AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

Monday,
January 31, 2005

Part VII

Federal Trade Commission

16 CFR Parts 801, 802 and 803

Premerger Notification; Reporting and Waiting Period Requirements; Final Rule Revised Jurisdictional Thresholds for Section 7A of the Clayton Act; Notice

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending the premerger notification rules (''the rules'') to reflect adjustment and publication of reporting thresholds as required by the 2000 amendments [1] to Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–935, 90 Stat. 1390 (''the Act.''). The Act requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Federal Trade Commission (''the Commission'') and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'') and to wait a designated period of time before consummating such transactions. The reporting and waiting period requirements are intended to 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.

DATES: These final rules are effective March 2, 2005.

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SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

The 2000 amendments to section 7A require the Commission to revise the Act's jurisdictional and filing fee thresholds annually, based on the change in gross national product, in accordance with section 8(a)(5) for each fiscal year beginning after September 30, 2004. The Commission, with the concurrence of the Assistant Attorney General, is adopting these final rules to reflect the revised thresholds in the examples contained in the rules and to provide a method for future adjustments as required by the 2000 amendments. These final rules will also adjust references to the notification and filing fee thresholds and other limitations in the rules and the Antitrust Improvements Act Notification and Report Form and its Instructions to remain consistent with the revised jurisdictional and filing fee thresholds.

The Commission notes that the effective date of the new thresholds does not affect or void the waiting period expressly required under section 7A(b)(1) of the Act, which provides that the waiting period shall begin with the date the Commission and the Antitrust Division of the Department of Justice (collectively ''the Agencies'') receive the filing, and shall not end until thirty days after that date, absent early termination under section 7A(b)(2). Accordingly, the 30-day statutory waiting period shall continue to apply to all proposed transactions filed with the Agencies for review, even in cases where the Agencies receive a filing before the effective date of the new thresholds but the waiting period for that filing does not expire until after that date.

Implementing the Threshold Changes in Examples to the Rules

Rather than attempt to revise the examples annually, a parenthetical ''(as adjusted)'' has been added where necessary throughout the rules to notify the filer where such a change in statutory threshold value occurs. The term ''as adjusted'' is then defined in new subsection 801.1(m) and refers to a table of the adjusted values published in the **Federal Register** notice titled ''Revised Jurisdictional Thresholds for Section 7A of the Clayton Act.'' The notice will also contain a table showing adjusted values for the rules. This **Federal Register** notice will be published in January of each year and the values contained therein will be effective as of the effective date published in the **Federal Register** notice and will remain effective until superceded in the next calendar year. The notice will also be available at *http://www.ftc.gov.* For ease of application, such adjusted values will be rounded up to the next highest $100,000.

In addition to the revisions to the examples throughout the rules as a result of the mandatory adjustments to the thresholds in the Act, the Commission will adjust the notification thresholds and certain limitations contained in the exemptions as discussed below. The notification thresholds and other limitations will be implemented in the same way as in the changes to the examples as discussed above (*i.e.* by adding the parenthetical ''(as adjusted)'' following the relevant threshold or limitation).

Non-Mandatory Revisions

Section 801.1(h) Definition of Notification Threshold

The HSR statute provides that an acquisition is reportable if, as a result of the acquisition, the acquirer will hold voting securities of the acquired person valued in excess of $50 million. Under the statute, once an acquirer holds voting securities valued at more than $50 million, any additional purchase of even one voting share is reportable. As the antitrust agencies recognized in the original rulemaking proceeding in 1978,[2] this provision would result in far more filings than are needed for effective antitrust review. At the same time, as the acquirer's holding in the company continue to increase in size through subsequent transactions, the agencies must have some opportunities to review the later transactions. That is, there must be some points (thresholds) where these additional acquisitions become reportable.

Section 801.1(h) defines the term ''notification threshold'' and sets forth five reporting thresholds. Failing to adjust these thresholds to correspond to adjusted thresholds for filing fees would create two different sets of thresholds, one for fees and another for notification requirements, creating confusion and difficult administrative problems. Therefore, the notification thresholds will be adjusted annually to correspond to the adjusted filing fee thresholds. Although adjustment of the $1 billion limitation associated with the 25 percent threshold is not mandated on this basis, this limitation will also be adjusted annually, by the same percentage as the other notification thresholds, in order to avoid its eventually coming too close to the $500 million notification threshold as it is adjusted. The Commission believes that such changes are consistent with Congressional intent and with encouraging efficient antitrust review.

Section 801.40 Formation of Joint Venture or Other Corporations

Section 801.40 provides a special size-of-person test in the formation of new corporations. The values used to determine whether the transaction satisfies this test are the same as the jurisdictional size-of-person thresholds

[1] 15 U.S.C. 18a(a). *See* Pub. L. 106–553, 114 Stat. 2762.

[2] 43 FR 33487 (July 31, 1978).

and will therefore be adjusted to remain identical to them.

