidence of our clients and consequently their business.

In light of these considerations, we urge you to re-think your position regarding Action No. 92 2854. The Department's proposal is definitely not in the interest of the public and the small business community.

Jorg Holzle,

President.

February 16, 1993.

Mark Schechter,
Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

We've been in this business of travel long enough to say—*WE object* to pending *Airline Lawsuit* * * * it is grossly unfair to the traveling public and will be a grand disservice to be unable to inform them of changing rates.

Riena Gilberts,

Owner, Choose to Cruise.

Omega deLuxe Travel Service, Inc.
February 19, 1993.

Mark C. Schechter,
Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: As an active travel agency in our area, we strongly oppose the ruling against the airlines for price-fixing.

This would make complete and professional travel counseling impossible; consumers would be harmed and not travel if they cannot make fully informed decisions.

Sincerely,

Margaret Richardson,

Manager, Omega Deluxe Travel Service.

Nemet Travel International, Inc., suite 612, 500 North Michigan Avenue, Chicago, IL 60611.

February 16, 1993.

Mr. Mark C. Schechter,
Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: We strongly oppose the above decree, which would interfere with our professionalism in providing our clients with information and quality service.

Example: You call me today, to find a cheap fare for your college kid to come home for vacation.

The price is very reasonable, but it expires in 7 days. You ask me how long will this low fare be in effect? I would either have to lie to you and mislead you, or tell you the truth, and violate the law.

This simple example should demonstrate how preposterous and unfair this proposal would be both for travel agents and for our clients.

Sincerely,

Catherine M. Nemet,

President, Nemet Travel International, Inc.

State of New Jersey, Department of Commerce and Economic Development, Division of Travel and Tourism, Mary G. Roebling Building, Trenton, NJ 08625–0826.

March 11, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy & Agriculture Section, Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: The New Jersey Division of Travel & Tourism represents the travel and tourism industry in the State of New Jersey. The Division is responsible for promoting leisure and business travel to the State. I am very concerned about the proposed consent decree developed by the Department of Justice in the U.S. vs. Airline Tariff Publishing Co. case. Since destinations like New Jersey depend upon the leisure traveler, it is imperative that these consumers have complete and free access to information regarding flight costs. Leisure travelers are very price-sensitive and history has proven that high airline fares reduce leisure travel while low fares increase leisure travel. The premise of the consent decree is to prevent travel agents from passing on to their clients and customers advance pricing information regarding air fares; it will have a devastating impact upon the leisure travel market and number of long-haul travelers that destinations can attract.

Leisure travelers use travel agents as advisors and counsellors regarding their vacation trip planning. To restrict the travel agent's ability to provide complete information to their customers would result in less consumers using travel agents and airlines for pleasure travel, therefore contributing to the economic decline of both segments of the travel industry.

On behalf of the New Jersey travel and tourism industry, I request that Judge Revercomb extend the public comment time beyond March 15 so that a better understanding of the impact the consent decree will have upon the travel industry and the economy can be made.

During a time when consumers are the most price-conscious in recent history, it is neither logical nor good economic policy to restrict the flow of information to consumers regarding the pricing of services such as airline fares.

Sincerely,

Eugene Dilbeck,

Director.

New Ulm Travel, 314 North Minnesota Street, P.O. Box 775, New Ulm, MN 56073.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: My name is Eric Dulka and I'm the owner and president of a travel agency located in New Ulm, Minnesota. I purchased this business on June 1, 1992 and consider myself to be a classic example of what entrepreneurial spirit combined with our free enterprise system can result in: Individual Business Ownership.

I am concerned about pending governmental interference with our free enterprise system. Particularly, recent consent decrees that are being imposed by the Department of Justice regarding:

1. That airlines must stop providing customers (travel agents) with advance announcements of fare increases;

2. That airlines must stop providing customers (travel agents) with advance announcements of the end of discount sales.

Obviously, such interference will inflict serious restrictions on my ability, as a travel agent, to provide my clients complete and professional advice regarding their air travel. The looming precedent of such consent decrees are also of great concern to me as a private business owner, with the implication of greater governmental intrusion and restrictions into the private enterprise sector. I strongly oppose such governmental intrusion!

Please share my concerns expressed in this letter with the appropriate justices reviewing these consent decrees.

Respectfully,

Eric Dulka,

President, New Ulm Travel/Travel Fun Tours.

North Country Travel, Inc., 1131 East 4th Street, Duluth, MN 55805.

March 5, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: With this letter I am voicing my opposition to the consent decree in regard to the alleged price fixing by airlines.

It impairs our ability to serve our customers properly and it certainly is a great disadvantage to the travelling public.

Your review and reversal in this matter would be in the best interest of all concerned.

Sincerely,

Margit C. Whiteside, DS,

Owner/Manager, North Country Travel.

North Star Travel Service, 114 North Cedar Street, Owatonna, MN 55060.

February 19, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: In reference to your recent lawsuit against the airlines and your consent decree which makes the airlines

1. Stop providing customers (and travel agents) with advance notice of fare increases.

2. Stop providing customers (and travel agents) with advance announcements of the end of discount sales.

We, as travel agents and agencies, are hit extremely hard by the inefficiency of the airlines. Because of their inefficiencies, we feel that we should not be punished as a group. We try to give our clients the best price on tickets and can do so only by knowing in advance as to what the airlines are doing, Many times we do not even know about an increase or decrease until the day it is announced in the paper. We are then left scrambling (i.e. rewriting already issued tickets and writing new tickets). In fact, everytime there is a price war, it actually costs us thousands of dollars because we have to re-issue tickets at a lower price, thereby losing our old commissions.

We ask that you consider a different way to solve this problem and not use the consent decrees put forth, as it will harm us, the innocent victims, and will not help us in any way.

Cordially,

Paul Daffinrud,

Owner.

Northwestern Business Travel, 7250 Metro Boulevard, Minneapolis, MN 55439–2138.

March 5, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: As the owner and Chairman of the thirteenth largest travel agency in the United States and as the Chairman and CEO of Woodside Travel Trust, representing $13 billion in annual air ticketing volume, I'm writing to express my feelings regarding the recent Department of Justice price fixing suit against several airlines.

Simply put . . . the suit is a bullying misuse of power. Specifically:

The domestic airline business is among the least healthy of all American industries. This action exacerbates that situation, threatening product availability for the American traveling public.

The proposed consent decree prevents airlines from taking pricing actions that are in the best interest of customers and which are common in other industries. It also prevents travelers from planning their purchases in a rational, cost effective manner.

A healthy air transportation system is an important part of the infrastructure of the United States. In attacking the industry, the DOJ is operating contrary to the best interests of the country.

Thank you for your consideration.

Sincerely,

John C. Noble

Chairman.

Nova Travel, 1117 S. Rock Road, suite 4, Wichita, KS 67207–3355.

February 19, 1993.

Mr. Mark C. Schechter,

Department of Justice, 555 4th Street NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: I have read recently where the Justice Department has filed a lawsuit against the airlines for alleged price fixing via the airline ticketing computers. I, as a travel agency owner, disagree with the consent decree.

We are in a highly competitive business. What we do have is service; customer service which depends heavily on the information

and prices supplied by SABRE, Worldspan, Covia, etc. By restructuring what is supplied to travel agents by the various computer systems would be more harmful to the consumer than the agent. They would not be able to make fully informed decisions.

I ask that you forgo further actions. If the system is wrong, then find another way to cure it. Don't hurt the consumer.

Sincerely,

Larry Howe,

President.

Novak Travel Service, 105 South Main Street, Kewanee, IL 61443.

February 24, 1993.

Mr. Mark Schechter,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division—Justice Department, 555 Fourth Street, NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: I am the owner of Novak Travel Service, and as such, one of countless hundreds of thousands of small business persons in this country trying to maintain a profitable company in today's difficult economic climate.

My agency subscribes to the philosophy of going that extra mile for our clients. It is by achieving this goal that we are able to attract new clients while retaining existing ones.

I wish to go on record to protest in the strongest possible terms, this proposed resolution of the price-fixing lawsuit against the major domestic airlines. The effective dates of fares are vital pieces of information that my agents need to have access to if we are to have the ability to properly assist travelers with their travel plans.

Travel agencies do not have a tangible product to sell. As a full-service travel agency, the primary benefit we have to offer our clients is service! To remove one of the prime pieces of information our clients require for them to be able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, will injure both consumers and travel agencies.

Your consideration of this request is greatly appreciated.

Sincerely,

Elizabeth D. Novak,

Owner.

Oaks North Travel, 11828 Rancho Bernardo Road, ste. 211, San Diego, CA 92128.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: We are writing to express our concern regarding the Consent decrees pending approval in the lawsuit against the airlines.

We are opposed to the decrees because they will interfere with our ability to service our clients in a professional manner.

We oppose the government setting decrees which will greatly hamper our ability to provide the excellent customer service and satisfaction that we do today. We do not think the federal court should be the price regulator for the airline industry.

We hope that the decrees are not approved to prevent further chaos in the airline industry.

Sincerely,

Kathryn J. Shafer,

Office Manager, Oaks North Travel.

Ocean Club Travel Center, 3104 Pacific Avenue, Atlantic City, NJ 08401.

February 18, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: I am in objection to this government intrusion into my business, with this pending lawsuit against the airlines.

If I am not able to provide my customers with advance announcements of fare increases and end of discount sales that would definitely hurt my business.

Ocean Club Travel employs 5 people and they need their jobs desperately.

If business drops off there are many people industry wide who will lose their jobs due to lack of business.

The Travel Agency will be an unnecessary service if we are not allowed to serve our clients with this information.

Access to travel information is our skill, just like the law is yours.

Sincerely,

Suzanne A. Cooper,

President, Ocean Club Travel.

Olde World Travel Ltd., 4610 East State St., Rockford, IL 61108.

February 24, 1993.

Mark Schechter,

Chief, Transportion, Energy & Agriculture Section, Antitrust Division, Justice Department, 555 Fourth St. NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: It has recently come to my attention that the Justice Dept. has issued a proposed consent decree that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings. This would be disastrous for our company!

As the business manager of Olde World Travel, Ltd., I wish to go on record to protest in the strongest possible terms, this proposed resolution of the price-fixing lawsuit against those carriers. The effective dates of fares are vital pieces of information that our agents need to have access to if we are to have the ability to properly assist travelers with their planning.

Travel agencies do not have a tangible product to sell. What we have to offer our clients is service! To remove one of the prime pieces of information our clients require for them to be able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, will injure both consumers and travel agencies.

Sincerly,

Nancy Byrne,

Business Manager.

Omega World Travel, 3102 Omega Office Park Drive, Fairfax, VA 22031.

March 11, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: We wish to offer our comments on the proposed Final Judgment in your antitrust action against the major U.S. airlines.

By way of background, Omega World Travel is the ninth largest travel agency in the nation, with $350 million in sales, 750 employees, and over 200 locations in 20 states. We issue approximately one million airline tickets per year. I am Omega's founder, president, and majority owner.

It seems very clear that competition has not been effective under the current practices. Fares fail to reflect the desirability of nonstop and direct service over connecting service. Flights with departure and arrival times that are undesirable for business travelers (which provide the bulk of airline revenue) have the same price as conveniently scheduled flights. In short, fares fail to respond to traveler preferences. Prices are insensitive to customer demand because the current system of announcing tentative prices through first and last ticket dates ensures that pricing is achieved by industry consensus instead of strategic decision-making by individual carriers.

Many airlines have said recently that they would rather compete on the basis of service than on price alone, but have been unable to escape the current system of consensus pricing. This case should undo the mechanism which has stifled individual pricing and free the airlines to compete on the basis of service as well as price. We believe that the airlines may eventually view this case as the key that unlocked competition based on service.

Although other travel agencies and their trade association have complained about the loss of access to first ticket dates and last ticket dates under the Final Judgment, we believe that the complaints are unjustified. Based on our experience, we agree with the Competitive Impact Statement's assertion that first and last ticket dates are very unreliable. We would guess that they are not honored about 50% of the time. By reporting this unreliable information to our traveling clients, we only lose their confidence when the airlines choose not to honor it.

Our own reliance on first and last ticket dates has caused us to incur significant costs, as well. Because the first and last ticket dates generally are unreliable, we have incurred significant overtime costs in eleventh-hour ticketing to meet announced fare changes, only to discover the next morning that the last ticket date for expiring lower fares had been lifted.

One such example has been American Airlines' repeated announcements of the end of so-called matching (or me-too) government discount fares. These fares match GSA's contract fares on other carriers. After American announced Value Pricing last April, it repeatedly announced future last ticketing dates for me-too fares. We repeatedly scurried to issue tickets at the last minute before the effective date of the end of the discount fares. Every time, American withdrew the fare change when not all major airlines matched it. Our overtime pay on this ticketing alone cost us in excess of $10,000.

Ideally, your Final Judgment should *require* airlines to keep their future fare changes in effect for a minimum period of time; e.g., 2 or 3 days. Such a requirement would help all travel agencies by making first and last ticketing dates reliable. It would also undo the signaling mechanism that is used for price fixing. Therefore, such a mandatory decree would achieve the required results without harming travel agencies or the traveling public.

If you cannot accept such a mandatory formula, we believe that your proposed prohibition will be better for competition than the *status quo*. While we would sometimes have no advance notice of fare changes, and while we would therefore be unable to advise our clients at all regarding when they should have their tickets issued, the benefits of true price competition outweigh the loss of advance information.

It is significant that we have incurred no difficulty in handling reservations and ticketing for United and USAir since they accepted the consent decree. If the other airlines accept the decree, we anticipate no difficulty in handling them without first and last ticket dates, either.

Sincerely,

Gloria S. Bohan,

President, Omega World Travel, Inc.

Daniel P. Bohan,

Chief Operating Officer, Omega World Travel, Inc.

On The Go Travel, 601 North Pottstown Pike, Exton, PA 19341.

March 10, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: As an owner of a small travel agency, I must convey to you my strong opposition to the Department of Justice lawsuit against the airlines for allegedly fixing prices. As a "woman on the street", I see no difference from the advertising that merchants do when they advertise time-limited sales via newspapers, radio or TV. Are these instances also infractions of the law?

Small travel businesses survive by providing the best possible service to their clients. If the airlines are forced by the DOJ to discontinue advertising dates fares change/expire, I do not look forward to explaining to our clients that *their governmnet* has now prohibited airlines from providing them with deadline dates for purchasing a quoted fare.

If the consent decree is approved, small businesses will suffer, and once again the consumer will be an uniformed buyer based on big government interference.

Sincerely yours,

Marjorie E. Hickey, CTC

President.

Orange Belt Travel, 1690 North Broadway, Bartow, FL 33830–3199.

March 10, 1993.

Mr. Mark C. Schechter,

Department of Justice, 555 4th St. NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: Please register my objection to the airlines being asked to drop the dates of fare validity in our computers.

If this occurs, it is obvious to me that the airline cannot service it's customers properly. There are very few people that can get all their travel arrangements together in one day. If a client comes in to my office the next day and the fare is higher, without warning, that is just unfair.

Many times even now, a fare is dropped or increased without warning. This creates such a hardship on a person trying to plan with relatives or people in another town for their trip.

Our business is tough enough with the airlines changing their fares. Please don't complicate things.

Sincerely,

Nancy T. Pennington,

Manager.

Orono Travel, 44 Main Street, Orono, ME 04473.

March 3, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; our clients expect us to be knowledgeable and prescient, and they trust and have confidence that we are acting in their best interests. How can we maintain this relationship if all we can say to them is buy today or there is no guarantee that this price will continue to be available? This is depriving the consumer of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortchanged and victimized by another capricious DOJ ruling. They do not deserve that! Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide their clients. As a professional travel consultant I oppose the ruling and am making my concerns known via this letter.

Sincerely,

John J. McDonough,

Owner.

Pace Travel Inc., Twin Towers, 1106 Clayton Lane, suite 102E, Austin, TX 78723.

February 26, 1993.

Judge Mark C. Schechter,

Department of Justice, 555 4th St., NW., rm. 9104, Washington, DC 20001.

Dear Judge Schechter: The United States government is doing more damage to the traveling consumer in America by the lawsuit it has filed for price signaling through computer pricing than by any airline pricing monopoly could possibly do.

Taking the beginning and ending dates out of the CRS display will create confusion, lack of confidence, and eliminate the general public's ability to plan their travel.

The travel agency business, which consists of 30,000 locations nationwide, with about 90% being small businesses, 70% women owned, and employing hundreds of thousands will also be hurt by this move.

Imaging the scenerio of a traveler calling for a fare quote to a destination, calling back the next day and the fare was $50 higher. They either think we, the travel agents are "ripping them off" or we don't know what we are doing. Further what about the business traveler who buys a ticket one day and the next day adds a business associate to the trip, and the ticket is $50 higher or even if it is lower. Once again we appear to not know what we are doing.

If any signaling were actually taking place through the reservations' systems, it would probably be to the advantage of the traveler because more frequently, than not, we see fare increases being withdrawn rather than implemented. Also, every fare decrease by any airline is immediately matched by others competing in the same market.

This is an unnecessary, burdensome, and useless expense and interference by the government in an already troubled industry needing no more problems.

Sincerely,

Rose Pace-Bogdanic, CTC,

President.

March 15, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, Washington, DC 20001.

Dear Mr. Schechter: Please help the travel industry! Help the American Consumer! Help Mr. Clinton's recovery programs and finally help the DOJ to succeed! Reregulated the airlines!

Reasons: Since the deregulation, the airline industry has been manipulated by a group of unscrupulous "executives" who have been seeking the opportunity to get rich at the expense of the travelling public, the travel agents and the shareholders of the airlines, i.e., Frank Lorenzo, Icahn, Fred Laker and others.

Since all these people do not understand the business, they are not able to know how much the cost of running an airlines is. They only know how to get involved with individuals in the media and advertising business to spend and waste money in a nonproductive marketing program that only produce kickbacks for them. At the same time, they produced a group of individuals whom they call consolidators who are marketing most of the airlines at low prices or bid discounts without any reason. Also the confusing fares they impose on the American public, create stress and harm the budget of the average traveller who faces penalties on restricted non-refundable fares.

I would suggest a cool off period of two years in order to start cleaning the mess, asking the airlines to submit feasible fares for

only three kinds of Seasons of year (low, shoulder and high) to be approved by the government and freeze them for one year. If this policy proves to be successful, it can be extended for another year.

Something has to be done Mr. Schechter; and if both your department and the DOT are committed to help Mr. Clinton in the economic recovery of our country, is better to start now to solve the problems that were inherited from previous administrations.

If you need more details, I will be in Washington participating in the annual ASTA "March on Washington" April 1st. If you are interested in more input on the above, let me know.

Sincerely,

Luis A. Gaona,

Pacific Express Travel.

Pajarito Travel Agency Mibk Inc., 2610 Trinity Drive, Los Alamos, NM 87544.

March 1, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Sir: As a travel agency owner, I am registering my opposition to the consent decree regarding certain airlines. Thanks for considering this opinion.

Sincerely yours,

John G. Whitcomb,

President.

March 2, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: I can not believe you are demanding the airlines stop putting the dates a fare will expire in the CRS! There is no way we can do a good job for the travelers without this information! We check for the lowest fare then tell the clients when the fare is valid.

Please, for the sake of the clients, reconsider!!!!

Sincerely,

Susie Heath,

Owner/Mgr., Pak N Go Travel.

Panhandle Travel
316 Northridge Circle, P.O. Box 447, Guymon, OK 73942.

March 4, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Panhandle Travel Service would like to go on record as opposing the Department of Justice's price-fixing suits against the major airlines. If these suits are successful, it will cause great hardship on both the airlines and the travel agencies. As travel agents, we engage everyday in a guessing game with the airlines concerning fares, particularly sale fares. Should the airlines not be allowed to display any information concerning time limits in the CRS, it will become almost impossible for us to secure the best fare for our clients. It will require much more time which means less profit for our small agency.

We urge the Department of Justice to drop these suits.

Sincerely,

Panhandle Travel Service.

Sandra L. Powell,

Owner.

Barbara Heppard,

Manager.

Kim Bechdolt,

Travel Consultant.

Parkland Travel Ltd., 2901 S. Chicago Avenue, South Milwaukee, WI 53172.

February 26, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I feel compelled to write you about the Department of Justice's demand to disallow advance notice of airline price changes.

This is incredibly unfair to the traveling public! People in the United States of America deserve the right to purchase travel arrangements at the best price and at the best time for them. If the Department of Justice takes away this freedom they are undermining the whole idea of free enterprise.

As a travel agency, we could not give complete and professional travel information to our clients. Information we need to help them make sound travel decisions would be kept from us.

What other businesses will be next? Department stores? Computer manufactures? Automobile dealers? How can we have a free enterprise system if companies are not allowed to have "specials", "sales", "promotions". . . even "lost leaders" to stimulate sales for a specified period of time. Certainly as a consumer of goods and services yourself, you must see how difficult it would be to make an intelligent decision on a purchase if you could only be quoted "today's price".

The American people deserve better than this stifling regulation.

Sincerely,

Kay M. Voss,

Vice-President.

Park Ridge Travel Bureau, Inc., 707 Devon Avenue, Park Ridge, IL 60068.

February 15, 1993.

Justice Department.

Lawsuit Against the Airlines.

We feel the Justice Department is trying to hinder us as a travel agency from doing our best job for the consumer. By not letting us know when a fare is forthcoming or going to be withdrawn is causing undo havic in the travel industry. We will no longer be able to help the consumer get the best possible price for their hard earned dollars. This new rule will also make us look bad if a customer calls about a new fare we know nothing about does not put us in the best of lights for our customer. We are here to help people and the Government should not step in to confuse and enrage the consumers if they just miss a fare that could save them some money by one day. I think we all have enough stress in our lives without having this added on. I believe this type of regulation is wrong and should not be passed.

Thank you,

Gil Passarella.

Passages, 8501 Wilshire Boulevard, Beverly Hills, CA 90211.

December 29, 1992.

Mr. Mark Schechter,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, room 9104, U.S. Department of Justice, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I have read with great interest the articles regarding the United/U.S. Air Charges of Price Signaling articles and must say I do not clearly understand what this specific case is all about.

I do however want you to know that anyone who doubts that the airline industry is in collusion regarding fares is absolutely out of their mind. How it could be construed otherwise is no doubt subject to some sort of investigation but it would be almost impossible to find out the reason in the convoluted system that allows every airline in the United States to instantly charge the same price as all of the others within seconds of announcement.

It has gotten so very bad from our position that fares quoted in the morning have changed by amounts in excess of $200.00 in a matter of three hours from the time the passenger made the reservation—needless to say these are always increases and always apply to all carriers.

We understand that there was a time when the airlines sent all their fare changes to a clearing house and the tapes were all loaded into the various computers at the same time. We understand that this is no longer the case and the airlines simply plug into each others' "Main Frames" and change their prices at will—sometimes several times during the day! We are further told that sometimes the host computer systems don't bother loading fares in effect a week or less because it uses computer time without purpose.

