respective undivided ownership interests of ASRC (that is, the applicable ASRC percentage set out in Exhibit A as to Nuiqsut subsurface and the applicable ASRC percentage set out in Exhibit B as to Point Lay subsurface) and of the State (that is, the applicable State percentage set out in Exhibit A as to Nuiqsut subsurface and the applicable State percentage set out in Exhibit B as to Point Lay subsurface) in each respective parcel of Nuiqsut subsurface described in Exhibit A and in each respective parcel of Point Lay subsurface described in Exhibit B, respectively, will not change by virtue of any future change in the boundary, location, or extent of uplands or submerged lands within said parcel.

5. Leases. To the extent that any oil and gas lease previously granted by the State to any person and described in paragraph 2.2(d) of the Settlement Agreement is presently valid and in force and effect as to the subsurface in any parcel of the Nuiqsut subsurface described in Exhibit A, this conveyance is made subject to that oil and gas lease, and subsurface revenues payable under and in connection with that oil and gas lease as to that parcel of the Nuiqsut subsurface after the effective date of this patent shall be owned by the State and ASRC in proportion to the applicable State percentage and applicable ASRC percentage as more fully provided in the Settlement Agreement. Nothing herein is intended or shall be construed to validate or reinstate any oil or gas lease that is not otherwise valid and extant.

6. Habendum. To have and to hold the applicable undivided ASRC percentage interest set out in Exhibit A in and to the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of the Nuiqsut subsurface described in subparagraph 2(a) of this patent and the applicable undivided ASRC percentage interest set out in Exhibit B in and to the portions of the Point Lay subsurface now and hereafter existing in the respective parcels of the Point Lay subsurface described in subparagraph 2(b) of this patent, together with all and singular the tenements, hereditaments, appurtenances, rights,

encumbrances, and actions thereto appertaining, unto ASRC and its successors and assigns, forever, subject to and in accordance with the terms and provisions of the Settlement Agreement. The State hereby binds itself and its successors and assigns, to warrant and forever defend all and singular the interests hereby conveyed unto ASRC (its successors and assigns) against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under the State, but not otherwise, but subject in all respects to the Settlement Agreement and to the other matters to which this patent is made subject as set forth in it.

7. Further Assurances. The parties agree to take all further actions and execute, acknowledge, and deliver any further documents that are necessary or useful in carrying out the purposes of this patent. Without limitation to the foregoing, the State agrees to execute, acknowledge, and deliver to ASRC all additional instruments, notices, and other documents and to do all other and further acts and things as may be necessary to more fully and effectively grant, convey, and assign to ASRC the interests conveyed hereby and intended to be so conveyed.

8. Governing Law. The validity of this patent shall be governed by and it shall be construed in accordance with the laws of the State of Alaska.

9. Counterparts. This patent may be executed in any number of counterparts and each counterpart shall be deemed to be an original instrument, but all counterparts shall constitute but one conveyance.

10. Successors and Assigns. Subject to the provisions of the Settlement Agreement, this patent shall bind and enure to the benefit of the State and ASRC and the respective successors and assigns of each of them. The covenants and provisions of this patent and of the Settlement Agreement shall be covenants running with the land.

11. Prior Warranties. The State hereby assigns to ASRC with full right of subrogation, to the extent so transferable,

the benefit of and the right to enforce the covenants and warranties, if any, which the State is entitled to enforce with respect to the interests in the Nuiqsut subsurface and Point Lay subsurface provided herein to be conveyed to ASRC, including those against any assignors and other predecessors in title.

12. Patent Effective Date. Chapter ___ SLA 199__ became effective on _____, 199__, and this patent is effective and takes effect as of that date.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

By_____
Director, Division of Land

THE STATE OF ALASKA §
§ ss.
_____ JUDICIAL DISTRICT §

This is to certify that on the _____ day of _____, 199__, before me appeared _____, the person who has been lawfully delegated the authority of _____, the Director of the Division of Land, Department of Natural Resources, State of Alaska, to execute the foregoing document; that _____ executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

_____
Notary Public in and for Alaska

My Commission Expires: _____

ACCEPTANCE

Arctic Slope Regional Corporation accepts title to the applicable ASRC percentage in the subsurface in the above-described property subject to the obligations set forth in this patent.

Dated this _____ day of _____, 199__.

ARCTIC SLOPE REGIONAL CORPORATION

By_____
Jacob Adams, President

THE STATE OF ALASKA §
§ ss.
_____ JUDICIAL DISTRICT §

This is to certify that on the _____ day of _____, 199__, before me appeared Jacob Adams, the person who has been lawfully authorized as the President of Arctic Slope Regional Corporation, a corporation organized and existing under the laws of the state of Alaska, to execute the foregoing document; that Jacob Adams executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

_____
Notary Public in and for Alaska

My Commission Expires: _____

EXHIBIT A
TO PATENT NO. _____
FROM THE STATE OF ALASKA TO
ARCTIC SLOPE REGIONAL CORPORATION

1. All of section _____, T_____N, R_____E, Umiat Meridian ("UM"), in the Barrow recording district, state of Alaska.

State percentage—_____%; ASRC percentage—_____%.

2. The following described portion of section _____, T_____N, R_____E, UM, in the Barrow recording district, state of Alaska:

INSERT DESCRIPTION

State percentage—_____%; ASRC percentage—_____%.

General Format: Each section or portion of a section to be described separately with State percentage and ASRC percentage to be set out separately for each section or portion of a section.

All references in this Exhibit A and in the foregoing patent to a "section" of land containing Nuiqsut subsurface refer to the entirety of the area (including any area now or hereafter situated within the Beaufort Sea) encompassed within a full square or rectangular section (protracted or projected to the extent, if any, it is within the Beaufort Sea) containing approximately 640 acres.

SIGNED FOR IDENTIFICATION

By_____
Name: _____
Title: _____

EXHIBIT B
TO PATENT NO. _____
FROM THE STATE OF ALASKA TO
ARCTIC SLOPE REGIONAL CORPORATION

1. All of section _____, T_____N, R_____E, Umiat Meridian ("UM"), in the Barrow recording district, state of Alaska.

State percentage—_____%; ASRC percentage—_____%.

2. All of section _____, T_____N, R_____E, UM, in the Barrow recording district, state of Alaska.

State percentage—_____%; ASRC percentage—_____%.

General Format: Each section to be described separately with State percentage and ASRC percentage to be set out separately for each section.

All references in this Exhibit B and in the foregoing patent to a "section" of land containing Point Lay subsurface refer to the entirety of the area (including any area now or hereafter situated within the Chukchi Sea or the Kasegaluk Lagoon) encompassed within a full square or rectangular section (protracted or projected to the extent, if any, it is within the Chukchi Sea or the Kasegaluk Lagoon) containing approximately 640 acres.

SIGNED FOR IDENTIFICATION

By_____
Name: _____
Title: _____

EXHIBIT I

STATE OF ALASKA

PATENT NO. _____

This patent is made from the State of Alaska, through its Department of Natural Resources ("State"), whose mailing address is Chief, Title Administration Section, Division of Land, State of Alaska, Department of Natural Resources, 3601 C Street, Suite 960, Anchorage, Alaska 99503, pursuant to chapter ___ SLA 199__, to Arctic Slope Regional Corporation, an Alaska corporation ("ASRC"), whose mailing address is P. O. Box 129, Barrow, Alaska 99723.

W I T N E S S E T H :

This patent is made pursuant to the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of Alaska " ("Settlement Agreement"), which was ratified and approved by the Alaska Legislature in chapter ___ SLA 199__ and to which reference is here made for all purposes. The Settlement Agreement has been recorded in the recording office of the Barrow recording district and has been noted in the land records system maintained by the State's Department of Natural Resources.

Now, therefore, in consideration of the premises, the mutual covenants and agreements contained herein and in the Settlement Agreement, and other good and valuable consideration (the receipt and sufficiency of which are all hereby acknowledged), ASRC and the State hereby agree as follows:

1. Definitions. In this patent, the following definitions apply:

(a) "**Subsurface**" means all interests in oil, gas, or other minerals, now known or discovered in the future in, on, or under land (including all depths, formations and horizons), together with all rights, privileges, benefits and powers conferred upon the owner of that interest with respect to the use and occupation of the surface of, and subsurface depths under,

the lands that may be necessary, convenient, or incidental to the possession and enjoyment (including, without limitation, exploring, drilling, developing, producing, mining, saving, handling, treating, transporting, marketing and operating oil, gas, or other minerals). However, "**subsurface**" does not include any "mineral" that on January 3, 1959, was subject to location under the mining laws of the United States, does not include sand and gravel (whether or not of an uncommon variety), and does not include water.

(b) "**State percentage**" means, as to each different section or portion of a section of Nuiqsut subsurface described in Exhibit A hereto, the undivided percentage interest described as the "**State percentage**" following the description of such particular section or portion of a section in Exhibit A.

(c) "**ASRC percentage**" means, as to each different section or portion of a section of Nuiqsut subsurface described in Exhibit A hereto, the undivided percentage interest described as the "**ASRC percentage**" following the description of such particular section or portion of a section in Exhibit A.

(d) "**Parcel**" means, as to each entire section of Nuiqsut subsurface described in Exhibit A, the entirety of that section; and as to less than all of a section of Nuiqsut subsurface described in Exhibit A, "parcel" means only that portion of the section so described.

(e) "**Nuiqsut subsurface**" means the subsurface in all the uplands and submerged lands now and hereafter existing in the lands described in subsection 11.16 of the Settlement Agreement (subject, if applicable, to the provisions of paragraph 2.3(b) of the Settlement Agreement).

(f) "**Subsurface revenues**" means all bid deposits, bonuses, rents, net profits, royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the exploration, development, production, or other exploitation of, or lease, sale, exchange, or other disposition of any interest in the

Nuiqsut subsurface, except as otherwise expressly provided in paragraph 7.3(b) of the Settlement Agreement. "**Subsurface revenues**" includes all rents, profits, and royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the oil and gas leases described in section 9 of the Settlement Agreement attributable to any part of the Nuiqsut subsurface. When "**subsurface revenues**" are received in a form other than cash or cash equivalents, the cash fair market value at the time of the receipt will be included in and considered as "**subsurface revenues.**"

"**Subsurface revenues**" does not include taxes of any kind owed to the State by any person, including ASRC. "**Subsurface revenues**" also does not include the customary fees charged by the State in connection with the filing of any application for a permit, lease, license, or mining claim, mining lease, or mining leasehold application that are generally applicable to all such applications and are not limited to or different in amount with respect to applications pertaining to Nuiqsut subsurface as compared to other subsurface areas, or other like generally applicable fees customarily charged by the State for authorizations, publications, or services.

(g) "**Person**" means a natural person and all types of private or governmental entities, including but not limited to all entities listed in AS 01.10.060(7), and any corporate subsidiary or joint venture.

(h) "**Fair market value**" means the amount of money that an informed purchaser, willing but not obligated to buy, would pay an informed seller, willing but not obligated to sell, for particular property, goods, or services.

2. Convevance. Pursuant to the Settlement Agreement, the State hereby grants, assigns, and conveys to ASRC and its successors and assigns the applicable ASRC percentage set out in Exhibit A hereto in and to the subsurface in all those portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut

subsurface is within uplands or submerged lands) in the respective parcels of Nuiqsut subsurface in the Barrow recording district in the State of Alaska described in Exhibit A hereto to which the State has heretofore acquired title in any manner other than by virtue of the ASRC Deed described below, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within those respective parcels of Nuiqsut subsurface.

3. Reservation. Pursuant to the Settlement Agreement, in making this grant, assignment, and conveyance, the State reserves and excepts to itself and its successors and assigns, the applicable State percentage set out in Exhibit A in and to the subsurface in the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of Nuiqsut subsurface described in paragraph 2 above.

4. Future Changes. As provided for in the Settlement Agreement, ASRC has granted or will grant to the State one or more warranty deeds (collectively, the "ASRC Deed") conveying to the State the applicable ASRC percentage set out in Exhibit A in and to the subsurface in all those portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut subsurface is within uplands or submerged lands) in the respective parcels of Nuiqsut subsurface described in Exhibit A hereto to which ASRC has heretofore acquired title, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within those respective parcels of Nuiqsut subsurface, reserving to ASRC the applicable ASRC percentage set out in Exhibit A in the subsurface in those portions of the Nuiqsut subsurface now and hereafter existing in those respective parcels of Nuiqsut subsurface. This patent is not intended and shall not be construed to grant to ASRC any interest in the State percentage in any Nuiqsut subsurface which has been or is conveyed from ASRC to the State pursuant to the ASRC Deed, and it is intended by the State and ASRC that, after giving effect to this patent and the ASRC Deed, the entirety of

the Nuiqsut subsurface in each of the parcels described in this patent and in the ASRC Deed shall be owned by the State and ASRC in undivided interests in proportion to the applicable State percentage and the applicable ASRC percentage, respectively, set out in Exhibit A. Further, pursuant to the Settlement Agreement, it is expressly stipulated and provided that the respective undivided ownership interests of ASRC (that is, the applicable ASRC percentage set out in Exhibit A) and of the State (that is, the applicable State percentage set out in Exhibit A) in each respective parcel of Nuiqsut subsurface described in Exhibit A will not change by virtue of any future change in the boundary, location or extent of uplands or submerged lands within said parcel.

5. Leases. To the extent that any oil and gas lease previously granted by the State to any person and described in paragraph 2.2(d) of the Settlement Agreement is presently valid and in force and effect as to the subsurface in any parcel of the Nuiqsut subsurface described in Exhibit A, this conveyance is made subject to that oil and gas lease, and subsurface revenues payable under and in connection with that oil and gas lease as to that parcel of the Nuiqsut subsurface after the effective date of this patent shall be owned by the State and ASRC in proportion to the applicable State percentage and applicable ASRC percentage as more fully provided in the Settlement Agreement. Nothing herein is intended or shall be construed to validate or reinstate any oil or gas lease which is not otherwise valid and extant.

6. Habendum. To have and to hold the applicable undivided ASRC percentage interest set out in Exhibit A in and to the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of the Nuiqsut subsurface described in paragraph 2 of this patent, together with all and singular the tenements, hereditaments, appurtenances, rights, encumbrances, and actions thereto appertaining, unto ASRC and its successors and assigns, forever, subject to and in accordance with the terms and provisions of the Settlement Agreement. The State does

hereby bind itself and its successors and assigns to warrant and forever defend all and singular the interests hereby conveyed unto ASRC (its successors and assigns) against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under the State, but not otherwise, but subject in all respects to the Settlement Agreement and to the other matters to which this patent is made subject as set forth in it.