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, and do not hold other non-exempt assets with an aggregate fair market value of more than $50 million. 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. The statute does not mandate adjustment to this $50 million limitation. However, since this threshold functions in the same manner as the size-of-transaction test in an asset acquisition, this limitation is adjusted to remain consistent with mandated adjustments to the $50 million jurisdictional threshold.

Section 802.21 Acquisitions of Voting Securities Not Meeting or Exceeding Greater Notification Threshold (as Adjusted)

The annual adjustment of notification thresholds can make it difficult for filing parties to determine which notification thresholds are applicable for purposes of this exemption. For example, where a notification threshold increases after a party files but before a year has passed, a question may arise as to whether the notification threshold in place at the time it filed or the adjusted notification threshold would apply. Section 802.21 is amended to provide an acquiring person with a one year period to reach the notification threshold in place at the time that they filed, even though the notification threshold may have subsequently been adjusted during that year. Note, however, that an acquiring person may then acquire up to the next greater *adjusted* notification threshold (as opposed to the next notification threshold in place at the time of filing) during the five years following expiration of the waiting period. This is illustrated in two new examples to section 802.21.

Sections 802.50 and 802.51 Acquisitions of Foreign Assets or Voting Securities of a Foreign Issuer

The adjustment statute does not require adjustment of the limitations contained in sections 802.50 and 802.51 regarding acquisitions of foreign assets and voting securities. The Commission nonetheless is amending the rules to make such adjustments, inasmuch as the Commission has previously amended these limitations to correspond to changes to thresholds in the Act. For example, in 2002,[3] the Commission amended the limitations in these sections by adopting the $50 million size-of-transaction threshold established in the 2000 amendments to the act.[4] In doing so, the Commission noted that the principle underlying sections 802.50 and 802.51 was that the acquisitions of foreign assets or voting securities should not be subject to the reporting requirements unless the assets or voting securities being acquired have sufficient impact on U.S. commerce. The Commission noted that the $50 million threshold amount established in the 2000 legislation provided an appropriate measure of such an impact. The Commission also referenced the 1978 SBP which explained that the $110 million limitation contained in the sections was adopted to approximate the size-of-person criteria of the act. Therefore, the $50 million limitations in these exemptions will be adjusted annually to remain in sync with the adjusted size-of-transaction threshold. Similarly, the $110 million limitation on combined U.S. sales or assets of the acquiring and acquired person will be adjusted in sync with the annual adjustments to the size-of-person test amounts.

Appendix: Premerger Notification and Report Form

Item 2(c) of the Form and Instructions requires the acquiring person to indicate the notification threshold that it will meet or exceed in an acquisition of voting securities. This item will be amended to add ''(as adjusted)'' to the appropriate notification thresholds on the Form and in the Instructions.

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 Commission 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 2000 amendments to the Act were intended to reduce the burden of the premerger notification program by exempting all transactions valued at $50 million or less. Further, none of the proposed rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these proposed 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

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 through May 31, 2007. As noted earlier, these final rules implement amendments to Section 7A of the Clayton Act that require annual adjustments to the jurisdictional thresholds.

There were 1,104 transactions requiring notification in FY 2003. FTC staff estimates that 45 of these transactions would not have required notification had the thresholds been adjusted by the average percentage change in the gross national product over the fifteen years that the thresholds in Section 8 have been annually adjusted. Generally, each transaction involves two filings (because each party to the transaction is required to file). The existing OMB clearance is premised on the staff's estimate that each of these filings requires 39 hours to complete. Accordingly, staff estimates that the final rule changes will result in a reduction in the hours burden of 3,510 hours per year (45 transactions × 2) × 39 hours. This estimate is based on fiscal year 2003 filings,[5] and constitutes approximately a 4% reduction from the previous burden estimate of 87,530 hours. Thus, the total burden hours under the HSR rules as revised will be 84,020 hours. Similarly, staff estimates the total labor costs under the final rules to be $35,708,000 (rounded to the nearest thousand), a decrease of

[3] 67 FR 11898 (March 18, 2002)

[4] See Pub. L. 106–553, 114 Stat. 2762.

[5] FY 2003 is the latest fiscal year for which statistics have been published in the Annual Report to Congress.

$1,492,000 from the previous estimate of $37,200,000.[6]

On January 11, 2005, the Office of Management and Budget approved the new burden estimates resulting from these final rule changes.

Administrative Procedure Act

These final amendments are technical and non-substantive, to the extent they make conforming rule changes that merely incorporate by reference the adjusted filing thresholds to be published elsewhere in the **Federal Register**, or merely clarify the application of the existing rules under the adjusted thresholds, without amending the existing rules in any other way. Accordingly, the Commission has determined that these amendments are not subject to the public notice and comment procedures of the Administrative Procedure Act. See 5 U.S.C. 553(b)(A).

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

Antitrust.

