

conditions of employment to be disclosed to the workers, the State workers' compensation notifications required by section 4 of Public Law 104-49.

## II. Review Focus

The Department of Labor 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 submissions of responses.

## III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to ensure that farm labor contractors, agricultural employers and agricultural associations have disclosed to their migrant and seasonal agricultural workers the terms and conditions of employment as required by MSPA and its regulations.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Worker Information—Terms and Conditions of Employment (English and Spanish).

*OMB Number:* 1215-0187.

*Agency Number:* WH-516.

*Affected Public:* Businesses or other for-profit; Individuals or households; Farms.

*Frequency:* On occasion.

*Total Respondents:* 137,000.

*Total Annual Responses:* 3.24 million.

*Time per Response:* 32 minutes.

*Estimated Total Burden Hours:* 73,067.

*Total Burden Cost (capital/startup):* \$0.

*Total Burden Cost (operating/maintenance):* \$29,160.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of

Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 9, 2001.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10949, et al.]

### Proposed Exemptions; Kimball International, Inc. Retirement Plan (the Plan) et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. \_\_\_\_, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for

public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW, Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Kimball International, Inc. Retirement Plan (the Plan), Located in Jasper, Indiana

[Application No. D-10949]

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of stock (the Shares) of Springs Valley Bank & Trust Company (Springs Valley) to Springs

Valley, the Trustee of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

- (a) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;
- (b) The Sale is a one-time transaction for cash;
- (c) The fair market value of the Shares is determined by a qualified, independent appraiser;
- (d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and
- (e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) \$40 per Share.

#### *Summary of Facts and Representations*

1. The Kimball International, Inc. Retirement Plan (the Plan) is a defined contribution plan within the meaning of ERISA Section 3(34), permitting both before-tax (401(k)) participant contributions and after-tax participant contributions. As of November 9, 2000, the Plan covers approximately 7,400 participants and has Plan assets of approximately \$349,204,819.28. Approximately 1.66% (\$5,796,800) of the Plan assets are involved in the proposed transaction. The Trustee of the Plan is Springs Valley.

2. Kimball International, Inc. (the Employer) is engaged in the manufacture of pianos, office, hotel, restaurant, healthcare and residential furniture and cabinets (in both wood and metal), and in the design, engineering, manufacture, packaging and distribution of electronic assemblies, circuit boards, multi-chip modules and semiconductor components on a contract basis to customers in the transportation, defense, aerospace, telecommunications, computer and medical industries.

3. Prior to 1990 the Employer sponsored and maintained two separate defined contribution profit sharing plans, the Kimball International, Inc. Indirect Retirement Plan (established effective January 1, 1952) covering the Employer's salaried employees; and the Kimball International, Inc. Direct Retirement Plan (established effective July 1, 1968) covering the Employer's non-salaried employees. Effective July 1, 1990, those two separate plans were merged to form the Plan. Subsequently, beginning March 1, 1994, the Employer incorporated a 401(k) feature within the Plan.

4. Springs Valley, as the Trustee of the Plan, has held the authority to vote the securities in the Plan, including the Shares. The Shares in the Plan were voted each year by an independent person, Claude Taylor (Mr. Taylor), on behalf of Spring Valley as Trustee. Mr. Taylor is not an employee of Spring Valley. He is a local resident of French Lick, Indiana, and has been serving in this independent capacity for over 20 years.

5. The Plan holds 144,920 Shares, having an estimated value of \$5,796,800 at June 30, 2000 (based on a private transaction at \$40 per share occurring in 2000), and representing approximately 19.5% of the issued and outstanding Shares. The Employer, its significant shareholders, and the Plan own in the aggregate approximately 38% of the issued and outstanding Shares. The Shares were originally acquired from Spring Valley by the Plan in three separate transactions prior to the enactment of the Act<sup>1</sup>. The total cost of the shares to the Plan was \$319,547.88.

