

FEDERAL TRADE COMMISSION**16 CFR Parts 801, 802 and 803****Premerger Notification Program;
Paperwork Burden****AGENCY:** Federal Trade Commission.**ACTION:** Notice of request for comments.

SUMMARY: The purpose of this notice of request for comments by the Federal Trade Commission is to incorporate public views on the operation of the Hart-Scott-Rodino premerger notification program prior to formulating specific proposals. The Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust, has several times amended the rules in order to improve the program's effectiveness and lessen the burden of complying with the rules. This review of the program is principally directed toward reducing the cost to the public of complying with the rules.

DATES: Comments must be received on or before August 2, 1982.**ADDRESSES:** Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 172, Washington, D.C. 20580 and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, D.C. 20530.**FOR FURTHER INFORMATION CONTACT:** Roberta S. Baruch, Attorney or Kenneth M. Davidson, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580. Telephone: (202) 523-3404.**SUPPLEMENTARY INFORMATION:** In furtherance of the effort to reduce the overall paperwork burden imposed by the Hart-Scott-Rodino premerger notification rules, the staff of the Federal Trade Commission has developed information relevant to the operation of the rules and has considered preliminarily four approaches to lessening the burden.

This notice is divided into three parts. Part One describes the development of the notification rules. Part Two provides tables summarizing enforcement activities of the Federal Trade Commission and the Department of Justice and premerger notification filings received during 1981. Part Three presents the four approaches to reducing the paperwork burden—raising the dollar reporting thresholds, establishing higher dollar reporting thresholds for specific industries, eliminating subsequent notification requirements for certain transactions and permitting incorporation by reference in relating

transactions—and a preliminary discussion of the merits of these approaches.

Part One

Background. In 1976, the Congress enacted section 7A of the Clayton Act (the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. 18a) to improve the effectiveness of antitrust enforcement. Previously the antitrust agencies often lacked the necessary information and sufficient time to obtain an adequate remedy for an illegal acquisition. The Federal Trade Commission has summarized congressional objectives of the Act:

[T]he Act requires that the agencies receive prior notification of significant acquisitions between sizeable parties, provides certain tools to facilitate a prompt but thorough investigation, assures an opportunity to seek a preliminary injunction before the parties are legally free to complete the transaction and eliminates the problem of unscrambling the assets when one of the agencies obtains an order enjoining consummation of the acquisition. (Third Annual Report to Congress by the Federal Trade Commission pursuant to section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, dated December 31, 1979, at p. 2).

The premerger notification rules (16 CFR Parts 801, 802, and 803) closely track the specific provisions of the Act. The statutory limits on the size of persons and transactions subject to the reporting requirements were incorporated into the original rules, along with the categorical exemptions listed in the Act. Since then, pursuant to their authority under section 7A of the Clayton Act (15 U.S.C. 18a(d)(2)(E)), the antitrust enforcement agencies have adopted additional exemptions to reduced the compliance burden.

The Act exempts two categories of transactions that are unlikely to result in antitrust violations. One kind is defined in terms of the size—*i.e.*, the dollar value of the parties and of the transaction. The second kind is based on the nature of the transaction. For example, acquisitions of goods or realty in the ordinary course of business, limited acquisitions of or by foreign persons, and certain acquisitions in regulated industries are exempt under the Act.

During the three years that the premerger program has been in operation, the Commission has taken several steps to reduce the reporting burden.

- On November 19, 1979 (44 FR 66782), the Commission amended the premerger rules to exempt many acquisitions valued at less than \$15 million, so that smaller transactions

covered by the Act—but generally unlikely to raise antitrust concerns—no longer have to be reported. 16 CFR 802.20.

- On April 7, 1981, the Bureau of Competition issued a formal interpretation permitting reporting parties to incorporate by reference certain documents they may have submitted with a previous filing. CCH Trade Regulation Reporter ¶ 42,475. (This change is also included in the recently proposed amendments to the premerger rules.)

- In response to suggestions from the public, the Bureau of Competition has changed the format of the report form to make it more convenient to use. In addition, this new form further reduces the number of documents that must be submitted with the filing, reflecting the staff's experience that certain documents are not likely to contain information important to antitrust enforcement decisions.

In addition to the steps already taken to reduce the reporting burden, the Commission also has proposed additional ways to reduce the burden. On July 29, 1981, the Commission published for comment a notice of proposed rulemaking (46 FR 38710) that would exempt certain transactions that are reviewed by federal regulatory agencies from the premerger reporting requirements.

Under the proposal, the following transactions would be exempted from the reporting requirement:

- Certain transactions that require approval by the Civil Aeronautics Board.

- Certain transactions that require the consent or approval of the appropriate regulatory agency under the Change in Bank Control Act or the Change in Savings and Loan Control Act.

The quantity of information that must be submitted by filing persons would be reduced as follows:

- Copies of documents that were prepared for the Securities and Exchange Commission and were submitted with a previous filing could be incorporated by reference in a subsequent filing by the same person.

- Registration statements filed with the Securities and Exchange Commission that do not directly relate to the transaction being reported would not have to be submitted.

The final form of these rules is currently being reviewed. That form will reflect both the comments received on the proposed rules and the results of an independent study of the premerger rules conducted by Professor Samuel C. Thompson of the University of Virginia.

Professor Thompson's study, *Evaluation of the Premerger Notification Program*, is available from the Federal Trade Commission which funded the study.

The Federal Trade Commission's premerger notification office has begun a project to lessen the burden of complying with the notification rules for persons who are unfamiliar with the rules. The premerger notification office is preparing two sets of introductory materials. One set will explain in simplified terms what transactions are subject to the prior notification requirements of the rules, and will provide references to key sections of the rules. The other will explain in basic terms how to fill out the notification form and provide examples of common entries. The Commission welcomes suggestions from the public on topics to be included in these introductory materials.

The Federal Trade Commission also welcomes comments on the information contained in Part Two and the questions raised in Part Three of this notice.

