Federal Register

Friday,
September 17, 2010

Part II

Federal Trade Commission

16 CFR Parts 801, 802, and 803

Premerger Notification; Reporting and Waiting Period Requirements; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802, and 803

RIN 3084-AA91

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to the Hart-Scott-Rodino ("HSR") Premerger Notification Rules (the "Rules"), the Premerger Notification and Report Form (the "Form") and associated Instructions in order to streamline the Form and capture new information that will help the Federal Trade Commission (the "Commission" or "FTC") and the Antitrust Division of the Department of Justice (the "Assistant Attorney General" or the "Antitrust Division") (together the "Antitrust Agencies" or "Agencies") conduct their initial review of a proposed transaction's competitive impact. Section 7A of the Clayton Act (the "Act") requires the parties to certain mergers or acquisitions to file with the Agencies and to wait a specified period of time before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the Antitrust 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, pursuant to section 7 of the Act.

DATES: Comments must be received on or before October 18, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form, byfollowing the instructions in the Invitation To Comment part of the "**SUPPLEMENTARY INFORMATION**" section below. Comments in electronic form should be submitted by using the following weblink: (*https://ftcpublic.commentworks.com/ftc/hsrformchanges*) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex Q), 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2252.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room 302, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-3100. E-mail: (*rjones@ftc.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of § 7A.

Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Rules, codified in 16 CFR Parts 801, 802 and 803, and the Form and its associated Instructions, codified at Part 803—Appendix. The Form is designed to provide the Commission and the Assistant Attorney General with the information and documentary material necessary and appropriate for an initial evaluation of the potential anticompetitive impact of significant mergers, acquisitions and certain similar transactions.

Over time, it has become clear to the Commission that certain items on the Form, intended to provide substantive information to aid the Agencies' review, are not as helpful as originally anticipated. As examples, Item 3(c) requires filing parties to provide overly detailed information regarding the number and classes of voting securities to be acquired and Item 5(a) requires the reporting of revenues by Department of Census base year, currently 2002,[1] which yields information that is typically too outdated to be of use to the Agencies. The Commission therefore proposes the deletion of these items on the Form, as well as the deletion or revision of several other items for similar reasons, as outlined below. The Commission proposes substantive and ministerial revisions, deletions and additions to streamline the Form and make it easier to prepare while focusing the Form on those categories of information the Agencies consider necessary for their initial review. The Commission also proposes amending certain Rules and parts of the Form and Instructions, as well as the addition of Items 4(d) and 7(d), in order to capture additional information that would significantly assist the Agencies in their initial review. Finally, minor changes are proposed to §§801.1, 801.15, 801.30, 802.4, 802.21, 802.52, 803.2 and 803.5, primarily to address minor omissions from the Commission's 2005 rulemaking involving unincorporated entities, and an amendment to §802.21 is proposed to remove the reference to the 2001 transition period.

It has also become apparent that the current Form does not solicit some information that would be useful to the Agencies in making an initial evaluation of a transaction's competitive impact. For instance, the Form does not require filing parties to provide current year revenues by the more detailed 10-digit North American Industry Classification System ("NAICS") product code, nor does it require revenue data for products manufactured outside of, but sold into, the United States. Moreover, the Form does not elicit sufficient information about ties between acquiring investment funds and other entities that are associated with these acquiring entities, which have holdings in the same line of business as the target. Thus, the Commission proposes to amend the Rules, the Form and the Instructions to require this and other helpful information, as discussed more fully below.

Substantive changes to the Rules, as well as improvements to the Instructions and Form, have been made on a number of occasions since the Premerger program began in 1978. For example, in 2001, the Rules and Form were significantly altered to accommodate the 2000 amendments to the HSR Act[2], as well as to implement some administrative changes that were proposed and that received public comment in 1994.[3] The Rules were also amended in 2005 to bring the treatment of non-corporate entities into line with the treatment of corporate entities.[4] The Form was revised in 2006 to accommodate the electronic filing option and to update some elements to make them more useful to the Agencies' initial analysis.[5] The Commission now seeks comment from the public on its current proposed amendments to the Rules, Form and Instructions.

[1] 70 FR 77312 (December 30, 2005).

[2] 66 FR 8680 (February 1, 2001).

[3] 59 FR 30545 (June14, 1994), *id.* at 46365 (Sept. 8, 1994) (extending comment period).

[4] 70 FR 11502 (March 8, 2005).

[5] 71 FR 35995 (June 23, 2006).

Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments pertinent to this rule review. Written comments must be received on or before October 18, 2010, and may be submitted electronically or in paper form. Comments should refer to "HSR Form Changes" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ," as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 C.F.R. 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 C.F.R. 4.9(c).[6]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://ftcpublic.commentworks.com/ftc/hsrformchanges*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it at (*https://ftcpublic.commentworks.com/ftc/hsrformchanges*) . If this document appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov*) to read the document and the news release describing it.

A comment filed in paper form should include the "HSR Form Changes" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex Q), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

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

The Commission proposes ministerial changes in Items 1 through 3 in order to make the Form easier to use, as well as the revision or deletion of many items, such as Items 2(e), 3(b), 3(c), 4(a), 4(b), 5(a), 5(b)(i), 5(b)(ii), 5(d), 6(a), and 6(b), which currently ask for information that the Agencies no longer consider necessary for their initial review. The Commission also proposes amending certain Rules and parts of the Form and Instructions, such as Items 2(d), 5(b)(iii), 5(c), 6(c), 7 and 8 in order to capture additional information (such as current year revenues by 10 digit NAICS product code, including products manufactured outside of and sold into the United States, and entities associated with the acquiring person) that would significantly assist the Agencies in their review. The Commission also proposes the addition of Item 4(d), which would require filing parties to submit certain documents useful to the Agencies' substantive review of transactions, and Item 7(d), which would require filing parties to provide information on overlapping NAICS codes between associates of the acquiring person and the acquired entity(s) or assets.

The proposed changes will eliminate the least helpful information requests in the Form and add requests for information that will greatly enhance the Agencies' review. The Commission believes the proposed changes will make the premerger notification process more efficient, and will, on balance, reduce the overall burden of completing the Form. The modifications to the relevant Rules, as well as the changes to the Form and Instructions, are described more fully below.

Part 801—Coverage Rules

801.1(d)(ii) Associate

"Associate" in Item 7 Overlapping NAICS Codes and in Item 6(c) Minority Holdings

At present, an acquiring person is required to provide information in its notification with respect to all entities included within it at the time of filing. In some instances, particularly with families of investment funds, entities that are commonly managed with the acquiring person are not included because these "associated" entities are not controlled, as defined in §801.1(b) of the Rules, by the acquiring Ultimate Parent Entity ("UPE"). As a result, the Agencies do not receive the information they need to get a complete picture of potential antitrust ramifications of an acquisition.

In particular, Item 7 currently requires the person filing notification to identify, to its knowledge or belief, any 6-digit NAICS industry code in which it derives revenues and in which any other party to the acquisition also derives revenues (a NAICS "overlap"). The information provided in response to Item 7 enables the Agencies to compare the products and services in which the acquired entity(s) or assets derive revenues with the products and services in which the acquiring person and any entity it controls derives revenues.

Item 7 does not currently capture all relevant overlap information when an acquisition is being made by a limited partnership ("LP") that is one of a number of LPs managed by the same general partner. Even though the general partner typically manages the LP, that

[6] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 C.F.R. 4.9(c).

general partner often has the right to only a small percentage of the profits of the LP. The definition of control of any unincorporated entity[7] requires the right to 50 percent or more of the profits or 50 percent or more of the assets upon dissolution. Thus, the general partner often does not control the LP for HSR purposes, making the LP its own UPE. Yet, that same general partner often manages other LPs with holdings that derive revenues in the same NAICS code as the acquired entity(s) or assets. Because the general partner does not have HSR control over the acquiring LP and any other LPs of which it is the general partner, overlaps across entities under the effective control of the general partner are not currently captured in Item 7. This scenario frequently arises in the energy industry with Master Limited Partnerships, where potentially crucial overlaps among LPs with the same general partner may go undetected.

Current Item 7 also falls short when an acquisition is being made by an investment fund that is one of a family of investment funds under common management. The acquiring investment fund is generally either its own UPE or possibly controlled by a limited partner that, by law, cannot have an active role in the management of the fund. It is not unusual for another investment fund under common management with the acquiring investment fund to have holdings that derive revenues in the same NAICS code as the acquired entity(s) or assets.

The current Form may also fail to detect instances in which entities that are under common management with the acquiring person, but are not part of the same UPE (e.g., funds that are part of a family of investment funds), already have minority holdings of the acquired entity(s) or assets. While holders of five percent or greater minority interests in the acquired entity(s) are disclosed in response to Item 6(b), the Agencies may not be aware that one or more of such holders is under common management with the acquiring person.

In these instances, because the entities are under common management, requiring reporting of where these entities' holdings overlap with the acquired entity(s) or assets would provide a more complete and accurate picture of the competitive impact of the acquisition. The Commission believes that capturing this information in the manner proposed herein would allow for a more complete analysis of the competitive impact of these types of transactions without imposing substantial additional burden on the acquiring person. Based on past experience, only a relatively small percentage of all acquiring persons will fall into the categories that would cause this additional notification requirement.[8]

To capture this information on associated entities, the Commission proposes three changes. First, the term "associate" would be added in new §801.1(d)(2) to define entities that are under common management with the acquiring person, but are not under common HSR control with the acquiring person. Examples of such associates include, but are not limited to, general partners of a limited partnership, other partnerships with the same general partner, other investment funds whose investments are managed by a common entity or under a common investment management agreement, and investment advisers of a fund.

Second, the instructions to Item 7 would be amended as follows:

> Item 7(a) would require reporting any 6-digit NAICS industry code in which the acquiring person, or any associate of the acquiring person, derives revenues and in which the acquired entity(s) or assets also derive revenues;
>
> Item 7(b)(i) would require reporting the name of any entity(s) controlled by the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year and Item 7(b)(ii) would require reporting the name of any entity(s) controlled by an associate of the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year; and
> Item 7(c) would require reporting the geographic information for any entity(s) controlled by the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year and Item 7(d) would require reporting the geographic information for any entity(s) controlled by an associate of the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year.

Third, the Commission also proposes amending Item 6(c) to require an acquiring person to report, based on its knowledge or belief, all its associates' holdings of voting securities and non-corporate interests of 5 percent or more and less than 50 percent in entities having 6-digit NAICS industry code overlaps with the acquired entity(s) or assets. The proposed changes to Item 6(c), as well as more details on the proposed changes to Item 7, are discussed more fully below.

Part 803–Transmittal Rules

As a result of the proposed changes to the Notification and Report Form and its Instructions, certain sections of Part 803 need to be amended in order to be consistent with the Form. Specifically, minor ministerial changes are required to §803.2.

Part 803—Appendix: Premerger Notification and Report Form

General Instructions

Item by Item

* * *

Fee Information

The 2001 revisions to the Form[9] expanded the Fee Information Item to obtain more information concerning electronic wire transfers ("EWT"), the preferred method of paying the HSR filing fee. The additional information concerning this method of payment, such as the Taxpayer Identification Number (or Social Security number for Natural Persons), is necessary under 31 U.S.C. §7701. Purely ministerial changes, such as repositioning and reformatting, are proposed in this section of the Form to make it easier to complete.

* * *

Privacy Act Statement

The Privacy Act Statement on the Form has been amended to reflect the change in civil penalties, effective on February 9, 2009, from a maximum of $11,000 per day to a maximum of $16,000 per day.[10]

Items 1-3

Items 1 through 3 require filing parties to supply basic information about the transaction and the parties to the transaction. The Commission proposes both ministerial and substantive changes to these items.

Item 1

Item 1 of the Form seeks information about the identity of the filing party, its contact information, whether it is an acquiring or acquired person or both, the definition of its fiscal year and what type of entity it is.

[7] 16 CFR § 801.1(b)(1)(ii).

[8] Investment funds often form limited partnerships to make acquisitions. For FY07, 445 of the 2,201 total transactions (20.2%) featured a limited partnership as an acquiring person that potentially would have had to report information on associates.

[9] 66 FR 8680 (February 1, 2001).

[10] 74 FR 857 (January 9, 2009).

The Commission proposes to reorganize Item 1 so that it is easier to complete. Item 1(a), for example, which currently asks for "Name and Headquarters address of person filing" would be amended to be consistent with Items 1(g) and 1(h) in specifically requesting line by line address information. In addition, Item 1(a) would ask for a website address to make it easier for the Agencies to learn more about the filing person, as well as to find information that might relate to the structure of the transaction described in Item 3(a). If a filer has several websites, it should use its best judgment as to which website would be the most relevant for Agency staff. It is understood that some parties may not have a relevant website to reference.

