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Federal Trade Commission

16 CFR Parts 2, 801, 802, and 803

Premerger Notification; Reporting and Waiting Period Requirements and Rules of Practice; Final Rules

16 CFR Parts 801 and 802

Premerger Notification; Reporting and Waiting Period Requirements; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Interim rules with request for comment.

SUMMARY: The Federal Trade Commission is amending the premerger notification rules, which require the parties to certain mergers or acquisitions to file reports with the Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions, pursuant to Section 7A of the Clayton Act. The filing and waiting period requirements enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. The rule amendments are necessary to implement recent amendments to the Clayton Act, and will increase the clarity and improve the effectiveness of the rules and the Notification and Report Form.

DATES: These interim rules are effective February 1, 2001. Comments should be filed no later than March 19, 2001.

ADDRESSES: Address comments concerning these interim rules to the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or by e-mail to hsr-rules@ftc.gov. With regard to the Paperwork Reduction Act, send a copy of any comments concerning the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503 (ATTN.: Edward Clarke, Desk Officer for the Federal Trade Commission).

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, or Karen E. Berg, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Background

Section 7A of the Clayton Act, 15 U.S.C. 18a (''the act''), as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR Act''), Pub. L. 94–435, 90 Stat. 1390, requires all persons contemplating certain mergers or acquisitions to file notification with the Federal Trade Commission (''FTC'' or ''Commission'') and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''Assistant Attorney General'') and to wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require ''that the notification * * * be in such form and contain such documentary material and information * * * as is necessary and appropriate'' to enable the agencies ''to determine whether such acquisitions may, if consummated, violate the antitrust laws.'' Congress similarly granted rulemaking authority to, inter alia, ''prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.'' See 15 U.S.C. 18a(d).

Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Antitrust Improvements Act Rules (''the rules''), which are codified in 16 CFR parts 801, 802 and 803, and the Notification and Report Form for Certain Mergers and Acquisitions (''the Form''), which appears at part 803—Appendix. The Commission has amended or revised the rules and Form on fourteen prior occasions since they were first introduced.

On December 21, 2000, the President signed into law certain amendments to Section 7A(a) of the Clayton Act, 15 U.S.C. 18a(a). *See* Pub. L. 106–553, 114 Stat. 2762 (''2000 Amendments''). These amendments are effective on February 1, 2001. The 2000 Amendments are the first significant changes to Section 7A since the passage of the HSR Act in 1976. These changes include:

- An increase in the size-of-transaction threshold to $50 million (in place of the previous $15 million threshold).
- Elimination of the 15 percent size-of-transaction threshold.
- Reportability of transactions valued at greater than $200 million without regard to ''size-of-person.'' The current size-of-person test will continue in place for transactions valued between $50 million and $200 million.
- Adjustment to the size-of-transaction threshold each fiscal year, beginning with FY 2005, for changes in GNP during the previous year.
- Implementation of a tiered fee structure. The fee that the acquiring person must pay will be based on the value of the voting securities or assets held as a result of the transaction:

Size (value) of transaction	Fee ($)
< $100 million	45,000
$100 million to < $500 million	125,000
$500 million or more	280,000

The filing fee tiers will be adjusted annually, beginning with FY 2005, for changes in GNP during the previous year.

- Extension of the waiting period that follows substantial compliance with requests for additional information and documentary material to 30 days for most transactions. The 10-day post-compliance period for cash tender offers (and bankruptcy transactions) is not changed.
- The end of any waiting period that would be on a Saturday, Sunday or legal public holiday shall be the next regular business day.

Statement of Basis and Purpose of the Amendments to the Rules and Form

To implement these statutory changes, the Commission, with the concurrence of the Assistant Attorney General, is promulgating additional amendments and revisions to the rules and Form, as described below. Generally, all references to Section 7A(a)(3) of the Clayton Act and all examples have been modified where necessary to reflect the higher $50 million size-of-transaction threshold and elimination of the 15 percent size-of-transaction threshold. In addition, the Commission has taken this opportunity to make minor ministerial changes to update the rules and Form. In a separate **Federal Register** document, the Commission is amending Part 2 of its Rules of Practice to incorporate procedures, as required by the 2000 Amendments, for internal agency review, upon petition, of requests for additional or documentary material (''second requests'') regarding the transaction at issue.

Part 801—Coverage Rules

Section 801.1(h): Notification Threshold

Section 801.1(h) of the rules defines the term ''notification threshold.'' This term does not appear in the act, and its principal appearance in the rules is in connection with Section 802.21, an exemption for certain incremental acquisitions. In general, the notification thresholds specify the levels of ownership of the assets or voting

securities of an acquired person that cannot be attained or exceeded without observing the filing and waiting period requirements of the Clayton Act.

Section 801.1(h), as originally promulgated in 1978 (43 FR 33450, July 31, 1978), contained four notification thresholds: $15 million; 15 percent; 25 percent; and 50 percent. Several of the changes Congress made in the act have, however, necessitated a complete revision of this rule. In particular, the elimination of the 15 percent size-of-transaction test, the increase of the monetary size of transaction test to $50 million, and the introduction of a three-tiered filing fee structure have all affected this provision. The 2001 thresholds are: Assets and voting securities valued at greater than $50 million but less than $100 million; assets and voting securities valued at $100 million or greater but less than $500 million; assets and voting securities valued at $500 million or greater; 25 percent of the voting securities of an issuer if valued at greater than $1 billion; and 50 percent of the voting securities of an issuer if valued at greater than $50 million.

To understand the function of the notification thresholds in the rules, it is necessary to look closely at the requirements of the act. Under the act as amended, one must file notification and observe a waiting period if at least one of the parties is engaged in commerce or in any activity affecting commerce, in certain transactions if the size-of-person test is met, and if *''as a result of such acquisition, the acquiring person would hold* an aggregate total amount of voting securities and assets of the acquired person'' in excess of $50 million (emphasis added). The rules interpret this provision to mean that all prior acquisitions of voting securities of an issuer are held as a result of any subsequent acquisition of voting securities from that issuer. See Section 801.13(a). This means that once the $50 million level is reached, every acquisition of voting securities is potentially reportable, not just the one that first exceeds this amount.

This result is overly burdensome and serves no law enforcement purpose. To avoid this consequence, the drafters of the 1978 rules added the concept of notification thresholds and Section 802.21. The thresholds establish certain levels of acquisition likely to be of competitive significance. Section 802.21 exempts all acquisitions between these levels not meeting or exceeding the next threshold for a period of five years after expiration or termination of the waiting period for the transaction which initially crossed the prior threshold. (For more regarding the function of the notification thresholds, see the discussion of Section 802.21 below.) The thresholds, in conjunction with Section 802.21, thus operate to inform the agencies that if a reported transaction is not challenged, the acquiring person can acquire up to the next highest threshold without having to file again.

Enactment of the new legislation has required some amendments to the Section 801.1(h) thresholds and has led the Commission to make other changes as well. Raising the statutory size-of-transaction threshold from $15 million to $50 million has required changing the lowest dollar threshold in Section 801.1(h) in the same fashion. At the same time, it appears logical that for voting securities, 50 percent (as long as valued in excess of the act's $50 million threshold) should continue to be the highest reporting threshold. Transactions resulting in an acquiring person holding at least 50 percent of the voting securities of an issuer transfer control of the issuer within the meaning of the rules and can have greater antitrust significance than acquisitions between the same parties resulting in minority interests. Any additional acquisitions by an acquiring person that already holds 50 percent of the voting securities of an issuer are exempted by Section 7A(c)(3) of the act.

The Commission thus began its consideration of appropriate Section 801.1(h) thresholds recognizing that $50 million should be the lowest reporting threshold and 50 percent (if greater than $50 million) the highest. The Commission then addressed what thresholds—if any—to have in addition to them. As with the 1976 statute, it was readily apparent that intermediate thresholds are desirable. Absent additional thresholds, a person intending to acquire 1 percent of an issuer for $51 million would be able to acquire any amount up to (but not including) 50 percent without another reporting obligation. The agencies would thus have to regard the one percent/$51 million acquisition as a much more significant acquisition than may have been contemplated by the parties.

While the original 1978 rules interposed two intermediate percentage thresholds for voting securities transactions—15 percent and 25 percent—the Commission has determined that the 2001 rules, with one exception noted below, should instead interpose intermediate dollar thresholds ($100 million and $500 million).

There are several reasons for this change. First, in enacting the new legislation, Congress eliminated the alternative 15 percent size-of-transaction test, leaving the size-of-transaction test based solely on the dollar value of the transaction. Second, in the 2000 Amendments, Congress established a tiered filing fee based on the dollar value of the transaction. In so doing, Congress appears to have concluded that there is a positive correlation between dollar value of transactions and agency resources devoted to investigating them. The tiered fee structure thus appears to reflect the view that larger dollar value transactions are more likely to require more antitrust review than smaller ones. These statutory changes led the Commission to conclude that there was no longer any special significance to be attached to the 15 percent level and that there is some significance to the $100 million and $500 million levels.

In addition to these reasons for adopting intermediate dollar thresholds in Section 801.1(h), the Commission believes this change will avoid certain administrative difficulties for the parties and the agencies. The existence of two different sets of thresholds, one for fees and another for notification requirements, would create difficult administrative problems. For example, suppose that the 15 percent and 25 percent thresholds were retained, and that A plans to acquire 26 percent of the voting securities of B in year 1 for $85 million. Under Section 802.21, A's filing would enable A to acquire up to 50 percent of B up through year 5, which would put A well above $100 million. In such a scenario, should A be required to pay a $125,000 filing fee at the time of its filing? Or should A be allowed to pay a $45,000 filing fee and to proceed up to 50 percent without paying any additional fee even though it would hold in excess of $100 million of the voting securities of B? Or should A be allowed to proceed up to 50 percent without filing but be required to pay an additional $125,000 fee for crossing the higher fee threshold (or, perhaps, be required to pay $80,000, crediting A for the $45,000 fee it had already paid)? Using the fee thresholds as Section 801.1(h) thresholds avoids these problems. In addition, as described above, doing so appears consistent with congressional intent and with encouraging efficient antitrust review.

The 25-percent-if-valued-at-greater-than-$1-billion threshold is intended to apply to progressive acquisitions of the stock of very large issuers. For such companies, even $500 million may represent a relatively small percentage

of the stock and therefore an additional threshold between $500 million and 50 percent is necessary. In the case of smaller issuers where just under 50 percent of the issuer's stock is valued less than $1 billion, the 25 percent threshold would be inapplicable.

Although these new thresholds are fairly self-explanatory, two features of the new thresholds deserve mention. First, the three monetary thresholds apply to acquisitions of voting securities or of assets but the percentage thresholds apply only to acquisitions of voting securities (as is indicated by the use of the word ''issuer''). These new thresholds thus do not introduce percentage notification thresholds for asset transactions. Second, the 50 percent threshold is the highest threshold regardless of the corresponding dollar value. That is, depending on the size of the issuer whose voting securities are being acquired, the 50 percent threshold may come after any of the monetary thresholds. If, however, 50 percent of the stock of an issuer is valued at $480 million, for example, there is no higher threshold at, say, $500 million because Section 7A(c)(3) of the act exempts acquisitions above the 50 percent level. Two examples have been added to illustrate the operation of the new thresholds.

Section 801.1(j): Engaged in Manufacturing

As a housekeeping matter, the definition of ''engaged in manufacturing'' has been amended to reference the current 1987 edition of the Standard Industrial Classification Manual.

Section 801.1(m): The Act

The definition of ''The act'' has been amended to include reference to the 2000 Amendments.

Section 801.10: Value of Voting Securities and Assets To Be Acquired

The last sentence in the example to Section 801.10 has been deleted, together with corresponding language in the Instructions that requests ''approximate value ''or ''estimated total value'' of assets in Item 2(d) of the Form. The Commission removed this language because a filing person must make as precise a valuation as it can under the new filing fee structure.

Section 801.11: Annual Net Sales and Total Assets

In Section 801.11(e)(2)(ii) the reference to Section 801.40(c) has been changed to Section 801.40(d) to reflect the renumbering of that section.

Section 801.12: Calculating Percentage of Voting Securities or Assets

Paragraphs (c) and (d) of Section 801.12, and the examples that follow have been removed because they are relevant only to a determination whether the percentage of assets being held or acquired meets the 15 percent size-of-transaction test. Because this test has been eliminated in the 2000 Amendments, these paragraphs and the corresponding examples are no longer applicable. The title of the section has also been changed by dropping ''or assets.''

Section 801.15: Aggregation of Voting Securities and Assets the Acquisition of Which Was Exempt

The reference to ''A's'' acquisition of less than 15 percent of the voting common stock of X has been deleted from Example 1 following Section 801.15. The reference was originally included to make clear that ''A's'' acquisition of the common stock alone would meet neither the $15 million nor the 15 percent the size-of-transaction threshold. The elimination of the 15 percent size-of-transaction threshold in the 2000 Amendments renders the reference meaningless, and it has been deleted.

Section 801.40: Exempt Formation of Joint Venture or Other Corporations

Section 801.40 has been amended to eliminate the size-of-person test for transactions valued at greater than $200 million. Specifically, a new paragraph (b) has been added to the section which makes an acquiring person in a joint venture subject to the act if the commerce test is satisfied and the size of transaction is valued at greater than $200 million. The only other changes to this section are minor and follow from the addition of new paragraph (b). They are: Redesignating the paragraph that follow (b); the addition of ''and (c)'' to new paragraph (d) (old paragraph (c)), which discusses what assets of the joint venture are to be included; requisite amendments to the example following the rule to reflect section and paragraph changes in the rule itself; addition of a new example demonstrating the application of new paragraph (b); and dollar changes to reflect the general increase in the filing threshold.

Part 802—Exemption Rules

Section 802.4: Acquisitions of Voting Securities of Issuers Holding Certain Assets the Direct Acquisition of Which Is Exempt

Section 802.4 exempts the acquisition of voting securities of issuers that hold certain assets the direct acquisition of which is exempt under the act or the rules. The rationale for this rule is that the applicability of an exemption should not depend on the form the acquisition takes, since the antitrust analysis would be the same whether voting securities or assets are being acquired. A change to the $15 million non-exempt assets threshold in this section is not mandated by the general increase in the size-of-transaction threshold from $15 million to $50 million, since the acquisition still would be an acquisition of voting securities of an issuer valued in excess of $50 million. However, since the threshold functions in the same manner as the size-of-transaction test in an asset acquisition, it appears consistent with Congressional intent to increase this threshold to the higher level as well. Accordingly, the Commission is amending the references from $15 million to $50 million in this rule and its Examples 1 and 2.

Section 802.20: Minimum Dollar Value

The preamble to Section 802.20, the Minimum Dollar Value Exemption, states that this provision applies to ''acquisition[s] which would be subject to the requirements of the act and which satisf[y] section 7A(a)(3)(A) [the 15 percent size-of-transaction test] but * * * not * * * section 7A(a)(3)(B) [the $15 million monetary size-of-transaction test].'' This rule exempts acquisitions of assets valued at less than $15 million regardless of the percentage of the assets of the acquired person they represent, and also exempts acquisitions of less than $15 million of voting securities unless the acquisition would confer control of an issuer with sales or assets of $25 million or more.

The need for Section 802.20 arose from the dual nature of the size-of-transaction test which made reportable certain very small transactions between parties meeting the size-of-person test. Absent Section 802.20, transactions could meet the statutory size-of-transaction test even though they fell below the monetary size-of-transaction test—a situation, as described below, that cannot occur under the 2000 Amendments. The most extreme example is that of a $100 million acquiring person acquiring 15 percent of the stock of a subsidiary of a $10 million acquired person for a price well below $15 million. Without Section 802.20, this transaction would have been reportable no matter how small the acquisition price was. Similarly, the acquisition of 15 percent of the assets of a $10 million person would have been reportable despite its small dollar value.

One of the 2000 Amendments eliminates the 15 percent size-of-transaction test. The removal of this test does away with the primary cause of the reportability of very small transactions and eliminates any need for Section 802.20. In addition, Congress has also increased the monetary size-of-transaction test to $50 million. These two measures assure that very small transactions are never reportable under the new statutory scheme. The $50 million threshold will be an absolute floor, with no transaction resulting in an acquiring person holding less than that amount of assets or voting securities'' of an acquired person being reportable. Because the $50 million statutory size-of-transaction threshold will be an absolute floor, the minimum dollar value exemption contained in Section 802.20 exempting transactions falling below that dollar threshold is no longer needed, and is removed.

Section 802.21: Acquisitions of Voting Securities Not Meeting or Exceeding Greater Notification Threshold

Section 802.21 is amended by the addition of paragraph (b), which addresses acquisitions of voting securities up to the next notification threshold by ''transitional'' filers, *i.e.,* acquiring persons who filed using the 1978 notification thresholds and who have met or crossed the threshold for which they filed within a year of the waiting period's expiration, but whose five-year period for making additional acquisitions under Section 802.21(a) has not expired as of February 1, 2001 (the effective date of the 2000 Amendments). Section 802.21(b) is an effort to strike a balance between the interests of these filers in being able to rely on rules that were in effect when they filed, and the need of the Premerger Notification Office to minimize the burden of administering two different sets of notification thresholds after February 1, 2001. Thus, transitional filers have one year from the effective date of the amendments or until the end of the original 5-year period for making additional acquisitions, whichever comes first, to acquire up to what was the next reporting threshold at the time that they filed, and they may do so without filing another notification, even though they might cross a new 2001 threshold. Thereafter, these acquiring persons, along with any other acquiring persons filing on or after February 1, 2001, must observe the 2001 thresholds contained in Section 801.1(h). The 1978 notification thresholds of $15 million, 15 percent, and 25 percent (for transactions valued at $1 billion and under) will be inapplicable to new filings as of February 1, 2001. Four new examples illustrate the application of Section 802.21(b).

