(e) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant, permit applicant or permittee, stating the reason(s) therefor.

§ 943.10 Other authorities.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are valid within the Sanctuary subject only to the activity restrictions set forth in § 943.6. All applicable regulatory programs remain in effect. Where regulations promulgated by another authority are in conflict with Sanctuary regulations, the more restrictive regulations shall prevail.

Appendix: Flower Garden Banks National Marine Sanctuary Boundary Coordinates

Point no.	Latitude	Longitude
East Flower Garden Bank:		
E-1	27°52′52.13″	93°37′40.52″
E-2	27°53′33.81″	93°38′22.33″
E-3	27°55′13.31″	93°38′39.07″
E-4	27°57′30.14″	93°38′32.26″
E-5	27°58′27.79″	93°37′42.93″
E-6	27°59′00.29″	93°35′29.56″
E-7	27°58′59.23″	93°35′09.91″
E-8	27°55′20.23″	93°34′13.75″
E-9	27°54′03.35″	93°34′18.42″
E-10	27°53′25.95″	93°35′03.79″
E-11	27°52′51.14″	93°36′57.59″
West FLower Garden Bank:		
W-1	27°49′09.24″	93°50′43.35″
W-2	27°50′10.23″	93°52′07.96″
W-3	27°51′13.14″	93°52′50.68″
W-4	27°51′31.24″	93°52′49.79″
W-5	27°52′49.55″	93°52′21.89″
W-6	27°54′59.08″	93°49′41.87″
W-7	27°54′57.08″	93°48′38.52″
W-8	27°54′33.46″	93°47′10.36″
W-9	27°54′13.51″	93°46′48.96″
W-10	27°53′37.67″	93°46′50.67″
W-11	27°52′56.44″	93°47′14.10″
W-12	27°50′38.31″	93°47′22.86″
W-13	27°49′11.23″	93°48′42.59″

[FR Doc. 89–4030 Filed 2–23–89; 8:45 am]

BILLING CODE 3510–08–M

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The purpose of this advance notice of proposed rulemaking and 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. This notice is directed principally toward reducing the number of non-reportable transactions that may raise antitrust concerns and reducing the availability of devices for avoiding reporting and waiting requirements.

DATES: Comments must be received on or before April 25, 1989.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 172, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Roberta S. Baruch, Deputy Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3300.

SUPPLEMENTARY INFORMATION: In furtherance of its efforts to improve the effectiveness of the Hart-Scott-Rodino premerger notification program, the Federal Trade Commission has considered preliminary, and now seeks public comments on, five approaches to reducing the number of non-reportable transactions that may raise antitrust concerns and to reducing the availability of devices for avoiding reporting and waiting requirements.

This notice is divided into two parts. Part One describes the development of the premerger notification rules and provides some background specific to the approaches discussed here. Part Two briefly describes each of the five options, discusses some of the merits and disadvantages of each, and raises questions about each to which concerned members of the public may wish to direct their comments. The public is also specifically invited to address any other issues raised by any of these options, and to suggest alternative approaches to addressing the problems of concern.

Part One: Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General"), and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the act requires that the antitrust agencies receive prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it, reducing the problem of unscrambling the assets after the transaction has taken place.

Subsection 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 5 U.S.C. 553, to require that the 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. Subsection 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 (A) to define the terms used in the act, (B) to exempt additional persons or transactions from the act's notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

On December 15, 1976, the Commission issued proposed rules and a proposed Notification and Report Form ("the Form") to implement the act. This proposed rulemaking was published in the **Federal Register** of December 20, 1976, 41 FR 55488. Because of the volume of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed Notification and Report Form. The revised rules and Form were published in the **Federal Register** of August 1, 1977, 42 FR 39040. Additional changes in the revised rules and Form were made after the close of the comment period. The Commission formally promulgated the final rules and Form, and issued an accompanying Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 18, 1978. The final rules and Form and the Statement of Basis and Purpose were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Final changes of a substantive nature have been made in the premerger notification rules or Form on six occasions since they were first promulgated. In addition, on September 22, 1988, the Federal Trade Commission published in the **Federal Register** a proposal for a seventh change. That notice of proposed rulemaking sought comments on one principal proposal and two alternative approaches to revising the rules, each of which is designed to eliminate unnecessary notification burdens and to reduce incentives to violate the rules. The principal proposal would exempt from the premerger notification obligations all acquisitions of 10% or less of an issuer's voting securities on the grounds that such acquisitions are unlikely to violate the antitrust laws. The alternative proposals would alter existing notification procedures for acquisitions of 10% or less of an issuer's voting securities. One would permit the purchase, but require that the securities be placed in escrow pending antitrust review; the other would eliminate the reporting requirement imposed on the target firm, thus freeing the acquiror of its obligation to give the target prior notice. The period for submitting public comments on this proposal expired on December 23, 1988.