The Commission also proposes to revise Item 1(g), which currently asks for a contact person in case of questions or problems with the Form. PNO staff frequently finds it difficult to quickly reach the contact person to resolve any outstanding issues with a filing. To avoid unnecessary delay in processing the filing, the Commission proposes that filers provide a secondary contact person. The secondary contact information will only be used in the event the primary contact is unavailable or if the Agencies are specifically instructed by the parties to contact the secondary person. Given the time-sensitive nature of HSR filings and the problems that arise when information is incorrect or missing from the filing, having a second contact person is a reasonable safeguard that imposes minimal additional burden on the parties.

Item 2

Item 2 requires the reporting person to identify the ultimate parent entities of the parties in the transaction as well as to identify the type and value of the transaction. The Commission proposes minor, non-substantive format changes, such as repositioning and reformatting text, to Items 2(a), (b) and (c) to improve the readability of the Form. There are no proposed substantive changes to Items 2(a), (b) and (c).

Item 2(d)

As discussed below, the Commission proposes removing the obligation of parties to provide certain details pertaining to assets, non-corporate interests and voting securities of the acquired person held by the acquiring party prior and subsequent to the acquisition, including, for example, the classes of shares to be acquired. The percentage of voting securities and non-corporate interests held both prior to, and as a result of, the acquisition are necessary, however, for the Agencies to determine that the parties are correctly adhering to the Act and to conduct a substantive review of the transaction.

Thus, the Commission proposes to modify Item 2(d) to include the percentage and value of voting securities and non-corporate interests of the acquired person held prior to and as a result of the acquisition.[11] Item 2(d) will continue to require parties to identify the value of assets to be held as a result of the acquisition, and to provide the aggregate total value of the acquisition. Additionally, the Commission proposes reformatting Item 2(d) into an expanded table format for ease of use by the filer and the Agencies.

This approach is in line with the 2005 amendments to the Rules which require the reporting of acquisitions of control of unincorporated entities and reconcile, as much as possible, the Rules' treatment of unincorporated and incorporated entities. Several changes were made to the Form at that time to reflect the new reportability of these acquisitions.[12] The Commission inadvertently failed to amend Item 2(d) at that time to include a reference to non-corporate interests and proposes to do so now.

Item 2(e)

Item 2(e) was added to the Form in 2001 to request the name of the person(s) who performed any fair market valuation used to determine the total value of the transaction.[13] The reasoning was that the new tiered filing fee structure made the determination of the fair market value more important than had previously been the case, and identifying a contact person familiar with the fair market valuation methodology would benefit the Agencies in the event that a valuation question arose.

The 2001 rulemaking acknowledges that in the event of questions, the Agencies will likely contact the Item 1(g) contact person first. "Although the agencies would initially contact the person listed for that purpose in Items 1(g) and (h) should any questions arise regarding information supplied on the Form, this addition should help the parties and the agencies pinpoint who would be most knowledgeable on the issue of valuation."[14]

The additional information obtained by Item 2(e) has not proven to be useful. In all cases, the contact person in Item 1(g) and (h) has been the person contacted. The contact person, of course, can point the Agencies to the person who prepared the valuation, thus making the direct contact information in Item 2(e) unnecessary. In the interest of reducing the burden on the parties, as small as it may be in this instance, the Commission proposes to delete Item 2(e).

Item 3(a)

In Item 3(a), filing parties are required to provide information on the filing parties, the contours of the transaction, the amount and form of consideration, and the time line for closing. The Commission proposes to amend Item 3(a) to require that, in the case of acquisitions of voting securities or non-corporate interests, filing parties list the names of all issuers and non-corporate entities whose shares or interests are being acquired. In the case of asset acquisitions, filing parties would be required to describe the business the assets being acquired comprise. If there are additional filings, such as shareholder backside filings, associated with the transaction, filing parties would be required to list those, as well as any special circumstances that apply to the filing, such as whether part of the transaction is exempt under one of the exemptions found in Section 802. These amendments to Item 3(a) will facilitate the Agencies' review and, on balance, reduce the burden on filers because they will allow Items 3(b) and 3(c) to be eliminated as discussed below.

Item 3(b)

Item 3(b) requests a description of the assets to be acquired, a description of any assets previously acquired from the acquired person and currently held by the acquiring person, and a description of assets held by any unincorporated entities that are being acquired. The Agencies have found that much of this level of detail is not helpful in the initial review of the transaction. Given the proposed amendment to Item 3(a) to include a description of the assets being acquired in a transaction, the Commission proposes to delete Item 3(b).

Item 3(c)

Item 3(c) requires parties to provide a list and description of voting and non-voting securities to be acquired,

[11] The revised Item 2(d) contemplates an overall percentage of all classes of voting securities held in the target. Filing parties should use 16 C.F.R. §801.12 as necessary to calculate the appropriate percentage of all classes of voting securities. The percentage of non-corporate interests should reflect economic interests.

[12] 70 FR 11502 (March 8, 2005).

[13] 66 FR 8680 (February 1, 2001).

[14] *Id.*

including the classes, the rights of each class, the total number of outstanding shares post-acquisition, the shares to be acquired, each class of share to be held by each acquiring person, and the dollar value of the shares to be acquired. First added in 1978,[15] this item was amended in 1987 to eliminate the need for a detailed response when 100% of the voting securities of the acquired entity are being acquired, requiring only that parties provide the total dollar value of the transaction in these instances.[16]

The Commission has further determined that obtaining the detailed information currently required in Item 3(c) for acquisitions of less than 100% does not significantly aid the Agencies in their initial review. It has determined that it is sufficient for initial review purposes that the parties provide information as to the names of all issuers and non-corporate entities whose shares or interests are being acquired, and the percentage and value of voting securities of the acquired entity or interests in the non-corporate entity held by the acquiring person prior and subsequent to the transaction. As discussed above, such information will be required under the proposed revisions to Item 2(d) and Item 3(a) of the Form. The Commission thus proposes deleting Item 3(c).

Item 3(d)

The Commission proposes redesignating Item 3(d), which requires copies of all documents that constitute the agreement(s) between the parties, to Item 3(b) to reflect the proposed elimination of former Items 3(b) and 3(c). Further, the Commission proposes amending the Instructions to the Form for the new Item 3(b) to make clear that all Agreements Not to Compete are required to be submitted with the Form. The Instructions would specify that documents that constitute the agreement(s) (e.g., a Letter of Intent, Merger Agreement or Purchase and Sale Agreement) must be executed, while Agreements Not to Compete may be provided in draft form if that is the most recent version.[17] There are no proposed substantive changes to Item 3(d).

Items 4-6

Item 4

Item 4 seeks various documents, including some created in the ordinary course of business and some produced by the parties in connection with the current transaction. The Commission is proposing changes to reduce the burden of producing documents in response to Items 4(a) and (b). The Commission also proposes the addition of new Item 4(d) which would require filing parties to submit certain documents useful to the Agencies' substantive review of transactions.

Item 4(a) Documents filed with the United States Securities and Exchange Commission ("SEC")

Item 4(a) seeks materials submitted to the SEC, including a company's most recent proxy statement, its most recent 10-K filing, all 10-Q and 8-K filings made since the end of the period reflected in the most recent 10-K, any registration statement filed in connection with the transaction, and, if the acquisition is a tender offer, the Schedule TO. Inclusion of these documents under Item 4(a) was "intended to provide financial information about the reporting person, information about its operations and those of its subsidiaries, and occasionally about the reported transaction itself."[18]

The Commission initially required parties to provide paper copies of the required SEC filings. In doing so, the Commission stated that although the documents were available from the SEC, the Agency staff would be under severe time constraints in reviewing filings under the Act and that obtaining the required documents for each reporting person would be extremely time-consuming.[19] However, with the advent of the Internet and the SEC's EDGAR database, the Commission determined that staff could quickly and easily obtain the relevant information and that the provision by the parties of electronic links to the documents would be sufficient. Therefore, in 2005, the Commission amended the Form to allow filers to provide Internet links to the documents required in Item 4(a) and Item 4(b).[20]

A number of filers have taken advantage of this change and provide Internet links in Item 4(a). Because virtually all filings are still made in paper form, however, Agency staff cannot simply click on the link and be directed to the document. Rather, to use these links, staff must type out long web addresses. The length of these addresses increases the chance that either the filer or the Agency staff might enter an incorrect address and delay the processing of the filing.

In the meantime, the sophistication of the SEC website has increased and now provides for immediate access to all filed materials. Thus, the Commission now proposes further simplifying Item 4(a) by only requiring filers to provide a list of all entities within the person filing notification, including the UPE, that file annual reports (10-K or 20-F filings) with the SEC, and to provide the Central Index Key number (CIK)[21] for each entity. Such information will provide staff with sufficient information to find and review these documents easily.

Item 4(b) Annual Reports, Annual Audit Reports, and Regularly Prepared Balance Sheets

Item 4(b) requires parties to provide the most recent annual reports and annual audit reports of the person filing notification and of each unconsolidated United States issuer included within the person. The person filing must also provide, if different, the most recent regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within the person.

It is often challenging for filing parties to provide balance sheets, particularly where the filing person is a natural person or a foreign entity, as these balance sheets are not readily available. Typically, these balance sheets contain no substantive information on the filing party, and are merely a snapshot of the party's assets and liabilities. The Commission has determined, based on the Agencies' experience, that the information contained in the most recently prepared balance sheet is not useful beyond providing evidence, where necessary, that the party has sufficient assets to meet the size of person test.

Thus, the Commission proposes the elimination of Item 4(b)'s requirement to submit a company's most recent regularly prepared balance sheet. Parties must continue to provide the most recent annual report and/or audit report for the filing person and any unconsolidated U.S. issuers, because these reports are often quite useful in understanding the business of the filing person. In addition, the Commission proposes expanding the requirement to submit annual reports and/or audit reports to include any unconsolidated

[15] 43 FR 33450 (July 31, 1978).

[16] 52 FR 7066 (March 6, 1987). Note this was Item 2(c) at the time.

[17] If parties are filing on an executed Letter of Intent, they may also submit a draft of the definitive agreement. Note that transactions subject to §801.30 and bankruptcies under 11 USC §363 do not require an executed agreement or letter of intent.

[18] 46 FR 38710 (July 29, 1981).

[19] 43 FR 33450 (July 31, 1978).

[20] 70 FR 73369 (December 12, 2005).

[21] A Central Index Key or CIK number is a number given to an individual or company by the United States Securities and Exchange Commission. The number is used to identify the filings of a company, person or entity in several online databases, including EDGAR.

non-corporate U.S. entities. This proposed change will bring this item in line with other changes that attempt to reconcile the treatment of corporations and unincorporated entities.[22] For natural persons, the Commission proposes requiring the person to submit only the most recent annual report and/or audit report from the highest level entity(s) that the person controls. Personal balance sheets from natural persons would thus no longer be required.

As balance sheets will no longer be required, filing parties will have to be more cognizant of demonstrating that they meet the size of person test when applicable. If the annual report or annual audit report does not show sales or assets sufficient to meet the size of person test, and the size of person test is relevant given the size of the transaction, the parties must stipulate in Item 4(b) that the filing person meets the test.

The Commission believes that the proposed changes to Items 4(a) and 4(b) will reduce the burden of producing documents for filing parties.

Proposed Item 4(d): Additional Documents

Certain categories of documents typically created in the course of a transaction are quite useful for the Agencies' initial substantive analysis of transactions but are not always provided because parties have differing interpretations as to whether they are called for under current Item 4(c). The Commission thus proposes new Item 4(d) to enumerate these documents and require their submission with the Form.

Item 4(d)(i): Offering Memoranda

When a company is preparing to put itself up for sale, it will often draft or hire a third party to draft a confidential information memorandum that lays out the details of the company for prospective buyers. Such offering memoranda are extremely valuable to the Agencies in their initial review. Most parties already submit these along with their HSR Filings and proposed Item 4(d)(i), which would require filing parties to do so, should not create any additional burden for them or substantial additional burden for others. Under proposed Item 4(d)(i), offering memoranda must be submitted regardless of whether they 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. Any such study, survey, analysis or report will only be responsive to Item 4(d)(i) if it also contains some reference to the acquired entity(s) or assets.[23] If the seller circulates an existing presentation to provide an overview of the company to a prospective buyer(s), this type of document would be the equivalent of an offering memorandum for the purposes of Item 4(d)(i) and must be submitted. The Commission recognizes that without a date cutoff, a search for these documents could be extremely burdensome. Accordingly, the Commission proposes a limit of two years before the date of filing for documents responsive to this item. This proposed time frame is consistent with the specified "relevant time period"of two years as applicable to second requests in the 2006 merger process reforms.[24]

Item 4(d)(ii): Materials Prepared by Investment Bankers, Consultants or Other Third Party Advisors

Investment bankers, consultants or other third party advisors are often active at all stages of a transaction, generating due diligence, valuation and other broad categories of materials. Some of these materials contain competition-related content and can be invaluable to the Agencies in their initial review of the potential competitive impact of a transaction. Many parties already submit such competition-related third party materials along with their HSR Filings and proposed Item 4(d)(ii), which would require filing parties to do so, should not create substantial additional burden for them or substantial additional burden for others. Under proposed Item 4(d)(ii), studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors must be submitted if they were prepared 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 market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. Any such study, survey, analysis or report will only be responsive to Item 4(d)(ii) if it also contains some reference to the acquired entity(s) or assets.[25] If such studies, surveys, analyses and reports are found in the files of any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions), they should be deemed to have been prepared for that individual. For the reasons state above, the Commission also proposes a limit of two years before the date of filing for documents responsive to this item.