7. Further Assurances. The parties agree to take all such further actions and execute, acknowledge and deliver such further documents that are necessary or useful in carrying out the purposes of this patent. Without limitation to the foregoing, the State agrees to execute, acknowledge and deliver to ASRC all such other additional instruments, notices and other documents and to do all such other and further acts and things as may be necessary to more fully and effectively grant, convey and assign to ASRC the interests conveyed hereby and intended to be so conveyed.

8. Governing Law. The validity of this patent shall be governed by and it shall be construed in accordance with the laws of the State of Alaska.

9. Counterparts. This patent may be executed in any number of counterparts and each counterpart shall be deemed to be an original instrument, but all such counterparts shall constitute but one conveyance.

10. Successors and Assigns. Subject to the provisions of the Settlement Agreement, this patent shall bind and enure to the benefit of the State and ASRC and the respective successors and assigns of each of them. The covenants and provisions of this patent and of the Settlement Agreement shall be covenants running with the land.

11. Prior Warranties. The State hereby assigns to ASRC with full right of subrogation, to the extent so transferable, the benefit of and the right to enforce the covenants and warranties, if any, which the State is entitled to enforce with

respect to the interests in the Nuiqsut subsurface provided herein to be conveyed to ASRC, including those against any assignors and other predecessors in title.

12. Patent Effective Date. This patent is effective and takes effect as of _____, 199__, the date the parcels (whether one or more) of Nuiqsut subsurface described in Exhibit A became "**Fully Conveyed Sections**" as defined in the Settlement Agreement.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

By_____
Director, Division of Land

THE STATE OF ALASKA §
§ ss.
_____ JUDICIAL DISTRICT §

This is to certify that on the _____ day of _____, 199__, before me appeared _____, the person who has been lawfully delegated the authority of _____, the Director of the Division of Land, Department of Natural Resources, State of Alaska, to execute the foregoing document; that _____ executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

_____
Notary Public in and for Alaska

My Commission Expires: _____

ACCEPTANCE

Arctic Slope Regional Corporation accepts title to the applicable ASRC percentage in the subsurface in the above-described property subject to the obligations set forth in this patent.

Dated this _____ day of _____, 199__.

ARCTIC SLOPE REGIONAL CORPORATION

By_____
Jacob Adams, President

THE STATE OF ALASKA §
§ ss.
_____ JUDICIAL DISTRICT §

This is to certify that on the _____ day of _____, 199__, before me appeared Jacob Adams, the person who has been lawfully authorized as the President of Arctic Slope Regional Corporation, a corporation organized and existing under the laws of the state of Alaska, to execute the foregoing document; that Jacob Adams executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

_____
Notary Public in and for Alaska

My Commission Expires: _____

EXHIBIT A
TO PATENT NO. _____
FROM THE STATE OF ALASKA TO
ARCTIC SLOPE REGIONAL CORPORATION

1. All of section _____, T_____N, R_____E, Umiat Meridian ("UM"), in the Barrow recording district, state of Alaska.

State percentage—_____%; ASRC percentage—_____%.

2. The following described portion of section _____, T_____N, R_____E, UM, in the Barrow recording district, state of Alaska:

INSERT DESCRIPTION

State percentage—_____%; ASRC percentage—_____%.

General Format: Each section or portion of a section to be described separately with State percentage and ASRC percentage to be set out separately for each section or portion of a section.

All references in this Exhibit A and in the foregoing patent to a "section" of land containing Nuiqsut subsurface refer to the entirety of the area (including any area now or hereafter situated within the Beaufort Sea) encompassed within a full square or rectangular section (protracted or projected to the extent, if any, it is within the Beaufort Sea) containing approximately 640 acres.

SIGNED FOR IDENTIFICATION

By_____
Name: _____
Title: _____

EXHIBIT J

NOTICE OF ASSIGNMENTS
OF
SUBSURFACE INTERESTS AND RIGHTS
UNDER STATE OF ALASKA
OIL AND GAS LEASE

TO: *[NAME AND ADDRESS OF LESSEE]*

This notice pertains to the following oil and gas lease (the "Subject Lease") issued by the State of Alaska:

Oil and Gas Lease ADL _____ *[If applicable, add:* (originally number ADL _____)*]* describing the following lands in the Barrow recording district, State of Alaska:

Township _____ North, Range _____ East, Umiat Meridian:

section _____: all (640 acres)
section _____: all (640 acres)*

Containing _____ acres, more or less (the "Lease Premises").

_____

*[*If less than all, describe portion and acres.]*

Notice is hereby given that:

1. The State of Alaska ("State") and Arctic Slope Regional Corporation ("ASRC") entered into the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and The State of Alaska" ("Settlement Agreement") which was ratified and approved by the Alaska Legislature in chapter ___ SLA 199__. The Settlement Agreement has been recorded in the recording office of the Barrow recording district and has been noted in the lands records system maintained by the State's Department of Natural Resources.

2. Pursuant to the Settlement Agreement, by warranty deed made effective as of _____,199__, ASRC conveyed to the State an undivided percentage interest (the "State Percentage") in and to all portions of the subsurface in the respective sections in the Lease Premises owned by ASRC, including both uplands and submerged lands now and hereafter existing, as follows:

Section No.	State Percentage

3. Pursuant to the Settlement Agreement, by patent no._____ made effective as of _____, 199__, the State conveyed to ASRC an undivided percentage interest (the "ASRC Percentage") in and to all portions of the subsurface in the respective sections in the Lease Premises owned by the State, including both uplands and submerged lands now and hereafter existing, as follows:

Section No.	ASRC Percentage

4. As provided in the Settlement Agreement, no change in the boundary, location, or extent of submerged lands or uplands within any section of the Lease Premises will alter, increase, or diminish the State Percentage or the ASRC Percentage of the subsurface and rentals, royalties, and other subsurface revenues in and attributable to such section owned by the State and ASRC, respectively.

5. As provided in the Settlement Agreement and notwithstanding any provision of section 14(g) of the Alaska Native Claims Settlement Act of 1971 ("ANCSA"), all rentals, royalties, and other subsurface revenues with respect to and payable on account of production of oil or gas from each section of the Lease Premises shall be owned by and payable to the State and ASRC, respectively, in proportion to the State Percentage and ASRC Percentage in that particular section and shall not be pooled or communitized with or payable to the owners of the subsurface in any other section of the Lease Premises.

6. As provided for in the Settlement Agreement, the lessee under the Subject Lease is hereby directed to pay all rentals, royalties, and other subsurface revenues becoming payable by the lessee under the Subject Lease after the effective date of the warranty deed and patent described in paragraphs 2 and 3 above, as follows:

(a) To ASRC, to the extent of the applicable ASRC Percentage in the subsurface in the particular section of the Lease Premises with respect to which such rentals, royalties, or other subsurface revenues become payable, at the following address (or such other address of which notice is hereafter given by ASRC to such lessee):

(b) To the State, to the extent of the applicable State Percentage in the subsurface in the particular section of the Lease Premises with respect to which such rentals, royalties, or other subsurface revenues become payable, at the following address (or such other address of which notice is hereafter given by the State to such lessee):

7. Notices from the lessee under the Subject Lease to the "lessor" under the Subject Lease after the effective date of the warranty deed and patent described in paragraphs 3 and 4 above are to be given both to ASRC, at the address shown in paragraph 6(a) above (or such other address of which notice is hereafter given by ASRC to the lessee) and to the State at the address shown in paragraph 6(b) above (or to such other address of which notice is hereafter given by the State to the lessee).

8. As provided in the Settlement Agreement, from and after the effective date of the warranty deed and patent described in paragraphs 2 and 3 above, and notwithstanding any contrary provision of section 14(g) of ANCSA:

(a) As to the applicable State Percentage in each respective section of the Lease Premises, the State shall have the right and responsibility, with respect only to its State Percentage interest, in its own discretion to administer and enforce directly any termination provisions, duties, obligations, and covenants, express or implied, undertaken by or imposed by virtue of the Subject Lease; and

(b) As to the applicable ASRC Percentage in each respective section of the Lease Premises, ASRC shall have the right and responsibility, with respect only to its ASRC Percentage interest, in its own discretion to administer and enforce directly any termination provisions, duties, obligations, and covenants, express or implied, undertaken by or imposed by virtue of the Subject Lease.

9. Nothing in this notice is intended or shall be construed to ratify, validate, or reinstate the Subject Lease as to any land or interest therein as to which the Subject Lease is not otherwise presently valid and in force and effect.

10. The effective date of this notice is the same date as the effective date of the deed and patent described in paragraphs 2 and 3 above.

STATE OF ALASKA

By_____
Director, Division of Land,
Department of Natural Resources

ARCTIC SLOPE REGIONAL CORPORATION

By_____
(Name) _____
(Title) _____

A G R E E M E N T

THIS AGREEMENT entered into this 21 day of January, 1987, is by ARCTIC SLOPE REGIONAL CORPORATION ("ASRC"), a corporation authorized pursuant to Section 7 of the Alaska Native Claims Settlement Act, 85 Stat. 688, 691, 43 U.S.C. 1606 ("ANCSA"), and duly organized under the laws of the State of Alaska, and KUUKPIK CORPORATION ("Kuukpik"), a corporation authorized pursuant to Section 8 of ANCSA and duly organized under the laws of the State of Alaska. ASRC and Kuukpik are collectively referred to as "the parties".

W I T N E S S E T H:

WHEREAS, ASRC desires to exercise its option under § 1431(o) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2542, Pub. L. 96-487 ("ANILCA"), to acquire the subsurface estate of lands, all or part of the surface estate of which has been selected by and has been or will be conveyed to Kuukpik within the National Petroleum Reserve in Alaska ("NPR-A") (referred to hereinafter as the "ASRC Subsurface"); and

WHEREAS, the option of ASRC to acquire the ASRC Subsurface will expire on January 26, 1987, unless extended; and

WHEREAS, it is in the best interests of ASRC and Kuukpik for ASRC to exercise its option under § 1431(o) of ANILCA; and

WHEREAS, the concurrence of Kuukpik is required under § 1431(o) of ANILCA prior to the exercise of ASRC's option to acquire the ASRC Subsurface; and

WHEREAS, the parties recognized that Kuukpik may condition its concurrence under § 1431(o) of ANILCA to require its further consent for ASRC, its successors and assigns, to conduct oil and gas exploration activities that may occur with respect to the ASRC Subsurface, and to conduct any future development activities, including but not limited to oil and gas development and production and sand and gravel extraction, that may occur with respect to the ASRC Subsurface (referred to hereinafter as "Exploration and Development Activities"); and

WHEREAS, Kuukpik is willing to give its conditional concurrence to ASRC for acquisition of the ASRC Subsurface under § 1431(o) of ANILCA.

NOW, THEREFORE, in consideration of their mutual promises and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto consent and agree as follows:

1. Kuukpik hereby gives its concurrence for ASRC to exercise its option under § 1431(o) of ANILCA to acquire the ASRC Subsurface, but Kuukpik expressly conditions its concurrence in such acquisition of the ASRC Subsurface by reserving the right to consent to any Exploration and Development Activities that ASRC, it successors and assigns, may engage in from time to time with respect to the ASRC Subsurface.

2. ASRC agrees that it will not engage in any Exploration and Development Activities with respect to the ASRC Subsurface without first obtaining the consent referred to in Paragraph 1 of this Agreement.

ARCTIC SLOPE REGIONAL CORPORATION

Date: 1/16/87 By Jacob Adams

KUUKPIK CORPORATION

Date: 1/21/87 By Joe Nukapigak Jr.

HB

422

(7)

HOUSE COMMITTEE REPORT

Date Referred: February 21, 1992 FURTHER REFERRALS: Finance

Date of Committee Action: 5/4/92

The JUDICIARY Committee considered: HB 422

HOUSE BILL NO. 422 REVOCATION OF DRIVER'S LICENSE

"An Act relating to the revocation of a person's driver's license, privilege to drive, or privilege to obtain a license; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 422 (JUD) [ ] the same title [X] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: House Transportation Committee letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) DPS 1/27/92

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Dave Donley		✓	
		[illegible]		X	
		Martin Pat G mee-		✓	
		Mike Kimbler		X	
Terry Martin	✓	~~Terry Martin~~ Alex Kennedy		~	

Dave Donley
CHAIRMAN'S SIGNATURE

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

HOUSE TRANSPORTATION COMMITTEE

LETTER OF INTENT

It is the intent of the House Transportation Committee to reduce the Department of Public Safety fiscal note attached to HB 422 to zero. The committee believes the funds requested for one additional full time position may not be necessary. However, as the requirements in HB 422 are federally mandated, the House Transportation Committee requests the Finance Committees evaluate the DPS fiscal note to determine the need for the additional position.

Richard [illegible] 2·20·92

FISCAL NOTE

No. 1
Bill Version: HB 422
(H) Publish Date: 1/27/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Public Safety

Title: "An Act relating to the revocation of a driver's license for drug convictions..." BRU: Motor Vehicles

Component: Driver Services

Sponsor: Rules

Requestor: Governor COMPONENT SERIAL NO. 500

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	43.3	43.3	43.3	43.3	43.3
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	1.4	1.4	1.4	1.4	1.4
SUPPLIES	0	.5	.5	.5	.5	.5
EQUIPMENT	0	8.2	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	53.4	45.2	45.2	45.2	45.2
CAPITAL	0	0	0	0	0	0
REVENUE GF/PRGM FUND SOURCE: 1005	0	54.0	54.0	54.0	54.0	54.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER GF/PRGM FUND SOURCE: 1005	0	53.4	45.2	45.2	45.2	45.2
TOTAL	0	53.4	45.2	45.2	45.2	45.2

POSITIONS:

FULL-TIME	0	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared By: Juanita Hensley Phone: 465-4335
Division: Motor Vehicles Date: 1/17/92
Approved by Commissioner: Richard L. Burton
Agency: Department of Public Safety Date: 1/17/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91 COMMITTEE COPY

This bill, mandated by federal law, will require the Division of Motor Vehicles to revoke the driver's license of persons who have been convicted of controlled substance offenses in Alaska or in the Federal Court system.

The Department of Law reports that approximately 500 persons a year are convicted of misdemeanor or felony drug offenses each year in Alaska. The federal law requires that notice of a conviction must be sent to the offender's home state, and the home state must take the action to revoke the driver's license. The federal courts were not able to report the number of Alaska residents who are convicted of drug offenses nationwide; the Division of Motor Vehicles estimates an additional 100 convictions from the federal courts.