The first final rule change increased (to $15 million) the minimum dollar value exemption contained in § 802.20 of the rules. This amendment was proposed in the **Federal Register** of August 10, 1979, 44 FR 47099, and was published in final form in the **Federal Register** of November 21, 1979, 44 FR 60781. The second amendment replaced the requirement that certain revenue data for the year 1972 be provided in the Notification and Report Form with a requirement that comparable data be provided for the year 1977. This change was made because total revenues for the year 1977 broken down by Standard Industrial Classification (SIC) codes became available from the Bureau of the Census. The amendment appeared in the **Federal Register** of March 5, 1980, 45 FR 14205, and was effective May 3, 1980.

The third set of changes was published by the Commission as proposed rules changes in the **Federal Register** of July 29, 1981, 46 FR 38710. These revisions were designed to clarify and improve the effectiveness of the rules and of the Notification and Report Form as well as to reduce the burden of filing notification. Several comments on the proposed changes were received during the comment period. Final rules, which adopted some of the suggestions received during the comment period, but which were substantially the same as the proposed rules, were published in the **Federal Register** of July 29, 1983, 48 FR 34427, and became effective on August 29, 1983. The fourth change, replacing the requirement to provide 1977 revenue data with a requirement to provide 1982 data on the Form, was published in the **Federal Register** of March 26, 1986, 51 FR 10368.

The fifth set of changes to the rules and the Notification and Report Form was published by the Federal Trade Commission as proposed rule changes in the **Federal Register** of September 24, 1985, 50 FR 38742. Those thirteen proposed revisions were designed to reduce the cost to the public of complying with rules and to improve the program's effectiveness. The Commission decided to adopt nine of the proposals, to reject one, and to defer action on the other three. Final rules, which adopted some of the suggestions received from public comments, were published in the **Federal Register** of March 6, 1987, 52 FR 7066 and became effective on April 10, 1987. These changes included revisions to the Notification and Report Form, found in 16 CFR 803 (Appendix). The Form had previously undergone minor revisions on two other occasions.

The sixth set of changes was published by the Federal Trade Commission as proposed rules changes in the **Federal Register** of March 6, 1987, 52 FR 7095, and as final rules in the **Federal Register** of May 29, 1987, 52 FR 20058. Those amendments to the premerger notification rules grew out of the comments on Proposal 1 of the September 24, 1985, **Federal Register** notice, the proposed "acquisition vehicle" rules. The underreporting problem that the "acquisition vehicle" approach was designed to solve is extensively discussed in that notice of proposed rulemaking. It explains both how in some circumstances an acquisition made by a partnership is not subject to the reporting and waiting obligations of the act, and how in similar circumstances an acquisition made by a newly-formed corporation that has no controlling owner is not subject to the obligations of the act. The proposed rules would have required both types of transactions to be reported.

Upon reviewing the comments on the "acquisition vehicle" proposal, the Commission concluded that that approach appeared likely to require filings in connection with numerous competitively insignificant transactions and that a less inclusive approach could accomplish the primary objective of the proposal: covering acquisitions by partnerships that really are controlled by another entity. In addition, it appeared that there had been no problems associated with acquisitions by newly-formed corporations. The Commission therefore reconsidered its proposal and developed a new approach that applied only to partnerships and

other entities that did not have outstanding voting securities.

Under previous staff interpretations, acquisitions made by certain partnerships were not reportable under the act although acquisitions by similarly structured corporations were reportable. No report was required even if an acquisition was by a partnership that was owned and operated principally by one person, and even if that person was a competitor of the acquired person. Because that result was inconsistent with the treatment of corporations that are dominated by one person and with the objectives of the act and the rules, the Commission amended the definition of control in § 801.1(b) to provide that persons owning 50 percent or more of partnerships or other entities that do not have outstanding voting securities control such entities. Those persons are now required to report acquisitions by the entities they own, just as persons must report acquisitions by corporations if they own 50 percent or more of the outstanding voting securities of those corporations.

The Commission also amended the alternative definition of control, which is based on the contractual power to designate members of an entity's board of directors or analogous body. The change—from the power to designate a majority to the power to designate 50 percent—resulted in a uniform 50 percent criterion for all three definitions of control in the rules.