Section 802.31: Acquisitions of Convertible Voting Securities

The reference to the acquisition of convertible voting securities being exempt ''even though they may be converted into 15 percent or more of the issuer's voting securities'' has been removed from the example to Section 802.31 in response to the elimination of the 15 percent size-of-transaction threshold by the 2000 Amendments.

Section 802.64: Acquisitions of Voting Securities by Certain Institutional Investors

Paragraphs (b)(4) and (b)(5)(ii) of Section 802.64 have been removed as unnecessary and example 1 has been revised to correct an inaccuracy. Paragraphs (b)(4) and (b)(5)(ii) made the acquisition of voting securities by an institutional investor exempt if the criteria in paragraphs (b)(1) through (b)(3) are satisfied and if, as a result of the acquisition, the institutional investor would not control the issuer and would hold voting securities of an issuer valued at $25 million or less. Given the increase in the general filing threshold to $50 million, the acquisition described in (b)(5)(ii) would be nonreportable, so there is no need to retain this exemption. Since the control test in (b)(4) was included only to prevent the exemption from being applied to acquisitions of more than 50 percent of the stock of an issuer for $25 million or less, it is no longer required with the deletion of the $25 million alternative because acquisitions at that dollar amount are no longer covered by the act. Section 802.64 now exempts acquisitions by certain institutional investors which are greater than $50 million but 15 percent or less. Example 1 has been revised to remove in two places the inaccurate statement that aggregate holdings equal to 15 percent would not be exempt under this section.

Part 803—Transmittal Rules

Section 803.1: Notification and Report Form

Section 803.1 has been revised to update the address for the Federal Trade Commission from 6th Street & Pennsylvania Avenue, N.W., to 600 Pennsylvania Avenue, NW, as now designated by the U.S. Postal Service. The Federal Trade Commission's Web site has also been added as a source for the Notification and Report Form.

Section 803.2: Instructions Applicable to Notification and Report Form

Section 803.2 has been revised to change references to Item 9 of the Notification and Report Form to Item 8, reflecting the reorganization of the Notification and Report Form. Paragraph (b) was also reorganized to correct an original drafting error. There is no additional revision of the text of this paragraph.

Section 803.5: Affidavits Required

Examples 2 and 3 to this section have been amended to reflect the new notification thresholds. A minor typographical error in example 2 was also corrected.

Section 803.9: Filing Fee

Section 803.9 is a new section on the payment of filing fees. Previously, the requirement of payment of a filing fee was not contained in the Clayton Act or in the HSR rules themselves, but was found at Pub. L. 103–317, amending Section 605 of Title VI of Pub. L. 101–162, 103 Stat. 1031. The 2000 Amendments build a filing fee structure into the Clayton Act for the first time and base the filing fee on the aggregate total amount of voting securities and assets held as a result of the acquisition. Because ''aggregate total amount * * * held'' is a concept defined and developed in the rules, the Commission believes it is appropriate that the rules contain instructions for the application of this concept to the proper payment of fees required under the statute.

Section 803.9 is very straightforward: paragraph (a) mandates that each acquiring person (except as provided in paragraphs (b) and (c), explained below) shall pay the filing fee required by the Clayton Act (as amended) to the Federal Trade Commission, and that no additional fee is due to the Department of Justice. Paragraph (a) is followed by a number of examples designed to illustrate how to apply the new graduated fee schedule to various types of transactions.

Paragraphs (b) and (c) create exceptions, in the case of consolidations and in certain cases where an acquiring entity has two ultimate parent entities, to the rule that every acquiring person must pay a filing fee. Consolidations are transactions where both parties lose their pre-acquisition identities, and a new corporation is formed. Both parties are deemed ''acquiring persons'' under the rules and, absent these exceptions, each would have to pay a filing fee. Similarly, where an entity is owned 50/50 by two persons, each is deemed to control the entity and to be an

''acquiring person'' when that entity makes an acquisition. While the 2000 Amendments do not mandate these changes, we believe they are appropriate in these limited circumstances. Consolidations are reviewed by the agencies in the same manner as mergers, which require only one filing fee. The absence of additional resource requirements to review consolidations argues against requiring two filing fees in such transactions. In transactions in which there are two acquiring persons that would have the same responses to items 5 through 8 of the Notification and Report Form, those two acquiring persons would have no significant business activities outside of the jointly controlled acquisition vehicle. Accordingly, the agencies are again essentially reviewing one transaction and a single filing fee seems appropriate for this type of transaction as well. Eliminating the double fee for these transactions is non-controversial and benefits potential filing parties; thus this change has been included with the interim amendments so it can take effect on February 1.

Paragraph (d) of Section 803.9 contains specific instructions for payment of the filing fee and refers filers to the Instructions to the Form for more specific electronic wire transfer payment (''EWT'') information. The preferred method of payment is EWT; thus this method of payment is highlighted.

Paragraph (e) provides that no filing fee or part of the filing fee shall be refunded, except where Commission staff determines the transaction was not reportable on its face under the rules. It is currently Commission practice to refund filing fees only in such instances, but paragraph (e) is added to codify that practice and give notice that acquiring persons will not receive partial reimbursement of their fee in the event they overvalue a transaction.

Section 803.10: Running of Time

Section 803.10 has been amended to reflect the fact that under the 2000 Amendments the waiting period for requests for additional information or documentary materials expires 30 days following substantial compliance. The section is also amended such that a waiting period that would expire on a Saturday, Sunday or legal public holiday, is extended to the end of the next regular business day. Section 803.10 has also been amended to correct the addresses of the Commission and the Department of Justice for the delivery of premerger notifications. As a housekeeping matter, paragraph (b) now contains a reference to 11 U.S.C. 363(b) to codify the current practice that bankruptcy matters are subject to the shortened waiting period afforded cash tender offers. Paragraph (c) was also reorganized to correct an original drafting error. There is no additional revision of the text of this paragraph.

In addition, Example 1 following Section 803.10 has been removed. It originally illustrated the concept that the 20-day second request waiting period cannot cut short the original 30-day waiting period for a non-801.30 acquisition. The 2000 Amendments extend the second request waiting period for non-801.30 transactions from 20 to 30 days; thus, the hypothetical situation in Example 1 could no longer occur, and it is pointless to retain this example in the rules. Former example 2 has been amended to reflect the 30-day second request waiting period.

Section 803.20: Requests for Additional Information or Documentary Material

Section 803.20(c)(2) and its example have been amended in response to the 2000 Amendments to change the request for additional information or documentary material waiting period from 20 to 30 days. As with Section 803.10 above, the rule now contains added references to 11 U.S.C. 363(b) to codify that bankruptcy matters are subject to the shortened waiting periods afforded cash tender offers.

This section has also been amended to reflect the fact that a second request to an acquired person in a bankruptcy transaction covered by 11 U.S.C. 363(b) does not extend the waiting period. That section of the Bankruptcy Code provides that subsection (e)(2) of Section 7A of the Clayton Act, which deals with how second requests affect the waiting period, shall apply to such bankruptcy transactions in the same manner as such subsection (e)(2) applies to a cash tender offer.

Part 803—Appendix: Premerger Notification and Report Form

The first Premerger Notification and Report Form (the ''Form'') was published on July 31, 1978, and was subsequently amended in 1987, with additional minor changes made in 1990 and 1995. The Commission is altering the Form again to accommodate the 2000 Amendments, as well as to implement some administrative changes that were proposed and received public comment in 1994. *See* 59 FR 30545 (June 14, 1994), *id.* at 46365 (Sept. 8, 1994) (extending comment period). Not all of the changes proposed in 1994 have been implemented, since several of the proposed changes were controversial, and re-proposal and comment regarding those changes would be appropriate prior to implementation. Those proposed changes will be addressed again in subsequent rulemakings.

Substantively, there is little change in the Form and the additions are relatively minor. The first page will now solicit information on the filing fee paid and method of payment. The first page of the Form will also ask for a voluntary listing of foreign competition authorities which the filing party believes will be notified of the proposed transaction. There will be boxes to check if the filing is a corrective filing for a transaction that has already been consummated or a filing subject to the special shortened waiting period afforded bankruptcy transactions under 11 U.S.C. 363(b). Former Items 10(a) and (b) are redesignated as Items 1(g) and (h), and Items 1–3 are reorganized with certain items redesignated for clarity and ease of completion and processing. The only amendment to Item 4 is a revision to reflect a change in Securities and Exchange Commission filing requirements. Items 5–7 are unchanged. Former Item 8 (Vendor-Vendee relationships) is removed. Former Item 9 is redesignated as Item 8. These changes are discussed in more detail below, in the order in which they appear on the Form.

General Instructions

Several minor changes have been made to update the general instructions. The address in the Information paragraph for the Federal Trade Commission has been updated from ''6th St. & Pa. Avenue, N.W.,'' to ''600 Pennsylvania Ave, NW,'' as now designated by the U.S. Postal Service. The Definition paragraph will include a reference to the **Federal Register** cite for these rules. The general instruction for Items 5 though 8 and the Appendix is expanded to clarify that the acquired person should limit its response to these items to the assets being sold or to the issuer(s) whose voting securities are being acquired as provided in Section 803.2(b). Acquired persons have often failed to limit their responses in this manner, and this clarification should remove any confusion. This expanded direction is also reiterated in the specific instructions for these items.

The Filing section of the general instructions is updated to give the current addresses of the Commission and the Department of Justice. It has also been revised to limit the number of original affidavits and certification pages which must accompany premerger filings as provided by Formal Interpretation 16 (Nov. 24, 1999).

Formal Interpretation 16 changed the policy of the Premerger Notification Office to allow filing persons to submit only one original affidavit and certification with their filings instead of five originals as previously required. The notarized original and one copy (with one set of documentary materials) should be submitted to the Commission's Premerger Notification Office and three copies (with one set of documentary materials) should be submitted to the Department of Justice.

Item by Item

Fee Information. With the new tiered fee schedule, a space has been added to the first page of the Form to elicit information regarding payment of the filing fee. The filing fee is based on the aggregate total amount of assets and voting securities to be held as a result of the acquisition.

Amount paid. The payer should enter the amount of the fee paid in the space where indicated. Should the fee be based on an amount that differs from the acquisition price, or if the acquisition price is undetermined and may fall within a range that straddles two filing fee thresholds, an explanation of the value reported is required to be submitted with the Form. The explanation should include discussion of adjustments to the acquisition price, a description of any exempt assets and their value, and the valuation methods used. To assist parties in making a proper determination of the value of the assets or voting securities to be held, a separate Valuation Worksheet can be obtained from the Premerger Notification Office (''PNO''). Although the PNO initially considered making this Worksheet an appendix to the Form, the Commission chose to make this Worksheet optional in order to ease the burden on filing parties. However, use of the Worksheet or something similar is strongly encouraged and should facilitate an accurate valuation of the acquisition.

Method of Payment. This section has been added to the Form to facilitate processing of fee payments with a minimal burden on the filing parties. Although instructions concerning the filing fee and the transmission of EWT payments have not previously appeared on the Form, these instructions closely track the filing fee information that historically has been available informally from the PNO. The acquiring person is responsible for ensuring full payment of the fee at the time of filing. Fees are payable in U.S. currency to the Federal Trade Commission by bank cashier's check, certified check or electronic wire transfer, although the preferred method of payment is by electronic wire transfer. Section 31001 of the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321–358 (''DCIA''), provides that Federal agencies shall require each person doing business with those agencies to furnish the person's taxpayer identification number to that agency. The DCIA defines ''doing business with'' to include entities that have been assessed a fine, fee, royalty or penalty by an agency, which would appear to include persons required to pay HSR filing fees. Thus, this section requests the taxpayer identification number or social security number of the acquiring person, and the payer of the fee if different from the acquiring person. If the acquiring person or payer of the fee is a natural person, a social security number should be given instead of the taxpayer identification number. If the acquiring person or payer is a foreign person, an identifying number need not be provided.

For EWTs, additional payment information is requested in this section of the Form. As the use of EWT for payment of the filing fee has increased, it has become apparent that additional information is needed for Commission staff to accurately pair each EWT with the HSR filing to which it pertains. Experience has shown that the EWT confirmation number, the name of the institution where the wire transfer originated, and the name of the payer if it differs from the person filing are all needed. The information received will ensure rapid and accurate identification of receipt of payment for payers utilizing EWT.

Notification for an Acquisition That Has Been Consummated in Violation of the HSR Act

As proposed in 1994, a question has been added to the preamble of the Form that requires reporting persons to indicate if the filing is a corrective filing being made for an acquisition that has already been consummated in violation of the act. Several times each year, persons file premerger notifications for acquisitions that have been consummated without filing notification and observing the appropriate waiting period. Persons who have consummated acquisitions in violation of the act are advised to make a corrective filing as soon as possible.

As explained in the 1994 Notice of Proposed Rulemaking, the PNO has established procedures for processing corrective filings and conducting a preliminary review to determine whether to refer the violation to the appropriate litigation office for further investigation and a possible civil penalty action. The PNO also monitors persons who have violated the act in order to identify repeat offenders. Responses to this question will enable the PNO to identify corrective filings promptly thereby assisting the PNO in its processing of these filings. Additional information and procedures for submission of corrective filings can be found on the PNO Web page at *www.ftc.gov/bc/hsr/hsr.htm.*

If, after February 1, 2001, parties discover that there was an acquisition made prior to February 1, 2001, that was subject to the reporting requirements of the act but for which a filing was not made, the parties must file a corrective filing even though the transaction would not be reportable under the 2000 Amendments. The acquisition is governed by the law in effect at the time of closing. Note also that the corrective filing would be subject to the new filing fee structure (*i.e.,* a violation valued in excess of $500MM would require a $280,000 filing fee with the corrective filing).

Transactions Subject to Foreign Antitrust Reporting Requirements

The Form is further amended to add a space for reporting persons to indicate if the filing is subject to foreign antitrust reporting requirements and requests the voluntary submission of the name(s) of any foreign antitrust or competition authority that, based upon the knowledge or belief of the filing person at the time of the filing, has been or will be notified of the proposed transaction and the date or anticipated date of such notification. This question on the Form was originally proposed in 1994 as mandatory but, based on the comments received, the Commission has decided to make providing this information voluntary. The filing person should respond based on its knowledge or belief ''at the time of the filing.'' The reasons for such amendments are discussed below.

Since the implementation of the HSR premerger notification program on September 5, 1978, the potential for multiple jurisdiction notifications relating to a proposed merger or acquisition has grown substantially. This growth appears to be due to the significant increase in the number of foreign antitrust authorities with a wide variety of mandatory or voluntary pre- or post-acquisition notification requirements, as well as to an increase in companies that conduct a variety of businesses in different countries.

Because of the development of merger notification programs in other countries, the U.S. antitrust enforcement agencies

have engaged in efforts to foster communication and cooperation among antitrust authorities. Providing premerger notification that a transaction is subject to review by other jurisdictions alerts the U.S. enforcement agencies to the presence of assets in those jurisdictions that may directly affect U.S. commerce. It may also facilitate identification of competitors in those jurisdictions that participate in a U.S. market identified in the subject transaction. The experience of the enforcement agencies has shown that cooperative efforts with foreign jurisdictions can enhance the enforcement of the antitrust laws against foreign mergers that may adversely affect U.S. commerce. Alerting the agencies at the time of filing that multiple jurisdiction filings will be made will enable the agencies to communicate with foreign counterparts only to the extent that statutorily protected information is not disclosed. However, early notice of multiple jurisdiction filings will also enable the agencies, where appropriate, to seek consent of the parties to enable more extensive cooperation between or among antitrust authorities in conducting their investigations. Because numerous foreign jurisdictions may be involved, some of which may not have been identified at the time the parties to a transaction are otherwise prepared to file their notification, the question has been modified from the 1994 proposal to provide that the response to this item should be made ''to the knowledge or belief of the filing person at the time of the filing of this notification.''

Transactions Subject to the Bankruptcy Code

A new question in the preamble of the Form requires both the acquiring and the acquired persons to identify whether the acquired person's filing is being made by a trustee in bankruptcy or debtor-in-possession subject to Section 363(b) of the Bankruptcy Code, 11 U.S.C. 363(b). This information will provide immediate notice to the enforcement agencies that the transaction is subject to the special, truncated waiting period of Section 363(b), with an initial waiting period of 15 days.

The rule as proposed in the 1994 Notice of Proposed Rulemaking required only the acquired person to respond. However, the agencies' goal of a more expeditious and efficient review of acquisitions subject to Section 363(b) of the Bankruptcy Code would be better achieved by requiring all filing persons to respond to this question. Parties to an acquisition do not always file simultaneously and in those instances when the acquiring person may file first, the agencies will be alerted immediately that the shortened waiting period is applicable and that expedited review is necessary.