■ For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR parts 801, 802 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

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

■ 2. Amend § 801.1 by revising paragraph (h) and adding paragraph (n) to read as follows:

§ 801.1 Definitions.

* * * * *

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

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

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

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

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

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

* * * * *

(n) *(as adjusted).* The parenthetical ''(as adjusted)'' refers to the adjusted values published in the **Federal Register** notice titled ''Revised Jurisdictional Threshold for Section 7A of the Clayton Act.'' This **Federal Register** notice will be published in January of each year and the values contained therein will be effective as of the effective date published in the **Federal Register** notice and will remain effective until superseded in the next calendar year. The notice will also be available at *http://www.ftc.gov.* Such adjusted values will be calculated in accordance with Section 7A(a)(2)(A) and will be rounded up to the next highest $100,000.

■ 3. Amend § 801.2(d) by revising Examples 2 and 3; by removing Example 4; and by redesignating Example 5 as Example 4 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 (as adjusted), 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 in excess of $50 million (as adjusted). ''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(b) by revising Examples 1 and 5 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 (as adjusted) 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 previous Example 4, suppose the consideration paid by A for the acquisition of B is in excess of $50 million (as adjusted) 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 § 801.11(e) by revising Examples 1, 3 and 4 to read as follows:

§ 801.11 Annual net sales and total assets.

* * * * *

(e) * * *

Examples: * * *

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 less than $10 million (as adjusted) and does not meet any size-of-person test of Section 7A(a)(2).

* * * * *

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 (as adjusted). $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 (as adjusted), the acquisition would be reportable without regard to the sizes of the persons involved.

4. Assume that ''A'' borrows $195 million to acquire $100 million of assets from ''B'' and $60 million of voting securities of ''C.'' The balance of the loan will be used for working capital. 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 $95 million for purposes of its acquisition from ''B.'' To determine its size with respect

[6] The reduction of approximately $1,492,000 in labor costs is based on an estimated average of $425 per hour for executives' and attorneys' wages (3,510 hours × $425/hour = $1,491,750).

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 $135 million. In the first acquisition ''A'' meets the $10 million (as adjusted) size-of-person test and in the second acquisition ''A'' meets the $100 million (as adjusted) size-of-person test of Section 7A(a)(2).

■ 6. Amend § 801.13(a) by revising Examples 1 and 4 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 in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted) 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.

* * * * *

4. On January 1, company A acquired in excess of $50 million (as adjusted) 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.

* * * * *

■ 7. Amend § 801.14(b) by revising Examples 1 and 2 to read as follows:

§ 801.14 Aggregate total amount of voting securities and assets.

* * * * *

(b) * * *

Examples:

1. Acquiring person ''A'' previously acquired less than $50 million (as adjusted) of the voting securities (not convertible voting securities) of corporation X. ''A'' now intends to acquire additional assets of X. 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). Therefore, if the voting securities have a present value which when combined with the value of the assets would exceed $50 million (as adjusted), 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 (as adjusted) .

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 (as adjusted) size-of-transaction test.

■ 8. Amend § 801.15(c) by revising Examples 1, 4, 6 and 7 to read as follows:

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

* * * * *

(c) * * *

Examples:

1. Assume that acquiring person ''A'' is simultaneously to acquire in excess of $50 million (as adjusted) of the convertible voting securities of X and less than $50 million (as adjusted) 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 (as adjusted), ''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 section, ''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 value of the convertible voting securities would be reflected in ''A's'' next regularly prepared balance sheet, for purposes of § 801.11).

* * * * *

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 in excess of $50 million (as adjusted). In the most recent year, sales into the United States attributable to the plants were less than $50 million (as adjusted), 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 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,''if the $50 million (as adjusted) limitation in § 802.50(a)(2) would be exceeded, under paragraph (b) of this section, ''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 (as adjusted) 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 less than $50 million (as adjusted) 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 less than $50 million (as adjusted). ''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 (as adjusted) 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 previous Example 6, 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 less than $50 million (as adjusted), and that N's assets currently consist of $60 million worth of producing coal reserves and non-exempt assets with a fair market value which when aggregated with M's non-exempt assets would exceed $50 million (as adjusted). 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 Secs. 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 (as

adjusted), the acquisition would not be exempt.

* * * * *

§ 801.20 [Amended]

■ 9. Amend § 801.20(c) by removing Examples 1 and 2.

■ 10. Amend § 801.30(b) by revising Example 2 to read as follows:

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

* * * * *

(b) * * *

Examples:

* * * * *

2. Acquiring person ''A'' proposes to acquire in excess of $50 million (as adjusted) 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.

* * * * *

■ 11. 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 (as adjusted), 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 (as adjusted), wishes to tender its holdings of X and in exchange would receive shares of A valued in excess of $50 million (as adjusted). 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.

■ 12. Amend § 801.32 by revising the Example to read as follows:

§ 801.32 Conversion and 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 in excess of $50 million (as adjusted). 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 the regulations in this part. Since § 801.30 applies, the waiting period begins upon notification by ''A,'' and ''X'' must file notification within 15 days.