In order to handle these 600 additional license suspensions a year, one full-time Document Processor III will be required. The duties of this position are detailed in the attached request for a new position. The cost for personal services for a Document Processor III is 37.9; the additional 5.4 is for overtime expenses associated with reinstatement of a revoked driver's licenses. The overtime pay is requested in lieu of a Motor Vehicle Representative III position, as the workload required to reinstate the offenders' driver's licenses will be borne by all of the Motor Vehicle Field offices throughout the state.

To revoke 600 additional driver's licenses a year takes over 30 processing steps per revoked license. Each processing step varies in the time it takes to complete the transaction. Complete accuracy is essential as an error of entry onto a record could result in civil liability to the State. It takes approximately 20 minutes per applicant to reinstate a revoked driver's license; the person must make a new application for the driver's license, take all of the required tests, pay the reinstatement fee and submit proof of SR-22 (Certificate of Insurance), thus totalling approximately 200 hours of additional workload for the Motor Vehicle Field office personnel.

Under existing law, each person whose license has been suspended must pay a $100 fee when applying for reinstatement of his or her driver's license. Assuming that 90 percent of the individuals who are eligible for reinstatement will comply with the reinstatement requirements, approximately 54.0 will be generated annually as program receipts.

DETAIL

		FY94
100	PERSONAL SERVICES	43.3
	One Document Processor III 37.9	
	Overtime for MVRIII Field Office 5.4	
200	CONTRACTUAL	1.4
	Postage and tolls	
400	SUPPLIES	.5
	Routine Office Supplies	
500	EQUIPMENT	8.2
	1 Computer Terminal	
	1 Network Line Hook-up	
	1 Desk	
	1 Chair	
	1 5-Drawer File Cabinet	
	TOTAL	53.4

COMMITTEE COPY

No. 1
Bill Version: HB 422
(H) Publish Date: 1/27/92

Position Title	No. of Positions	Range/Step	Barg. Unit
Document Processor III	1	10A	GGU

Time Status	Staff Months	Location	Election District
PFT	12	Juneau	

Type of Expenditure		Amount
1	2	3
Salary*	25.3	
Benefits*	12.6	
Premium Pay (Included in Above)		
Other		
Total Personal Services		37.9
Travel		
Contractual		1.4
Commodities		.5
Equipment		8.2
Other - Overtime		5.4
Total Cost		53.4

Funding Source for Total Cost		
Federal Receipts	1002	
G.F. Match	1003	
General Fund	1004	
Program Receipts/GF	1005	53.4
I-A Receipts	1007	
CIP Receipts	1061	
Other		

* Personal Services Salary and Benefits Costs are from PACS calculations.

Justification

This position would handle the necessary paperwork and computer entry onto the person's driving record. Among other duties, this person will send out notice of license revocation, prepare files, prepare certified copies of driving records, file, close files out, sanitize for microfilm, microfilm, enter microfilm documents for microfilm retreival, enter license revocation, change status, change record to reflect new court action, send judgement to home state of an out-of-state resident, and process court judgements for driving while license revoked.

No. 1 Bill Version: HB 422 (H) Publish Date: 1/27/92

COMMITTEE COPY

REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

BRU Division of Motor Vehicles

COMPONENT Driver Services

Revised Date

FY 93

BUDGET 31

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 27, 1992 FURTHER REFERRALS: 2-21-92 Judiciary Finance

Date of Committee Action: 2/20/92

The TRANSPORTATION Committee considered:

HOUSE BILL NO. 422 REVOCATION OF DRIVER'S LICENSE

"An Act relating to the revocation of a person's driver's license, privilege to drive, or privilege to obtain a license; and providing for an effective date."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: House Transportation letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal note(s) DPS 1-27-92

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Drew D. Leman	✓				
Eppie R. Kahn	✓				
Bill Hildebran	✓				
Richard Hokey	*			✓	
		Gail Phillips		✓	

Richard Hokey
CHAIRMAN'S SIGNATURE

Breakthrough

PROVIDENCE & LANGDON HOSPITAL & CLINIC

LOCAL TREATMENT FROM THOSE YOU TRUST

February 28, 1992

Obed Nelson, Program Director
Aron Wolf, M.D., Medical Director

Representative Dave Donley, Chair
House Judiciary Committee
311 C Street, Suite 450
Anchorage, Ak. 99503

Dear Representative Donley,

I am writing this letter to express my concern about the introduction, at the Governors request, HB422. This bill, in accordance with federal legislation, proposes to revoke the drivers licenses of persons convicted of crimes involving illegal drugs.

I have worked as both a clinician and administrator in the field of drug abuse and dependence for over 13 years. During this time I have designed and managed treatment programs in both rural and urban areas of Alaska. I have had the pleasure of seeing many patients recover from drug dependence. The patients, their families, their employers, and society as a whole benefit greatly from the successful rehabilitation of drug abusers.

There are numerous variables that determine whether a person involved with illegal, drug related activities can be successfully rehabilitated. Having drug abusers receive a mandatory professional clinical evaluation followed by placement in the appropriate treatment modality is an essential starting point for successful rehabilitation.

The majority of our drug treatment patients are employed full time and so are placed in an intensive outpatient program that meets in the evenings. This allows them to continue to work and/or complete educational classes and job training during the day. All of these activities often require a drivers license. Further, if they lose their licenses, and thus their employment, they often lose their health care benefits and the income they need to cover the cost of treatment and fines. Alaska is known for it's harsh weather and poor public transportation systems, and adopting HB422 would prevent many persons from being able to maintain employment and participate in the drug treatment, educational and job training they may need to get off and stay off drugs. For these reasons, I see HB422 as a self-defeating, narrow minded bill and I urge you and other legislators to oppose its passage.

Sincerely,

Chip Ames

Chip Ames
Clinical Supervisor

Note: The UAA library search system if presently backed-up. If you desire, I can locate solid research that will substantiate the points made in this letter. I need two weeks notice. I can be contacted at (907) 261-3003.

NAGHSR

National Association
of Governors' Highway Safety Representatives

November 20, 1991

Docket Section
National Highway Traffic Safety Administration
Room 5109 Nassif Building
400 7th St. S.W.
Washington D. C. 20590

Re: Docket No. 91-17; Notice 1
Drug Offender's License Suspension

Dear Sir or Madam:

The National Association of Governors' Highway Safety Representatives (NAGHSR) has reviewed the notice of proposed rulemaking and is pleased to submit our comments on it.

As you may be aware, NAGHSR believes that suspension or revocation of a driver's license for a purpose unrelated to a driving offense sets a bad precedent and is poor public policy. NAGHSR is strongly opposed to such a policy. We are equally opposed to the sanctions relating to this requirement and believe that the "opt out" provisions which enable a state to refrain from complying are politically unworkable and unacceptable to states. We understand, however, that NHTSA had little to do with the requirement's authorization and is only responsible for its implementation. Our remarks, therefore, will be limited to implementation issues.

In general, we are disappointed that it took the Agency over a year to promulgate a Notice of Proposed Rulemaking on this requirement. The statutory language explicitly defines the circumstances under which a license is to be suspended, the persons affected by the requirement, and the penalties for noncompliance with the requirement, leaving the Agency relatively little flexibility for interpretation. Consequently, we do not understand why the Agency could not have acted more expeditiously. As a result of the Agency's inaction, states have been left in abeyance and were unable to take positive action which would help them either come into compliance with the statutory criteria or submit an annual certification. A year was lost to the states while the clock was ticking toward the compliance deadlines.

Although the Agency took over a year to draft the proposed rulemaking, it has given the public only 45 days in which to comment. This is insufficient time for comment. We are particularly concerned that the state motor vehicle licensing agencies, which will bear the burden of implementing the requirements, will not have sufficient time to fully analyze the proposed rulemaking and determine its impact on individual state licensing operations. We strongly urge NHTSA to extend the comment period for another thirty days.

Enforcement

Our primary concern is with the requirement relating to the enforcement of state drug offenders license suspension laws. NHTSA has proposed that states indicate what steps they are taking to enforce the law. The Agency has suggested that states could meet this requirement by exchanging drug conviction information with other states or by entering into data exchange agreements with the federal government. This proposal, however, assumes that information is complete, accurate and readily available and that states have the capacity to both access that information and exchange it.

According to the National Criminal Justice Association, disposition information relating to drug arrests is extremely difficult to obtain. The availability, reliability and completeness of the data varies considerably from court jurisdiction to court jurisdiction. As is the case with court information relating to motor

vehicle violations, most courts do not have a court tracking system that monitors cases from "cradle to grave". In many states, arrest and conviction information is not routinely conveyed to the state licensing agency. A new data linkage system would have to be developed within the state just to convey in-state conviction information to the licensing agency.

Additionally, states generally do not have the capability to undertake state-to-state exchanges of drug conviction-related data. While the states are in the process of improving their criminal justice data bases in response to a number of federal legislative mandates, it will be many years before complete and accurate conviction information is available in a uniform format that is easily transferable between states. Furthermore, many states are prohibited from circulating arrest information without data relating to disposition, making state-to-state transfers difficult if not impossible.

The National Criminal Justice Association also indicated that the federal government drug-related data base does not fare much better. The National Crime Information Center (NCIC) is presently undergoing a transformation from a centralized criminal justice database to a pointer system that is set up similar to the National Driver Register. A state of inquiry that wishes to access information about drug convictions will contact the NCIC which in turn will notify the state of origin about the inquiry. The state of origin will provide the requisite data back through the NCIC, assuming that it has such information.

The NCIC is in the process of developing such a pointer system, but it will take years before the system is completed, just as it has taken years for the development and implementation of the NDR. Furthermore, it is very unclear whether the NCIC has taken this new legislative mandate into account in the development of the pointer system, and also extremely uncertain that the new system will have the capacity to handle the hundreds of state inquiries that this legislative mandate will generate.

The Senate report suggested that states could enter into interstate agreements to exchange conviction information. NHTSA has proposed that these agreements could be modeled after the Driver License Compact. However, it has taken years for the states to agree to participate in the Driver License Compact and Non-Resident Compact. It is likely that a new compact for drug-conviction information will also take years to implement. Furthermore, if the data is not generally available or there is a state prohibition against information exchange, then state compacts will be useless.

We are further concerned that the drug conviction records requirement NHTSA is proposing will be an enormous financial burden on a state at a time when states can ill afford new financial demands. The financial investment that will be required of a state will surely take funds away from other, more pressing traffic records needs.

Until reliable and accurate conviction-related data is readily available on a national basis, NAGHSR believes that a state should only be required to submit data indicating the number of driver licenses that have actually been revoked or suspended (including those for federal convictions and juvenile adjudications), using whatever data is available to the state.

Compelling Circumstances

NAGHSR's second concern relates to the issue of "compelling circumstances". NHTSA has indicated that it will not give a regulatory definition of a compelling circumstance (i.e. a hardship waiver) in order to give a state maximum flexibility to establish, within reason, its own definition. In the rulemaking, the Agency has indicated that the conditions under which a hardship or restricted license should be issued are very limited without specifying what those limits are. Clearly the drafters of the rulemaking had some notion of what those limited conditions may be, yet were not willing to explicitly define those circumstances under the aegis of "state flexibility".

While we applaud NHTSA's willingness to maximize state discretion on an important definitional issue, the Agency's stance is problematic for states. In effect, the Agency has created a guessing game for states on the issue of compelling circumstances, and states must guess what the drafters had in mind. If

a state guesses correctly, then it may be considered in compliance. If a state guesses incorrectly, then a state may stand to loose a considerable proportion of its highway construction revenues. For states, this is a very high stakes guessing game.

NAGHSR recommends that the Agency at least provide some examples and give the state some guidance on appropriate and reasonable compelling circumstances or provide some criteria by which the states could judge the reasonableness of their proposed "compelling circumstances". The Agency needn't limit the conditions to those identified in the rulemaking and could provide some open-ended regulatory language which would allow states to provide additional definitions as long as the definitions satisfied the specified criteria.

Revocation and Suspension

NAGHSR recommends that license suspension for imprisoned individuals run concurrently with the jail term. We agree that a prison sentence is a much greater deterrent than the license suspension sanction. We also believe that concurrent penalties would reduce state administrative burdens.

Thank you for the opportunity to submit our views on this important rulemaking. NAGHSR looks forward to the final and expeditious promulgation of the regulations.

Sincerely,

Eugene Peterson

Eugene Peterson
Chairman

HB 422

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the revocation of a person's driver's license, privilege to drive, or privilege to obtain a license upon conviction for an offense involving controlled substances.

The bill requires a court to revoke, for a minimum of six months, a person's driver's license, privilege to drive, or privilege to obtain a license when the person is convicted of any drug offense. A new federal law (Public Law 101-516, November 5, 1990) requires the withholding of federal highway money if the state does not enact this legislation by October 1, 1993. The only alternative by which the state could continue to receive the highway money at risk ($15,000,000) is if, during this session, I certify that I am opposed to the enactment of such a law and both houses of this legislature adopt resolutions expressing opposition to such a law.

The provisions of this bill are similar to existing state law (AS 28.15.185) governing the revocation of the driver's license of a juvenile who is adjudicated delinquent for a drug or alcohol offense. This bill is broader for drug-related offenses, however, in that it applies to all persons and not just juveniles. Under the bill, the period of revocation of a juvenile's license or privilege to drive is increased to a minimum of six months for a drug-related conviction or adjudication.

I urge your favorable action on this bill.

Sincerely,

Walter J. Hickel
Governor

SEC. 330. (a) AUXILIARY FLIGHT SERVICE STATION PROGRAM.—The Administrator of the Federal Aviation Administration shall develop and implement a system of manned auxiliary flight service stations. The auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be located in areas of unique weather or operational conditions which are critical to the safety of flight. Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall report to Congress with the plan and schedule for implementation of this section.

(b) NATIONAL WEATHER GRAPHICS SYSTEM.—None of the funds made available in this Act may be used by the Federal Aviation Administration for a new National Weather Graphics System.

SEC. 331. NATIONAL 55 MPH SPEED LIMIT ENFORCEMENT PENALTIES.—Notwithstanding sections 141(a) and 154 of title 23, United States Code, none of the funds in this or any previous or subsequent Act shall be used for the purpose of reducing or reserving any portion of a State's apportionment of Federal-aid highway funds as required by section 154(f) of title 23, United States Code, for reason of noncompliance with the criteria of that subsection during fiscal year 1989. The Secretary shall promptly restore any apportionments which, prior to enactment of this Act, were reduced or reserved from obligation for reason of noncompliance under section 154(f) during said fiscal year.