Part Two

A. A Profile of Premerger Notification Transactions and Preliminary Enforcement Activities During 1981

The tables in this section provide a statistical profile of merger and acquisition transactions that were subject to filing requirements during 1981. The transactions have been grouped according to various criteria (e.g., size of transaction, size of acquiring firm, percentage of voting securities acquired and industry grouping). The various criteria are compared in the tables with the level of enforcement interest as indicated by a "clearance" or a "second request."

The measures of enforcement interest chosen reflect the division of enforcement authority between the Federal Trade Commission and the

Department of Justice and the investigatory authority conferred by the Hart-Scott-Rodino amendments. All premerger notification filings are sent to both agencies because both have authority under the Clayton Antitrust Act to prevent unlawful transactions and each agency briefly reviews all filings. If either or both agencies decide the transaction should be scrutinized more closely then a "clearance" process is undertaken to insure that only one agency will proceed with an investigation. If further analysis suggests the possibility of an antitrust violation, the investigating agency will typically utilize the premerger act's authority to issue a request for additional information ("second request") to the parties to the transaction.

"Clearance" and "second requests" have been chosen as measures of enforcement interest rather than lawsuits brought or won or settlements agreed upon for two reasons. First, the number of instances in which lawsuits are instituted or settlements are reached are too few to draw conclusions about the relevance of the various criteria. Second, and more importantly, the purpose of the Hart-Scott-Rodino amendments was to provide premerger scrutiny of those transactions that are likely to violate the antitrust laws. The universe of transactions that ought to receive close review corresponds most closely to those where clearance has been granted or a second request has issued.

The current universe of transactions for specific industries is too small to suggest any pattern of enforcement activity by size of transaction. Accordingly the tables only detail enforcement activity by industry group.

BILLING CODE 6750-01-M

TABLE I
ACQUISITIONS BY SIZE OF TRANSACTION, 1/ 1981
(By Size Range)

Transaction Range (\$ Millions)	H-S-R Transactions		Clearance Granted to FTC or DOJ					Second Requests Issued				
	Number 2/	Percent 3/	Number		Percent 4/			Number		Percent 4/		
			FTC	DOJ	FTC	DOJ	Total	FTC	DOJ	FTC	DOJ	Total
Less than 15	87	11.4	7	3	8.0	3.4	11.5	2	1	2.3	1.1	3.4
15 up to 25	173	22.7	13	12	7.5	6.9	14.5	9	6	5.2	3.5	8.7
25 up to 50	207	27.2	23	18	11.1	8.7	19.8	6	7	2.9	3.4	6.3
50 up to 100	125	16.4	18	9	14.4	7.2	21.6	12	5	9.6	4.0	13.6
100 up to 150	53	7.0	6	3	11.3	5.7	17.0	4	-	7.5	-	7.5
150 up to 200	24	3.1	6	2	25.0	8.3	33.3	2	-	8.3	-	8.3
200 up to 300	34	4.5	9	4	26.5	11.8	38.2	6	1	17.6	2.9	20.6
300 up to 500	23	3.0	10	3	43.4	13.0	56.5	4	3	17.4	13.0	30.4
500 up to 1000	18	2.4	6	3	33.3	16.7	50.0	3	2	16.7	11.1	27.8
1000 and up	18	2.4	6	5	33.3	27.8	61.1	3	2	16.7	11.1	27.8
All Transactions	762	100.0	104	62	13.6	8.1	21.8	51	27	6.7	3.5	10.2

1/ The size of transaction is based on the aggregate total amount of voting securities and assets to be held by the acquiring person as a result of the transaction and is taken from the response to item 3(c) of the premerger notification and report form.

2/ During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

3/ Percentage of total transactions.

4/ Percentage of transaction range group.

Note: Detail may not add to total due to rounding.

TABLE II
ACQUISITIONS BY SIZE OF TRANSACTION ^{1/}, 1981
(Cumulative)

Transaction Amount (\$ Million)	H-S-R Transactions		Clearance Granted to FTC or DOJ					Second Requests Issued				
	Number ^{2/}	Percent	Percentage of Total Number of Clearances Granted			Percentage of Total Number of Second Requests						
			FTC	DOJ	Total	FTC	DOJ	Total				
Less than 15`	87	11.4	7	3	4.2	1.8	6.0	2	1	2.6	1.3	3.8
Less than 25	260	34.1	20	15	12.0	9.0	21.1	11	7	14.1	9.0	23.1
Less than 50	467	61.3	43	33	25.9	19.9	45.8	17	14	21.8	17.9	39.7
Less than 100	592	77.7	61	42	36.7	25.3	62.0	29	19	37.2	24.4	61.5
Less than 150	645	84.6	67	45	40.4	27.1	67.5	33	19	42.3	24.4	66.7
Less than 200	669	87.8	73	47	44.0	28.3	72.3	35	19	44.9	24.4	69.2
Less than 300	703	92.3	82	51	49.4	30.7	80.1	41	20	52.6	25.6	78.2
Less than 500	726	95.3	92	54	55.4	32.5	88.0	45	23	57.7	29.5	87.2
Less than 1000	744	97.6	98	57	59.0	34.3	93.4	48	25	61.5	32.1	93.6
All transactions	762	100.0	104	62	62.7	37.3	100.0	51	27	65.4	34.6	100.0

^{1/} The size of transaction is based on the aggregate total amount of voting securities and assets to be held by the acquiring person as a result of the transaction and is taken from the response to item 3(c) of the premerger notification and report form.

^{2/} During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

Note: Detail may not add to total due to rounding.

