

national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605 (d).

Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with the new rules adopted and any additional new rules that are adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605 (c). One year prior to the expiration of this certification, July 25, 2007, the states may apply for renewal of their TRS program certification by filing demonstration in accordance with the Commission's rules, pursuant to 47 CFR 64.605(a) and (b).

### Third Group of States Approved for Certification

File No: TRS-54-02

Michigan Public Service Commission,  
State of Michigan

File No: TRS-28-02

Puerto Rico Telecommunications  
Regulatory Board, State of Puerto Rico

Federal Communications Commission.

Thomas Wyatt,

Deputy Bureau Chief, Consumer &  
Governmental Affairs Bureau.

[FR Doc. 03-19688 Filed 8-1-03; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL MARITIME COMMISSION

[Petition P3-03]

#### Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts; Notice of Filing

Notice is hereby given that United Parcel Service, Inc. ("Petitioner") has petitioned, pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.67, for an exemption from the Shipping Act, to permit it to negotiate, enter into and perform service contracts.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than August 22, 2003. Replies shall consist of an original

and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, and be served on Petitioner's counsels, J. Michael Cavanaugh, Esq., Holland & Knight LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006-6801 and Charles L. Coleman, III, Esq., Holland & Knight LLP, 50 California Street, Suite 2800, San Francisco, California 94111. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to [Secretary@fmc.gov](mailto:Secretary@fmc.gov). Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to [secretary@fmc.gov](mailto:secretary@fmc.gov) or by calling (202) 523-5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through email in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an email address where service can be made. Such request may be directed to [secretary@fmc.gov](mailto:secretary@fmc.gov).

Bryant L. VanBrakle,  
Secretary.

[FR Doc. 03-19653 Filed 8-1-03; 8:45 am]

BILLING CODE 6730-01-P

### FEDERAL RESERVE SYSTEM

#### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2003.

**A. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Bank of Hawaii*, Honolulu, Hawaii; Bank of Hawaii Corporation, Honolulu, Hawaii; Chicago Equity Partners Corp., Chicago, Illinois; to engage *de novo* through a joint venture between Bank of Hawaii, Honolulu, and Chicago Equity Partners, Chicago, Illinois, to be known as Bankoh Investment Partners, LLC, Honolulu, Hawaii, in investment advisory activities, pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 2003.

Jennifer J. Johnson,  
Secretary of the Board.

[FR Doc. 03-19669 Filed 8-01-03; 8:45 am]

BILLING CODE 6210-01-S

### FEDERAL TRADE COMMISSION

#### Policy Statement on Monetary Equitable Remedies in Competition Cases

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice.

**SUMMARY:** The Commission has issued a policy statement on the use of disgorgement as a remedy for violations of the Hart-Scott-Rodino (HSR) Act, FTC Act and Clayton Act.

**DATES:** The Commission approved this policy statement on July 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** John D. Graubert, Principal Deputy General Counsel, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2186, [jgraubert@ftc.gov](mailto:jgraubert@ftc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Policy Statement on Monetary Equitable Remedies in Competition Cases

In recent years the Commission has given considerable thought to the appropriate circumstances in which to seek, as a matter of prosecutorial

discretion, monetary equitable remedies (particularly disgorgement or restitution) in competition cases brought pursuant to section 13(b) of the FTC Act.<sup>1</sup> In December 2001, the Commission issued a notice requesting comment on the issue,<sup>2</sup> and received six comments in response.<sup>3</sup> The agency has also reviewed relevant case law and literature, including a number of sources cited by commentators, as well as discussions in public fora and its own experience. The Commission may use all these resources to inform its decisions whether to seek monetary remedies in particular competition matters on a case by case basis. In addition, the Commission sets forth below some general observations on the use of disgorgement or restitution in competition cases.<sup>4</sup>