We don't know if yours is the Department to handle this problem but, if so, I would strongly suggest that you enlist the help of the travel agent community in your pursuit of aiding the consumer with air transportation as it is clear to us that the airlines have no intention of playing by any rules. We do, after all, need airline transportation in this country.

Passages—A Travel Company,

Janet M. Szabo,

President.

Pegasus Travel, 1120 Connecticut Avenue, NW., Washington, DC 20036–3902.

March 2, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: Having labored in the vineyards of travel for almost thirty years, first with airlines for twelve years and since on the agency side of the industry, I find the recent DOJ ruling re publication of the commencement and conclusion of certain air fares in our CRS systems to be truly incredible. Presently, travel agencies do almost eighty percent of domestic reservations. The vast majority of us do this

in our computers. How can we possibly tell the travelling public, both those on business and those on leisure travel, we have discovered in our computers the best possible price for a certain destination if we cannot complete our information to the public by noting a bargain fare will no longer be available by a certain date; that, a ticket must be purchased by a certain time in order the public may avail itself of an affordable cost of a ticket.

It is my understanding such information as pertains to the start and end of air fares will no longer be permitted in our computer systems; *however*, such information may be published in the various media or given to the public via the public published airline phone numbers. If this is truly the case, it can only be considered the height of hypocrisy. Indeed, if this is so, agents have only to phone on the airlines' phone lines open to the public and learn the beginning and ending dates for whatever air fares are being wanted.

In addition, it is my understanding the airlines are being directed, after submitting to a consent decree, to cease advising agents via their computer systems of the dates included in air destination fares. As pointed out, Mr. Schechter, having been in this business for ever so many years, the airlines will continue to find ways to work for their own cohesiveness in air fares. It has always been so. In a sense, deregulation is a mockery. Airlines will follow one another like a bunch of lemmings as far as fares are concerned.

Having said this, I would appreciate knowing what course of reasoning was followed in this latest DOJ ruling. It may very well be I am not that conversant with the whole matter. On the strength of what I do understand at this point, I can only judge the matter to be a totally unfair, one-sided, issue.

Can it not be considered "restraint of trade" if travel agents are not permitted to have total air fare pictures in our computers and, yet, such information is admissible in other ways. I ask you, Mr. Schechter, what is the purpose of all this? Why is air fare information, COMPLETE information, not permitted to be programmed in our computer systems but yet is available elsewhere.

Please be so kind as to advise me of the reasoning pursued in arriving at this state of affairs.

Many thanks for your attention and cooperation in this matter.

Yours truly,

Jeanne Westrope, CTC,

President, Pegasus Travel.

Penn Hills Resort in the Poconos, Analomink, Pennsylvania 18320; 717–421–6464, 800–233–8240.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Consent decrees for the airline industry.

Dear Mr. Schechter: Penn Hills is a resort in the Pocono Mountains of Pennsylvania and we are very concerned about the recent ruling regarding airline industry pricing.

This ruling is very distressful to the resort industry as well as travel agents and airlines. The resort industry uses special rates and extra values to entice travelers to our resorts during times we are not filled. If this right were taken away so we could not advertise dates that special packages would be in effect it would be an extreme hardship for our business and surely a disservice for our customers.

We feel very strongly that the airlines should have the same right to promote their savings packages for their customers and feel that taking that right away is jeopardizing the entire industry.

We feel that this ruling should be reconsidered due to the future effects this may have on all businesses.

Very truly yours,

Penn Hills Resort

Charles A. Poalillo,

President.

Pierre's World of Travel, 880 Winton Road South, Rochester, NY 14618; 716/461–5220, TTY 716/244–8880.

February 16, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Mr. Schechter: I am writing to express my concern regarding the Department of Justice action in regards to prohibiting airlines from announcing in advance fare expirations and impending increases. This is, in my humble opinion severe restraint of trade, unevenly applied singling out the travel industry, and affecting the consumer. Supermarkets, Department Store chains, automobile manufacturers have promotions with expiry dates repeatedly. What makes it allright for one industry, yet not for another? Admittedly, there is communication, indirectly, thru reservations systems, among the airlines, but there are much more important reasons than fare expirations to investigate. If this industry is deregulated, let it be deregulated, or revise the laws. My personal feeling on this matter is that there should be some limited reregulation, to give airlines some parameter within which they can make changes without prior approval, and to obtain approval for anything beyond these parameters. The fare wars initiated by the airlines have been disastrous for them as well as for the travel agency community. We have been burdened, unreasonably so, without proper compensation for the work load involved.

I would urge the Justice Department to re-examine the situation and reverse its ruling on the issue before it, regarding the restrictions of fare increase and expiration prohibition. I would think there would be far more important matters to address. This is a disservice to the traveling public. Thank you for your consideration of this very important issue.

Sincerely yours,

Pierre Fenster, CTC,

Owner.

Plan It Cruise & Travel.

February 25, 1993

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Re: United States vs Airline Tariff Publishing Company Action No. 92–2854.

Dear Mr. Schechter: To serve our clients properly, travel agents must have every resource available, including all fare information. The placing of prohibitions by the Department of Justice on the airlines is harmful to consumers and our small business.

The Department feels that airlines must inform the media prior to any detailed fare information being loaded into our computer reservation system. Travel agencies sell over 87% of all airlines seats, so we should have access to all price information first. Since we are in virtually every community we are accessible to most all consumers and are able to answer questions about all airlines.

We are professionals who care and service a vast number of consumers. Much of our service is offering options and opinions on airline fares. It is obvious to me that neither travel agents nor our customers will be well served if we cannot inform them as to when a fare is to be increased. Likewise, we need to know when discount fares will end because we frequently call our customers if we know there is a special fare available for a limited time. If airlines have to inform the media first of any fare changes, as your department proposes, it may well discourage sales. The airlines and this industry cannot stand any further eroding of sales.

Please consider the inconvenience you are placing on the consumer and the negative impact on our small business. We are being put at a marketing and service disadvantage. The proposed final judgment is not in the best interest of the traveling public.

Thank you for listening.

Sincerely,

Lad A. West,

Owner.

RD 1, Box 294, Bloomingburg, NY 12721; (914) 733–4979.

February 22, 1993.

Mark C. Schechter,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Re: United States vs Airline Tariff Publishing Company Action No. 92–2854.

Dear Mr. Schechter: I recently tried to plan a trip to California. When I phoned my travel agent she told me that there was a sale on airline tickets and I could save $200 per ticket if I purchased the ticket no later than a certain date in early February. (I forget the date.) If Action No. 92–2854 had been put into effect, I would have waited until March, when I wanted to fly, to buy the tickets and my agent would not have been able to save me $400.

Last year, I went to Kansas City. When I phoned my agent for information, she told me there was going to be a fare increase in three or four days. So I bought my tickets that

very day, avoiding a $40 increase. If Action No. 92–2854 had been in effect I would not have saved that $80 (two tickets).

Obviously, I believe Action No. 92–2854 is detrimental to consumers because they will not be able to take advantage of sale fares if travel agents do not have "end of sale date" information in their computers. It is also detrimental to consumers if they cannot be forewarned that an increase is imminent.

Thank you for your consideration. I look forward to the rejection of Action No. 92–2854.

Sincerely,

Barry Plaxen.

Pleasure Break, Inc., 3701 Algonquin Road, Suite 900, Rolling Meadows, Illinois 60008; (708) 670–6350, Fax (708) 670–7682.

February 26, 1993.

Mr. Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., Suite 9104, Washington, DC 20001.

Dear Mr. Schechter: It has recently come to my attention that the Justice Department has issued a proposed consent decree that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings. This would be disastrous for my company!

As the owner of Pleasure Break, Inc. I wish to go on record to protest in the strongest possible terms, this proposed resolution of the price-fixing lawsuit against those carriers. The effective dates of fares are vital pieces of information that my agents need to have access to if we are to have the ability to properly assist travelers with their planning.

Travel agencies do not have a tangible product to sell. What we have to offer our clients is service! To remove one of the prime pieces of information our clients require for them to be able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, will injure both consumers and travel agencies.

Your consideration of this request is greatly appreciated.

Sincerely,

Engelbert Saile,

President.

Plum Grove Travel Center, Inc., 2201 Plum Grove Road, Suite A, Palatine, IL 60067; (708) 303–5040, Fax (708) 303–5046.

February 12, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Lawsuit against the airlines.

Dear Mr. Schechter: As a professional travel adviser I object to the government interfering in the matters that directly affect my ability to advise and service my clients efficiently.

The consent decree that the airlines are being asked to sign is dangerous and frightening. How can we service our clients if we are not informed about fare increases and the end of discount sales.

Let's be fair to the travel industry . . . do not force the airlines to sign and obey this decree.

Thank you for your help.

Sincerely concerned,

Lee Anne Clark, CTC,

Owner/Manager.

Polynesian Cultural Center.

March 15, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Re: U.S. versus Airline Tariff Publishing Company.

Dear Mr. Schechter: I strongly protest your proposal to prevent airlines and travel agents from informing the consumer of airfares not yet in effect.

This would be a great disservice to the traveling public and is comparable to preventing major retail outlets from announcing their future sales.

I hope you can envision the huge detrimental effect this will have on our tour and travel industry and ask you to please withdraw this proposal.

Sincerely,

P. Alfred Grace,

Director of Westbound Sales.

Prestige Travel, 4551 N. Channel Ave., Portland, Oregon 97217, (503) 285–2522.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Department of Justice Lawsuit Against the Airlines.

Dear Mr. Schechter: I would like to express my concerns regarding the recent lawsuit filed against the major airlines, alleging that they fixed prices by signalling each other of their pricing plans through advance announcements of fare increases and other fare changes.

It is depriving the industry if airlines are not able to advise travel agencies, and their clients, of advance notice and expiration dates of promotional airline pricing!

I find the government's intervention in this area to be anti-consumer, anti-travel agent and anti-airline! No one would be any better off with the proposed DOJ decree. It would only confuse all parties involved and most importantly, the consumer would have no valuable information to rely on when making buying decisions.

Sincerely,

Becky Rae Olson,

President.

Professional Travel, Inc., 302 South Thornton Avenue, P.O. Box 1623, Dalton, Georgia 30722–1623; (706) 278–1010, Wats: (800) 221–3915, Fax: (706) 226–5310, Telex: (810) 759–4406.

February 24, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 4th St. NW., room 9104, Washington, DC 20001.

Re: United States vs Airline Tariff Publishing Company Action No. 92–2854.

Dear Mr. Schechter: Professional Travel has been in existence for 16 years—from the days of hand-written tickets to today's total automation. Throughout our history, we have relied on every available resource in order to properly service our clientele. The Department of Justice is now considering limiting our access to a very valuable resource: fare information. We perceive this action to be harmful to both consumers and small businesses.

As the "local" agent for all major airlines, travel agencies are available to community members who have questions about the airlines. If the Department Of Justice succeeds in requiring the airlines to inform the media prior to loading detailed fare information into our computer reservations systems, we become the "last to know" and certainly will be unable to provide intelligent information to airline consumers. This hardly seems reasonable since travel agents sell approximately 85% of all airline seats.

In consideration of the fact that the large majority of U.S. travel agencies are, indeed, "small businesses," please consider the negative impact that the release of the fare information will have on thousands of agencies and millions of consumers. This judgement does not appear to be in the best interest of the traveling public.

Sincerely,

Sherry Cochran,

General Manager.

Public Citizen; Buyers Up, Congress Watch, Critical Mass, Health Research Group; Litigation Group, Ralph Nader, Founder; 2000 P Street NW., Washington, DC 20036; (202) 833–3000.

15 March 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, U.S. Department of Justice, 555 Fourth Street, NW., room 9104, Washington, DC 20001.

Re: United States v. Airline Tariff Publishing Co., Civil Action No. 92–2854 (GHR) D.D.C.)

Dear Mr. Schechter: Pursuant to the notice at 58 Fed. Reg. 3971 (12 January 1993), Public Citizen submits the following comments, as authorized by the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16.

Interest of Public Citizen and Summary of Position

Public Citizen is a consumer organization which was founded in 1971. It has 140,000 members, many of them are airline passengers directly affected by the proposed settlement. Public Citizen has long been active on aviation issues, having worked for passage of the Airline Deregulation Act of 1978 and appeared before federal agencies and Congress on many issues affecting

competition in the airline industry. Public Citizen is also a party in the private class action antitrust lawsuit involving similar allegations, where the proposed settlement does not go as far as the Department of Justice has proposed. *In re Domestic Air Transportation Antitrust Litigation,* MDL No. 861 (N.D. Ga.).

In supporting abolition of the Civil Aeronautics Board and the end of traditional route-and-rate regulation in domestic aviation, Public Citizen expected, as did many other supporters of that reform, that vigorous antitrust regulation would replace CAB economic regulation. Consistent with that aim, Public Citizen voiced support for the Department of Justice's opposition to several anti-competitive mergers which the Department of Transportation approved in the mid-1980s (*e.g.*, Northwest-Republic, TWA-Ozark); Public Citizen also opposed on antitrust grounds, as did the Department, the proposed merger in 1989 of Delta's computer reservation system into the Sabre system developed by American.

We note this past support for the Department's antitrust initiatives because, on the present evidence, we are at best skeptical that the proposed settlement here will benefit the flying public. The Department is asking the Court to approve a consent decree with two defendants, United Airlines and U.S. Air (the "settling defendants"), under the APPA. That Act requires the Court to decide whether this proposed settlement is "in the public interest," and in making that assessment, the Court may consider such factors as the "anticipated effect of alternative remedies actually considered" and the impact that entry of a judgment would have on the public generally. 15 U.S.C. § 16(e).

In our view, the parties have not shown that the settlement would be in the public interest, and approval may threaten important conveniences and savings which consumers now enjoy. Indeed, based on the evidence now in the public domain, the cure proposed by the Department may be worse than the disease.

Discussion

The proposed consent decree (as well as the complaint aimed at the non-settling airlines) would bar distribution of information identifying the first date in the future that tickets will be available at a given price (the "first ticket date"). The Competitive Impact Statement describes the proposed ban on use of first ticket dates as "absolute"; thus, all of a settling defendant's fares, whether loaded into the central Airline Tariff Publishing Company ("ATPCO") computer system, individual airline computer reservation systems, or elsewhere, must be currently available for sale to consumers. 58 Fed. Reg. at 3976 (col. 2).

The consent decree also seeks to regulate airline statements about the last date that certain fares will be sold to the public (the "last ticket date"). It provides that settling airlines may advertise the last ticket dates of particular fare offerings when the fares in question are first offered for sale, provided that last ticket dates are advertised in "media of general circulation" or through "mass mailings," and in a manner "designed to directly reach a meaningful number of likely potential consumers." If their fare offerings are first communicated to the public in this fashion, the settling airlines may communicate last ticket dates electronically and may respond to fare offerings of their competitors without first taking out advertisements.

This proposal, if approved by the Court, could seriously limit the flexibility which consumers now enjoy when making reservations, and that is true regarding the proposed limitations as to both the first and last travel dates. To understand why this is so, it may be useful to review some basic facts about the way that air transportation is purchased.

Consumers often book reservations days, weeks or months before they actually travel. This is so because seats may be unavailable at any price during certain peak travel times; in addition, some of the lowest, deep discount fares are subject to restrictions as to the number of seats offered at those prices.

Because consumers book reservations so far in advance, the often prefer to defer payment for as long as possible, particularly if they plan to buy the ticket with a revolving credit card account which charges interest from the date the transaction is consummated. In recognition of this fact, airlines permit early reservations, but the fare paid is the one in effect on the date the ticket is actually purchased, a practice which began before economic deregulation.

The availability of advance information on when new fares (generally fare hikes) take effect—called the "first travel date" here—thus allows consumers to anticipate and avoid price hikes which may otherwise take effect between the time when a reservation is made and the time when the ticket is actually purchased. Travel agents are aware of this consumer preference, which is why many of them will volunteer the details of impending fare hikes to passengers, for example, by saying, "You can make your reservation now, but you'll have to pay for the ticket by the 21st because prices are going up on the 22nd." Indeed, consumers rely heavily on travel agents for such information: Unlike discount fares, which airlines widely trumpet through their advertising, proposed increases in existing fares are rarely announced in airline advertising.

The Department's Competitive Impact Statement ignores the conveniences and savings under this regime, and it asks this Court to order an end to these practices. The result would likely be consumer confusion and higher costs. When a customer asks an agent, "How long will the fare be available at this price?", the agent will be forced to answer, "I don't know." Alternatively, since the proposed decree would allow airlines to talk about contemplated fare increases only in the most general of terms, the agent would have to say something such as "I can't guarantee how much longer that fare will be around, and the airlines are talking about how fares have to go up soon, so the only way you can be safe is to charge your ticket today."

The Department seems to concede (at 3978/1) that this may be the only way for consumers to protect themselves against surprise price increases, and it asks the Court to endorse that view. We disagree with this approach because the likely result would be consumer hostility and a feeling of being rushed to commit one's money today. And of course, if consumers do end up committing to the purchase sooner rather than later, that has the effect of raising the cost of travel, at least marginally.

For many of the same reasons, we question whether consumers would benefit from the severe restrictions that would be placed on disclosure of the last ticket date. Airlines may offer restricted deep-discount fares as a way to fill empty seats during slow travel periods, and an expiration date for these fares is seen as an essential way to stimulate travel without diverting high-fare (usually business) passengers to these lower fares.

Passengers, particularly those who are sensitive to price, find it very important to know how long a limited-time, low-fare offering will remain available. Because only a limited number of seats are available at the offered fare, consumers may want to reserve early, lest seats be sold out completely by the end of the sale period, yet they prefer to make their payment as late as possible. Indeed, limited-time promotions of deep discount fares can create a special need for some breathing room between the day a reservation is made and the date of purchase. That is so because deep discounts may generate a strong consumer response, with the effect that a passenger may learn from the travel agent that his or her preferred flights or dates are already sold out; the passenger may nonetheless deem it prudent to book reservations at a less preferred time and then consult with the passenger's spouse or employer to make sure that the alternative dates reserved with the travel agent are still convenient.

The flexibility passengers enjoy in this situation might be lost under the proposed regime. Some deep discount fares are non-refundable or carry significant penalties which would deter passengers from committing themselves to a particular flight schedule when they initially call their travel agent, which is the way that the Department thinks the world should work with respect to the first ticket date for particular fare offerings. Indeed, many people would simply stay home if the current levels of flexibility now in the system were to be removed.

Perhaps in recognition of these facts, the Department does not seek a flat ban on last ticket dates, but the loophole it tries to create raises a number of issues. The Department contemplates that a last ticket date can be communicated to consumers by travel agents, provided that the date in question has been identified when the airline first advertises a promotional fare in "media of general circulation" or "mass mailings," provided also that the advertisement is "designed to directly reach a meaningful number of potential consumers likely to purchase the promotional fare." Proposed Consent Decree ¶ V(C).

This supposed escape clause raises more questions than it answers. For example:

—What exactly are "media of general circulation"? In the metropolitan Washington

area, for example, is it sufficient to advertise in *The Washington Post*, or must an airline advertise in the Maryland and Virginia suburban newspapers as well?

—What sort of "mass mailings" are contemplated? Is it sufficient, for example, if an airline advises all members of its frequent flier program about a new, limited-time-only fare?

—What is a "meaningful" number of potential consumers?

—What benchmark should be used to determine if these consumers are "likely to purchase" the promotional fare in question?

—How is one to measure if the advertisement or mass mailing is designed to reach these consumers "directly"?

—If an advertisement for a promotional fare mentions some cities, but not others, is a travel agent forbidden to communicate the last ticket date as to the unmentioned city? Suppose, for example, that USAir chose to advertise some promotional fares to specific cities and listed a $99 fare to Hartford, Connecticut, but not a $99 fare to New Haven: Why does it make sense to let travel agents tell passengers that the Hartford fare expires on the 31st of the month, but not be able to tell the same, truthful information about the New Haven fare? Or, put differently, why does the Department believe that passengers are better served if the agent says to a consumer asking about the fares and fare conditions for a flight to New Haven, "I can't tell you if the $99 New Haven fare which I just found will be available on the 31st, but if you fly 50 miles out of your way to Hartford, I can book you now, and you can pay as late as the 31st"?

The Competitive Impact Statement shows no awareness of these very real concerns, which are the practical consequences of the consent decree. Apart from the passing reference that consumers can (and presumably should) commit their money when they place their reservations, the only discussion of consumer impact is an assertion that first and late ticket date information "is of little benefit to consumers." *Id.* at 3977/3. The argument appears to be that consumers do not see many of the changes that are proposed in ticket date information at the time these data are loaded into the ATPCO computer, and even if they could, those dates could not be deemed to be reliable since they are subject to change during the "electronic dialogue" between the airlines over such issues. *Id.* at 3977/3–3978/1. This argument fails to perceive the true consumer interest here.

It may well be that many consumers do not have access to the ATPCO computer data base in which fair change data is circulated both within and outside of the industry. It may also be true that not all of the data circulated via the ATPCO network are ultimately made available to travel agents through the individual computer reservation systems which they use to book reservations for their customers. The fact remains, however, that fare information which the Department is trying to limit *is* helpful to consumers when it is communicated to them at the retail level, whether by travel agents or through advertising, and it is often used in making travel plans. The Competitive Impact Statement never comes to grips with this issue in its effort to regulate the "electronic dialogue" at its source.

Thus, the proposed consent decree does not address or respond to one of the factors identified in the statute, namely, the "anticipated effects of alternative remedies actually considered." 15 U.S.C. § 16(e). The Department does not indicate that any alternatives were considered which might alleviate the burden which the consent decree might place on consumers. Nor does it explain what exactly consumers would gain in return for being deprived of data which many people find useful. The APPA allows the Court to consider, as part of its "public interest" inquiry, the impact that entry of the proposed decree would have on the public generally. *Id.* Based on the present evidence, the public loss would be clear and the public gain unclear.

We appreciate the opportunity to submit these views and hope that they are helpful to the Department's review of these issues.

Very truly yours,

Cornish F. Hitchcock,

Attorney for Public Citizen.

QDAT, 6900 East Camelback Road, Suite 300, Scottsdale, AZ 85251; (602) 990–9498, FAX (602) 990–9502.

February 15, 1993.

Mr. Mark Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schecter: I am writing to indicate opposition to the dissent decree regarding the Department of Justice Lawsuit against the airlines. It would interfere and alter the structure of the current distribution channel.

Please review this matter as it will adversely impact an already unhealthy industry.

Sincerely,

Robert B. Danoff,

Vice President of Marketing.

Regal Travel, Inc., 677 W. DeKalb Pike, King of Prussia, PA 19406; (215) 354–0255, (215) 354–0259 FAX.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, rm. 9104, 555 4th St., NW., Washington, DC 20001.

Re: Department of Justice Lawsuit against Airlines.

Dear Sir: I feel I must take this opportunity to write to you personally to voice my opinion on the lawsuit regarding price fixing by the major airlines. The Consent Decree currently under consideration will seriously limit my abilities to provide professional travel counseling to my clients. Additionally, I certainly need no further governmental intrusion in my business.