SEC. 332. Unless specifically provided in this Act, none of the funds in this Act shall be available to initiate multiyear contracts for a program which meets the criteria of a Level I or Level II major system acquisition as defined by Department of Transportation Order 4200.14 if the total value of procurement end items in the contract, including options, exceeds $100,000,000: *Provided*, That for the purposes of this section, a multiyear contract is defined as one which provides for more than one year's requirements of systems, subsystems, or components within a single contract: *Provided further*, That none of the funds in this Act shall be available to initiate contracts for major systems acquisition which include procurement options where funding for those options is scheduled to be provided prior to delivery to the Federal Government of at least fifty per centum of all units previously ordered under that contract.

SEC. 333. For each fiscal year the Secretary of Transportation shall withhold five per centum of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the second full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on such date.

Subsections (a)(2), (a)(3), (b), and (c) of section 104 of title 23, United States Code, are amended as follows:

"(2) The Secretary shall withhold 10 per centum (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the fourth full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

"(3) A State meets the requirements of this paragraph if—

"(A) the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception—

"(i) the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—

"(I) any violation of the Controlled Substances Act, or

"(II) any drug offense, and

"(ii) a delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, or

"(B) The Governor of the State—

"(i) submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after the date of enactment of this section a written certification stating that he is opposed to the enactment or enforcement in his State of a law described in subparagraph (A) relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

"(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i).

"(b)(1)(A) Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

"(i) If such funds would have been apportioned under section 104(b)(5)(A) but for this section, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

"(ii) If such funds would have been apportioned under section 104(b)(5)(B) but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(iii) If such funds would have been apportioned under paragraph (1), (2), or (6) of section 104(b) but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(B) No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

"(2) If, before the last day of the period for which funds withheld under subsection (a) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements of subsection (a)(3), apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

"(3) Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure as follows:

"(A) Funds originally apportioned under section 104(b)(5)(A) shall remain available until the end of the fiscal year succeed-

Will BACCUS 202-366-1396 (7449)

ing the fiscal year in which such funds are apportioned under paragraph (2).

"(B) Funds originally apportioned under paragraph (1), (2), (5)(B), or (6) of section 104(b) shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(4) If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5), such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(c) For purposes of this section—

"(1) The term 'driver's license' means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

"(2) The term 'drug offense' means any criminal offense which prescribes—

"(A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

"(B) the operation of a motor vehicle under the influence of such a substance.

"(3) The term 'convicted' includes adjudicated under juvenile proceedings.".

(b) The table of contents for chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new item:

"159. Revocation or suspension of the driver's license of individuals convicted of drug offenses.".

SEC. 334. Unobligated funds authorized to be appropriated by section 131(d)(2) of the Highway Improvement Act of 1982, Public Law 97-424, shall be available for obligation for the project described in section 149(a)(88) of the Federal-Aid Highway Act of 1987, Public Law 100-17, in the same manner and to the same extent provided in section 131(d)(3) of the Highway Improvement Act of 1982.

SEC. 335. Notwithstanding section 127 of title 23, United States Code, the State of Wyoming may permit the use of the National System of Interstate and Defense Highways located in Wyoming by vehicles in excess of 80,000 pounds gross weight, but meeting axle and bridge formula specifications in section 127 of title 23, United States Code: *Provided*, That this section shall remain in effect until December 31, 1991.

SEC. 336. 23 U.S.C. 410(e)(1)(C) is hereby amended by striking the words "within the time period specified in subparagraph (F)"; 23 U.S.C. 410(e)(2) is hereby amended by adding the words "a significant portion of" after the word "which", the first time it appears,

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and by striking the words "convicted of" and inserting in lieu thereof the words "apprehended and fined for".

SEC. 337. Within 120 days of the effective date of this Act, the Federal Aviation Administration shall undertake and complete a study on the classification of air traffic controllers at level IV limited radar approach facilities which includes airspace complexity as a factor in determining grade classification. The results of this study, along with an implementation plan, shall be provided to the House and Senate Committees on Appropriations.

SEC. 338. Notwithstanding any provision of the Urban Mass Transportation Act of 1964, as amended, the Urban Mass Transportation Administration shall not withhold fiscal year 1989, 1990 or 1991 funds for any section 3 and section 9 operating and capital assistance grants for the City of Phoenix, Arizona, based on the inclusion of a "preference in hiring" provision in the employee protective arrangements developed pursuant to 49 U.S.C. 1609(c).

SEC. 339. Notwithstanding subsection (d) of section 402 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424, 96 Stat. 2155, 2156) for States which have received only a development grant for fiscal year 1989 under such section 402 and which have participated in the Commercial Motor Carrier Safety Inspection and Weighing Demonstration Program, the Secretary shall only approve a plan under such section 402 for fiscal year 1991 which provides that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for commercial motor vehicle safety programs will be maintained at a level which does not fall below the average level of such expenditures for the last two full fiscal years preceding fiscal year 1990.

SEC. 340. (a)(1) None of the funds appropriated by this Act may be obligated or expended to enter into any contract for the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative under subsection (c) of this section.

(2) The President or the head of a Federal agency administering the funds for the construction, alteration, or repair may waive the restrictions of paragraph (1) of this subsection with respect to an individual contract if the President or the head of such agency determines that such action is necessary for the public interest. The authority of the President or the head of a Federal agency under this paragraph may not be delegated. The President or the head of a Federal agency waiving such restrictions shall, within 10 days, publish a notice thereof in the Federal Register describing in detail the contract involved and the reason for granting the waiver.

(b)(1) Not later than 30 days after the date of enactment of this Act, the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for products and services of the United States in procurement, or

(B) denies fair and equitable market opportunities for products and services of the United States in bidding.

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign

proposed to be made, that the institution-affiliated party has violated or conspired to violate section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a federally insured financial institution as defined in title 18 of the United States Code.

(c) In making a determination under paragraph (b) of this section, the appropriate federal banking agency and the Corporation may consider:

(1) Whether, and to what degree, the institution affiliated party was in a position of managerial or fiduciary responsibility;

(2) The length of time the institution-affiliated party was affiliated with the insured depository institution or depository institution holding company, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of section 18(k) of the Act or this part.

(d) Notwithstanding paragraphs (a) and (b) of this section, a depository institution holding company that is a diversified holding company as defined in section 10(a)(1)(F) of the Home Owner's Loan Act (12 U.S.C. 1461 et seq.) may make a golden parachute payment if, and to the extent that, such depository institution holding company determines and can demonstrate that:

(1) The conditions delineated in paragraphs (b) (1), (2), (3) and (4) of this section have been satisfied; and

(2) The institution-affiliated party falls within the definition of "institution-affiliated party" solely because such person is a director, officer, employee or controlling stockholder of a diversified holding company.

§ 359.3 Indemnification payments prohibited.

No insured depository institution or depository institution holding company shall make or agree to make any indemnification payment, except as provided in § 359.5 of this part.

§ 359.4 Permissible golden parachute payments.

An insured depository institution or depository institution holding company may agree to make a golden parachute payment if:

(a) Such an agreement is made with respect to an institution-affiliated party who was hired by an insured depository institution or depository institution holding company at a time when that institution or holding company satisfied any of the criteria set forth in § 359.1(g)(1)(ii) of this part and the institution's appropriate federal banking agency and the Corporation consented in writing to the amount and terms of the golden parachute payment; and

(b) At the time the payment is made, the factors delineated in § 359.2(b) (1), (2), (3), or (4) of this part have been satisfied, and the factors delineated in § 359.2(c)(3) of this part are not present.

§ 359.5 Permissible indemnification payments.

(a) An insured depository institution or depository institution holding company may make or agree to make reasonable indemnification payments to an institution-affiliated party if:

(1) The institution's or holding company's board of directors, in good faith, determines in writing that the institution-affiliated party has a substantial likelihood of prevailing on the merits;

(2) The institution's or holding company's board of directors, in good faith, determines in writing that the payment of such expenses will not adversely affect the institution's safety and soundness;

(3) At any time the institution's or holding company's board of directors believes, or should reasonably believe, that the conditions of paragraphs (a) (1) and (2) of this section are no longer being met, it ceases making or authorizing such payments;

(4) The indemnification payments are limited to the payment or reimbursement of reasonable legal or other professional expenses incurred in connection with an institution-affiliated party's involvement in an administrative proceeding or civil action instituted by the appropriate federal banking agency; but in no event shall such indemnification pay or reimburse an institution-affiliated party for the amount of, or any cost incurred in connection with, any settlement of any such claim, proceeding or action or any judgment or penalty imposed with respect to any such claim, proceeding or action;

(5) The institution-affiliated party agrees in writing to reimburse the institution for such indemnification payments in the event that the proceeding results in a final order under which the institution-affiliated party:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution; and

(6) The institution or holding company provides the appropriate federal banking agency and the FDIC with prior written notice of its board of directors' authorization of such indemnification.

(b) An institution-affiliated party requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; *provided, however*, that such institution-affiliated party may present his/her request to the board and respond to any inquiries from the board concerning his/her involvement in the circumstances giving rise to the administrative proceeding or civil action.

By order of the Board of Directors, dated at Washington, DC, this 24th day of September, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-23747 Filed 10-4-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1212

[NHTSA Docket No. 91-17; Notice 1]

RIN 2127-AE10

Drug Offender's Driver's License Suspension

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice of Proposed Rulemaking (NPRM) contains a proposal for implementing a new program enacted by the Department of Transportation and Related Agencies Appropriations Act for FY 1991. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense. This notice proposes the manner in which States would certify that they are not subject to this withholding, and the disposition of funds that are withheld. The agencies

request comments on the proposed regulation discussed in this notice.

DATES: Comments must be received by November 21, 1991.

ADDRESS: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 8 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. William Holden, Office of Alcohol and State Programs, Traffic Safety Programs, room 5130, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2722; or Ms. Heidi L. Coleman, Office of Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1834.

In FHWA: Mr. Warren Harper, Office of Highway Safety, Room 3407, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2172; or Mr. Wilbert Baccus, Office of Chief Counsel, room 4230, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–0780.

SUPPLEMENTARY INFORMATION: The Department of Transportation and Related Agencies Appropriations Act for FY 1991, Public Law 101–516, was signed into law on November 5, 1990. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act (Pub.L. 91–513, as amended) or any drug offense. If a State decides not to enact such legislation, the section stipulates a procedure by which the state can avoid the withholding of funds.

This notice proposes the manner in which States would certify that they are not subject to this withholding and the disposition of funds that are withheld.

Adoption of Drug Offender's Driver's License Suspension

The legislation specifically provides that the Secretary must withhold a portion of Federal-aid highway funds from any State that does not meet certain statutory requirements. To avoid such withholding, a State must have enacted and be enforcing a law that provides for the revocation or suspension of the driver's license of any individual who is convicted for any violation of the Controlled Substances Act or any drug offense. Alternatively, a State can avoid the withholding by submitting to the Secretary a written certification stating that the Governor is opposed to the enactment or enforcement of such a law and that the legislature has adopted a resolution expressing its opposition to such a law.

The requirements of the Commercial Motor Vehicle Safety Act of 1986 would remain unaffected by any such resolution. Specifically, a State may not waive the requirement of 49 CFR 383.51 that a person who is convicted of either driving a commercial motor vehicle (CMV) while under the influence of a controlled substance, or using a CMV in the commission of a controlled substance-related felony, be disqualified from operating a CMV for a period of from one year to life, depending on the specific offense(s), without facing a reduction in Federal-aid highway funds.

Any State that does not enact and enforce a law that provides for the revocation or suspension of the driver's license of drug offenders or submit to the Secretary written certification from the Governor that he or she is opposed to the enactment or enforcement of such a law in the State will be subject to withholding of a portion of its Federal-aid highway funds. In accordance with the statute, if a State does not meet the statutory requirements by October 1, 1993, five percent of its FY 1994 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) shall be withheld. These sections relate to the apportionments for the primary, secondary, interstate (including interstate construction and interstate resurfacing, restoration, rehabilitation and reconstruction (4R) funds) and urban highway systems. Five percent will be withheld also in FY 1995 if the State does not meet the requirements by October 1, 1994. If the State does not meet the statutory requirements by October 1 of any subsequent fiscal year (beginning with FY 1996), ten percent of its Federal-aid highway apportionments under these sections will be withheld.

Compliance Criteria

To avoid the withholding of Federal-aid highway funds, a State has two alternatives, the first of which is to enact and enforce a law that meets the statutory criteria. Section 333 provides that:

A State meets the requirements of this paragraph if—

(a) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception—

(i) The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—

(I) Any violation of the Controlled Substances Act, or

(II) Any drug offense, and

(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted * * *.

1. Statutory Definitions

The statute defines several terms, and the agencies are proposing to adopt these definitions. Section 333 defines the term "driver's license" to mean "a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways." This definition would encompass licenses that permit individuals to operate any type of motor vehicle, including motorcycles and commercial motor vehicles.

The term "drug offense" is also defined in the statute. The term, as defined in the statute, would cover any criminal drug offense including "the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or *. * * the operation of a motor vehicle under the influence of such a substance." It should be noted that, while Section 333 requires that States take a driver's licensing action against violators of these drug offenses, the offenses covered by this definition are not limited to moving violations. In fact, to be covered, these offenses need not be motor vehicle-related at all.

The agencies do not believe that the Act requires a State to enact any particular drug offense law. The Act requires only that if a drug offense is proscribed and an individual is convicted for a violation of the offense that the State suspend, revoke or delay that individual's driver's license.

Since the statutory definition of "drug offense" includes manufacturing among the activities that are unlawful, the agencies believe this term should cover not only controlled and counterfeit substances but also listed chemicals, the possession of which was made unlawful by the Chemical Diversion and

Trafficking Act of 1988, Public Law 100-690. NHTSA and FHWA therefore propose to define the term "substance the possession of which is prohibited under the Controlled Substances Act" to mean "a controlled or counterfeit substance or a listed chemical as those terms are defined in subsections 102(6), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (21 U.S.C. 802(6), (7) & (33)). Complete listings of all controlled substances and listed chemicals are contained in 21 CFR 1308.11-.15 and 1310.02."

The statute provides that the term "convicted" includes "adjudicated under juvenile proceedings." In other words, the statute requires that State laws provide that juveniles who are adjudicated for drug offenses outside of criminal proceedings would also be subject to revocation or suspension of their driver's licenses. If these individuals do not have driver's licenses, then the State must delay issuance of driving privileges to them.

Several issues are left unresolved by the statutory language, and the agencies request comments from the public on these issues.