Disgorgement is an equitable monetary remedy “designed to deprive a wrongdoer of his unjust enrichment and to deter others” from future violations.<sup>5</sup> Depriving the violator of any of the benefits of illegal conduct has long been accepted as an appropriate, indeed necessary, element of antitrust remedies. See, e.g., *United States v. Grinnell Corp.*, 384 U.S. 563, 577 (1966); *Schine Chain Theatres, Inc. v. United States*, 334 U.S. 110, 128 (1948). Restitution is also an equitable remedy, serving different but often complimentary purposes. Restitution is intended to restore the victims of a violation to the position they would have been in without the violation, often by refunding overpayments made as a result of the violation. The Commission has sought and obtained disgorgement or restitution in a number of competition cases over the last few

decades,<sup>6</sup> most recently in the *Mylan*<sup>7</sup> and *Hearst*<sup>8</sup> matters. In exercising its prosecutorial discretion in the competition area, however, the Commission has moved cautiously and used its monetary remedial authority there sparingly. The Commission continues to believe that disgorgement and restitution can play a useful role in some competition cases, complementing more familiar remedies such as divestiture, conduct remedies, private damages, and civil or criminal penalties. The competition enforcement regime in the United States is multifaceted, and it is important and beneficial that there be a number of flexible tools, as well as a number of potential enforcers, available to address competitive problems in a particular case. Nonetheless, we do not view monetary disgorgement or restitution as routine remedies for antitrust cases. In general, we will continue to rely primarily on more familiar, prospective remedies, and seek disgorgement and restitution in exceptional cases.

As a general matter, the Commission will consider the following three factors in determining whether to seek disgorgement or restitution in a

competition case. *First*, the Commission will ordinarily seek monetary relief only where the underlying violation is clear. *Second*, there must be a reasonable basis for calculating the amount of a remedial payment. *Third*, the Commission will consider the value of seeking monetary relief in light of any other remedies available in the matter, including private actions and criminal proceedings. A strong showing in one area may tip the decision whether to seek monetary remedies. For example, a particularly egregious violation may justify pursuit of these remedies even if there appears to be some likelihood of private actions. Moreover, the pendency of numerous private actions may tilt the balance the other way, even if the violation is clear.

#### Clear Violation

The Commission will ordinarily seek monetary disgorgement only when the violation is clear. A violation is “clear” for this purpose when, based on existing precedent, a reasonable party should expect that the conduct is issue would likely be found to be illegal. (“Clearness” is therefore measured *ex ante*, as of the time the act occurs, and not *ex post* with the benefit of hindsight.) In such cases, the use of disgorgement will serve an appropriate deterrence goal. One key purpose of the disgorgement remedy is to remove the incentive to commit violations by demonstrating to the potential violator that unlawful conduct will not be profitable. This purpose can best be served when the violator can determine in advance that its conduct would probably be considered illegal. Disgorgement might arguably serve useful purposes whether or not the violation was clear—for instance, by providing an example for future violators and restoring the relevant market to its pre-violation status (thereby removing any unfair advantages obtained by the violator). Overall, however, the Commission believes that the value of deterrence is reduced when the violator has no reasonable way of knowing in advance that its conduct is placing it in jeopardy of having to pay back all the potential gains.<sup>9</sup>

<sup>9</sup> The analysis may be slightly more complicated in cases in which the Commission is seeking restitution rather than disgorgement. Restitution focuses on the victim, not the violator, and is justified by the need to restore the victim to the status quo ante, not on *ex ante* deterrence of unlawful conduct by a defendant. Thus, for example, when significant consumer harm will not (for one reason or another) be redressed through a private action (see discussion of our third factor, below), the Commission might therefore consider

Continued

<sup>1</sup> 15 U.S.C. 53(b).

<sup>2</sup> 66 FR 67254 (Dec. 28, 2001); also available on the Commission's web site at <http://www.ftc.gov/os/2001/12/disgorgefrn.htm>.

<sup>3</sup> The following filed comments: The Antitrust Section of the American Bar Association, the American Antitrust Institute, the American Enterprise Institute for Public Policy Research, James M. Spears, Stephen A. Stack, and Kenneth G. Starling. These comments are available at <http://www.ftc.gov/os/comments/disgorgement/index.htm>.

<sup>4</sup> This statement sets forth some observations and intentions of the Commission regarding its exercise of discretion in determining whether to seek monetary equitable remedies in competition cases. It does not create any right or obligation, impose any element of proof, or adjust the burden of proof or production of evidence on any particular issue, as those standards have been established by the courts. This statement of policy does not apply to consumer protection cases.