In the statement of basis and purpose accompanying the promulgation of the amendments to the definition of control at 52 FR 20061 the Commission noted that more inclusive definitions of control were possible and, indeed, that each of the comments on the proposed rule had suggested some more expansive approach. The Commission rejected greater coverage at that time, preferring first to amend the definitions of control to equalize the treatment of partnerships and corporations. It noted, however, that it might reexamine the need for more inclusive definitions if it appeared that significant underreporting remained after implementation of the changes being promulgated at that time.

Based on the Commission's experience with the new partnership control rules in effect for 18 months, we believe that there may continue to be acquisitions that may not be covered by the HSR premerger reporting requirements that it would be useful for the enforcement agencies to have an opportunity to review. At the same time, the Commission continues to be concerned about any unnecessary increase in the number of filings that might result from any of these rules.

Thus, to facilitate the analysis of the more inclusive options available, and to highlight the merits and disadvantages of each, the Commission seeks public comments in response to this advance notice of proposed rulemaking. The Commission seeks comments on several general questions posed here, as well as on five more specific options discussed in the next section.

General Questions

How many transactions take place each year that it would be useful for the enforcement agencies to have an opportunity to review but that the parties believe are not covered by the HSR premerger reporting requirements' definition of "control"?

Based on the Commission's experience, it appears that intermediary entities created to carry out acquisitions are most often in the form of partnerships. What are the reasons for the apparent preference for this business form for this kind of business activity?

More specifically, under the current rules, why have partnerships rather than corporations been used to avoid reporting?

What would be the effect of having a more inclusive definition of "control" for partnerships than for corporations?

Part Two: Options

Option One: Change the "Flow-through rule" of § 801.11(e). Section 801.11(e) was amended in the March 6, 1987, **Federal Register**, 52 FR 7066, to codify a long-standing informal position of the Commission staff that a person without a regularly prepared balance sheet generally should not include funds used to make an acquisition in determining its size. The issue arises primarily in connection with newly-formed entities, not controlled by any other entity, that have not yet drawn up a balance sheet. Under this rule, if such an entity's only assets are cash that will be used to make an acquisition and securities of the entity it is acquiring, it generally will not have to file for that acquisition because it will be deemed too small to meet the act's size-of-person test. The rule is intended to limit the coverage of the premerger rules to those situations when an antitrust violation is most likely to be present, that is, when one business entity of a substantial size acquires another business entity of a substantial size. The operation and purpose of the rule is discussed in some detail in the statement of basis and purpose accompanying the final rule.

Most new entities that do not have to report significant acquisitions are exempt from filing obligations because they fail independently to meet the act's size-of-person test through the operation of this rule. If such an intity is not controlled by another entity with sufficient sales or assets to fall within the coverage of the act, then the acquisition may not be subject to the reporting and waiting requirements.

The focus of both the proposed "acquisition vehicle" rule and the more limited partnership control rule ultimately adopted by the Commission was on providing a mechanism for the enforcement agencies to receive filings from the entities with controlling or other ownership interests in the newly-formed entities that would not, themselves, have to report. It may be, however, that it would be helpful to change the flow-through rule in some way that would require certain newly-formed entities to report.

There are at least two potentially significant problems with this approach. First, there are many transactions without antitrust significance that are exempt under the current rule but that would be reportable with a change in the flow-through rule. The additional reporting that would likely result from such a change might be limited by adopting a different, higher threshold for such newly-formed entities. However, the Commission does not currently have sufficient information to identify the appropriate threshold.

Second, if newly-formed entities were themselves required to report, their filings would not provide much information useful for an initial assessment of the antitrust significance of the transaction. It is likely that any competitive effects would be associated with the ongoing business interests of those with ownership interests in the new acquiring entity, even if they did not meet the rules' narrow definition of control. To reflect their operations in a filing by the acquiring entity could require significant changes in the information required by the Notification and Report Form.

Questions for Option One

How many transactions currently exempt from reporting and waiting requirements would be required to report if the flow-through rule were eliminated?

Are these transactions concentrated in any particular industry?

What might be an appropriate alternative threshold level for newly-formed entities?

What changes would need to be made in the Notification and Report Form to provide useful information from entities with less-than-controlling interests in

newly-formed entities? Could these be made without requiring extensive additional information from all reporting parties?

Are there other changes that could be made in the flow-through rule that would achieve these objectives without requiring as many additional filings?