■ 13. Amend § 801.40 by revising paragraphs (c)(1) and (2) and Examples 1 and 2 to read as follows:

§ 801.40 Formation of joint venture or other corporations.

* * * * *

(c) * * *

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

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

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

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

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

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

* * * * *

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 (as adjusted) in annual net sales. ''B'' has more than $10 million (as adjusted) in total assets but less than $100 million (as adjusted) in annual net sales and total assets. Both ''C's'' total assets and its annual net sales are less than $10 million (as adjusted). ''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) of this section, the assets of the new corporation are $207 million. Under paragraph (c) of this section, ''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 in excess of $50 million (as adjusted). N need not file notification; see § 802.41.

2. In the preceding example ''A'' has over $10 million (as adjusted) but less than $100 million (as adjusted) in sales and assets, ''B'' and ''C'' have less than $10 million (as adjusted) 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 (as adjusted) in voting securities of ''N'', the size-of-person test in § 801.40(c) is inapplicable and ''A'' is required to file notification.

■ 14. 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 (as adjusted) in the joint venture; persons ''A'' and ''B'' each have total assets in excess of $100 million (as adjusted). 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 in excess of $50 million (as adjusted) 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 (as adjusted) 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 in excess of $50 million (as adjusted). ''A'' proposes to sell the stores to ''B'' for in excess of $50 million (as adjusted). 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

■ 15. The authority citation for part 802 continues to read as follows:

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

■ 16. Amend § 802.1 by revising Examples 1 through 7, 9 and 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 (as adjusted).

2. ''A,'' a manufacturer of airplane engines, agrees to pay in excess of $50 million (as adjusted) 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, in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted) 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 § 802.1(a). Management and administrative support services are not a ''business undertaking'' as that term is used in § 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 § 802.1(d)(4), since the equipment is not being used solely to provide management and administrative support services to ''A''.

* * * * *

■ 17. Amend § 802.2 by revising examples 2 through 7, 9, 10, and 12 to read as follows:

§ 802.2 Certain acquisitions of real property assets.

* * * * *

Examples:

* * * * *

2. ''B,'' a subsidiary of ''A,'' a financial institution, acquired a newly constructed power plant, which it leased to ''X'' pursuant to a lease financing arrangement. ''A's'' acquisition of the plant through B was exempt under § 802.63(a) as a bona fide credit transaction entered into in the ordinary course of ''A's'' business. ''X'' operated the plant as sole lessee for the next eight years and now proposes to exercise an option to buy the plant for in excess of $50 million (as adjusted). ''X's'' acquisition of the plant is exempt pursuant to § 802.2(b). The plant is being acquired from B, the lessor, which held title to the plant for financing purposes, and the purchaser, ''X,'' has had sole and continuous possession and use of the plant since its construction.

3. ''A'' proposes to acquire a tract of wilderness land from ''B'' for consideration in excess of $50 million (as adjusted). Copper deposits valued in excess of $50 million (as adjusted) and timber reserves valued in excess of $50 million (as adjusted) 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 in excess of $200 million (as adjusted) 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 in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted). 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.

6. ''A'' plans to purchase from ''B,'' a manufacturer, a newly-constructed building that ''B'' had intended to equip for use in its manufacturing operations. ''B'' was unable to secure financing to purchase the necessary equipment and ''A'', also a manufacturer, will be required to invest in excess of $50 million (as adjusted) in order to equip the building for use in its production operations. This building is not a new facility under § 802.2 (a), because it was not constructed or held by ''B'' for sale or resale. However, the acquisition of the building qualifies for exemption as unproductive real property pursuant to § 802.2(c)(1). The building is not yet a manufacturing facility since it does not contain equipment and requires significant capital investment before it can be used as a manufacturing facility.

7. ''A'' proposes to purchase from ''B,'' for in excess of $50 million (as adjusted), 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 an aggregate fair market value of in excess of $50 million (as adjusted). 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 in excess of $200 million (as adjusted). 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 (as adjusted), ''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 in excess of $50 million (as adjusted). 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 (as adjusted), ''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 in excess of $50 million (as adjusted). 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.

■ 18. 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 in excess of $50 million (as adjusted) 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 (as adjusted).

* * * * *

■ 19. Amend § 802.4 by revising paragraph (a) and Examples 1 and 2 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 this part 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 (as adjusted).

* * * * *

(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 (as adjusted) 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 (as adjusted), this acquisition is exempt under § 802.4(a).

* * * * *

■ 20. 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 (as adjusted) or less, the entire transaction may be exempted by that section.

■ 21. 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 in excess of $50 million (as adjusted). If the acquisition is solely for the purpose of investment, it is exempt under Section 7A(c)(9).

* * * * *

■ 22. Amend § 802.21 by revising the heading, paragraph (a)(3), and Examples 1 through 4 following paragraph (a); by adding new Examples 5 and 6 to paragraph (a) to read as follows; and by removing paragraph (c).