TABLE III
TRANSACTIONS INVOLVING THE GRANTING OF CLEARANCE BY AGENCY, 1981

Transaction Range (\$ Millions)	Clearance Granted By Agency			Clearance Granted as a Percentage of:								
	FIC	DOJ	Total	Total Number of Transactions 1/			Transactions in Each Transaction Range Group 2/			Total Number of Clearances Granted		
				FIC	DOJ	Total	FIC	DOJ	Total	FIC	DOJ	Total
Less than 15	7	3	10	0.9	0.4	1.3	8.0	3.4	11.5	4.2	1.8	6.0
15 up to 25	13	12	25	1.7	1.6	3.3	7.5	6.9	14.5	7.8	7.2	15.1
25 up to 50	23	18	41	3.0	2.4	5.4	11.1	8.7	19.8	13.9	10.8	24.7
50 up to 100	18	9	27	2.4	1.2	3.5	14.4	7.2	21.6	10.8	5.4	16.3
100 up to 150	6	3	9	0.8	0.4	1.2	11.3	5.7	17.0	3.6	1.8	5.4
150 up to 200	6	2	8	0.8	0.3	1.0	25.0	8.3	33.3	3.6	1.2	4.8
200 up to 300	9	4	13	1.2	0.5	1.7	26.5	11.8	38.2	5.4	2.4	7.8
300 up to 500	10	3	13	1.3	0.4	1.7	43.4	13.0	56.5	6.0	1.8	7.8
500 up to 1000	6	3	9	0.8	0.4	1.2	33.3	16.7	50.0	3.6	1.8	5.4
1000 and up	6	5	11	0.8	0.7	1.4	33.3	27.8	61.1	3.6	3.0	6.6
All Clearances	104	62	166	13.6	8.1	21.8	13.6	8.1	21.8	62.7	37.3	100.0

1/ During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

2/ Percentages also appear in TABLE I.

Note: Detail may not add to total due to rounding.

TABLE IV

TRANSACTIONS INVOLVING THE ISSUANCE OF SECOND REQUESTS, 1981

Transaction Range (\$ Millions)	Transactions Involving the Issuance of Second Requests			Second Requests Issued as a Percentage of:								
				Total Number of Transactions 1/			Transactions in Each Transaction Range Group 2/			Total Number of Second Requests		
				FTC	DOJ	Total	FTC	DOJ	Total	FTC	DOJ	Total
Less than 15	2	1	3	0.3	0.1	0.4	2.3	1.1	3.4	2.6	1.3	3.8
15 up to 25	9	6	15	1.2	0.8	2.0	5.2	3.5	8.7	11.5	7.7	19.2
25 up to 50	6	7	13	0.8	0.9	1.7	2.9	3.4	6.3	7.7	9.0	16.7
50 up to 100	12	5	17	1.6	0.7	2.2	9.6	4.0	13.6	15.4	6.4	21.8
100 up to 150	4	-	4	0.5	-	0.5	7.5	-	7.5	5.1	-	5.1
150 up to 200	2	-	2	0.3	-	0.3	8.3	-	8.3	2.6	-	2.6
200 up to 300	6	1	7	0.8	0.1	0.9	17.6	2.9	20.6	7.7	1.3	9.0
300 up to 500	4	3	7	0.5	0.4	0.9	17.4	13.0	30.4	5.1	3.8	9.0
500 up to 1000	3	2	5	0.4	0.3	0.7	16.7	11.1	27.8	3.8	2.6	6.4
1000 and up	3	2	5	0.4	0.3	0.7	16.7	11.1	27.8	3.8	2.6	6.4
All Transactions	51	27	78	6.7	3.5	10.2	6.7	3.5	10.2	65.4	34.6	100.0

1/ During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

2/ Percentages also appear in TABLE I.

Note: Detail may not add to total due to rounding.

TABLE V
ACQUISITIONS BY REPORTING THRESHOLD, 1981

Threshold	H-S-R Transactions		Clearance Granted to FTC or DOJ					Second Requests Issued				
	Number	1/ Percent	Number			Percentage of		Number		Percentage of		
			FTC	DOJ	Total	FTC	DOJ	FTC	DOJ	Total		
\$15 Million	20	2.6	1	-	5.0	-	5.0	-	-	-	-	-
15%	48	6.3	9	4	18.8	8.3	27.1	5	1	10.4	2.1	12.5
25%	41	5.4	5	2	12.2	4.9	17.1	2	-	4.9	-	4.9
50%	470	61.7	63	34	13.4	7.2	20.4	24	14	5.1	3.0	8.1
Assets Only	183	24.0	26	22	14.2	12.0	26.2	20	12	10.9	6.6	17.5
All Transactions	762	100.0	104	62	13.6	8.1	21.8	51	27	6.7	3.5	10.2

1/ During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

Note: Detail may not add to total due to rounding.

TABLE VI

TRANSACTIONS BY ASSETS OF ACQUIRING PERSONS, 1981

Asset Range (\$ Millions)	H-S-R Transactions		Clearance Granted to PTC or DOJ					Second Requests Issued				
	Number	Percent	Percentage of			Percentage of						
			PTC	DOJ	Total	PTC	DOJ	Total				
Less than 15	13	1.7	-	-	-	-	-	-	-	-	-	-
15 up to 25	10	1.3	1	-	10.0	-	10.0	1	-	10.0	-	10.0
25 up to 50	28	3.7	1	4	3.6	14.3	17.9	1	3	3.6	10.7	14.3
50 up to 100	43	5.6	4	5	9.3	11.6	20.9	-	2	-	4.7	4.7
100 up to 150	49	6.4	5	5	10.2	10.2	20.4	3	-	6.1	-	6.1
150 up to 200	39	5.1	5	2	12.8	5.1	17.9	2	-	5.1	-	5.1
200 up to 300	52	6.8	8	4	15.4	7.7	23.1	2	1	3.8	1.9	5.8
300 up to 500	86	11.3	4	6	4.7	7.0	11.6	2	5	2.3	5.8	8.1
500 up to 1000	112	14.7	11	8	9.8	7.1	17.0	5	3	4.5	2.7	7.1
1000 and up	320	42.0	64	27	20.0	8.4	28.4	35	12	10.9	3.8	14.7
Assets not available	10 ^{2/}	1.3	1	1	10.0	10.0	20.0	-	1	-	10.0	10.0
All Transactions	762	100.0	104	62	13.6	8.1	21.8	51	27	6.7	3.5	10.2

^{1/} During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

^{2/} This category is made up 9 acquiring individuals whose assets could not be accurately determined based on the submitted documents and a foreign acquiring person wholly-owned by a foreign government.

Note: Detail may not add to total due to rounding.