Therefore I urge you to reconsider the Consent Decree presently under consideration with an eye toward the negative ramifications to Small Business. Punish the Airlines if they are guilty of wrongdoing, but don't negatively impact the thousands of travel agencies (small businesses) around the country.

Yours very truly,

H.J. McPartland,

Secretary/Treasurer.

Reserve Travel, 1820 Superior Building, 815 Superior Avenue East, Cleveland, OH 44114–2799.

February 12, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I understand that the justice department, in all their wisdom, has filed yet another action against the airlines for price fixing. The Federal Government must stop this pedantic string of intellectual exercises and do something positive to help the travel industry in the United States.

The final results of the Antitrust actions will soon be disclosed and will probably result in 40 million dollars of cash being used to pay legal fees and administrative charges to issue certificates of questionable value. The final press on this action will not reflect proudly on the judicial system in our country.

It is pretty clear to me that the Federal Government is close to running all the airlines out of business, especially with frivolous actions as the one you are currently addressing. It may also mean that some 40,000 travel agencies will be in jeopardy also.

I think one of our Federal Judges should stand back for a minute and address the issues of millions of Americans working in the travel industry. All of us should be able to try to work hard and make a profit from our endeavors. When you get down to matters, the airlines have not made a profit in years. * * * I guess your analysis of "price fixing" forgot to address the fact of who benefited from it.

If the airlines do not know how to make a profit, I have a hard time with the concept that they would be smart enough to "price fix". Does IBM look at what price other computer manufacturers are charging? Does Baseball have an exemption? What is really the big picture here?

You should send this letter over to President Clinton, I think he would know how to get to the heart of the problems in the travel industry.

In closing, I think we should learn from the scam called the "antitrust action 1988–1992". That little piece of intellectual handball has caused a lot of people to do alot of work for nothing. How about all people in the United States suing the airlines for excess noise levels, or better yet, everyone suing the Justice Department for interference.

Very truly yours,

Donald E. Carlson, CPA,

CEO.

Rex Travel Organization, Inc., 100 N. LaSalle St., Chicago, IL 60602.

February 16, 1993.

Judge Mark C. Schechter,

Department of Justice, 555 4th Street NW., Suite 9104, Washington, DC 20001.

Dear Judge: Let's pretend. * * * Let's pretend that you and your family want to fly to Colorado for a summer vacation, and, let's

pretend, you're not using free government transportation * * * you're going to pay your own way.

You call your travel agent and he gives you a fare. However, unbeknown to the travel agent or the public, the airline you are booked on will be reducing its fares by 30% two days after you have planned to leave. * * *

You are going to be mad as hell, naturally, blame stupid travel agent who did not know, etc. etc.

Take a minute to sit back and think this over logically. Obviously the public (which includes the travel agent) have to know as far in advance as possible when airlines are planning to introduce their next round of gimmick fares.

Sincerely,

Rex Fritschi, CTC,

President.

March 9, 1993.

Mark C. Schechter, Esq.,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: I have been told that the Department of Justice plans to sue the major airlines, on the basis that they are "price-fixing" by computer-based airline schedules/price quoting.

To many travellers like myself, the availability of receiving advance information on economic traveling by air is very important, and such planned legal action against the industry would preclude me getting this information from my travel agent, thereby substantially increasing the cost of my travels.

I urge you and your department to reconsider the necessity and—indeed—the merits of this matter.

Sincerely,

Cleveland Riley, Jr.,

6318 Apple Lane, Freeland, WA 98249–9463.

River City Travel, 19655 Detroit Rd., Rocky River, OH 44116.

February 24, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

I am expressing my opposition to the consent decrees now being considered in the lawsuit against the airlines.

It has been my experience that there has been no collusion between the airlines to "fix" fares. One airline may initiate a price reduction, and in order to stay competitive, the others reluctantly fall in line, many times with varying rules and regulations. In the other direction, one airline may test the waters with an increase, and if it doesn't go, bring it back down again. If it does, the other airlines are likely, in this day of increasing losses, to follow suit.

To forbid them to announce an increase in fare as well as the end of a sale would be to restrict their freedom of marketing and create an intolerable situation for all those of us who must advise both individual and corporate clients on their travel plans.

It is only that the computer systems allow the airlines to monitor each other's marketing innovations and respond more quickly than other businesses can monitor their competitors' activities.

Please do not allow this to become law.

Sincerely,

River City Travel.

Anne Kroehle, C.T.C.,

Owner.

River Falls Travel Service, 111 E. Elm St., River Falls, WI 54022.

February 18, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Stop providing customers advance notice. Stop providing customers with advance end of discount sales.

Dear Mr. Schechter: We are writing with concerns to the two above decrees. We feel that the Department of Justice should not interfere with the airlines on these two matters.

We as travel agents cannot provide a full professional service to our customers if we are not aware in advance of fares to come. This involves a lot of things other than just knowing fares. We have to staff and gear for sales to properly serve our customers, order extra ticket supply and more. We must know in advance of fares.

To address the second decree, it is not fair to the customers to not make them aware of sales that are going to expire. People need to arrange work and other parts of their lives and sometimes can only travel during sale fares. This is only a small list of reasons why the Department of Justice should not interfere and control the airlines. Please reconsider this seriously.

Sincerely,

Susan Y. Moen,

Owner.

Janelle Gregor,

Consultant.

Cheri Radunzel,

Consultant.

Riverside Travel Group, Inc., P.O. Box 20696, Portland, OR 97220.

February 12, 1993.

Mark C. Schechter,

Department of Justice, rm. 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The Riverside Travel Group is a trade association of 45 travel agencies located in Oregon. We sell over $150 million annually to Oregonians who plan their trips with us.

The key word is plan.

We must all take time to plan, from the shortest vacation trip to the most extensive business itinerary. Part of the planning process is critical information regarding validity of fares.

The Justice action against the U.S. airlines that suggests they withhold this key, critical information from their published fare sources is ill-conceived. Since Riverside Agents write over 20% of the airlines tickets purchased by Oregonians, we object in the strongest terms to this concept.

Causing the airlines to keep secret one of the most important factors needed to plan a trip will do irreparable harm to the business community, as well as leisure/vacation travelers.

Virtually every consumer advertisement has effective and expiration dates: "Buy your Chevy before May 31". "This Safeway ad contains prices valid til June 30th." Or: "Valid while supplies last." How often do we see: "prices in effect from * * *"?

To eliminate the ability to plan will cause trips NOT to be taken. The result will be a loss of tourism revenues; business sales and related spending will decline. Truly, a bad plan in today's climate.

Since Travel Agents provide planning services for over 80% of the travel purchased in this country, don't deny us, or our clients access to planning information. We cannot afford the results.

Sincerely,

Riverside Travel Group Inc.

Jon R. Brobst,

Executive Director,

Robb's World of Travel, Ltd., 33125 North Highway 45, Wildwood, IL 60030.

February 12, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Lawsuit Against the Airlines.

Dear Mr. Schechter: We strongly object to government intrusion into the travel industry. It is hard enough in this highly competitive field to keep our agency afloat without adding the hardship of more restrictions on agent/client relationships.

Please give this matter your utmost consideration.

Sincerely yours,

Douglas Robb,

President, Robb's World of Travel, Ltd.

Roberts Travel of Starkville, Inc., Lagalerie Shopping Center, 500 Russell Street, Starkville, MS 39759.

March 1, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Our travel agency is opposed to any law which will prohibit our agents from providing customers information on fare increases or deadlines on discount fares. To our knowledge US Air, American Airlines, and United Airlines are currently trying to pass this type of law.

Sincerely yours,

Kerry Lee Long.

Royal Ambassador Travel of Missouri, Inc., 1222 N. Belt Highway, P.O. Box 8611, St. Joseph, MO 64508.

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: This is to voice our objection to the pending suit and consent decrees requiring that airlines must (1) stop providing customers and travel agents with advance announcement fare increases and (2) stop providing customers and travel agents with advance announcements of the end of discount sales (with some limited exceptions).

I believe you will find these objections present with everyone in the retail travel business.

I trust that the views of this agency and others in this business will be taken into consideration.

Sincerely,

Lester L. Einbender,

President, Royal Ambassador Travel.

Royal Travel and Tours, Inc., Corporate Headquarters, 122 North First Street, DeKalb, IL 60115.

February 18, 1993.

Mr. Mark C. Schechter,

Department of Justice, 555 4th Street NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: It is outrageous that the Justice Department wants to limit information our customers need to make intelligent decisions as it relates to there travel plans.

Without dates for airfare increases as well as the dates for discount sales ending, how can our customers plan?

This information must be provided to the traveling public.

Sincerely yours,

Larry Berke,

President, Corporate Headquarters.

March 31, 1993.

Dear Mr. Schechter: I agree with prevention airline price fixing, however preventing travel agents from having full information is counter productive (US v. Airline Tariff Publishing Co.). We need more information and more competing between airlines.

C. Rutledge,

3333 W. 231st St., N. Olmsted, OH 44070.

Sakonnet Travel Service, 3913-c Main Road, Tiverton, RI 02878.

February 25, 1993.

Mr. Mark C. Schechter,

U.S. Department of Justice, 555 Fourth Street, room 9104, Washington, DC 20001.

Dear Mr. Schechter: As a travel agency owner and a person who has been in the travel business for over thirty years, I would like to register my strong opposition to the pending court decision on price fixing and the consent decree the carriers are being asked to sign which will prohibit them from showing last ticketing dates in their computer reservation systems.

This will clearly cause great distress to the consumer who may need some time to make a decision between the time a price is quoted and the ticket purchase. No leisure travel consumer is likely to make an instantaneous decision at the time of quotation of price and since there will be no deadline for ticket purchase available to the consumer (or the travel agent), the consumer will in many cases feel they have been a victim of bait and switch tactics when they do commit and find that the quoted fare is not only no longer applicable but was in fact available "yesterday" unbeknownst to them.

This decision should be opposed by the Department of Justice.

Very truly yours,

Norman P. Lofsky,

President.

Sanders International Tours, Inc., suite 105, Robidoux Center, St. Joseph, MO 64501.

February 19, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: We have had some client inquiries in the last several days concerning a lawsuit against the major air carriers. The callers understand that the Dept. of Justice is against the traveling public being able, through the efforts of their travel agent, to obtain advance pricing information.

Some have expressed the opinion that those in Washington fly at tax-payer's expense don't seem to understand that those who do not fly at taxpayer's expense have to search for the lowest fares available. Though I do not believe this opinion to have that much merit, I am sure that many of our clients plan their travel dates to match the savings offered by some air carriers to balance their load factors.

I called the American Society of Travel Agents to get your name and address. Please keep the costs to the traveling public in mind when making decisions concerning availability of air-ticket pricing.

Sincerely,

Phil L. Sanders,

President, Sanders International Tours, Inc.

Santa Teresa Travel, 369 Shadow Mountain, El Paso, TX 79912.

February 23, 1993.

Mr. Mark C. Schechter,

Chief of Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Re: United States vs Airline Tariff Publishing Company Action No. 92 2854.

Dear Mr. Schechter: I am writing on behalf of Travel Agents and their Agencies in response to the prohibitions the Department of Justice is seeking to impose on the Airlines.

Travel agents are professionals whose business is to research all available information for the consumer without a charge for this service. Because travel agents are responsible for over 85% of all airline reservations it is extremely crucial for agents to have priority access to all pricing. If the Airlines are required to inform the public of changes in fares, the public will seek to by pass our services which will affect sales and eliminate the main purpose for travel agencies.

In El Paso alone, there are over 50 Travel Agencies which would be negatively impacted by this Action. We are being placed at a marketing and service disadvantage which is not in the best interest of the public or small businesses.

Please understand how this Action will effect the economy and the future of people involved in this industry. I hope that you will utilize this information before making any further decisions regarding this matter.

I have also enclosed two lists that contain the names and addresses of clients who support our request.

If you have any questions, please feel free to contact me at (915) 581–1191.

Sincerely,

Miriam Redman,

Vice President/Manager, Santa Teresa Travel.

The United States Department of Justice is trying to prevent the airlines from warning travel agents and consumers in advance of airline price increases. I am against this because it will make it much more difficult for me to plan and budget my travel arrangements. I want to continue receiving information about future ticket fare changes from my travel agent.

Lillian B. Vickers, 4718 Tislon, Hou TX 77041

William S. Sparks, P.O. Box 97, Sunland PerleNM 88063

Daniel Sandoval, 405 Fronters, El Paso, TX 79922

Nancy Pindar, 256 Northwind, El Paso, TX 79912

Suzanner Pinder, 256 Northwind, El Paso, TX 79912

Jan McNuh, 6192 Los Felines, El Paso, TX 79912

A. Lester, 7557B LeConte, El Paso, TX 79912

(ILLEGIBLE), 600 (Illegible) TX 79912

Bob Funk, 11580 Bob Mitchell, El Paso, TX 79936

R. Fox, 810 River Oaks Dr., El Paso, TX 79912

Bruce (Illegible), 829 View De La Pay, El Paso, TX 79912

Klye R. (Illegible), 6111 SunerVally, El Paso, TX 79912

Jane J. Rosen, 912 Cherry Hill Lane, El Paso, TX 79912

(Illegible), 912 Cherry Hill, El Paso, TX 79912

Paulette Newberger, 6902 Westwind Dr., El Paso, TX 79912

Martha Eisnberg, 840 Rosinante, El Paso, TX 79912

Barbara Poth, 4701 Rosinonte, El Paso, TX 79912

Louise (Illegible), 6209 Pino (Illegible), El Paso, TX

William DSpier, 5809 Buringin Tree, El Paso, TX

Gail Borgle, 6308 Monarch, EL Paso, TX 79912

Laung (Illegilble), 5701 Nonneville, EL Paso, TX 79912

(Illegible), 4713 Rosinante, EL Paso TX 79912

Paul (Illegible), 446 El Carmius, EL Paso, TX 79912

Santa Teresa Travel.

Sargent Strong, Travel Services, 8201 Preston Road, suite 160, Dallas TX 75225.

February 22, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Sir: This is to inform you that if you prohibit the use of "first ticket dates" you will impede my professional ability to correctly advise my clients of fares because of the confusion it will create.

Please reconsider your decision on this suit. It is in the best interest of the consumer and certainly will make the distribution system (travel agents) of the airlines credible.

Thank you for your attention to this matter.

Sincerely yours,

Nancy A. Strong, CTC,

President, ASTA National Aviation Committee.

Seddelmeyer-Osburn Travel Concepts, 221 North Main Street, suite 1A, P.O. Box 698, Lima, OH 45802.

February 18, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 Fourth Street NW., Washington, DC 20001.

Dear Mr. Schechter: Just how much "Big Brother" does the American Public need?

For years the American public has been served well by the airlines and the professional travel agency community. As with any business, there have been "peaks and valleys" experienced by all of us but, for the most part, the airlines and the travel agents that sell their products have provided a quality product at a fair price.

I fail to see where the U.S. government, through the infinite wisdom of its Department of Justice, can "protect" the public by imposing what obviously will be price regulation.

Please use your knowledge, experience, and expertise in other areas that desperately need it and leave the pricing and ultimately the ability to counsel travelers to those who do indeed know something about it. Consumers and travel agents need (and can put to good use) the advance announcement of airlines price changes.

Thank you for your consideration.

Christie A. Seddelmeyer.

Sincerely,

Charles E. Osburn.

Seven Continents Travel, 4351 W. Indian School Road, Phoenix, AZ 85031.

February 18, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: There is surely a misconception in the department of justice in the belief that there is price fixing among the airlines through our CRS systems.

The fact that the airlines indicate announcements of fare increases and fare changes is but a tool for agents to correctly advice the consumer.

We need to remain in a position where we can counsel the consumer in a professional manner and without this information we will not be able to do so in the future.

This is government intrusion into our business and against the foundation of our country for free enterprise. We strongly urge you not to proceed in this manner and thereby leave the agency community to go about it's business and give the consumer the best of service.

We appreciate the opportunity to express our views and the time it has taken you to consider our position.

Sincerely,

Rosemary Janicki,

General Manager.

Shell Travel Bureau, North Point Shopping Center, 304A East Rand Road, Arlington Heights, IL 60004.

February 12, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Sir: It is with sincere hope that you express my comments to the proper people in reference to the latest antitrust airline lawsuit.

The logic of not letting me, as a professional travel agent, the knowledge to tell the consumer when a fare expires, or if fare changes are scheduled, escapes me.

How can a policy such as this help consumers? All that this is creating is a situation where every one will play catch up, as once one announces a new fare, the others have the right to compete anyway, with the exception that the computers we pay for will not be current, and we will all be targeted for not being credible with the information we present to the client.

I suggest to you that this is no different than Ford offering a rebate on auto purchases, and General Motors following. This is not price fixing, this is competition in a free market place.

Perhaps more time and effort should be placed on the gross abuses allowed with our current bankruptcy laws (for those in reorganization for years), or for a way to protect the consumer when an airline shuts down completely.

From my uneducated legal viewpoint, I suggest that the lawyers who filed these lawsuits did so for financial gain, and perhaps the courts should look at their motives for bringing these cases, as there is, in this case, no value being generated for the general public * * * and in this case may be cause for sustaining some damage as they won't have valid information on which to base their decisions.

Thank you for any consideration you may give to my thoughts.

Vincent J. Cherry,

President, K-V Travel, Ltd., D/B/A Shell Travel Bureau.

February 23, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: Short's Travel has the State of Iowa, the Iowa Dept. of Transportation, the University of Iowa, and the University of Northern Iowa accounts as well as countless commercial corporations. We hope you can see the harm to these accounts if fare information is denied them by elimination in (illegible) computers.

These government entities count on us to offer (illegible) and options on fares. It is obvious they will not be well served if we cannot inform them when a fare is likely to be increased. We also need to warn them when discount fares will cease so they can take advantage of the savings.

Iowa continues to strive to save every cent it can and this inconvenience is but another (illegible) by the Department of Justice for the state to (illegible) simple phone call by the airlines to their competitors, (illegible) desk will supply them any information they need anywhere so why place the burden and the disadvantage on the traveling public? Short's strongly requests your reconsideration of this proposed judgment.

Sincerely,

Camile S. Hogan,

Short's Travel Service, Inc.

Signal Travel & Tours, Inc., Corporate Office: 227 East Main Street, P.O. Box 940, Niles, MI 49120.

February 18, 1993.

Mr. Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: It has recently come to my attention that the Justice Department has issued a proposed consent decree that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare fillings. This would be disastrous for my company!

As the owner of Signal Travel and Tours, I wish to go on record to protest in the strongest possible terms, this proposed resolution of the price-fixing lawsuit against those carriers. The effective dates of fares are vital pieces of information that my agents need to have access to if we are to have the ability to properly assist travelers with their planning.

Travel agencies do not have a tangible product to sell. What we have to offer our clients is service! To remove one of the prime pieces of information our clients require for them to be able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, will injure both consumers and travel agencies.

Your consideration of this request is greatly appreciated.

Sincerely,

Michele L. Boyd, CTC,

President, Signal Travel and Tours, Inc.

Snohomish Travel, 323 Second St., Snohomish, WA 98290.

February 19, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I object to government intrusion into my business in regards to airline regulation where they cannot

a. provide customers with advance announcements of fare increases or

b. provide customers with advance announcements of the end of discount sales.

With these new laws we cannot as travel agents provide our clients complete and professional travel counseling.

Please reconsider this new law.
Sincerely,

Deryn J. Fulton,

Owner, Snohomish Travel.

St. Clair Travel Service, Inc., #2 Eagle Center, Suite 1, O'Fallon, IL 62269–0066.

February 23, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: As a concerned and active person in the travel industry, I wish to express my strong objections to the lawsuits filed against some of the major airlines and subsequent consent decrees alleging price fixing.

The well being and fairness to the consumer is at stake here as if we cannot provide information beyond a daily basis, the consumer will be unable to make fully informed decisions with regard to travel planning. Also, my office staff's ability to provide complete and professional counseling would be seriously hampered.

The current status of the airline industry is chaotic and millions of dollars are being lost every day. This additional threatened restraint to best serve the consumers is totally unfair and uncalled for.

Yours truly,

Marlene J. Kowalsky, CTC,

President.

Stowe Travel Service, 51 Main Street, P.O. Box 249, Stowe, VT 05672.

February 26, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to express my strong opposition to the proposed Airline Consent Decree.

You will be doing a dis-service to the travelling public not to mention the economy of the U.S.

How on earth do you expect Travel Agencies to quote fares, we will have to preface our quote by saying this is the "Fare DuJour" (fare of the day) this is sheer madness.

Our Founding Fathers would be shocked by your actions, this country was founded on fair play and rebellion against too much Government.

Sincerely,

Mrs. K. Ann Danforth,

Manager.

Suburban Travel Service, 358 Millburn Ave., Millburn, NJ 07041.

March 1, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Mr. Schechter: I am writing in opposition to the recent concent decree being forced on the US Airlines in regard to price fixing through the computers.

Travel Agents and their clients rely on the accuracy of the fare information contained in the computer reservation systems. The consumer is confused enough with the fare wars and the amount of fares to every location in the USA. We as agents have a rough enough time keeping fares and rules straight even with the help of the computers.

How can we advise our clients with confidence and accuracy as to when to purchase a ticket, when the fare could be eliminated that night. Every other industry in the US is allowed to publish their Pre-sale prices and say how long they are good for. Why is the government always down on the Travel Industry? We are the only industry that works on the smallest percentage of commissions and can only charge what the Airlines charge. We can never mark up or down.

This concent decree is totally anti consumer! I hope the Justice Department will review this action and truly serve the public interest.

Thank you for your attention.
Sincerely,

Barbara S. Leddy,

President.

Sun City Travel Service, 10777 Grand Avenue, Sun City, AZ 85351.

February 19, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: Please be advised that our ability to provide complete and professional travel counseling for our customers will be impaired if the consent decrees are approved. It will be impossible to project costs for our clients and give a reasonable estimate for their vacation or business plans.

Further, we will have a run on tickets one day and no business the next depending upon what fare was announced in the morning papers. We then will have many exchange tickets with refunds due to lower airfares. We lose money on these types of transactions.

Grocery stores, clothing stores, furniture stores, etc., all are allowed to plan and notify the public of sales and specials. Why not the airline industry?

Please check out all the details and reconsider this action.

Sincerely,

Elisabeth Braganza, CTC,

Manager.

Sun Travel & Travel Boutique, 3100 North Mesa, suite B, El Paso, TX 79902.

February 25, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: The DOJ is wrong in thinking the airlines must inform the media prior to any detailed fare information being loaded into computer reservation systems. Anyone who went through the "fare war" of last spring would know absolutely that this would make an impossible situation, instead of just chaos, for travel agents to serve their clients when this happens.

Travel agencies sell approximately 85% of all airline seats and, therefore, need access to all price information first. This enables us to SPECTRA our CRS to find which customers who are already ticketed would be affected and to get them reticketed before the deluge hits. Also, by being able to know ahead of the media when the fare will expire, we can help our clients better in their planning.

