EXHIBIT 12

from Italy)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 7, 2004.)

5. Inv. No. AA1921–188 (Second Review) (Prestressed Concrete Steel Wire Strand from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 7, 2004.)

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 11, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11060 Filed 5–12–04; 9:27 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response on Proposed Final Judgment in United States v. First Data Corporation and Concord EFS, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *First Data Corporation and Concord EFS, Inc.*, Civil Action No. 1:03CV02169, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection at Room 200 of the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530, telephone (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer, II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, et al., Plaintiffs, v. First Data Corporation and Concord EFS, Inc., Defendants

Case Number: 1:03CV02169.
Judge: Hon. Rosemary M. Collyer.
Filed: May 7, 2004.

Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("Tunney Act"), the United States files the comments of the public concerning the proposed Final Judgment in this case and the United States' responses to those comments. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Background

On October 23, 2003, plaintiffs the United States and the states of Connecticut, Illinois, Louisiana, Massachusetts, New York, Ohio, Pennsylvania, and Texas, and the District of Columbia (collectively "Plaintiff States") filed a Complaint alleging that the proposed acquisition of Concord EFS, Inc. ("Concord") by First Data Corporation ("First Data") would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleged that First Data's acquisition of Concord would substantially reduce competition in the market for PIN debit network services by combining the STAR and NYCE point-of-sale PIN debit networks.[1] Concord's STAR network is the largest PIN debit network in the United States, currently switching approximately half of all U.S. PIN debit transactions. NYCE is the third-largest PIN debit network. First Data owns a 64 percent controlling interest in NYCE. The transaction would have eliminated the competition between STAR and NYCE, leading to higher prices for PIN debit network services to merchant customers. Merchants would have passed on at least some of the higher costs of PIN debit transactions by raising the prices of their goods and services, to the detriment of tens of millions of consumers throughout the United States.

On December 15, 2003, the United States, the Plaintiff States and the Defendants filed a proposed Final Judgment and Hold Separate Stipulation and Order. On January 9, 2004, the parties, by consent, filed an Amended Hold Separate Stipulation and Order. The proposed Final Judgment requires First Data, within 150 calendar days after the Court's signing of the original Hold Separate Stipulation and Order, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest all of its governance rights in NYCE and its entire 64 percent ownership interest in NYCE (collectively "NYCE Holdings"). In addition, the Amended Hold Separate Stipulation and Order requires First Data to take certain steps to ensure that NYCE is operated as a competitively independent, economically viable and ongoing business concern that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States, the Plaintiff States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Tunney Act. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

Pursuant to the requirements of the Tunney Act, the United States filed a Competitive Impact Statement ("CIS") on January 23, 2004, and published the proposed Final Judgment and the CIS in the **Federal Register** on February 10, 2004. A summary of the terms of the proposed Final Judgment and CIS, with directions for the submission of written comments relating to the proposed Final Judgment, were published in the Washington Post for seven days on February 6, through February 12, 2004. The sixty-day period for public comments, during which the two comments described below were received, expired on April 12, 2004.

[1] PIN debit networks are the telecommunications and payment infrastructure that connects merchants to consumers' demand deposit accounts at banks. These networks enable consumers to purchase goods and services from merchants through PIN debit transactions by swiping their bank card at a merchant's terminal and entering a Personal Identification Number, or PIN. Within seconds, the purchase amount is debited from the customer's bank account and transferred to the retailer's bank.

II. Response to Public Comments

A. Legal Standard Governing the Court's Public Interest Determination

Upon publishing the public comments and this Response, the United States will have fully complied with the Tunney Act. After receiving the motion of the United States for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C 16(e). In making that determination, "the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States* v. *W. Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir. 1993) (citations and emphasis omitted). The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's "rather broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *accord United States* v. *Associated Milk Producers, Inc.*, 534 F.2d 113, 117–18 (8th Cir. 1976). The Court should review the proposed Final Judgment "in light of the violations charged in the complaint and * * * withhold approval only [(a)] if any of the terms appear ambiguous, [(b)] if the enforcement mechanism is inadequate, [(c)] if third parties will be positively injured, or [(d)] if the decree otherwise makes a 'mockery of judicial power.'" *Mass. Sch. of Law at Andover, Inc.* v. *United States*, 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *Microsoft*, 56 F.3d at 1462).