Item 4(d)(iii): Documents Discussing Synergies and/or Efficiencies

Documents that discuss synergies and/or efficiencies likely to result from a transaction can be very useful in the Agencies' initial review. Proposed Item 4(d)(iii) would require filing parties to submit studies, surveys, analyses and reports evaluating or analyzing such synergies and/or efficiencies if they 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. Financial models without stated assumptions need not be provided in response to this item. As many filing parties already submit such documents, this item should present little additional burden for them or substantial additional burden for others.

The proposed instructions to Item 4(d) would read as follows:

Item 4(d) - Additional Documents

> For each category below, indicate (if not contained in the document itself) the date of preparation, and the name of the company or organization that prepared each such document.
> Item 4(d)(i): Provide all offering memoranda (or documents that served that function) that reference the acquired entity(s) or assets. Documents responsive to this item are limited to those produced up to two years before the date of filing.
> Item 4(d)(ii): Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors if they were prepared 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 market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and that also reference the

[22] 70 FR 11502 (March 8, 2005).

[23] This requirement is intended to capture documents from both the buyer and the seller.

[24] See REFORMS TO THE MERGER REVIEW PROCESS (p.19) announced by then Chairman Deborah Platt Majoras on February 16, 2006. (*http://www.ftc.gov/os/2006/02/mergerreviewprocess.pdf*)

[25] This requirement is intended to capture documents from both the buyer and the seller.

acquired entity(s) or assets. Documents responsive to this item are limited to those produced up to two years before the date of filing.

Item 4(d)(iii): Provide all studies, surveys, analyses and reports evaluating or analyzing synergies and/or efficiencies if they 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. Financial models without stated assumptions need not be provided in response to this item.

Item 5

Item 5 requires persons to submit information regarding dollar revenues and lines of commerce with respect to operations conducted within the United States during a company's most recently completed year and the base year, currently 2002.[26] All filing 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 provided at the 7-digit product code level for the most recent year and at the 10-digit product code level for the base year.

The Item 5 reporting requirement was first based on Standard Industrial Classification ("SIC") codes, and at the time it was contemplated that such a reporting requirement would not be unduly burdensome. Reporting persons were presumed to compile yearly SIC-based data for submission to the Bureau of Census and, thus, would have such information readily available.[27] This presumption remained in place when SIC codes were supplanted by NAICS codes in 2001.[28]

Based on informal input from practitioners, it appears that filing parties generally do not rely on data compiled for previous Census requirements in responding to Item 5, either because they were never compiled or are no longer available. In fact, the appropriate NAICS codes and underlying revenues generally are determined by the parties when preparing the filing. Because the parties do not, as the Commission believed they would, reference previously compiled data, the burden of gathering this information is not as minimal as the Commission originally believed. This is particularly true for the base year requirement in Items 5(a) and 5(b)(i).

The incorporation of a base year in the Form was intended to provide context for the company's most recent year's revenues. The reasoning was that the Agencies would be able to see how much a given industry had grown in the span of time between the base year and the most current year. The base year was intended to coincide with the publication schedules of the quinquennial economic censuses and the Annual Survey of Manufacturers, publications that serve as the most readily available and reliable statistical sources of industry components and market universe to which individual company product and revenue data can be compared.

Even though the U.S. Economic Census occurs every five years, it can take as long as three years for the results to be published. Consequently, new base years are not adopted by the Commission until well after the relevant census occurred. For example, the current 2002 base year was not adopted by the Commission until the end of 2005.[29] The result is that parties are required to assemble data that may be as much as eight years old. This is often a difficult task, particularly in the case of assets acquired since the base year. Moreover, comparing current revenues of the parties to an economic universe that is at a minimum three and at a maximum eight years old is of minimal value to the Agencies in analyzing the potential competitive impact of a transaction. The Commission, therefore, proposes eliminating the base year reporting requirements in Items 5(a) and 5(b)(i).

Once the base year requirements are removed, Item 5(b)(ii), which requires a listing of revenues for products added or deleted between the base year and the most recent year, becomes moot. The Commission, therefore, also proposes deleting Item 5(b)(ii).

Item 5(b)(iii) requires parties to list dollar revenues by manufactured product class (7-digit) for the most recent year and Item 5(c) requires parties to submit revenues by non-manufacturing industry code (6-digit) for the most recent year. To provide the Agencies with a more accurate view of recent revenues, the Commission proposes to revise Item 5(b)(iii) by substituting the reporting of the more precise 10-digit product codes for manufactured products for the most recent year in place of the currently required 7-digit product classes. Based on informal input from practitioners, filing parties generally find these revenues to be far less burdensome to compile than base year revenues, and 10-digit product codes are typically prepared by the parties as part of the analysis of the transaction to identify potentially problematic overlaps. The Commission thus proposes that Item 5 be revised to have only one reporting section, proposed Item 5(a), where filing parties will list manufacturing revenues by 10-digit product codes and non-manufacturing revenues by 6-digit industry codes for the most recent year. The Commission believes this change will result in the Agencies getting more useful NAICS code information in Item 5 than they currently receive.

In addition, the Commission proposes the elimination of the million dollar minimum applicable to current Item 5(c). The million dollar minimum was based on the way filing persons reported non-manufacturing data to the Bureau of Census. As discussed above, filing parties may not rely on data compiled for Census in responding to Item 5, and, in fact, generally determine the appropriate NAICS codes in response to Item 5 at the time of filing. In addition, this million dollar minimum often creates confusion about whether there is a need to report an overlap in Item 7. For instance, if an acquiring person has less than $1 million in sales in a non-manufacturing NAICS industry code and does not report that code in the current Item 5(c), it still is required to report an overlap in Item 7 if the acquired person also derives revenue in that same non-manufacturing NAICS industry code; however, most filing parties do not indicate an overlap in Item 7 in this instance, assuming the million dollar minimum in Item 5(c) means there are essentially no revenues to report in that code. The elimination of the million dollar minimum would thus eliminate confusion for filing parties and ensure that the Agencies get this overlap information.

Occasionally a filing party will not have revenue to report in proposed Item 5. To speed review of the Form, the Commission proposes inserting a checkbox indicating "None" into the Form at Item 5 in the event the filing party has no Item 5 information to report. Parties checking the box will be required to provide a brief explanation for the lack of reportable Item 5 information. Explanations may include, but are not limited to, situations where:

1. An acquiring person is newly-formed in a transaction valued in excess of $200 million (as adjusted);

2. An acquiring person is foreign and has no sales in or into the U.S;

3. A filing person is a development stage company that has not yet generated sales; or

[26] 70 FR 77312 (December 30, 2005).

[27] 43 FR 33450 (July 31, 1978).

[28] 66 FR 35541 (July 6, 2001).

[29] 70 FR 77312 (December 30, 2005).

4. A filing person's holding is an exclusive license for intellectual property related to a product that has not yet gone into production.

Item 5 Foreign Manufactured Products

Section 803.2(c)(1) of the Rules instructs filing persons to provide information in response to Items 5, 7, and 8 "with respect to operations conducted within the United States." Filing persons are not required to submit NAICS code information on a detailed manufacturing basis for products they manufacture outside the United States even if they sell the products in the United States. For example, if a filing person manufactured a product in Canada, imported it into the United States, and sold that product at the wholesale or retail level, the filing person would report revenues derived from those sales in current Item 5(c) using a wholesale or retail 6-digit NAICS industry code. The filing person would not be required to identify the product it manufactured in Canada using the more detailed 10-digit manufacturing product codes that would have been required had the product been manufactured in the United States.

Absent NAICS code information at the manufacturing level, the Agencies have found it very difficult to determine whether a filing person that manufactures products outside the United States but sells them in the U.S. may be involved in manufacturing activities similar to those of another party to the transaction. As foreign imports and their effect on the nation's economy have increased, this information has become more important. Accordingly, the Commission believes that 10-digit NAICS product code information concerning products manufactured outside the U.S. that are sold in or into the U.S. at the wholesale or retail level would provide a more complete picture of the impact of the transaction at the initial review stage.

Consistent with other proposed changes to Item 5, the Commission proposes to modify the Form to require filing persons to identify the 10-digit NAICS product codes and revenues for each product they manufacture outside the U.S. and sell in the U.S. at the wholesale or retail level, or that they sell directly to customers in the U.S. Filing parties would include 10-digit NAICS product codes and revenues for such foreign manufactured products only for the most recent year in proposed Item 5(a). Sales made directly into the U.S. would be reported in a manufacturing code while sales made in to the U.S. through a wholesale operation within the same person would be reported in both manufacturing (transfer price) and wholesale or retail (sales price) codes.[30] This information will aid the Agencies in their initial review and, as the provision of the 10-digit NAICS information is based on the most recent year, it should not impose a significant additional burden on filing persons.

The Commission therefore proposes to revise the instructions to new Item 5(a) to read as follows:

> Item 5(a): Provide 6-digit NAICS industry data concerning the aggregate operations of the person filing notification for the most recent year in NAICS Sectors other than 31-33 (non-manufacturing industries) in which the person engaged and 10-digit NAICS product code data for each product code within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged, including revenues for each product manufactured outside the U.S. but sold in or into the U.S. Sales made directly into the U.S. should be reported in a manufacturing code. Sales made into the U.S. through a wholesale or retail operation within the same person should be reported in both manufacturing (transfer price) and wholesale or retail (sales price) codes. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry codes and 10-digit NAICS product codes may be provided if a statement describing the method of estimation is furnished.

In conjunction with this proposed change to Item 5, the Commission proposes deleting §803.2(c)(1) to remove the limitation to operations conducted within the U.S.

Item 5(d)

Item 5(d) requires filing parties to provide certain information with regard to the formation of a joint venture ("JV"), including the name and address of the JV in Item 5(d)(i); a description of the contributions that each person forming the JV has agreed to make in Item 5(d)(ii)(A); a description of any contracts or agreements related to the JV and a description of any credit guarantees or obligations applicable to the JV in Items 5(d)(ii)(B) and (C); the consideration which each person forming the JV will receive in Item 5(d)(ii)(D); the business in which the JV will engage in Item 5(d)(iii); and the expected source of the JV's revenues by NAICS code in Item 5(d)(iv).

Informal discussions with FTC and Antitrust Division staff have revealed that some of this information, such as the description of the contributions that each person forming the JV has agreed to make, the consideration which each forming person will receive, the business in which the JV will engage, and the source of the JV's revenues by NAICS code, is crucial to the Agencies' initial analysis of the joint venture's competitive impact; however, other parts of Item 5(d) are not as important to staff's substantive analysis of the JV. The name and the address of the JV, a description of any contracts or agreements whereby the JV will obtain assets or capital from sources other than the persons forming it (as opposed to the formation agreement), and a description of any credit guarantees or obligations applicable to the JV provide the Agencies with little helpful information for their initial review. The Commission therefore proposes to delete Item 5(d)(i) and Items 5(d)(ii)(B) and (C) from the Form.

The Commission also proposes to revise Item 5(d)(iv) to require information on the expected source of the JV's dollar revenues by 6-digit NAICS industry codes (non-manufacturing) and 10-digit NAICS product codes (manufacturing) to be consistent with the proposal to require 10-digit NAICS product codes for the most recent year in Item 5(a) as discussed above.

Finally, the Commission proposes redesignating Item 5(d) to Item 5(b) to reflect the proposed changes to this item and renumbering the subsections within Item 5(b).

Item 6(a) Entities within person filing notification

Item 6(a) requires information concerning entities within the party filing notification: the acquiring person must list all entities within it having total assets of $10 million or more, including foreign entities, and the acquired person must list all entities within the acquired entity, including foreign entities.