<sup>5</sup> *SEC v. First City Financial Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989).

<sup>6</sup> See *FTC v. College of Physicians-Surgeons of Puerto Rico*, Civ. No. 97-2466 HL (D.P.R. Oct. 2, 1997) (alleged price-fixing and boycott, under FTC Act sections 5(a) and 13(b); stipulated judgment included \$300,000 restitution to Puerto Rico); *FTC v. Mead Johnson & Co.*, No. 92-1266 (D.D.C. June 11, 1992) (alleged bid-rigging, under FTC Act sections 5(a) and 13(b); stipulated judgment included restitution in kind to USDA); *FTC v. American Home Products Corp.*, Civ. No. 92-1367 (D.D.C. June 11, 1992) (same); *FTC v. Joseph Dixon Crucible Co.*, Civ. No. C80-700 (N.D. Ohio 1983) (alleged price-fixing, under Section 5(1) for violation of earlier order; stipulated judgment included \$525,000 in consumer redress, plus \$75,000 civil penalty); *Commonwealth Land Title Ins. Co.*, 126 F.T.C. 680, 688 (1998) (alleged price-fixing; consent order included refund of excess charges); *Binney & Smith Inc.*, 96 F.T.C. 625 (1980) (alleged price-fixing; consent order included \$1 million in consumer redress); *Milton Bradley Co.*, 96 F.T.C. 638 (1980) (same; consent order included \$200,000 in consumer redress); *American Art Clay Co.*, 96 F.T.C. 809 (1980) (same; consent order included \$25,000 in consumer redress); see also *FTC v. Abbott Laboratories*, 1992-2 Trade Cas. (CCH) ¶ 69,996 (D.D.C. 1992) (Gesell, J.), *dismissed on other grounds*, 853 F. Supp. 526 (D.D.C. 1994) (holding that FTC Act section 13(b) permitted the FTC to seek permanent injunction ordering restitution in antitrust case); FTC press release, June 5, 1989, re: A&P/Waldbaums (noting position of Commissioner Strenio that Commission should have exercised its “authority to obtain full disgorgement of these ill-gotten gains”).

<sup>7</sup> *FTC v. Mylan Labs, Inc.*, No. 1:98CV03114 (TFH) (D.D.C. Feb. 9, 2001) (alleged monopolization; stipulated judgment included \$100 million restitution); see Mem. Opinion, 62 F. Supp. 2d 25, 36-37 (D.D.C.), *revised and reaffirmed in pertinent part*, 99 F. Supp. 2d 1, 4-5 (D.D.C. 1999).

<sup>8</sup> *FTC v. The Hearst Trust*, No. 1:01CV00734 (TPJ) (D.D.C. Nov. 9, 2001) (alleged anticompetitive acquisition and violation of pre-merger filing requirements; stipulated judgment included \$19 million disgorgement).

The Commission will assess whether a violation is "clear" by means of an objective, not a subjective, standard, *i.e.*, a reasonableness test. "Naked" restraints of trade, such as price-fixing or horizontal market division, are presumptively clear cases. The list of "clear" cases, however, goes beyond traditional *per se* violations. The *Hearst* and *Mylan* cases are themselves examples of easily condemned conduct that would not necessarily be described as a *per se* violation: In *Hearst*, merger to monopoly aided by withholding key documents from the FTC;<sup>10</sup> and in *Mylan*, conspiracy to obtain monopoly power through exclusive supply agreements (unsupported by any legitimate business purpose).<sup>11</sup>