For travel agencies to properly service their clients, they must be able to know about the fare information ahead of the public. Most small agencies cannot handle the resulting deluge which happens when "sale" fare reductions are learned about through reading the newspaper or listening to the radio or TV. The handling of this situation the way the DOJ wants to places an undue burden on small travel agency businesses. It in fact would cause many of them to close in the event of tremendous fare bargains as have been encountered in the past.

The fact that fare changes go to the CRS prior to the media has absolutely nothing to do with collusion. In the past, all fare-matching by the airlines has been done AFTER one airline has independently reduced its fare(s). Conversely, all fare increases have been made (or withdrawn) based on whether or not the competition follows along. This practice would hold true whether or not the media was informed ahead of time. There is no adverse affect to the traveling public. However, THERE ARE ADVERSE AFFECTS to the travel agencies whenever they cannot be advised of fare changes ahead of the news media.

Please consider this when discussing this Action No. The solution proposed by the DOJ IS NOT in the best interests of the traveling public nor the small travel agencies.

Very truly yours,

Duane P. Coleman,

Vice President.

Sunburst Travel, Inc., 180 N. Michigan Ave., suite 300, Chicago, IL 60601.

February 16, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: The consent decree proposed by the Justice Department will hurt the consumer most of all. Our job as travel agents is to get the best possible air fare for our customers. If we cannot inform them of price increases, they will not be able to take advantage of current (lower) fares for a trip scheduled for the future. This is true for both the business and the vacation traveler.

By eliminating the end date of discount sales you will be hurting the vacation customer most of all. When a customer knows the last day of a fare sale, he can plan better for his vacation. It is our experience that when a vacation traveler has to make "instant" decisions because he doesn't know when a sale is ending, he makes the wrong decisions more often. Under the current fare rules, this "instant" wrong decision results in the customer paying a higher fare.

In conclusion these consent decrees will hurt the consumer much more than the airlines and do little to prevent all airlines from having the same fares. We urge you not to approve these consent decrees but to consider the consumer in your decision.

Thank you,

Michael S. Willens,

Manager.

Sundial Travel Service, 750 Marine Dr., suite 100, Astoria, OR 97103.

February 15, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The Riverside Travel Group is a trade association of 45 travel agencies located in Oregon. We sell over $150 million annually to Oregonians who plan their trips with us.

The key word is plan.

We must all take time to plan, from the shortest vacation trip to the most extensive business itinerary. Part of the planning process is critical information regarding validity of fares.

The Justice action against the U.S. airlines that suggests they withhold this key, critical information from their published fare sources is ill-conceived. Since Riverside Agents write over 20% of the airline tickets purchased by Oregonians, we object in the strongest terms to this concept.

Causing the airlines to keep secret one of the most important factors needed to plan a trip will do irreparable harm to the business community, as well as leisure/vacation travelers.

Virtually every consumer advertisement has effective and expiration dates: "Buy your Chevy before May 31." "This Safeway ad contains prices valid til June 30th." Or: "Valid while supplies last." How often do we see: "prices in effect from.....?"

To eliminate the ability to plan will cause trips NOT to be taken. The result will be a loss of tourism revenues, business sales and related spending will decline. Truly, a bad plan in today's climate.

Since Travel Agents provide planning services for over 80% of the travel purchased in this country, don't deny us, or our clients access to planning information. We cannot afford the results.

Sincerely,

Patricia R. Conner,

Owner, Sundial Travel.

Sunflower Travel Corporation, 1223 N. Rock Road, Bldg. G, suite 200, Box 780448, Wichita, KS 67278–0448.

February 17, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

The present Lawsuit Against the Airlines is a backward movement for US Carriers, consumers and the travel industry.

Deregulation should work as it was intended [no intervention by Government Departments) Free Enterprise!!

I'd like to point out that before deregulation carriers filed for airfare changes through the CAB (so consumers were alerted to the possibility of fare increases and changes).

We ask that you allow those of us in the travel industry to continue our ability to provide clients with complete and professional travel counseling by withdrawing this lawsuit against the Airlines.

Bobbi Hansen, CTC.

Sunniland Travel Bureau, Inc., 50 East Central Boulevard, Orlando, FL 32801.

February 19, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: As an active member of the American Society of Travel Agents and a busy, working travel agent, I have a major concern regarding the Department of Justice suit against the U.S. based air carriers. Your suit, which alledges price fixing, does a huge injustice not only to the airlines, but to the travelling public whom they, you and I serve.

We in the travel agency community serve that travelling public every day. We are most aware of all of the difficulties faced in the industry. We have concerns for the carriers and for the public. We must attempt to keep abreast of every change, every idiosyncrasy, every movement in the marketplace. We must advise our clients and to do so, we must have all information available to us at all times. If the airlines are prohibited from allowing the public to have *all* of the information available regarding discounted fares or fare increases, then, how will we, or the airlines, serve that public? If this suit continues, it will gravely harm the publics ability to plan. This should not be allowed to happen.

We urge you to protect the consumer from any further unnecessary harm. Please withdraw this action.

Sincerely,

Robert B. Ente,

President, Sunniland Travel Bureau, Inc.

Swanson Travel, Inc., 201 S. Locust St., Centralia, IL 62801.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, Washington, DC 20001.

To Whom it May Concern: I am writing to express my extreme objection to the proposed consent decrees. If you give your approval to these decrees the travel industry would be placed under a great strain. We are expected to provide our clients with accurate, and up to the second fare information. Under the decrees that would be virtually impossible. The travel agency community was not involved in the alleged wrong doings, and we should not be punished for them.

Please consider other options in place of the proposed decrees. Thank you for your time, and consideration.

Sincerely,

Verle Besant,

President.

Table Mountain Travel Service Inc., 14062 Denver West Pkwy., Ste. 100, Golden, CO 80401.

March 1, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: This is to express our opposition to the consent decree as it relates to notice of changes in published airline fares.

We do not feel this would be in the best interest of travel agencies, and would probably cause more confusion and dissension in the minds of the general public.

Yours very truly,

Pamela A. Snow.

Law Offices of Tanzman & Kaplan, 330 Washington Street, Washington Square, suite 504, Marina Del Rey, CA 90202.

February 22, 1993.

Mr. Mark C. Schechter,

Department of Justice, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: As an active travel agent and an attorney, I am shocked and quite dismayed to see the approach that the Department of Justice wants to take with regard to the alleged price fixing through the Computer reservation systems.

Even considering for a moment that the Department's analysis of the problem is correct, it makes no logical sense to then punish the innocent consumer who must be the victim you are trying to protect. This is ludicrous. The consumer has the right to know when a sale starts and when it finishes. Why would you now want to put the consumer at risk of purchasing their tickets when they are at the highest price? I always believed that your interest was in allowing the traveling public all the options which facilitate a smart consumer who bases their decisions on pertinent facts. You have single-handedly thrown away the consumers right to know and to make wise decisions based on pricing which should be in the reservation system.

The one who is ultimately punished is the one you want to protect. It makes no sense to implement a plan which provides no benefit to the consumer.

I truly believe the Department of Justice needs to go back to the drawing board and resolve the problem if it exists, in a logical and well planned manner. It would seem that if you implemented just the opposite plan of what you have created, you might solve your problem. If you force the carriers who put a fare in the computers and it states it will last from Tuesday until Friday, then the fare cannot be taken out of the system until the date it is to end. This certainly makes more sense than your approach.

I am hopeful you will review your position and not create a disaster to an industry already in peril.

Sincerely,

Susan D. Tanzman,

Tanzman & Kaplan.

Taos Travel Ltd., P.O. Box 1927, 229 Camino De La Placita, Taos, NM 87571.

February 25, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am very concerned to learn of the consent decree regarding the airline price fixing case. As a full time travel agent for more than 18 years, I feel strongly that the traveling public needs as much information as possible when making travel

arrangements. Limiting any such information will be a true disservice to the consumer.

I strongly urge you to reconsider dropping your suit against the airlines.

Most sincerely,

Marcia B. Winter, CTC,

President.

Taunton Travel Bureau, Inc., 25 Main Street, Taunton, MA 02780.

March 4, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; our clients expect us to be knowledgeable and prescient, and they trust and have confidence that we are acting in their best interests. How can we maintain this relationship if all we can say to them is buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers what prices will be in effect when they travel or when a fare would expire. This is depriving the consumer of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortchanged and victimized by another capricious DOJ ruling. They do not deserve that! Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide to their clients. As a professional travel consultant I oppose the ruling and am making my concerns known via this letter.

Sincerely,

Barbara A. Yuill,

President, Taunton Travel Bureau.

Teplis Travel Service, 5885 Glenridge Drive N.E., suite 250, Atlanta, GA 30328–5573.

March 17, 1993.

Mr. Mark C. Schechter, Chief,

Transportation, Energy and Agriculture Section, Department of Justice, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: As General Manager of Teplis Travel Service, I am writing to express opposition to the actions currently being taken against the airlines by the Department of Justice. The pending lawsuit and the proposed Consent Decree are not in the public interest. Rather, the restrictions the government is seeking to impose on the travel industry will severely and adversely impact the traveling public. Accordingly, we strongly urge the Court not to approve the decree.

Teplis Travel is a full-service travel agency, which has operated in Atlanta, Georgia for more than 21 years. We currently have 45 employees, and sell more then $25 million in airline tickets annually. I personally have been in the travel industry for more than 15 years.

The restrictions the Consent Decree places on the airlines' ability to notify travelers of fare increases and the expiration of sale fares will be detrimental not only to the agency community, but also, and more importantly, to the consumer. By preventing the dissemination of information as to fare increases, we will no longer be able to warn passengers that tickets must be purchased by a date certain to avoid paying a higher fare. As a result, many passengers will undoubtedly pay more for a ticket than the fare quoted at the time the reservation was made. Similarly, our inability to advise passengers of the date a sale fare will expire will result in consumers paying a fare higher than that quoted.

As our customers are forced to pay higher fares, and as our clients are forced to make uninformed decisions, we will be forced to deal with their frustration on a daily basis. As the liaison between our customers and the service providers, we are the individuals who deal directly with the traveling public. Our clients rely on our advice in making their travel plans. As travel professionals, we serve our customers by assisting them in securing the most affordable service available. The prohibitions in the Decree will effectively prevent us from doing our jobs.

Not only will the Decree hamper the public's ability to plan effectively, but we believe, it will also increase the overall cost of air travel. The costs associated with the required advertising, as well as the general increase in operating costs resulting from the DOJ's proposed reregulation of the airline industry, will undoubtedly be passed on to the consumer. We fail to see how the Decree will benefit the public.

It is essential that our clients have access to enough information to allow them to make informed decisions regarding their travel plans. This is true even on those occasions when fare changes may be delayed or even canceled.

We would request that the Consent Decree not be approved, and that the airlines be allowed to continue to inform the public of impending fare increases and the expiration of sale fares. We believe the current use of first and last ticket dates best serves our needs and the needs of our clients.

Sincerely,

Van Henderson,

General Manager, Teplis Travel Service.

Travel Priorities Inc., 3905 W. Howard St., Skokie, IL 60076.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: We strongly feel that the government should not interfere with private business practices, and dictate when and how sales can be conducted. Also, to focus on one industry on which to impose these regulations is unjust. Every other business is allowed to advertise sales. Singling out airlines and travel agents is totally irresponsible.

Furthermore, in this time of economic disaster, with so many airlines and travel agencies already in bankruptcy and out of business, the government should be doing everything possible to stimulate growth rather than strangle it.

In order to stay in business we must be able to provide our clients with professional, knowledgeable counseling. Your proposal to prevent us from advising our clients of their best price options will certainly deter many from traveling.

We urge you to reconsider your lawsuit against the airlines.

Sincerely,

Morris Stroz,

President.

Travel Professionals International, 7041 Grand National Drive, suite 212, Orlando, FL 32819.

February 15, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC.

Dear Sir: The business of travel is one of the fastest growing in the world. It is also one of the fastest changing industries. Deregulation has played a major part in this. Automation has also borne a significant role in changing travel. But, the largest influence is—the traveler.

We want to express our concern about the lawsuit that is effecting the major carriers. We are very concerned about this matter. We rely highly on the airline carriers for the lowest fares and any changes going on in the industry.

Travel Professionals International, along with all other travel agencies wants to guarantee the lowest available airfare to our clients. If we cannot provide the best airfares, our business and reputation would suffer greatly. We hope this situation can be resolved. Thank you for your attention to this matter.

Sincerely,

Felipe Santos

President.

Travel Rite, Inc., Currier Plaza, 14 Post Office Square, Lynnfield, MA 01940; Walls of Decor Plaza, 515 Lowell St., Peabody, MA 01960.

March 8, 1992.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; our clients expect us to be knowledgeable and prescient, and they trust and have confident that we are acting in their best interests. How can we maintain this relationship if all we can say to them is buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers what prices will be in effect when they travel or when a fare would expire. This is depriving the consumer of the ability to make the most effective use of his or her financial resources. Again, the consumer is being shortchanged and victimized by another capricious DOJ Ruling. They do not deserve that!

Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide to their clients. As a professional travel consultant, I oppose the ruling and am making my concerns known via this letter.

Very truly yours,

Beverly Silber, CTC,

President, Travel Rite, Inc.

Shawnee Travel Shoppe, Inc., 102 E. Main Street, Shawnee, OK 74801.

March 4, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 5556 4th St. NW., Washington, DC 2001.

I am writing to you to express my concerns regarding the Department of Justice lawsuit. The results of this suit have placed undue burdens on Travel Agents throughout the country. It is difficult enough to keep up with the thousands of fare changes that occur daily without being kept in the dark regarding the validity dates of the fares.

By publishing these dates, at least we receive a little warning of a fare war and know when it will end.

I honestly feel that you suit is ludicrous. If anything the constant matching of fares by competing airlines had benefited the flying public. Fares are basically lower today than they were prior to deregulation.

Please consider the burden your suit is placing on both Travel Agents and Airlines with the current financial instabilities in the Airline Industry. Your suit could ruin many Carriers. The legal fees would be enormous. What benefit will the public reap from the bankruptcy of numerous Carriers due to litigation costs?

Please drop this suit and work with the Airlines rather than against them and the Travel Industry as a whole. Everyone would benefit!

Sincerely yours,

Nancy McGee,

Owner.

Travel Specialists Inc., 13032 North Dale Mabry, Tampa, FL 33618.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to express my concern with the pending airline consent decrees. The approval of the consent decrees would seriously encroach upon our ability to serve the travelling public. We must be provided with complete and accurate information in a timely manner to best serve our customers.

Sincerely,

Tanya Highnote,

CTC, Travel Specialists, Inc.

Travel Store, Inc., 105 Spring Street, Williamstown, MA 01267.

February 27, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Mark Schechter: This letter is to tell you that I am strongly against the lawsuit by the Dept. of Justice against the airlines regarding price fixing.

I feel that as a travel professional for over 18 years I would not be able to serve my customers as I have done in the past, and consumers in general would be hurt by the lack of advance notice of fare changes.

Sincerely,

Claudine R. Auge,

President.

February 23, 1993.

Mr. Mark C. Schechter, Chief,

Transportation, Energy and Agriculture Section, Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: The prohibitions that the Department of Justice is placing on airlines is harmful to consumers and to small businesses like the many travel agencies which service the American public.

As travel agencies like ours sell 85% of all airline seats we should have fare information loaded into our computer reservations systems before advertising these fares appears.

Without advance notice travel agents cannot provide the American public with information, and options on fares. Without knowing the start and end dates of special fare promotions, without knowing when fares are to be increased or decreased we are unable to serve our clients properly.

We feel the proposed judgment harms small business like ours, not helps them. The proposed judgment is not in the best interests of the traveling American public.

Sincerely,

Dagnar Q. Matthews,

President, Travel Systems Incorporated.

Travel Travel, 146 East Main Street, Newark, DE 19711.

February 25, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I do not feel that the government should interfere with the airlines and Travel Agents ability to tell clients when there is a sale starting or ending on fares.

I feel this would make us very unprofessional, not being able to give our clients this information.

Sincerely,

Joan M. Simmons,

Owner.

February 19, 1993.

My agency opposes what the Department of Justice is demanding from the airlines in regards to announcements of fare increases. This does not allow us to properly serve our clients in providing low cost travel guidance.

Sincerely,

Lynne W. Washburn,

President, Travel Trends.

Travel/Unlimited.

March 1, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The policy that prohibits airlines from showing the effective dates of fares is hurting the public, corporate travelers and travel agents. Not being able to tell our clients when a fare increase becomes effective does a tremendous disservice to everyone concerned with travel.

Surely there is some way to resolve this sticky problem.

Sincerely,

Paul J. Kreeb, CTC,

Vice President.

George Simonds' Travel Unlimited, Inc., 12 South Poplar St., Oxford, OH 45056.

February 19, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Sir: I have delayed writing until I have had the opportunity to discuss the discontinuance of advance notice of air fare changes with several of our significant clients.

Denying advance change of air fare information to the traveling public is an unacceptable concept.

To deny such information is to deny the public the opportunity to most effectively plan the use of their relatively scarce dollars. With our clientele being 75% University students we know the importance of their being able to adjust plans to minimize costs and perhaps even more importantly the need to be able to avoid the financial impacts of unannounced fare increases.

It is important that we keep in mind the fact that not all travelers are business travelers. Students, families and seniors will all be severely injured by this proposal. Our jobs as travel agents will become even worse nightmares when as the person readily available to the public we will catch the blame, anger, rage and frustration of disgruntled air ticket purchasers.

Sincerely yours,

George M. Simonds, CTC.

Travel With Us, 919 North Michigan Avenue, Suite 3102, Chicago, IL 60611.

February 12, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: As the owner of a small travel agency I wanted to take a minute to tell you why I am opposed to the approval of the pending consent decrees between the airlines and the Department of Justice.

Most of our clients are non-corporate, leisure travelers. They save so they can afford a vacation once or twice a year. When they call us for advice we have to be able to give them an idea of the best time to purchase their airline tickets. Once we quote a price and make a booking, they usually have 1 day (24 hours) to buy the tickets. Most of the time they have to call relatives or discuss the dates with travelling partners that evening. If the decrees are approved, the situation could exist that the next morning the fare could be much higher than when they called the day before. How could we properly advise anyone?

By knowing in advance of fare increases, we constantly help the public save money. When consumers are given a price for something and the next day the same thing costs more, they feel cheated.

I urge you *not* to approve these consent decrees.

Thank you for your time.

Sincerely,

Michael Kauffman,

CTC, Owner/Manager.

Travel Wise, Ltd., 526 W. Dundee Road, Wheeling, IL 60090.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I have learned that the Department of Justice has filed suit against most of the major airlines stating that they must stop providing customers (travel agents and the travelling public alike) with advance announcements of fare increases and/or announcements of the end of a sale.

This suit will severely limit the services we have provided our clientele with for close to 20 years. These customer look to their professional travel agent to counsel them with respect to their anticipated airline ticket purchase. A significant part of our day is spend researching fare increases and decreases and then relaying our findings to our customers. If this critical information is withheld I believe the travelling public will be forced to spend more money than necessary on higher fares.

I am writing to your offices to request that you abandon the current lawsuit the Department of Justice has against the airlines.

Sincerely,

Scott J. Kennedy,

Travel Wise, Ltd.

Travelworks, 1609 17th Street, Denver, CO 80202.

January 28, 1993.

Mark Schechter, Chief,

Transportation, Energy & Agriculture Section, Anti Trust Division, Justice Department, room 9104, 555 Fourth St. NW., Washington, DC 20001.

Dear Sir: With regard to enforcing the airline consent decree affecting the publishing of first and last ticketing dates, someone is not seeing the big picture. It may stop the airlines from "signaling" each other, however it drastically hurts the travel agent and consumer. Consider the scenarios below:

—In December '92 the airline fares increased about 15%. By knowing the increases were scheduled, we were able to contact clients and ticket early, before the increases became effective. For our business travelers, this early ticketing saved $100 plus!!

—A client calls for a fare quote, considering a trip. Once finding the airfare is affordable, the client needs to check other details, i.e. time off from work, finding a babysitter, checking if the person to be visited is available, checking with a traveling companion. Often the answers are not immediately available and take several days. Using the last date to purchase the ticket, a client knows if s/he has one day, 3 days, a week or more to get answers.

—Our business as a travel agency is built on repeat clients. Our clients expect us to advise them and help them—which we do. We must be able to give the client accurate info that is good for more than that day. We interrupt and advise clients on airfares all day—we must have all the conditions, rules, and ticketing dates available to us.

Travelworld, P.O. Box 450, South Main Plaza, Wilkes-Barre, PA 18701.

February 15, 1993.

Mr. Mark Schecter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schecter: I have never felt the need to write to the Department of Justice before, but I believe that recent actions force me to object to a decision which I feel is most detrimental to those of us in the Travel Agency marketplace.

As I understand the recent lawsuit against the major airlines, the Department of Justice has stated that it is unfair practice to signal price increases, or decreases, as has been done in the past.

I respectfully submit that, if allowed, the lawsuit will severely impact my ability to counsel my clients and place irreparable harm to my agency. We advise both our vacation and business clients with fare information provided to us through our reservation system. Without that information, we are going to be placed in a hit and miss situation that is simply untenable and without reason. I believe that the system in use should be regarded as the best possible method of getting information to the public and by taking it away you would be destroying my ability to properly serve my client.

There are, I believe, over 1,000,000 fares stored in our system at any given time. Without knowing when fares will increase or decrease will place an unfair burden both on those in my business and also those we serve. Please do not take away my professionalism. We have the tools to do a good job * * * the Department of Justice is attempting to take those tools from our hands.

Very truly yours,

Michael Salamon, CTC,

CEO, Travelworld.

Travelex International, Northwest Corporate Center, 2500 W. Higgins Road, suite 1100, Hoffman Estates, IL 60195.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, Rm. 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I would like to express my deep concern over the consent decrees recently signed by two major airlines. While I understand the Justice Department's desire to prevent price fixing, these consent decrees do not help consumers but rather hurt them. It is absolutely imperative for travel agencies to have some advance notice on fare increases or scheduled reductions.

Our clients rely on our professional advice and assistance in helping them secure the most advantageous prices. Without advance announcements, consumers are unable to make informed purchase decisions. Therefore, the proposed remedy adversely affects the consumer.

I strongly urge you to renounce the signed consent decrees and support the continued practice of advance announcements on fare changes.

Sincerely,

Tor Saile, President, Travelex International.

March 6, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Gentleman: As a Travel Agent in a small town, I am writing to encourage you to take a strong stand against the "Concern Decrees filed by United Airlines and US Air Lines."

Should this DOJ win this Lawsuit, the Travel agents and Consumers will be deprived of useful Travel planning information.

After Forty Years as Owner of this agency, I would hate to tell my faithful clients of the dilemma over such a ruling.

Trusting your taking a hard look at this matter and cast you vote and encourage others to do the same against this matter.

Yours truly,

Thelma Bacon,

Owner, Thrift Travel Service.

Thomas Travel Service, 123 South Main Street, P.O. Box 270, Doylestown, PA 18901.

February 15, 1993.