2. Compelling Circumstances

Section 333 provides that, to meet the statutory requirements, the State law must require the revocation, suspension or delay in issuance of driver's licenses for drug offenders "in all circumstances" or "in the absence of compelling circumstances warranting an exception." The statute does not specify what circumstances would warrant an exception.

NHTSA and FHWA believe that this language provides States with flexibility to issue restricted licenses to individuals in certain limited circumstances, but the agencies are not proposing to define for the States which circumstances would warrant an exception. When NHTSA originally promulgated its regulation implementing section 408 of the Highway Safety Act of 1966, Incentive Grant Criteria for Alcohol Traffic Safety Programs, the agency defined the particular conditions for which restricted or hardship licenses could be issued to drunk drivers. Over time, however, NHTSA found these conditions to be overly restrictive for the States and amended the regulation accordingly. Based on this experience, the agencies are not proposing to define in this regulation a limited set of conditions under which hardship or restricted licenses may be issued. However, hardship or restricted licenses should be issued only in exceptional circumstances specific to the offender.

3. Enforcement

Section 333 requires not only that States enact drug offender's driver's license suspension statutes, but also that they enforce such statutes. The Act does not explain, however, how States are to satisfy this enforcement requirement. The Senate Report for the measure states:

> The requirement * * * is satisfied so long as the State is attempting in good faith to enforce the law. If a State resident is convicted of a drug offense in another State, and officials of the State of residence are unaware of the conviction, the failure of the State of residence to revoke or suspend the offender's driver's license would not, by itself, be a sufficient basis to find the State of residence in noncompliance with the bill's requirements. Similarly, if State officials are unaware of the conviction of a resident under the Controlled Substances Act, the failure to revoke or suspend the resident's license is not, by itself, a sufficient basis to find the State in noncompliance. S.Rep.No. 298, 101st Cong., 1st Sess. 5 (1989).

The Senate Report further suggests that a State could show good faith efforts to enforce its law by entering into agreements with other States or with Federal officials to inform each other of drug offense convictions. The report indicates, however, that such agreements are not required by the Act. Id.

The agencies are proposing to require that, in order to comply with the enforcement criterion, States with qualifying laws must submit a description of the steps they are taking to enforce their law. The description would need to include the steps the State is taking to enforce its law with regard to within-State convictions, out-of-State convictions, Federal convictions and juvenile adjudications. We intend to accept good faith efforts, and are not mandating that States meet any particular condition as a prerequisite.

States would be able to show good faith in a number of ways. With regard to out-of-State and Federal convictions, for example, as suggested by the Senate Report, States could show good faith by entering into agreements with Federal officials and with other States to inform each other of drug offense convictions. Such agreements could be modeled after the Driver License Compact, under which States report convictions for major moving violations to a driver's home State.

In addition, States could establish procedures for submitting inquiries to the National Crime Information Center (NCIC) prior to issuing or renewing an individual's driver's license. The NCIC maintains the Interstate Identification Index (III), a nationwide computerized information system that contains criminal justice information, and includes both State and Federal drug offense conviction information. The agencies are aware that access to the NCIC/III is limited to criminal justice purposes. Because of this limitation, NHTSA and FHWA have requested an interpretation from the Assistant Director/Legal Counsel for the Federal Bureau of Investigation to determine whether State access to this information for the purpose of suspending, revoking or refusing a driver's license to a drug offender would be authorized.

4. Suspension, Revocation or Delay

Section 333 requires that States revoke or suspend for at least six months the driver's license of any individual who is convicted of the Controlled Substances Act or any drug offense. The statute is silent about the effect, if any, a prison term would have on the suspension or revocation. A drug offender, for example, may be sentenced to serve on year in prison. Must that individual be deprived of his or her driver's license for a least six months after the prison term is completed, or could the suspension or revocation period run concurrently with the term of imprisonment imposed?

The Drug Offender's Driving Privileges Suspension Act was enacted to deter drug offenders. If a drug offender serves at least six months in prison, the agencies believe such punishment provides a greater degree of deterrence than would the suspension or revocation of the individual's driver's license. NHTSA and FHWA therefore have tentatively determined that the license suspension or revocation term may run concurrently with any prison term imposed, if the offender serves less than six months in prison, of course, the full six month suspension or revocation would have to be completed.

If the individual does not have a driver's license or if the individual's driver's license is suspended at the time the individual is convicted, Section 333 requires that the State law must provide for a delay in the issuance or reinstatement of the individual's driver's license for at least six months after the individual applies for issuance or reinstatement of his or her driver's license. The statute seems to provide that the six month period would not begin to run until the individual initiates the issuance or reinstatement process by submitting an actual application. The agencies request comments, particularly from the States, regarding whether this would impose unnecessary burdens for driver licensing operations, and if there

is a preferable method for marking the beginning of the six month period within the meaning of the statute. For example, we request comments on whether it would be preferable to require the issuance or reinstatement of the individual's driver's license be preferable to require that issuance or reinstatement of the individual's driver's license be delayed for at least six months after the individual otherwise would have been eligible to have his or here driver's license issued or reinstated. NHTSA and FHWA have tentatively determined that, like the license suspension or revocation term, the period of delay may run concurrently with any prison term imposed.

5. Certification

To avoid the withholding of Federal-aid highway funds, each State would be required by this proposed regulation to submit a certification on a annual basis. Under the agencies' proposal, States would be required to submit their certifications by April 1, 1993 to avoid the withholding of funds in fiscal year 1994. Thereafter, States would be required to submit certifications by January 1 of each year (beginning with January 1, 1994) to avoid the withholding of funds in the following fiscal year (beginning with FY 1995). States could submit their certifications along with their Certifications of Speed Limit Enforcement, which are required to be submitted annually in accordance with 23 CFR Part 659.

The certifications submitted under the Part would provide the agencies with the basis for finding States in compliance with the Drug Offender's Driver's License Suspension requirements. Accordingly, until a State has been determined to be in compliance with these requirements, the agencies are proposing that the certification must consist of a certifying statement and also supporting documentation. Once a State has been determined to be in compliance with the Drug Offender's Driver's License Suspension requirements, the State would then be required to submit a certifying statement, but would no longer be required to submit supporting documentation, unless the State's law or enforcement efforts have changed significantly enough so as to warrant an amendment of the State's supporting material.

For example, if a State believes that it has a law that revokes or suspends the driver's license of drug offenders in conformance with the statutory and regulatory requirements, the State would be required to submit a certifying statement to this effect. With the certification, the State would be required to submit a copy of its conforming law and, as discussed earlier, a description of the steps the State is taking to enforce the law. Once the State is determined to be in compliance, the State would be required to submit only the certifying statement. It would not be required to resubmit its law or describe again its enforcement efforts. If the State's law or its enforcement efforts were to change significantly, the State would be required to amend or supplement the State's original submission.

If a State has not enacted or is not enforcing a conforming law, it can avoid the withholding of funds by submitting, not earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification signed by the Governor stating that he or she is opposed to the enactment or enforcement in the State of a drug offender's driver's license suspension law. The Governor would also be required to submit written certification that the legislative (including in both Houses where applicable) has adopted a resolution expressing its opposition to such a law and a copy of the resolution. Once the State is determined to be in compliance, the State would be required to submit only the Governor's certifying statement. The State legislature would not be required to pass a resolution each successive year, and the State would not be required to resubmit a copy of the resolution.

Notification of Compliance

For each fiscal year beginning with FY 1994, NHTSA and FHWA propose to notify States of their compliance or noncompliance with Public Law 101–516, based on a review of certifications received. The agencies propose that this notification will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to Public Law 101–516 and the implementing regulation, the agencies will make an initial determination that the State is in noncompliance. States that are determined to be in noncompliance with Public Law 101–516 will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

Each State determined not to comply will have an opportunity to rebut the initial determination. These States will be notified of the agencies' final determination of compliance or noncompliance as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

NHTSA and FHWA recognize that States may want to know as soon as possible whether their laws satisfy the requirements of Public Law 101–516 or they may want assistance in drafting conforming legislation. States are encouraged to request preliminary reviews and assistance from NHTSA's or FHWA's Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. They are encouraged also to request assistance from NHTSA and FHWA regional offices.

Period of Availability for Funds

Section 333 provides an incremental approach to the withholding of funds for noncompliance with Public Law 101–516. If a State is found to be in noncompliance in fiscal years 1994 or 1995, the State would be subject to a five percent withholding. If a State is found to be in noncompliance in any subsequent fiscal year, beginning with FY 1996, the State would be subject to a ten percent withholding.

In addition, if a State is found to be in noncompliance in fiscal years 1994 or 1995, the funds withheld from apportionment to the State would remain available for apportionment to that State for a period of time, prescribed in the statute. If a State is found to be in noncompliance in any subsequent fiscal year, the funds withheld from apportionment would no longer be available for apportionment.

Paragraph 104(b)(1)(B) of the Section provides that, "No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State." The disposition of these funds would be made in accordance with paragraph 104(b)(4) of the section.

Paragraphs 104(b)(1)(A) and (b)(2) of the section identify the period of time during which funds withheld on or before September 30, 1995, remain available for apportionment, and when they are to be restored if the State complies with the Federal requirements before the funds lapse. Paragraph 104(b)(3) establishes the period of time during which these subsequently apportioned funds would remain available to a State for expenditure. If the withheld funds lapse before they are restored, their disposition would be made in accordance with paragraph 104(b)(4) of the section.

These sections are virtually identical to those found in the National Minimum Drinking Age Act, as amended, 23 U.S.C. 158. For a full discussion of how these provisions have been applied in practice, interested parties are encouraged to read the agencies' joint final rule published in the Federal Register on August 18, 1988 (53 FR 31318).

Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by November 21, 1991. The agencies have not provided a longer comment period in order to provide States with sufficient time to prepare their agendas for their upcoming legislative sessions. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and FHWA will mail copies to all Governors, Governors' Representatives for Highway Safety and State highway agencies.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 91-17; Notice 1 of the NHTSA Docket Section in room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

On April 29, 1991, the State of Alaska submitted some questions to FHWA regarding the agency's interpretation of section 333. FHWA acknowledged receipt of these questions, but declined to answer them since the agencies were in the process of developing this proposed regulation. We believe the questions raised in Alaska's inquiry have all been addressed in this NPRM. The questions have been placed in the public docket for his rulemaking action, and are available for public examination.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it would have no federalism implication that warrants the preparation of a federalism assessment. States can choose to enact and enforce a law that requires the suspension or revocation of driver's licenses for drug offenders in conformance with Public Law 101-516, and thereby avoid the withholding of Federal-aid highway funds. Alternatively, States can choose not to enact and enforce this type of law, and still avoid such withholding. To avoid the withholding of funds in such cases, the Governor would submit a certification that he or she is opposed to the enactment or enforcement in the State of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. While specific criteria that State laws must meet have been proposed in this NPRM, they are mandated by Public Law 101-516.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures. A preliminary regulatory evaluation of the impacts of this proposal has been prepared and placed in Docket 91-17; Notice 1. This preliminary evaluation provides information regarding the expected costs and benefits of the agencies' proposal and requests information demonstrating that license suspensions or revocations for drugged driving or illegal possession convictions deter drug use or reduce driver's future involvement in crashes. It also requests comments on methods that States could use and the costs to develop systems for providing Federal, out-of-State and juvenile records to State Departments of Motor Vehicles. Any interested person may obtain a copy of this preliminary evaluation by writing to NHTSA's Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949. Comments should be submitted to the NHTSA Docket, in accordance with the procedures described earlier in this notice.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this proposed rule on small entities. Based on the evaluation, we certify that this rule would not have a significant economic impact on a substantial number of small entities. Any withholding of funds under the regulation would be from States. Accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this proposal that States certify that they conform to the statutory requirements to avoid the withholding of Federal-aid highway funds are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, the reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under DOT No.: 3517; OMB No.: New; Administration: NHTSA, NEED FOR INFORMATION: To encourage States to enact and enforce drug offender's driver's license suspension; PROPOSED USE OF INFORMATION: To provide procedures to State highway construction grant recipients on how to certify compliance with the provision of Public Law 101-516. The law requires a driver's license suspension, or revocation, for individuals convicted of any drug-related offense; FREQUENCY: Annual; BURDEN ESTIMATE: 280 hours; RESPONDENTS: State/local government; FORM(S): None, but Forms HS-62, HS-62A and HS-217 may be used, OMB No. 2127-0003; AVERAGE BURDEN HOURS PER RESPONDENT: 5 hours. For further information contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

The agencies have also analyzed this proposed action for the purpose of the

National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

List of Subjects in 23 CFR Part 1212

Driver licensing, Drugs, Highway safety.

In accordance with the foregoing, the agencies propose to add a new part 1212 to title 23 of the Code of Federal Regulations to read as follows:

PART 1212—DRUG OFFENDER'S DRIVER'S LICENSE SUSPENSION

Sec.

Authority: Public Law 101–516; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1212.1 Scope.

This part prescribes the requirements necessary to implement section 333 of Public Law 101–516, which encourages States to enact and enforce Drug Offender's Driver's License Suspensions.

§ 1212.2 Purpose.

The purpose of this part is to specify the steps that States must take in order to avoid the withholding of Federal-aid highway funds for noncompliance with section 333 of Public Law 101–516.

§ 1212.3 Definitions.

As used in this part:

(a) Convicted includes adjudicated under juvenile proceedings.

(b) *Driver's license* means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

(c) *Drug offense* means:

(1) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

(2) The operation of a motor vehicle under the influence of such a substance.

(d) *Substance the possession of which is prohibited under the Controlled Substances Act* or *substance* means a controlled or counterfeit substance or a listed chemical, as those terms are defined in subsections 102 (6), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802 (6), (7) & (33)) and listed in 21 CFR 1308.11–.15 and 1310.02.

§ 1212.4 Adoption of Drug Offender's Driver's License Suspension.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of fiscal years 1994 and 1995 if the State does not meet the requirements of this section on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of fiscal year 1996 and any subsequent fiscal year if the State does not meet the requirements of this section on that date.

(c) A State meets the requirements of this section if:

(1) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception:

(i) The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of

(A) Any violation of the Controlled Substances Act, or

(B) Any drug offense, and

(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, or

(2) The Governor of the State:

(i) Submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification stating that he or she is opposed to the enactment or enforcement in the State of a law described in paragraph (c)(1) of this section relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

(ii) Submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in paragraph (c)(1) of this section.

§ 1212.5 Certification requirements.

(a) Each State shall certify to the Secretary of Transportation by April 1, 1993 and by January 1 of each subsequent year that it meets the requirements of section 333, Public Law 101–516 and this regulation.