Option Two: Define each general partner or a managing partner as controlling a partnership. Under the current partnership control rule, any partner with a 50 percent or greater ownership interest in a partnership is deemed to control the partnership. However, partnerships are often set up with many limited partners and a small number of general partners, none of which has a 50 percent interest but any of which could exercise significant control over the business of the partnership. An acquisition made by such a partnership entity might well be exempt from current reporting requirements. This is especially likely if the partnership were newly-formed and did not have a regularly prepared balance sheet so that it failed to meet the size-of-person test as a result of the operation of the flow-through rule.

Deeming each general partner to control the partnership would be consistent with the power of general partners under common law. It would also assure that any party with potential control over a partnership would have to report any acquisition (that otherwise meets the statutory requirements) made by that partnership. The primary problem with this option is that it would likely require filings for many transactions that are unlikely to present significant antitrust concerns and that have, until now, been exempt from reporting requirements.

There are at least two ways the Commission might be able to limit this effect. One is to exempt certain types of partnerships, or industries that often use partnerships, where it is possible to identify significant numbers of otherwise reportable acquisitions that would not raise antitrust concerns. The other is to exempt general partners that relinquish certain crucial elements of partnership control through the partnership agreement. Thus, rather than defining every general partner as controlling every partnership, the definition of control might include only partners with certain critical powers, for example, the powers to acquire and dispose of assets, to enter into certain kinds of agreements, or to perform certain management functions of an ongoing business. This definition of control, designed for partnerships, might also be applied to entities with similar powers to direct the business operations of corporations or other entities. Thus, the "managing" entity would include the value of the controlled entities when determining whether it met the size-of-person test, and it would include information about the business activities of the controlled entities on its notification and report forms. One effect of applying the rule in this way would be to resolve a question that has been of concern on several occasions: how to obtain information in a premerger filing from an entity with little or no ownership interest in a compny but with management contracts giving it actual control over the company's ongoing business. Such a change, whether or not limited to control of a partnership, might take the form of an expansion or clarification of § 801.1(b)(2), which defines control to include:

(2) Having the contractual power presently to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

Questions for Option Two

How many additional filings would the enforcement agencies likely receive as the result of such a change, if the change included all general partners? If the change were limited to partners with specific elements of management authority? If the change applied to any entity with similar elements of management authority over corporations or other entities, as well as partnerships?

What proportion of those transactions are likely to have antitrust significance?

What industries are likely to be significantly affected by such a change?

What elements of authority might be used to define when a partner or other entity is deemed to control a partnership or other entity?

Option Three: lower ownership level for control from 50 percent. Several comments to the Commission, including comments by the American Bar Association ("ABA") offered in response to the proposed "Acquisition Vehicle" rule, have suggested that the Commission base its definition of control of a partnership on an ownership level lower than the 50 percent used to define control of a corporation. The ABA comments and others have suggested 25 percent as an alternative. Although the 50-percent ownership level appears to have been adequate for attributing control of a corporation, it may be that a different standard is warranted for partnerships in light of their more frequent use as acquisition vehicles and their greater flexibility in allocating power among partners.

Any such change would almost certainly subject to premerger antitrust review some transactions that it would be useful for the antitrust agencies to assess and that currently are not reported. However, the change would also increase the number of filings of transactions raising no antitrust concerns. To limit the number of additional filings that the agencies would receive as a result of a lower ownership threshold for control of a partnership, the ABA proposal would attribute control *only* to the partner with the largest ownership share equal to or greater than 25 percent. Thus, if there were a 50-percent partner and two 25-percent partners, only the 50-percent partner would file. If there were two 25-percent partners and 50 one-percent partners, the 25-percent partners each would be deemed to control the partnership. A possible disadvantage of requiring reports by minority owners is that minority owners might thereby obtain effective veto power over acquisitions.

Questions for Option Three:

How many additional filings might the enforcement agencies expect from any of these changes?

Would different definitions of control for corporations than for partnerships create an incentive for parties to structure transactions in inefficient ways to avoid reporting and waiting requirements?

Option Four: restore the concept of a "group" to the definition of "entity" and include in it the kind of group recognized by the Securities and Exchange Commission. The definition of "entity" is a critical link in determining who must report and wait before completing a proposed transaction. Section 801.1(a)(2) defines "entity" by setting forth a list of the types of organizational units that are included within that term. In the original HSR rule published in the July 31, 1978 **Federal Register**, 43 FR 33450, the list included the phrase, "or other group organized for any purpose." Informal contacts between the Commission staff and persons wishing to determine the reportability of particular transactions indicated that the concept of "group" was a source of considerable uncertainty. The concern was caused in part by the fact that the Securities and Exchange Commission ("SEC") also requires reporting by entities called groups. However, the Commission concluded that the SEC's definition of "group," geared as it is to securities regulation, was too broad for purposes of the HSR premerger rules. The Commission concluded that the other

organizational units included in the definition of "entity" had proven to be adequate, and that in light of the confusion it engendered, the concept of "group" was unnecessary. Accordingly, the Commission eliminated the concept of "group" from the definition of "entity" on July 29, 1983, 48 FR 34427.