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold (as adjusted).

(a) * * *

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

Examples:

1. In 2004, Corporation A acquired $53 million of the voting securities of corporation B and both ''A'' and ''B'' filed 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 (as adjusted) or 50 percent of the voting securities of B. No additional notification is required.

2. In 2004, Corporation A acquired $53 million of the voting securities of corporation B and both ''A'' and ''B'' filed notification as required, indicating the $50 million threshold. Suppose that in year three following the expiration of the waiting period, the $50 million notification threshold has been adjusted to $56 million pursuant to Section 7A(a)(2)(a) of the Act. ''A'' now intends to acquire an additional $5 million of the voting securities of B. ''A'' is not required to file another notification even though it now holds voting securities in excess of the $56 million notification threshold (which is greater than the $50 million notification threshold indicated in its filing), because it has not met or exceeded a notification threshold (as adjusted) greater than the notification threshold exceeded in the earlier acquisition (*i.e.* $100 million (as adjusted) or 50% notification thresholds).

3. Same facts as in Example 2 above except now the five year period has expired. Suppose that, the $50 million notification threshold has been adjusted to $57 million pursuant to Section 7A(a)(2)(a) of the Act. ''A'' now holds $58 million of voting securities of B. Because § 802.21(a)(2) is no longer satisfied, the acquisition of any additional voting securities of B will require a new filing because ''A'' will hold voting securities valued in excess of the $57 million notification threshold. If, however, the $50 million notification threshold had been adjusted to $60 million at the end of the five-year period, A could acquire up to that threshold without a new filing.

4. This section also allows a person to recross any of the threshold notification levels that were in effect at the time of filing notification any number of times within five years of the expiration of the waiting period following notification. 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.

5. A files notification at the $50 million notification threshold and acquires $51 million of the voting securities of B in the year following expiration of the waiting period. The next greater notification threshold at the time of filing was $100 million. In year three, the $100 million notification threshold has been adjusted to $106 million. A can now acquire up to, but not meet or exceed, voting securities of B valued at $106 million. As the original $100 million threshold is adjusted upward in years four and five, A can acquire up to those new thresholds as the adjustments are effected.

6. A files notification at the $50 million threshold in January of year one. In February of year one, the $50 million threshold is adjusted to $52 million. A only needs to acquire in excess of $50 million of voting securities of B, not in excess of $52 million, to have exceeded the threshold which was filed for in the year following expiration of the waiting period (*see* § 803.7). It may then acquire up to the next greater notification threshold (as adjusted) during the five years following expiration of the waiting period.

■ 23. 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 in excess of $50 million (as adjusted). Later, the trust acquires 20% of the stock of Company B, a wholly-owned subsidiary of Company A, for in excess of $50 million (as adjusted). Neither acquisition is reportable.

2. Assume that in the example above, ''A'' has total assets of $100 million (as adjusted). ''C'' also has total assets of $100 million (as adjusted) 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 in excess of $50 million (as adjusted). 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.

■ 24. 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 in excess of $100 million (as adjusted), each propose to contribute in excess of $50 million (as adjusted) 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 of this section, A and B have agreed that upon creation N will purchase 100 percent of the voting securities of corporation C for in excess of $50 million (as adjusted). 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.

■ 25. Amend § 802.50 by revising paragraphs (a), (b)(2) and (b)(3) and Examples 2 through 4 to read as follows:

§ 802.50 Acquisitions of foreign assets.

(a) The acquisition of assets located outside the United States shall be exempt from the requirements of the act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding $50 million (as adjusted) during the acquired person's most recent fiscal year.

(b) * * *

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than $110 million (as adjusted) in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) are less than $110 million (as adjusted) ; and

* * * * *

Examples:

* * * * *

2. Sixty days after the transaction in example 1, ''A'' proposes to sell to ''B'' a second manufacturing plant located abroad; sales in or into the United States attributable to this plant, when combined with the sales into the United States of the first plant, totaled in excess of $50 million (as adjusted) in the most recent fiscal year. Since ''B'' would be acquiring the second plant within 180 days of the first plant, both plants would be considered assets of ''A'' held by ''B'' as a result of the second acquisition (*see* § 801.13(b)(2) of this chapter). Since the total sales in or into the United States exceed $50 million (as adjusted), the acquisition of the second plant would not be exempt under this paragraph (a) of this section.

3. Assume that ''A'' and ''B'' are foreign persons with aggregate sales in or into the

United States of in excess of $110 million (as adjusted). If ''A'' acquires only foreign assets of ''B,'' and if those assets generated $50 million (as adjusted) or less in sales in or into the United States, the transaction is exempt.