TABLE VII

TRANSACTIONS BY SALES OF ACQUIRING PERSONS, 1981

Sales Range (\$ Millions)	H-S-R Transactions		Clearance Granted to FTC or DOJ					Second Requests Issued				
	Number	Percent	Number		Percentage of Sales Range Group			Number		Percentage of Sales Range Group		
			FTC	DOJ	FTC	DOJ	Total	FTC	DOJ	FTC	DOJ	Total
Less than 15	22	2.9	1	-	4.5	-	4.5	1	-	4.5	-	4.5
15 up to 25	17	2.2	-	1	-	5.9	5.9	-	1	-	5.9	5.9
25 up to 50	22	2.9	-	1	-	4.5	4.5	-	-	-	-	-
50 up to 100	36	4.7	-	2	-	5.6	5.6	-	2	-	5.6	5.6
100 up to 150	50	6.6	6	6	12.0	12.0	24.0	1	2	2.0	4.0	6.0
150 up to 200	28	3.7	-	5	-	17.9	17.9	-	-	-	-	-
200 up to 300	60	7.9	7	3	11.7	5.0	16.7	5	1	8.3	1.7	10.0
300 up to 500	69	9.1	8	5	11.6	7.2	18.8	2	3	2.9	4.3	7.2
500 up to 1000	96	12.6	14	5	14.6	5.2	19.8	7	3	7.3	3.1	10.4
1000 and up	338	44.4	68	33	20.1	9.8	29.9	35	14	10.4	4.1	14.5
Sales not available	24	2/ 3.1	-	1	-	4.2	4.2	-	1	-	4.2	4.2
All Transactions	762	100.0	104	62	13.6	8.1	21.8	51	27	6.7	3.5	10.2

1/ During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

2/ Transactions in this category include acquiring individuals whose sales could not be accurately determined, newly formed acquiring companies and foreign companies with no U.S. operations.

Note: Detail may not add to total due to rounding.

TABLE VIII

TRANSACTIONS BY ASSETS OF ACQUIRED ENTITY ^{1/}, 1981

Asset Range (\$ Millions)	H-S-R Transactions		Clearance Granted to FTC or DOJ					Second Requests Issued				
	Number ^{2/}	Percent	Number		Percentage of Asset Range Group			Number		Percentage of Asset Range Group		
			FTC	DOJ	FTC	DOJ	Total	FTC	DOJ	FTC	DOJ	Total
Less than 15	83	10.9	4	3	4.8	3.6	8.4	2	2	2.4	2.4	4.8
15 up to 25	108	14.2	10	10	9.3	9.3	18.5	6	4	5.6	3.7	9.3
25 up to 50	145	19.0	16	15	11.0	10.3	21.4	7	6	4.8	4.1	9.0
50 up to 100	117	15.4	18	8	15.4	6.8	22.2	10	3	8.5	2.6	11.1
100 up to 150	58	7.6	10	1	17.2	1.7	19.0	6	-	10.3	-	10.3
150 up to 200	28	3.7	3	4	10.7	14.3	25.0	1	2	3.5	7.1	10.7
200 up to 300	46	6.0	8	3	17.4	6.5	23.9	5	1	10.9	2.2	13.0
300 up to 500	39	5.1	6	3	15.4	7.7	23.1	2	1	5.1	2.6	7.7
500 up to 1000	43	5.6	7	4	16.3	9.3	25.6	3	4	7.0	9.3	16.3
1000 and up	56	7.3	14	6	25.0	10.7	35.7	7	2	12.5	3.6	16.1
Assets not available	39 ^{3/}	5.1	8	5	20.5	12.8	33.3	2	2	5.1	5.1	10.3
All Transactions	762	100.0	104	62	13.6	8.1	21.8	51	27	6.7	3.5	10.2

^{1/} The assets of the acquired entity were taken from responses to item 2(d)(i) (Assets to be Acquired) or from items 4(a) or 4(b) (SEC documents and annual reports) of the premerger notification and report form.

^{2/} During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

^{3/} For thirty-three of these transactions the value of the assets up the entity being acquired is not available. The other six transactions involve the formation of joint ventures, none of which had any assets.

Note: Detail may not add to total due to rounding.

TABLE IX
TRANSACTIONS BY SALES OF ACQUIRED ENTITY 1/, 1981

Sales Range (\$ Millions)	H-S-R Transactions		Clearance Granted to FTC or DOJ						Second Request Issued			
	Number	Percent	Number		Percentage of			Number		Percentage of		
			FTC	DOJ	FTC	DOJ	Total	FTC	DOJ	FTC	DOJ	Total
Less than 15	90	11.8	6	2	6.7	2.2	8.9	2	1	2.2	1.1	3.3
15 up to 25	73	9.6	8	3	11.0	4.1	15.1	6	1	8.2	1.4	9.6
25 up to 50	140	18.4	8	13	5.7	9.3	15.0	2	5	1.4	3.6	5.0
50 up to 100	141	18.5	20	12	14.2	8.5	22.7	10	6	7.1	4.3	11.3
100 up to 150	48	6.3	7	6	14.6	12.5	27.1	4	3	8.3	6.2	14.6
150 up to 200	31	4.1	4	3	12.9	9.7	22.6	3	-	9.7	-	9.7
200 up to 300	30	3.9	8	1	26.7	3.3	30.0	2	-	6.7	-	6.7
300 up to 500	47	6.2	12	7	25.5	14.9	40.4	8	2	17.0	4.3	21.3
500 up to 1000	46	6.0	12	3	26.1	6.5	32.6	4	3	8.7	6.5	15.2
1000 and up	64	8.4	14	8	21.9	12.5	34.4	7	4	10.9	6.2	17.2
Sales not available	52	3/ 6.8	5	4	9.6	7.7	17.3	3	2	5.8	3.8	9.6
All Transactions	762	100.0	104	62	13.6	8.1	21.8	51	27	6.7	3.5	10.2

1/ The sales of the acquired entity were taken from responses to items 5 (dollar revenues) and items 4(a) and 4(b) (SEC documents and annual reports) of the premerger notification and report form.