Over the course of thirty years, it has become clear that the value of such detailed information in Item 6(a) is limited. Compiling a list of the name and street address of every entity within a person, regardless of whether the entity has a nexus with the U.S., can be often quite burdensome for filing parties, particularly with respect to foreign addresses. The Commission thus proposes to limit the entities that must

[30] Reporting in this manner is in line with current practice when companies have both domestic manufacturing and wholesale or retail operations.

be listed in Item 6(a) to those located in the U.S. and those foreign entities that have sales in or into the U.S.[31] In addition, the Commission believes that identifying the street addresses of these entities is not necessary to the Agencies' initial premerger review and proposes limiting responses in Item 6(a) to a list of responsive entities with only city and state or city and foreign country designations.

Item 6(b) Shareholders of Person Filing Notification and Item 6(c) Holdings of Person Filing Notification

Item 6(b) of the Form currently requires the filing person to identify shareholders holding five percent or more of the voting securities of any entity included within the filing person (including the ultimate parent entity) having total assets of $10 million or more. For each shareholder, the filing person must list the issuer, the class, the number and the percentage of each class of voting securities held. Item 6(c) requires the filing person to list its minority voting stock holdings of five percent or more in any issuer having total assets of $10 million or more.

Items 6(b) and 6(c) are designed to obtain information to "alert the enforcement agencies to situations in which the potential antitrust impact of the reported transaction does not result solely or directly from the acquisition, but may arise from direct or indirect shareholder relationships between the parties to the transaction."[32] For example, Items 6(b) and 6(c) may reveal situations in which "a person known to be a competitor, customer or supplier of one of the parties is also a significant shareholder of the other party, or when the acquiring party holds stock in a competitor, customer or supplier of the acquired company, or vice versa."[33] Responses to these two items are very useful to the Agencies in their initial review and the Commission proposes several changes to them to give the Agencies an even clearer picture of the competitive impact of a given transaction, while in some ways reducing the scope of the required responses.

As noted above, the Commission amended the rules in 2005[34] to more closely align the treatment of unincorporated entities with the treatment of corporations, and the Commission now proposes amending Items 6(b) and 6(c) to include non-corporate interests to reflect this earlier change. Item 6(b) will not require a list of limited partners, as the limited partners have no control over the operations of the fund or the portfolio companies and the identity and investment level of limited partners is often highly confidential. Any general partner(s) would have to be listed in proposed Item 6(b), regardless of the percentage held, as these are entities that typically manage the limited partnership.

The Commission also proposes to limit the response to Item 6(b) to the acquired entity(s) and the acquiring entity(s) and its UPE (or in the case of natural persons, the top-level corporate or non-corporate entity(s) within that UPE), and not to require a response to Item 6(b) for any other entities included within, but not wholly owned by, the UPE. The additional detail regarding other included entities that is required in current Item 6(b) is not essential to the Agencies' initial review. Finally, the Commission proposes to eliminate the $10 million asset threshold from Item 6(b). This would require filing parties to provide the identities of shareholders or interest holders of the UPE and acquiring entity(s) regardless of the amount of assets held. This change will be of significant use to the Agencies in their initial review, especially in the case of newly formed entities. To know which investment funds hold interests in a newly formed entity, particularly when these funds are not associates of the filing person, will give the Agencies a better picture of the competitive impact of a given transaction.

Proposed Item 6(c)(i) would require filing parties to report their holdings of 5 percent or greater, but less than 50 percent, of the voting securities or non-corporate interests of an issuer or unincorporated entity. For the acquiring person, the response would be limited, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquired entity(s) or assets. For the acquired entity, the response would be limited, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquiring person. The Commission recognizes that it may be difficult for a filing person to determine in what NAICS codes an entity derives revenues if it does not control the entity. Therefore, the Commission proposes that if NAICS codes are unavailable, the filing person may report, based on its knowledge or belief, holdings in entities that have operations in the same industry as the acquired entity(s) or assets.[35] Furthermore, in Item 6(c), the Commission proposes the deletion of the seldom-exercised option to list the entity within the person filing that holds the securities.

Consistent with the other changes related to associated entities, the Commission also proposes amending Item 6(c) to require the acquiring person to include, based on its knowledge or belief, the minority holdings of its associates. Proposed Item 6(c)(ii) would require the filing person, based on its knowledge or belief, to report the holdings of its associates of 5 percent or greater, but less than 50 percent, of the voting securities or non-corporate interests of an issuer or unincorporated entity that derives revenues in the same 6-digit NAICS industry code as the acquired entity(s) or assets. The Commission recognizes that it may be difficult for an acquiring person to determine in what NAICS codes an entity derives revenues if it does not control the entity. Therefore, the Commission proposes that if NAICS codes are unavailable, the acquiring person may report, based on its knowledge or belief, holdings in entities that have operations in the same industry as the acquired entity(s) or assets.[36]

Accordingly, the Commission proposes to revise Items 6(b) and 6(c) of the Instructions to the Form to read as follows:

> Item 6(b) For the acquired entity(s) and for the acquiring entity(s) and its UPE or, in the case of natural persons, the top-level corporate or non-corporate entity(s) within that UPE, list the name and headquarters mailing address of each other person that holds (See §801.1(c)) five percent or more of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person.
> For limited partnerships, only the general partner(s), regardless of percentage held, should be listed.
> Item 6(c)(i) If the person filing notification holds five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an

[31] Under the proposal, it is permissible for a filing person to report all entities within it in response to Item 6(a).

[32] 43 FR 33450 (July 31, 1978).

[33] *Id.*

[34] 70 FR 11502 (March 8, 2005).

[35] Under the proposal, it would be permissible for a filing person to list all entities in which it has a reportable minority interest in response to Item 6(c)(i).

[36] Under the proposal, it would be permissible for an acquiring person to list all entities in which its associate(s) has a reportable minority interest in response to Item 6(c)(i)(ii).

unincorporated entity, the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year. The acquired entity should limit its response, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquiring person. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the filing person, should be listed. Holdings of issuers or unincorporated entities with total assets of less than $10 million, may be omitted. In responding to Item 6(c)(i), it is permissible for a filing person to list all entities in which it has a reportable minority interest.

Item 6(c)(ii) - (**Acquiring person only**) For each associate (see §801.1(d)(2)) of the person filing notification holding five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year, list, based on the knowledge or belief of the acquiring person, the top level associate, the issuer or unincorporated entity and percentage held. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. Holdings of entities with total assets of less than $10 million may be omitted. In responding to Item 6(c)(ii), it is permissible for the acquiring person to list all entities in which its associate(s) has a reportable minority interest.

Items 7-8

Item 7

The Commission proposes reorganizing Item 7 to make it more consistent with other items in the Form. The only proposed change to the substance of Items 7(a) and 7(b) is the requiring of information for associates, as discussed above.

In Item 7(b)(i) the Commission proposes that filing parties not only be required to list the name of each person that is a party to the acquisition that also derived dollar revenues in the 6-digit NAICS industry code but also, if different, the name of the entity(s) that actually derived those revenues. In Item 7(b)(ii), the acquiring person would be required to list the name of each associate of the acquiring person that also derived dollar revenues in the 6-digit industry and, if different, the name of the entity(s) that actually derived those revenues. Having the name of the entity(s), instead of just the UPE or associate, will be very useful to the Agencies and, as many filing parties already submit such information, this item should present little additional burden for them or substantial additional burden for others.

There are also some proposed changes to Items 7(c)(iv) and (v) and a proposed new Item 7(d).

Items 7(c)(iv) and (v) Geographic Market Information

For each overlap listed in Item 7(a) that falls within certain 6-digit NAICS industry codes, the parties are required to provide in Item 7(c)(iv) 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.

Based on the Agencies' review of past transactions, the Commission has determined that the list of NAICS codes in Item 7(c)(iv) should be updated to include more detailed geographic market information for some industries not currently captured in Item 7(c)(iv) and to delete certain industries currently included in Item 7(c)(iv) for which this detailed geographic market information is not necessary. The Commission therefore proposes amending the list included in Item 7(c)(iv) to add the following NAICS codes.

Nonmetallic mineral mining and quarrying (2123)
Concrete (32732)
Concrete products (32733)
Industrial gases (32512)

The Commission proposes moving the following NAICS codes to Item 7(c)(v), which requires listing only the states in which establishments are located:

Furniture and home furnishings stores (442)

Electronics and appliance stores (443)
Recreational vehicle parks and recreational camps (7212)
Rooming and boarding houses (7213)
Personal and household goods repair and maintenance (8114)

Item 7 Overlaps

As discussed above, the Commission proposes to require the acquiring person to provide information in Item 7, based on its knowledge or belief, for any associates that derive revenues in the same 6-digit NAICS industry code as the acquired entity in Item 7. Accordingly, the Commission proposes to add new Item 7(d) in order to capture geographic market information regarding associates in the same manner as for the person filing notification. Within this item, the Commission proposes that the acquiring person be required to list separately the geographic information for each of its associates and, if different, for the entity(s) that actually derived the revenues. Having the geographic information broken out in this specific manner will be very useful to the Agencies as they conduct their initial review.

Item 8 Previous acquisitions

Item 8 requires the parties to identify certain previous acquisitions in each 6-digit industry code identified in Item 7(a). As noted above, the Commission amended the rules in 2005[37] to more closely align the treatment of unincorporated entities with the treatment of corporations, and the Commission now proposes amending Item 8 to include non-corporate interests to reflect this earlier change.

Other Proposed Ministerial Revisions to the Rules

Additionally, the Commission proposes revisions to certain rules that should have been included in the 2005 non-corporate rulemaking that sought to apply the Act as consistently as possible to all forms of legal entities[38] and other minor ministerial changes.

§ 801.1 Definitions

§ 801.1(a)(2) Entity

The proposed revision to §801.1(a)(2) would add "non-corporate entity" after "corporation" in the two parentheticals in its last sentence of this paragraph. The omission of this change from the non-corporate rulemaking meant that corporations controlled by foreign, federal, state or local governments, that are not themselves agencies of a government, are required to file notification in an acquisition that satisfies the jurisdictional requirements of the Act, while non-corporate entities

[37] 70 FR 11502 (March 8, 2005).
[38] *Id.*

making the same acquisition are not. This proposed amendment would correct this oversight by treating similarly all types of legal entities controlled by a government.

§ 801.1(b)(2) Control

§ 801.1(f)(1)(ii) Non-corporate interest

The proposed revision to §801.1(b)(2) would change the reference to "trusts described in paragraphs (c)(3) through (5) of this section" to "trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest". An example would be added to clarify that such trusts do not include business trusts in which persons have an equity interest that entitles them to profits or assets upon dissolution of the trust. In the change to the definition of control in the non-corporate rulemaking, the reference to paragraphs (c)(3) through (c)(5) inadvertently eliminated a class of trusts (e.g., family trusts) from the control rule. The intent of the change was to differentiate between traditional trusts that have beneficiaries, and business trusts that have unit holders with equity interests. What was intended was to classify the business trusts as non-corporate entities whose control is determined by rights to profits and assets upon dissolution of the business trust, as opposed to traditional trusts whose control is determined by the right to designate a majority of the trustees. By referencing paragraphs (c)(3) through (5), traditional trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest are not included in the definition of control. The trusts described in paragraphs (c)(3) through (5) are revocable and/or the settlor retains a reversionary interest in the trust. These trusts do not require a control definition because the settlor is already deemed to hold the assets of the trust. For the same reason, this change is also being applied to the definition of non-corporate interests in §801.1(f)(1)(ii).

Additionally, in 2005 the Commission amended the definition of control for an unincorporated entity to remove the reference to an individual exercising similar functions to a corporate director. However, it inadvertently failed to remove the same reference in Example 2 of §801.1(b)(2). This revision eliminates the reference to that alternative test of control for unincorporated entities from that example.

§ 801.10 Value of voting securities, non-corporate interests and assets to be acquired.

In 2005[39] , the Commission stated that the value of an acquisition of non-corporate interests is determined in the same manner as determining the value of non-publicly traded voting securities. In order to clarify that acquisition price for non-corporate interests is the same as for voting securities, the Commission proposes to add non-corporate interests to paragraph (c)(2) of the rule.

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

The Commission also proposes revising §801.15, which specifies the circumstances in which certain classes of assets and voting securities are held as a result of an acquisition. The change would add references to §7A(c)(3) and §802.30 to paragraph (a), in order to allow the intraperson exemption to have its intended effect. The Statement of Basis and Purpose for the original HSR rules explained the omission of §7A(c)(3) as follows:

> While voting securities acquired under a section 7A(c)(3) exemption are deemed held for purposes of later acquisitions of the same person's securities the later acquisitions are themselves exempt if prior to that transaction the acquiring person holds at least 50 percent of the outstanding voting securities of the acquired person. So long as the later acquisitions are exempt, it is not significant whether the voting securities acquired under the section 7A(c)(3) exemption are held.[40]

While this is true for acquisitions of voting securities of a parent issuer, it does not take into account the acquisition of voting securities of multiple subsidiaries of the same parent. For example, A already holds 50 percent of the voting securities of B1, while parent B holds the other 50 percent. A now intends to acquire the other 50 percent of B1 from B as well as 100 percent of the voting securities of B2, a wholly owned subsidiary of B. Neither acquisition satisfies the size of transaction test on its own, but the two acquisitions do if aggregated. The acquisition of the remaining 50 percent of B1's voting securities is exempt under §7A(c)(3); however, because that exemption is not referenced in §801.15, the exempt voting securities are deemed to be held as a result of the acquisition of B2's voting securities. Therefore, an acquisition is made reportable because of the aggregation of an exempt acquisition. This is certainly not the result that was intended.