Because "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place" it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters the United States might have, but did not, pursue. *Microsoft*, 56 F.3d at 1459–60. The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that "other remedies were preferable," *Id.* at 1460, nor does it give the Court authority to impose different terms on the parties. *See, e.g., United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 153 n.95 (D.D.C. 1982); *accord* H.R. Rep. No. 93–1463 (1974). Further, the United States is entitled to "due respect" concerning its "prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case." *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (*citing Microsoft*, 56 F.3d at 1461).

B. Summary of Public Comments and the United States' Responses

The United States received comments from the Citizens for Voluntary Trade ("CVT") (Exhibit 1) and Ryco, Ltd. (Exhibit 2) in response to its publication of the Final Judgment in the **Federal Register**.

1. CVT

CVT's comment states that the United States incorrectly alleged in the Complaint that there is a relevant product market for PIN debit network services. The comment maintains that PIN debit network services are part of a broader product market that includes all demand forms of payment, including signature debit network services, cash, checks, money orders, and traveler's checks. CVT concludes that because NYCE and STAR compete in a broader market, combining the two networks does not threaten competition and, therefore, entering the Final Judgment does not serve the public interest.

CVT's comment is directed at whether the United States should have filed this case, not to whether the relief in the proposed Final Judgment is adequate to address the harm alleged in the Complaint. Comments challenging the validity of the United States' case, or alleging that it should not have been brought, are challenges to the initial exercise of the United States' prosecutorial discretion and are outside the scope of the Tunney Act proceeding. The purpose of this proceeding is not to evaluate the merits of the United States' case. A Tunney Act proceeding is not an opportunity for a "de novo determination of facts and issues," but rather "to determine whether the Department of Justice's explanations were reasonable under the circumstances" because "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *United States* v. *W. Elec. Co.*, 993 F.2d at 1577 (citations omitted). Consequently, the courts consistently have refused to consider "contentions going to the merits of the underlying claims and defenses." *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981); *accord United States* v. *Thomson Corp.*, 949 F. Supp. 907, 913 (D.D.C. 1996) ("[T]he court is to compare the complaint filed by the government with the proposed consent decree and determine whether the remedies negotiated between the parties and proposed by the Justice Department clearly and effectively address the anticompetitive harms initially identified."). Thus, CVT's challenge to the merits of the United States' underlying case are beyond the purview of appropriate Tunney Act inquiry.

Nevertheless, in response to CVT's comment, the United States observes that it conducted an extensive and thorough investigation into the provision of PIN debit network services, including to what extent these services potentially competed with other products or services. The facts found by the investigation demonstrated that PIN debit network services are a relevant product market under the antitrust laws. Many merchants strongly prefer PIN debit network services because PIN debit network services offer substantial advantages that set them apart from other forms of demand payment, most notably from the closest potential substitute, signature debit network services.[2] First, PIN debit networks generally charge merchants considerably lower prices than those offered by signature debit networks. Second, PIN debit networks provide a more secure method of payment than signature debit networks because it is easier to forge a person's signature than to obtain an individual's PIN. Consequently, fraud rates, and the expenses imposed by such fraud, are generally lower for PIN debit network services than for signature debit. The greater security provided by PIN debit networks also typically eliminates the need for costly charge-back procedures that allow consumers to challenge signature debit transactions. Third, PIN debit transactions also generally settle instantaneously, guaranteeing the merchant ready access to its receipts, while signature debit transactions often take one or two days to settle. Finally, PIN debit networks usually enable shorter times at the check-out counter than signature debit networks, further reducing merchants' costs.