Early Termination

The first page of the Form provides a box for requesting early termination of the waiting period. The former instructions for this item noted that notification of each grant of early termination would be published in the **Federal Register** as required by Section 7A(b)(2) of the act. This instruction has been amended to include mention of the current PNO practice of publishing grants of early termination on the Commission's web site. As the use of electronic communications has grown enormously, it is often easier for parties to seek information on the World Wide Web rather than wait for publication of the **Federal Register**. The PNO has been posting grants of early termination on its Web page since 1998.

Items 1 Through 3

These three items have been reorganized and some subsections are redesignated for ease of completion by the parties and efficiency of processing and review by the agencies. These items request the same basic information as before, with minor additions and deletions.

Item 1, as before, seeks background information about the person making the filing. The primary change is that former Item 10 is now redesignated as Items 1(g) and 1(h). These items are updated to request the fax number and e-mail address of contact persons.

Item 2 seeks information about the ultimate parent entities and the value of the assets or voting securities to be held, and reflects the new filing thresholds. This item has one new addition in Item 2(e) which requires the acquiring persons to provide the name of the person(s) who performed any fair market valuation used to determine the aggregate total value of the transaction. Now that the amount of the filing fee is based on the value of the acquired person's assets or voting securities to be held by the acquiring person, the determination of that value has increased in importance. Although the agencies would initially contact the person listed for that purpose in Items 1(g) and (h) should any questions arise regarding information supplied on the Form, this addition should help the parties and the agencies pinpoint who would be most knowledgeable on the issue of valuation.

Item 3 focuses on the description of the acquisition and the details of the assets and voting securities being acquired. References to ''approximate'' or ''estimated'' values have been deleted as the new tiered fee structure requires valuation to be made with greater certainty. As a housekeeping matter, Item 3(b)(i), which requests information for acquisitions of assets, has been amended to remove the reference to Section 801.40. This reference has proven to be irrelevant to completion of this item. Item 3(c), requesting information about voting securities acquisitions, has been amended by deleting the last sentence referencing the 15 percent and $15 million size-of-transaction tests. Former Item 2(c)(vii), requesting the percentage of each class of securities which will be held by the acquiring person, has also been removed because this information has proven to be of minimal benefit in the agencies' premerger analysis.

Item 4 The SEC eliminated Schedule 14D–1 effective January 24, 2000, by combining the existing schedules for issuer and third-party tender offers into one schedule available for all tender offers, entitled ''Schedule TO.'' *See* 17 CFR 240.14D–100; www.sec.gov/rules/final/33–7760.htm. Consequently, Item 4(a) is now amended to require production of a Schedule TO instead of a Schedule 14d–1 if the acquisition is a tender offer.

Removal of Former Item 8: Vendor/Vendee Relationships

Former Item 8 asked for information about any vendor-vendee relationship between reporting parties during the most recent year with respect to any manufactured product. Responses to this item were intended to alert the enforcement agencies to the potential risks of vertical foreclosure or increased vertical integration in a given industry. However, the agencies have found that they have not needed to rely on Item 8 to learn about transactions that present vertical concerns. In addition, the specific data provided in response to Item 8 on manufactured product sales between filing persons are of limited use in determining whether the proposed acquisition will result in a vertical integration or foreclosure that will unreasonably restrain trade. In view of both the burden that Item 8 may place on vendees, particularly large diversified persons that may purchase from other filing persons a wide variety of manufactured products through numerous subsidiaries and divisions, and the record of the agencies' limited use of such vendor/vendee data, Item 8 is removed from the Form.

Removal of Former Item 8 does not mean that vertical acquisitions present no potential competitive risks. The agencies simply have determined that the information provided in response to this item has not been particularly useful in identifying vertical relationships that may pose serious threats to competition.

Administrative Procedure Act

The requirement to publish a notice of proposed rulemaking and afford an opportunity for public comment under the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b), with respect to substantive rule amendments, if any, does not apply where an agency for good cause finds that such procedure would be ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(A). To the extent the rule amendments described above are required by the 2000 Amendments to the Clayton Act, as explained earlier, the time period between the signing of 2000 Amendments into law and the legislation's effective date is extremely brief. These rule changes are basic and necessary to conform the rules to the 2000 Amendments, particularly the new $50 million size-of-transaction threshold and the new tiered fee structure, so that the Hart-Scott-Rodino premerger notification program remains functional with minimal confusion to persons required to file. To delay implementation beyond the effective date of the 2000 Amendments in order to solicit and consider public comment would leave rules in place that do not reflect the statutory changes, thereby creating conflict between the statute and rules. Accordingly, the Commission has determined that prior notice of and comment on these rule amendments would be impracticable, unnecessary and contrary to the public interest.

These rule amendments also include certain minor modifications to the Form not directly related to the 2000 Amendments, most of which were already published in proposed form for public comment, as previously noted. To the extent these Form modifications include certain additional housekeeping matters, they are simple clarifications or corrections, with respect to which the Commission finds that a separate notice-and-comment period would be unnecessary and not in the public interest. Nonetheless, the Commission invites comments on the amended rules and Forms, and reserves the right to make further modifications based on its experience and on any comments that may be received after the amendments have taken effect.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, the recent amendments to Section 7A of the Clayton Act, which these rule amendments implement, were intended to reduce the burden of the premerger notification program by exempting all transactions valued at less than $50 million. Further, none of the rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3518, requires agencies to submit requirements for ''collections of information'' to the Office of Management and Budget (''OMB'') and obtain clearance prior to instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The HSR premerger notification rules and Form contain information collection requirements as defined by the Paperwork Reduction Act that have been reviewed and approved by the Office of Management and Budget under OMB Control No. 3084–0005 (preceding the latest HSR amendments). As noted earlier, the interim rules implement amendments to Section 7A of the Clayton Act, which reduce the burden of the premerger reporting program by exempting all transactions valued at less than $50 million. Because the interim rules would affect the information collection requirements of the premerger notification program, they are being submitted to OMB for review pursuant to the Paperwork Reduction Act. The Supporting Statement accompanying the Request for OMB Review states that the total burden imposed on the members of the public subject to the requirements of the Act, including the interim rules, is estimated to be 192,089 hours per year (based on fiscal year 2000 filings). This constitutes approximately a 47% reduction from what the burden estimate would be absent the interim rules and based on the number of fiscal year 2000 filings. As the public comment period extends beyond the interim rules' effective date, the Commission is seeking emergency paperwork clearance from OMB for the collections of information and burden estimates associated with the rules' amendments. The Commission will seek the ordinary 3-year clearance immediately thereafter with the requisite submissions to OMB.

List of Subjects in 16 CFR Parts 801, 802, and 803

Antitrust, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR parts 801, 802, and 803 as follows:

PART 801—COVERAGE RULES

1. Revise the authority citation for part 801 to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend § 801.1 by revising paragraphs (h), (j), and (m) to read as follows:

§ 801.1 Definitions.

* * * * *

(h) *Notification threshold.* The term ''notification threshold'' means:

(1) An aggregate total amount of voting securities and assets of the acquired person valued at greater than $50 million but less than $100 million;

(2) An aggregate total amount of voting securities and assets of the acquired person valued at $100 million or greater but less than $500 million;

(3) An aggregate total amount of voting securities and assets of the acquired person valued at $500 million or greater;

(4) Twenty-five percent of the outstanding voting securities of an issuer if valued at greater than $1 billion; or

(5) Fifty percent of the outstanding voting securities of an issuer if valued at greater than $50 million.

Examples:

1. Person ''A'' will acquire 10 percent of the voting securities of corporation ''B'' for $60 million. ''A'' would indicate the $50 million notification threshold. ''A'' later will acquire all of the outstanding voting securities of ''B'' and will hold as a result voting securities of ''B'' valued at $600 million. ''A'' would indicate the 50 percent notification threshold for the later filing,

even though the $100 million and $500 million notification thresholds would also be crossed as a result of the acquisition.

2. Person ''A'' will acquire 26 percent of the voting securities of corporation ''B'' for $550 million. ''A'' files for the $500 million notification threshold. Later ''A'' will acquire an additional 20 percent of the voting securities of ''B'' and as a result will hold 46 percent of the voting securities of ''B'' valued at $1.1 billion. ''A'' is now required to file for the 25 percent notification threshold despite the fact that it already holds in excess of 25 percent of the voting securities of ''B'' prior to the current acquisition. The 25 percent threshold is crossed when as the result of an acquisition, 25 percent or more, but less than 50 percent, of an issuer's voting securities are held and those securities are valued in excess of $1 billion.

* * * * *

(j) *Engaged in manufacturing.* A person is ''engaged in manufacturing'' if it produces and derives annual sales or revenues in excess of $1 million from products within industries 2000–3999, as coded in the Standard Industrial Classification Manual (1987 edition) published by the Executive Office of the President, Office of Management and Budget.

* * * * *

(m) *The act.* References to ''the act'' refer to Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390, and as amended by Pub. L. 106–553, 114 Stat. 2762. References to ''Section 7A( )'' refer to subsections of Section 7A of the Clayton Act. References to ''this section'' refer to the section of these rules in which the term appears.

3. Amend § 801.2 by revising Examples 2 and 3 in paragraph (d) to read as follows:

§ 801.2 Acquiring and acquired persons.

* * * * *

(d) * * *

Examples: * * *

2. In the above example, suppose the consideration for Y consists of $8 million worth of the voting securities of A. With regard to the transfer of this consideration, ''B'' is an acquiring person because it will hold voting securities it did not previously hold, and ''A'' is an acquired person because its voting securities will be held by B. Since these voting securities are worth less than $50 million, however, the acquisition of these securities is not reportable. ''A'' will therefore report as an acquiring person only and ''B'' as an acquired person only.

3. In the above example, suppose that, as consideration for Y, A transfers to B a manufacturing plant valued at $51 million. ''B'' is thus an acquiring person and ''A'' an acquired person in a reportable acquisition of assets. ''A'' and ''B'' will each report as both an acquiring and an acquired person in this transaction because each occupies each role in a reportable acquisition.

* * * * *

4. Amend § 801.4 by revising Examples 1 and 5 in paragraph (b) to read as follows:

§ 801.4 Secondary acquisitions.

* * * * *

(b) * * *

Examples: 1. Assume that acquiring person ''A'' proposes to acquire all the voting securities of corporation B. This section provides that the acquisition of voting securities of issuers held but not controlled by B or by any entity which B controls are secondary acquisitions by ''A.'' Thus, if B holds more than $50 million of the voting securities of corporation X (but does not control X), and ''A'' and ''X'' satisfy Sections 7A (a)(1) and (a)(2), ''A'' must file notification separately with respect to its secondary acquisition of voting securities of X. ''X'' must file notification within fifteen days (or in the case of a cash tender offer, 10 days) after ''A'' files, pursuant to § 801.30.

5. In example 4 above, suppose the consideration paid by A for the acquisition of B is $60 million worth of the voting securities of A. By virtue of § 801.2(d)(2), ''A'' and ''B'' are each both acquiring and acquired persons. A will still be deemed to have acquired control of B, and therefore the resulting acquisition of the voting securities of X is a secondary acquisition. Although ''B'' is now also an acquiring person, unless B gains control of A in the transaction, B still makes no secondary acquisitions of stock held by A. If the consideration paid by A is the voting securities of one of A's subsidiaries and B thereby gains control of that subsidiary, B will make secondary acquisitions of any minority holdings of that subsidiary.

* * * * *

5. Amend § 801.10 by revising its example to read as follows:

§ 801.10 Value of voting securities and assets to be acquired.

* * * * *

Example: Corporation A, the ultimate parent entity in person ''A,'' contracts to acquire assets of corporation B, and the contract provides that the acquisition price is not to be determined until after the acquisition is effected. Under paragraph (b) of this section, for purposes of the act, the value of the assets is to be the fair market value of the assets. Under paragraph (c)(3), the board of directors of corporation A must in good faith determine the fair market value. That determination will control for 60 days whether ''A'' and ''B'' must observe the requirements of the act; that is, ''A'' and ''B'' must either file notification or consummate the acquisition within that time. If ''A'' and ''B'' neither file nor consummate within 60 days, the parties would no longer be entitled to rely on the determination of fair market value, and, if in doubt about whether required to observe the requirements of the act, would have to make a second determination of fair market value.

6. Amend § 801.11 by revising the introductory text and the example to paragraph (b), paragraph (e)(2)(ii), and Examples 1 through 4 to paragraph (e), to read as follows:

§ 801.11 Annual net sales and total assets.

* * * * *

(b) Except for the total assets of a joint venture or other corporation at the time of its formation which shall be determined pursuant to § 801.40(d) the annual net sales and total assets of a person shall be as stated on the financial statements specified in paragraph (c) of this section: *Provided:*

* * * * *

Example: Person ''A'' is composed of entity A, subsidiaries B1 and B2 which A controls, subsidiaries C1 and C2 which B1 controls, and subsidiary C3 which B2 controls. Suppose that A's most recent financial statement consolidates the annual net sales and total assets of B1, C1, and C2, but not B2 or C3. In order to determine whether person ''A'' meets the criteria of Section 7A(a)(2)(B), as either an acquiring or an acquired person, A must recompute its annual net sales and total assets to reflect consolidation of the nonduplicative annual net sales and nonduplicative total assets of B2 and C3.

* * * * *

(e) * * *

(2) * * *

(ii) Where applicable, its assets as determined in accordance with § 801.40(d).

Examples: For examples 1–4, assume that A is a newly-formed company which is not controlled by any other entity. Assume also that A has no sales and does not have the balance sheet described in paragraph (c)(2) of this section.

1. A will borrow $105 million in cash and will purchase assets from B for $100 million. In order to establish whether A's acquisition of B's assets is reportable, A's total assets are determined by subtracting the $100 million that it will use to acquire B's assets from the $105 million that A will have at the time of the acquisition. Therefore, A has total assets of $5 million and does not meet any size-of-person test of Section 7A(a)(2).

2. Assume that A will acquire assets from B and that, at the time it acquires B's assets, A will have $85 million in cash and a factory valued at $60 million. A will exchange the factory and $80 million cash for B's assets. To determine A's total assets, A should subtract from the $85 million cash the $80 million that will be used to acquire assets from B and add the remainder to the value of the factory. Thus, A has total assets of $65 million. Even though A will use the factory as part of the consideration for the acquisition, the value of the factory must still be included in A's total assets. Note that A and B may also have to report the acquisition by B of A's non-cash assets (i.e., the factory). For that acquisition, the value of the cash A will use to buy B's assets is not excluded from A's total assets. Thus, in the acquisition by B, A's total assets are $145 million.

3. Assume that company A will make a $150 million acquisition and that it must pay a loan origination fee of $5 million. A borrows $161 million. A does not meet the size-of-person test in Section 7A(a)(2) because its total assets are less than $10 million. $150 million is excluded because it will be consideration for the acquisition and $5 million is excluded because it is an expense incidental to the acquisition. Therefore, A is only a $6 million person. Note that if A were making an acquisition valued at over $200 million, the acquisition would be reportable without regard to the sizes of the persons involved.

4. Assume that ''A'' borrows $165 million to acquire $100 million of assets from ''B'' and $60 million of voting securities of ''C.'' To determine its size for purposes of its acquisition from ''B,'' ''A'' subtracts the $100 million that it will use for that acquisition. Therefore, A has total assets of $65 million for purposes of its acquisition from ''B.'' To determine its size with respect to its acquisition from ''C,'' ''A'' subtracts the $60 million that will be paid for ''C's'' voting securities. Thus, for purposes of its acquisition from ''C'', ''A'' has total assets of $105 million. In the first acquisition ''A'' meets the $10 million size-of-person test and in the second acquisition ''A'' meets the $100 million size-of-person test of Section 7A(a)(2).

7. Amend § 801.12 as follows:

a. Revise the heading of the section to read ''Calculating percentage of voting securities.'';

b. Remove paragraphs (c) and (d), including the examples thereto.

8. Amend § 801.13 by revising Examples 1 and 4 to paragraph (a), and by revising paragraph (b)(2)(ii) and its example, to read as follows:

§ 801.13 Voting securities or assets to be held as a result of acquisition.

* * * * *

(a) * * *

Examples: 1. Assume that acquiring person ''A'' holds $52 million of the voting securities of X, and is to acquire another $1 million of the same voting securities. Since under paragraph (a) of this section all voting securities ''A'' will hold after the acquisition are held ''as a result of'' the acquisition, ''A'' will hold $53 million of the voting securities of X as a result of the acquisition. ''A'' must therefore observe the requirements of the act before making the acquisition, unless the present acquisition is exempt under Section 7A(c), § 802.21 or any other rule.

* * * * *

Examples: 4. On January 1, company A acquired $60 million of voting securities of company B. ''A'' and ''B'' filed notification and observed the waiting period for that acquisition. Company A plans to acquire $1 million of assets from company B on May 1 of the same year. Under § 801.13(a)(3), ''A'' and ''B'' do not aggregate the value of the earlier acquired voting securities to determine whether the acquisition is subject to the act. Therefore, the value of the acquisition is $1 million and it is not reportable.