4. Assume that ''A'' and ''B'' are foreign persons with aggregate sales in or into the United States and assets located in the United Sates of less than $110 million (as adjusted). If ''A'' acquires only foreign assets of ''B,'' and those assets generated in excess of $50 million (as adjusted) in sales in or into the United States during the most recent fiscal year, the transaction is exempt from reporting if the assets are valued at $200 million (as adjusted) or less, but is reportable if valued at greater than $200 million (as adjusted).

■ 26. Amend § 802.51 by revising paragraphs (a), (b), (c)(2) and (c)(3) and Examples 1 through 3 to read as follows:

§ 802.51 Acquisitions of voting securities of a foreign issuer.

(a) *By U.S. persons.* (1) The acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over $50 million (as adjusted); or made aggregate sales in or into the United States of over $50 million (as adjusted) in its most recent fiscal year.

(2) If interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either $50 million (as adjusted) limitation is exceeded.

(b) *By foreign persons.* (1) The acquisition of voting securities of a foreign issuer by a foreign person shall be exempt from the requirements of the act unless the acquisition will confer control of the issuer and the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over $50 million (as adjusted); or made aggregate sales in or into the United States of over $50 million (as adjusted) in its most recent fiscal year.

(2) If controlling interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either $50 million (as adjusted) limitation is exceeded.

(c) * * *

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than $110 million (as adjusted) in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) are less than $110 million (as adjusted); and

* * * * *

Examples:

1. ''A,'' a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of in excess of 50 million (as adjusted) in the most recent fiscal year. The transaction is not exempt under this section.

2. Assume that ''A'' and ''B'' are foreign persons with aggregate sales in or into the United States in excess of $110 million (as adjusted), and that ''A'' is acquiring 100% of the voting securities of ''B.'' Included within ''B'' is U.S. issuer C, whose total U.S. assets are valued in excess of $50 million (as adjusted). Since ''A'' will be acquiring control of an issuer, C, with total U.S. assets of more than $50 million (as adjusted), and the parties' aggregate sales in or into the U.S. in the relevant time period exceed $110 million (as adjusted), the acquisition is not exempt under this section.

3. ''A,'' a foreign person, intends to acquire 100 percent of the voting securities of two wholly owned subsidiaries of ''B'' for a total of in excess of $50 million (as adjusted). BSUB1 is a foreign issuer with less than $50 million (as adjusted) in sales into the U.S. in its most recent fiscal year and with assets of less than $50 million (as adjusted) located in the U.S. Less than $50 million (as adjusted) of the acquisition price has been allocated to BSUB1. BSUB2 is a U.S. issuer with more than $50 million (as adjusted) in U.S. sales and more than $50 million (as adjusted) in assets located in the U.S. Less than $50 million (as adjusted) of the acquisition price is allocated to BSUB2. Since BSUB1 does not exceed the $50 million (as adjusted) limitation for U.S. sales or assets in § 802.51(b), its voting securities are not held as a result of the acquisition (*see* § 801.15(b) of this chapter). Since the acquisition price for BSUB2 alone would not result in ''A'' holding in excess of $50 million (as adjusted) of voting securities of the acquired person, the transaction is non-reportable in its entirety. Note that the U.S. sales and assets of BSUB1 are not aggregated with those of BSUB2 for purposes of determining whether the limitations in paragraph (b) of this section are exceeded. If BSUB2 were also a foreign issuer, such aggregation would be required under paragraph (b)(2) of this section, and the transaction in its entirety would be reportable.

■ 27. Amend § 802.52 by revising its Example to read as follows:

§ 802.52 Acquisitions by or from foreign governmental corporations.

* * * * *

Example: The government of foreign country X has decided to sell assets of its wholly owned corporation, B, all of which are located in foreign country X. The buyer is ''A,'' a U.S. person. Regardless of the aggregate sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate sales were $50 million (as adjusted) or less, the transaction would also be exempt under § 802.50).

■ 28. Amend § 802.64 by revising Example 1 to read as follows:

§ 802.64 Acquisitions of voting securities by certain institutional investors.

* * * * *

(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 adjusted) 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 (as adjusted) worth of voting securities without being subject to the requirements of the act.

* * * * *

PART 803—TRANSMITTAL RULES

■ 29. The authority citation for part 803 continues to read as follows:

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

■ 30. Amend § 803.5(a)(2) by revising Examples 2 and 3 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 (as adjusted).

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 in excess of $50 million (as adjusted) worth and may

acquire 50 percent of Company B's shares. ''A'''s notice to the acquired person would meet the requirements of Sec. 803.5(a)(1)(iii) if it states, inter alia, either: ''Company A has a present good faith intention to acquire in excess of $50 million (as adjusted) 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 in excess of $50 million (as adjusted) 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.

* * * * *

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

§ 803.7 Expiration of notification.

* * * * *

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

■ 32. Amend § 803.9(a) by revising Examples 1 through 6 to read as follows:

§ 803.9 Filing fee.