Mark G. Schechter,

Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: This is a public comment related to the DOJ lawsuit against several airlines having to do with price fixing by placing advance notice of new fares in the computer reservations systems (CRS) used by almost all travel agents.

The proposed DOJ requirement is very anti consumer in nature because it will make the process of intelligently buying a low cost airline ticket almost impossible for the average traveler. With no ability to know how long a fare will last, the passenger cannot possibly plan her trip.

The proposed rule will introduce confusion in the marketplace. This will not benefit the public, airlines, or travel agents.

I strongly oppose the proposed rule.

Very truly yours,

Tom Thomas,

President.

The Total Traveler, Inc., 2800 Higgins Road, Hoffman Estates, IL 60195–2008.

February 16, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to you in regard to the Department of Justice lawsuit against the airlines. I believe the traveling public will be unfairly harmed if the consent decrees are approved or any lawsuit against the airlines is allowed to proceed.

I also will not be able to do my job properly in counseling my clients about options available to them. I believe the Justice Department is misguided in thinking that advance announcements of fare increases or decreases is price-fixing. The purchase of travel is a big decision for most people and is often one of the biggest expenditures that someone might purchase in a given year. It is not some "K-Mart blue light

special" or some flea market bargain that is too good to pass up. The public must be allowed time to make the right decisions and the right purchases with regard to travel arrangements and shouldn't be pressured into doing something that they later don't want or don't need.

Other industries are allowed to post their sale dates. What is different about airline tickets? I urge you to pass my comments on to the judge presiding over the concent decrees. Thank you very much.

Sincerely,

John Werner, CTC,

President.

Tower Tree Travel & Tours, 108 East 10th Street, P.O. Box 608, Greensburg, IN 47240.

February 12, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Sir: As a small business and a travel agency, we strongly oppose the lawsuit filed against the airlines. Not only is this against the airlines, it completely stonewalls the agencies!! We can no longer aid our clients in buying tickets or planning their vacations as far as letting them know certain tickets should be purchased before certain dates in order to receive the best fares.

Of course, I suppose "Congratulations" are in order, because once again it is going to be the middle-working class that is really being hit again through all this. They are the ones who must plan early and save for that long awaited vacation. Then, once they think they're on their way, they may have to forfeit simply because tickets went up at the last minute. Or, they may have cancelled their vacation, then fares dropped. But it is too late for them to make the necessary arrangements for a vacation.

It is imperative that agencies be informed so that they may keep their clients informed. It builds a trust and a bond. It is a large part of what makes an agency. If there is no trust, we cannot hope to build our agencies and continue to hire.

Overall, the whole country will be affected. For many places in our country, tourism is a staple. The people in these areas depend on tourism for a living.

Please reconsider and do not allow this lawsuit to jeopardize our economy.

Thank you.

Sincerely,

Jane Dragoo,

Manager.

Trans-Global Trave , Inc., 456 Fulton Street, suite 150, Peoria, IL 61602–1220.

February 28, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 Fourth Street, NW., Washington, DC 20001.

Dear Mr. Schechter: It has come to our attention that the DOJ has filed a lawsuit against most of the major airlines alleging that they fixed prices by signalling each other of their pricing plans through advance announcements of fare increases and changes.

If this change is made, this will severely limit our agents from providing complete and professional travel information and advice. We are very opposed to this action. An analogy to providing this information would be the example of knowing when Sear's sale on refrigerators will end. Complete, deregulated consumer information is essential to maintaining the rights of purchasers.

Please forward these comments and concerns to the judge reviewing the consent decrees.

Regards,

Marcia Burdick, CTC,

Manager.

Travel Adventures Unlimited Inc., 15 Yacht Club Drive, Fort Walton Beach, FL 32548.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to vehemently oppose the consent decree preventing airlines from advising us of fare increases and other fare changes.

I know if no other business that can't be advised by their suppliers of price increases. This will severely impair our ability to be professionals.

The last thing we need is a federal court as our price regulator. Please, please stay out of our business!

Sincerely,

Peggy L. Wise,

President.

The Travel Agent, 11562 Westfield Blvd., Carmel, IN 46032.

February 16, 1993.

Mr. Justice Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Justice: It has come to my attention that the Department of Justice has filed a lawsuit against the major airlines, alleging that they must:

- Stop providing customers and travel agents with advanced announcements of fare increases.
- Stop providing customers and travel agents with advanced announcements of the end of discount sales (with limited exceptions).

If this becomes a reality, it is my firm belief that travel agents and consumers will be deprived of useful travel planning information. With travel and tourism already besieged by the recession and excessive taxation, it is contrary to the national interest in restoring a healthy economy to take action that will further depress consumer demand.

The Justice Department's position would place a federal judge in the role of price regulator for the airline industry. This, at a time when the focus should be on supporting the industry's growth so that new jobs are created and to revitalize our economy. After all, last year the travel and tourism industry paid out $47 billion in taxes collected by the government. This is nearly a 75% increase from the previous 5 years. Is this just the beginning of additional government intervention? The negative spiral that this could create at this time may further destroy this already depressed industry. In the long run it is the consumer that will suffer.

Sincerely,

Mark D. Moorhead,

V.P., General Manager.

Travel Agents International, 13140 Central Ave. NE, suite D, Albuquerque, NM 87123.

February 26, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: We strongly oppose the outcome of the referenced litigation if it requires the airlines to stop providing customers and travel agents of advance announcements of fare increased or the end of discount sales.

Giving advance notice of fare increases is one of the most powerful tools travel agents have for best serving the needs of their customers.

It will result in unexpected fare increases, no warnings of discount fare expirations, and ultimately rising ticket costs.

We hope that the Department of Justice and the presiding Judge consider the financial impact to the consumer if this advance notification is eliminated.

Sincerely,

Gerald L. Quintana,

President, Travel Agents International.

February 17, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, Washington, DC 20001.

Dear Mr. Schechter: I have followed with interest the events concerning the consent decrees having to do with the announcement of fares increases and sales and dates by the airlines. Needless to say, this has extraordinary impact on my business and my ability to serve our clients.

My agency serves primarily senior citizens, leisure travel clientele which is extremely price-driven. It is difficult to even imagine that the Justice Department could contemplate making rules that would not allow us or our clients to know when new fares were due to be implemented or cancelled.

Every industry publishes dates for a sale—just pick up the newspaper or inserts! The grocery store, the department store, the tire store etc. etc. all indicate when the sale begins and when it ends. Why should the travel industry be different? Clients will be up in arms if we tell them the fare is only valid at the moment—that we have no idea when it will expire or change.

Again, every other business is allowed to publish the dates a sale begins and ends—to restrict the airlines from doing so goes against everything the consumer is accustomed to and indeed, expects. It would be a SEVERE blow to our business and our ability to serve the needs of our clients.

I would have to hope that reason and common sense will prevail and those charged with decision making will realize how unfair it would be to our industry, and most importantly to our customers, to not allow information regarding the beginning or end date for sale of fares to be available to us.

Respectfully,

Kate Basore, CTC,

President, Travel Associates.

Travel Assured Corp., 1531 14th Street, Rock Valley, IA 51247.

February 17, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mark: I want to express my concern about the traveller. If he is unable to make fully informed decisions about his travel he will be harmed. If the information is available it needs to be shared. How can one run a business and not know what is going on. We will not be able to provide our clients with the proper information. I strongly oppose the consent decrees.

Sincerely,

Nancy Lammers.

Travel Bureau of Westfield, Inc.

March 4, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: The changes in faring have clearly taken away our ability to anticipate price increases and decreases. As professional travel consultants, we book 80% of all airline tickets; our clients expect us to be knowledgeable and prescient, and they trust and have confidence that we are acting in their best interests. How can we maintain this relationship if all we can say to them is buy today or there is no guarantee that this price will continue to be available. We cannot tell our customers what prices will be in effect when they travel or when a fare would expire. This is depriving the consumer of the ability to make the most effective use of his or her financial resources. Again the consumer is being shortchanged and victimized by another capricious DOJ ruling. They do not deserve that! Providing effective date information with ticket price information is a value-added service that the travel industry must be able to provide to their clients. As a professional travel consultant I oppose the ruling and am making my concerns known via this letter.

Sincerely,

Mary J. Boscher, CTC,

President, Travel Bureau of Westfield, Inc.

The Travel Center.

February 27, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 Fourth St. NW., Washington, DC 20001.

Dear Mr. Schechter: This letter is in opposition to the present law suit filed against major airlines contending that they are unable to provide customers and travel agents with advance announcements of fare increases, as well as the expiration date of fares.

Mr. Schechter, this seems to be a rule that is contrary to the public interest, as well as the entire travel agency industry. We have had many inquiries from our corporate, as well as leisure clients already pertaining to this situation.

With such a ruling, we as travel agents would be unable to provide our clients with any indication as to what an airfare is other than at the exact second we are quoting it from our CRS systems. This would definitely be a hardship on the travel agency industry and would be very adverse to the traveling public.

I would appreciate The Department of Justice reconsidering such a move and that you seek further advise from professionals from the industry that you are attempting to regulate.

Sincerely,

The Travel Center.

Larry D. Smith,

President.

The Travel Center, 5805 Fleur Drive, Des Moines, IA 50321.

February 18, 1993.

Mark C. Schechter,

Department of Justice, room 9140, 555 4th St., NW., Washington, DC 20001.

I object strongly to the Department of Justice limiting the ability of the Airlines (which in turn affects, the travel agent) to stop providing customers (and travel agents) with advance announcements of fare increases and to not provide airlines (and travel agents) to announce the end of discount fares.

This will impair our counseling and planning of groups etc.

Sincerely.

Elvira South,

President.

The Travel Center, Inc., 71 Keystone Ave., Reno, NV 89503.

February 26, 1993.

Mr. Mark C. Schechter,

Anti Trust Division, Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I have been in the business since 1971 and have seen more changes, good and bad, than most people in the industry as well as out of the industry.

The current prohibition placed by the Department of Justice is quite ridiculous in such a competitive business. More than anything else, I have built my reputation on providing the best dependable service in the area but this new ruling makes a mockery out of professionalism.

Last Friday, I quoted a fare of $388 from Reno to New York but the client could not book until Monday when the same fare was $553! Guess who the passenger was mad at? Not the airline. Not the Department of Justice. At me, the travel agent who had to stand behind what I had given him two day earlier. Incidentally, the commission on a $553 ticket is $50.27 and you can figure out the loss we had to sustain.

The problem was caused by the fact that we cannot have the all the information we need to make a transaction in particular, the expiration date of a fare. We, Travel Agents, sell 85% of the airline seats and HAVE to have all the information in order to transact business professionally and knowledgeably.

This final judgment has a negative impact on small business's like travel agencies and highly inconvenient on the client. The disadvantage we have now impacts our marketing and servicing. We used to advertise heavily when a fare was announced but now cannot as the fare may not be in existence the next day! The airlines have also reduced their advertising to the public which hardly ever read the ads anyway due to the numerous fine prints that always exist with airfare sales. So they call the Travel Agent, who they assume has the information, as they did in the past.

Deregulation has already reduced the number of airlines that exist today, and this gives them even more control over what they want to sell. I am sorry but Government does not belong in private business because I do not think you know the realities that exist from your ivory towers.

Sincerely,

Suraj N. Zutshi, CTC,

President.

The Travel Center, Westside Plaza, 2120 W. Main, suite 2, Rapid City, SD 57702.

February 15, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: We are writing with regard to the pending lawsuit against the airlines and in particular, to the demand that the airlines cease providing the customers and travel agents with advance announcements of fare increases and with announcements of the end of discount sales.

Since this type of regulatory control would impair our ability to provide the consumer with professional and complete information, we feel that it compromises our position as professional travel consultants. We respectfully submit that these decrees would establish the federal court as the price regulator in the airline industry and we feel this is an objectionable government intrusion into our business.

Thank you for your consideration.

Sincerely,

Cheryl A. Wierenga,

Co-Owner.

Mary M. Thomas,

Co-Owner.

The Travel Connection, 655 West Gurley Prescott, AZ 86301.

February 18, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: Please rule against the consent decrees in the lawsuit which the Department of Justice has filed against the airlines.

This decree will seriously affect the ability of travel agents and the general public in providing the best available service and value.

It is in the best interest of the traveling public to be able to avail themselves of the costs of travel at all times.

Sincerely,

Joyce Bunch, CTC.

February 24, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: I have been working in the travel business since 1978. I now own my agency and work hard to keep it in the black. I don't spend my time flying all over the world, but sitting at my desk constantly searching for the best value for my traveling customers.

I'm not a crook, I don't play games with airfares, but I need all the help I can get to give the best service in an industry which is changing all the time. This change is not going to benefit the troubling public and will make my job so much more difficult to provide the best for less.

I'd suggest you stop in to a local travel agency and get some first hand experience as * * *

Travel Dynamics,

February 24, 1993.

Mr. Mark C. Schechter,

Chief, Transportation Energy & Agricultural Section, Anti-Trust Division, Department of Justice, 555 Fourth Street, NW., room 9104, Washington, DC 20001.

Re: United States vs. Airline Tariff Publishing Company Action No. 922854.

Dear Mr. Schechter: I am writing today concerning the prohibitions the Department of Justice is placing on the scheduled airlines. I am sure that you are aware, travel agents account for roughly eighty-five percent of the airline tickets that are issued today to the traveling public. We are concerned as the consumer counts on a travel agent to give objective and unbiased information. This enables the consumer not only to buy their airfares wisely, but to know when to buy them before airfares expire. We understand that the Department of Justice has a concern, perhaps a deserved concern is to the possibility of price fixing on behalf of the carriers. We do not feel that this is serving the public properly by keeping that information out of the airline reservation systems, which travel agents utilize for both flight information and airfares.

We feel very strongly that all airfare information should be put into the reservation systems which we utilize as soon as they are made available with all restrictions concerning the fares loaded in at the same time. We agree with what we believe the position of the Department of Justice to be, in that all information should be available simultaneously to the travel trade as well as to other airlines as well as being advertised in the newspaper. We hope that the Justice Department will take action to be sure that the reservations systems which we use have accurate up-to-date information so that we can properly advise the consumer as to their rights and maximize their travel dollar.

It is obvious that neither travel agents nor our clients will be well served if we cannot inform them as to when airfares are to be increased. Likewise we need to know when discounted airfares will end so when we call our clients we will know there is a special fare available for a limited time period. If the airlines have to inform the media first of any fare changes, as the Department of Justice proposes it, it may well discourage sales. Travel agents are professionals and we do care about our clients and service a vast number of consumers. Much of our service is to offer opinions and options on fares.

We have noticed since United Airlines and US Air as well as America West have signed a consent decree with the Department of Justice that the fare display for both Apollo and SABRE agents have had changing fare displays not only day to day, but from morning until afternoon. This creates a particularily strong hardship for the consumer. Many of our corporate business travelers book their reservations in the morning. We go through several quality control steps during the day before actually issuing their tickets and then more quality control steps before we actually package the tickets and deliver them to a client. If the fares are allowed to change without notice and without us being properly advised we are in the awkward position of not being able to give the correct information in the morning because it will be supplanted by mid-day or afternoon.

Please consider the inconvenience you are placing on the consumer, especially the business traveler, who is very important to our economy at this point. The negative impact on our small business is of course a concern to us as we feel that we are the select private sector that will be providing jobs that are most needed for our economy to grow and thrive. Needless to say we are being put at a marketing and service disadvantage. The proposed file judgement is certainly not in the best interest of the travel industry or the public at large.

Sincerely,

Walter S. Durso,

President.

Travel Exchange, 253 Post Road West, Westport, CT 06880.

February 25, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street Northwest, Washington, DC 20001.

Dear Mr. Schechter: I am writing to express my opposition and that of Travel Exchange to the "Consent Decree," as signed by U.S. air and United Airlines. This practice will seriously infringe upon the Travel Industry's right and ability to be of complete service to their clients.

I trust that a better solution, one which does not punish the travel agent and the traveller alike, can and will be devised.

Sincerely,

Lesley Kaplan,

Manager.

Travel 15 Ltd.,

February 26, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am in opposition to the consent decree regarding airline price fixing.

Yours Sincerely,

Travel 15, Ltd.

Phyllis Meranus.

The Travel Gallery, Inc., 6645 N. Oliphant, Chicago, IL 60631.

February 16, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St. NW, Washington, DC 20001.

I'm writing on behalf of The Travel Gallery to express my opposition to the consent decree which requires airlines to stop providing advance notice of fare increases and ticketing deadlines.

I believe it will be impossible to maintain our professionalism and efficiency without this information.

I urge you to reconsider!!

Sincerely,

The Travel Gallery, Inc.

Mary Laszczkowski,

Manager.

Travel House Travel Agency, 2718 Observatory Road, Hyde Park, Cincinnati, OH 45208.

February 15, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW, Washington, DC 20001.

Dear Mr. Schechter: I am writing this letter on behalf of airlines, travel agents and consumers throughout the country to ask the judge considering the Justice Department's lawsuit against the airlines not to approve the consent decrees filed.

While I obviously do not have all the facts that the Justice Department has, I cannot understand how matching a competitor's price can be considered price fixing in an industry where prices change constantly to adapt to supply and demand. When the corner gas station raises the price of gasoline 5¢ a gallon and the station owner across the street follows suit as soon as he sees his competitor change his sign, is that price fixing? When the local department store advertises an after-Christmas sale beginning December 26 and ending December 31 and includes items and prices, is that price fixing? When General Motors announces new prices for 1993 models three months ahead of time, is that price fixing? Airline seats are a commodity and this is one of the most competitive markets I have come across in a diverse business career.

Regardless of whether price fixing occurs, however, the Justice Department cure is worse than the disease. By forcing the airlines to terminate fares without notice, and not allowing them the provide us with a last date to ticket, these new rules create enormous confusion and ill-will for the travelling public. Imagine that you call your travel agent to book a vacation to Paris. The agent gives you a fare of $570 and shows plenty of seats available on the dates you want to travel. Rather than book a non-refundable ticket that instant, you ask the agent to obtain some hotel information for you. When the agent calls back the next day with hotel prices, you both discover that the airfare is no longer available because the promotional fare is no longer available. With thousands of different fares and millions of

passengers, this is just one simple example of the thousands of problems that these rules will cause.

With the economy struggling to achieve a decent level of growth and the airline industry laying off hundreds of workers cutting health benefits and losing millions of dollars, these rules seem ill-conceived and ill-timed to say the least.

Once again I urge you to rule against these consent decrees and, if possible, put a stop to this lawsuit.

Sincerely,

Travel House Inc.

Brian A. Collings,

Vice President.

Travel, Inc., 936 Fourth Avenue, P.O. Box 1779, Huntington, WV 25718.

March 1, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I would like to voice my opposition to the consent decree now under consideration by your office.

Sincerely,

Betty J. Given,

President.

Travel King of Dallas.

February 26, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: U.S. vs. Airline Tariff Publishing Co., et al.

Dear Mr. Schechter: This action is a serious disservice to the American consumer and accomplishes exactly the opposite of what it is was intended to do. Here's why this action discourages competitive pricing:

1. Because prices cannot be announced in advance—it prevents travel agents from advising the flying public of the most advantageous pricing.

2. Because the end of a price sale cannot be announced in advance—travel agents cannot advise the consumer of an upcoming price increase. The result will be *unexpected fare increases and no warning of discount fare expirations.*

3. It's unfair partiality to single out the airline industry. Why not "outlaw" Sears, or Wallmart, or J.C. Penney from advertising an upcoming weekend sale in their retail stores?—Because it would be detrimental to the consumer.

4. Approximately 85% of airline tickets are written through travel agents because we have the resources to find the best fares for the flying public from among all carriers and because we can advise flyers of the best dates to fly in a completely unbiased way. This will prevent travel agents from supplying this valuable counseling service to the American consumer.

This is government interfering in private business to the detriment of both the consumer and the business.

Sincerely,

Stephen H. Schott,

Donna J. Schott,

Owners.

Travel Link, 785–B Alpha Drive, Highland Heights, OH 44143.

February 12, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Re: Department of Justice-Lawsuit Against the Airlines.

Dear Mr. Schechter: Our Industry has been beaten and battered in many ways during the past few years and the above mentioned lawsuit will only add another problem in our dealings with our customers.

Our clients rely upon us to assist them in securing the lowest available fares for their travel needs. In the past we were able to create some degree of urgency by advising our clients when a fare would increase. If this degree of advice is removed from our abilities to counsel, we could be further impaired. We do not know how the lawsuit can be settled, however, we do know that the consent decrees would not be a benefit to our industry.

I am sure that you have been quoted statistics on the value of the Travel Agent Industry to the Economy and any interruption in that contribution would affect others as well as the Travel Industry.

Please look favorably upon our request.

Thank you.

Sincerely,

Frank A. Cirino Sr.,

Travel Link Co.

Travel Makers.

February 23, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.

Re: United States vs. Airline Tariff Publishing Company, Action No 92–2854.

Dear Mr. Schechter: The settlement provisions imposed by the government concerning the alleged antitrust activities of our airlines is unfair and detrimental to the travel industry. As agents, we can no longer perform to the best of our abilities as we cannot provide complete fare information to our clients.

Our industry is already viewed with a degree of skepticism over the professionality of some agents. Those of us who want to project the proper image are hampered by lack of information. This appearance of inefficiency relegates us to the exact position we are trying to overcome.

Please reconsider the position we are now in as a direct result of your decisions. Small businesses have enough difficulties to overcome as it is. We need governmental support, rather than administrative restrictions. The proposed judgment is not in the best interest of the industry or the public.

Sincerely,

Susan Boyd,

President.

The Travel Mart, Ltd.

February 18, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW, Washington, DC 20001.

Dear Mr. Schechter: I would like to register my comments regarding the Department of Justice filing of a lawsuit against most of the major airlines alleging price fixing.

Your suit stipulates that carriers stop providing customers and travel agents with advance announcements of fare increases as well as the dates on which these fares terminate.

This is a gross disservice to the consumer and also to my work as a travel agent.

I find it difficult to understand that the Justice Department now feels that it should be the regulating body as far as airline fares are concerned and I strongly object to the current tactics that you employ. This is still a free enterprise country and in my opinion the constant interference of government in commercial affairs leads me to surmise that free trade is something of which the Justice Department does not approve.

Sincerely,

Lorrie Knorr,

Manager.

Travel Masters of Tempe, 5158 S. Rural Rd, ABCO Center, Tempe, AZ 85282.

February 14, 1993.

Mr. Mark Schechter,

Department of Justice, rm. 9104, 555 4th ST. NW., Washington, DC 20001.

Dear Mr. Schechter: After reading some of the details of the lawsuit filed against the major airlines, I am compelled to write and voice my opinion on this matter.

To continue this suit would severely damage, the airlines and the travel agency community, in their effort to serve their clients.

If this decision goes against the airlines, you would have to regulate every business in the United States. Most companies or manufactors give their clients a deadline as too when a promotion will end or when there will be a price increase. This can be quite beneficial to the consumer.

I would therefore appreciate your voting for the airlines.