Conversely, in the Commission's statement accompanying the issuance of its consent agreement in *Abbott Laboratories and Geneva Pharmaceuticals, Inc.*, File No. 981-0395 (March 16, 2000), the Commission noted that the case represented the first resolution of an antitrust challenge by the government to a private agreement whereby a brand name drug company paid the first generic company that sought FDA approval not to enter the market, and to retain its 180-day period of market exclusivity under the Hatch-Waxman Act. Because the behavior occurred in a complex regulatory context, and because this was the first government antitrust enforcement action in this area, the Commission believed the public interest was

satisfied with orders that regulated future conduct by the parties, without further monetary relief. The Commission warned pharmaceutical firms that they "should now be on notice, however, that [such] arrangements \* \* \* can raise serious antitrust issues," and that accordingly, "in the future, the Commission will consider its entire range of remedies in connection with enforcement actions against such arrangements, including possibly seeking disgorgement of illegally obtained profits."<sup>12</sup>

#### *Reasonable Basis for Calculation of Remedy*

The Commission will not seek a monetary equitable remedy when there is no reasonable basis for calculating the amount of the disgorgement or restitution to be ordered. Thus, the agency does not expect to seek disgorgement unless it can suggest to a court a reasonable means of calculating the gains or benefits from a violation, nor to seek restitution unless it can offer a reasonable gauge of the amount of injury from a violation. Nonetheless, a reasonable basis for calculation does not require undue precision. *See, e.g., FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997); *see also SEC v. Bilzerian*, 29 F.3d 689 (D.C. Cir. 1994); *SEC v. First City Financial Corporation, Ltd.*, 890 F.2d 1215 (D.C. Cir. 1989).

#### *Value Added by the Commission's Monetary Remedy*

The Commission will consider monetary remedies when it anticipates that other remedies are likely to fail to accomplish fully the purposes of the antitrust laws or when such a monetary remedy may provide important additional benefits. When other remedies are brought to bear and are likely to result in complete relief, a Commission action for monetary equitable relief might well be an unnecessary and unwise expenditure of limited agency resources.<sup>13</sup>

Thus, for example, a case may be particularly appropriate for disgorgement when private actions likely will not remove the total unjust enrichment from a violation. If statutes of limitation for, or market disincentives to, private damage actions are likely to leave a violator with some or all of the fruits of its violation, we may seek disgorgement to prevent the violator from benefitting from the violation. Similarly, when practical or legal difficulties are likely to preclude compensation for those injured by a violation who in equity should be made whole, we may seek restitution for them.<sup>14</sup> Such situations can arise, for example, when significant aggregate consumer injury results from relatively small individual injuries not justifying the cost of a private lawsuit, or when direct purchasers do not sue (for a variety of possible reasons) and indirect purchasers are precluded from suit under section 4 of the Clayton Act.

Disgorgement can also be particularly valuable when the advantages a violator reaps from the violation greatly outweigh the specific penalties prescribed in applicable laws, and thereby overwhelm the significant disincentive to violating the law that such penalties otherwise provide.<sup>15</sup> The paramount purpose of disgorgement is to make sure that wrongdoers do not profit from their wrongdoing. *E.g., SEC v. First City Financial Corp.*, *supra*; *SEC v. Tome*, 833 F.2d 1086 (2d Cir. 1987),

*Injury in the Microsoft Case?*, 69 Geo. Wash. L. Rev. 829 (2001); Robert Lande, *Are Antitrust "Treble" Damages Really Single Damages?*, 54 Ohio St. L.J. 115 (1993); Steven Salop & Lawrence White, *Economic Analysis of Private Antitrust Litigation*, 74 GEO. L.J. 1001, 1033-39 (1986); Walter Erickson, *The Profitability of Violating the Antitrust Laws: Dissolution and Treble Damages in Private Antitrust*, 5:4 Antitrust L. & Econ. Rev. 101 (1972); Alfred Parker, *Treble Damage Action—A Financial Deterrent to Antitrust Violations?*, 16 Antitrust Bull. 483 (1971); compare Joseph Gallo *et al.*, *Department of Justice Antitrust Enforcement, 1955-1997: An Empirical Study*, 17 Rev. Indus. Org. 75, 125-27 (2000). The Commission will therefore need to continue to evaluate this issue on a case-by-case basis.

<sup>14</sup> For example, *Hearst* presented the somewhat unusual case of a consummated merger that had passed through the HSR review process. Absent FTC action, private plaintiffs would have faced the possibly discouraging prospect of not only having to prove a violation of section 7 of the Clayton Act or section 2 of the Sherman Act, but also, as a practical matter, needing to show a violation of the Hart-Scott-Rodino premerger notification rules to explain why the FTC took no action with respect to the merger.