The proposed addition of §7A(c)(3) to §801.15(a)(1) corrects this problem. The proposed addition of §802.30 to §801.15(a)(2) eliminates the same potential problem in an acquisition of non-corporate interests. Also, because acquisitions of non-corporate interests are exempted under §802.4 and §802.30, and will be exempt under §802.52 if these proposed rules are finalized, a reference to non-corporate interests is proposed in both paragraphs (a) and (b) of this section.

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

Two scenarios have come to light involving acquisitions of non-corporate interests that should invoke §801.30. In one case, the interests in an unincorporated entity were being acquired from its members where the entity was hostile to the acquisition and refused to file notification. Because §801.30 currently only covers voting securities acquisitions, the waiting period did not begin upon notification by the acquiring person and the unincorporated entity was able to block the acquisition indefinitely. This clearly thwarts the intent of §801.30, which prevents a hostile target from holding up a transaction by not filing. Even if the unincorporated entity had been willing to file notification, it is unclear how it could profess its good faith intent to consummate the acquisition in the affidavit required of non-§801.30 filers, since it was not a party to any agreement with the acquiror.

In the second scenario, publicly traded master limited partnership interests conferring control were being acquired on the open market. Because non-corporate interests are not included in §801.30, the partnership was at risk of failing to file and thereby delaying the deal because it did not receive the notification letter required by §803.5(a) in §801.30 transactions. Also, because there is no agreement in an open market purchase, the parties would be unable to attest to the execution of an agreement or letter of intent in the affidavit required of non-§801.30 filers. The proposed addition to §801.30 of a reference to non-corporate interests addresses both of these potential problems.

[39] 70 FR 11502 (March 8, 2005).

[40] 43 FR 33450 (July 31, 1978).

§ 802.4 Acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt

The last sentence in paragraph (a) of this exemption is intended to exclude the value of any non-controlling interest in a corporation or unincorporated entity, held by the acquired entity, in determining whether the $50 million (as adjusted) limitation on non-exempt assets is exceeded. This is intended to apply to acquisitions of both voting securities and non-corporate interests, as the title of the rule and the Statement of Basis and Purpose accompanying its introduction made clear.[41] However, the phrase "not included within the acquired issuer" could be interpreted to mean that the exemption only applies to acquisitions of voting securities because unincorporated entities are not issuers. Although the PNO informally interprets this language to apply the intent of the rule to non-corporate entities, this proposed amendment adds unincorporated entities to the language of the rule to make it clear.

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

Section 802.21 permits an acquiring person that filed for an acquisition at a given threshold, to make additional acquisitions up to, but not exceeding, the next threshold, for five years, without a further filing. When the Commission changed from percentage-based notification thresholds to notification thresholds that matched the tiered filing fee thresholds, a new paragraph was added to this section to advise how to address transactions where the original acquisition was made under the old thresholds and the acquiring person was now acquiring additional voting securities after the effective date of the rule change introducing the new thresholds, but within five years of the termination of the waiting period for the original acquisition.[42] As it has now been over five years from the end of the waiting period on any filing made using the old notification thresholds, this paragraph is unnecessary and is accordingly removed.

§ 802.52 Acquisitions by or from foreign governmental corporations

Section 802.52 exempts acquisitions if the ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and the acquisition is of assets located within that foreign state or of voting securities of an issuer organized under the laws of that state. This means that an acquisition of non-corporate interests of an entity organized under the laws of the foreign state but with assets outside that foreign state would not be exempted. In order to treat acquisitions of corporate and unincorporated entities consistently, the Commission proposes to change the title of the rule to "Acquisitions by or from foreign governmental entities", and to add non-corporate interests to paragraph (b) of the rule.

§ 803.2 Instructions applicable to Notification and Report Form

Section 803.2(b) provides guidance on how the Form is to be completed by acquiring and acquired persons. In the case of acquired persons, the response is limited, as laid out in §§803.2(b)(1)(ii), (iii), and (iv), to assets, voting securities or non-corporate interests being acquired in the transaction. §803.2(b)(2) provides further guidance on completing the Form and refers to §§803.2(b)(1)(ii) and (iii). This part of §803.2(b) should also include a reference to paragraph (b)(1) (iv). The Commission proposes to correct this omission in §803.2(b)(2) accordingly.

Section 803.2(c)(1) limits the responses to Items 5, 7 and 8 to information with respect to operations conducted within the United States. Because the proposed changes to these Items would now require some reporting with respect to operations conducted outside of the United States, it is proposed that §803.2(c)(1) be removed.

Additionally, minor ministerial changes to §803.2(e) are required to conform to the proposed changes discussed above.

§ 803.5 Affidavits required

With the proposed change to §801.30 adding non-corporate interests, §803.5(a) needs to be revised to incorporate a reference to non-corporate interests as well. The proposed revision to §803.5(a) would add the terms "non-corporate interests" and "unincorporated entity" where applicable.

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 trigger a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, these proposed amendments are intended to reduce the burden of the premerger notification program. 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

The Paperwork Reduction Act, 44 U.S.C. 3501-3521, requires agencies to submit "collections of information" to the Office of Management and Budget ("OMB") and obtain clearance before instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The existing information collection requirements in the HSR rules and Form have been reviewed and approved by OMB under OMB Control No. 3084-0005. The current clearance expires on May 31, 2013. Because the rule amendments proposed in this NPR would change existing reporting requirements, the Commission is submitting a Supporting Statement for Information Collection Provisions ("Supporting Statement") to OMB.

Increase or decrease in filings due to proposed ministerial changes in filing requirements

The proposed amendments are primarily changes to the information reported on the Notification and Report Form and do not affect the reportability of a transaction. Most of the proposed ministerial changes to the rules are clarifications (e.g., the change to §802.4) or new procedures (e.g., the change to §801.30), which also would have no effect on reporting obligations. One proposed amendment could theoretically produce an increase in filings. The definition of "entity" in §801.1(a)(2) is being modified to include non-corporate entities engaged in commerce that are controlled by a government. The definition currently includes only corporations engaged in commerce. Another proposed amendment could theoretically produce

[41] *Id.*

[42] 66 FR 8680 (February 1, 2001).

a decrease in filings. The proposed amendment to the aggregation rules in §801.15 would eliminate the unintended effect of requiring aggregation when exactly 50 percent of multiple subsidiaries have been acquired and additional voting securities of the same person are newly being acquired. The Commission believes that any increase or decrease in filings as a result of the proposed ministerial amendments would be negligible. Thus, the same number of filings projected for fiscal year 2010 in the prior Supporting Statement submitted to OMB and appearing in the associated **Federal Register** notice[43] will be used in the instant burden hour calculations.

Reduced time collecting data for and preparing the Form

Premerger Notification Office staff canvassed eight practitioners from the private bar to estimate the projected change in burden due to the proposed amendments to the Form. All are considered HSR experts and have extensive experience with preparing HSR filings for the types of transactions that are most likely to be affected by the proposed changes.

Many of the proposed changes would significantly reduce burden for all filers. Others would increase burden, particularly for acquiring persons that are private equity funds and master limited partnerships. The consensus of those canvassed was that, on average, burden for collecting and reporting would decrease approximately five percent. Thus, 37 hours (rounded to the nearest hour) will be allocated to non-index filings.[44] [(Current estimate, 39 hours[45]) x (1-.05) = 37.05 hours.]

Net Effect

The proposed Form changes only affect non-index filings which, for FY 2010, the FTC projects will total 841. Assuming an average of 37 hours per filer, and combining this revised calculation with the preceding calculations for index filings and estimates of transactions requiring more precise valuations results in a revised cumulative total of 32,037 hours.[46] This is a decrease of 1,261 hours from the prior estimate of 33,298 hours[47] for the current rules. Applying the revised estimated hours, 32,037, to the previous assumed hourly wage of $460 for executive and attorney compensation,[48] yields $14,737,000 (rounded to the nearest thousand) in labor costs, a decrease of $580,000 from the prior estimate of $15,317,000. The proposed amendments presumably will impose minimal or no additional capital or other non-labor costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the HSR Rules and the corresponding Notification and Report Form.

The Commission invites comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on the proposed reporting requirements subject to Paperwork Reduction Act review by OMB should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at OMB is subject to delay due to heightened security precautions.

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

Antitrust.

■ For the reasons stated in the preamble, the Federal Trade Commission proposes to amend 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 paragraphs (a)(2) and (b)(2), revising example 2 to paragraph (b), adding example 5 to paragraph (b), redesignating paragraph (d) as (d)(1), revising newly designated (d)(1), adding new paragraph (d)(2), and revising paragraph (f)(1)(ii) to read as follows:

§ 801.1 Definitions.

* * * * *

(a) * * *

(2) *Entity.* The term *entity* means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules: *Provided, however,* that the term entity shall not include any foreign state, foreign government, or agency thereof (other than a corporation or non-corporate entity engaged in commerce), nor the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation or non-corporate entity engaged in commerce).

(b) * * *

(2) Having the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts that are irrevocable and/or in

[43] 75 FR 27558 (May 17, 2010).

[44] *Id.* Clayton Act sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant Attorney General. Thus, parties must submit copies of these "index" filings, but completing the task requires significantly less time than non-exempt transactions that require "non-index" filings.

[45] *Id.*

[46] This is determined as follows: [(841 non-index filings x 37 hours) + (22 transactions requiring more precise valuation x 40 hours) + (20 index filings x 2 hours)]

[47] The preceding estimate, detailed further at 75 FR 8992 - 8993, was calculated as follows: [(841 non-index filings x 1/2 incorporating Item 4(a) and Item 4(b) documents by reference to an Internet link) x (39 hours less one hour saved this way)] + [(841 non-index filings x 1/2 at 39 hours)] + (22 transactions requiring more precise valuation x 40 hours) + (20 index filings x 2 hours)] = 33,298 hours. The reduction within this prior calculation for time saved when incorporating Item 4(a) and Item 4(b) documents by reference to an Internet link would be mooted by the proposed changes. The proposals would further reduce time to complete the Form, and are factored into the estimated five percent reduction stated above.

[48] *Id.*

which the settlor does not retain a reversionary interest, the trustees of such a trust.

Examples: * * *

2. A statutory limited partnership agreement provides as follows: The general partner "A" is entitled to 50 percent of the partnership profits, "B" is entitled to 40 percent of the profits and "C" is entitled to 10 percent of the profits. Upon dissolution, "B" is entitled to 75 percent of the partnership assets and "C" is entitled to 25 percent of those assets. All limited and general partners are entitled to vote on the following matters: the dissolution of the partnership, the transfer of assets not in the ordinary course of business, any change in the nature of the business, and the removal of the general partner. The interest of each partner is evidenced by an ownership certificate that is transferable under the terms of the partnership agreement and is subject to the Securities Act of 1933. For purposes of these rules, control of this partnership is determined by paragraph (b)(1)(ii) of this section. Although partnership interests may be securities and have some voting rights attached to them, they do not entitle the owner of that interest to vote for a corporate "director" as required by § 801.1(f)(1) of this section. Thus control of a partnership is not determined on the basis of either paragraph (b)(1)(i) or (2) of this section. Consequently, "A" is deemed to control the partnership because of its right to 50 percent of the partnership's profits. "B" is also deemed to control the partnership because it is entitled to 75 percent of the partnership's assets upon dissolution.

* * *

5. A is the settlor of an irrevocable trust in which it does not retain a reversionary interest in the corpus of the trust. A is entitled under the trust indenture to designate four of the eight trustees of the trust. A controls the trust pursuant to § 801.1(b)(2) and is deemed to hold the assets that constitute the corpus of the trust. Note that the right to designate 50 percent or more of the trustees of a business trust that has equity holders entitled to profits or assets upon dissolution of the business trust does not constitute control. Such business trusts are treated as non-corporate entities and control is determined pursuant to § 801.1(b)(1)(ii).

(d)(1) *Affiliate.* An entity is an affiliate of a person if it is controlled, directly or indirectly, by the ultimate parent entity of such person.