Sincerely,

Tony Le Fevre,

Owner.

Travel Now, Inc., One Franklin Plaza, Philadelphia, PA 19102.

February 16, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to voice my opposition to the proposed airline consent decrees. This type of government intrusion into the travel business would hinder our ability to provide our customers with advance notice of fare increases and sale end dates.

With the federal court as price regulator for the airline industry, professional travel counseling by travel agents would be greatly impaired.

Travel Now has been providing exceptional travel planning for many years. We would like to think of our business as an ongoing concern.

Sincerely yours,

Fran A. Engelbach,

President.

Travel Now, 107 North Commercial, P.O. Box 160, Clark, SD 57225.

February 15, 1993.

Mark C. Schechter

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Re: Department of Justice Lawsuit Against the Airlines.

I am writing you in regards to the above mentioned. If the consent decrees are approved my ability to provide my clients complete and professional travel counseling will be impaired.

I strongly object to this government intrusion into my business.

Sincerely,

Karen L. Arthur.

Travel Now, Inc.

February 23, 1993.

Mark Schechter,

Dept. of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Sir: I am writing to express my opposition to the lawsuit against most airlines regarding pricing fixing.

It would not only be very difficult for us to do an adequate job if we did not know the beginning & ending dates of fare promotions, but it would be unfair to our clients.

Your consideration would be appreciated.

Sincerely,

Jean Remington,

President.

Travel Partners, Inc., 7926 Old Seward Highway, Suite C4, Anchorage, Alaska 99518; Phone (907) 349–4778, FAX (907) 349–3668, Intrastate 1–800–478–4779 (Outside Anchorage).

February 17, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: As a member of the Travel Agent community I must protest the actions being taken by the Justice Department on the airlines price fixing lawsuit. Travel agents are brokers of space, basically, we advise our clients the most advantageous time for them to purchase their airfares and vacations. If the Justice Department makes it an illegal act for the airlines to let the public and travel agents to know in advance when airfares will expire or go up, it will greatly affect the way business is done for all types of businesses. A stockbroker could not call his clients to tell them to buy or sell at whatever time is best for them. Grocery stores could not publish ads specifying sales on Brand name items as it would make an advantage over their competition as price fixing even though the first grocery store is a privately held concern. What normally happens when the airlines lower airfares the price comes out and every single travel agent I know will call the airlines involved in the same marketplace and ask them if they are going to match the airfares to save from charging their clients the higher prices to fly to the same destinations. If you write a supersaver ticket, which is an advance purchase restricted ticket, there is a penalty to rewrite the ticket to be able to refund any fare difference.

If you want to regulate the airline industry again please do it with some sense. If you want to do some good for the nation look inwards to Government Departments on State and Federal levels. Government should monitor their own travellers in that they are required to get the best fares (including supersavers) and show why they didn't. I have seen more Government waste on taxpayers money than should be deemed necessary. The American public needs to be informed more on what saves them money not how much more their taxes are going to cost because of Government spending.

Sincerely,

Twanna Hood,

Travel Consultant.

Travel Partners, Inc., 7926 Old Seward Highway, Suite C4, Anchorage Alaska 99518; Phone (907) 349–4778, FAX (907) 349–3668, Intrastate 1–800–478–4779 (Outside Anchorage).

February 17, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

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If you want to regulate the airline industry again please do it with some sense. If you want to do some good for the nation look inwards to Government Departments both on the State and Federal level. Government should monitor their own travellers in that they are required to get the best fares (including supersavers) and show why they didn't. I have seen more Government waste on taxpayers money than should be deemed necessary. The American public needs to be informed more on what saves them money not how much their taxes are going to cost because of Government spending.

Sincerely

Collen Van Vleet, CTC.

Travel Partners, Inc., 7926 Old Seward Highway, Suite C4, Anchorage Alaska 99518; Phone (907) 349–4778, FAX (907) 349–3668, Intrastate 1–800–478–4779 (Outside Anchorage).

February 17, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: As a member of the Travel Agent community I must protest the actions being taken by the Justice Department on the airlines price fixing lawsuit. Travel agents are brokers of space, basically, we advise our clients the most advantageous time for them to purchase their airfares and vacations. If the Justice Department makes it an illegal act for the airlines to let the public and travel agents to know in advance when airfares will expire or go up, it will greatly affect the way business is done for all types of businesses. A stockbroker could not call his clients to them to buy or sell at whatever time is best for them. Grocery stores could not publish ads specifying sales on Brand name items as it would make an advantage over their competition as price fixing even though the first grocery store is a privately held concern. What normally happens when the airlines lower airfares the price comes out and every single travel agent I know will call the airlines involved in the same marketplace and ask them if they are going to match the airfares to save from charging their clients the higher prices to fly in the same destinations. If you write a supersaver ticket, which is an advance purchase restricted ticket, there is a penalty to rewrite the ticket to be able to refund any fare difference.

If you want to regulate the airline industry again please do it with some sense. If you want to do some good for the nation look inwards to Government Departments both on the State and Federal level. Government should monitor their own travellers in that they are required to get the best fares (including supersavers) and show why they didn't. I have seen more Government waste on taxpayers money than should be deemed necessary. The American public needs to be informed more on what saves them money not how much more their taxes are going to cost because of Government spending.

Sincerely,

Maria Williamson,

Travel Consultant.

I've seen this for over 20 plus years. Clean your own house up first!!

Travelyle.

February 26, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: As a member of ASTA, this note is to advise you that I am in oposition to the consent decree.

Sincerely,

Lyle Ann Glassmyer,

President.

Memo from Trevi Travel, 140 Erie Blvd., Schenectady, NY 12305, (518) 374–2756.

17 February 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing you concerning the Justice Department's consent decrees concerning advance announcement of fare increases, which we seldom receive now, and advance announcement of the end of discount sales.

We usually do not get advance warning of discount sales at the present time. The sales catch us totally off-guard, often happen over the weekend when we are not here and cause a myriad of problems. We are used to this.

What we are not used to is not knowing when a discount will end. During the January sale just past, we encountered such a thing when we asked USAir when the sale would end. The reply was that they were sorry but they could not tell us. Who ever heard of such a thing. I told this to my client and he thought that I was trying to pressure him into making a decision that he was not ready to make by saying he had to buy the fare then because I could not tell him when it would end. Who ever heard of having a sale on cars, stoves, dresses or anything else and not know when you had to get to the store by in order to take advantage of the sale. This is already a goofy business but having no announced end limits to ticket sales would make it sheer lunacy.

I have offered many times to those who affect our business without knowing much about it, including Elizabeth Dole, to come visit our agency or any other for a day before making decisions that affect us so adversely. I hope that the judge can do this.

Sincerely yours,

Susan C. Rosenthal, CTC,

Manager.

Trip & Travel, Country Fair, 4347 Tuscarawas St., W, Canton, Ohio 44708; Phone: (216) 477–3482.

February 15, 1993.

Mark C. Schechter

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Lawsuit Against Airlines

Trip & Travel is strongly opposed to the lawsuit filed by your department against most of the major airlines, alleging that they fixed prices by signalling each other of their pricing plans through advance announcements of fare increases & other fare notices.

Travel agencies are small businesses with steady employment for our agents. Our business is service as airline tickets & other travel services can be purchased direct for the same cost. How can we provide complete and professional travel counseling without the fare knowledge needed?

We need employment in our country. Without advance information of fare increases and expiration dates, travel agencies will suffer and cut back the number of agents. With this government intrusion you will take away our only business. ."service"! We need BOTH advance announcements of fare increases and advance announcements of the end of discount fares.

Thank you for your consideration of this important issue.

Sincerely,

(Mrs.) Mary Ann Kahumoku, CTP,

President.

Trips Unlimited, 4501 Maryland Avenue, St. Louis, MO 63108–1998.

February 27, 1992.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Re: Price fixing suit against airlines.

It is our opinion that your suit will in effect harm, not help consumers. It will:

1. stop providing customers and travel agents with advance announcements of fare increases.

2. also stop providing customers and their travel agents with advance announcements of the end of most discount sales.

If the consent decrees are approved by the federal judge who is reviewing them, our ability to provide our clients complete and professional travel counseling will be impaired.

The effect of your suit will prevent consumers and their travel agents from making fully informed decisions on travel purchases.

Sincerely,

Traude E. Wilson, CTC

President.

Tri-Seasons Travel, 7 W. Main Street, P.O. Box 480, Bensenville, IL 60106.

February 12, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Re: Lawsuit Against the Airlines.

I consider the proposed decrees to stop providing customers advance announcements of fare increases and the end of discount sales a great disservice to the travel agency community as a business and to the traveling public as a whole. Not only does this greatly jeopardize our ability to function as a professional travel advisor, but the traveling community at large stands to suffer serious financial losses and will greatly decrease their ability to travel and to trust both the travel agency and airline industry.

Please reconsider and don't hamper what already is one of the more difficult time periods in the travel industry history.

Sincerely,

Susan Paczosa,

President.

Tustin Travel, 2122 North Tustin Ave., Santa Ana, CA 92701.

February 24, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: We would like to voice our objection to the consent decree requiring that airlines withhold announcements of fare increases or last day of discount sales. It is important to the responsible conduct of business to be able to advise our clients of these dates. It is also difficult to promote or market a fare without such knowledge. This consent decree will do harm to consumers, agents, and airlines.

Sincerely,

Maile Clyde,

Manager.

Twentieth Century Travel.

March 8, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: I am adamantly opposed to the Department of Justice lawsuit against airlines.

If I am unable to provide beginning and expiration date information to the clients, the travelers will be unable to make an informed decision concerning their travel costs.

I utilize this information to provide the best possible service to the traveling public and believe this information should be available.

Sincerely,

Resly Ozar.

Twentieth Century Travel.

March 8, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: I am adamantly opposed to the Department of Justice lawsuit against airlines.

If I am unable to provide beginning and expiration date information to the clients, the travelers will be unable to make an informed decision concerning their travel costs.

I utilize this information to provide the best possible service to the traveling public and believe this information should be available.

Sincerely,

Barry Plasbey.

Twentieth Century Travel.

March 8, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St., NW., Washington, D.C. 20001.

Dear Mr. Schechter: I am adamantly opposed to the Department of Justice lawsuit against airlines.

If I am unable to provide beginning and expiration date information to the clients, the travelers will be unable to make an informed decision concerning their travel costs.

I utilize this information to provide the best possible service to the traveling public and believe this information should be available.

Sincerely,

Richard Rubenstein.

Twin City Travel, Inc., 324 First Avenue, Sterling, IL 61081.

March 17, 1993.

Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth Street, NW., Suite 9104, Washington, DC 20001.

Dear Mr. Schechter: It has recently come to my attention that the Justice Department has issued a proposed consent decree that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings. This would be disastrous for my company!!

As the owner of Twin City Travel, I wish to go on record to protest in the strongest possible terms, this proposed resolution of the price-fixing lawsuit against those carriers. The effective dates of fares are vital pieces of information that my agents need to have access to if we are to have the ability to properly assist travelers with their planning.

Travel agencies do not have a tangible product to sell. What we have to offer our clients is service. To remove one of the prime pieces of information our clients require for them to be able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, would injure both consumers and travel agencies.

Your consideration of this request is greatly appreciated.

Very truly yours,

Twin City Travel, Inc.

Maureen L. Brown,

Owner/President.

Uniglobe Active Travel.

February 22, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: For most American companies, travel and entertainment represents their third largest business expense. As the travel management partner for these companies, we need to have as much information as possible to perform our duties.

Please do not further restrict our trade. We want to have access to advance announcements of fare increases and expiration dates.

We strongly oppose the Department of Justice intrusion into our business. This industry does not need this regulation and our consumers do not need this regulation.

Thank you.

Sincerely,

Naji K. Haddad,

President.

Uniglobe, Brickell Executive Travel, 600 Brickell Avenue, Suite #104, Miami, FL 33131.

March 25, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: For most American companies, travel and entertainment represents their third largest business expense. As the travel management partner for these companies, we need to have as much information as possible to perform our duties.

Please do not further restrict our trade. We want to have access to advance announcements of fare increases and expiration dates.

We strongly oppose the Department of Justice intrusion into our business. This industry does not need this regulation and our consumers do not need this regulation.

Thank you.

Sincerely,

M. Constanza Maria-Arango,

Vice President, Owner.

Uniglobe, Brickell Executive Travel, 600 Brickell Avenue, Suite #104, Miami FL 33131.

March 25, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: For most American companies, travel and entertainment represents their third largest business expense. As the travel management partner for these companies, we need to have as much information as possible to perform our duties.

Please do not further restrict our trade. We want to have access to advance announcements of fare increases and expiration dates.

We strongly oppose the Department of Justice intrusion into our business. This industry does not need this regulation and our consumers do not need this regulation.

Thank you.

Sincerely,

Horacio R. De Felice,

President.

Uniglobe, Distinctive Travel, Inc., 3507 Frontage Rd., Suite 120, Tampa, FL 33607.

February 15, 1993.

The Hon. Mark C. Schechter,

Department of Justice, room #9104, 555 4th Street NW., Washington, DC 20001.

Re: "price-fixing" lawsuit against major airlines.

Your Honor: This agency, like so many in the travel agency community, is very concerned about the lawsuit recently filed by the DOJ against most of the major airlines.

Our industry is a very tough and challenging one. We strive day after day to provide our customers with the best service at the best prices. One of our missions is to provide accurate information to trustful and loyal clients who rely on us for their travel needs.

We feel that the accuracy and reliability of that information is going to be severely undermined by the repercussions of the aforesaid lawsuit. The information we would be able to provide would no longer be reliable if discounted fares, promotions, etc. . . are allowed to be discontinued without notice.

It would almost be like taking your car to the garage for some repair, and be told . . . "Well, you need a new timing chain. That costs $250.00 today, but since we can't get to it until tomorrow, who knows? . . .".

With all due respect, we would like to suggest that the action taken by the DOJ will only make the matters worse in an industry that has already been hit very hard by the current recession, and that such action is likely to put the US carriers at a great disadvantage vis-a-vis the foreign competition.

We therefore welcome this opportunity to voice our objection to the action taken by the DOJ.

Respectfully,

Salvatore Alhadeff,

President.

Uniglobe Fantasy Travel, 3631 South Federal Highway, Boynton Beach, FL 33435.

February 24, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: For most American companies, travel and entertainment represents their third largest business expense. As the travel management partner for these companies, we need to have as much information as possible to perform our duties.

Please do not further restrict our trade. We must have access to advance announcements of fare increases and expiration dates. Our clients, the American public, deserve nothing less.

We strongly oppose the Department of Justice intrusion into our business. This industry does not need this regulation and our consumers do not need this regulation. The traveling public is already angry about the hassle and frustration they suffer because of existing restrictions. We do not need more of them.

Thank you for your attention to our plight.

Sincerely,

Janice M. Betler,

President.

Uniglobe, Lemon Bay Travel, 475 West Dearborn Street, Englewood, FL 34223.

February 24, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: For most American companies, travel and entertainment represent their third largest business expense. As the travel management partner for these companies, we need to have as much information as possible to perform our duties and thus serve the clients needs.

Please do not further restrict our trade. We want to have access to advance announcements of fare increases and expiration dates.

We strongly oppose the Department of Justice intrusion into our business. This

industry does not need this regulation and our consumers do not need this regulation.

Thank you.

Sincerely,

Jean K. West-Walker,

President.

Uniglobe, Martin Miller Travel, 800 West 2nd Street, P.O. Box 332, Hastings, NE 68902.

February 17, 1993.

Mark C. Schechter,

Department of Justice, Room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: I'm writing in regards to the Justice Departments lawsuits against many airlines. Alleging that they are fixing prices by notification of travel agents and the public of future price changes and discontinuation of discount sales.

I would like to strongly urge that these suits be stopped, and the matter dropped. To further burden an industry reeling from 10 years of chaos and recession is absurd. Not to mention the disservice to the traveling public if they have no advance warnings of fare increases and/or reductions. The elimination of advance notifications of sales and their discontinuation would cause virtual panic during sale periods. When American Airlines announced a half price sale, the only thing that prevented complete hysteria was the establishment of when the tickets had to be purchased by.

These announcements are not anticompetitive. Each carrier has a choice as to how to respond, and of late, if the matter is closely looked at, carriers are responding to each others announcements in varied ways. Depending on their own strengths, weaknesses, and effected markets.

I don't understand why, when the airline industry is supposed to be deregulated, the courts insist on trying to tell them how to run their business.

Again, I strongly urge the courts to back off, and let what little sanity remains in the U.S. airline industry rest in peace.

Thanks for your attention.

Sincerely,

Martin Miller.

Uniglobe, Ohio Valley Travel, 32 Tenth Street, Wheeling, WV 26003.

February 26, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Mr. Schechter: We are strongly opposed to the federal court approval of consent decrees signed by United and USAir. If these consent decrees are finalized we will not have available, useful travel planning information. This will also be a major setback to the consumer.

Keep the government out of our business. We have more regulations than we need.

Sincerely,

William R. Bryson Jr.,

Owner.

Uniglobe, Red Carpet Travel, Inc., 413 Branmar Plaza, Upper Level, Wilmington, DE 19810.

March 3, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: We wish to say that we oppose the consent decree with the airlines that is to be voted on.

This will be a terrible hardship on all travel agents and not a help to the public.

Sincerely,

Helen S. Whitson,

Owner.

Uniglobe, Select Travel, 32020 1st Avenue South, Suite 101, Federal Way, WA 98003.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to you because I believe that the lawsuit filed by the Department of Justice alleging price fixing by the airlines in an unfortunate and unnecessary intrusion into the transportation industry. The stipulations of the consent decree will negatively impact the travelling public. Why is the Justice Department working against the welfare of the people?

Surely with the airline industry losing $8 billion over the last three years, the Department is not concerned that the airlines are making unfair profits. What is the purpose of the suit? The American public is enjoying the lowest airfares in the world.

This proposed consent decree would inhibit our ability to serve the traveling public. Information is important to decision making and this consent decree would severely limit the information available to the traveling public.

I urge you to withdraw this frivolous lawsuit and allow the basic economic principles to determine the market place. Enterprise free of government interference is the American way.

Sincerely,

K.G. Feldt,

President.

Uniglobe Active Travel.

March 8, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: For most American companies, travel and entertainment represents their third largest business expense. As the travel management partner for these companies, we need to have as much information as possible to perform our duties.

Please do not further restrict our trade. We want to have access to advance announcements of fare increases and expiration dates.

We strongly oppose the Department of Justice intrusion into our business. This industry does not need this regulation and our customers do not need this regulation.

Thank you.

Sincerely,

Evelyn H. Harrill,

President.

Uniglobe Travel Resources, P.O. Box 20639, 1049 Bethel Road, Columbus, OH 43220, (614) 459–5455, (800) 458–5455.

15 February 93.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: Would you please convey this to the judge ruling on the consent decree against the airlines alleging price fixing.

To prohibit the airlines from communicating the rules of the tariffs from the travel agency community will severely impair our ability to function in a professional manner for our clients.

Our clients rely on us to inform them of the restrictions on fares that will meet their travel plans. One of those parameters is when a given fare will no longer be available, recognizing that, even today, there is no assurance the fare will be here tomorrow.

As a small businessman, I implore you to let us continue to professionally serve our clients. We do not really need this government intrusion!

Sincerely,

R.R. Vermillion,

President.

Unique Travel Service, 170 North York Road, Elmhurst, Illinois 60126; (708) 833–8850.

February 12, 1993.

Mr. Mark C. Schechter,

Department of Justice, Room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: We wish to express our strong opposition to the consent decrees recently agreed to by two major U.S. Airlines, USAir and United. We fully support those remaining carriers and their desire to fight the court ruling.

Our customers are some of the smartest and most savvy consumers in the United States. For us to do our jobs correctly, we must be able to continue the practice of notifying our customers of fare effective dates, discontinuation dates and validity.

If the consent decrees are upheld by the Federal Courts, our jobs will become increasingly difficult to perform. We foresee the same customer calling us daily, since we will have to inform them that any airline fare we quote is valid only on the day at that time. We will no longer have the ability to notify that fares must be purchased by a certain date or that a new fare will become applicable on a given date.

We make little enough commission as it is and cannot afford the imposed burden it would place on us to sell the same airline seat dozens of times before it is actually ticketed.

Please advise the Court of our objection to the government intruding into our business in this matter.

Respectfully,

Glennda Lockard,

Manager.

Virginia Harmon,

Owner.

Universal-Heritage Travel, 1700 North Main, Racine, WI 53402–4929; 414/631–5820.

February 22, 1993.

Mark C. Schechter,

Department of Justice, rm 9104, 555 4th Street NW., Washington, DC 20001.

Re: Government Lawsuit Alleging Price Fixing Through Airline CRSs.

Dear Sir: As a Travel Agent serving the public, I am disturbed at the Government's recent lawsuit claiming the carriers were guilty of price fixing through the computer reservation systems.

The remedy demanded of the carriers is anti-consumer, in that it will result in higher fares being paid by the travelers purchasing air tickets. We already have had cases whereby reservations were being finalized, but before the tickets could be issued, the fares increased without notice. These situations place the travel agent in an awkward position with customers when fares are increased unexpectedly.

The remedy does not allow travel agents to properly serve their customers and the required consent decree should be lifted immediately.

Sincerely,

Universal-Heritage Travel

W. Blake Smith, CTC,

President.

Universal Travel, 1072 N. Campbell Ave., Tucson, AZ 85719; Phone (602) 327–6271.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Re: Lawsuit Against Airlines Price Fixing Case.

Dear Mr. Schechter: I am writing you with regard to the lawsuit by the Department of Justice, against the airlines in the price fixing case.

If the rules as proposed were to be put in place, it seems to me the Government would be interferring with our rights to open communication, such as any store which is announcing a sales in advance. If this is a Democracy, businesses, which are operated by citizens, must not have their right to communicate whether by computer, newspaper, or letter diminished.

I ask that you not approve the consent decrees which have been filed, and to not rule against the airlines, as it would add additional problems to our already overburdened businesses.

Thank you for your time necessary to read this.

Sincerely,

Mildred Wedel, CTC,

Owner.

U.S. International Travel & Tours, 117 S. Main St., Mishawaka, IN 46544; 2724 N. Lehmann Ct., Chicago, IL 60614; (219) 255–7272; (312) 404–0990.

February 25, 1993.

Mr. Mark C. Schechter, Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I have worked in the travel industry for the past 8 years. I have witness many changes in the ever challenging industry, but change is good in order for a large industry to grow and expand.

However, it is very imperative the United States Government not intervene in the travel industry by forcing to change and control the airlines pricing practices.

On behalf of the travel agent community, the airlines should notify us through our computer systems, the beginning and ending date of all fares, in order to better serve our corporate and leisure clients.

As the saying goes, "Don't fix what isn't broken."

Thank you for your consideration in this matter.

Sincerely Yours,

Mary Goodhew,

Manager.

USTRAVEL, 2903 E. Grant Road, Tucson, AZ 85716–2791; Tel: (602) 323–3161.

February 16, 1993.

