

To address the specific questions raised by Comment 13, an example of when the value of a transaction may straddle two filing fee thresholds is when the agreed price for an acquisition of non-publicly traded voting securities is \$99 million, subject to post-closing adjustments of up to plus or minus \$2 million. In this situation, if the acquiring person has a reasonable basis for estimating that the adjustments will be minus \$1 million, then the acquisition price is determined and the appropriate filing fee threshold is \$50 million. However, since the potential acquisition price, subject to adjustments, could have exceeded the \$100 million threshold, an explanation of why the lower threshold was indicated should be attached (*see* § 803.9, example 7).

In the case of tender offers, if the offer is for a minimum percentage of the issuer's voting securities, but there is no cap on the offer, the transaction must be valued at the maximum that could be tendered (*i.e.*, 100 percent). If, however, the offer is capped at a fixed amount (*i.e.*, 50 percent plus one share), after which no further shares can be tendered, the value will be that fixed amount, even if the tender offer will be followed by a merger, which will not be reportable under section 7A(c)(3) (*see* § 803.9, example 8).

The requirement to provide the name of an individual responsible for any fair market valuation is not intended to circumvent the contact person identified in Item 1(g) of the Form. It is intended, rather, to ensure that the contact person can quickly and easily locate the appropriate person in the event a question is raised by the agencies concerning the valuation. In the Commission staff's experience, the contact person often is not involved in the detailed compilation of the information on the Form, and may require an extended period of time to determine who within the acquiring person is knowledgeable about the information contained in any particular item. Providing the name of the person responsible for this item will ensure that review of the notification is not unduly delayed by valuation issues.

In summary, the Commission does not believe that any new significant burden has been introduced by the addition of these two items and they will remain on the Form submitted with the Final Rules. The agencies will continue to provide assistance in resolving the complex issues surrounding valuation through informal, and, if appropriate, formal interpretation.

Item 2(c) Notification Threshold

As noted in the SBP for § 801.1(h), the Notification and Report Form is also being amended to clarify that Item 2(c), requiring the acquiring person to report the notification threshold that is being filed for, is applicable only to acquisitions of voting securities.

Regulatory Flexibility Act

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

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501–3520, requires agencies to seek and obtain Office of Management and Budget ("OMB") approval before undertaking a "collection of information" directed to ten or more persons. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The HSR premerger notification rules and Form contain information collection requirements as defined by the PRA that have been reviewed and approved by OMB (preceding these latest HSR rule amendments)² under OMB Control No. 3084–0005. The Final Rules implement amendments to section 7A of the Clayton Act, which reduce the burden of the premerger reporting program by exempting all transactions valued at \$50 million or less. Because the Final Rules do not

affect the information collection requirements of the premerger notification program as implemented by the Interim Rules, they have not been resubmitted to OMB for review. The Supporting Statement that accompanied the Request for OMB Review states that the total burden imposed on the members of the public subject to the requirements of the Act, including the Final Rules, is estimated to be 192,089 hours per year (based on fiscal year 2000 filings). This constitutes an approximate 47 percent reduction from what the burden estimate would be absent the final rules and based on the number of fiscal year 2000 filings.

List of Subjects in 16 CFR Parts 801 and 803

Antitrust, Reporting and recordkeeping requirements.

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

PART 801—COVERAGE RULES

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

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

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

§ 801.1 Definitions.

* * * * *

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

- (1) An aggregate total amount of voting securities of the acquired person valued at greater than \$50 million but less than \$100 million;
- (2) An aggregate total amount of voting securities of the acquired person valued at \$100 million or greater but less than \$500 million;
- (3) An aggregate total amount of voting securities of the acquired person valued at \$500 million or greater;
- (4) Twenty-five percent of the outstanding voting securities of an issuer if valued at greater than \$1 billion; or
- (5) Fifty percent of the outstanding voting securities of an issuer if valued at greater than \$50 million.

* * * * *

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

§ 801.21 Securities and cash not considered assets when acquired.

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

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² OMB clearance was received on May 14, 2001 and extends through May 31, 2004.