2/ During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

3/ Transactions in this category are represented by the acquisition of newly formed corporations or corporate joint ventures from which no sales have been generated and the acquisition of assets which had produced no sales or revenues.

Note: Detail may not add to total due to rounding.

TABLE X

INDUSTRY GROUP OF ACQUIRING PERSON AND ACQUIRED ENTITY, 1981

2-Digit SIC Code 1/	Industry Description	Acquiring Person						Acquired Entity						Number of 2-Digit Intra-Industry Transactions		
		Clearance Granted to PTC or DOJ			Second Requests Issued			Clearance Granted to PTC or DOJ			Second Requests Issued					
		Number 2/	PTC	DOJ	Total	PTC	DOJ	Total	Number 2/	PTC	DOJ	Total	PTC		DOJ	Total
01	Agricultural Production-Crops	2	-	-	-	-	-	2	-	1	1	-	-	-	1	
02	Agricultural Production-Livestock	1	-	-	-	-	-	1	-	-	-	-	-	-	-	
10	Metal Mining	4	-	-	-	-	-	4	1	-	1	1	-	1	-	
11	Anthracite Mining	1	-	-	-	-	-	-	-	-	-	-	-	-	-	
12	Bituminous Coal and Lignite Mining	3	-	-	-	-	-	16	3	1	4	-	-	-	3	
13	Oil and Gas Extraction	27	1	3	4	1	3	4	26	2	2	4	-	1	1	11
14	Mining and Quarrying of Nonmetallic Minerals, Except Fuels	3	1	-	1	-	-	-	3	1	-	1	-	-	-	-
15	Building Construction-General Contractors and Operative Builders	10	-	-	-	-	-	-	9	-	-	-	-	-	-	5
16	Construction other than Building Construction-General Contractors	4	-	-	-	-	-	-	6	-	1	1	-	1	1	-
17	Construction-Special Grade Contractors	1	-	-	-	-	-	-	2	-	1	1	-	-	-	-
20	Food and Kindred Products	42	8	6	14	4	2	6	44	9	6	15	5	4	9	27
21	Tobacco Manufacturers	3	1	-	1	-	-	-	-	-	-	-	-	-	-	-
22	Textile Mill Products	1	-	-	-	-	-	-	2	-	1	1	-	1	1	-
23	Apparel and other Finished Products made from Fabrics and Similar Materials	1	-	-	-	-	-	-	4	-	-	-	-	-	-	1
24	Lumber and Wood Products, Except Furniture	5	-	-	-	-	-	-	6	-	-	-	-	-	-	1
25	Furniture and Fixtures	2	-	-	-	-	-	-	2	-	2	2	-	1	1	-
26	Paper and Allied Products	9	2	-	2	1	-	1	7	2	-	2	-	-	-	2
27	Printing, Publishing and Allied Industries	18	-	-	-	-	-	-	12	-	-	-	-	-	-	5
28	Chemicals and Allied Products	30	7	4	11	2	3	5	28	6	4	10	3	3	6	16
29	Petroleum Refining and Related Industries	20	7	1	8	5	1	6	18	4	3	7	3	1	4	4
30	Rubber and Misc. Plastics Products	7	3	1	4	1	-	1	12	1	-	1	-	-	-	1
31	Leather and Leather Products	2	1	-	1	-	-	-	-	-	-	-	-	-	-	-
32	Stone, Clay, Glass, and Concrete Products	9	3	1	4	3	-	3	18	7	1	8	6	-	6	5
33	Primary Metal Industries	26	8	2	10	3	-	3	20	4	2	6	4	1	5	3
34	Fabricated Metal Products, Except Machinery and Transportation Equipment	20	5	4	9	1	1	2	20	3	4	7	2	1	3	8
35	Machinery, Except Electrical	47	12	3	15	10	3	13	51	11	4	15	7	3	10	23
36	Electrical and Electronic Machinery, Equipment and Supplies	17	6	2	8	3	1	4	32	10	3	13	5	2	7	9
37	Transportation Equipment	11	2	1	3	-	-	-	15	4	3	7	1	1	2	3
38	Measuring, Analysing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks	4	-	1	1	-	-	-	13	4	-	4	3	-	3	1
39	Miscellaneous Manufacturing Industries	1	1	-	1	1	-	1	6	1	-	1	1	-	1	1

TABLE X (continued)