Merchant preference for PIN debit network services over other forms of demand payment, including signature debit transactions, cash, money orders, and travelers checks, is further strengthened by the strong demand of many consumers to use PIN debit network services, particularly at

[2] Signature debit networks are telecommunications and payment infrastructure that enable consumers to purchase goods and services by swiping a debit card and then signing for the transaction as the means of authentication.

supermarkets, mass merchandisers and drug stores. Many consumers value the security and speed of PIN debit transactions, as well as the unique "cash back" feature that allows them to receive cash at the register when making a purchase. Consumers cannot receive cash back when making a signature debit purchase. Today, consumers request cash back in approximately twenty percent of all PIN debit transactions. Because of their generally substantial lower costs and superior features, the United States determined that a small but significant increase in the price of PIN debit network services would not cause a sufficient number of merchants to stop accepting PIN debit transactions, or to discourage their customers from executing such transactions, to defeat the price increase. Based on this finding, the United States concluded, and properly alleged in its Complaint, that PIN debit network services is a relevant antitrust product market.

2. Ryco's Comment

Ryco is an independent gas station and convenience store that does business under the trade name "Hansen's Good to Go." Ryco's comment states that it objects to the merger of First Data and Concord because Concord currently engages in alleged anticompetitive behavior. The comment maintains that Concord provides Ryco and other merchant customers with poor customer service by double-charging them on some bills, routing some transactions to more expensive networks, and negotiating unfavorable terms in its contracts concerning the forums for litigating contractual disputes and the parties' responsibilities for "fees" and "costs" that result from such litigation. Ryco believes that the merger will increase the number of merchants to which Concord provides debit card transaction related services and, consequently, will increase Concord's leverage to provide poor customer service. Ryco advocates conditioning approval of the merger on (a) revisions to the choice of forum and attorneys' fees provisions in Concord's contracts, and (b) improvements in Concord's customer service.

Ryco's concerns do not indicate that the proposed Final Judgment is not in the public interest. To the extent that Ryco's concerns are directed to the provision of PIN debit network services, the Final Judgment's requirement that First Data divest NYCE is a fully adequate remedy. Preventing the combination of STAR and NYCE maintains the competitive structure of the PIN debit network services market that existed at the time First Data and Concord decided to merge.

Ryco also appears to be concerned about the merger's potential impact on at least two other types of services, merchant processing and acquiring services for credit and debit card transactions. These concerns are not a proper focus for the Tunney Act proceeding because they were not the subject of the Complaint. The Complaint alleged that First Data's acquisition of Concord would reduce competition *only* in the PIN debit network services market. As explained, Tunney Act review may not "reach beyond the complaint to evaluate claims that the government did *not* make and to inquire as to why they were not made." *Microsoft*, 56 F.3d at 1459. *See also Archer-Daniels-Midland Co.*, 272 F. Supp. 2d at 6–7, 9 (rejecting argument that court should consider effects in markets other than those raised in the complaint); *United States* v. *Pearson PLC*, 55 F. Supp. 2d 43, 45 (D.D.C. 1999) (a court should not "base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint") (citation omitted). Therefore, Ryco's apparent concerns about the merger's impact on merchant processing and acquiring services provides no basis for the Court to reject the proposed Final Judgment.

III. Conclusion

The CIS and this Response of the United States to the public comments demonstrate that the proposed Final Judgment is in the public interest. *Accordingly, pursuant to Section 16(d)* of the Tunney Act, after these comments and this Response are published in the **Federal Register**, the United States will move this Court to enter the Proposed Final Judgment.

Dated: May 7, 2004.

Respectfully submitted,

Joshua H. Soven,
Networks and Technology Section, Antitrust Division, United States Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530.

Certificate of Service

The undersigned certifies that a copy of the foregoing Response to Public Comments was served on the following counsel, by electronic mail in PDF format, on May 7, 2004:

Counsel for Defendant First Data Corp.

Counsel for Defendant Concord EFS, Inc.

Christopher Hockett, Esq., Bingham McCutchen LLP, Three Embarcadero Center, San Francisco, CA 94111, e-mail: *chris.hockett@bingham.com*

Geraldine M. Alexis, Esq., Bingham McCutchen LLP, Three Embarcadero Center, San Francisco, CA 94111, e-mail: *geraldine.alexis@bingham.com*

Lawrence R. Fullerton, Esq., Sidley Austin Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005, e-mail: *lfullerton@sidley.com*

Jeffrey T. Green, Sidley Austin Brown & Wood LLP, 1501 K Street, NW., Washington, DC 20005, e-mail: *jgreen@sidley.com*