(2) *Associate.* For purposes of Items 6(c) and 7 on the Form, an associate of an acquiring person shall be an entity that is not an affiliate of such person but:

(i) Has the right, directly or indirectly, to manage, direct or oversee the affairs and/or the investments of an acquiring entity (a "managing entity"); or

(ii) Has its affairs and/or investments, directly or indirectly, managed, directed or overseen by the acquiring person; or

(iii) Directly or indirectly, controls, is controlled by, or is under common control with a managing entity; or

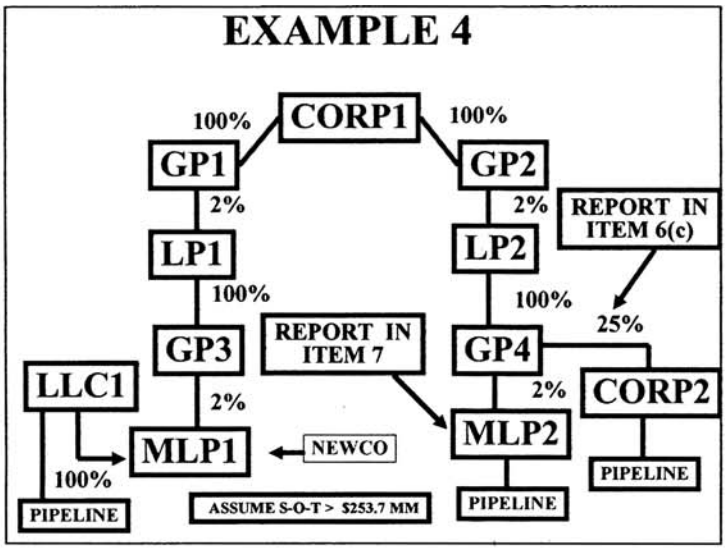
(iv) Directly or indirectly, manages, directs or oversees, is managed by, directed by or overseen by, or is under common management with a managing entity.

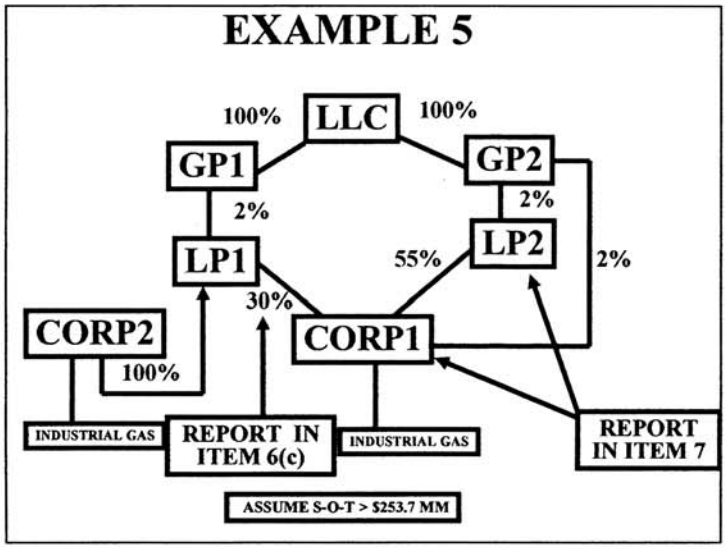
Examples to §801.1(d):

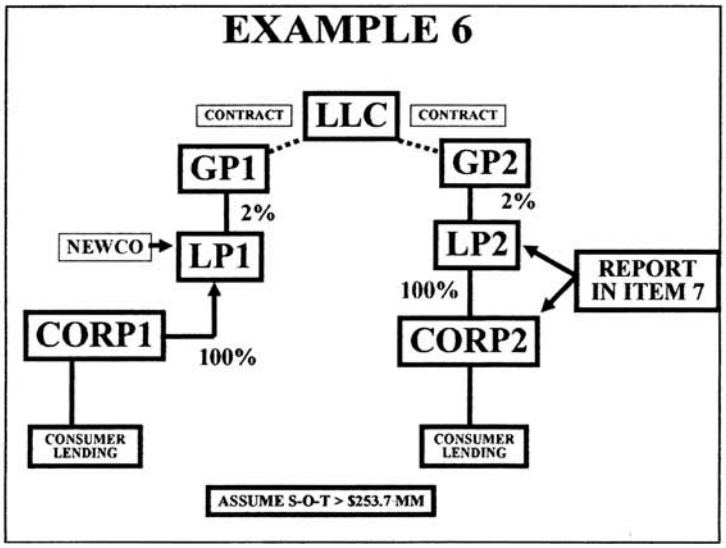
1. ABC Investment Group has organized a number of investment partnerships. Each of the partnerships is its own ultimate parent, but ABC makes the investment decisions for all of the partnerships. One of the partnerships intends to make a reportable acquisition. For purposes of Items 6(c) and 7, each of the other investment partnerships, and ABC Investment Group itself are associates of the partnership that is the acquiring person. In response to Item 6(c), the acquiring person will disclose any minority holdings of its own, or of any of these associates, in any other entity that generates revenues in any of the same codes as the acquired entity in the reportable transaction. In Item 7, the acquiring person will indicate whether there are any NAICS code overlaps between the acquired entity in the reportable transaction, on the one hand, and the acquiring person and all of its associates, on the other.

2. XYZ Corporation is its own ultimate parent and intends to make a reportable acquisition. Pursuant to a management contract, Fund MNO has the right to manage the affairs of XYZ Corporation. For the HSR filing by XYZ Corporation, Fund MNO is an associate of XYZ, as is any other entity that either controls, or is controlled by, or manages or is managed by Fund MNO or is under common control or common management with Fund MNO.

3. EFG Investment Group has the contractual power to determine the investments of PRS Corporation, which is its own ultimate parent. Natural person Mr. X, who is not an employee of EFG Investment Group, has been contracted by EFG Investment Group as its investment advisor. When PRS Corporation makes an acquisition, its associates include (i) EFG Investment Group, (ii) any entity over which EFG Investment Group has investment authority, (iii) any entity that controls, or is controlled by, EFG Investment Group, (iv) Natural person Mr. X, (v) any entity over which Natural person Mr. X has management authority, and (vi) any entity which is controlled by Natural person Mr. X, directly or indirectly.







4. CORP1 controls GP1 and GP2, the sole general partners of private equity funds LP1 and LP2 respectively. LP1 controls GP3, the sole general partner of MLP1, a newly formed master limited partnership which is its own ultimate

parent entity. LP2 controls GP4, the sole general partner of MLP2, another master limited partnership that is its own ultimate parent entity and owns and operates a natural gas pipeline. In addition, GP4 holds 25% of the voting securities of CORP2, which also owns and operates a natural gas pipeline.

MLP1 is acquiring 100% of the membership interests of LLC1, also the owner and operator of a natural gas pipeline. MLP2, CORP2 and LLC1 all derive revenues in the same NAICS code (Pipeline Transportation of Natural Gas). All of the entities under common management of CORP1, including GP4 and MLP2, are associates of MLP1, the acquiring person.

In Item 7 of its HSR filing, MLP1 would identify MLP2 as an associate that has an overlap in pipeline transportation of natural gas with LLC1, the acquired person. Because GP4 does not control CORP2 it would not be listed in Item 7, however, it would be listed in Item 6(c)(ii) as an associate that holds 25% of the voting securities of CORP2. In this example, even though there is no direct overlap between the acquiring person (MLP1) and the acquired person (LLC1), there is an overlap reported for an associate (MLP2) of the acquiring person in Item 7. Also, while the acquiring person (MLP1) has no holdings, the holdings of an associate (GP4) of the acquiring person is reported in Item 6(c)(ii).

5. LLC is the investment manager for and ultimate parent entity of general partnerships GP1 and GP2. GP1 is the general partner of LP1, a limited partnership that holds 30% the voting securities of CORP1. GP2 is the general partner of LP2, which holds 55% of the voting securities of CORP1. GP2 also directly holds 2% of the voting securities of CORP1. LP1 is acquiring 100% of the voting securities of CORP2. CORP1 and CORP2 both derive revenues in the same NAICS code (Industrial Gas Manufacturing).

All of the entities under common management of the managing entity LLC, including GP1, GP2, LP2 and CORP1 are associates of LP1. In Item 6(c)(i) of its HSR filing, LP1 would report its own holding of 30% of the voting securities of CORP1. It would not report the 55% holding of LP2 in Item 6(c)(ii) because it is greater than 50%. It also would not report GP2's 2% holding because it is less than 5%. In Item 7, LP1 would identify both LP2 and CORP1 as associates that derive revenues in the same NAICS code as CORP2.

6. LLC is the investment manager for GP1 and GP2 which are the general partners of limited partnerships LP1 and LP2, respectively. LLC holds no equity interests in either general partnership but manages their investments and the investments of the limited partnership by contract. LP1 is newly formed and its own ultimate parent entity. It plans to acquire 100% of the voting securities of CORP1, which derives revenues in the NAICS code for Consumer Lending. LP2 controls CORP2, which derives revenues in the same NAICS code. All of the entities under the common management of LLC, including LP2 and CORP2, are associates of LP1. For purposes of Item 7, LP1 would report LP2 and CORP2 as associates that derive revenues in the NAICS code that overlaps with CORP1. Even though the investment manager (LLC) holds no equity interest in GP1 or GP2, the contractual arrangement with them makes them associates of LP1 through common management.

7. Corporation A is its own ultimate parent entity and is making an acquisition of Corporation B. Although Corporation A is operationally managed by its officers and its investments, including the acquisition of Corporation B, are managed by its directors, neither the officers nor directors are considered associates of A.

8. Limited partnership A is an investment partnership that is making an acquisition. LLC B has no equity interest in A, but has a contract to manage its investments for a fee. LLC B has an investment committee comprised of twelve of its employees that makes the actual investment decisions. LLC B is an associate of A but none of the twelve employees are associates of A, as LLC B is a managing entity and the twelve individuals are merely its employees. Contrast this with example 3 where a managing entity, EFG, is itself managed by another entity, Mr. X, who is thus an associate.

(f) * * *

(1) * * *

(ii) *Non-corporate interest.* The term "non-corporate interest" means an interest in any unincorporated entity which gives the holder the right to any profits of the entity or in the event of dissolution of that entity the right to any of its assets after payment of its debts. These unincorporated entities include, but are not limited to, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, cooperatives and business trusts; but these unincorporated entities do not include trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest and any interest in such a trust is not a non-corporate interest as defined by this rule.

* * * * *

■ 3. Amend § 801.10 by revising paragraph (c)(2) to read as follows:

§ 801.10 Value of voting securities, non-corporate interests and assets to be acquired.

* * *

(c) * * *

(2) *Acquisition price.* The acquisition price shall include the value of all consideration for such voting securities, non-corporate interests or assets to be acquired.

* * * * *

■ 4. Amend § 801.15 by revising the heading, introductory text, and paragraphs (a) and (b) to read as follows:

§ 801.15 Aggregation of voting securities, non-corporate interests and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of determining the aggregate total amount of voting securities, non-corporate interests and assets of the acquired person held by the acquiring person under Section 7A(a)(2) and § 801.1(h), none of the following will be held as a result of an acquisition: a) Assets, non-corporate interests or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under—

(1) Sections 7A(c) (1), (3), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.30, 802.31, 802.35, 802.52, 802.53, 802.63, and 802.70 of this chapter;

(b) Assets, non-corporate interests or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under Section 7A(c)(9) and §§ 802.3, 802.4, and 802.64 of this chapter unless the limitations contained in Section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

* * * * *

■ 5. Amend § 801.30 by revising the heading and paragraph (a)(5) to read as follows:

§ 801.30 Tender offers and acquisitions of voting securities and non-corporate interests from third parties.

(a) * * *

(5) All acquisitions (other than mergers and consolidations) in which voting securities or non-corporate interests are to be acquired from a holder or holders other than the issuer or unincorporated entity or an entity included within the same person as the issuer or unincorporated entity;

* * * * *

PART 802–EXEMPTION RULES

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

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

■ 7. Amend § 802.4 by revising paragraph (a) introductory text to read as follows:

§ 802.4 Acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt.

(a) An acquisition of voting securities of an issuer or non-corporate interests in an unincorporated entity whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act pursuant to § 7A(c) of the Act, this part 802, or pursuant to § 801.21, is exempt from the reporting requirements if the acquired issuer or unincorporated entity and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than $50 million (as adjusted). The value of voting or non-voting securities of any other issuer or interests in any non-corporate entity not included within the acquired issuer or unincorporated entity does not count toward the $50 million (as adjusted) limitation for non-exempt assets.

* * * * *

■ 8. Amend § 802.21 by removing paragraph (b) and its three examples.

■ 9. Amend § 802.52 by revising the heading and paragraph (b) introductory text to read as follows:

§ 802.52 Acquisitions by or from foreign governmental entities.

(b) The acquisition is of assets located within that foreign state or of voting securities or non-corporate interests of an entity organized under the laws of that state.