* * * * *

(b) * * *

(2) * * *

(ii) Subject to the provisions of § 801.15, if the acquiring person has acquired from the acquired person within the 180 calendar days preceding the signing of such agreement any assets which are presently held by the acquiring person, and the acquisition of which was not previously subject to the requirements of the act or the acquisition of which was subject to the requirements of the act but they were not observed, then for purposes of the size-of-transaction tests of Section 7A(a)(2) and for § 801.1(h), both the acquiring and the acquired persons shall treat such assets as though they had not previously been acquired and are being acquired as part of the present acquisition. The value of any assets previously acquired which are subject to this paragraph shall be determined in accordance with § 801.10(b) as of the time of their prior acquisition.

Example: Acquiring person ''A'' proposes to make two acquisitions of assets from acquired person ''B,'' 90 days apart, and wishes to determine whether notification is necessary prior to the second acquisition. For purposes of the size-of-transaction tests in Section 7A(a)(2), ''A'' must aggregate both of its acquisitions and must value each as of the time of its occurrence.

* * * * *

9. Amend § 801.14 by revising the introductory text of the section and Examples 1 and 2 following paragraph (b), to read as follows:

§ 801.14 Aggregate total amount of voting securities and assets.

For purposes of Section 7A(a)(2) and § 801.1(h), the aggregate total amount of voting securities and assets shall be the sum of:

* * * * *

(b) * * *

Examples: 1. Acquiring person ''A'' previously acquired $36 million of the voting securities (not convertible voting securities) of corporation X. ''A'' now intends to acquire $8 million of X's assets. Under paragraph (a) of this section, ''A'' looks to § 801.13(a) and determines that the voting securities are to be held ''as a result of'' the acquisition. Section 801.13(a) also provides that ''A'' must determine the present value of the previously acquired securities. Under paragraph (b) of this section, ''A'' looks to § 801.13(b)(1) and determines that the assets to be acquired will be held ''as a result of'' the acquisition, and are valued under § 801.10(b) at $8 million. Therefore, if the voting securities have a present value of more than $42 million, the asset acquisition is subject to the requirements of the act since, as a result of it, ''A'' would hold an aggregate total amount of the voting securities and assets of ''X'' in excess of $50 million.

2. In the previous example, assume that the assets acquisition occurred first, and that the acquisition of the voting securities is to occur within 180 days of the first acquisition. ''A'' now looks to § 801.13(b)(2) and determines that because the second acquisition is of voting securities and not assets, the asset and voting securities acquisitions are not treated as one transaction. Therefore, the second acquisition would not be subject to the requirements of the act since the value of the securities to be acquired does not exceed the $50 million size-of-transaction test.

10. Amend § 801.15 by revising the introductory text of the section by revising the Examples 1, 2, 4, 6 and 7 following paragraph (c), to read as follows:

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of determining the aggregate total amount of voting securities and assets of the acquired person held by the acquiring person under Section 7A(a)(2) and § 801.1(h), none of the following will be held as a result of an acquisition:

* * * * *

(c) * * *

Examples: 1. Assume that acquiring person ''A'' is simultaneously to acquire $51 million of the convertible voting securities of X and $12 million of the voting common stock of X. Although the acquisition of the convertible voting securities is exempt under § 802.31, since the overall value of the securities to be acquired is greater than $50 million, ''A'' must determine whether it is obliged to file notification and observe a waiting period before acquiring the securities. Because § 802.31 is one of the exemptions listed in paragraph (a)(2) of this rule, ''A'' would not hold the convertible voting securities as a result of the acquisition. Therefore, since as a result of the acquisition ''A'' would hold only the common stock, the size-of-transaction tests of Section 7A(a)(2) would not be satisfied, and ''A'' need not observe the requirements of the act before acquiring the common stock. (Note, however, that the $51 million of convertible voting securities would be reflected in ''A's'' next regularly prepared balance sheet, for purposes of § 801.11.)

2. In the previous example, the rule was applied to voting securities the present acquisition of which is exempt. Assume instead that ''A'' had acquired the convertible voting securities prior to its acquisition of the common stock. ''A'' still would not hold the convertible voting securities as a result of the acquisition of the common stock, because the rule states that voting securities the previous acquisition of which was exempt also fall within the rule. Thus, the size-of-transaction tests of Section 7A(a)(2) would again not be satisfied, and ''A'' need not observe the requirements of the act before acquiring the common stock.

* * * * *

4. Assume that acquiring person ''B,'' a United States person, acquired from corporation ''X'' two manufacturing plants located abroad, and assume that the acquisition price was $60 million. In the most recent year, sales into the United States attributable to the plants were $15 million, and thus the acquisition was exempt under § 802.50(a)(2). Within 180 days of that acquisition, ''B'' seeks to acquire a third plant from ''X,'' to which United States sales of $12 million were attributable in the most recent year. Since under § 801.13(b)(2), as a result of the acquisition, ''B'' would hold all three plants of ''X,'' and the $25 million limitation in § 802.50(a)(2) would be exceeded, under paragraph (b) of this rule, ''B'' would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition, ''B'' would hold assets of ''X'' exceeding $50 million in value, would not qualify for the exemption in § 802.50(a)(2), and must observe the requirements of the act and file notification for the acquisition of all three plants before acquiring the third plant.

* * * * *

6. ''X'' acquired 55 percent of the voting securities of M, an entity controlled by ''Z,'' six months ago and now proposes to acquire 50 percent of the voting stock of N, another entity controlled by ''Z.'' M's assets consist of $150 million worth of producing coal reserves plus $47 million worth of non-exempt assets and N's assets consist of a producing coal mine worth $100 million together with non-exempt assets with a fair market value of $36 million. ''X's'' acquisition of the voting securities of M was exempt under § 802.4(a) because M held exempt assets pursuant to § 802.3(b) and less than $50 million of non-exempt assets. Because ''X'' acquired control of M in the earlier transaction, M is now within the person of ''X,'' and the assets of M need not be aggregated with those of N to determine if the subsequent acquisition of N will exceed the limitation for coal reserves or for non-exempt assets. Since the assets of N alone do not exceed these limitations, ''X's'' acquisition of N also is not reportable.

7. In Example 6, above, assume that ''X'' acquired 30 percent of the voting securities of M and proposes to acquire 40 percent of the voting securities of N, another entity controlled by ''Z.'' Assume also that M's assets at the time of ''X's'' acquisition of M's voting securities consisted of $90 million worth of producing coal reserves and non-exempt assets with a fair market value of $39 million, and that N's assets currently consist of $60 million worth of producing coal reserves and non-exempt assets with a fair market value of $28 million. Since ''X'' acquired a minority interest in M and intends to acquire a minority interest in N, and since M and N are controlled by ''Z,'' the assets of M and N must be aggregated, pursuant to §§ 801.15(b) and 801.13, to determine whether the acquisition of N's voting securities is exempt. ''X'' is required to determine the current fair market value of M's assets. If the fair market value of M's coal reserves is unchanged, the aggregated exempt assets do not exceed the limitation for coal reserves. However, if the present fair market value of N's non-exempt assets also is unchanged, the present fair market value of the non-exempt assets of M and N when aggregated is greater than $50 million. Thus the acquisition of the voting securities of N is not exempt. If ''X'' proposed to acquire 50 percent or more of the voting securities of both M and N in the same acquisition, the assets of M and N must be aggregated to determine if the acquisition of the voting securities of both issuers is exempt. Since the fair market value of the aggregated non-exempt assets exceeds $50 million, the acquisition would not be exempt.

* * * * *

11. Amend § 801.20 by revising its Examples 1 and 2 to read as follows:

§ 801.20 Acquisitions subsequent to exceeding threshold.

* * * * *

Examples: 1. Person ''A'' acquires $10 million of the voting securities of person ''B'' before the effective date of these rules. If ''A'' wishes to acquire an additional $41 million of the voting securities of ''B'' after the effective date of the rules, notification will be required by reason of Section 7A(a)(2).

2. In example 1, assume that the value of the voting securities of ''B'' originally acquired by ''A'' has reached a present value exceeding $50 million. If ''A'' wishes to acquire any additional voting securities or assets of ''B,'' notification will be required. See § 801.13(a).

12. Amend § 801.21 by revising the introductory text to read as follows:

§ 801.21 Securities and cash not considered assets when acquired.

For purposes of determining the aggregate total amount of assets under Section 7A(a)(2) and §§ 801.1(h)(1) and 801.13(b):

* * * * *

13. Amend § 801.30 by revising paragraph (b)(2) and Example 2 to read as follows:

§ 801.30 Tender offers and acquisitions of voting securities from third parties.

* * * * *

(b) * * *

(2) The acquired person shall file the notification required by the act, in accordance with these rules, no later than 5 p.m. Eastern Time on the 15th (or, in the case of cash tender offers, the 10th) calendar day following the date of receipt, as defined by § 803.10(a), by the Federal Trade Commission and Assistant Attorney General of the notification filed by the acquiring person. Should the 15th (or, in the case of cash tender offers, the 10th) calendar day fall on a weekend day or federal holiday, the notification shall be filed no later than 5 p.m. Eastern Time on the next following business day.

* * * * *

Examples: * * *

2. Acquiring person ''A'' proposes to acquire $60 million of the voting securities of corporation X on a securities exchange. The waiting period begins when ''A'' files notification. ''X'' must file notification within 15 calendar days thereafter. The seller of the X shares is not subject to any obligations under the act.

* * * * *

14. Amend § 801.31 by revising the example to read as follows:

§ 801.31 Acquisitions of voting securities by offerees in tender offers.

* * * * *

Example: Assume that ''A,'' which has annual net sales exceeding $100 million, makes a tender offer for voting securities of corporation X. The consideration for the tender offer is to be voting securities of A. ''S,'' a shareholder of X with total assets exceeding $10 million, wishes to tender its holdings of X and in exchange would receive shares of A valued at $56 million. Under this section, ''S's'' acquisition of the shares of A would be an acquisition separately subject to the requirements of the act. Before ''S'' may acquire the voting securities of A, ''S'' must first file notification and observe a waiting period—which is separate from any waiting period that may apply with respect to ''A'' and ''X.'' Since § 801.30 applies, the waiting period applicable to ''A'' and ''S'' begins upon filing by ''S,'' and ''A'' must file with respect to ''S's'' acquisition within 15 days pursuant to § 801.30(b). Should the waiting period with respect to ''A'' and ''X'' expire or be terminated prior to the waiting period with respect to ''S'' and ''A,'' ''S'' may wish to tender its X-shares and place the A-shares into a nonvoting escrow until the expiration or termination of the latter waiting period.

15. Amend § 801.32 by revising the example to read as follows:

§ 801.32 Conversion an acquisition.

* * * * *

Example: Assume that acquiring person ''A'' wishes to convert convertible voting securities of issuer X, and is to receive common stock of X valued at $80 million. If ''A'' and ''X'' satisfy the criteria of Section 7A(a)(1) and Section 7A(a)(2)(B)(ii), then ''A'' and ''X'' must file notification and observe the waiting period before ''A'' completes the acquisition of the X common stock, unless exempted by Section 7A(c) or these rules. Since § 801.30 applies, the waiting period begins upon notification by ''A,'' and ''X'' must file notification within 15 days.

16. Amend § 801.40 by revising paragraphs (b), (c) and (d), by adding paragraph (e), by revising the example at the end of the section and redesignating it as Example 1, and by adding an Example 2, to read as follows:

§ 801.40 Formation of joint venture or other corporations.

* * * * *

(b) Unless exempted by the act or any of these rules, upon the formation of a joint venture or other corporation, in a

transaction meeting the criteria of Section 7A(a)(1) and 7A(a)(2)(A) (other than in connection with a merger or consolidation), an acquiring person shall be subject to the requirements of the act.

(c) Unless exempted by the act or any of these rules, upon the formation of a joint venture or other corporation, in a transaction meeting the criteria of Section 7A(a)(1) and the criteria of Section 7A(a)(2)(B)(i) (other than in connection with a merger or consolidation), an acquiring person shall be subject to the requirements of the act if:

(1)(i) The acquiring person has annual net sales or total assets of $100 million or more;

(ii) The joint venture or other corporation will have total assets of $10 million or more; and

(iii) At least one other acquiring person has annual net sales or total assets of $10 million or more; or

(2)(i) The acquiring person has annual net sales or total assets of $10 million or more;

(ii) The joint venture or other corporation will have total assets of $100 million or more; and

(iii) At least one other acquiring person has annual net sales or total assets of $10 million or more.

(d) For purposes of paragraphs (b) and (c) of this section and determining whether any exemptions provided by the act and these rules apply to its formation, the assets of the joint venture or other corporation shall include:

(1) All assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the act; and

(2) Any amount of credit or any obligations of the joint venture or other corporation which any person contributing to the formation has agreed to extend or guarantee, at any time.

(e) The commerce criterion of Section 7A(a)(1) is satisfied if either the activities of any acquiring person are in or affect commerce, or the person filing notification should reasonably believe that the activities of the joint venture or other corporation will be in or will affect commerce.

Examples: 1. Persons ''A,'' ''B,'' and ''C'' agree to create new corporation ''N,'' a joint venture. ''A,'' ''B,'' and ''C'' will each hold one third of the shares of ''N.'' ''A'' has more than $100 million in annual net sales. ''B'' has more than $10 million in total assets but less than $100 million in annual net sales and total assets. Both ''C''s total assets and its annual net sales are less than $10 million. ''A,'' ''B,'' and ''C'' are each engaged in commerce. ''A,'' ''B,'' and ''C'' have agreed to make an aggregate initial contribution to the new entity of $18 million in assets and each to make additional contributions of $21 million in each of the next three years. Under paragraph (d), the assets of the new corporation are $207 million. Under paragraph (c), ''A'' and ''B'' must file notification. Note that ''A'' and ''B'' also meet the criterion of Section 7A(a)(2)(B)(i) since they will be acquiring one third of the voting securities of the new entity for $69 million. N need not file notification; see § 802.41.

2. In the preceding example ''A'' has over $10 million but less than $100 million in sales and assets, ''B'' and ''C'' have less than $10 million in sales and assets. ''N'' has total assets of $500 million. Assume that ''A'' will acquire 50 percent of the voting securities of ''N'' and ''B'' and ''C'' will each acquire 25 percent. Since ''A'' will acquire in excess of $200 million in voting securities of ''N'', the size-of-person test in § 801.40(c) is inapplicable and ''A'' is required to file notification.

17. Amend § 801.90 by revising Examples 1 and 2 to read as follows:

§ 801.90 Transactions or devices for avoidance.

* * * * *

Examples: 1. Suppose corporations A and B wish to form a joint venture. A and B contemplate a total investment of over $100 million in the joint venture; persons ''A'' and ''B'' each have total assets in excess of $100 million. Instead of filing notification pursuant to § 801.40, A creates a new subsidiary, A1, which issues half of its authorized shares to A. Assume that A1 has total assets of $3000. ''A'' then sells 50 percent of its A1 stock to ''B'' for $1500. Thereafter, ''A'' and ''B'' each contribute $53 million to A1 in exchange for the remaining authorized A1 stock (one-fourth each to ''A'' and ''B''). A's creation of A1 was exempt under Sec. 802.30; its $1500 sale of A1 stock to ''B'' did not meet the size-of-transaction filing threshold in Section 7A(a)(2)(B); and the second acquisition of stock in A1 by ''A'' and ''B'' was exempt under § 802.30 and Sections 7A(c)(3) and (10). Since this scheme appears to be for the purpose of avoiding the requirements of the act, the sequence of transactions will be disregarded. The transactions will be viewed as the formation of a joint venture corporation by ''A'' and ''B'' having over $10 million in assets. Such a transaction would be covered by § 801.40 and ''A'' and ''B'' must file notification and observe the waiting period.

2. Suppose ''A'' wholly owns and operates a chain of twenty retail hardware stores, each of which is separately incorporated and has assets of less than $10 million. The aggregate fair market value of the assets of the twenty store corporations is $60 million. ''A'' proposes to sell the stores to ''B'' for $60 million. For various reasons it is decided that ''B'' will buy the stock of each of the store corporations from ''A.'' Instead of filing notification and observing the waiting period as contemplated by the act, ''A'' and ''B'' enter into a series of five stock purchase-sale agreements for $12 million each. Under the terms of each contract, the stock of four stores will pass from ''A'' to ''B''. The five agreements are to be consummated on five successive days. Because after each of these transactions the store corporations are no longer part of the acquired person (§ 801.13(a) does not apply because control has passed, see § 801.2), and because $12 million is below the size-of-transaction filing threshold of Section 7A(a)(2)(B), none of the contemplated acquisitions would be subject to the requirements of the act. However, if the stock of all of the store corporations were to be purchased in one transaction, no exemption would be applicable, and the act's requirements would have to be met. Because it appears that the purpose of making five separate contracts is to avoid the requirements of the act, this section would ignore the form of the separate transactions and consider the substance to be one transaction requiring compliance with the act.

PART 802—EXEMPTION RULES

18. Revise the authority citation for part 802 to read as follows:

Authority: 15 U.S.C. 18a(d).

19. Amend § 802.1 by revising Examples 1 through 7 and 9 through 10 to read as follows:

§ 802.1 Acquisitions of goods and realty in the ordinary course of business.