(a) * * *

Examples:

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

2. ''A'' acquires less than $50 million (as adjusted) 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 (as adjusted) size of transaction threshold of that provision. Two months later ''A'' acquires additional assets from ''B'' valued at between $50 million (as adjusted) and $100 million (as adjusted). 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 in excess of $100 million (as adjusted). Accordingly, when ''A'' files notification for the second transaction, ''A'' must indicate the $100 million (as adjusted) threshold and pay a filing fee of $125,000 because the aggregate total amount of the acquisition is less than $500 million (as adjusted), but not less than $100 million (as adjusted).

3. ''A'' acquires in excess of $50 million (as adjusted) of voting securities issued by B after submitting its notification and $45,000 filing fee and indicates the $50 million (as adjusted) threshold. Two years later, ''A'' files to acquire additional voting securities issued by B valued at $50 million (as adjusted) 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 in excess of $100 million (as adjusted) 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 in excess of $100 million (as adjusted), 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 less than $100 million (as adjusted), 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 (as adjusted), 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 in excess of $500 million (as adjusted). The assets include hotels, office buildings, and rental retail property, 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 in excess of $100 million (as adjusted), but less than $500 million (as adjusted). ''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 (as adjusted) but less than $500 million (as adjusted). Note, however, that ''A'' must include an attachment in its Notification and Report Form setting out both the in excess of $500 million (as adjusted) total purchase price and the basis for its determination that the aggregate total amount of the acquisition under the rules is between $100 million (as adjusted) and $500 million (as adjusted) rather than in excess of $500 million (as adjusted), 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 $500 million (as adjusted). 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 $500 million (as adjusted) 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 limitation, § 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 $500 million (as adjusted) acquisition exceeds $500 million (as adjusted). Accordingly, ''A'' must file notification to acquire the coal reserves valued in excess of $500 million (as adjusted) and pay a filing fee of $280,000.

* * * * *

■ 33. Revise the Appendix to part 803 to read as follows:

BILLING CODE 6750–01–P

Appendix to Part 803

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

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-15) 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.

North American Industry Classification System (NAICS) 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 6-digit NAICS national industry code level. To the extent that dollar revenues are derived from *manufacturing operations* (NAICS Sectors 31-33), data must also be submitted at the *7-digit NAICS product class and 10-digit NAICS product code levels.* The term "dollar revenues" is defined in § 803.2(d).

References-In reporting information by 6-digit NAICS industry code refer to the *North American Industry Classification System - United States, 1997* (*1997 NAICS Manual*) published by the Executive Office of the President, Office of Management and Budget. In reporting information by 7-digit NAICS product class and 10-digit NAICS product code refer to the *1997 Numerical List of Manufactured and Mineral Products* (EC97M31R-NL) published by the Bureau of the Census. Information regarding NAICS also is available at www.census.gov.

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 the 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-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, 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.)

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 (as adjusted)	$45,000
$100 million or greater but less than $500 million (as adjusted)	$125,000
$500 million or greater (as adjusted)	$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 (as adjusted), $100 million (as adjusted), $500 million (as adjusted), 25% (if value of voting securities to be held is greater than $1 billion (as adjusted)), or 50%. The notification threshold selected should be based on voting securities only that will be held as a result of the acquisition.

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 must 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 involved 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)(vi).

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 regularly 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

NOTE: For Items 5 through 8, 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).)

Items 5(a)-5(c): These items request information regarding dollar revenues and lines of commerce at three NAICS levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), data must also be submitted at the 7-digit product class level and 10-digit product code level (NAICS-based codes). Where certain published NAICS industry codes contain only 5 digits, the filing person should add a zero (0) after the fifth (5th) digit.

NOTE: See "References" listed in the General Instructions to the Form. Refer to the *1997 NAICS Manual* for the 6-digit industry codes and the *1997 Numerical List of Manufactured and Mineral Products (1997 Numerical List)* for the 7-digit product classes and 10-digit product codes. Report revenues for the 7-digit NAICS product classes and 10-digit NAICS product codes using the codes in the columns labeled "Product code" in the *1997 Numerical List.*

Nondepository credit intermediation (NAICS Industry Group Code 5222); securities, commodity contracts, and other financial investments (NAICS Subsector 523); funds, trusts, and other financial vehicles (NAICS Subsector 525); real estate (NAICS Subsector 531); lessors of nonfinancial intangible assets, except copyright works (NAICS Subsector 533); and management of companies and enterprises (NAICS Subsector 551) should identify or explain the revenues reported (e.g. dollar sales receipts).

Persons filing notification should include the total dollar revenues for 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 1997). For example, if the person filing notification acquired an entity in 1998, it must include that entity's 1997 revenues in items 5(a) and 5(b)(i). It must also include that entity's most recent year's revenues in Item 5(b)(iii) and/or Item 5(c).

Item 5(a)-*Dollar revenues by industry.* Provide aggregate 6-digit NAICS industry data for 1997.

Item 5(b)(i)-*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations for the person filing notification for 1997 for each 10-digit NAICS product of the person in NAICS Sectors 31-33 (manufacturing industries).