* * * * *

PART 803–TRANSMITTAL RULES

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

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

■ 11. Amend § 803.2 by revising paragraph (b)(2) introductory text, removing paragraph (c)(1), redesignating paragraph (c)(2) as (c), and revising paragraph (e) to read as follows:

§ 803.2 Instructions applicable to Notification and Report Form.

* * *

(b) * * *

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

* * *

(e) A person filing notification may instead provide:

(1) A cite to a previous filing containing documentary materials required to be filed in response to item 4(b) of the Notification and Report Form, which were previously filed by the same person and which are the most recent versions available; except that when the same parties file for a higher threshold no more than 90 days after having made filings with respect to a lower threshold, each party may instead provide a cite to any documents or information in its earlier filing provided that the documents and information are the most recent available;

(2) A cite to an Internet address directly linking to the document, only documents required to be filed in response to item 4(b) of the Notification and Report Form. If an Internet address is inoperative or becomes inoperative during the waiting period, or the document that is linked to it is incomplete, or the link requires payment to access the document, upon notification by the Commission or Assistant Attorney General, the parties must make these documents available to the agencies by either referencing an operative Internet address or by providing paper copies to the agencies as provided in § 803.10(c)(1) by 5 p.m. on the next regular business day. Failure to make the documents available, by the Internet or by providing paper copies, by 5 p.m. on the next regular business day, will result in notice of a deficient filing pursuant to § 803.10(c)(2).

* * * * *

■ 12. Amend § 803.5 by revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(1)(iii), and (a)(1)(vi) to read as follows.

§ 803.5 Affidavits required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, or attached as part of the electronic submission, attesting that the issuer or unincorporated entity whose voting securities or non-corporate interests are to be acquired has received notice in writing by certified or registered mail, by wire or by hand delivery, at its principal executive offices, of:

* * *

(ii) The fact that the acquiring person intends to acquire voting securities or non-corporate interests of the issuer or unincorporated entity;

(iii) The specific classes of voting securities or non-corporate interests of the issuer or unincorporated entity sought to be acquired; and if known, the number of voting securities or unincorporated interests of each such class that would be held by the acquiring person as a result of the acquisition or, if the number of voting securities is not known in the case of an issuer, the specific notification threshold that the acquiring person intends to meet or exceed; and, if designated by the acquiring person, a higher threshold for additional voting securities it may hold in the year following the expiration of the waiting period;

* * *

(vi) The fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the act.

* * * * *

BILLING CODE 6750–01–S

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

INSTRUCTIONS

GENERAL

The Notification and Report Form ("the Form") is required to be submitted pursuant to §803.1(a) of the premerger notification rules, 16 CFR Parts 801-803 ("the Rules").

These instructions specify the information which must be provided in response to the items on the Form. The completed Form, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice ('the Agencies").

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

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

Information

The central office for information and assistance concerning the Rules and the Form is:

Premerger Notification Office
Federal Trade Commission, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
phone: (202) 326-3100 - e-mail: HSRHelp@hsr.gov

Copies of the Form, Instructions and Rules as well as materials to assist in completing the Form are available at www.ftc.gov/bc/hsr. An electronic version of the Form is available at www.hsr.gov and may be used for the direct electronic submission of filings or to generate a print version of the Form for paper copy submission.

Definitions

The definitions and other provisions governing this Form are set forth in the Rules, 16 CFR Parts 801-803. The governing statute ("the Act"), 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), 61 FR 13688 (March 28, 1996), 66 FR 8693 (February 1, 2001), 70 FR 4994 (January 31, 2005), 70 FR 11513 (March 8, 2005), 70 FR 73369 (December 12, 2005), 70 FR 77312 (December 30, 2005), 71 FR 2943 (January 18, 2006), and Pub. L. No. 106-533, 114 Stat. 2762. See www.ftc.gov/bc/hsr for copies of these materials.

Affidavit

Attach the affidavit required by §803.5 to the Form. If filing electronically, submit an electronic version of the affidavit as attachment 1.

The language found in 28 U.S.C. §1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the affidavit.

For acquisitions to which §801.30 does not apply, the affidavit must attest that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of the person filing notification to complete the transaction.

For acquisitions to which §801.30 does apply, the affidavit must also attest that the issuer whose voting securities or the unincorporated entity whose non-corporate interests are to be acquired has received notice; the identity of the acquiring person and the fact that the acquiring person intends to acquire voting securities of the issuer or non-corporate interests of the unincorporated entity; the specific notification threshold that the acquiring person intends to meet or exceed if an acquisition of voting securities; the fact that the acquisition may be subject to the Act, and that the acquiring person will file notification under the Act; the anticipated date of receipt of such notification by the Agencies; and the fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the Act.

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)(3).

In the case of a tender offer, the affidavit must also attest that the intention to make the tender offer has been publicly announced.

An affidavit is **not** required of 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. 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.

For electronic filings, all items are automatically identified within the Form. Electronic attachments and endnotes may be appended to the Form for any item.

Enter the name of the person filing notification as reported 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. All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars. Estimated data should be followed by the notation, "est." For electronic filings, add an endnote with the notation, "est." to any item where data is estimated.

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

The Form requests dollar revenues and lines of commerce for non-manufactured and manufactured products with respect to operations conducted within the United States and for products manufactured outside of the United States and sold into the United States. Filing persons must submit data at the 6-digit NAICS national industry code level to reflect non-manufacturing revenues. To the extent that dollar revenues (see §803.2(d)) are derived from manufacturing operations (NAICS Sectors 31-33), filing persons must submit data at the 10-digit NAICS product code levels.

References

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

Thresholds

Filing fee and notification thresholds are adjusted annually pursuant to Section 7A(a)(2) of the Clayton Act based on the change in gross national product, in accordance with Section 8(a)(5). The current threshold values can be found at www.ftc.gov/bc/hsr.

Limited Response

Information need not be supplied regarding assets, non-corporate interests, or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See §803.2(c)(1)). The acquired person should limit its response in the case of an acquisition of assets, to the assets being sold, in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) whose non-corporate interests are being acquired, 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 acquired entities. Separate responses may be required where a person is both acquiring and acquired. (See §§803.2(b) and (c)).

Filing

Filers have three options:

(1) Complete and return **ONE** original and **ONE** copy (with one notarized original affidavit and certification and one set of documentary attachments) of the Notification and Report Form ("Form") to:

Premerger Notification Office
Federal Trade Commission, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Also, **THREE** copies (with one set of documentary attachments) should be sent to:

Director of Operations, Antitrust Division,
Department of Justice,
950 Pennsylvania Avenue, N.W., Room #3335
Washington, D.C. 20530.

(For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004);

(2) Complete the electronic version of the Form and submit the completed Form with all electronic attachments as directed at www.hsr.gov; or

(3) Complete the electronic version of the Form and submit it electronically as directed at www.hsr.gov, while providing the documentary attachments in paper copy to the FTC and DOJ as in Option 1 above. Note that for Option 3, the attachments must be listed on the attachments page of the Form and classified as "paper to follow".

If one or both delivery sites are unavailable, the Agencies may announce alternate sites for delivery through the media and, if possible, at www.ftc.gov/bc/hsr and www.hsr.gov.

ITEM BY ITEM

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 (as adjusted) but less than $100 million (as adjusted)	$45,000
$100 million (as adjusted) or greater but less than $500 million (as adjusted)	$125,000
$500 million or greater (as adjusted)	$280,000

For current thresholds and fee information, see www.ftc.gov/bc/hsr.

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.

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, if different, need be supplied.

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 filer's name. If the confirmation number is unavailable at the time notification is filed, provide this information by letter within one business day of filing.

When submitting an EWT, all payers should include a contact person and a phone number in the Comment Field.

If paying by certified check or money order, send the payment to the Premerger Notification Office at the address above.

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. See http://www.ftc.gov/bc/hsr/postconsumfilings.shtm for more information on how to proceed in the case of a corrective filing.

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 (11 USC §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. Note that if *either* party requests early termination, it may be granted and published.

Transactions Subject to International Antitrust Notification

If, to the knowledge or belief of the filing person at the time of filing, a non-U.S. 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.

ITEM 1

Item 1(a)

Provide the name, headquarters address and website (if one exists) of the person filing notification. The name of the person is the name of the ultimate parent entity.

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, unincorporated entity, natural person, 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 the 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 the 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, voting securities or non-corporate interests 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 or non-corporate interests 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)

Provide the name and title, firm name, address, telephone number, fax number and e-mail address of the primary individual to contact and a backup contact regarding the Form. (See §803.20(b)(2)(ii)).

Item 1(h)

Foreign filing persons provide the name, 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 persons that are parties to the acquisition, whether or not

they are required to file notification. If not required to file, note as non-reportable.

Item 2(b)

Put an X in all the boxes that apply to this acquisition.

Item 2(c)

(Acquiring person only) 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.

Note that the 50% notification threshold is the highest threshold and should be used for any acquisition of 50% or more of the voting securities of an issuer, regardless of the value of the voting securities (e.g. an acquisition of 100% of the voting securities of an issuer, valued in excess of $500 million (as adjusted) would cross the 50% notification threshold, not the $500 million (as adjusted) threshold.

Item 2(d)

Item 2(d)(i)

State the value of voting securities already held (see §801.10).

Item 2(d)(ii)

State the percentage of voting securities already held (see §801.12).

Item 2(d)(iii)

State the total value of voting securities to be held as a result of the acquisition (see §801.10).

Item 2(d)(iv)

State the total percentage of voting securities to be held as a result of the acquisition (overall voting power; see §801.12).

Item 2(d)(v)

State the value of non-corporate interests already held (§801.10).

Item 2(d)(vi)

State the percentage of non-corporate interests already held (economic interests).

Item 2(d)(vii)

State the total value of non-corporate interests to be held as a result of the acquisition (see §801.10).

Item 2(d)(viii)

State the total percentage of non-corporate interests to be held as a result of the acquisition (economic interests).

Item 2(d)(ix)

State the value of assets to be held as a result of the acquisition (see §801.10).

Item 2(d)(x)

State the aggregate total value of voting securities, assets and non-corporate interests of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§801.10, 801.12, 801.13, and 801.14).

ITEM 3

Item 3(a)

Briefly describe the transaction, indicating whether assets, voting securities, or non-corporate interests (or some combination) are to be acquired. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification, and the names of any acquired issuers or non-corporate entities. In an asset acquisition, provide a brief description of the business the assets to be acquired comprise. 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 there are additional filings, such as shareholder backside filings, associated with the transaction, list those, as well as any special circumstances that apply to the filing, such as whether part of the transaction is exempt under one of the exemptions found in Section 802.

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

Item 3(b)

Furnish copies of all documents that constitute the agreement(s) among the acquiring person(s) and the person(s) whose voting securities, non-corporate interests or assets are to be acquired. Also furnish Agreements Not to Compete. Documents that constitute the agreement(s) (e.g., a Letter of Intent, Merger Agreement, Purchase and Sale Agreement) must be executed, while Agreements Not to Compete may be provided in draft form if that is the most recent version. If parties are filing on an executed Letter of Intent, they may also submit a draft of the definitive agreement. Note that transactions subject to §801.30 and bankruptcies under 11 USC §363 do not require an executed agreement or letter of intent. (For paper copy submissions, do not attach these documents to the Form).

ITEM 4

Item 4(a)

Provide the names of all entities, including the UPE, within the person filing notification that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission and provide the Central Index Key (CIK) number for each entity.

For Items 4(b) through 4(d), furnish one copy of each of the indicated documents.

Item 4(b)

Provide the most recent annual reports and/or annual audit reports

of the person filing notification and of each unconsolidated United States entity included within such person. Natural persons need only provide annual reports and/or annual audit reports for the highest level entity(s) they control. Alternatively, the person filing notification may incorporate a document by reference to an internet address directly linking to the document (see §803.2(e)(2)).

NOTE: In response to Item 4(b), 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).

If the annual report and/or annual audit report does not show sales or assets sufficient to meet the size of person test, and the size of person test is relevant given the size of the transaction, the filing person must stipulate in Item 4(b) that it meets the test.

Item 4(c)

Provide 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.

NOTE: If the person filing notification withholds or redacts 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).

Item 4(d)

For each category below, indicate (if not contained in the document itself) the date of preparation, and the name of the company or organization that prepared each such document.

Item 4(d)(i): Provide all offering memoranda (or documents that served that function) that reference the acquired entity(s) or assets. Documents responsive to this item are limited to those produced up to two years before the date of filing.

Item 4(d)(ii): Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors if they were prepared 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 market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and that also reference the acquired entity(s) or assets. Documents responsive to this item are limited to those produced up to two years before the date of filing.

Item 4(d)(iii): Provide all studies, surveys, analyses and reports evaluating or analyzing synergies and/or efficiencies if they 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. Financial models without stated assumptions need not be provided in response to this item.