2-Digit BIC Code 1/	Industry Description	INDUSTRY GROUP OF ACQUIRING PERSON AND ACQUIRED ENTITY, 1981													
		Acquiring Person						Acquired Entity					Number of 2-Digit Intra-Industry Transactions		
		Number 2/	Clearance Granted to PTC or DOJ		Total	Second Requests Issued		Number 2/	Clearance Granted to PTC or DOJ		Total	Second Requests Issued			
40	Railroad Transportation	-	-	-	-	-	-	-	-	-	-	-	-	-	-
42	Motor Freight Transportation and Warehousing	6	-	-	-	-	-	-	-	-	-	-	-	-	-
44	Water Transportation	6	-	-	-	-	-	-	-	-	-	-	-	-	2
45	Transportation by Air	1	-	-	-	-	-	-	1	-	1	1	-	1	-
47	Transportation Services	2	-	-	-	-	-	-	-	-	-	-	-	-	-
48	Communication	16	2	1	3	1	-	1	28	-	-	-	-	-	7
49	Electric, Gas, and Sanitary Services	12	-	-	-	-	-	-	5	-	-	-	-	-	1
50	Wholesale Trade-Durable Goods	32	3	4	7	3	1	4	32	4	2	6	3	-	3
51	Wholesale Trade-Nondurable Goods	32	-	6	6	-	3	3	34	4	3	7	1	1	2
52	Building Materials, Hardware, Garden Supply and Mobile Home Dealers	-	-	-	-	-	-	-	1	-	-	-	-	-	-
53	General Merchandise Stores	13	5	2	7	-	-	-	8	3	1	4	-	-	5
54	Food Stores	9	2	-	2	-	-	-	4	1	-	1	-	-	3
55	Automotive Dealers and Gasoline Service Stations	-	-	-	-	-	-	-	2	-	-	-	-	-	-
56	Apparel and Accessory Stores	2	-	-	-	-	-	-	6	-	-	-	-	-	-
57	Furniture, Home Furnishings, and Equipment Stores	-	-	-	-	-	-	-	1	-	-	-	-	-	-
58	Eating and Drinking Places	4	-	-	-	-	-	-	6	-	2	2	-	-	2
59	Miscellaneous Retail	11	-	1	1	-	-	-	14	1	1	2	-	-	8
60	Banking	6	-	-	-	-	-	-	7	-	-	-	-	-	5
61	Credit Agencies other than Banks	15	1	-	1	-	-	-	23	-	-	-	-	-	10
62	Security and Commodity Brokers, Dealers, Exchanges, and Services	14	-	-	-	-	-	-	12	2	-	2	-	-	5
63	Insurance	43	3	1	4	1	1	2	46	2	1	3	1	-	1
64	Insurance Agents, Brokers, and Service	5	-	-	-	-	-	-	6	1	-	1	1	-	1
65	Real Estate	13	-	-	-	-	-	-	11	-	-	-	-	-	3
67	Holding and other Investment Offices	16	-	-	-	-	-	-	11	1	-	1	-	-	5
70	Hotels, Rooming Houses, Camps, and other Lodging Places	5	-	1	1	-	-	-	8	-	-	-	-	-	2
72	Personal Services	2	1	-	1	-	-	-	3	1	-	1	-	-	2
73	Business Services	9	-	3	3	-	1	1	18	1	3	4	-	2	2
75	Automotive Repair, Services, and Garages	1	1	-	1	1	-	1	7	-	-	-	-	-	-
76	Miscellaneous Repair Services	1	-	-	-	-	-	-	1	-	-	-	-	-	-
78	Motion Pictures	8	-	2	2	-	1	1	4	-	1	1	-	1	1
79	Amusement and Recreation Services, Except Motion Pictures	2	-	-	-	-	-	-	5	-	-	-	-	-	-
80	Health Services	20	3	7	10	2	3	3	23	4	7	11	2	3	5

TABLE X (continued)

INDUSTRY GROUP OF ACQUIRING PERSON AND ACQUIRED ENTITY, 1981

2-Digit SIC Code ^{1/}	Industry Description	Acquiring Person						Acquired Entity						Number of 2-Digit Intra-Industry Transactions		
		Number ^{2/}	Clearance Granted to FTC or DOJ			Second Requests Issued			Number ^{2/}	Clearance Granted to FTC or DOJ			Second Requests Issued			
			FTC	DOJ	Total	FTC	DOJ	Total		FTC	DOJ	Total	FTC		DOJ	Total
89	Miscellaneous Services	4	-	-	-	-	-	3	-	-	-	-	-	-	-	
99	Nonclassifiable Establishments	-	-	-	-	-	-	2	-	-	-	-	-	-	-	
DV	Diversified Companies	87	14	4	18	7	3	10	24	4	-	4	-	-	7	
00	Not Available	34 ^{3/}	1	1	2	1	-	1	4 ^{4/}	1	2	3	1	-	1	
	All Transactions	762	104	62	166	51	27	78	762	104	62	166	51	27	78	

^{1/} 2-Digit SIC codes are part of the system of Standard Industrial Classification established by the U.S. Government, Standard Industrial Classification Manual, 1972 Executive Office of the President - Office of Management and Budget. The SIC groupings used in this table were determined from responses submitted by filing parties to item 5 of the premerger notification and report form.

^{2/} During calendar year 1981, 1083 transactions were reported under the Hart-Scott-Rodino premerger notification program. The smaller number, 762, reflects adjustments to eliminate the following types of transactions: (1) 211 transactions reported under Sections 7A(c)(6) and 7A(c)(8) (transactions involving certain financial businesses and regulated industries); (2) 27 transactions which were followed by separate notifications for one or more additional transactions between the same parties during 1981 (such transactions are listed here as a single consolidated transaction); (3) 31 transactions found to be non-reportable; (4) 4 incomplete transactions (only one party to the transaction filed notification) and; (5) 48 secondary acquisitions (filed pursuant to Section 801.30(a)(4)) reported as a result of reportable primary transactions. The table does not however, exclude 23 competing offers or 74 multiple-party transactions (transactions involving two or more acquiring or acquired persons).

^{3/} Transactions included in this category represent newly formed companies, companies with no U.S. operations and notification filed by individuals.

^{4/} Transactions included in this category represent the acquisition of newly formed companies and the acquisition of assets located outside the U.S.

Note: Detail may not add to total due to rounding.

BILLING CODE 6750 01-C

*B. Summary of Transaction
Notifications Received and Formal
Enforcement Activity Taken Since the
Inception of the Premerger Notification
Program*

The table in this section presents the number of filings received annually under the Hart-Scott-Rodino premerger notification program and the number of formal enforcement actions taken by the Federal Trade Commission and the Department of Justice with respect to mergers since the program went into effect. The number of filings listed in this table for 1981 is greater than the number of transactions included in tables in the previous section because it includes banking mergers, secondary acquisitions and two-step mergers. The formal enforcement actions listed here are not necessarily based on premerger notification filings.

These formal actions do not represent the full enforcement impact of the program. For example, these categories do not reflect transactions that were abandoned after the parties learned that an enforcement agency intended to oppose consummation of the transaction. Nor do they reflect transactions that were deterred because of the assurance that enforcement agencies would review all transactions subject to premerger notification program.

BILLING CODE 6750-01-M

TABLE XI

PREMERGER TRANSACTIONS FILED AND MERGER ENFORCEMENT ACTIVITY SINCE
THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT BECAME EFFECTIVE

Calendar Year	Number of FTC Enforcement Actions Authorized ^{3/}				Number of DOJ Enforcement Actions ^{3/}		
	Number of Transactions	Preliminary Injunctions	Consent Orders	Complaints ^{4/} Issued	Preliminary Injunctions	Consent Agreements	Actions Initiated
1978 ^{1/} ^{2/}	355	0	2	4	2	2	8
1979 ^{2/}	868	3	6	4	6	3	10
1980	824	2	13	5	3	4	5
1981	1083	4	6	4	0	2	2

^{1/} The premerger notification rules went into effect on September 5, 1978.