* * * * *

Examples: 1. Greengrocer Inc. intends to sell to ''A'' all of the assets of one of the 12 grocery stores that it owns and operates throughout the metropolitan area of City X. Each of Greengrocer's stores constitutes an operating unit, i.e., a business undertaking in a particular location. Thus ''A's'' acquisition is not exempt as an acquisition in the ordinary course of business. However, the acquisition will not be subject to the notification requirements if the acquisition price or fair market value of the store's assets does not exceed $50 million.

2. ''A,'' a manufacturer of airplane engines, agrees to pay $52 million to ''B,'' a manufacturer of airplane parts, for certain new engine components to be used in the manufacture of airplane engines. The acquisition is exempt under § 802.1(b) as new goods as well as under § 802.1(c)(3) as current supplies.

3. ''A,'' a power generation company, proposes to purchase from ''B,'' a coal company, $75 million of coal under a long-term contract for use in its facilities to supply electric power to a regional public utility and steam to several industrial sites. This transaction is exempt under § 802.1(c)(2) as an acquisition of current supplies. However, if ''A'' proposed to purchase coal reserves rather than enter into a contract to acquire output of a coal mine, the acquisition would not be exempt as an acquisition of goods in the ordinary course of business. The acquisition may still be exempt pursuant to § 802.3(b) as an acquisition of reserves of coal if the requirements of that section are met.

4. ''A,'' a national producer of canned fruit, preserves, jams and jellies, agrees to purchase

from ''B'' for $60 million a total of 20,000 acres of orchards and vineyards in several locations throughout the U.S. ''A'' plans to harvest the fruit from the acreage for use in its canning operations. The acquisition is not exempt under § 802.1 because orchards and vineyards are real property, not ''goods.'' If, on the other hand, ''A'' had contracted to acquire from ''B'' the fruit and grapes harvested from the orchards and vineyards, the acquisition would qualify for the exemption as an acquisition of current supplies under § 802.1(c)(3). Although the transfer of orchards and vineyards is not exempt under § 802.1, the acquisition would be exempt under § 802.2(g) as an acquisition of agricultural property.

5. ''A,'' a railcar leasing company, will purchase $55 million of new railcars from a railcar manufacturer in order to expand its existing fleet of cars available for lease. The transaction is exempt under § 802.1(b) as an acquisition of new goods and § 802.1(c), as an acquisition of current supplies. If ''A'' subsequently sells the railcars to ''C,'' a commercial railroad company, that acquisition would be exempt under § 802.1(d)(2), provided that ''A'' acquired and held the railcars solely for resale or leasing to an entity not within itself.

6. ''A,'' a major oil company, proposes to sell two of its used oil tankers for $75 million to ''B,'' a dealer who purchases oil tankers from the major U.S. oil companies. ''B's'' acquisition of the used oil tankers is exempt under § 802.1(d)(1) provided that ''B'' is actually acquiring beneficial ownership of the used tankers and is not acting as an agent of the seller or purchaser.

7. ''A,'' a cruise ship operator, plans to sell for $58 million one of its cruise ships to ''B,'' another cruise ship operator. ''A'' has, in good faith, executed a contract to acquire a new cruise ship with substantially the same capacity from a manufacturer. The contract specifies that ''A'' will receive the new cruise ship within one month after the scheduled date of the sale of its used cruise ship to ''B.'' Since ''B'' is acquiring a used durable good that ''A'' has contracted to replace within six months of the sale, the acquisition is exempt under § 802.1(d)(3).

* * * * *

9. Three months ago ''A,'' a manufacturing company, acquired several new machines that will replace equipment on one of its production lines. ''A's'' capacity to produce the same products increased modestly when the integration of the new equipment was completed. ''B,'' a manufacturing company that produces products similar to those produced by ''A,'' has entered into a contract to acquire for $66 million the machinery that ''A'' replaced. Delivery of the equipment by ''A'' to ''B'' is scheduled to occur within thirty days. Since ''A'' purchased new machinery to replace the productive capacity of the used equipment, which it sold within six months of the purchase of the new equipment, the acquisition by ''B'' is exempt under § 802.1(d)(3).

10. ''A'' will sell to ''B'' for $56 million all of the equipment ''A'' uses exclusively to perform its billing requirements. ''B'' will use the equipment to provide ''A's'' billing needs pursuant to a contract which ''A'' and ''B'' executed 30 days ago in conjunction with the equipment purchase agreement. Although the assets ''B'' will acquire make up essentially all of the assets of one of ''A's'' management and administrative support services divisions, the acquisition qualifies for the exemption under § 802.1(d)(4) because a company's internal management and administrative support services, however organized, are not an operating unit as defined by Sec. 802.1(a). Management and administrative support services are not a ''business undertaking'' as that term is used in Sec. 802.1(a). Rather, they provide support and benefit to the company's operating units and support the company's business operations. However, if the assets being sold also derived revenues from providing billing services for third parties, then the transfer of these assets would not be exempt under Sec. 802.1(d)(4), since the equipment is not being used solely to provide management and administrative support services to ''A''.

* * * * *

20. Amend § 802.2 by revising examples 3 through 5, 7, 9, 10, and 12 to read as follows:

§ 802.2 Certain acquisitions of real property assets.

* * * * *

Examples: * * *

3. ''A'' proposes to acquire a $200 million tract of wilderness land from ''B.'' Copper deposits valued at $57 million and timber reserves valued at $60 million are situated on the land and will be conveyed as part of this transaction. During the last three fiscal years preceding the sale, the property generated $50,000 from the sale of a small amount of timber cut from the reserves two years ago. ''A's'' acquisition of the wilderness land from ''B'' is exempt as an acquisition of unproductive real property because the property did not generate revenues exceeding $5 million during the thirty-six months preceding the acquisition. The copper deposits and timber reserves are by definition unproductive real property and, thus, are not separately subject to the notification requirements.

4. ''A'' proposes to purchase from ''B'' for $140 million an old steel mill that is not currently operating to add to ''A's'' existing steel production capacity. The mill has not generated revenues during the 36 months preceding the acquisition but contains equipment valued at $56 million that ''A'' plans to refurbish for use in its operations. ''A's'' acquisition of the mill and the land on which it is located is exempt as unproductive real property. However, the transfer of the equipment and any assets other than the unproductive property is not exempt and is separately subject to the notification requirements of the act.

5. ''A'' proposes to purchase two downtown lots, Parcels 1 and 2, from ''B'' for $70 million. Parcel 1, located in the southwest section, contains no structures or improvements. A hotel is located in the northeast section on Parcel 2, and it has generated $9 million in revenues during the past three years. The purchase of Parcel 1 is exempt if it qualifies as unproductive real property, i.e., it has not generated annual revenues in excess of $5 million in the three fiscal years prior to the acquisition. Parcel 2 is not unproductive real property, but its acquisition is exempt under § 802.2(e) as the acquisition of a hotel.

* * * * *

7. ''A'' proposes to purchase from ''B,'' for $60 million, a 100 acre parcel of land that includes a currently operating factory occupying 10 acres. The other 90 adjoining acres are vacant and unimproved and are used by ''B'' for storage of supplies and equipment. The factory and the unimproved acreage have fair market values of $32 million and $28 million, respectively. The transaction is not exempt under § 802.2(c) because the vacant property is adjacent to property occupied by the operating factory. Moreover, if the 90 acres were not adjacent to the 10 acres occupied by the factory, the transaction would not be exempt because the 90 acres are being used in conjunction with the factory being acquired and thus are not unproductive property.

* * * * *

9. ''A'' intends to acquire three shopping centers from ''B'' for a total of $180 million. The anchor stores in two of the shopping centers are department stores, the businesses of which ''A'' is buying from ''B'' as part of the overall transaction. The acquisition of the shopping centers is an acquisition of retail rental space that is exempt under § 802.2(h). However, ''A's'' acquisition of the department store businesses, including the portion of the shopping centers that the two department stores being purchased occupy, are separately subject to the notification requirements. If the value of these assets exceeds $50 million, ''A'' must comply with the requirements of the act for this part of the transaction.

10. ''A'' wishes to purchase from ''B'' a parcel of land for $67 million. The parcel contains a race track and a golf course. The golf course qualifies as recreational land pursuant to § 802.2(f), but the race track is not included in the exemption. Therefore, if the value of the race track is more than $50 million, ''A'' will have to file notification for the purchase of the race track.

* * * * *

12. ''A'' proposes to purchase the prescription drug wholesale distribution business of ''B'' for $80 million. The business includes six regional warehouses used for ''B's'' national wholesale drug distribution business. Since ''A'' is acquiring the warehouses in connection with the acquisition of ''B's'' prescription drug wholesale distribution business, the acquisition of the warehouses is not exempt.

* * * * *

21. Amend § 802.3 by revising Examples 2 and 3 to read as follows:

§ 802.3 Acquisitions of carbon-based mineral reserves.

* * * * *

Examples: * * *

2. ''A,'' an oil company, proposes to acquire for $180 million oil reserves currently in production along with field

pipelines and treating and metering facilities which serve such reserves exclusively. The acquisition of the reserves and the associated assets are exempt. ''A'' will also acquire from ''B'' for $51 million a natural gas processing plant and its associated gathering pipeline system. This acquisition is not exempt since § 802.3(c) excludes these assets from the exemption in § 802.3 for transfers of associated exploration or production assets.

3. ''A,'' an oil company, proposes to acquire a coal mine currently in operation and associated production assets for $90 million from ''B,'' an oil company. ''A'' will also purchase from ''B'' producing oil reserves valued at $100 million and an oil refinery valued at $13 million. The acquisition of the coal mine and the oil reserves is exempt pursuant to § 802.3. Although § 802.3(c) excludes the refinery from the exemption in § 802.3 for transfers of associated exploration and production assets, ''A's'' acquisition of the refinery is not subject to the notification requirements of the act because its value does not exceed $50 million.

* * * * *

22. Amend § 802.4 by revising paragraph (a) and Examples 1 and 2 following paragraph (c) to read as follows:

§ 802.4 Acquisitions of voting securities of issuers holding certain assets the direct acquisition of which is exempt.

(a) An acquisition of voting securities of an issuer whose assets together with those of all entities it controls consist or will consist of assets whose purchase would be exempt from the requirements of the act pursuant to Section 7A(c)(2) of the act, § 802.2, § 802.3 or § 802.5 of these rules is exempt from the reporting requirements if the acquired issuer and all entities it controls do not hold other non-exempt assets with an aggregate fair market value of more than $50 million.

* * * * *

(c) * * *

Examples: 1. ''A,'' a real estate investment company, proposes to purchase 100 percent of the voting securities of C, a wholly-owned subsidiary of ''B,'' a construction company. C's assets are a newly constructed, never occupied hotel, including fixtures, furnishings and insurance policies. The acquisition of the hotel would be exempt under § 802.2(a) as a new facility and under § 802.2(d). Therefore, the acquisition of the voting securities of C is exempt pursuant to § 802.4(a) since C holds assets whose direct purchase would be exempt under § 802.2 and does not hold non-exempt assets exceeding $50 million in value.

2. ''A'' proposes to acquire 60 percent of the voting securities of C from ''B.'' C's assets consist of a portfolio of mortgages valued at $55 million and a small manufacturing plant valued at $26 million. The manufacturing plant is an operating unit for purposes of § 802.1(a). Since the acquisition of the mortgages would be exempt pursuant to Section 7A(c)(2) of the act and since the value of the non-exempt manufacturing plant is less than $50 million, this acquisition is exempt under § 802.4(a).

* * * * *

23. Amend § 802.5 by revising Example 2 to read as follows:

§ 802.5 Acquisitions of investment rental property assets.

* * * * *

Examples: * * *

2. ''X'' intends to buy from ''Y'' a development commonly referred to as an industrial park. The industrial park contains a warehouse/distribution center, a retail tire and automobile parts store, an office building, and a small factory. The industrial park also contains several parcels of vacant land. If ''X'' intends to acquire this industrial park as investment rental property, the acquisition will be exempt pursuant to § 802.5. If, however, ''X'' intends to use the factory for its own manufacturing operations, this exemption would be unavailable. The exemptions in § 802.2 for warehouses, rental retail space, office buildings, and undeveloped land may still apply and, if the value of the factory is $50 million or less, the entire transaction may be exempted by that section.

24. Amend § 802.6 by revising paragraph (b)(2)(ii) and its example as set forth below.

§ 802.6 Federal agency approval.

* * * * *

(b) * * *

(2) * * *

(ii) If the transaction is an acquisition of voting securities, or is treated under the rules as an acquisition of voting securities, and the acquiring person will, as a result of the acquisition, hold voting securities of the acquired person valued in excess of $50 million, the business or businesses of the acquired issuer (and all entities which it controls) which are not engaged in aeronautics or air transportation as defined in section 101 of the Federal Aviation Act, 49 U.S.C. 1301.

Example: Assume that A (an entity included within person ''A'') proposes to acquire voting securities of B (an entity included within person ''B'') for $100 million. A and B are both air carriers who meet the size-of-person test, but B also owns a commercial data processing business located in the United States with a value of $60 million. Assume that this transaction requires CAB approval under 49 U.S.C. 1378. Since the acquired person has a business other than aeronautics or air transportation, the parties must report under § 802.6(b)(2) because the parties meet the size-of-person test, no other exemption applies to the acquisition of the data processing business, and the acquisition of the non-aeronautic business is deemed to be an acquisition of assets valued at $60 million.

25. Amend § 802.9 by revising Example 1 to read as follows:

§ 802.9 Acquisition solely for the purpose of investment.

* * * * *

Examples: 1. Suppose that acquiring person ''A'' acquires 6 percent of the voting securities of issuer X, valued at $52 million. If the acquisition is solely for the purpose of investment, it is exempt under Section 7A(c)(9).

* * * * *

26. Remove and reserve § 802.20.

27. Amend § 802.21 as follows:

a. Remove the introductory text;

b. Revise paragraph (a) and add Examples 1 through 4 thereto to read as set forth below;

c. Revise paragraph (b) and add Examples 1 through 4 thereto to read as set forth below; and

d. Remove Examples 1 through 5 following paragraph (c):

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

(a) An acquisition of voting securities shall be exempt from the requirements of the act if:

(1) The acquiring person and all other persons required by the act and these rules to file notification filed notification with respect to an earlier acquisition of voting securities of the same issuer;

(2) The waiting period with respect to the earlier acquisition has expired, or been terminated pursuant to § 803.11, and the acquisition will be consummated within 5 years of such expiration or termination; and

(3) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

Examples: 1. Corporation A acquires $53 million of the voting securities of corporation B and both ''A'' and ''B'' file notification as required, indicating the $50 million threshold. Within five years of the expiration of the original waiting period, ''A'' acquires additional voting securities of B but not in an amount sufficient to meet or exceed $100 million or 50 percent of the voting securities of B. No additional notification is required.

2. In Example 1, ''A'' continues to acquire B's securities. Before ''A's'' holdings meet or exceed $100 million or 50 percent of B's outstanding voting securities, ''A'' and ''B'' must file notification and wait the prescribed period, regardless of whether the acquisition occurs within five years after the expiration of the earlier waiting period.

3. In Example 2, suppose that ''A'' and ''B'' file notification at the $500 million level and that, within 5 years after expiration of the waiting period, ''A'' continues to acquire voting securities of B. No further notification is required until ''A'' plans to make the acquisition that will give it 25 percent of B's

voting securities valued at over $1 billion; or 50 percent ownership of B. (Once ''A'' holds 50 percent, further acquisitions of voting securities are exempt under Section 7A(c)(3)).

4. This section also allows a person to recross any of the threshold notification levels—$50 million, $100 million, $500 million, 25 percent (if valued over $1 billion) and 50 percent—any number of times within 5 years of the expiration of the waiting period following notification for that level. Thus, if in Example 1, ''A'' had disposed of some voting securities so that it held less than $50 million of the voting securities of B, and thereafter had increased its holdings to more than $50 million but less than $100 million or 50 percent of B, notification would not be required if the increase occurred within 5 years of the expiration of the original waiting period. Similarly, in Examples 2 and 3, ''A'' could decrease its holdings below, and then increase its holdings above, $50 million and $500 million, respectively without filing notification, if done within 5 years of the expiration of those respective waiting periods.

(b) *Year 2001 Transition.* For transactions filed using the 1978 thresholds where the waiting period expired after February 1, 1996, an acquiring person may acquire up to what was the next percentage threshold at the time it made its filing without filing another notification, even if in doing so it crosses a 2001 notification threshold in § 801.1(h). However, it has only one year from February 1, 2001, or until the end of the original 5-year period following expiration of the waiting period, whichever comes first, to acquire additional securities up to the previous next threshold. Any acquisition thereafter must be the subject of a new notification if it meets or exceeds a 2001 threshold in § 801.1(h).

Examples: 1. Corporation A filed to acquire 20 percent of the voting securities of corporation B and indicated the 15 percent threshold. The waiting period expired on October 3, 1999. ''A'' acquired the 20 percent within the year following expiration of the waiting period. ''A'' has until February 1, 2002 to acquire additional securities up to 25 percent of ''B''s voting securities, and need not make another filing before doing so, even though such acquisition by ''A'' may cross the $50 million, $100 million or $500 million notification threshold in § 801.1(h). After February 1, 2002, ''A'' and ''B'' must observe the 2001 notification thresholds set out in § 801.1(h).