6. The Shares are not publicly traded, and there is no ready market for it. The Shares are valued annually by an independent, qualified, appraiser, Professional Bank Services located in Louisville, Kentucky, retained and paid by Spring Valley for the purpose of valuing such stock in connection with the Springs Valley employees' stock option plan. The method used in such valuation can briefly be described as follows: (i) The appraisal is based on a valuation of the Plan's minority interest in Springs Valley; (ii) an analysis of the bank's market liquidity, regulatory and audit reports; and (iii) other such summary information that is available and deemed appropriate. The Plan uses that valuation for its purposes of valuing the Shares annually. Professional Bank Services concluded that the fair market value of the Shares is \$40 per common share as of April 5, 2001.

7. With dividends reinvested, the compound rate of return of the Shares has been 10.663% from 1984 through 1999. The Plan will receive \$5,796,800 resulting from the investment by the Plan in the Shares of \$319,547.88.

8. On July 1, 2001, the Employer amended the Plan to permit participants to self-direct the investment of their Plan accounts. In order to facilitate this process, and because of the illiquid nature of the Shares, the continued investment in the Shares is incompatible with Plan participant self-

direction, and with the future distributions from the Plan. As a result, the Plan now proposes to sell the Shares for the greater of: (1) The fair market value of the Shares as of the date of the Sale or (2) \$40 per Share.

9. Before the Sale, the Shares will be transferred from Springs Valley as trustee to an independent trustee also acting under the Plan. That independent trustee will be the National Bank of Indianapolis (the National Bank) located in Indianapolis, Indiana. The National Bank will perform an independent review and fairness determination of the appraisal process prior to the Sale to Springs Valley, which may include obtaining a second independent appraisal.

10. The applicant represents that the proposed transaction is administratively feasible, and in the best interest and protective of the Plan. The transaction will be for cash and the Plan will pay no costs or commissions associated with the sale, allowing the Plan to divest itself of the Shares and reinvest the proceeds of the Sale in assets that will be diversified and generate higher rates of return.

11. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those reasonably obtainable in an arm's-length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) The fair market value of the Shares is determined by a qualified, independent, appraiser;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and

(e) The Plan receives as consideration an amount that is no less than the greater of: (1) the fair market value of the Shares as of the date of the Sale or (2) \$40 per Share.

**Notice to Interested Persons:** Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

**For Further Information Contact:** Khalif Ford of the Department, telephone (202) 219-8883. (This is not a toll-free number).

<sup>1</sup> The Department expresses no opinion herein as to whether the holding of the Shares by the Plan violated any of the provisions of Part 4 of Title I of the Act.

**Alaska United Food and Commercial Workers Health and Security Trust Fund (the Plan) Located in Anchorage, Alaska**

[Application No. L-10896]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the proposed purchase by Plan participants and beneficiaries of prescription drugs from Safeway, Inc. (Safeway), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and its wholly owned subsidiary, SMCrx; (c) at least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving Safeway are unrelated to Safeway or any other party in interest with respect to the Plan; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transaction is not part of an agreement, arrangement or understanding designed to benefit Safeway or any other party in interest with respect to the Plan.

**Effective Date:** The proposed exemption, if granted, will be effective as of August 1, 2000.

*Summary of Facts and Representations*

1. The Plan is a multi-employer welfare benefit plan, which has been in existence since February 25, 1965. The Plan was established to provide health and welfare benefits, including life, sickness, accident and other benefits for Plan participants and their beneficiaries. The Plan is directed by a six person board of trustees. The three trustees representing labor are appointed by the United Food and Commercial Workers Local Union 1496 (the Union). The three employer trustees are appointed by contributing employers to the Plan, including Safeway, which operates Safeway/Carr's grocery stores. The Plan currently has approximately 2,916 participants and \$8,687,702 in assets.

2. The applicant represents that the Plan had an existing relationship with a Pharmacy Benefits Manager (PBM), a

company called PCS, that had not been satisfactory for an extended period of time. The applicant states that PCS has an extensive network of participating pharmacies but could not accommodate the needs of the Plan by processing non-electronic (i.e., paper) claims. The failure of PCS to process paper claims for the Plan placed the burden of processing such claims on the Plan's third party administrator, Labor Trust Services of Anchorage, Alaska.