^{2/} Revised rule 16 CFR § 802.20 went into effect on November 21, 1979. This rule expanded considerably the number of transactions valued at \$15 million or less that are exempt from reporting requirements.

^{3/} These legal actions taken by the Federal Trade Commission and the Department of Justice may or may not be based on premerger filings.

^{4/} Does not include complaints where consent order was obtained in the same year.

Source: Second, Third, Fourth and Fifth Annual Reports to Congress pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and supplemented by enforcement agency data.

BILLING CODE 6750-01-C

Part Three

A. Should the size of Person or Size of Transaction Dollar Reporting Levels Be Raised Based On

- Enforcement Patterns?
- Inflation?

Background. Section 7A of the Clayton Act, 18 U.S.C. 18a (The Hart-Scott-Rodino Antitrust Improvements Act of 1976) requires, in part, that any merger or acquisition between a business entity with annual sales or assets exceeding \$100 million and a business entity with annual sales or assets exceeding \$10 million which involve the purchase of more than \$15 million in voting securities and assets be reported in the prescribed manner prior to consummating the transaction. The Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust was granted authority to exempt transactions "which are not likely to violate the antitrust laws." Section 7A(d)(2) of the Clayton Act, 15 U.S.C. 18a(d)(2). The issue considered here is whether the materials presented in Part Two concerning enforcement patterns and the inflation since 1976 provide an adequate basis for increasing the dollar size for reportability.

One index for accommodating the effect of inflation is the implicit price deflator for the Gross National Product. This index is a broad indicator of price trends that includes personal consumption expenditures for durable goods, nondurable goods, and services; gross private domestic investment in farm and nonfarm structures, residential and nonresidential structures, and producers' durable equipment; imports and exports; and government purchases of goods and services.

The GNP implicit price deflator has increased about 47 percent since 1976, as shown in the following table:

GNP Implicit Price Deflator

1976=100	
1976.....	100.00
1977.....	105.84
1978.....	113.58
1979.....	123.21
1980.....	134.25
1981.....	146.61

Source: Department of Commerce, *Survey of Current Business*. (Index converted to a 1976 basis.)

Preliminary Conclusion. The preliminary conclusion of the staff is that if any changes are warranted in dollar levels such changes should be limited to the size of transaction. There

appears to be some basis for raising the size of transaction test to \$25 million.

Discussion

Inflation. The staff does not believe that, by itself, inflation provides an adequate basis for creating exemptions under section 7A(d)(2) of the Clayton Act, 15 U.S.C. 18a(d)(2). Congress did not index dollar amounts to accommodate inflation; rather it conditioned the exemption authority on a finding concerning the likelihood of antitrust violations. In addition the staff believes that automatically indexing stated dollar amounts would unnecessarily complicate an already intricate statutory structure.

Nevertheless, the staff does believe that inflation may have some legitimate role in establishing reporting exemptions if used in conjunction with other factors. This role is based on the apparent Congressional decision that only larger transactions be subject to notification requirements, an intention that is eroded by inflation. The greater Congressional concern about larger transactions is generally related to antitrust analysis where market share (for which size is an imperfect surrogate) is often used as an indicator of market power. Therefore inflation in conjunction with other indications that smaller transactions are of lesser antitrust significance might justify an increase in the size of person or size of transaction test.

Enforcement Patterns. Table I suggests that there is some correlation between the size of transactions and enforcement interest by the Federal Trade Commission and Department of Justice. This pattern is also evident in Tables VIII and IX which reflect the size of acquired entities. No comparable pattern is evident from the tables based on the size of acquiring firm or the percentages of voting securities being acquired.

While Table I suggests a pattern that enforcement interest increases with size of transaction, it does not indicate either a complete lack of enforcement interest below a certain size or a dramatic break (i.e. increase) in enforcement interest above a particular size level. Thus, the tables by themselves do not provide a natural or obvious choice for a new size of transaction test. Nevertheless it might be justifiable to raise the size of transaction threshold to \$25 million on the grounds that both: the enforcement interest in transactions below \$25 million has been relatively low—approximately one of each seven transactions receive "clearance" for investigation; and, the increase in nominal dollar amount from \$15 million

to \$25 million does not greatly raise in constant dollars the size of transaction test chosen by the Congress in 1976 for § 7A(a)(3)(B). (This approach would also eliminate all transactions currently reportable under 16 CFR 802.20(b)). On the other hand, raising the transaction size to \$25 million would eliminate eighteen of the seventy-eight second requests issued by the Federal Trade Commission and the Department of Justice during 1981. In other words, the increase in size of transaction test would eliminate almost one quarter of the transactions which received the highest level of preliminary antitrust scrutiny.

B. Should Separate Size of Person or Size of Transaction Tests Be Established for Specific Industries Based On

- Enforcement Patterns?
- Industry Size Characteristics?

Background. The 1976 Hart-Scott-Rodino Antitrust amendments to the Clayton Act exempt or modify reporting requirements for transactions involving firms in particular industries and for transactions involving particular kinds of goods. For example, section 7A(c) of the Act, 15 U.S.C. 18a(c), exempts transactions in specified regulated industries and sales of goods and realty in the ordinary course of business. But the Act does not provide for different dollar size tests for different industries. On the other hand, prior to section 7A of the Act the Federal Trade Commission initiated premerger notification requirements which established size criteria for transactions in the cement, dairy and food distribution industries that were lower than the subsequent criteria established under section 7A. *Commission Enforcement Policy with Respect to Vertical Mergers in the Cement Industry*, January 17, 1967, CCH Trade Regulation Reporter ¶ 4520; *Commission Enforcement Policy with Respect to Mergers in the Food Distribution Industries*, January 17, 1967, CCH Trade Regulation Reporter ¶ 4525; *Enforcement Policy with Respect to Mergers in the Dairy Industry*, 43 FR 28046, June 28, 1978. These programs arose out of a history of antitrust litigation and the programs relied on industry definitions based on that litigation experience.