NOTE: Where the *1997 Numerical List* denotes footnote 1 at the end of a specific Subsector, refer to Appendices A, and then B for detail collected in a specified Current Industrial Report. You must provide 10-digit NAICS product codes and descriptions listed in Appendix B.

Item 5(b)(ii)-*Products added or deleted.* Within NAICS Sectors 31-33 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1997, 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 10-digit NAICS product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1997 by reason of mergers or acquisitions of entities occurring since 1997. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 1997 by the person filing notification (and now included within the person) itself has added any products since 1997, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets constituting less than substantially all of the assets of an entity since 1997 should also be listed here.

Item 5(b)(iii)-*Dollar revenues by manufactured product class.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 7-digit NAICS product class within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 7-digit NAICS 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 6-digit NAICS industry code in NAICS Sectors other than 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry code 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).*

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 6-digit NAICS industry code 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 7-digit NAICS 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 industries within any 6-digit NAICS industry code in which any other person that 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 6-digit NAICS industry code:

Item 7(a)-supply the 6-digit NAICS industry 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 6-digit industry;

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

Item 7(c)(i)-for each 6-digit NAICS industry code within NAICS Sectors 31-33 (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 6-digit NAICS code 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 6-digit NAICS industry code within NAICS Sectors or Subsectors 11 (agriculture, forestry, fishing and hunting); 21 (mining); 22 (utilities); 23 (construction); 48-49 (transportation and warehousing); 511(publishing industries); 513 (broadcasting and telecommunications); and 71 (arts, entertainment and recreation) 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 6-digit NAICS industry code within NAICS Sector 42 (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 6-digit NAICS industry code within NAICS Sectors or Subsectors 44-45 (retail trade); 512 (motion picture and sound recording industries); 521 (monetary authorities-central bank); 522 (credit intermediation and related activities); 532 (rental and leasing services); 62 (health care and social assistance); 72 (accommodations and food services); 811 (repair and maintenance); and 812 (personal and laundry 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 6-digit NAICS industry code within NAICS Subsectors 514 (information services and data processing services); 523 (securities, commodity contracts and other financial investments and related activities); 525 (funds, trusts and other financial vehicles); 531 (real estate); 533 (lessors of nonfinancial intangible assets, except copyright works); 54 (professional, scientific and technical services); 55 (management of companies and enterprises); 56 (administrative and support and waste management and remediation services); 61 (educational services); 813 (religious, grantmaking, civic, professional, and similar organizations); and NAICS Industry Group 5242 (insurance agencies and brokerages, third party administration of insurance and pension funds, claims adjusting, and other insurance related activities) 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 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) 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 NAICS major industries in the Sectors and Subsectors 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 6-digit NAICS industry code 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 6-digit NAICS industry code, 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 6-digit NAICS industry code. List only acquisitions of 50 percent or more of the voting securities of an issuer which had annual net sales or total assets greater than $10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their 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; and

(e) the 6-digit (NAICS code) industries by (number and description) identified above in which the acquired entity derived dollar revenues.

CERTIFICATION- (See § 803.6.)

TRANSACTION NUMBER ASSIGNED ☐☐☐☐☐☐☐☐

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

Approved by OMB
3084-0005
Expires 05/31/2007

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: *(voluntary)* _____

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

Under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears in the upper right-hand corner of the first page of this form.

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 in an acquisition of voting securities)*

☐ $50 million (as adjusted) ☐ $100 million (as adjusted) ☐ $500 million (as adjusted) ☐ 25% (see Instructions) (as adjusted) ☐ 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 ACQUISITION	(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) TOTAL NUMBER OF EACH CLASS 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 "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 1997* (*1997 NAICS Manual*) for the 6-digit (NAICS) industry codes. Refer to the *1997 Numerical List of Manufactured and Mineral Products* (EC97M31R-NL) for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the www.census.gov web site.)

5(a) DOLLAR REVENUES BY INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

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

10-DIGIT PRODUCT CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

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

DESCRIPTION (10-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES

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

7-DIGIT PRODUCT CLASS	DESCRIPTION	YEAR |_____| TOTAL DOLLAR REVENUES
	(Item 5(b)(iii) continued on page 10)	

NAME OF PERSON FILING NOTIFICATION	DATE

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

7-DIGIT PRODUCT CLASS	DESCRIPTION	YEAR |_____| TOTAL DOLLAR REVENUES

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

6-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 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 7-DIGIT PRODUCT CLASS (manufacturing)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) SHAREHOLDERS OF PERSON FILING NOTIFICATION

NAME OF PERSON FILING NOTIFICATION	DATE

6(c) HOLDINGS OF PERSON FILING NOTIFICATION

ITEM 7 DOLLAR REVENUES

7(a) 6-DIGIT NAICS 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]

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–1679 Filed 1–28–05; 8:45 am]

BILLING CODE 6750–01–C