3. After several attempts to rectify these problems with PCS, the Plan's trustees decided to seek bids from other PBMs. The trustees requested that the Plan's independent consultant, William M. Mercer, Inc., of Seattle, Washington (Mercer), find and recommend an alternative PBM at a competitive price, who would be better able to adapt to the needs of the Plan. The trustees did not select the entities to be considered in the PBM search.

4. Mercer considered four entities as possible PBMs for the Plan. Requests for proposals had been sent to SysMed (Merck-Medco), PCN and SMCrx. PCS also provided an unsolicited bid. Mercer analyzed the bids and recommended SMCrx as being the most able to fulfill the needs of the Plan since its price was competitive and it would process the non-electronic claims. The applicant represents that the trustees of the Plan chose SMCrx based on the findings and recommendation of Mercer, the Plan's independent consultant. Safeway's representative on the Plan's board of trustees took no part in the discussion or voting on the selection of SMCrx as the Plan's PBM.

5. SMCrx is a wholly-owned subsidiary of Safeway, which is a major contributing employer to the Plan through its grocery stores in Alaska. SMCrx has a separate board of directors and a separate corporate headquarters from Safeway.

6. A PBM normally maintains an extensive system of participating pharmacies in its preferred provider network (i.e., a PPN) throughout the United States. The applicant states that SMCrx has a PPN comparable to many of its competitors. However, SMCrx is smaller in size, and, therefore, more willing to adjust its operations to the needs of the Plan, including the processing of paper claims. The Plan does have a mail order prescription option through SMCrx, which is an advantage to the participants and beneficiaries. As a PBM, SMCrx negotiated discounts with the drug manufacturers as well as the participating pharmacies. These discounts will be passed on to the Plan and its participants and beneficiaries.

Unless the pharmacies meet the discount standards of SMCrx, they do not participate in the PPN. SMCrx has a nationwide network of participating pharmacies. The applicant states that the discounts with the pharmacies are uniform, thereby avoiding any favoritism.

7. Effective August 1, 2000, the Plan entered into an agreement with SMCrx wherein SMCrx agreed to act as the PBM for the Plan.<sup>2</sup> The Plan will receive the same discounts on pharmaceutical drugs as all other customers of SMCrx. The Plan will, through SMCrx, participate in the PPN as well as benefit from SMCrx's ability to handle the paper claims of participants and beneficiaries. SMCrx has agreed to a 30 day cancellation clause in its contract for cause, and either party may cancel the contract without cause by giving 60 days prior notice.

8. SMCrx has agreed to the following terms for a period of one year:

(a) *Custom Alaska Network*  
Brand Discount 11% off AWP<sup>3</sup> or U&C<sup>4</sup>

Dispensing Fee \$2.50/Rx

Generic Discount 25% off AWP or U&C

Dispensing Fee \$2.50/Rx

Claims Processing:

Electronic \$0.60 per claim

<sup>2</sup> The provision of services to a plan by a party in interest with respect to the plan is a separate prohibited transaction under section 406(a)(1)(C) of the Act. However, the provision of services to a plan by a party in interest, which are necessary for the operation of the plan, are statutorily exempt under section 408(b)(2) of the Act, if the conditions required therein are met. The regulation promulgated by the Department which defines the scope of the statutory exemption contained in section 408(b)(2) of the Act states that no relief is provided for any arrangement for services which would violate section 406(b) of the Act (see 29 CFR section 2550.408b-2).

Therefore, it should be noted that in this proposed exemption, the Department is providing no relief beyond that provided by section 408(b)(2) of the Act with respect to the provision of PBM services by SMCrx to the Plan. In addition, the Department is providing no opinion herein as to whether any service arrangements between SMCrx and the Plan would meet the conditions of section 408(b)(2) of the Act and the regulations thereunder.