<sup>15</sup> Such a discrepancy could also be addressed by the Department of Justice in a criminal action seeking, among other remedies, the significant penalties under the alternative fines provisions of the Sentencing Reform Act. 18 U.S.C. 3571(d). When DOJ has initiated a criminal prosecution, however, under existing institutional arrangements the Commission ordinarily will defer to DOJ and not bring a separate action for monetary relief.

seeking restitution even if the conduct at issue does not otherwise meet our definition of a "clear" violation.

<sup>10</sup> Although there are some disagreement among the Commissioners in *Hearst* on whether seeking disgorgement resulted in the optimal payment from the defendants, there was general agreement that the conduct at issue was egregious. It is axiomatic that a merger of the only significant competitors in a market (absent unusual circumstances such as proof of the "failing firm" criteria of Section 5 of the Horizontal Merger Guidelines) violates the letter of the Clayton and Sherman Acts. *See United States v. Aluminum Co. of America*, 148 F.2d 416, 429 (2d Cir. 1945); Areeda, Hovenkamp & Solow, IV ANTITRUST LAW section 14.12 (2002 ed.). The case is further bolstered when, as in *Hearst*, such conduct is paired with evidence of specific intent to monopolize. *See United States v. Microsoft Corp.*, 253 F.3d 34, 59 (D.C. Cir.), (en banc), cert. denied, 534 U.S. 952 (2001); Statement of Chairman Pitofsky and Commissioners Anthony and Thompson (Apr. 2001) (available at <http://www.ftc.gov/os/2001/04/hearstpitantthom.htm>).

<sup>11</sup> According to the Commission's complaint in *Mylan*, the parties' exclusive arrangements covered 90% of the supply of the ingredient necessary to produce one of the drugs at issue, and 100% with respect to a second drug. The Commissioners all characterized the conduct alleged as "egregious," with one Commissioner observing that the facts alleged described "a clear cut antitrust violation." Statement of Commissioner Thomas B. Leary, Dissenting in Part and Concurring in Part (available at <http://www.ftc.gov/os/2000/11/mylanlearystatement.htm>).

<sup>12</sup> *See* <http://www.ftc.gov/opa/2000/03/hoechst.htm>.

<sup>13</sup> Several commentators suggested that the mere availability of treble damage actions or other avenues of relief will ordinarily render disgorgement unnecessary, implying that ultimately such other actions will have extracted the full amount of unjust enrichment from violators and will provide adequate deterrence against future violations. On the current state of the record we cannot share this confidence. We have not been directed to empirical evidence indicating that existing remedies routinely achieve these goals, let alone evidence that antitrust defendants have been subjected to excessive, "duplicative" damage awards. In fact it appears that the issue has been the subject of considerable debate. *See, e.g.,* Richard Posner, ANTITRUST LAW 47 (2d ed. 2001); John Lopatka & William Page, *Who Suffered Antitrust*

*cert. denied*, 486 U.S. 1014–15 (1988); *see also* *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 470 (11th Cir. 1996).

The Commission is sensitive to the interest in avoiding duplicative recoveries by injured persons or “excessive” multiple payments by defendants for the same injury. Thus, although a particular illegal practice may give rise both to monetary equitable remedies and to damages under the antitrust laws, when an injured person obtains damages sufficient to erase an injury, we do not believe that equity warrants restitution to that person. We will take pains to ensure that injured persons who recover losses through private damage actions under the Clayton Act not recover doubly for the same losses via FTC-obtained restitution. Similarly, in cases involving both disgorgement and restitution, we would apply any available disgorged funds toward restitution and credit any funds paid for restitution against the amount of disgorgement.

We do not, however, consider it appropriate to offset a civil penalty assessment against disgorgement or restitution. As noted above, disgorgement is an equitable remedy whose purpose is simply to remove the unjust gain of the violator. Penalties are intended to punish the violator and reflect a different, additional calculation of the amount that will serve society’s interest in optimal deterrence, retribution, and perhaps other interests. A penalty award would have no punitive effect if it were simply offset against these equitable remedies. It is not the Commission’s intent, therefore, to allow its monetary relief proceedings to dilute the effectiveness of a civil penalty.