(b) If the State believes it meets the requirements of section 333 of Public Law 101–516 and this regulation on the basis that it has enacted and is enforcing a law that suspends or revokes the driver's license of drug offenders, the certification shall contain:

(1)(i) A statement by the Governor of the State, or an official designated by the Governor, that the State has enacted and is enforcing a Drug Offender's Driver's License Suspension law. The certifying statement shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted and is enforcing a Drug Offender's Driver's License Suspension law.

(ii) If the statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor.

(2) Until a State has been determined to be in compliance with the requirements of section 333 of Public Law 101–516 and this regulation, the certification shall include also:

(i) A copy of the State law, regulation, or binding policy directive implementing or interpreting such law or regulation relating to the suspension, revocation, issuance or reinstatement or driver's licenses of drug offenders, and

(ii) A statement describing the steps the State is taking to enforce its law with regard to within State convictions, out-of-State convictions, Federal convictions and juvenile adjudications.

(c) If the State believes it meets the requirements of section 333 of Public Law 101–516 on the basis that it opposes a law that requires the suspension, revocation or delay in issuance or reinstatement of the driver's license of drug offenders, the certification shall contain:

(1)(i) A statement by the Governor of the State, or an official designated by the Governor, that he or she is opposed to the enactment or enforcement of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. The certifying statement shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do

hereby certify that I am opposed to the enactment or enforcement of such a law and that the legislature of the (State or Commonwealth) of _____ has adopted a resolution expressing its opposition to such a law.

(ii) If the statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor.

(2) Until a State has been determined to be in compliance with the requirements of section 333 of Public Law 101–516 and this regulation, the certification shall include also a copy of the resolution.

(d) The Governor, or an official designated by the Governor, each year shall submit the original and four copies of the certification to the local FHWA Division Administrator. The FHWA Division Administrator shall retain the original and forward two copies each to the Regional Administrator of NHTSA and FHWA. The Regional Administrators shall each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington Headquarters, attention of the Chief Counsel.

(e) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded, State legislative changes or changes in State enforcement activity shall be submitted in the same manner as the original.

§ 1212.6 Period of availability of withheld funds.

(a) Funds withheld under § 1212.4 from apportionment to any State on or before September 30, 1995, will remain available for apportionment as follows:

(1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A) but for this section, the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.

(2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for this section, the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1), 104(b)(2) or 104(b)(6) but for this section, the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1212.4 from apportionment to any State after September 30, 1995 will not be available for apportionment to the State.

§ 1212.7 Apportionment of withheld funds after compliance.

Funds withheld under § 1212.4 from apportionment, which remain available for apportionment under § 1212.5(a), will be made available to any State that conforms to the requirements of § 1212.4 before the last day of the period of availability as defined in § 1212.5(a).

§ 1212.8 Period of availability of subsequently apportioned funds.

(a) Funds apportioned pursuant to § 1212.7 will remain available for expenditure as follows:

(1) Funds originally apportioned under 23 U.S.C. 104(b)(5)(A) will remain available until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned.

(2) Funds originally apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned.

(b) Sums apportioned to a State pursuant to § 1212.7 and not obligated at the end of the periods defined in § 1212.8(a), shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

§ 1212.9 Effect of noncompliance.

If a State has not met the requirements of section 333 of Public Law 101–516 at the end of the period for which funds withheld under § 1212.4 are available for apportionment to a State under § 1212.6, then such funds shall lapse or, in the case of funds withheld from apportionment under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

§ 1212.10 Procedures affecting states in noncompliance.

(a) Every fiscal year, each State determined to be in noncompliance with section 333 of Public Law 101–516, based on NHTSA's and FHWA's preliminary review of its statutes, will be advised of the funds expected to be withheld under § 1212.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with section 333 of Public Law 101–516 based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(c) Every fiscal year, each State determined not to be in compliance with section 333 of Public Law 101–516, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1212.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 1, 1991.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

[FR Doc. 91–23991 Filed 10–4–91; 8:45am]

BILLING CODE 4910-59-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 409

[BPD–628–P]

RIN: 0938–AE34

Medicare Program; "Confined to the Home" Requirements for Home Health Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current Medicare rules to clarify when a home health patient would be considered "confined to the home" in order to receive home health benefits. It would conform our regulations to changes made by section 4024 of the Omnibus Budget Reconciliation Act of 1987.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 6, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–628–P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

HB

425

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

February 24, 1992

The Honorable Dave Donley
Alaska House of Representatives
Room 122, Capitol
P.O. Box V
Juneau, Alaska 99811

re: HB 425

Dear Representative Donley,

The enclosed article appeared in the February 10, 1992 issue of "Insurance Week." As you can see other states are going through the same process we are and are very aggressive about it.

Of particular concern is the highlighted portion at the end of the article which points out that Washington "could be in even better shape - and ahead of its insurance-department brethren in the West - by the end of the summer." Alaska already loses a significant amount of its market to Outside brokers and we hope to reverse that trend with the passage of HB 425 and the national accreditation which the bill will allow us to seek.

Your committee is, of course, very busy with many pieces of critical legislation. However, prompt consideration of HB 425 will allow us to get a spot on the NAIC accreditation team's schedule for this year. Delay may mean that we will not be on the schedule for this year, thus fulfilling the prophecy of the Washington department to the detriment of Alaskan businesses and consumers.

Please consider early scheduling and passage of HB 425. As always, if you have any questions or if I can ever be of service, please do not hesitate to contact me.

Sincerely,

Dave Walsh

David J. Walsh

If Legislation Passes, Accreditation Could Come by Late Summer

Wash. DOI Aims for Billing as Part of NAIC's Solvency Police

By Richard Rambeck
Editor

OLYMPIA, Wash. — It is a process that could contain all the rigors of a doctoral dissertation combined with the pain and suffering of a root canal.

Bring it on, says the Washington Department of Insurance, rigor, pain, suffering and all. The DOI is gearing up to have its operations, procedures, regulations — heck, even its working papers — placed under a microscope by a team stone-turners from the National Association of Insurance Commissioners.

The Washington DOI is aiming to receive the NAIC stamp of approval and membership in the association's Financial Regulation Standards and Accreditation Program, designed to give state insurance departments the regulatory mechanisms and teeth to effectively monitor insurer solvency.

"Frankly," says Washington Insurance Commissioner Richard Marquardt, sounding a bit like a man facing a three-foot-long needle filled with Novocain, "we want it, we need it, we want to get it done."

They are about six months, one piece of legislation and a passing grade on the onerous NAIC exam away from getting with the program. Optimism is reasonably high at the DOI that the department will soon join the nine states currently accredited in the NAIC's insurer-solvency-regulation program.

None of those states is in the West, and Washington seems the best bet from the region to be the first to obtain thumbs up from the NAIC. But despite the appearance of being a little ahead of the game, Washington DOI officials know that time is of the essence.

After Jan. 1, 1994, states that have been accredited by the NAIC will no longer accept the results of financial-solvency examinations conducted by non-accredited states. As such, carriers domiciled in non-accredited states could be refused authority to sell insurance in accredited states or be subject to reaudit, likely at the insurers' expense, by accredited states.

The key element for most states in the accreditation process is passing legislation to establish minimum NAIC financial-regulation standards. Some Western states — Oregon, Montana and Nevada — won't have legislative sessions in 1992, which essentially means that those states face in all-or-nothing fight during the 1993 lawmaking session to get the needed statutes in place for NAIC accreditation time to meet the Jan. 1, 1994, deadline.

Fortunately for the Washington DOI, the state Legislature convenes in 1992 and 1993, providing two opportunities to pass the necessary bill. But Scott Jarvis, deputy insurance commissioner and legislative liaison, wants to get it done this session.

"We don't want to wait another year," Jarvis said. "If we miss something, we have a year to fine-tune it" with legislation in 1993.

The DOI has introduced a 144-page bill — "most of it is existing law with amendments added," Jarvis says — that, if passed, would bring the Washington department up to speed on the 19 areas of laws and regulations that encompass the NAIC financial standards.

Of those 19, the DOI is asking for statutorial revision of 11, including regulations relating to holding companies, producer-controlled property/casualty insurers, reinsurance intermediaries, managing general agents, exams and examination authority, capital and surplus requirements, risk limitation, valuation of investments, receiverships, liabilities and reserves, and risk retention.

Marquardt says he tells legislators that the crux of the bill's provisions is to "keep money in the company where it belongs," so that when the need arises, claims can be paid.

Roger Polzin, deputy insurance commissioner in charge of management services, says the bill has no fiscal impact during the current biennium. (During the next biennium, the DOI would need funds to hire three additional examiners.)

At this point, the department's legislation has "no opposition that we know of to the concept," Jarvis says, explaining that some specific elements of the bill may require negotiation, but that the DOI will attempt to adhere as closely as possible to the NAIC standards.

"The industry has been generally supportive," Jarvis says. "There's no logical reason it shouldn't go through."

Logic and legislatures, however, often are mutually exclusive, but DOI staffers at this point are expecting to be able to welcome an NAIC review team to Olympia sometime this summer.

If the review team does come to Olympia — something that won't happen if the bill doesn't pass — the DOI's examination practices and procedures, as well as the quality and quantity of its financial-examination staffing will be probed in depth.

"We're fortunate to be in good shape in these areas," Polzin said.

If all goes well, the Washington DOI could be in even better shape — and ahead of its insurance department brethren in the West — by the end of the summer.

InsuranceWeek FEB 10, 1992 P13

MEMORANDUM

State of Alaska

TO: Dave Walsh
Director
Division of Insurance

DATE: February 21, 1992

SUBJECT: Amendments
SB 376

FROM: Stan Garlington
Insurance Market Analyst
Division of Insurance
Department of Commerce
and Economic Development

Summary of Proposed Changes

Third Party Administrator Registration
The American Council of Life Insurers requested that third party administrators be licensed more in line with the NAIC Model Third Party Administrator Statute rather than as managing general agents. The division was able to develop acceptable consensus language for third party administrator registration Changes 1, 3, 4, 7, 9, 10, 11, 17, and 19 impliment this addition.

Attorney-in-fact License
Concern expressed regarding the lack of specifics in the proposed bill has been addressed by providing licensing procedures and qualifications. The effective date of the license requirement has been changed to 1/1/94 to accommidate a smooth transition. Changes 13, 14, and 20.

Premium Refund
Language is clarified that the 30 days begins 30 days from receipt of the request for cancellation or the effective date of cancellation, which ever is later. Change 12.

Mandatory Appraisal
Language is changed to address legislative concerns and public testimony before House Labor and Commerce. Change 15.

Misc Cleanup
Changes 2, 5, 6, 8, 16 and 18

DOI
2/21/92

AMENDMENT

OFFERED IN THE SENATE
TO: SB 376

1. Page 34, line 23, after "who":

Insert: "for residents of this state, or for residents of another jurisdiction from a place of business in this state, performs administrative functions such as claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance only in regard to life insurance, disability insurance, or annuities is not required to be additionally licensed as a managing general agent if the person is registered under this chapter as a third party administrator or only investigates and adjusts claims and is licensed under this chapter as an independent adjuster."

Delete: "performs administrative functions, including claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to insurance as a third-party administrator shall be licensed as a managing general agent unless the person only investigates and adjusts claims and is licensed under this chapter as an independent adjuster."

2. Page 66, line 30, after "bond"

Delete "with admitted insurers authorized to transact surety insurance"

3. Page 73, line 8,

Insert: "Sec.___. AS 21.27 is amended by adding a new section to read:

ARTICLE 4. THIRD PARTY ADMINISTRATORS.

Sec. 21.27.640. REGISTRATION REQUIRED. (a) A person may not act as or represent to be a third party administrator in this state or relative to a subject resident, located, or to be performed in this state unless registered under this chapter or by another juridiction under AS 21.27.660. A person may not act as or represent to be a third party administrator representing an insurer domiciled in this state regarding a risk located outside this state unless registered by this state.

(b) A third party administrator may not transact business for a kind or class of insurance for which the person is not registered.

(c) A person who performs administrative functions, including claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to insurance as a third party administrator shall be registered as a third party administrator unless the person only investigates and adjusts claims and is licensed under AS 21.27 as an independent adjuster.

(d) A third party administrator may not use a fictitious name or alias unless the licensee's legal name and fictitious name or alias are on the registration.

(e) A person who is an employee of an admitted insurer, who acts within the course and scope of that employment, and within the scope of the insurer's certificate of authority is not required to be registered under this section.

(f) A person who performs management services for an admitted insurer is not required to be registered as a third party administrator if the person's compensation is not based on the volume of premium written and the person

(1) is a wholly-owned subsidiary of the admitted insurer;

(2) wholly owns the admitted insurer;

(3) is a wholly-owned subsidiary of the insurance holding company that owns or controls the admitted insurer;

(4) is a United States manager of the United States branch of an alien admitted insurer; or

(5) is the manager of a group, association, pool, or organization of admitted insurers that does joint underwriting if it is subject to examination by the authorized insurance regulator in the state in which the person's principal place of business is located.

(g) A credit union or a financial institution subject to supervision or examination by federal or state banking authorities, or a mortagage lender, that performs no functions other than advancing premiums to the insurer and collecting a debt from the insured is not required to be registered as a third party administrator

(h) A credit card issuing company that performs no functions, including adjustment or settlement of claims, other than advancing and collecting premiums from its credit card holders who have authorized collection is not required to be registered as a third party administrator

(i) A person who exclusively provides services to bona fide employee benefit plans that are established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted under the Employee Retirement Income Security Act of 1974, is not required to be additionally registered as a third party administrator if the person certifies to the director on or before February 1 of each year its exempt status.

(j) A third party administrator shall

(1) apply for registration under the procedures of AS 21.27.040;

(2) renew its registration under the procedures of AS 21.27.380; and

(3) be subject to hearings and orders on violations; denial, nonrenewal, suspension, or revocation of registration; penalties; and surrender of registration under the procedures of AS 21.27.405-21.27.460;

Sec. 21.27.650. THIRD PARTY ADMINISTRATOR QUALIFICATIONS. (a) For the protection of the people of this state, the director may not issue or renew a registration except in compliance with this chapter and may not issue a registration to a person, or to be exercised by a person, found by the director to be untrustworthy, incompetent, financially irresponsible, or

who has not established to the satisfaction of the director that the person is qualified under this chapter.

