

to file reports with the Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions, pursuant to section 7A of the Clayton Act. The filing and waiting period requirements enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. The rule amendments are necessary to address public comments regarding the Interim Rules published February 1, 2001, and will increase the clarity and improve the effectiveness of the rules and the Notification and Report Form.

DATES: These final rules are effective January 17, 2003.

FOR FURTHER INFORMATION CONTACT:

Marian R. Bruno, Assistant Director, Karen E. Berg, Attorney, or B. Michael Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326-3100.

SUPPLEMENTARY INFORMATION: On February 1, 2001, the Commission published Interim and Proposed Rules amending the Hart-Scott-Rodino rules ("HSR rules") contained in 16 CFR parts 801, 802 and 803. The Interim Rules took effect upon publication and implemented amendments to section 7A of the Clayton Act enacted on December 21, 2000 ("2000 Amendments"). The Proposed Rules set forth other changes improving and updating the HSR rules and were revised and made final effective April 17, 2002 (67 FR 11898). Interim Rule 802.21 was revised and made final in a separate rulemaking effective February 2, 2002 (67 FR 11904).

Both sets of rules invited public comments. The Commission received seventeen public comments addressing the Interim Rules (66 FR 8679) and the Proposed Rules (66 FR 8723). Some comments addressed both sets of rules, others addressed only one or the other. Eight of the public comments pertained to the Interim Rules and are listed below. In response to these eight comments, the Commission, with the concurrence of the Assistant Attorney General, is promulgating additional amendments and revisions to the Interim Rules and Form, as described below. The Commission also received a number of comments that were not relevant to the changes promulgated by

either set of rules. These additional comments remain under consideration and may be addressed by future rulemaking.

The following provided public comments on the Interim Rules to the Commission:

1. Baker & McKenzie (Clanton, David A., *et al.*) (3/19/01)
3. Ford Motor Company (Bolerjack, Stephen D.) (3/19/01)
8. National Association of Manufacturers ("NAM") (3/29/01)
9. O'Melveny and Myers (Beddow, David T.) (3/19/01)
12. Gibson, Dunn & Crutcher (Pfunder, Malcolm R.) (3/19/01)
13. Section of Antitrust Law of the American Bar Association (3/19/01)
15. Skadden, Arps, Slate, Meagher & Flom, LLP (Stoll, Neal R. Esq., *et al.*) (3/19/01)
16. Kirkland & Ellis (Sonda, James and Jachino, Dani) (3/19/01)

Part 801—Coverage Rules

Section 801.1(h): Notification Threshold

The Commission is adopting the Interim Rule as final with an edit for clarification purposes, as described in the following discussion.

Background Information to § 801.1(h)

The Commission received six comments addressing the notification thresholds implemented by the Interim Rules. Comment 3 asserted that the dollar amount thresholds do not reflect levels of competitive significance of an acquisition and recommended their elimination. It also stated that the Statement of Basis and Purpose ("SBP") accompanying the Interim Rules offered no reason why these dollar amounts might reflect levels of acquisition that deserve agency review. Comments 3 and 8 recommended elimination of the \$100 million and \$500 million notification thresholds, with retention of the remaining three thresholds. Comments 13 and 15 advocated a return to the 1978 notification thresholds with only a change from \$15 million to \$50 million as the lowest threshold, citing as justification the same concerns indicated in Comments 3 and 8.

As explained in the SBP accompanying the Interim Rules and below, the Commission believes that these dollar thresholds are an effective solution to administrative problems relating to filing fees that parties and the agencies would otherwise face, and also that these thresholds impose little burden on parties. Thus, the Commission believes that these thresholds are appropriate and should be retained.

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

In 1978, the agencies adopted \$15 million, 15 percent, 25 percent, and 50 percent as thresholds requiring reporting of acquisitions. The 50 percent threshold is self-evident: it is the point where the acquirer attains control, as defined in the Rules, and at least veto power. The \$15 million threshold reflected the basic statutory threshold for filing. The other thresholds were chosen as intermediate points representing substantial additional ownership and, often, additional practical control. At the same time, the agencies also promulgated § 802.21 of the HSR rules to allow additional voting securities acquisitions between these thresholds to go unreported. Intermediate thresholds and § 802.21 thus serve the interests of both the agencies and the parties, enabling the agencies to allow small minority acquisitions to proceed even where the transfer of a more significant minority interest between the parties might be of concern.

In light of the 2000 Amendments, the Commission reconsidered the appropriate § 801.1(h) thresholds, recognizing that \$50 million should be the lowest reporting threshold and 50 percent (if valued at greater than \$50 million) the highest. The Commission then addressed what additional thresholds, if any, to implement. As with the 1978 Rules, it was readily apparent that intermediate thresholds are desirable. However, as outlined in the SBP that accompanied the Interim Rules, using only percentage notification thresholds would create administrative problems for both filers and the agencies. Section 802.21 allows an acquiring person in a voting securities acquisition—assuming it has crossed the notification threshold for which it filed within a year of the end