Stephen R. Patton, Esq., Kirkland & Ellis LLP, Aon Center, 200 East Randolph Drive, Chicago, IL 60601–6636, e-mail: *spatton@kirkland.com*

James H. Mutchnik, Kirkland & Ellis LLP, Aon Center, 200 East Randolph Drive, Chicago, IL 60601, e-mail: *jmutchnik@kirkland.com*

Counsel for Plaintiff States

Rebecca Fisher, Esq., Assistant Attorney General, P.O. Box 12548, Austin, TX 78711–2548, e-mail: *rebecca.fisher@oag.state.tx.us*

Joshua H. Soven,
Networks and Technology Section Antitrust Division, United States Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530.

BILLING CODE 4410–11–M

EXHIBIT 1

Citizens for Voluntary Trade

Better Living through Rational Thinking

April 7, 2004

Ms. Renata Hesse
Chief, Networks and Technology Section
U.S. Department of Justice, Antitrust Division
600 E Street, N.W., Suite 9500
Washington, DC 20530

Re: Public comment in United States, et al. v. First Data Corp. and Concord EFS, Inc.., et al. (D.D.C., Civil No. 03-CV-2169).

Dear Ms. Hesse:

Citizens for Voluntary Trade (CVT), a Virginia corporation, respectfully submits the following public comment under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), in response to the *Federal Register* notice published by the United States on February 10, 2004, regarding the above-captioned case. CVT is a nonpartisan educational organization that analyzes the antitrust and competition laws from a pro-reason, pro-capitalism perspective. CVT regularly files public comments and *amicus curiae* briefs in antitrust judgments reached under the Tunney Act and the Federal Trade Commission Act. Neither CVT nor its officers or directors have a financial interest in the outcome of this case. CVT owns no subsidiaries and has no parent corporation.

CVT objects to entry of the Proposed Final Judgment. After reviewing the Competitive Impact Statement, the complaint, and the public versions of the parties' trial briefs, CVT concludes no rational individual would accept the plaintiff governments' position that PIN and signature-based debit networks constitute separate economic markets, nor would a properly-defined market exclude cash, checks, money orders, traveler's checks, and other forms of demand payment as reasonable alternatives to PIN-based debit cards. Had the plaintiff governments' properly defined the market, they would have concluded that the First Data-Concord merger posed no threat of monopolization or lessened competition. Accordingly, there is no identifiable public interest served by entering the Proposed Final Judgment.

Post Office Box 66 Arlington, Virginia 22210 571.242.1766
www.voluntarytrade.org

CVT recommends the district court reject entry of the Proposed Final Judgment under 15 U.S.C. §16(e) and dismiss the complaint *sua sponte*.

Respectfully Submitted,

S.M. Oliva
President
Citizens for Voluntary Trade

EXHIBIT 2

KRISLOV & ASSOCIATES, LTD.
Attorneys at Law

CIVIC OPERA BUILDING, SUITE 1350
20 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606

FAX (312) 606-0207
TELEPHONE (312) 606-0500

March 01, 2004

Renata B. Hesse
Chief, Networks & Technology Enforcement Section
Antitrust Division
U.S. Department of Justice
600 E. Street N.W., 9th Floor
Washington. D.C. 20530-0001

Re: First Data/Concord Merger Litigation
Objection to Settlement and Permission to Complete Merger

Dear Ms. Hesse:

We wish to object to your agreement to permit the merger between Concord EFS, Inc. and First Data, and we would like the opportunity to shed light on the overbearing anti-competitive behavior of Concord, and believe it is ill-advised to permit them to increase their market share by this merger, unless changes are made to improve customer service and delete unfair provisions from their form contracts. As we will show, Concord signs on merchants by unsupervised Ponzi-type marketers, then abuses its customers in ways that leave them without effective redress. Giving them the opportunity to do this on a grander scale is unconscionable, unless the government requires changes in Concord's form agreements.

Background: Our Client's Experience With Concord/EFS

Our client, Ryco, Ltd., d/b/a Hansen's Good to Go, an independent gas station convenience store located in Arizona, was solicited by one of Concord's sales representatives to contract with Concord for processing his customer's credit card charges. Ryco came to us early last year with a concern of how fees were being charged by the company, how his transactions were being routed once within Concord's network, and the level of control and supervision Concord maintained over its sales associates.