(b) To qualify for issuance or renewal of a registration, an applicant or registrant shall comply with this title and

(1) be a trustworthy person;

(2) have active working experience in administrative functions which, in the director's opinion, exhibits the ability to competently perform the administrative functions of a third party administrator;

(3) not have committed an act that is a cause for denial, nonrenewal, suspension, or revocation of a registration in this state or another jurisdiction;

(4) if a corporation or partnership,

(A) maintain a lawfully established place of business as described in AS 21.27.330 in this state, except as provided in AS 21.27.270;

(B) disclose to the director all officers, directors, or partners, and whether or not they are licensed in this state or another jurisdiction;

(C) designate an officer or partner responsible for the firm's compliance with the insurance statutes and regulations of this state.

(5) provide in or with its application

(A) all basic organizational documents of the third party administrator, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all endorsements to such documents;

(B) the bylaws, rules, regulations or similar documents regulating the internal affairs of the administrator;

(C) the names, mailing addresses, physical addresses, official positions, and professional qualifications of persons who are responsible for the conduct of affairs of the third party administrator; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of partnership or association;

shareholders holding directly or indirectly 10 per cent or more of the voting securities of the third party administrator; and any other person who exercises control or influence over the affairs of the third party administrator;

(D) certified financial statements for the prior two years prepared by an independent certified public accountant which establish that the applicant is solvent, that the applicant's system of accounting, internal control, and procedure is operating effectively to provide reasonable assurance that money is promptly accounted for and paid to the person entitled to the money, and any other information that the director may require to review the current financial condition of the applicant; and

(E) a statement describing the business plan including information on staffing levels and activities proposed in this state and in other jurisdictions and providing details establishing the third party administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims handling, underwriting, and record keeping;

(6) provide to the director documents necessary to verify the statements contained in or in connection with the application;

(7) notify the director within 30 days in writing by certified mail of a change in principal or manager, residence, place of business, mailing address, phone number; suspension or revocation of an insurance license or registration by another state or jurisdiction; or a conviction of a misdemeanor or felony of the third party administrator, its officers, directors, partners, owners, or employees; and

(8) provide the director on January 1, April 1, July 1, and October 1 of each year

(A) a list of current employees, identifying those transacting business in this state or upon subjects resident, located or to be performed in this state;

(B) a list of current insurers under contract; and

(C) other information the director may require.

(c) The director may adopt regulations establishing additional education or experience requirements for applicants or registrants under this chapter.

(d) The director may require that a third party administrator maintain

(1) a bond as described in AS 21.27.190 in an amount acceptable to the director and conditioned in that the third party administrator will conduct business as required by this title; and

(2) an errors and omissions insurance policy acceptable to the director.

(e) If the director finds that the applicant or registrant is qualified and that application, registration, or renewal fees have been paid, the director may issue or renew the registration.

Sec. 21.27.660. OPERATING REQUIREMENTS FOR THIRD PARTY ADMINISTRATORS. (a) An insurer may not transact business with a third party administrator unless

(1) the insurer holds a certificate of authority in this state;

(2) the third party administrator is registered under this chapter or, when the third party administrator is operating only for a foreign insurer, is registered as a third party administrator by the third party administrator's resident insurance regulator in a state that the director has determined has enacted provisions substantially similar to those contained in AS 21.27.640 - 21.27.660 and that is accredited by the National Association of Insurance Commissioners, if the third party administrator provides the director on January 1, April 1, July 1, and October 1 of each year

(A) a list of current employees, identifying those transacting business in this state or upon subjects resident, located or to be performed in this state;

(B) a list of current insurers under contract; and

(C) other information the director may require.

(3) a written contract is in effect between the parties that establishes the responsibilities of each party, indicates both party's share of responsibility for a particular function, and specifies the division of responsibilities;

(4) a written contract between an insurer and a third party administrator contains the following provisions:

(A) the insurer may terminate the contract for cause upon written notice sent by certified mail to the third party

administrator and may suspend the underwriting authority of the third party administrator during a dispute regarding the cause for termination; but the insurer must fulfill all lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the third party administrator.

(B) the third party administrator shall render accounts to the insurer detailing all transactions and remit all money due under the contract to the insurer at least monthly;

(C) all money collected for the account of an insurer shall be held by the third party administrator in a fiduciary account as described under AS 21.27.360;

(D) the third party administrator shall comply with all applicable fiduciary account statutes and regulations;

(E) a fiduciary account shall be used for all payments on behalf of the insurer;

(F) the third party administrator may not retain more than three months estimated claims payments and allocated loss adjustment expenses;

(G) the third party administrator shall maintain separate records for each insurer in a form usable by the insurer; the insurer or its authorized representative shall have the right to audit and the right to copy all accounts and records related to the insurer's business; the director, in addition to authority granted in this title, shall have access to all books, bank accounts, and records of the third party administrator in a form usable to the director; any trade secrets contained in books and records reviewed by the director, including the identity and addresses of policyholders and certificateholders, shall be kept confidential, except that the director may use the information in a proceeding instituted against the third party administrator or the insurer.

(H) the contract may not be assigned in whole or in part by the third party administrator;

(I) if the contract permits the third party administrator to do underwriting, the contract must include the following:

(i) the third party administrator's maximum annual premium volume;

(ii) the rating system and basis of the rates to be charged;

(iii) the types of risks that may be written;

(iv) maximum limits of liability;

(v) applicable exclusions;

(vi) territorial limitations;

(vii) policy cancellation provisions;

(viii) the maximum policy term; and

(ix) that the insurer shall have the right to cancel or not renew a policy of insurance subject to applicable state law;

(J) if the contract permits the third party administrator to settle claims on behalf of the insurer, the contract must include the following:

(i) written settlement authority must be provided by the insurer and may be terminated for cause upon the insurer's written notice sent by certified mail to the third party administrator or upon the termination of the contract, but the insurer may suspend the settlement authority during a dispute regarding the cause of termination;

(ii) claims shall be reported to the insurer within 30 days;

(iii) a copy of the claim file shall be sent to the insurer upon request or as soon as it becomes known that the claim has the potential to exceed an amount determined by the director or exceeds the limit set by the insurer, whichever is less; involves a coverage dispute; may exceed the third party administrator's claims settlement authority; is open for more than six months; involves extra contractual allegations; or is closed by payment in excess of an amount set by the director or an amount set by the insurer, whichever is less;

(iv) each party to the contract shall comply with unfair claims settlement statutes and regulations;

(v) transmission of electronic data must occur at least monthly if electronic claim files are in existence; and

(vi) claim files shall be the sole property of the insurer; upon an order of liquidation of the insurer, the third party administrator shall have reasonable access to and the right to copy the files on a timely basis;

(K) the contract may not provide for commissions, fees, or charges contingent upon savings effected in the adjustment, settlement, and payment of losses covered by the insurers obligations; but a third party administrator may receive performance-based compensation for providing hospital or other auditing services or may receive compensation based on premiums or charges collected or the number of claims paid or processed;

(L) if the insurer is domiciled in this state or the third party administrator has a place of business in this state, a copy of the contract must be filed with and approved by the director at least 30 days before the third party administrator transacts business on behalf of the insurer; and

(M) if the contract is not required to be approved in advance by the director, the insurer shall provide written notification to the director within 30 days of the entry into or termination of a contract with a third party administrator; the notice must include a statement of duties to be performed by the third party administrator on behalf of the insurer, the kinds and classes of insurance for which the third party administrator has authorization to act, and other information required by the director.

(b) If the contract provides for the third party administrator to receive or collect premiums, payment by or on behalf of the insured of premiums for insurance to the third party administrator shall be deemed to have been received by the insurer; payment of return premiums or claim payments forwarded by the insurer to the third party administrator shall not be deemed to have been received by the person entitled to the money until the payments are received by the insured or claimant; nothing in this subsection limits the rights that the insurer may have against the administrator resulting from the failure of the administrator to make payments to persons entitled to money.

(c) Policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the third party administrator for delivery to the insured or covered individuals shall be delivered by the third party administrator within 10 days after receipt of instructions from the insurer to deliver them.

(d) When the services of a third party administrator are utilized, the third party administrator shall provide a written notice approved in writing by the insurer to a covered person advising the person the identity and relationship among the third party administrator, the policyholder, and the insurer;

(e) The third party administrator may not

(1) bind reinsurance or retrocessions on behalf of the insurer;

(2) commit the insurer to participate in insurance or reinsurance syndicates;

(3) appoint a subagent unless the scope of the subagent's license as an insurance producer includes the kinds and classes of insurance for which the subagent is appointed and there is in effect a written agency agreement that specifically sets out the duties, functions, powers, authority, and compensation of all parties to the contract;

(4) pay or commit the insurer to pay a claim, net of reinsurance, the amount of which exceeds one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year without the prior written approval of the insurer for the settlement and the approval is received after the insurer has been notified in writing that the claim settlement will exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(5) collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer without prior written approval of the insurer, but if prior written approval is given, a complete report must be forwarded to the insurer within 30 days;

(6) serve on the insurer's board of directors;

(7) jointly employ an individual who is employed by the insurer;

(8) delegate third party administrator authority to another person;

(9) solicit applications for insurance or renewals of insurance directly through employees or by appointments of insurance producers as its subagents under the procedures of AS 21.27.100 - 21.27.110 unless its employees or the insurance producers are licensed for the kinds or classes of insurance and the solicitation or renewals are within the scope of authority granted by the insurer contracting with the third party administrator; or

(10) advertise the business underwritten by an insurer unless the advertising has been approved in writing by the insurer in advance of its use.

(f) In a form acceptable to the director, a third party administrator shall annually provide and an insurer shall annually obtain a copy of certified financial statements prepared by an independent certified public accountant of each third party administrator with which the insurer has done business.

(g) In addition to any other required loss reserve certification, if a third party administrator establishes loss reserves, the insurer shall annually obtain the opinion of an independent qualified actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the third party administrator. The insurer retains an independent responsibility to determine the adequacy of its loss reserves, including those established by its third party administrators.

(h) If a third party administrator provides services for more than 100 certificateholders on behalf of an insurer, the insurer shall at least semiannually conduct a review of the operations of the third party administrator, at least one of which must be an on-site review.

(i) A third party administrator shall maintain records as described in AS 21.27.350.

(j) An insurer may not appoint to its board of directors an officer, director, employee, subagent, insurance producer, or controlling shareholder of its third party administrator.

(k) An actual or apparently authorized act of the third party administrator is considered to be the act of the insurer upon whose behalf the third party administrator is acting.

(l) A third party administrator may be examined by the director under AS 21.06.120 as if it were the insurer.

(m) If the director determines after a hearing under AS 21.06.170 - 21.06.240 that a third party administrator caused loss arising out of a violation of AS 21.27.640 - 21.27.660 to an insurer, the director may order the third party administrator to reimburse the insurer, the rehabilitator, or the liquidator of the insurer for the loss. Reimbursement ordered under this subsection is in addition to any other liability of the third party administrator and does not affect the rights of a policyholder, claimant, creditor, or third party.

(n) In addition to any other penalty provided by law, a person who violates this section is subject to the penalties provided under AS 21.27.440 and an insurer's certificate of authority may be suspended or revoked."

4. Page 73, line 8, after "ARTICLE":

Insert: "5"
Delete: "4"

5. Page 73, line 16, after "(1)"

Delete "an in-force, unimpaired"

6. Page 73, line 16, after "bond"

Delete "with admitted insurers authorized to transact surety insurance"

7. Page 77, line 14, after "ARTICLE":

Insert: "6"
Delete: "5"

8. Page 77, line 30, after "bond"

Delete "with admitted insurers authorized to transact surety insurance"

9. Page 84, line 19, after "ARTICLE":

Insert: "7"
Delete: "6"

10. Page 87, line 10, after "ARTICLE":

Insert: "8"
Delete: "7"

11. Page 90, line 9, after "ARTICLE":

Insert: "9"
Delete: "8"

12. Page 114, line 11

Insert " (A) within 30 days of receipt of the request for cancellation or the effective date of cancellation, which ever is later, on a policy not subject to audit; or

(B) within 30 days completion of an audit; the insurer shall perform and complete an audit within 30 days of receipt of the request for cancellation or the effective date of cancellation, which ever is later, unless the audit cannot reasonably be completed using due diligence and the insured is advised in writing of the reason why additional time is necessary to complete the audit and when the audit will be completed.

Delete " (A) within 30 days on a policy not subject to audit; or

(B) within 30 days of completion of an audit; the insurer shall perform and complete an audit within 30 days unless the audit cannot reasonably be completed using due diligence and the insured is advised in writing of the reason why additional time is necessary to complete the audit and when the audit will be completed.

13. Page 129, line 13, after "ATTORNEYS-IN-FACT"

Insert "(a)"

14. Page 129, line 21, after "insurer."

Insert "(b) For the protection of the people of this state, the director may not issue or renew a license to a person, or to be exercised by a person, found by the director to be untrustworthy, incompetent, financially irresponsible, or who has not established to the satisfaction of the director that the person is qualified under this chapter.

(c) To qualify for issuance or renewal of a license, an applicant or license shall comply with this title and

(1) be a trustworthy person;

(2) have active working experience in administrative functions which, in the director's opinion, exhibits the ability to competently perform the administrative functions of an attorney-in-fact;

(3) not have committed an act that is a cause for denial, nonrenewal, suspension, or revocation of a license in this state or another jurisdiction;

(4) have and maintain a lawfully established place of business physically accessible to the public where the attorney-in-fact principally conducts transactions under the license in this state, or if for a foreign reciprocal, in the state domicile;

(5) disclose to the director all officers, directors, partners, principals, or manager and whether or not they are licensed in this state or another jurisdiction;

(6) designate an officer, partner, or principal responsible for the firm's compliance with the insurance statutes and regulations of this state.

(7) provide certified financial statements for the prior two years prepared by an independent certified public accountant which establish that the applicant is solvent, that the applicant's system of accounting, internal control, and procedure is operating effectively to provide reasonable assurance that money is promptly accounted for and paid to the person entitled to the money, and any other information that the director may require to review the current financial condition of the applicant; and

(8) provide to the director documents necessary to verify the statements contained in or in connection with the application;

(9) notify the director within 30 days in writing by certified mail of a change in officer, director, partner, principal, or manager; place of business; mailing address; phone number; suspension or revocation of an insurance license by another state or jurisdiction; or a conviction of a misdemeanor or felony of the attorney-in-fact, its officers, directors, partners, owners, or employees; and

(d) The director may adopt regulations establishing education requirements, experience requirements, or examination requirements for applicants or licensees under this chapter.

(e) The director may require that an attorney-in-fact maintain an errors and omissions insurance policy acceptable to the director.

(f) If the director finds that the applicant or licensee is qualified and that application, license, or renewal fees set under AS 21.06.250 have been paid, the director may issue or renew the license.

(g) The license shall be renewed each year by the attorney-in-fact when the annual statement is filed under AS 21.75.130.