Preliminary Conclusion. The staff does not believe it is likely that an administrable premerger notification system can be established which sets separate size requirements for different industries.

Discussion. While the staff recognizes the significance of a \$15 or \$25 million transaction varies in different industries, it has not developed a generally satisfactory method to establish appropriate levels for different industries or to identify which transactions should be included within an industry. Establishing separate industry reporting criteria raises a host of difficult and related issues.

As noted earlier the number of premerger filings for specific industries was not large enough to discern patterns of enforcement activity even using the grossly overbroad industry categories that are defined by two digit Standard Industrial Classifications (SIC). While two digit SIC definitions almost surely comprehend too many different business activities to provide a useful definition of an industry, are there better uniform definitions? How many separate industry categories with separate reporting criteria should be established? Will the establishment of a multitude of separate standards unduly complicate an already complex statutory program? If separate reporting criteria are established for a few industries, will the absence of separate criteria be unfair to some of the remaining industries that are lumped together under general reporting criteria? In the absence of clear benchmarks reflecting size-based enforcement patterns for specific industries, how should the size criteria be established for different industries? If separate size criteria are to be set with reference to the minimum efficient scale of firms within an industry, how is this always controversial question of scale economies to be determined? And how would the industry be monitored to determine technological or organizational changes in scale economies?

Assuming industries could be defined and relevant size criteria could be determined for individual industries it is not obvious how reporting parties would identify whether transactions would meet specific industry criteria. For example, if reportability of a transaction depended on the acquiring firm and the acquired entity having a specified combined amount of annual sales or revenues from particular goods or services, or assets engaged in certain specified activities, how would an acquiring firm be able to predict the relevant sales or assets level of the prospective acquired entity to determine reportability prior to consummating the transaction?

The objections to establishing separate size requirements for different industries are practical, not theoretical.

It may be possible at some point to overcome these practical problems and establish separate reporting thresholds for certain industries under the Hart-Scott-Rodino premerger notification system. Acceptable separate industry size tests must satisfy three requirements: the criteria which define the industry must be objective; the size threshold must be based on antitrust considerations; and, acquiring parties must be able to determine which industry size thresholds apply prior to consummating a transaction. The appropriateness of higher separate size thresholds ought to be established by data showing that a significant number of transactions in that industry are being reported which generate very little antitrust enforcement interest.

C. Should the Requirement That a Party File Separate Notifications for Additional Purchases of Voting Securities of One Business Entity Be

- *Eliminated?*
- *Simplified?*

Background. Under existing rules 16 CFR 801.1(h) a person who purchases the voting securities of a business entity in several transactions may be required to file several premerger notifications. The requirement for additional filings is triggered by the person increasing its holdings of voting securities beyond several threshold levels which are stated in terms of percentages of the total number of voting securities of the business entity. For example, a party is required to file once for acquisitions of 15 percent or more of a business entity's voting securities. Before the same party can acquire 25 percent or more of the voting securities of the same entity it must file again, and finally, prior to acquiring 50 percent of the entity's securities it must file again. Where a party knows how many securities it ultimately wishes to purchase it may avoid multiple filings by filing for the highest applicable threshold initially.

Under proposed rule 16 CFR 803.2(e) a party who files for the acquisition of voting securities at one threshold may for a period of 90 days incorporate by reference any documents or information contained in the notification in any subsequent filing to cross another threshold. Under 16 CFR 804.7 a party may acquire voting securities pursuant to the notification for a period of one year. If the minimum percentage of securities filed for are acquired within one year the party may, pursuant to 16 CFR 802.21(b), buy additional securities (but not more than the maximum permitted at that threshold) for an additional four years.

Preliminary Conclusion. The staff does not believe that the subsequent notification requirements should be eliminated; however the staff does believe that the incorporation by reference standard of proposed § 803.2(e) could be expanded to a period of up to one year for subsequent filings for higher thresholds of voting securities.

Discussion. The staff continues to believe that it is useful to require multiple notifications for acquisitions of voting securities for reasons already stated by the Federal Trade Commission. In its Statement of Basis and Purpose for § 801.1(h) the Commission said, "working control or significant influence may arise at different points with respect to different companies. The * * * [lower] thresholds give the enforcement agencies adequate opportunities to assess the ability of a significant minority shareholder to influence or direct management," 43 FR 33465, July 31, 1978.

Although it is important that the enforcement agencies receive notice prior to a person increasing its securities holdings significantly, the information sent to the agencies in successive filings is often identical, apart from the statement of holdings. For this reason proposed § 803.2(e) permits parties to incorporate by reference any documents or information contained in their previous filing for a period of 90 days. Limiting the right to incorporate by reference to 90 days reflected practical considerations about the period of time the enforcement agencies can reasonably maintain access to filed information and the extent to which a filing for a higher threshold is likely to differ from a previous filing.

Upon further consideration, the staff believes that the time period during which incorporation by reference is permitted might appropriately be extended to one year. The one year period for incorporation by reference would then match the period established by § 803.7, during which a party may purchase voting securities pursuant to a filed notification.

D. Should a Party Filing for an Acquisition Be Permitted to Incorporate by Reference Information or Documents Contained Therein in Related Secondary Acquisitions?

Background. Under existing rules, 16 CFR 801.4, whenever a party obtains control of a business entity it is also deemed to be separately acquiring any voting shares held by that business entity. The acquisition of these voting shares (i.e. the "secondary acquisitions") will trigger separate

reporting obligations if the direct acquisition of such shares would have been reportable. So, for example, an acquiring person is required to file six separate notifications if it acquired one large firm which held more than fifteen percent of the voting securities of five firms each valued at more than \$15 million.

Preliminary Conclusion. The staff believes that a party should be permitted to incorporate by reference any information or documents in related "secondary acquisitions."

Discussion. Experience has shown that multiple filing of identical information in related secondary acquisitions is unnecessary.

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

Antitrust.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-18035 Filed 7-1-82; 8:45 am]

BILLING CODE 6750-01-M