Mark C. Schechter, Department of Justice, rm 9104, 555 4th St., NW., Washington, DC 20001.

Re: Department of Justice Lawsuit Against the Airlines.

Dear Mr. Schechter: The requirements of the consent decrees will, in our opinion, serve to destroy the trust and our clients' reliance on our professional handling of their travel needs. We have spend time and money to build a strong client base. Not having advance information will result in many changes which are beyond our control that our clients will not understand.

We do not need government intervention and regulations in areas that will hurt, rather than help, the client.

Sincerely,

Roland W. Browne,

Management Consultant.

USTRAVEL Affiliates, Travel One, Inc., One Appletree Square, Minneapolis, MN 55425; Tel: (612) 854–2551, Fax: 854–5038.

February 16, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I would like to comment on your pending ruling concerning the major airlines and the allegation that they conspired to fix prices.

As an owner of a travel agency, my job is to provide the highest degree of service to my traveling clients. If you restrict the airlines from advance announcements of fare increases and, more importantly, from advance announcements of the end of discount sales, you will dramatically lessen the service level I can provide my customers. Since the vast majority of airline tickets are issued via travel agents, by adopting the pending rulings, you are in effect doing a disservice to the traveling public.

Thank you for taking this point of view into consideration.

Sincerely,

Travel One/USTRAVEL

Robert P. Neuman,

Vice President.

USTRAVEL, 520 Pike Street, Suite 2800, Seattle, WA 98101–4000, Tel: (206) 682–5200, Fax: 224–7770; (800) 426–1491.

March 5, 1993.

Mr. Mark C. Schechter,

Department of Justice, 555 4th Street NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: Your consent decrees regarding price fixing through CRS systems has seriously impacted our ability to provide complete and professional travel counseling to our customers. The need to issue tickets immediately to protect a fare is not always in the best interest of the customer or the travel agent. The business traveler usually makes 2–3 changes to an itinerary after the initial booking. If we wait until the last minute to issue the ticket we risk losing the best fare, if we issue the ticket too early we create additional work without additional income. The end result will be travel agents will have to absorb the cost or find a way to pass it on to the customer. I would like to believe increased cost is not what was intended when these consent decrees were filed.

The system for posting applicable dates for fares in the CRS system has always been the best and most informative system for the customer. I would ask you to please review this filing and allow airlines to at least post "not valid after dates".

Sincerely,

Carl Jernquist,

Vice President & General Manager, Seattle Area.

USTRAVEL, 520 Pike Street, Suite 2800, Seattle, WA 98101–4000; Tel: (206) 682–5200 Fax: 224–7770; (800) 426–1491.

March 5, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: With more than 30 years experience in the transportation industry—both with the airlines and as a travel agent—I feel qualified to write to you with a request to consider the concerns of the people who are on the firing line of the air transportation industry: those who work with the traveling public issuing tickets and explaining the complicated system we find ourselves using today.

Our professional efforts to give a traveler proper direction and information are surely diminished if we cannot provide advanced information on increases or discount sales. Don't make our efforts any more impossible by impairing our efforts to do a good job for an already confused traveling public.

Sincerely,

William H. Hunt, CTC,

Executive Vice President.

February 21, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 4th St., NW., room 9104, Washington, DC 20001.

Re: United States vs. Airline Tarriff Publishing Company, Action No. 92-2854.

Dear Mr. Schechter: As a travel professional I must protest the pending legislation restricting access to fare information. My clients depend on me to be able to provide accurate and current fare information on a daily basis. If I cannot do so then I lose my credibility and my clients.

Please work to keep airline fares available to travel agent personnel via our reservation systems. We need to know fare availability and expiration dates before the public, not the other way around.

Thank you.

Sincerely,

Venture Travel Center

Alfred Escano,

Travel Consultant.

February 21, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Re: United States vs. Airline Tariff Publishing Company, Action Number 92 2854.

Dear Mr. Schechter: I am deeply disturbed by the news that above is still pending legislation. I would have hoped that the Justice Department would have done its homework and realized that this is not in the best interests of the consumer, nor of the travel business.

Travel agencies are responsible for over 85% of all ticketing and we cannot provide our clients with the best service if we do not have the information necessary to do so. The recent limitations we have already experienced have caused some unhappy clients, and travel agents, in this community.

Please do your best to make sure that the travel agency community is kept in the informational loop; at least equal to what is proposed for the public via the media (our media is our reservation system!).

Sincerely,

Venture Travel Center

Erin Branson,

Independent Travel Consultant.

February 21, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Re: United States vs. Airline Tariff Publishing Company, Action Number 92 2854.

Dear Mr. Schechter: The above action which limits the availability of fare information to travel agents has negative impact on small travel businesses and the consumer.

We and our clients have always relied on being able to determine the expiration dates of fares to better serve our clients needs. The fact that the public, and not the travel agency community, is to be informed of fares is ridiculous! Travel agencies issue over 85% of all airline tickets in the United States and our clients depend on us to be able to supply up-to-date and accurate fare information. Since the recent limitations in fare information, we have encountered missed ticketing dates and very unhappy consumers who don't like being told "we don't know".

Our current newsletter will contain information about this legislation and I can guarantee a consumer response from this agency. Please reconsider as this is not in the best interests of travel agents or consumers.

Sincerely,

Venture Travel Center

Margaret Midlick,

Owner-Manager.

Mr. Mark C. Schechter,

Chief Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 4th St., NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: As owner of a retail travel agency, I request that you reconsider your decision in regard to carriers affected by the anti-trust litigation.

Our business has, by the very nature of our airline relationship, a very narrow profit margin. Today's economic climate is not helping those of us who operate small businesses nor is it helping the consumer. We need all of the marketing tools available to operate even at a small profit. The consumer also needs all of the information available to make an intelligent purchasing decision.

As it stands now, expiration dates are available to the consumer and he can make his purchase decision based on his needs and financial situation. If advance and expiration dates are withheld from the consumer, you will open a real "can of worms". Tickets will be exchanged by the carriers for lower fares at the gate. (They do this with tickets now that they won't let the travel agency rewrite and then they take back our commission), causing double work for them and lost profits for the agency that sold the ticket in the first place. We don't need to add this to our list of problems or to the consumer's. They are confused enough as it is right now.

All retail businesses have beginning and ending dates for their sales and the travel business is no exception. We happen to be the only business I know of that refunds money because a price goes down several months late. You won't find a department store doing that. We need set dates and set rules across the board so that we can have a chance at making a profit in this economy. By the time a ticket is rewritten a few times, we have actually lost money. Think about it and please reconsider.

Sincerely,

Kay F. Penn, CTC

President—Village Travel.

Village Travel Agency, Inc., 4140 W. 71st, Ste. #111, Prairie Village, Kansas 66208; (913) 432-8200.

February 17, 1993.

Mr. Mark C. Schechter,

Dept. of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: I am a member of the American Society of Travel Agents, writing in request of your help regarding the lawsuit against most of the major airlines, alleging their price fixing.

I would like to state that I oppose this action as it will be most harmful to the consumer and they will not want to travel if they cannot be given the full information on various fares to make a decision.

Your assistance on our behalf will be greatly appreciated.

Cordially,

(Mrs.) Helen L. Forte,

Owner.

1341 Fecis St., Metairie, LA 70005.

March 8, 1993.

Mr. Mark C. Schechter,

Chief, Transportation, Energy and Agriculture Section, Department of Justice, room 9104, 555 Fourth St., NW., Washington, DC 20001.

Dear Mr. Schechter: We strongly oppose the airfare suit which charges airlines with coordinating price increases and sales.

If it ain't broke don't fix it.

This suit is just another means for greedy lawyers to line their pockets while the consumer suffers.

Very truly yours,

Norma Martinez Vodanovich,

A member of United We Stand Americans.

Waimea Travel Center, Inc., Kamuela Office Center, Room 9-A, P.O. Box 927, Kamuela, HI 96743; Telephone 808/885-7341.

February 16, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: May I express my opposition to the proposed price fixing ruling that you are considering. I understand that you feel the airlines are doing a disservice to the consumer by signaling price information to one another. I believe the consumer gets hurt by the lack of information such as sale periods and sale end dates. Tell a client that you know nothing about the sale and see how their reaction is to that statement. That is not what the consumer wants to hear. They want to know if they have a period of time to consider the fare and if the travel dates will work for them. It erodes our (the travel agent) ability to provide the best service to the consumer. We like to know all there is to know about the fares to pass that information on to the client to better serve them.

If you are looking for unfairness to the consumer then look at non-refundable fares and penalties for flights not taken for very

valid reasons that are other than death. There is unfairness in the airline pricing area for the consumer but I believe it is not the sale information that they normally provide. The best service is when you can provide your client (the consumer) with as much information as possible to help them make the best travel decision possible.

Thank you for your time and attention to this matter.

Sincerely,

Bernadette Botelho,

Manager, Waimea Travel Center.

Walnut Valley Travel Service, 705–B Main, P.O. Box 537, Winfield, KS 67156.

February 25, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing this letter to express my frustration with the situation we are now experiencing in quoting air fares to consumers. As I am sure you are aware this is a highly volatile market with many changes in rates and rules. Without the ability to advise our clients of the cut off dates for various airfares, we are unable to provide them with the data they need to make an informed decision.

If we advise a client of an airfare and if the rule for that fare states that the ticket must be purchased within 24 hours, then overnight the fare is discontinued; how do you explain to that client when they come in money in hand the next day that that fare no longer exists and the fare is now higher than quoted yesterday? In this scenerio we now have a frustrated agent, a mad consumer, and a lost sale.

It is vital that travel agents and consumers be given as much information as possible about the beginning and end dates of airfares. Only thru knowledge can any consumer be expected to make an informed decision to purchase and we are all hurt if he decides not to purchase.

Sincerely,

Walnut Valley Travel Service.

Barbara Mehuron, CTC,

Manager.

March 11, 1993.

Sir: The Federal Gov't should stay the heck out of private business affairs—get off the airlines' backs—they're in bad enough shape already without the help of Uncle Sam. Pls. rescind the consent decrees already *forced* on the two carriers.

Very truly yours,

Richard Waheld.

Mary Margaret Watson, 1161 Lake Avenue, #314, Metairie, LA 70005.

March 8, 1993.

Mark C. Schechter,

Chief of the Transportation, Energy and Agriculture Section, Department of Justice, room 9104, 555 4th Street NW, Washington, DC 20001.

Re: Lawsuit filed by U.S. Justice Department against Alaska Airlines, American, Continental, Delta, Northwest, TWA, USAir and United.

Dear Mr. Schechter: I read an article which was published in the Times Picayune (New Orleans) on Sunday, March 7, 1993 which stated that the above lawsuit had been filed and should the Department of Justice win its suit, airlines and travel agents would be prohibited from providing customers with advance announcement of fare increases. Also, travel agents would be prohibited from informing consumers of the end date for discount fare promotions and the government would begin a de facto de-regulation of the airline industry resulting in increased litigation costs and inefficiency which would then be passed on to the consumer in the form of increased ticket costs.

Mr. Schechter, I enjoy traveling via air to other parts of the world and to other parts of this nation. It's very educational and I think you would agree that it gives a person a better perspective on many issues if one is able to empathize with the people of a country after becoming familiar with a certain section of the world or another section of our own United States. As a secretary on a moderate income, I often plan my travel during "low season" so as to save part of the cost of the airfare, enabling me to remain in a certain area for a longer period of time. Should the Department of Justice be successful in the above litigation it would seriously curtail my ability to travel because I would be unable to get the information that I would need as to "low season" and special air fares. This would affect many other people as well. I sincerely hope that this does not happen and assure you that I will be watching with great interest the outcome of this suit. In my opinion withholding the above information from a society of "free" people is borderline unAmerican.

Sincerely,

Mary Margaret Watson.

Welcome Aboard.

February 12, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: The recent lawsuit filed by the Department of Justice against the airline industry will impair our agency the ability to provide our clients the professional travel counseling they deserve. These clients are confused enough with the changing state of our industry. And to stop providing customers with advance announcements of fare increases and the end of discount sales will continue to add to their confusion.

Furthermore, two airlines have already felt compelled to sign consent decrees in order to avoid additional legal costs and risks even though they adamantly oppose what the Department of Justice is demanding. One of those airlines is Phoenix based America West. We need this airline to survive as well as all the airlines that are now in financial distress.

Plase forward our opposition to this lawsuit to the judge assigned to this case.

Sincerely,

Mary Louise Seifert,

CTC, Vice President.

Westminster Travel, 28 N. Lansdowne Avenue, Lansdowne, PA 19050; (215) 284–4800.

February 22, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: The Department of Justice has filed a lawsuit against most of the major airlines, alleging that they fixed prices by signaling each other of their pricing plans through advance announcements of fare increases and other fare changes.

I oppose to this government intrusion into the travel business.

I do not want the federal court to become the price regulator for the airline industry.

Sincerely,

Bob Dowd.

Westport Travel Agency, 764 Main Road, Westport, MA 02790; 636–4048.

January 25, 1993.

Mark Schechter,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Justice Department, room 9104, 555 Fourth St., NW., Washington, DC 20001.

Dear Sir: I am the owner of a local Travel Agency, located in a small town and employ 6 persons plus myself. I have been operating this business for 20 years and am finding, since deregulation, that it is an extremely frustrating cause.

Our business is in a very small town in the country, however we service many people in the outlying towns and cities. Our reputation is based on SERVICE since there are many agencies in the other areas. Our SERVICE is done by calling our clients with good deals, advising them on airline fares, saving them money!!!!!!

A small business can not survive without the opportunity to be able to help their clients travel as inexpensively as possible. If I have to close down my business because we can not service our clients properly 6 families will be affected. WE WANT TO CONTINUE TO RECEIVE INFORMATION ABOUT FUTURE TICKET FARE CHANGES.

Restaurants, department stores, cruise lines etc can advise their clients about sales, why can't the airlines?

Please help us, the small business people to stay in business.

Sincerely,

Westport Travel Agency

Mary Silveira

President/Manager.

Whitaker Travel, Ltd., 2125 North 63rd Street, Overbrook, PA 19151.

February 18, 1993.

Mr. Mark C. Schechter,

Antitrust Division, room 9104, Department of Justice, 555 Fifth Street NW., Washington, DC 20001.

Gentlemen: As a small retail travel agency engaged in the sale of leisure travel, I am very upset by the restrictions the Department of

Justice is attempting to place on the air fare information which is available to my agency.

The only thing which uniquely separates one travel agency from another is the type and amount of personalized service they give to their clients. Part of that service is the agency's ability to advise clients on the best air fares available and the best time to purchase tickets at special air fares. Leisure clients need this information in order to make vacation arrangements that will give them the best value of their available funds.

Since no airline passengers, or travel agents, have complained that they are being harmed by what you are calling 'electronic price setting' why is the government now coming in to create a problem for passengers and agents so they can complain? If it "ain't broke" why are you trying to break it? The only people who will benefit from your lawsuits will be the lawyers. They will make money while you are using *my tax dollars* to increase the burden on the already over burdened courts.

Will you next pick on the cruise lines, or car rentals or hotels, because they too have their fares in a common computer base? They too could be guilty of what you call 'electronic price fixing'. Of course the airlines are losing millions while they are busy 'price fixing' and the car companies and hotels are not making any money either. How do you explain that? When you are fixing prices aren't you supposed to be making lots of money while your clients suffer from the overpricing of the products?

I suggest you withdraw your suit which is harmful to both the traveling public and the travel industry.

Sincerely,

Dorothy E. Whitaker, CTC,

President.

Dorothy Ann Wiener, 766 Hope Street, P.O. Box 6845, Providence, RI 02940.

March 1, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: In reference to *U.S. Airline Tariaff Publishing Co. et al.*, I hope the Department of Justice and the presiding Judge understand that giving advance notice of fare *increases* is one of the most powerful tools travel agents have for best serving the needs of their customers.

Eliminating this tool could be very damaging to the industry and to the customers that we serve.

It will result in unexpected fare increases, no warnings of discount fare expirations, and ultimately rising ticket costs.

Please help us not to lose this tool.

Cordially,

Dorothy Ann Wiener,

President, Member of ASTA.

Wilcox Travel.

February 24, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to express my opposition to the proposed consent decree currently under consideration for the airlines.

The imposition of such a decree would severely impede my ability to provide my clients with accurate information. The airline industry is chaotic enough without the imposition of more rules and regulations by the government.

Will you kindly forward this correspondence to the court.

Very truly yours,

Thomas O. Mehen, CTC,

Chief Executive Officer.

Windigo Travel Inc., Box 648, Manchester, VT 05254–0648.

March 1, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Sir: We in this office of 5 heartily oppose the government attempt to restrict computer displays of special airline fares—particularly the validity dates. It is impossible to require clients to purchase a ticket at once—and often heartbreaking and/or infuriating to them to be told a recent good fare has expired without their being warned. We must give them the best information about fares that we can, and a great tool like the computer display system has in the past helped us to do this.

We feel this action is particularly anti-consumer, particularly in this rural area where the public doesn't have easy access to, for example, advertisements in the NY Times.

Sincerely,

Kendra,

Manager.

Windjammer Travel Service Inc., 9989 Manchester Road, Warson Village St. Louis, MO 63122–1992.

February 18, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

As owners of a local travel agency for 20 years, we are most concerned about the effects of the airline price fixing case now before the court. We believe requiring airlines to stop providing customers and travel agents with advance announcements of fare increases, and advance announcements of the end of discount sales with limited exceptions, would hurt the traveling public, and travel agencies.

In other competitive environments, this practice is common. My newspaper and mailbox are filled with announcements of special sales starting on a given date in the future, and ending on a given date. If a furniture store runs an ad for Washington birthday special starting next Thursday, the competition has the choice of running a similar ad, matching the sales price, or inventing their own promotional ad, or doing nothing. I see no difference with the airlines announcing advance sales, or price increases, and reacting to the competition.

From the traveling public's point of view, this information is much to their advantage. If a family is thinking about a trip, they need to know in advance if a price increase is planned, or when a discount may be discontinued.

If you were calling a travel agency for your reservations for a family of four, which scenario would you prefer? (1) Super-saver fares from St. Louis to Orlando have ranged from $178–$330 in the past year. As of now, there is a "special" non-refundable fare of $198 on XYZ Airline valid on your desired travel dates, good till next Friday, when fares are tentatively set to increase. Would you like to discuss this with your family, and let us issue the tickets prior to Friday to guarantee the fare? (2) Super-saver fares from St. Louis to Orlando have ranged for $17–$330 in the past year. As of today, there is a "special" non-refundable fare of $198 on XYZ Airline valid on your desired travel dates; by tomorrow, the fare may have gone up or down. If you want to take a chance, you can wait. If you know you want the ticket this minute, we will be happy to issue them—come in with a check or give me your credit card number.

We want to do a good job for our clients. It has helped us to stay in business for the past 20 years. Refusing to let us have advance notice of fare decisions hurts our ability to advise our clients and help them make an informed decision.

Claire R. Adams, CTC.

Windward Travel Inc, 201 Executive Commons, East, 29525 Chagrin Boulevard, Pepper Pike, OH 44122.

March 3, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am opposed to the airline consent decrees which will require airlines to stop providing customers with advance announcements of fare increases and the end of discount sales.

Every Sunday I read the newspaper ad inserts for my favorite stores. The ads indicate what merchandise is on sale, for how much, and the starting and ending dates of the sale. This information helps me decide when to buy something I need or whether to buy something I want but don't need.

The stores hope to entice you to buy from them with a lower sale price, and remind you to hurry before the sale is over. Everyone knows you buy a new car before September when the new models arrive and the prices increase. Flower catalogs usually indicate that prices increase after a certain date.

Why should the airlines be any different? It's just advertising and everyone's doing it. Price-fixing is an agreement between two or more companies; sales and price increase announcements are just advertising. Price competition is good for the consumer, but he has to be informed to benefit. It just doesn't make any sense to ban one particular industry from advertising its sales.

Sincerely,

Marilyn L. Rouge,

President, Windward Travel.

Woodside Travel Trust.

February 19, 1993.

Mr. Mark C. Schechter, Chief,

Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: I am writing to present the comments of Woodside Travel Trust on the proposed Final Judgment accepted by United Air Lines, Inc. and USAir, Inc. to settle the above-referenced antitrust suit.

Woodside Travel Trust is a global travel management group of more than 150 major travel agencies throughout the world. Our partners have over $13 billion in sales at over 3,400 locations in 51 countries.

After reviewing the complaint and the competitive impact statement, we have concluded that the relief sought by the Justice Department is likely to do more harm than good. Therefore, we oppose your proposed remedial action.

Both counts of the complaint rest on the theory that first ticket dates and last ticket dates have been used by airlines to suppress price competition for air travel. From that premise, the Final Judgment has been crafted to prevent signatory airlines from announcing first and last ticket dates in the future. This action will deprive agencies and the travelers they serve of useful information.

Travel agencies refer to first ticket dates and last ticket dates when advising travelers whether to purchase airline tickets at current fares. A last ticket date stating that a discount fare will expire on a specific date is useful in advising travelers of a deadline for purchasing a specific fare. Similarly, a first ticket date can be used to advise travelers to wait for lower fares to come into effect before purchasing tickets.

Even if first and last tickets are not universally honored by the airlines, the dates provide relevant information used to advise travelers. The Final Judgment does not consider the impact of depriving both agencies and the traveling public of that information.

We question whether the complaint against the airlines is warranted at all. Significantly, the complaint never identifies a relevant geographic market in which the alleged price fixing took place. The competitive impact statement indicates that competition is supposed to take place between specific city pairs, but no city pair has been identified as a market in which prices have been maintained at an artificially high level. In the record available, there is no apparent market in which competition has been stifled.

It also seems unusual that the consent decree was offered to the airlines before the complaint had even been filed. Surely, if the complaint is justified, further discovery should be made before offering to settle the case by consent.

The absence of a defined market and the haste with which settlement has been offered cause us to wonder whether the complaint has any merit. Last October, in a class action based on similar (if not identical) allegations, Judge Marvin Shoob expressed doubt that the plaintiffs had any chance of winning on the merits. The airlines nevertheless have agreed to settle the class action through a discount coupon program.

As they did in the class action, the carriers named in the Justice Department's complaint certainly have every incentive to avoid the cost of defending protracted antitrust litigation. Continental and TWA are still trying to conclude their Chapter 11 reorganizations. Northwest and USAir each have sought additional cash in much-publicized investment deals. None of the carriers named as defendants posted an operating profit in the last year. In such circumstances, the desire to avoid protracted litigation is understandable.

However, the desire to avoid lengthy, costly and complex litigation is a poor reason to tarnish the reputation of the world's only truly market-driven airline industry with unproven allegations of price-fixing. Nor is it a good reason to deprive travelers and travel agencies of information concerning future price changes.

Market forces work best when full information is available to purchasers. Travelers turn to their agents as an unbiased and informed source regarding air travel options. The proposed Final Judgment will restrict the information available to travelers and the travel agencies on which they rely. We urge that this suppression of price information be avoided.

Thank you for the opportunity to submit our comments.