(h) An attorney-in-fact shall be subject to hearings and orders on violations; denial, nonrenewal, suspension, or revocation of license; penalties; and surrender of license under the procedures of AS 21.27.405 - 21.27.460."

15. Page 143, line 25, after "APPRAISAL"

Insert "A motor vehicle or similar policy, a policy providing property coverage, or any other policy providing first party property, casualty, or inland marine coverage, issued or delivered in this state, must include an appraisal clause providing a contractual means to resolve a dispute between the insured and the insurer over the value of a covered first party loss for real property, personal property, business property, or similar risks. If the insured and the insurer fail to agree on the amount of such a covered first party loss, either may make written demand upon the other to submit the dispute for appraisal. Within 10 days of the written demand, the insured and insurer must notify the other of the competent appraiser each has selected. The two appraisers will promptly choose a competent and impartial umpire. No later than 15 days after the umpire has been chosen, unless the time period is extended by the umpire, each appraiser will separately state in writing the amount of the loss. If the appraisers submit a written report of agreement on the amount of the loss, the agreed amount will be binding upon the insured and insurer. If the appraisers fail to agree, the appraisers will promptly submit their differences to the umpire. A decision agreed to by one of the appraisers and the umpire will be binding upon the insured and insurer. All expenses and fees, not including counsel or adjuster fees, incurred because of the appraisal shall be paid as determined by the umpire. Except as specifically provided, nothing in this section is intended to or shall in any manner limit or restrict the rights of insureds or insurers or confer any rights to such persons."

Delete "An automobile, homeowner, or dwelling policy issued or delivered in the state must include an appraisal clause providing a contractual means to pursue a dispute over the value of an insured's property loss. The appraisal right shall be the insured's first right of appeal. The insured may invoke the right of appraisal by giving written notice to the insurer of the insured's intent. The notice must include the name, address, and phone number of an appraiser of the insured's choice. Within 10 working days from receipt of information, the insurer shall provide the name, address, and phone number of an independent appraiser of the insurer's choice to the insured. The appraiser shall provide final appraisals within 30 working days from the date of the

written demand by the insured to invoke the appraisal provision. If a mutual value is not agreed upon by the two appraisals, the appraisers shall select a third appraiser. A valuation in writing agreed upon by two of the three appraisers shall determine the amount of the loss. The insured and insurer shall pay the cost of their own appraisals and the expense of a third appraiser shall be divided equally between them

16. Page 147, line 7, after "more"

Insert "admitted"

17. Page 147, line 11, after "issuance":

Delete: "'managing general agent' includes a third-party administrator"

18. Page 148, line 5, after "assuming"

Insert "admitted"

19. Page 148, line 27, after "who"

Insert: "for residents of this state, or for residents of another jurisdiction from a place of business in this state, performs administrative functions such as claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to life insurance, disability insurance, or annuities;"

Delete: "performs administrative functions such as claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to insurance;"

20. Page 149, line 22, after "94"

Insert ", 95, and 188"

Delete "and"

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T E L E F A X C O V E R P A G E

TO: Rep. David Donley, Chairman
House Judiciary Committee
State Capitol
Juneau, AK 99801-1182

From: Marilyn L. Lytle, Esq.

Fax #: (907) 465-2299

 # Of Pages: 4
including cover page

Your File No:

Our File No: 027289-30

SENT: A.M._____ ATTY'S CODE_____

P.M._____ OPER. INITIALS_____

MESSAGE:

Dear Representative Donley:

Please see attached urgent message regarding H.B. 425 and S.B. 376 from the American Institute of Marine Underwriters.

MARILYN L. LYTLE

AIMU

April 1, 1992

Re: Alaska H. 425

Representative David Donley, Chairman
House Judiciary Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Donley:

Alaska H. 425 presents serious problems for American ocean marine insurers. Section 144 of the bill would delete the exemption for wet marine and transportation insurance from the definition of business or commercial insurance. This step contravenes the unique international character of ocean marine insurance. As a result of this proposed change, ocean marine would be subject to the cancellation and non-renewal provisions of the code which could seriously disrupt trade and commerce in Alaska.

Ocean marine insurance encompasses insurance protection for exports or imports while in transit (known as cargo insurance), hull coverages, various marine liability exposures, and war risks at sea on both hull and cargo risks. Through marine exemptions, both the state and federal governments have recognized the international, extra-territorial nature of ocean marine risks as well as the strong competition found not only within the domestic market but with foreign marine insurance markets as well.

One of the many unique features of the marine insurance market is the "open" cargo insurance policy. An open cargo policy is usually issued to cover all of the shipments of an

AMERICAN INSTITUTE OF MARINE UNDERWRITERS
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insured regardless of destination. Open policies facilitate trade by providing for automatic coverage without the necessity of individually negotiating and insuring each shipment. The policies are issued without an expiration date and coverage attaches to each shipment when it is declared to the insurer. H. 425 would require a marine cargo insurer to continue on an open policy ad infinitum because there is no renewal date. [Notice of non-renewal must be sent 45 days before expiration of the policy pursuant to Alaska Insurance Code §21.36.235(a)(2)].

Since the marine cargo insurance market in the United States is intensely competitive and coverage is readily available at very low cost, these new requirements would create an unnecessary burden on American insurers and may place them at a competitive disadvantage with foreign markets. We doubt that consideration was given to the application of these new statutes to ocean marine policy forms and practices.

Application of the cancellation and non-renewal provisions to wet marine insurance may also created an immediate problem with respect to war risk coverages. War risk insurance protects against risk of loss or damage at sea caused by an outbreak of hostilities. A cargo war risk policy is a separate policy with no expiration date, written today (peacetime) for a very low premium. Because of this, marine insurers require the flexibility to respond to rapidly changing political conditions to protect themselves from catastrophic accumulation of risk, inadequate premium or disappearance of reinsurance.

Throughout the world, cargo war risk policies provide that either party may cancel on 48 hours notice for shipments not yet in transit. Such cancellations do not affect goods already at risk. In the event that the United States were to go to war, there exists a stand-by federal war risk insurance program which would replace private war risk insurance (as it did in

World War II and Dessert Storm). Other major governments have similar programs.

American companies writing war risk insurance generally are subject to a seven day notice of cancellation from their reinsurers. Those reinsurers, many of whom are foreign, would not be subject to the cancellation and renewal provisions. Application of the new statutes to marine war risk insurers will subject them to the possibility of being compelled, without reinsurance, to continue to insure shipments into areas where armed conflict is in progress. Under these circumstances, it would be necessary for them, if they were to stay in the market at all, to apply much higher rates (wartime premiums for peacetime shipments). In fact, the practical effect would be to force war risk cover to go to foreign insurers. As a further consequence, much of the marine cargo insurance would go abroad with it. Service to the insureds in Alaska could be reduced and, of course, the U.S. balance of payments problems would be intensified. We cannot believe such was the intent.

AIMU urges that H. 425 be amended to preserve the marine exemption in Code §21.36.310(i). If you have any questions about the effect of this legislation upon the ocean marine industry, please do not hesitate to contact us. We would welcome the opportunity to discuss these matters with you.

The American Institute of Marine Underwriters is a trade association representing the American ocean marine insurance industry.

Very truly yours,

Ward L. Mauck
President

ALASKA STATE LEGISLATURE

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SENATOR SAM COTTEN

March 2, 1992

Peter C. Huycke
Huycke General Agency
2904 Boniface Parkway
Anchorage, AK 99504

Dear Peter:

Thank you for your letter of February 24, concerning House Bill 425/Senate Bill 376.

House Bill 425 is currently before the House Judiciary Committee for consideration. Senate Bill 376 is before the Senate Labor & Commerce Committee for consideration.

I have sent a copy of your comments to the chairs of these committees so that your concerns are made a part of the record. I appreciate the comments and suggestions contained in your letter.

Sincerely,

Sam Cotten
State Senator

cc: Senator Drue Pearce (w/enclosure)
Chair, Senate Labor & Commerce Committee

Representative Dave Donley (w/enclosure)
Chair, House Judiciary Committee

Huycke General Agency

AAMGA

2904 Boniface Parkway
Anchorage, Alaska 99504

FAX 907–338-7234

907–338-0491

February 24, 1992

Honorable Senator Sam Cotten
P.O. Box V
Juneau, Alaska 99811

Re: HB 426/SB 376

Dear Senator Cotten:

You will recall I had briefly visited with you about these Omnibus Insurance bills. I had indicated my support for these, explaining they were a result of generally acceptable compromises worked out by the Division of Insurance and the insurance industry representatives. And that the general purpose of these bills is to enable the State of Alaska Division to be accredited by the National Association of Insurance Commissioners.

Have finally had an opportunity to go through and digest the almost 150 pages. I noted several discrepancies, which possibly occurred in the legal translation from our working drafts to what was presented to you.

The first is on Bonds, Section 70, page 46-47. The Division had accepted my request to insert "or an alternative indemnity" on line 12. Existing statute does not define the nature of the bond. This revision does so define a bond. The problem is with the size of the indemnity ($200,000. for a Surplus Lines Broker). Few bond insurers are willing to write this bond for smaller Surplus Lines Brokers.

I fall into this category. At least once in the past, I have had to resort to obtaining a Letter of Credit from a local bank as a substitute. What concerns me is the wording presented to you on lines 29-31; "may adopt, by regulation." I request the word "may" be replaced by "shall." If I again have to resort to a LOC, I think the Director should have to recognize that a LOC from First National Bank of Anchorage is as good as, if not superior to a bond provided by some of the "admitted" insurers presently working the market.

The other concern I have is on Return Premiums, Section 143, page 114. First, if insurers generally are not paid until 45 days (after the close of the current accounting month), why the choice of 30 days from the policy cancellation date? I can see instances where this would require the insurer to make a refund before it has even been paid!

Secondly, this 30 day requirement ignores requirements elsewhere in statute that insurers give specific cancellation notice to interested third parties. These requirements are regardless of who is requesting cancellation. To be required to issue a refund before the policy is even cancelled does not make any sense to me.

Instead, if the insured requests cancellation, I suggest the wording be changed to 45 days after the insurer has discharged its obligation to notify all interested third parites that the policy is being cancelled.

Thank you for your interest, and

Very truly yours,

Peter C. Huycke

PCH:jsh

vending machine license for each machine to be used. The license must specify the name and **mailing** address of the insurer and **insurance producer** [AGENT], the name of the policy to be sold, the serial number of the machine, and the **physical location** [PLACE] where the machine is to be in operation. The **special vending machine** license is subject to **nonrenewal,** suspension, or revocation coincidentally with that of the **insurance producer** [AGENT]. The director shall also revoke the license on a machine if the director finds that the conditions upon which the machine was licensed, under (a) of this section, no longer exist. Proof of the existence of a license shall be displayed on or about each vending machine in use in the manner the director may [REASONABLY] require.

* Sec. 70. AS 21.27.190 is repealed and reenacted to read:

Sec. 21.27.190. BOND. (a) In addition to any other requirements in this title, a bond or an alternative indemnity permitted under this section shall meet the following requirements:

(1) it shall be continuous in form;

(2) it shall remain in force until the licensee is released from liability by the director or until cancelled by the issuer;

(3) without prejudice to any liability accrued before the effective cancellation, it may be cancelled if the director receives 60 days advance written notice;

(4) the amount required to be maintained must be maintained unimpaired; and

(5) it shall be in favor of insurers, insureds, and this state.

(b) A bond may only be issued by an admitted insurer authorized to transact surety insurance in this state that is acceptable to the director.

(c) For a firm licensee, a single bond or an alternative indemnity permitted under this section may combine the sureties required

(1) by separate sections of this title; and

(2) for separate places of business.

(d) An individual in the firm who acts solely on behalf of a firm that has and maintains a bond or an alternative permitted under this section may not be required to also have and maintain a bond if the individual in the firm deposits all money into the firm's fiduciary account.

(e) Except as provided in this title, the director may adopt, by regulation, a deposit of cash, a certificate of deposit, or letter of credit as an alternative to a bond if the deposit of cash, certificate of deposit, or letter of credit meets the requirements of this section, other provisions

practices in the conduct of the business of insurance found by the director to be unfair or deceptive.

* **Sec. 143.** AS 21.36.255(a) is amended to read:

(a) If an insurance policy is cancelled, rejected, or rescinded by the

(1) insurer, the insurer shall refund the unearned premium paid to the insured or premium finance company; or

(2) insured, the insurer shall return any unearned premium paid to the insured or premium finance company, less a cancellation fee not to exceed 7.5 percent of the unearned premium; a cancellation fee may not be charged unless the fee is clearly stated in the policy; **the insurer shall return or credit the unearned premium less a lawful cancellation fee**

(A) within 30 days on a policy not subject to audit; or

(B) within 30 days of completion of an audit; the insurer shall perform and complete an audit within 30 days unless the audit cannot reasonably be completed using due diligence and the insured is advised in writing of the reason why additional time is necessary to complete the audit and when the audit will be completed.

* **Sec. 144.** AS 21.36.310(1) is amended to read:

(1) "business or commercial insurance" means insurance other than personal insurance, reinsurance, life insurance, disability insurance, fidelity and surety insurance, title insurance, [WET MARINE AND TRANSPORTATION INSURANCE AS DEFINED IN AS 21.34.900,] or an annuity contract;

* **Sec. 145.** AS 21.36.320(a) is amended to read:

(a) On the complaint of a person or on the motion of the director, the director may conduct an investigation to determine whether a person [IN THIS STATE] is engaged in an unfair method of competition or unfair or deceptive act or practice prohibited by this chapter.

* **Sec. 146.** AS 21.36.320(c) is amended to read:

(c) **If the director determines that a person violated** [ON A FINDING OF A VIOLATION OF] this chapter, the director shall serve upon the person charged an order requiring that person to **cease and desist from engaging in the act or practice** [STOP THE ACTS OR PRACTICES].

* **Sec. 147.** AS 21.36.320(d) is amended to read:

Huycke General Agency

FEB 2 6 1992

AAMGA

2904 Boniface Parkway
Anchorage, Alaska 99504

FAX 907–338-7234

907–338-0491

February 24, 1992

Honorable Representative Bettye Davis
P.O. Box V
Juneau, Alaska 99811

Re: HB 425/SB 376

Dear Representative Davis:

You will recall I had briefly visited with you about these Omnibus Insurance bills. I had indicated my support for these, explaining they were a result of generally acceptable compromises worked out by the Division of Insurance and the insurance industry representatives. And that the general purpose of these bills is to enable the State of Alaska Division to be accredited by the National Association of Insurance Commissioners.

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