When the same conduct gives rise to two different causes of action, moreover, the imposition of remedies for each cause of action does not necessarily mean the resulting sanctions are “excessive.” *See e.g., California v. ARC America Corp.*, 490 U.S. 93 (1989); *Loeb Industries, Inc. v. Sumitomo Corp.*, 306 F.3d 469, 492 (7th Cir. 2002), *cert. denied*, 123 S. Ct. 2247 (2003); *In Re Lorazepam & Clorazepate Antitrust Litigation*, MDL Dkt. No. 1290 (D.D.C.) (denial of motion to dismiss, July 2, 2001) Mem. Order at 15–16. Ultimately, we believe that courts considering equitable remedies have sufficient flexibility to craft orders to avoid unjust results.<sup>16</sup> We have not yet encountered any such complications.

As a procedural matter, in the Commission’s two recent cases in which disgorgement was approved, claims administration procedures were being developed in parallel state and private litigation. To simplify the process and avoid any appearance of duplicative payments, in each of those cases the funds recovered by the Commission were combined with other recoveries and a single claims administration process handled the administration of all the funds. In future cases, the Commission could also consider the suggestion of several commentors to set up an escrow fund, to seek appointment of a special master or claims administrator to determine the appropriate allocation of funds collected, or to seek to coordinate parallel actions.

By direction of the Commission

**Donal S. Clark,**  
Secretary.

[FR Doc. 03–19722 Filed 8–1–03; 8:45 am]

**BILLING CODE 6750–01–M**

## **HARRY S. TRUMAN SCHOLARSHIP FOUNDATION**

### **Notice of Intent To Extend an Information Collection**

**AGENCY:** Harry S. Truman Scholarship Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Harry S. Truman Scholarship Foundation [Foundation] will publish periodic summaries of proposed projects.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the forms of information technology.

(1997); *SEC v. Penn Cent. Co.*, 425 F. Supp. 593, 599 (E.D. Pa. 1976); *see also* *SEC v. Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1307 (2d Cir.) (establishing escrow fund to prevent “double liability”), *cert denied*, 404 U.S. 1005 (1971).

**DATES:** Written comments on this notice must be received by October 3, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

### **FOR FURTHER INFORMATION CONTACT:**

Contact Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006; telephone 202–395–4831; or send e-mail to [lblair@truman.gov](mailto:lblair@truman.gov). You also may obtain a copy of the data collection instrument and instructions from Mr. Blair.

### **SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Truman Scholar Payment Request Form.

*OMB Approval Number:* 3200–0005.

*Expiration Date of Approval:*

September 30, 2003.

*Type of Request:* Intent to seek approval to extend an information collection for three years.

*Proposed Project:* The Foundation has been providing scholarships since 1977 in compliance with Public Law 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Foundation to determine the amount of financial support to which each Truman Scholar is eligible and then to make the payment. A total response rate of 100% was provided by the 315 Truman Scholars who received support in FY 2002.

*Estimate of Burden:* The Foundation estimates that, on average, 0.5 hours per Scholar applying for funds will be required to complete the Payment Request Form, for a total annual burden of 157.5 hours for all applicants.

*Respondents:* Individuals.

*Estimated Number of Responses:* 215.

*Estimated Total Annual Burden on Respondents:* 157.5 hours.

Dated: July 30, 2003.

**Louis H. Blair,**

Executive Secretary.

[FR Doc. 03–19777 Filed 8–1–03; 8:45 am]

**BILLING CODE 6820–AD–U**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention**

[30Day–59–03]

### **Proposed Data Collections Submitted for Public Comment and Recommendations**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and

<sup>16</sup> Courts routinely allows “set-offs” and credits, for example, to avoid duplicative payments. *See, e.g., SEC v. First Jersey Sec., Inc.*, 101 F. 3d 1450, 1475 (2d Cir. 1996), *cert. denied*, 552 U.S. 812