2. Same facts as in Example 1 above, except that the waiting period on corporation A's filing expired on October 3, 1996. ''A'' has until October 3, 2001 to make additional acquisitions up to the 25 percent threshold. The one year transition period in § 802.21(b) cannot be used to extend the 5-year period for additional acquisitions provided for in § 802.21(a).

3. Prior to February 1, 2001, ''A'' filed to acquire 12 percent of the voting securities of corporation B and indicated the $15 million notification threshold. In March, 2001, ''A'' determines that it will make an additional acquisition which will result in it holding 16 percent of the voting securities of B, valued at $60 million. ''A'' is required to file notification at the $50 million notification threshold prior to making the acquisition.

4. Prior to February 1, 2001, ''A'' filed to acquire 26 percent of the voting securities of ''B'' and indicated the 25 percent notification threshold. After February 1, 2002, ''A'' will acquire additional shares of ''B'' which will result in it holding 30 percent of the voting securities of ''B'', valued at $125 million. ''A'' is required to file notification at the $100 million notification threshold prior to making the acquisition. ''A'' could, however, have reached this level (30 percent valued at $125 million) prior to February 1, 2002 without making an additional filing. If ''A'' had done this, and then wanted to acquire any additional voting securities of ''B'' after February 1, 2002, ''A'' would have to file for the $100 million notification threshold.

* * * * *

28. Amend § 802.23 by revising Example 2 to read as follows:

§ 802.23 Amended or renewed tender offers.

* * * * *

Examples: * * *

2. In the previous example, assume that A makes an amended tender offer for 27 percent of the voting securities of B, valued at greater than $1 billion. Since a new notification threshold will be crossed, this section requires that ''A'' must again file notification and observe a new waiting period. Paragraph (a) of this section, however, provides that ''B'' need not file notification again.

* * * * *

29. Amend § 802.31 by revising its example to read as follows:

§ 802.31 Acquisitions of convertible voting securities.

* * * * *

Example: This section applies regardless of the dollar value of the convertible voting securities held or to be acquired. Note, however, that subsequent conversions of convertible voting securities may be subject to the requirements of the act. See § 801.32.

30. Amend § 802.35 by revising Examples 1 and 2 to read as follows:

§ 802.35 Acquisitions by employee trusts.

* * * * *

Examples: 1. Company A establishes a trust for its employees that meets the qualifications of section 401 of the Internal Revenue Code. Company A has the power to designate the trustee of the trust. That trust then acquires 30% of the voting securities of Company A for $120 million. Later, the trust acquires 20% of the stock of Company B, a wholly-owned subsidiary of Company A, for $58 million. Neither acquisition is reportable.

2. Assume that in the example above, ''A'' has total assets of $100 million. ''C'' also has total assets of $100 million and is not controlled by Company A. The trust controlled by Company A plans to acquire 40 percent of the voting securities of Company C for $80 million. Since Company C is not included within ''A,'' ''A'' must observe the requirements of the act before the trust makes the acquisition of Company C's shares.

* * * * *

31. Amend § 802.41 by revising Examples 1 and 2 to read as follows:

§ 802.41 Joint venture or other corporations at time of formation.

* * * * *

Examples: 1. Corporations A and B, each having sales of $200 million, each propose to contribute $80 million in cash in exchange for 50 percent of the voting securities of a new corporation, N. Under this section, the new corporation need not file notification, although both ''A'' and ''B'' must do so and observe the waiting period prior to receiving any voting securities of N.

2. In addition to the facts in example 1 above, A and B have agreed that upon creation N will purchase 100 percent of the voting securities of corporation C for $55 million. Because N's purchase of C is not a transaction in connection with N's formation, and because in any event C is not a contributor to the formation of N, ''A,'' ''B'' and ''C'' must file with respect to the proposed acquisition of C and must observe the waiting period.

32. Amend § 802.64 by revising paragraphs (b)(3) and (b)(4), by removing paragraph (b)(5), and by revising Example 1 following paragraph (c), to read as follows:

§ 802.64 Acquisitions of voting securities by certain institutional investors.

* * * * *

(b) * * *

(3) Made solely for the purpose of investment; and

(4) As a result of the acquisition the acquiring person would hold fifteen percent or less of the outstanding voting securities of the issuer.

(c) * * *

Examples: 1. Assume that A and its subsidiary, B, are both institutional investors as defined in paragraph (a) of this section, that X is not, and that the conditions set forth in paragraphs (b)(2), (3) and (4) of this section are satisfied. Either A or B may acquire voting securities of X worth in excess of $50 million as long as the aggregate amount held by person ''A'' as a result of the acquisition does not exceed 15 percent of X's outstanding voting securities. If the aggregate holdings would exceed 15 percent, ''A'' may acquire no more than $50 million worth of voting securities without being subject to the requirements of the act.

* * * * *

PART 803—TRANSMITTAL RULES

33. Revise the authority citation for part 803 to read as follows:

Authority: 15 U.S.C. 18a(d).

34. Revise § 803.1(a) to read as follows:

§ 803.1 Notification and Report Form.

(a) The notification required by the act shall be the Notification and Report Form set forth in the appendix to this part (803), as amended from time to time. All acquiring and acquired persons required to file notification by the act and these rules shall do so by completing and filing the Notification and Report Form, or a photostatic or other equivalent reproduction thereof, in accordance with the instructions thereon and these rules. Copies of the Notification and Report Form may be obtained in person from the Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC, 20580, or by writing to the Premerger Notification Office, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The Notification and Report Form also can be downloaded from the Federal Trade Commission's web site at www.ftc.gov.

* * * * *

35. Amend § 803.2 by adding introductory text to paragraph (b), by revising paragraphs (b)(1) introductory text and (b)(2) and the example thereto, and by revising the introductory text to paragraph (c), as set forth below.

§ 803.2 Instructions applicable to Notification and Report Form.

* * * * *

(b) Except as provided in paragraph (b)(2) of this section and paragraph (c) of this section:

(1) Items 5–8 and the appendix to the Notification and Report Form must be completed—

* * * * *

(2) For purposes of items 7 and 8 of the Notification and Report Form, the acquiring person shall regard the acquired person in the manner described in paragraphs (b)(1) (ii) and (iii) of this section.

Example: Person ''A'' is comprised of entities separately engaged in grocery retailing, auto rental, and coal mining. Person ''B'' is comprised of entities separately engaged in wholesale magazine distribution, auto rental and book publishing. ''A'' proposes to purchase 100 percent of the voting securities of ''B''s book publishing subsidiary. For purposes of item 5, under clause (b)(1)(i), ''A'' reports the activities of all its entities; under clause (b)(1)(iii), ''B'' reports only the operations of its book publishing subsidiary. For purposes of items 7 and 8, under paragraph (b)(2) of this section, ''A'' must regard ''B'' as consisting only of its book publishing subsidiary and must disregard the fact that ''A'' and ''B'' are both engaged in the auto rental business.

(c) In response to items 5, 7, and 8 and the appendix to the Notification and Report Form—

* * * * *

36. Amend § 803.5 by revising Examples 2 and 3 to paragraph (a)(2), to read as follows:

§ 803.5 Affidavits required.

(a) * * *

(2) * * *

Examples: * * *

2. ''A'' holds 100,000 shares of the voting securities of Company B. ''A'' has a good faith intention to acquire an additional 900,000 shares of Company B's voting securities. ''A'' states in its notice to B, inter alia, that as a result of the acquisition it will hold 1,000,000 shares. If 1,000,000 shares of Company B represent 20 percent of Company B's outstanding voting securities, the statement will be deemed by the enforcement agencies a notification for the $100 million threshold.

3. Company A intends to acquire voting securities of Company B. ''A'' does not know exactly how many shares it will acquire, but it knows it will definitely acquire $51 million worth and may acquire 50 percent of Company B's shares. ''A''s notice to the acquired person would meet the requirements of § 803.5(a)(1)(iii) if it states, inter alia, either: ''Company A has a present good faith intention to acquire $51 million of the outstanding voting securities of Company B, and depending on market conditions, may acquire more of the voting securities of Company B and thus designates the 50 percent threshold,'' or ''Company A has a present good faith intention to acquire $51 million of the outstanding voting securities of Company B, and depending on market conditions may acquire 50 percent or more of the voting securities of Company B.'' The Commission would deem either of these statements as intending to give notice for the 50 percent threshold.

* * * * *

37. Amend § 803.7 by revising its example to read as follows:

§ 803.7 Expiration of notification.

* * * * *

Example: A files notification that $125 million of the voting securities of corporation B are to be acquired. One year after the expiration of the waiting period, A has acquired only $95 million of B's voting securities. Although § 802.21 will permit ''A'' to purchase any amount of B's voting securities short of $100 million within 5 years from the expiration of the waiting period, A's holdings may not meet or exceed the $100 million notification threshold without ''A'' and ''B'' again filing notification and observing a waiting period.

38. Add § 803.9 to read as follows:

§ 803.9 Filing fee.

(a) Each acquiring person shall pay the filing fee required by the act to the Federal Trade Commission, except as provided in paragraphs (b) and (c) of this section. No additional fee is to be submitted to the Antitrust Division of the Department of Justice.

Examples: 1. ''A'' wishes to acquire voting securities issued by B, where the greater of the acquisition price and the market price is $64 million, pursuant to § 801.10. When ''A'' files notification for the transaction, it must indicate the $50 million threshold and pay a filing fee of $45,000 because the aggregate total amount of the acquisition is less than $100 million, but greater than $50 million.

2. ''A'' acquires $40 million of assets from ''B.'' The parties meet the size of person criteria of Section 7A(a)(2)(B), but the transaction is not reportable because it does not exceed the $50 million size of transaction threshold of that provision. Two months later ''A'' acquires additional assets from ''B'' valued at $90 million. Pursuant to the aggregation requirements of § 801.13(b)(2)(ii), the aggregate total amount of ''B's'' assets that ''A'' will hold as a result of the second acquisition is $130 million. Accordingly, when ''A'' files notification for the second transaction, ''A'' must indicate the $100 million threshold and pay a filing fee of $125,000 because the aggregate total amount of the acquisition is less than $500 million, but not less than $100 million.

3. ''A'' acquires $60 million of voting securities issued by B after submitting its notification and $45,000 filing fee and indicates the $50 million threshold. Two years later, ''A'' files to acquire additional voting securities issued by B valued at $50 million because it will exceed the next higher reporting threshold (see § 801.1(h)). Assuming the second transaction is reportable and the value of its initial holdings is unchanged (see § 801.13(a)(2) and 801.10(c)), the provisions of § 801.13(a)(1) require that ''A'' report that the value of the second transaction is $110 million because ''A'' must aggregate previously acquired securities in calculating the value of B's voting securities that it will hold as a result of the second acquisition. ''A'' should pay a filing fee of $125,000.

4. ''A'' signs a contract with a stated purchase price of $110 million, subject to adjustments, to acquire all of the assets of ''B.'' If the amount of adjustments can be reasonably estimated, the acquisition price—as adjusted to reflect that estimate—is determined. If the amount of adjustments cannot be reasonably estimated, the acquisition price is undetermined. In either case the board or its delegee must also determine in good faith the fair market value. (§ 801.10(b) states that the value of an asset acquisition is to be the fair market value or the acquisition price, if determined and greater than fair market value.) ''A'' files notification and submits a $45,000 filing fee. ''A''s decision to pay that fee may be justified on either of two bases, and ''A'' should submit an attachment to the Notification and Report Form explaining the valuation. First, ''A'' may have concluded that the acquisition

price can be reasonably estimated to be $98 million, because of anticipated adjustments—e.g., based on due diligence by ''A's'' accounting firm indicating that one third of the inventory is not saleable. If fair market value is also determined in good faith to be less than $100 million, the $45,000 fee is appropriate. Alternatively, ''A'' may conclude that because the adjustments cannot reasonably be estimated, acquisition price is undetermined. If so, ''A'' would base the valuation on the good faith determination of fair market value. The acquiring party's execution of the Certification also attests to the good faith valuation of the value of the transaction.

5. ''A'' contracts to acquire all of the assets of ''B'' for $1 billion. The assets include hotels, office buildings, and rental retail property with a total value of $850 million, all of which are exempted by § 802.2. Section 802.2 directs that these assets are exempt from the requirements of the act and that reporting requirements for the transaction should be determined by analyzing the remainder of the acquisition as if it were a separate transaction. Furthermore, § 801.15(a)(2) states that those exempt assets are never held as a result of the acquisition. Accordingly, the aggregate amount of the transaction is $150 million. ''A'' will be liable for a filing fee of $125,000, rather than $280,000, because the value of the transaction is not less than $100 million but less than $500 million. Note, however, that ''A'' must include an attachment in its Notification and Report Form setting out both the $1 billion total purchase price and the basis for its determination that the aggregate total amount of the acquisition under the rules is $150 million rather than $1 billion, in accordance with the Instructions to the Form.

6. ''A'' acquires coal reserves from ''B'' valued at $150 million. No notification or filing fee is required because the acquisition is exempted by § 802.3(b). Three months later, A proposes to acquire additional coal reserves from ''B'' valued at $450 million. This transaction is subject to the notification requirements of the act because the value of the acquisition exceeds the $200 million limitation on the exemption in § 802.3(b). As a result of § 801.13(b)(2)(ii), the prior $150 million acquisition must be added because the additional $450 million of coal reserves were acquired from the same person within 180 days of the initial acquisition. Because aggregating the two acquisitions exceeds the $200 million exemption threshold, § 801.15(b) directs that ''A'' will also hold the previously exempt $150 million acquisition; thus, the aggregate amount held as a result of the $450 million acquisition is $600 million. Accordingly, ''A'' must file notification to acquire the coal reserves valued at $600 million and pay a filing fee of $280,000.

(b) For a transaction described by § 801.2(d)(2)(iii), the parties shall pay only one filing fee. In accordance with § 801.2(d)(2)(iii), both parties to a consolidation are acquiring and acquired persons and must submit a Notification and Report Form where the transaction meets the reporting requirements of that act; however, only one filing fee is required in connection with such a transaction, and is payable by either party to the transaction. The filing fee is based on the greater of the two sizes of transaction in the consolidation.

(c) For a reportable transaction in which the acquiring entity has two ultimate parent entities, both ultimate parent entities are acquiring persons; however, if the responses for both ultimate parent entities would be the same for items 5 through 8 of the Notification and Report Form, only one filing fee is required in connection with the transaction.

(d) *Manner of payment.* Fees may be paid by United States postal money order, bank money order, bank cashier's check, certified check or by electronic wire transfer (EWT). The fee must be paid in U.S. currency.

(1) Fees paid by money order or check shall be made payable to the ''Federal Trade Commission,'' omitting the name or title of any official of the Commission, and shall be submitted to the Premerger Notification Office of the Federal Trade Commission along with the Notification and Report Form.

(2) Fees paid by EWT shall be deposited to the Treasury's account at the New York Federal Reserve Bank. Specific instructions for making EWT payments are contained in the Instructions to the Notification and Report Form.

(e) *Refunds.* Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payer and no part of the filing fee shall be refunded. The filing fee shall be refunded only if the Commission's staff determines, based on the information and representations contained in the filing person's notification, that premerger notification was not required by the act. Once the Commission's staff has determined that the notification was required, the filing fee shall not be refunded even if it appears at the time of consummation that the transaction does not meet the reporting requirements established in the act.

39. Amend § 803.10 by:

a. Revising paragraphs (b)(1) and (b)(2),

b. Adding a new paragraph (b)(3),

c. Revising paragraph (c)(1),

d. Removing the first example, and

e. Revising the second example thereto.

The addition and revisions read as follows:

§ 803.10 Running of time.

* * * * *

(b) *Expiration of waiting period.* (1) Subject to paragraph (b)(3) of this section, for purposes of Section 7A(b)(1)(B), the waiting period shall expire at 11:59 p.m. Eastern Time on the 30th (or in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), the 15th) calendar day (or if § 802.23 applies, such other day as that section may provide) following the beginning of the waiting period as determined under paragraph (a) of this section, unless extended pursuant to Section 7A(e) and § 803.20, or Section 7A(g)(2), or unless terminated pursuant to Section 7A(b)(2) and § 803.11.

(2) Unless further extended pursuant to Section 7A(g)(2), or terminated pursuant to Section 7A(b)(2) and § 803.11, any waiting period which has been extended pursuant to Section 7A(e)(2) and § 803.20 shall, subject to paragraph (b)(3) of this section, expire at 11:59 p.m. Eastern Time—

(i) On the 30th (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), the 10th) day following the date of receipt of all additional information or documentary material requested from all persons to whom such requests have been directed (or, if a request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance in accordance with § 803.3), by the Federal Trade Commission or Assistant Attorney General, whichever requested additional information or documentary material, at the office designated in paragraph (c) of this section, or

(ii) As provided in paragraph (b)(1) of this section, whichever is later.

(3) If any waiting period would expire on a Saturday, Sunday, or legal public holiday (as defined in 5 U.S.C. 6103(a)) the waiting period shall be extended to 11:59 p.m. Eastern Time of the next regular business day.