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

ITEMS 5 through 7

For Items 5 through 7, the acquired person should limit its response in the case of an acquisition of assets, to the assets to be acquired, in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) being acquired and all entities controlled by such unincorporated entity(s), 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)).

NOTE: See "References" listed in the General Instructions to the Form.

ITEM 5

This item requests information by NAICS code regarding non-manufacturing and manufacturing dollar revenues. All persons must submit data on non-manufacturing revenues 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 be submitted at the 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.

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 the Form is prepared. If no revenues are reported, check the "None" box and provide a brief explanation.

Item 5(a)

Provide 6-digit NAICS industry data concerning the aggregate operations of the person filing notification for the most recent year in NAICS Sectors other than 31-33 (non-manufacturing industries) in which the person engaged and 10-digit NAICS product code data for each product code within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged, including revenues for each product manufactured outside the U.S. but sold in or into the U.S. Sales made directly into the U.S. should be reported in a manufacturing code. Sales made into the U.S. through a wholesale or retail operation within the same person should be reported in both manufacturing (transfer price) and wholesale or retail (sales price) codes. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry codes and 10-digit NAICS product codes may be provided if a statement describing the method of estimation is furnished.

Item 5(b)

Supply the following information only if the acquisition is the formation of a joint venture corporation or unincorporated entity (see

§§801.40 and 801.50). If the acquisition is not a formation, check the "Not Applicable" box.

Item 5(b)(i)

List the contributions that each person forming the joint venture corporation or unincorporated entity 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(b)(ii)

Describe fully the consideration which each person forming the joint venture corporation or unincorporated entity will receive in exchange for its contribution(s).

Item 5(b)(iii)

Describe generally the business in which the joint venture corporation or unincorporated entity 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(b)(iv)

Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing, also specify each 10-digit NAICS product code 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)

List the name and city and state/country of any U.S. entities and any foreign entities that have sales into the U.S. included within the person filing notification. Entities with total assets of less than $10 million may be omitted. In responding to Item 6(a), it is permissible for a filing person to report all entities within it.

Item 6(b)

For the acquired entity(s) and for the acquiring entity(s) and its UPE or, in the case of natural persons, the top-level corporate or non-corporate entity(s) within that UPE, list the name and headquarters mailing address of each other person that holds (See §801.1(c)) five percent or more of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person.

For limited partnerships, only the general partner(s), regardless of percentage held, should be listed.

Item 6(c)

Item 6(c)(i)

If the person filing notification holds five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an unincorporated entity, the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year. The acquired entity should limit its response, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquiring person. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the filing person, should be listed. Holdings of issuers or unincorporated entities with total assets of less than $10 million, may be omitted. In responding to Item 6(c)(i), it is permissible for a filing person to list all entities in which it has a reportable minority interest.

Item 6(c)(ii)

(Acquiring person only) For each associate (see §801.1(d)(2)) of the person filing notification holding five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year, list, based on the knowledge or belief of the acquiring person, the top level associate, the issuer or unincorporated entity and percentage held. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. Holdings of entities with total assets of less than $10 million may be omitted. In responding to Item 6(c)(ii), it is permissible for the acquiring person to list all entities in which its associate(s) has a reportable minority interest.

ITEM 7

If, to the knowledge or belief of the person filing notification, the acquiring person filing notification, or any associate (see §801.1(d)(2)) of the acquiring person, derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition also derived dollar revenues in the most recent year, or in which a joint venture corporation or unincorporated entity will derive dollar revenues (note that if the acquired entity is a joint venture the only overlaps will be between the assets to be held by the joint venture and any assets of the acquiring person not contributed to the joint venture), 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)

Item 7(b)(i)

List the name of each person that is a party to the acquisition that also derived dollar revenues in the 6-digit industry and, if different, the name of the entity(s) that actually derived those revenues.

Item 7(b)(ii)

(Acquiring person only) List the name of each top level associate of the acquiring person that also derived dollar revenues in the 6-digit industry and, if different, the name of the entity(s) that actually derived those revenues.

Item 7(c)

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 industry 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); 515 (broadcasting); 517 (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 Nonmetallic Mineral Mining and Quarrying (2123); Concrete (32732); Concrete products (32733); Industrial gases (32512); 44-45 (retail trade), except 442 (furniture and home furnishings stores), and 443 (electronics and appliance stores); 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), except 7212 (recreational vehicle parks and recreational camps), and 7213 (rooming and boarding houses); 811 (repair and maintenance), except 8114 (Personal and Household Goods 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 442 (furniture and home furnishings stores), 443 (electronics and appliance stores); 516 (internet publishing & broadcasting); 518 (internet service providers); 519 (other information services); 523 (securities, commodity contracts and other financial investments and related activities); 525 (funds, trusts and other financial vehicles); 53 (real estate and rental and leasing); 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, and other insurance related activities); 7212 (recreational vehicle parks and recreational camps), 7213 (rooming and boarding houses) and 8114 (personal and household goods repair and maintenance) 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.

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 7(d)

(Acquiring person only) Use the geographic markets listed in Items 7(c)(i) through 7(c)(vi) to respond to this item, providing the information for associates of the acquiring person. List separately responses for each associate of the acquiring person and, if different, the entity(s) that actually derived the revenues.

ITEM 8

(Acquiring person only). Determine each 6-digit NAICS industry code listed in Item 7(a) above, in which the acquiring person derived dollar revenues of $1 million or more in the most recent year and in which either the acquired entity derived revenues of $1 million or more in the recent year (or in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive revenues of $1 million or more), or, in the case of acquired assets, to which revenues of $1 million or more were attributable in the most recent year. 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 or 50 percent or more of non-corporate interests of an unincorporated entity that 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 from which the voting securities, non-corporate interests or assets were acquired;

(b) the headquarters address of that entity prior to the acquisition;

(c) whether voting securities, non-corporate interests 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)

The language found in 28 U.S.C. §1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the certification.

Privacy Act Statement–Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. 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 $16,000 per day. We also may be unable to process the Form unless you provide all of the requested information.

16 C.F.R. Part 803 – Appendix

NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

☐☐☐☐☐☐☐☐
TRANSACTION NUMBER ASSIGNED

FEE INFORMATION *(For Payer Only)*

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.

Attachment Number _____

TAXPAYER IDENTIFICATION NUMBER _____
OR SOCIAL SECURITY NUMBER FOR NATURAL PERSONS

NAME OF PAYER *(if different from PERSON FILING)* _____

WIRE TRANSFER ☐ or CERTIFIED CHECK / MONEY ORDER ATTACHED ☐

WIRE TRANSFER CONFIRMATION NO. _____

FROM (NAME OF INSTITUTION) _____

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

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

(*voluntary*) IS THIS ACQUISITION SUBJECT TO NON-US FILING REQUIREMENTS? ☐ YES ☐ NO
IF YES, list jurisdictions:

ITEM 1

1(a) PERSON FILING

NAME	
HEADQUARTERS ADDRESS	
ADDRESS LINE 2	
CITY, STATE, COUNTRY	
ZIP CODE	
WEB SITE	

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

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE THE PERSON FILING NOTIFICATION
☐ Corporation ☐ Unincorporated Entity ☐ Natural Person ☐ Other *(Specify)*: _____

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

1(e) PUT AN "X" IN THE APPROPRIATE BOX BELOW AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION, IF DIFFERENT THAN THE ULTIMATE PARENT ENTITY

☐ Not Applicable	☐ 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	
ADDRESS	
CITY, STATE, COUNTRY	
ZIP CODE	

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

NAME		
ADDRESS		☐ Not Applicable
CITY, STATE, COUNTRY		
ZIP CODE		

PERCENT OF VOTING SECURITIES OR NON-CORPORATE INTERESTS THAT THE UPE HOLDS DIRECTLY OR INDIRECTLY IN THE ACQUIRING OR ACQUIRED ENTITY IDENTIFIED IN ITEM 1(f) %

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

CONTACT PERSON 1		CONTACT PERSON 2	
FIRM NAME		FIRM NAME	
BUSINESS ADDRESS		BUSINESS ADDRESS	
CITY, STATE, COUNTRY		CITY, STATE, COUNTRY	
ZIP CODE		ZIP CODE	
TELEPHONE NUMBER		TELEPHONE NUMBER	
FAX NUMBER		FAX NUMBER	
E-MAIL ADDRESS		E-MAIL ADDRESS	

1(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	
FIRM NAME	
BUSINESS ADDRESS	
CITY, STATE, COUNTRY	
ZIP CODE	
TELEPHONE NUMBER	
FAX NUMBER	
E-MAIL ADDRESS	

NAME OF PERSON FILING NOTIFICATION	DATE

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 or other corporation or unincorporated entity (see § 801.40 or § 801.50)
- ☐ an acquisition subject to § 801.30 (*specify type*)
- ☐ a consolidation (see § 801.2)
- ☐ an acquisition of voting securities
- ☐ a secondary acquisition
- ☐ an acquisition subject to § 801.31
- ☐ an acquisition of non-corporate interests
- ☐ other (*specify*) _____

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% ☐ N/A

2(d)(i) VALUE OF VOTING SECURITIES ALREADY HELD ($MM) $	**(v)** VALUE OF NON-CORPORATE INTERESTS ALREADY HELD ($MM) $	
(ii) PERCENTAGE OF VOTING SECURITIES ALREADY HELD %	**(vi)** PERCENTAGE OF NON-CORPORATE INTERESTS ALREADY HELD %	
(iii) TOTAL VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $	**(vii)** TOTAL VALUE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $	**(ix)** VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $
(iv) TOTAL PERCENTAGE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION %	**(viii)** TOTAL PERCENTAGE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION %	**(x)** AGGREGATE TOTAL VALUE ($MM) $

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

ACQUIRING UPE(S)	ACQUIRED UPE(S)
ACQUIRING ENTITY(S)	ACQUIRED ENTITY(S)

TRANSACTION DESCRIPTION

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

(DO NOT ATTACH THE 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) ENTITIES WITHIN THE PERSON FILING NOTIFICATION THAT FILE ANNUAL REPORTS WITH THE SECURITIES AND EXCHANGE COMMISSION	CENTRAL INDEX KEY NUMBER

4(b) ANNUAL REPORTS AND ANNUAL AUDIT REPORTS	ATTACHMENT OR REFERENCE NUMBER

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

4(d) ADDITIONAL DOCUMENTS	ATTACHMENT OR REFERENCE NUMBER

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5

5(a) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY CODE AND BY MANUFACTURED PRODUCT CODE

6-DIGIT INDUSTRY CODE AND/OR 10-DIGIT PRODUCT CODE	DESCRIPTION	YEAR I_____I TOTAL DOLLAR REVENUES ($MM)

NONE ☐ *(PROVIDE EXPLANATION)*

NAME OF PERSON FILING NOTIFICATION	DATE

5(b) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY	☐ Not Applicable

5(b)(i) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY HAS AGREED TO MAKE

5(b)(ii) DESCRIPTION OF CONSIDERATION THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL RECEIVE

5(b)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL ENGAGE

5(b)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 10-DIGIT PRODUCT CODE (manufactured)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) HOLDERS OF PERSON FILING NOTIFICATION

6(c)(i) HOLDINGS OF PERSON FILING NOTIFICATION

6(c)(ii) HOLDINGS OF ASSOCIATES *(ACQUIRING PERSON ONLY)*

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 7

OVERLAP DOLLAR REVENUES

7(a) 6-DIGIT NAICS INDUSTRY CODE AND DESCRIPTION

7(b)(i) LIST THE NAME OF EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

7(b)(ii) LIST THE NAME OF EACH ASSOCIATE OF THE ACQUIRING PERSON THAT ALSO DERIVED DOLLAR REVENUES (*ACQUIRING PERSON ONLY*)

7(c) GEOGRAPHIC MARKET INFORMATION FOR EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

7(d) GEOGRAPHIC MARKET INFORMATION FOR ASSOCIATES OF THE ACQUIRING PERSON (*ACQUIRING PERSON ONLY*)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 8

PRIOR ACQUISITIONS *(ACQUIRING PERSON ONLY)*

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 _____ [SEAL]

this _____day of _____, the year _____

Signature _____

My Commission expires _____

Attach the Affidavit required by § 803.5 to the Form.

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

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 $16,000 for each day during which such person is in violation of 15 U.S.C. §18a.

Pursuant to the Hart-Scott-Rodino Act, 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.

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 37 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
and
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 above.

Privacy Act Statement--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. 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 $16,000 per day. We also may be unable to process the Form unless you provide all of the requested information.

This page may be omitted when submitting the Form.

By direction of the Commission.

Donald S. Clark
Secretary

[FR Doc. 2010–23079 Filed 9–16–10; 8:45 am]
BILLING CODE 6750–01–C