Sincerley,

Ivan Michael Schaeffer.

World Class Travel, 1 Route 37 East, Sherman, CT 06784, (203) 354–9360.

Mark Schechter, Chief,
Transporation, Energy and Agriculture Section, Antitrust Division, Justice Department, 555 Fourth St. NW., room 9104, Washington, DC 20001.

Dear Mr. Schechter: Again the government is in areas of our business they do not understand.

The Department of Justice is trying to stop all airlines from giving future fare changes or first and last ticket dates in fare quotes.

Please tell me how I can service my clients when you are taking the tools away from me?

For your information, Travel Agents are not as you have labeled us, "order takers." I am a professional and have been in this business for 19 years. I would not be a member of "Whos Who in the Business World" if I were not a professional.

I have something better to do with my time than to sit on the phone with each airline to find out when a fare expires and when to ticket my client.

I am against this because it will make it much more difficult for my clients to make their travel arrangements. I want to be able to tell them when the fare is going up and how long it is good so that they can make their plans accordingly.

Very truly yours,

N. Jimilee Knepper,

Manager.

World Class Travel, Inc., 2200 Sixth Ave., suite 404, Seattle, WA 98121.

March 8, 1993.

Mark C. Schechter,
Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: Having just been through another "Fare War" I feel that I must comment on your lawsuit against the airlines, alleging that by putting a expiration date on fares in the computer they are "price fixing".

You ended the regulation of airfares and airlines in order to "better serve the consumer". The consent decree, signed by the airlines, puts the consumer at a disadvantage and the travel agent in a state of shock. The latest "fare war" points this up. The fares, according to the newspapers and TV, were to expire on Friday, February 26th. On Monday they were still there and due to expire on March 3rd. Then on Thursday March 4th they were still there and due to expire today. ——Now they are due to expire on March 10th.

It is hard to appear to have credibility with my clients when I never know what is going on. I tell my clients that they have to purchase their tickets on the day they call or they may or may not be able to get the same fare the next day. The airlines all match the fares that appear in the newspaper so why is that any different than matching the fares that appear in my computer? It makes doing business harder for the travel agent and stressful for the customer.

Please do not rule in favor of the consent decree.

Thank you.

Sincerely,

Louise Gibbeson, CTC,

President, World Class Travel, Inc.

World Travel, 11 Airport Road, P.O. Box 3448, Butte, MT 59702.

Mark C. Schechter,
Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Mr. Schechter: I am opposed to the Consent Decree.

Furniture stores run specials and have a time limit set. They tell when the sale starts and when the sale ends.

The grocery stores put out ads in the paper weekly, they run for a specific length of time.

Catalog sale flyers have expiration dates.

What makes it legal for these businesses to run dates and the travel industry not to?

I feel I will not be able to offer my client the best service if I do not know all of the facts.

Sincerely,

Deanna Phillips,

World Travel.

World Travel, 6 West Main Street, Middletown, DE 19709.

March 4, 1993.

Mark C. Schechter,
Department of Justice, room 9104, 555 Fourth Street NW., Washington, DC 20001.

Dear Mr. Schechter: I am writing to you to express my strong opposition to the recent Justice Department consent decree designed to settle the price-fixing lawsuit.

This consent decree will increase ticket prices and discourage our customers from flying because of unexpected fare changes. It will deny Travel Agents and travellers basic fare information, and subsequently prevent us from doing our jobs of selling travel.

In these recessionary times, every effort should be made to encourage people to travel by keeping fares as low as possible and providing as much information as possible for them to make enlightened decisions. This consent decree will have the opposite effect.

We encourage you to take another look at the consent decree, and take the necessary steps to encourage travel rather than restricting it.

Sincerely,

Frank J. Stanitski.

World Travel & Tours, 1887 W. Front St., Lynden, WA 98264.

February 16, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th St. NW., Washington, DC 20001.

Dear Sir: I am writing to you in regards to the lawsuit the Dept. of Justice has filed against most major airlines, alleging that they fixed prices by signalling each other of their pricing plans. The consent decrees would require that the airlines must stop providing customers and TRAVEL AGENTS with advance notices of fare increases and advance notices of the end of discounted sales. If these decrees are approved by the federal judge who is reviewing the decrees, our ability to provide our clients with complete and professional travel counseling will be greatly impaired!!!!

I not only oppose the government from intruding into my business, I resent it!!!! These rules, if imposed, would only be the beginning of the end—the federal court then becomes the price regulator for the airline industry.

This lawsuit will most surely force most airlines that are already having financial problems and trying to keep their heads above the water and the wolf from the door, OUT OF BUSINESS!!!! Is this what the government wants—3 airlines left—which would mean NO COMPETITION between airlines and higher prices for the consumer.

I strongly urge you to reconsider your views on this lawsuit and cancel it at your earliest convenience.

The Travel Industry is having enough problems without the government compounding them!!!!

Thank you.

Grace E. Schneider,

Owner.

World Travel Mart, 5615 W. 95th St., Oak Lawn, IL 60453.

February 23, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: It is my understanding that two major airlines have signed consent decrees regarding the Justice Department Suit against the airlines alleging price fixing. The consent decrees, as I understand it, were signed to avoid additional legal and other expenses by both carriers.

I am writing to register my objection to approval of these decrees for the following reasons:

• Advance fare increase announcements and other fare changes are a significant planning aid for both the consumer and travel agencies. These announcements are for the consumers benefit, and to prohibit the airlines from publicly announcing such announcements is a disservice to consumers and another intrusion by the federal government in airline management.

• Approval of these decrees diminishes the scope of my employees ability to professionally advise our clients in developing their travel plans to their best economic advantage.

• No other travel agency owner that I know considers these announcements to be a price fixing scheme.

It is my firm opinion that the review judge should reject these decrees, and that the Justice Department should withdraw its suit.

Sincerely,

James A. Buschbach.

World Wide Travel, 2228 Cottondale Lane, P.O. Box 2701, Little Rock, AR 72203–2701.

February 26, 1993.

Mr. Mark Schechter,

Department of Justice, room 9104, 555 4th St., NW., Washington, DC 20001.

Dear Mr. Schechter: We must state that World Wide Travel Service, with 1992 sales exceeding $100 million and The Official Travel Agency of the Clinton/Gore Campaign, is opposed to the *Consent Degree* proposed by the Department of Justice against the Airline Reservation System companies.Your proposal will eliminate the ability of travel agencies to provide the consumer with accurate and advance, best fare information. We will be able to only provide the consumer with the current fares available at that precise moment.

Currently we have the ability to search for the best fares and provide an invaluable and unbiased service to the consumer. There will be no reason to use a travel agent under your proposed system of faring. This will have a negative impact on the travel agency community and create chaos in the marketplace. Do not make your proposed change in a system that has served the consumer so well.

Your logic fails us. If the airlines are purportedly inflating prices, then why are they suffering such a terrible financial crisis and continually reducing their work force? If there was collusion and price-fixing, then one would believe that their financial picture would be significantly better. It is not, and the Department of Justice is on the verge of worsening it.

Sincerely yours,

Betta Carney,

President & CEO.

Younkers Travel Service.

February 25, 1993.

Mark C. Schechter,

Department of Justice, 555 4th Street, NW., suite 9104, Washington, DC 20001.

Dear Mr. Schechter: It has recently come to my attention that the Justice Department has issued a proposed consent decree that would require the major domestic airlines to no longer make available to travel agencies the first and most of the last effective dates in their fare filings. This would be disastrous for the company I manage!

As the Director of Younkers Travel Service, I wish to go on record to protest in the strongest possible terms this proposed resolution of the price-fixing lawsuit against those carriers. The effective dates of fares are vital pieces of information that my agents need to have access to if we are to have the ability to properly assist travelers with their planning.

Travel agencies do not have a tangible product to sell. What we have to offer our clients is service! To remove one of the prime pieces of information our clients require for them to be able to make efficient and economical travel plans, lessens our usefulness and impairs our efforts to provide timely data.

I urge that any fair reconciliation of this litigation not include provisions which would harm the public's ability to be selective in their travel planning. The settlement, as currently proposed, will injure both consumers and travel agencies.

Your consideration of this request is greatly appreciated.

Jill Nizzi, CTC,

Director, Younkers Travel Service.

Your Travel Agent of Spartanburg, Inc., 321 North Pine Street, Spartanburg, SC 29302.

March 1, 1993.

Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street NW., Washington, DC 20001.

Dear Mr. Schechter: As a travel agency owner I would like to state my objection to consent decrees signed by United Airlines and USAir in the price-fixing case initiated by the Department of Justice.

We and consumers need advance notice of pricing and hope that you can find another way to solve this problem of price-fixing.

Sincerely,

Jean S. Wood.

A Better Travel Agency, Inc., 7269 Bee Ridge Road, Sarasota, FL 34241.

February 23, 1993.

Mr. Mark C. Schechter, *Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 555 Fourth Street NW., room 9104, Washington, DC 20001.*

Dear Mr. Schechter: The prohibitions that the Department of Justice is placing on the airlines is harmful not just to the consumer, but to the travel agent as well. For travel agents to serve our clients with the best service possible, we must have every resource available, and this includes all fare information.

The Department of Justice feels the airlines must inform the media prior to any detailed fare information being loaded into our computer reservation systems. Travel agents sell 85% of all airline seats so we should have, and need to have, access to all price information first. We are in every town, city and state, accessible to all and able to answer questions about all airlines.

Travel agents are professionals who care and service a vast number of consumers. Much of our service is to offer opinions on fares. It is obvious that neither travel agents nor our clients will be well served if we cannot inform them when a fare is to be changed. If the airlines have to inform the media first of any fare changes, as the Department of Justice proposes, we may not be able to accurately inform our clients.

Please consider the inconvenience you are placing on the consumer and the negative impact on our small business. We are being put at a marketing and service disadvantage, the proposed final judgement is not in the best interest of the traveling public.

Sincerely,

Keith Ian Miller.

The Antitrust Division received approximately 207 letters from travel agencies that were substantially the same as the letter reproduced above.

The United States Justice Department, Antitrust Division, 10th and Constitution Avenue, NW., Washington, DC.

Gentlemen: I have learned of new regulations proposed by the Department of Justice (DOJ) that could have very damaging consequences for travel agents and the traveling public. It has to do with *U.S.* v. *Airline Tariff Publishing Co., et. al.*

I am not writing to express a view on the merits of the Justice Department's lawsuit against the airlines, but to call to your attention the remedy proposed by the DOJ. It seems obvious that if the terms of this remedy are applied to the entire airline industry, that consumers would be prevented from having sufficient information to plan their travel and get the best deal for their dollar.

In today's economic climate, vacation travel plans are based on the best bargains available. Under the proposed DOJ regulations, airlines and travel agents would be prohibited from providing consumers with advance announcement of fare increases. Individuals might make reservations for a family vacation, for example, only to find when they called back a few days later to purchase the tickets that their fare had increased. The same scenario would apply to informing the consumer of the expiration date for discount fare promotions.

Should the DOJ proceed with this suit, increased costs would evolve due to inefficiencies and increased litigation costs, which would ultimately be passed on to you and me in the form of higher priced tickets. To me, the consumer becomes the targeted loser; something the DOJ sorely overlooked.

Sincerely,

Michael Carey,

1892 W. Sage St., Tucson, AZ 85704.

The Antitrust Division received 91 copies of the form letter reproduced above from individuals in Arizona.

March 8, 1993.

Mr. Mark C. Schechter,

Department of Justice, room 9104, 555 4th Street, NW., Washington, DC 20001.

Dear Mr. Schechter: I am adamantly opposed to the Department of Justice lawsuit against the airlines.

If I am unable to provide beginning and expiration data information to the clients, the travelers will be unable to make an informed decision concerning their travel costs.

I utilize this information to provide the best possible service to the traveling public and believe this information should be available.

Sincerely,

Suzanne Campbell,

International Tours.

The Antitrust Division received copies of the form letter reproduced above from 70 employees of International Tours.

March 15, 1993.

Mark C. Schechter, Esq.,

U.S. Department of Justice, Antitrust Division, room 9104, Washington, DC 20001.

Dear Mr. Schechter: ARTA—the Association of Retail Travel Agents ("ARTA") is a trade association whose members consist of small and independent travel agents throughout the United States. Our membership currently is about 2,500, including both travel agencies and individuals who own, manage, or are employed by travel agencies.

ARTA and its members strongly feel that the Department of Justice's attempt to force the airlines to permanently discontinue the practice of using first and last ticket dates to notify travel agents and the public of fare changes fails to take into account the real world beneficial consequences of these advance price announcements.

ARTA would like DOJ to know that its members use first and last ticket dates to provide customers with the best possible information about air fares, so they can make the best choices for themselves. Consumers are entitled to receive information regarding future fare changes so they can make informed decisions and get the most value for their travel dollars. Without advance announcements of price increases, and of the last dates for fare sales, consumers will be deprived of important information they need to make travel arrangements in a cost-effective manner.

ARTA's members have told us their customers use advance price announcements to make loans for future travel, often to save themselves money. For example, an individual desiring to travel might frequently call a travel agent to inquire about air fares and to make reservations for specific flights. The travel agent can provide this customer with fare information for the proposed itinerary, and also tell the customer by what date the tickets must be purchased to obtain this fare. In the interim the travel agent can make reservations for the passenger. Before the last ticket date passes the passenger can either pay for the ticket or rebook the flight, probably at the different fare. Having the information about when fares will change thus assists the traveler.

Since learning of DOJ's intention of prohibiting the use of first and last ticket dates, many customers have informed ARTA's members of their opposition to the proposed ban. Customers have often stated that the absence of advance price announcements will make it much more difficult for them to plan and budget for their travel arrangements. To this end, more than 500 customers of ARTA member travel agencies have signed the enclosed petitions opposing the consent decree's prohibition on advance notice of fare changes and requesting the Department to allow them to continue to receive from their travel agents information about fare changes in advance of the actual change so they can better plan and budget for their travel.

ARTA has one additional reason for requesting DOJ to change its proposal. Travel agents take great pride in their professionalism, and make great efforts to be in a position to give their clients complete and accurate information with which to make decisions about their travel plans. Travel agents want to have as much information to give their clients as possible, including the dates of proposed fare changes and the dates when sales are scheduled to conclude. This enhances the value of travel agents to their clients, and the professionalism of travel agents. ARTA believes that the United States government should not interfere with travel agents' ability to provide the best possible services to our customers.

ARTA appreciates the opportunity to submit these comments, as well as the views of the customers of our member travel agencies. ARTA believes that it and its members should be a part of any future reviews of this rule or similar studies. If you have any questions, please do not hesitate to contact ARTA's Chairman, Adriane D. Green, at 516–585–7070, or ARTA's President, Paul M. Bessel, CTC, at 703–413–2222.

Respectfully submitted,

Paul M. Bessel,

President, ARTA—Association of Retail Travel Agents.

The United States Department of Justice is trying to prevent the airlines from warning travel agents and consumers in advance of airline price increases. I am against this because it will make it much more difficult for me to plan and budget my travel arrangements. I want to continue receiving information about future ticket fare changes from my travel agent.

Numerous Signatures

The Antitrust Division received petitions identical to the petition reproduced above from the Association of Retail Travel Agents and approximately 56 travel agencies.

[FR Doc. 93–10289 Filed 5–6–93; 8:45 am]

BILLING CODE 4410–01–M

federal register

Friday
May 7, 1993

Part III

Department of Education

34 CFR Part 318

Training Personnel for the Education of Individuals With Disabilities; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 318

RIN 1820-AB03

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends regulations for the Training Personnel for the Education of Individuals with Disabilities program. The amendments conform certain existing regulations published in the **Federal Register** on December 29, 1992 (57 FR 62094) to statutory provisions enacted by the Education of the Deaf Act Amendments of 1992 and the Rehabilitation Act Amendments of 1992. These two statutes modify section 631 of the Individuals with Disabilities Education Act (IDEA).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Max Mueller, U.S. Department of Education, 400 Maryland Avenue, SW., room 3072, Switzer Building, Washington, DC 20202-2651. Telephone: (202) 205-9554. Deaf and hearing impaired individuals may call (202) 205-9999 for TDD services.

SUPPLEMENTARY INFORMATION: The major purpose of these regulations is to incorporate new program authorities established by the Education of the Deaf Act Amendments of 1992 (Pub. L. 102-421) and the Rehabilitation Act Amendments of 1992 (Pub. L. 102-569).

Section 202(a) of the Education of the Deaf Act Amendments of 1992 amended section 631(a) of the Individuals with Disabilities Education Act by adding a new section 8 that authorizes support for regional model demonstration training programs on deafness and secondary disabilities that provide preservice and inservice training to teachers, school administrators, leadership personnel, and related services personnel in the education of students with deafness and secondary disabilities. Although the law in section 631(a)(8)(B) does not expressly mention deaf students who also have secondary disabilities in the training programs, the Department includes them to be consistent with the purpose of the demonstration program stated in section 8(A). This authority has been incorporated in a new priority at 34 CFR 318.11(a)(20)—Regional Model Demonstration Training Programs on Deafness and Secondary Disabilities.

Section 202(b) of the Education of the Deaf Act Amendments of 1992 renumbered subsections of section 631 of the Individuals with Disabilities Education Act and inserted a new section (b).

This new subsection authorizes projects to establish or continue programs to train educational interpreters to meet effectively the various communication needs of elementary and secondary students who are deaf or deaf-blind. These programs may also support training or retraining on the role of educational interpreters (including short-term and inservice training) for regular education teachers who are not certified teachers of individuals who are deaf and other personnel who teach or work with them. This authority has been incorporated by amending a priority for the same purpose to reflect the new authorization. This priority is the Training Educational Interpreters priority at 34 CFR 318.11(a)(18).

Section 912(a) of the Rehabilitation Act Amendments of 1992 amended section 631(a) of the Individuals with Disabilities Education Act by adding an authorization to support projects to provide for the training or retraining of regular education teachers who are involved in providing instruction to individuals, to meet the communication needs of such individuals. This authority has been incorporated in a new priority at 34 CFR 318.11(a)(21)—Training Regular Educators who Serve Students with Deafness.

Other technical changes to the regulations reflect additional specific requirements associated with each of the new authorizations.

These regulations support the National Education Goals by seeking to enhance the quality and quantity of personnel available to serve children with disabilities. National Education Goal 1 calls for all children to start school ready to learn, and National Education goal 3 calls for all American students to demonstrate competency in challenging subject matter and learn to use their minds well.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, because these regulations merely incorporate statutory changes, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are small nonprofit agencies receiving Federal funds under this program. However, the regulations would not have a significant economic impact on these organizations because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary has determined that these final regulations would not require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

List of Subjects in 34 CFR Part 318

Education, Education of individuals with disabilities, Education—training, Grant programs—education, Student aid, Teachers, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.029—Training Personnel for the Education of Individuals with Disabilities)

Dated: February 12, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by amending part 318 as follows:

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

1. The authority citation for part 318 is revised to read as follows:

Authority: 20 U.S.C. 1431(a)–(d) and 1434, unless otherwise noted.

2. Section 318.2 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 318.2 Who is eligible for an award?

* * * * *

(a) Institutions of higher education and appropriate nonprofit agencies are eligible under § 318.10 (a)(1), (a)(2), (a)(7), and (a)(8).

* * * * *

(d) Institutions of higher education in partnership with local education agencies and center schools for students who are deaf are eligible under § 318.10(a)(6).

* * * * *

3. Section 318.10 is amended by revising paragraph (a) introductory text, and by adding new paragraphs (a)(6), (a)(7), and (a)(8) to read as follows:

§ 318.10 What activities may the Secretary fund?

(a) The Secretary supports training programs in the following eight areas:

* * * * *

(6) Regional model demonstration training programs on deafness and secondary disabilities.

(7) Training educational interpreters.

(8) Training regular educators who serve students with deafness.

* * * * *

4. Section 318.11(a) is amended by revising paragraph (a)(18), and adding new paragraphs (a)(20) and (a)(21) to read as follows:

§ 318.11 What priorities may the Secretary establish?

* * * * *

(18) *Training educational interpreters.* This priority supports projects for the establishment or continuation of educational interpreter training programs to train personnel to effectively meet the various communication needs of elementary and secondary students who are deaf or deaf-blind. These programs may also provide for the training or retraining (including short-term and inservice training) of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, and other personnel who work with such individuals, on the role of educational interpreters.

* * * * *

(20) *Regional model demonstration training programs on deafness and secondary disabilities.* This priority supports regional model demonstration training programs on deafness and secondary disabilities. These programs shall provide preservice and inservice training to teachers, school administrators, leadership personnel, and related services personnel in the education of students with deafness.

(21) *Training regular educators who serve students with deafness.* This priority supports projects to provide for the training or retraining of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, to meet the communication needs of such individuals.

* * * * *

5. Section 318.20 is amended by revising paragraphs (a), (b) introductory text, (d), and (f) and by adding a new paragraph (g) to read as follows:

§ 318.20 What are the requirements for applicants?

(a) An applicant under § 318.10 (a)(1), (a)(2), (a)(6), or (a)(8) shall demonstrate that the proposed project is consistent with the needs for personnel, including personnel to provide special education services to children with limited English proficiency, identified by the comprehensive systems of personnel development of the State or States typically employing program graduates.

(b) A project under § 318.10 (a)(1), (a)(2), (a)(6), or (a)(8) must include—

* * * * *

(d) An applicant under § 318.10 (a)(1), (a)(2), (a)(6), or (a)(8) shall present a detailed description of strategies for recruitment and training of members of minority groups and persons with disabilities.

* * * * *

(f) An applicant under § 318.10 ((a)(1), (a)(2), (a)(6), or (a)(8) shall demonstrate that it meets State and professionally recognized standards for the training of personnel, as evidenced by appropriate State and professional accreditation, unless the award is for the purpose of assisting the applicant to meet those standards.

(g) An applicant under § 318.10(a)(7) must provide an assurance that all interpreters receiving training under the grant will be provided training designed to develop skills necessary for facilitating effective communication for students who are deaf or deaf-blind.

* * * * *

6. Section 318.22 is amended by revising the section heading and introductory text to read as follows:

§ 318.22 What selection criteria does the Secretary use to evaluate applications for preservice training, leadership training, professional development programs, regional model demonstration training programs on deafness and secondary disabilities, training educational interpreters, and training regular educators to serve students with deafness?

The Secretary uses the following criteria to evaluate all applications for preservice training under § 318.10(a)(1), leadership training under § 318.10(a)(2), professional development projects under § 318.10(a)(4), regional model demonstration training programs on deafness and secondary disabilities under § 318.10(a)(6), training educational interpreters under § 318.10(a)(7), and training regular educators to serve students with deafness under § 318.10(a)(8).

* * * * *

7. Section 318.25 is revised to read as follows:

§ 318.25 What additional factors does the Secretary consider?

To the extent feasible, the Secretary ensures that projects for professional development partnerships under § 318.10(a)(4) and training educational interpreters under § 318.10(a)(7) are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1431(a)–(c))

[FR Doc. 93–10796 Filed 5–6–93; 8:45 am]

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