(c) *Date of receipt and means of delivery.* (1) For purposes of this section, the date of receipt shall be the date on which delivery is effected to the designated offices (Premerger Notification Office, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, and Director of Operations and Merger Enforcement, Antitrust Division, Department of Justice, Patrick Henry Building, 601 D Street, NW, Room #10013, Washington, DC 20530) during normal business hours. Delivery effected after 5:00 p.m. Eastern Time on a regular business day, or at any time on any day other than a regular business day, shall be deemed effected on the next following regular business day. Delivery should be effected directly to

the designated offices, either by hand or by certified or registered mail. If delivery of all required filings to all offices required to receive such filings is not effected on the same date, the date of receipt shall be the latest of the dates on which delivery is effected.

Example: In an acquisition other than a tender offer, assume that requests for additional information are issued to both the acquiring and acquired persons on the 26th day of the waiting period. One person submits the additional information on the 35th day, while the other responds on the 44th day. Under this section, the waiting period expires thirty days following the last receipt of additional information, that is, it expires on the 74th day (unless that day is a Saturday, Sunday or legal public holiday).

* * * * *

40. Amend § 803.20 by revising paragraphs (b)(2)(i) and (ii), and by revising paragraph (c)(2) and the example thereto, to read as follows:

§ 803.20 Requests for additional information or documentary material.

* * * * *

(b) * * *

(2) * * *

(i) In the case of a written request, upon receipt of the request by the ultimate parent entity of the person to which the request is directed (or, if another entity included within the person filed notification pursuant to § 803.2(a), then by such entity), within the original 30-day (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides); or

(ii) In the case of a written request, upon notice of the issuance of such request to the person to which it is directed within the original 30-day (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides), provided that written confirmation of the request is mailed to the person to which the request is directed within the original 30-day (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides). Notice to the person to which the request is directed may be given by telephone or in person. The person filing notification shall keep a designated individual reasonably available during normal business hours throughout the waiting period at the telephone number supplied in the Notification and Report Form. Notice of a request for additional information or documentary material need be given by telephone only to that individual or to the individual designated in accordance with paragraph (b)(2)(iii) of this section. Upon the request of the individual receiving notice of the issuance of such a request, the full text of the request will be read. The written confirmation of the request shall be mailed to the ultimate parent entity of the person filing notification, or if another entity within the person filed notification pursuant to § 803.2(a), then to such entity.

* * * * *

(c) * * *

(2) A request for additional information or documentary material to any person other than, in the case of a tender offer, the person whose voting securities are being acquired pursuant to the tender offer (or any officer, director, partner, agent or employee thereof), shall in every instance extend the waiting period for a period of 30 (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), 10) calendar days from the date of receipt (as determined under § 803.10) of the additional information or documentary material requested.

Example: Acquiring person ''A'' desires to acquire voting securities of corporation X on a securities exchange, and files notification. Under § 801.30, the waiting period begins upon filing by ''A,'' and ''X'' must file within 15 days thereafter. Assume that before the end of the waiting period, the Assistant Attorney General issues a request for additional information to ''X.'' Since the transaction is not a tender offer, under paragraph (c)(1) the waiting period is extended until ''X'' supplies the requested information; under paragraph (c)(2), the waiting period is extended for 30 days beyond the date on which ''X'' responds. Note that under § 803.21 ''X'' is obliged to respond to the request within a reasonable time; nevertheless, the Federal Trade Commission and Assistant Attorney General could, notwithstanding the pendency of the request for additional information, terminate the waiting period sua sponte pursuant to § 803.11(c).

* * * * *

41. Revise the Appendix to part 803 to read as follows:

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-16) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These instructions specify the information which must be provided in response to the Items on the Answer Sheets. Only the completed Answer Sheets, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on answer sheets must submit a complete set of attachment pages with each copy of the Form.

The term "documentary attachments" refers to materials supplied in responses to Item 3(d), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information-The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions-The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) 48 FR 34427 (July 29, 1983) and Pub. L. No. 106-533, 114 Stat. 2762.

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 803.5(a)).

Responses-*Each answer* should identify the Item to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any Item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year-All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

SIC Data-This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) *All persons* must submit certain data at the 4-digit (SIC code) *industry level*. To the extent that dollar revenues are derived from *manufacturing operations* (SIC major groups 20-39), data must also be submitted at the *5-digit product class and 7-digit product levels* (SIC based codes). The term "dollar revenues" is defined in § 803.2(d).

References-In reporting information by "4-digit (SIC code) industry" refer to the 1987 edition of the *Standard Industrial Classification Manual* published by the Executive Office of the President, Office of Management and Budget.

In reporting information by "5-digit product class" and "7-digit product" refer to the following reference publication published by the U.S. Bureau of the Census: Numerical List of Manufactured and Mineral Products, 1992 *Census of Manufactures and Census of Mineral Industries* (MC92-R-1). Make sure that the Numerical List you use has MC92-R-1 printed on the cover.

Furthermore, when the Numerical List cites footnote 3, which refers to Appendices A and C for detail collected in a specified Current Industrial Report, you must provide revenue information using the 7-digit products listed in Appendix A.

Privacy Act Statement-Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws. Furnishing the information on this Form is voluntary.

Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $11,000 per day.

Items 5,7,8 and the Insurance Appendix-Supply information only with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. (See §§ 801.1(k), 803.2(c)(1).)

Information need not be supplied regarding assets or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See § 803.2(c)(2).)

The acquired person should limit its response in the case of an acquisition of assets, to the assets being sold, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. Separate responses may be required where a person is both acquiring and acquired. (See § 803.2(b) and (c).)

Filing-Complete and return two copies (with one notarized original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Three copies (with one set of documentary attachments) should be sent to: Director of Operations, Antitrust Division, Department of Justice, Patrick Henry Bldg., 601 D Street, NW, Room #10-013, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004.)

ITEM BY ITEM

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Answer Sheets. Acquiring persons in transactions covered by § 801.30 are required to also submit a copy of the notice served on the acquired person pursuant to § 803.5(a)(1). (See § 803.5(a)(3).)

Fee Information-The fee for filing the Notification and Report Form is based on the aggregate total amount of assets and voting securities to be held as a result of the acquisition:

Value of assets or voting securities to be held	Fee Amount
greater than $50 million but less than $100 million	$45,000
$100 million or greater but less than $500 million	$125,000
$500 million or greater	$280,000

Amount Paid-Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges. Where an explanatory attachment is required, include in your explanation any adjustments to the acquisition price that serve to lower the fee from that which would otherwise be due. If there is no acquisition price or if the acquisition price may fall within a range that straddles two filing fee thresholds, state the transaction value on which the fee is based and explain the valuation method used. Include in your explanation a description of any exempt assets, the value assigned to each, and the valuation method used.

A Valuation Worksheet available from the Premerger Notification Office will be helpful in determining the value of a transaction for filing and fee purposes. This Worksheet need not be submitted with the Notification and Report Form, but it or something similar should be utilized and retained by the acquiring person in the event Commission staff has questions about the valuation of the transaction.

Payer Identification- Provide the 9-digit Taxpayer Identification Number (TIN) of the acquiring person and, if different from the filing person, the TIN of the payer(s) of the filing fee. A payer or filing person who is a natural person having no TIN must provide the name and social security number (SSN) of the payer. If the payer or filing person is a foreign person, only the name of the payer and the name of the filing person need be supplied if different.

Method of Payment-Check the box indicating the method of fee payment. If paying by electronic wire transfer (EWT), provide the name of the financial institution from which the EWT is being sent and the confirmation number.

To insure filing fees paid by EWT are attributed to the appropriate payer filing notification, the payer must provide the following information to the financial institution initiating the EWT:

The Department of Treasury's ABA Number: 021030004;
and
The Federal Trade Commission's ALC Number: 29000001.

If the name used to transmit the EWT differs from the filer's name, provide the alternative name. If the confirmation number is unavailable at the time notification is filed, provide this information by letter within one business day of filing.

Corrective Filing-Put an X in the appropriate box to indicate whether the notification is a corrective filing being made for an acquisition that has already taken place in violation of the statute. Attach a detailed, written explanation signed by a company official explaining (1) how the violation occurred, (2) when and how the violation was discovered and (3) what steps will be taken to ensure compliance in the future.

Transactions Subject to Foreign Antitrust Notification-If to the knowledge or belief of the filing person at the time of filing this notification, a foreign antitrust or competition authority has been or will be notified of the proposed transaction, list the name of each such authority and the date or anticipated date of each such notification. Response to this item is voluntary.

Cash Tender Offer-Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Bankruptcy-Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or a debtor-in-possession for a transaction that is subject to section 363(b) of the Bankruptcy Code (11USC § 363).

Early Termination-Put an X in the yes box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by § 7A(b)(2) of the Clayton Act and on the FTC web site, www.ftc.gov.

ITEM 1

Item 1(a)-Give the name and headquarters address of the person filing notification. The name of the person is the name of the ultimate parent entity included within that person.

Item 1(b)-Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2.)

Item 1(c)-Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, partnership or other (specify).

Item 1(d)-Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(e)-Put an X in the appropriate box to indicate if this Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) of the Form.

Item 1(f)-If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the assets or voting securities of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b)).

Item 1(g)-Print or type the name and title, firm name, address, telephone number, fax number and e-mail address of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

Item 1(h)-Foreign filing persons print or type the name and title, firm name, address, telephone number, fax number and e-mail address of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

ITEM 2

Item 2(a)-Give the names of all ultimate parent entities of acquiring and acquired person which are parties to the acquisition whether or not they are required to file notification.

Item 2(b)-Put an X in all the boxes that apply to this acquisition.

Item 2(c)-*Acquiring persons* put an X in the box to indicate the highest threshold for which notification is being filed (see § 801.1(h)): $50 million, $100 million, $500 million, 25% (if value of voting securities to be held is greater than $1 billion), or 50%.

Item 2(d)-*Assets and voting securities held as a result of the acquisition* (to be completed by both acquiring and acquired persons). State:

Item 2(d)(i)-the value of voting securities;

Item 2(d)(ii)-the percentage of voting securities;

Item 2(d)(iii)-the value of assets:

Item 2(d)(iv)-the aggregate total amount of voting securities and assets of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801.13, and 801.14).

Item 2(e)-Acquiring persons provide the name(s) of the person(s) who performed any fair market valuation used to determine the aggregate total value of the transaction reported in Item 2(d)(iv).

ITEM 3

Item 3(a)-*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification. Indicate for each party whether assets or voting securities (or both) are to be acquired. Also indicate what consideration will be received by each party. In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction.

If the voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons in tender offers should describe the terms of the offer.

Item 3(b)(i)-*Assets to be acquired.* This Item is to be completed only to the extent that the transaction is an acquisition of assets. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction, giving dollar values thereof.

Give the total value of the assets to be acquired in this transaction.

Examples of general classes of assets other than cash and securities are land, merchandising inventory, manufacturing plants (specify location and products produced), and retail stores. For each general class of assets, indicate the page or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

Item 3(b)(ii)-*Assets held by acquiring person.* (To be completed by acquiring persons). If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 3(b)(i), and the dollar value or estimated dollar value at the time they were acquired.

Item 3(c)-*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition: (If, as a result of the acquisition, the acquiring person will hold 100 percent of the voting securities of the acquired issuer or if the acquisition is a merger or consolidation (see § 801.2(d)), the parties may so state and provide the total dollar value of the transaction instead of responding to items 3(c)(i)-3(c)(viii).

Item 3(c)(i)-List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition;

Item 3(c)(ii)-Total number of shares of each class of securities listed which will be outstanding after the acquisition has been completed;

Item 3(c)(iii)-Total number of shares of each class of securities listed which will be acquired in this acquisition. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(c)(iv)-Identity of each person acquiring any securities of any class listed. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(c)(v)-Dollar value of securities of each class listed to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made);

Item 3(c)(vi)-Total number of each class of securities listed which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(d)-Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired (Do not attach these documents to the Answer Sheets).

ITEM 4

Furnish one copy of each of the following documents. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity. Furnish copies of:

Item 4(a)-all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition); the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed; if the acquisition is a tender offer, Schedule TO. Alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance;

NOTE: In response to Item 4(a), the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(e).

Item 4(b)-the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recently prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person;

Item 4(c)-all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

ITEMS 5 through 8 and the Appendix

NOTE: *For Items 5 through 8 and the Appendix*, the acquired person should limit its response in the case of an acquisition of assets, to the assets to be sold, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. A person filing as both acquiring and acquired may be required to provide a separate response to these items in each capacity so that it can properly limit its response as an acquired person. (See § 803.2(b) and (c).)

Item 5(a)-5(c): These items request information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 4-digit (SIC code) *industry level.* To the extent that dollar revenues are derived from manufacturing operations (SIC major groups 20-39), data must also be submitted at the 5-digit product class and 7-digit product levels (SIC based codes).

NOTE: See the "References" listed in the General Instructions to the Form. Refer to the 1987 edition of the *Standard Industrial Classification Manual* for the 4-digit (SIC code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, 1992 *Census of Manufactures and Census of Mineral Industries* (MC92-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code."

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within 2-digit major group 63. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; holding and other investment offices, and real estate companies (2-digit SIC major groups 61, 62, 67 and 65) should identify or explain the revenues reported (e.g., dollar sales, receipts).

Persons filing notification should include the total dollar revenues for 1992 derived by all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 1992). For example, if the person filing notification acquired an entity in 1994, it must include that entity's 1992 revenues in items 5(a) and 5(b)(i).

Item 5(a)-*Dollar revenues by industry*. Provide aggregate 4-digit (SIC code) industry data for 1992.

Item 5(b)(i)-*Dollar revenues by manufactured product*. Provide the following information on the aggregate operations for the person filing notification for 1992 for each 7-digit product of the person in 2-digit SIC major groups 20-39 (manufacturing industries).

NOTE: When the Numerical List refers to footnote 3, which cites Appendices A and C for detail collected in a specified Current Industrial Report, you must provide revenue information using 7-digit product codes listed in Appendix A.

Item 5(b)(ii)-*Products added or deleted*. Within 2-digit SIC major groups 20-39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1992, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 7-digit product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1992 by reason of mergers or acquisition occurring since 1992. Dollar revenues derived from such products should be included in response to item 5(b)(i). However, if an entity acquired since 1992 by the person filing notification (and now included within the person) itself has added any products since 1992, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets or voting securities since 1992 should also be listed here.

Item 5(b)(iii)-*Dollar revenues by manufactured product class*. Provide the following information about the aggregate operations of the person filing notification for the most recent year for each 5-digit product class of the person within SIC major groups 20-39 (manufacturing industries). If such data have not been compiled for the most recent year, estimates of dollar revenues by 5-digit product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)-*Dollar revenues by non-manufacturing industry*. Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to item 5(c).* Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63, and, if voting securities of an insurance carrier are being acquired directly or indirectly, should complete the Insurance Appendix to this Form.

JOINT VENTURE OR OTHER CORPORATIONS

Item 5(d)-Supply the following information only if the acquisition is the formation of a joint venture or other corporation. (See § 801.40.)

Item 5(d)(i)-List the name and mailing address of the joint venture or other corporation.

Item 5(d)(ii)(A)-List contributions that each person forming the joint venture or other corporation has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(d)(ii)(B)-Describe any contracts or agreements whereby the joint venture or other corporation will obtain assets or capital from sources other than the persons forming it.

Item 5(d)(ii)(C)-Specify whether and in what amount the persons forming the joint venture or other corporation have agreed to guarantee its credit or obligations.

Item 5(d)(ii)(D)-Describe fully the consideration which each person forming the joint venture or other corporation will receive in exchange for its contribution(s).

Item 5(d)(iii)-Describe generally the business in which the joint venture or other corporation will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(d)(iv)-Identify each 4-digit (SIC code) *industry* in which the joint venture or other corporation will derive dollar revenues. If the joint venture or other corporation will be engaged in manufacturing, also specify each 5-digit *product class* in which it will derive dollar revenues.

ITEM 6

This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired. Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "document attachment" furnished with this Form if the information so referenced is a complete response and is up-to-date and accurate. Indicate for each Item the specific page(s) of the document that are responsive to that Item.

Item 6(a)-*Entities within the person filing notification*. List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $10 million may be omitted.

Item 6(b)-*Shareholders of person filing notification*. For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

Item 6(c)-Holdings of person filing notification. If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holding of issuers with total assets of less than $10 million may be omitted.