Concord/EFS virtually owns the market for servicing merchants' credit and debit card transactions. By its SEC corporate filings, Concord boasts that it controls the routing for 56% of all PIN-based debit transactions, and controls 64% of all ATM machines in the United States . Similar to the discredited long distance telephone slammers, Concord uses an army of independent, unsupervised contractor commission based solicitors to get small merchants to engage Concord to provide credit card servicing to their customers by promising network routing

and low transaction charges to merchants, which Concord simply ignores. Concord's customer service to these merchants is worse than non-existent. Thus, when merchants call to take issue with double charges on their bills, and misrouted transactions through higher cost networks, their inquiries are simply ignored. After Concord failed to respond to numerous calls to its customer service, Ryco simply had no way to correct Concord's charges, other than to sue them.

Under Concord's form contracts, all disputes must be brought in Concord's Tennessee jurisdiction and the loser pays the winners' costs. The result of this was having to engage counsel in Tennessee, and suing in federal court. However, when the court dismissed the federal count and declined to exercise supplemental jurisdiction, rather than accept this small victory over the consumer, Concord then sued our client for fees, in effect, using the fee provision of the merchant contract as a threat against further litigation of the matter.

Unmoved by such truculent tactics, our client requested we continue our pursuit of what he believed to be a necessary fight against this company's dishonest and deceitful practices. As this Department understands, the issue of how a company routes charges and imposes fees, potentially a very costly unknown for unsavvy small merchants.

Amazingly, the federal judge signed onto Concord's coercive measures by ordering payment of nearly $80,000 in fees to the Defendants. Unable to further pursue litigation with this additional burden, we were able to negotiate to drop all claims, for our payment of $5,000 to Concord, demonstrating Concord's intent to preclude any consumer challenges.

We bring these matters to the Department's attention as demonstrative of the manner in which Concord treats its consumers, and their iron-fist approach to "customer service". Allowing this company to further grow, controlling what would amount to nearly half of the market for debit card transactions, would create an uncontrollable corporate machine, baiting and switching customer transactions all the way to their internally-controlled bank.

This merger must be prevented, and Concord forced to change its practices, rather than have those practices amplified through a larger share of the market. Accordingly, Concord/First Data should not be given this increased market share under current circumstances. We believe that the merger should not be approved without Concord agreeing to delete two provisions of its contract (deleting the provisions requiring suits to be brought in Concord's home district and the "loser pays" provision, unless changed to apply to ultimate victory), and upgrading its customer service.

Very truly yours,

Clinton A. Krislov

[FR Doc. 04–10917 Filed 5–13–04; 8:45 am]

BILLING CODE 4410–11–C

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 7, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Application for a Permit to Fire More than 20 Boreholes for the use of Nonpermissible Blasting Units, Explosive, and Shot-firing Units.

OMB Number: 1219–0025.

Frequency: On occasion.

Type of Response: Recordkeeping; Reporting; and Third party disclosure.

Affected Public: Business or other for-profit.

Number of Respondents: 48.

Number of Annual Responses: 105.

Estimated Time Per Response: 1 hour to prepare an application for a permit and 20 minutes to post a conspicuous warning notice at the entrance of an area affected by a misfire.

Total Burden Hours: 67.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $588.

Description: Title 30 CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of nonpermissible shot-firing units in underground coal mines. In those instances in which there is a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Title 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use nonpermissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines. These permits inform mine management and the miners of the steps to be employed to protect the safety of any person exposed to such blasting while using nonpermissible items. The posting of danger/warning signs at entrances to locations where an misfired blast hole or round remains indisposed is a safety precaution predating the Coal Mine Safety and Health Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–10959 Filed 5–13–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 6, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Vehicle Mechanical Inspection Report for Transportation Subject to DOT Requirements; Subject to DOL Safety Standards.

OMB Number: 1215–0036.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit and Farms.

Number of Respondents: 1,020.

Number of Annual Responses: 3,060.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 255.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $140,760.

Description: Section 401 of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that farm labor contractors, agricultural employers, or agricultural associations