However, interested persons should review DOL Adv. Op. 99-09A (May 21, 1999) for a discussion of issues relating to such service arrangements.

<sup>3</sup> "AWP" stands for "Average Wholesale Price." The AWP is determined by SMCrx's utilization of the Medispan First Data Bank. This data bank is the national drug pricing standard for determining AWP. The AWP pricing is updated daily and automatically in SMCrx's adjudication system. AWP represents the retail spread over wholesale acquisition costs and is set by the manufacturers. Thus, the applicant represents that it is objectively determined. The PBM also utilizes HCFA-MAC pricing for generics. This is a nationally recognized generic pricing standard which is updated monthly.

<sup>4</sup> "U&C" stands for "Usual and Customary." The discount will be taken off either the AWP or the U&C price, whichever produces the lowest price.

Paper \$1.50 per claim

(b) Broad Network

Brand Discount 13% off AWP or U&C  
Dispensing Fee \$2.50/Rx  
Generic Discount AWP—33%  
Dispensing Fee \$2.50/Rx

(c) Mail Order

Brand Discount 15% off AWP  
Generic Discount 30% off AWP  
Dispensing Fee \$2.00/Rx

9. The Custom Network consists of participating pharmacies who file claims electronically, while the Broad Network consists of all other pharmacies in SMCrx's network. In each network, the Plan receives a discount on the price of drugs. The SMCrx proposal provides the Plan with the highest savings off AWP. However, there are "paper" claims which are part of the Broad Network which must be processed by SMCrx. There is no mandatory formulary arrangement. A voluntary formulary arrangement exists where the Plan receives 60% of the manufacturer's rebate.

10. Plan participants and beneficiaries may acquire their prescription drugs through the PPN established by SMCrx. SMCrx will adjudicate prescription claims that have been submitted to the PPN by the covered individual and shall perform all claims-related processing functions, not limited to determining the validity and the accuracy of the claims submitted. SMCrx will then bill the Plan for the cost of these services, which is agreed to by contract. SMCrx will receive a monthly fee assessed on a per claim basis which will be paid for by the Plan. SMCrx's performance and competitiveness are monitored by the Plan's third party administrator, Labor Trust Services, Inc. (LTS), and the Plan's consultant Mercer. Both Mercer and LTS are independent of Safeway.

11. The Plan benefits by: (a) Receiving discounts through the participating pharmacies; (b) receiving discounts from any participating pharmaceutical company or manufacturer in the form of lower costs to participants and beneficiaries; (c) the processing and review of claims by professional management; and (d) the submissions of reports regarding trends in the pharmaceutical/prescription industry.

The applicant represents that at least 50% of the preferred providers participating in the PPN are, and will continue to be, unrelated to Safeway or any other party in interest. All Plan decisions to enter into agreements governing the subject purchases of prescription drugs have been and will continue to be made by Plan fiduciaries that are independent of Safeway and

SMCrx. In this regard, any fiduciary affiliated with Safeway or SMCrx has removed or will remove himself or herself from all consideration by the Plan as to whether to engage in the covered transactions. Finally, the applicant states that the subject transactions are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

12. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions are at least as favorable to the Plan as those the Plan could obtain in similar transactions with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of Safeway and SMCrx; (c) at least 50% of the preferred providers participating in the PPN are unrelated to Safeway or any other party in interest; (d) Safeway will be treated no differently than any other pharmacy participating in the PPN; and (e) the transactions are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible,

in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of October, 2001.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
Department of Labor.*

[FR Doc. 01-26567 Filed 10-22-01; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01-135)]

### Agency Information Collection Activity; OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3506(c)(2)(A)). This collection is required to document changes to NASA contracts and ensure that they are made quickly and in a cost-effective manner. **DATES:** All comments should be submitted on or before December 24, 2001.

**ADDRESSES:** All comments should be addressed to Mr. Paul Brundage, Code HK, National Aeronautics and Space Administration, Washington, DC 20546-0001.