ITEM 7

If, to the knowledge or belief of the person filing notification, the person filing notification derived dollar revenues in the most recent year from operations in any 4-digit (SIC code) industries in which any other person which is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture or other corporation will derive dollar revenues), then for each such 4-digit (SIC code) industry:

Item 7(a)-supply the 4-digit SIC code and description for the industry;

Item 7(b)-list the name of each person which is a party to the acquisition which also derived dollar revenues in the 4-digit industry;

Item 7(c)-*Geographic market information*:

Item 7(c)(i)-for each 4-digit industry within SIC major groups 20-39 (manufacturing industries) listed in Item 7(a) above, list the states (or if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(ii)- for each 4-digit industry within SIC major groups 01-17 and 40-49 (agriculture, forestry and fishing, mining, construction, transportation, communications, electric, gas and sanitary services) listed in item 7(a) above, list the states (or, if desired, portions thereof) in which the person filing notification conducts such operations;

Item 7(c)(iii)-for each 4-digit industry within SIC major groups 50-51 (wholesale trade) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the customers of the person filing notification are located;

Item 7(c)(iv)-for each 4-digit industry within SIC major groups 52-61, 70, 75, 78, and 80 (retail trade, banking, and certain services) listed in Item 7(a) above, provide the address, **arranged by state, county and city or town,** of each establishment from which dollar revenues were derived in the most recent year by the person filing notification;

Item 7(c)(v)-for each 4-digit industry within SIC major groups 62, 64-67, 72, 73, 76, 79, and 81-89 (certain finance, insurance and real estate groups and certain services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which establishments were located from which the person filing notification derived revenues in the most recent year; and

Item 7(c)(vi)-for each 4-digit industry within SIC major group 63 (insurance) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

NOTE: Except in the case of those SIC major industry groups mentioned in Item 7(c)(iv) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

ITEM 8

Item 8-*Previous acquisitions* (to be completed by acquiring persons). Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $1 million or more in the most recent year and in which either the acquired issuer derived revenues of $1 million or more in the recent year, (or in which, in the case of the formation of a joint venture or other corporation, the joint venture or other corporation reasonably can be expected to derive revenues of $1 million or more), or revenues of $1 million or more in the most recent year were attributable to the acquired assets. For each such 4-digit industry, list all acquisitions made by the person filing notification in the five years prior to the date of filing of entities deriving dollar revenues in that 4-digit industry. List only acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition.

For each such acquisition, supply:

(a) the name of the entity acquired;
(b) the headquarters address of the entity prior to the acquisition;
(c) whether securities or assets were acquired;
(d) the consummation date of the acquisition;
(e) the annual net sales of the acquired entity in the year prior to the acquisition;
(f) the total assets of the acquired entity in the year prior to the acquisition; and

(g) the 4-digit (SIC code) industries (by number and description) identified above in which the acquired entity derived dollar revenues.

CERTIFICATION-(See § 803.6.)

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE

Insurance carriers (2-digit SIC major group 63) are required to complete this Appendix if voting securities of an insurance carrier are being acquired directly or indirectly.

ITEM 1

Item 1(A)-*Life Insurance*. Provide for the most recent year the amount of premium receipts (calculated on the accrual basis) for each of the lines of insurance listed on page 16 of the Answer Sheets.

Item 1(B)-*New Business*. Provide for the most recent year the amount of new life insurance business issued in the United States (exclusive of revivals, increases, dividend additions and reinsurance ceded) for each of the lines of insurance listed on page 16 of the Answer Sheets.

ITEM 2

Item 2(A)-*Property Liability Insurance*. Provide for the most recent year the amount of direct premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

Item 2(B)-Provide for the most recent year the amount of net premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

ITEM 3

Item 3(A)-*Title Insurance*. Provide for the most recent year the amount of net direct title insurance premiums written in the United States.

Item 3(B)-Provide for the most recent year the amount of direct title insurance premiums earned in the United States.

TRANSACTION NUMBER ASSIGNED ☐☐☐☐☐☐☐☐

16 C.F.R. Part 803 - Appendix
NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

Approved by OMB
DRAFT
Expires 00/00/00

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

➢ Attach the Affidavit required by § 803.5 to this page.

FEE INFORMATION

AMOUNT PAID $_____

In cases where your filing fee would be higher if based on acquisition price or where the acquisition price is undetermined to the extent that it may straddle a filing fee threshold, attach an explanation of how you determined the appropriate fee *(acquiring persons only)*.

Attachment Number _____

TAXPAYER IDENTIFICATION NUMBER _____
or SOCIAL SECURITY NUMBER of payer _____
(acquiring person (and payer if different from acquiring person))

CHECK ATTACHED ☐ MONEY ORDER ATTACHED ☐

WIRE TRANSFER ☐ CONFIRMATION NO._____

FROM: NAME OF INSTITUTION _____

NAME OF PAYER (if different from PERSON FILING) _____

IS THIS A CORRECTIVE FILING? ☐ YES ☐ NO

IS THIS ACQUISITION SUBJECT TO FOREIGN FILING REQUIREMENTS? ☐ YES ☐ NO
If YES, list jurisdictions: _____

IS THIS ACQUISITION A CASH TENDER OFFER? ☐ YES ☐ NO | BANKRUPTCY? ☐ YES ☐ NO

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? *(Grants of early termination are published in the Federal Register AND on the FTC web site www.ftc.gov)*
☐ YES ☐ NO

ITEM 1 – PERSON FILING

1(a) NAME and
HEADQUARTERS ADDRESS
of PERSON FILING

1(b) PERSON FILING NOTIFICATION IS
☐ an acquiring person ☐ an acquired person ☐ both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE PERSON FILING NOTIFICATION
☐ Corporation ☐ Partnership ☐ Other *(Specify)* _____

1(d) DATA FURNISHED BY
☐ calendar year ☐ fiscal year *(specify period)* _____(month/year) to _____ (month/year)

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $11,000 for each day during which such person is in violation of 15 U.S.C. §18a.

All information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Filing - Complete and return *two* copies (with one original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. *Three* copies (with one set of documentary attachments) should be sent to: Director of Operations and Merger Enforcement, Antitrust Division, Department of Justice, Patrick Henry Building, 601 D Street, N.W., Room #10013, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004.)

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 39 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office,
H-303
Federal Trade Commission
Washington, DC 20580

Office of Information and
Regulatory Affairs,
Office of Management and Budget
Washington, DC 20503

NAME OF PERSON FILING NOTIFICATION	DATE

1(e) PUT AN X IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF ENTITY FILING NOTIFICATION (if other than ultimate parent entity)

☐ NA ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4. ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

NAME OF ENTITY FILING NOTIFICATION	ADDRESS

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS OR VOTING SECURITIES ARE BEING ACQUIRED IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES HELD BY EACH ENTITY IDENTIFIED IN ITEM 1(a)

1(g) IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT

NAME OF CONTACT PERSON	
TITLE	
FIRM NAME	
BUSINESS ADDRESS	
TELEPHONE NUMBER	
FAX NUMBER	
E-MAIL ADDRESS	

(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. (See § 803.20(b)(2)(iii))

NAME OF CONTACT PERSON	
TITLE	
FIRM NAME	
BUSINESS ADDRESS	
TELEPHONE NUMBER	
FAX NUMBER	
E-MAIL ADDRESS	

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS	LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

2(b) THIS ACQUISITION IS *(put an X in all the boxes that apply)*

- ☐ an acquisition of assets
- ☐ a merger (see § 801.2)
- ☐ an acquisition subject to § 801.2(e)
- ☐ a formation of a joint venture of other corporation (see § 801.40)
- ☐ an acquisition subject to § 801.30 (*specify type*)
- ☐ other (*specify*)_____
- ☐ a consolidation (see § 801.2)
- ☐ an acquisition of voting securities
- ☐ a secondary acquisition
- ☐ an acquisition subject to § 801.31

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED *(acquiring person only)*

☐ $50 million ☐ $100 million ☐ $500 million ☐ 25% (see Instructions) ☐ 50%

2(d)(i) VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION	(ii) PERCENTAGE OF VOTING SECURITIES	(iii) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITON	(iv) AGGREGATE TOTAL VALUE
$	%	$	$

NAME OF PERSON FILING NOTIFICATION	DATE

2(e) If aggregate total value in 2(d)(iv) is based in whole or in part on a fair market valuation pursuant to § 801.10(c)(3), identify the person or persons responsible for making the valuation *(acquiring persons only)*.

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

NAME OF PERSON FILING NOTIFICATION	DATE

3(b)(i) ASSETS TO BE ACQUIRED (to be completed only for asset acquisitions)

3(b)(ii) ASSETS HELD BY ACQUIRING PERSON

3(c) VOTING SECURITIES TO BE ACQUIRED

3(c)(i) LIST AND DESCRIPTION OF VOTING SECURITIES AND LIST OF NON-VOTING SECURITIES:

3(c)(ii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY:

3(c)(iii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY BEING ACQUIRED:

NAME OF PERSON FILING NOTIFICATION	DATE

3(c)(iv) IDENTITY OF PERSONS ACQUIRING SECURITIES:

3(c)(v) DOLLAR VALUE OF SECURITIES IN EACH CLASS BEING ACQUIRED:

3(c)(vi) DOLLAR VALUE OF SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION:

3(d) SUBMIT A COPY OF THE MOST RECENT VERSION OF CONTRACT OR AGREEMENT (or letter of intent to merge or acquire)

DO NOT ATTACH THIS DOCUMENT TO THIS PAGE ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT _____

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 4 PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 (See Item by Item instructions). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

4(a) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION	ATTACHMENT OR REFERENCE NUMBER

4(b) ANNUAL REPORTS, ANNUAL AUDIT REPORTS, AND REGULARLY PREPARED BALANCE SHEETS	ATTACHMENT OR REFERENCE NUMBER

4(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS	ATTACHMENT OR REFERENCE NUMBER

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5 (See the "References" listed in the General Instructions to the Form. Refer to the 1987 edition of the *Standard Industrial Classification Manual* for the 4-digit (SIC Code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1992 Census of Manufactures and Census of Mineral Industries* (MC92-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code.")

5(a) DOLLAR REVENUES BY INDUSTRY

4-DIGIT INDUSTRY CODE	DESCRIPTION	1992 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

7-DIGIT INDUSTRY CODE	DESCRIPTION	1992 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(ii) PRODUCTS ADDED OR DELETED

DESCRIPTION (7-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS

5-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR |_____| TOTAL DOLLAR REVENUES
	(item 5(b)(iii) continued on page 9)	

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS - CONTINUED

5-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR |_____| TOTAL DOLLAR REVENUES

ITEM 5(c) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY

4-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR |_____| TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

5(d) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE OR OTHER CORPORATION

5(d)(I) NAME AND ADDRESS OF THE JOINT VENTURE OR OTHER CORPORATION

5(d)(ii)

(A) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION HAS AGREED TO MAKE

(B) DESCRIPTION OF ANY CONTRACTS OR AGREEMENTS

(C) DESCRIPTION OF ANY CREDIT GUARANTEES OR OBLIGATIONS

(D) DESCRIPTION OF CONSIDERATION WHICH EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION WILL RECEIVE

5(d)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE OR OTHER CORPORATION WILL ENGAGE

5(d)(iv) SOURCE OF DOLLAR REVENUES BY 4-DIGIT SIC CODE (non-manufacturing) AND BY 5-DIGIT PRODUCT CLASS (manufacturing)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) SHAREHOLDERS OR PERSON FILING NOTIFICATION

NAME OF PERSON FILING NOTIFICATION	DATE

6(c) HOLDINGS OF PERSON FILING NOTIFICATION

ITEM 7 DOLLAR REVENUES

7(a) 4-DIGIT SIC CODE AND DESCRIPTION

7(b) NAME OF EACH PERSON WHICH ALSO DERIVED DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

7(c) GEOGRAPHIC MARKET INFORMATION

ITEM 8 PRIOR ACQUISITIONS (to be completed by acquiring person only)

NAME OF PERSON FILING NOTIFICATION	DATE

CERTIFICATION

This **NOTIFICATION AND REPORT FORM,** together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)	TITLE
SIGNATURE	DATE

Subscribed and sworn to before me at the
City of _____, State of _____

this _____day of _____, the year _____

Signature _____

My Commission expires _____

[SEAL]

NAME OF PERSON FILING NOTIFICATION	DATE

APPENDIX: INSURANCE

ITEM 1

	YEAR _____ AMOUNT
A PREMIUM RECEIPTS	
1 LIFE INSURANCE	
1a. ORDINARY LIFE INSURANCE	
1b. GROUP LIFE INSURANCE (including Federal Employees' Group Life Insurance) and Servicemans' Group Life Insurance, but excluding credit life insurance)	
1c. INDUSTRIAL LIFE INSURANCE	
1d. CREDIT LIFE INSURANCE	
2 ANNUITY CONSIDERATIONS	
2a. INDIVIDUAL ANNUITY CONSIDERATIONS	
2b. GROUP ANNUITY CONSIDERATIONS	
3 HEALTH INSURANCE	
3a. INDIVIDUAL HEALTH INSURANCE	
3b. GROUP HEALTH INSURANCE	
TOTAL	

	YEAR _____ AMOUNT
B NEW BUSINESS	
1 ORDINARY LIFE INSURANCE	
2 GROUP LIFE INSURANCE	
3 INDUSTRIAL LIFE INSURANCE	
4 CREDIT LIFE INSURANCE	
TOTAL	

ITEM 2 PROPERTY LIABILITY INSURANCE

LINE OF INSURANCE	A. DIRECT PREMIUMS	YEAR _____ AMOUNT B. NET PREMIUMS

ITEM 3 TITLE INSURANCE

A. NET DIRECT PREMIUMS WRITTEN	B. DIRECT PREMIUMS EARNED	YEAR _____ AMOUNT

BILLING CODE 6750–01–P

By direction of the Commission.

Dated: January 24, 2001.

Donald S. Clark,

Secretary.

[FR Doc. 01–2605 Filed 1–31–01; 8:45 am]

BILLING CODE 6750–01–C

FEDERAL TRADE COMMISSION

16 CFR Part 2

Rules of Practice

AGENCY: Federal Trade Commission (FTC).

ACTION: Interim rule with request for comments.

SUMMARY: The FTC is amending its Rules of Practice to incorporate procedures for internal agency review of requests for additional information or documentary material relating to transactions subject to the premerger notification requirements of Section 7A of the Clayton Act. These procedures are necessary to implement recent amendments to Section 7A. The procedures will ensure that petitions for such review are handled in accordance with the statute's requirements.

DATES: These rules are effective February 1, 2001. Comments should be filed no later than March 19, 2001.

ADDRESSES: Address all comments concerning these rules to Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or by e-mail to hsr-rules@ftc.gov.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Room 592, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Telephone: (202) 326–32424.

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law certain amendments to Section 7A of the Clayton Act, 15 U.S.C. 18a, which requires that parties to certain mergers or acquisitions file reports with the FTC and with the Department of Justice and to wait a specified period of time before consummating such a transaction, so that the agencies can determine whether the transaction may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. *See* Pub. L. 106–553, 114 Stat. 2762 (''2000 Amendments''). The statutory amendments are effective on February 1, 2001.

In a separate **Federal Register** document, the Commission is adopting interim implementing amendments to its rules and notification form for premerger review under Section 7A (16 CFR Parts 801, 802, and 803) and, in another **Federal Register** document, is proposing additional rule amendments.

In this **Federal Register** document, the Commission, in accordance with Section 7A(e)(1)(B) of the Clayton Act, 15 U.S.C. 18a(e)(1)(B), as added by the 2000 Amendments, is adopting administrative procedures for persons seeking to obtain internal agency review of requests for additional information or documentary material (''second requests'') relating to proposed transactions for which premerger notification is required under Section 7A. These ''second request'' review procedures will be incorporated into previously reserved Subpart B of Part 2 of the Commission's Rules of Practice and will implement the statute's requirement that a senior agency official be designated for the review, upon petition, of a ''second request'' to determine whether it is unreasonably cumulative, unduly burdensome, or cumulative, or whether the petitioner has substantially complied with the request.

Administrative Procedure Act

These procedures are exempt from the notice-and-comment requirements of the Administrative Procedure Act as rules of agency organization, procedure or practice. *See* 5 U.S.C. 553(b)(A). Nonetheless, the Commission seeks public comment on these procedures and reserves the right to amend them based on its experience and on any comments that may be received after the procedures take effect.

Regulatory Flexibility Act

The requirements for initial and final regulatory analyses under the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply to these procedural rules, because they will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Under the recent statutory amendments to Section 7A of the Clayton Act, transactions valued at less than $50 million are exempted, and these ''second request'' review procedures do not expand or otherwise alter the coverage of the premerger notification rules in a way that would affect its impact, if any, on small business. Accordingly, the Commission certifies that these procedural rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

These procedural rules do not contain any record maintenance, reporting, or disclosure requirements that would constitute agency ''collections of information'' that would have to be submitted for clearance and approval by the Office of Management & Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3518.

List of Subjects in 16 CFR Part 2

Administrative practice and procedure.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 2 as follows:

PART 2—NONADJUDICATIVE PROCEDURES

1. Revise the authority citation for part 2 to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

2. Add subpart B to read as follows:

Subpart B—Petitions Filed Under Section 7A of the Clayton Act, as Amended, for Review of Requests for Additional Information or Documentary Material

Authority: 15 U.S.C. 18a(d), (e).

§ 2.20 Petitions for review of requests for additional information or documentary material.

(a) For purposes of this section, ''second request'' refers to a request for additional information or documentary material issued under 16 CFR 803.20.

(b) *Second request procedures.* (1) *Notice.* Every request for additional information or documentary material issued under 16 CFR 803.20 shall inform the recipient(s) of the request that the recipient has a right to discuss modifications or clarifications of the request with an authorized representative of the Commission. The request shall identify the name and telephone number of at least one such representative.

(2) *Second request conference.* An authorized representative of the Commission shall invite the recipient to discuss the request for additional information or documentary material soon after the request is issued. At the conference, the authorized representative shall discuss the competitive issues raised by the proposed transaction, to the extent then known, and confer with the recipient about the most effective way to obtain information and documents relating to the competitive issues raised. The