It may be time to reevaluate both of the Commission's earlier conclusions about the appropriateness of using the SEC's definition of group and value of including "group" within the definition of "entity." The Commission believes that unnecessary inconsistencies between the HSR rules and the SEC rules may create both confusion and distortions in the market that can result in inefficiently structured transactions as well as incentives to violate one set of regulations. Accordingly, the Commission seeks comments on the effects of including the SEC definition of "group" within the HSR rules' definition of "entity."

One problem with this approach is how to define control by, or of, a "group." If the group neither controls nor is controlled by any of its members, a filing by the group would likely contain little information useful to a preliminary antitrust analysis. Indeed, in many cases a group formed to make an acquisition would probably be exempt from filing requirements by operation of the flow-through rule (discussed in Option One, above). If a group were deemed to control all of its members, the rules would probably have to provide some special mechanism for a joint filing. And if a group were deemed controlled by some or all of its members, the rules would have to provide some way of determining who controls the group. For that purpose, one of the two options discussed above for defining control of a partnership might be useful.

Questions for Option Four:

How many additional filings would the enforcement agencies likely receive if this rule were adopted?

Is the existing SEC definition of "group" clear enough to be incorporated into the Commission's premerger rules?

Would the SEC definition of "group" necessarily include every partnership?

If a "group" were deemed to control all of its members, how might information from all of the members be provided?

Option Five: return to the "acquisition vehicle" rule. the "acquisition vehicle" rule, proposed by the Commission on September 24, 1985, at 50 FR 38742, would have required the owners of an entity used primarily to make an acquisition (an "acquisition vehicle") to file notification for an acquisition made by the acquisition vehicle as if the owners had made the acquisition directly without the acquisition vehicle. Although the premerger notification rules subject many indirect acquisitions to antitrust review, acquisitions made by entities that are not "controlled" by other persons frequently are not reportable.

Thus, under current rules, if four corporations each acquired 25 percent of the voting securities of another corporation, each of those acquisitions would be separately reported and reviewed by the antitrust agencies (assuming the act's other requirements were met). However, if, for purposes of acquiring the voting securities, the four corporations were to create a new entity to make the acquisition, the acquisition would probably not be reported, even though the antitrust interest in the transaction would be identical. Indeed, such an acquisition typically would be followed by a statutory merger that would not be covered by the rules' reporting requirements. Such a merger would, thus, transfer direct ownership of the acquired voting securities to the original four purchasers with no opportunity for review by the antitrust enforcement agencies. The "acquisition vehicle" rule would require the four purchasers in the above example to report the acquisition in the same way whether they acquired the voting securities directly or through the device of an "acquisition vehicle."

The "acquisition vehicle" rule has a particular advantage in that, with respect both to underreporting and avoidance, "acquisition vehicles" have been the entities of greatest concern to the Commission. This approach also would treat transactions with similar characteristics in the same manner and would assure that many transactions not now reported to the enforcement agencies would be subject to meaningful premerger antitrust review. At the same time, commenters on the proposed rule suggested that the "acquisition vehicle" rule would require the unnecessary reporting of a significant number of transactions, and could be particularly susceptible to manipulation for avoidance purposes because of difficulties in defining "acquisition vehicle."

The Commission is interested in further suggestions on how reporting created by the acquisition vehicle rule could be limited while obtaining the benefits of this approach.

Questions for Option 5:

How many additional transactions would likely be received by the enforcement agencies if the rule as previously proposed were adopted?

How could the rule be revised to reduce any overreporting that might result?

How could "acquisition vehicle" be defined to avoid both confusion and manipulation by those seeking to avoid reporting?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-4310 Filed 2-23-89; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3527-5; GA-013]

Approval and Promulgation of Implementation Plans; Georgia Stack Height Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by Georgia that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Georgia has satisfied its obligations under Section 406 of Pub. L. 95-95 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique with the possible exception of five sources. These sources will be dealt with in a subsequent notice.

DATE: Comments must be received on or before March 27, 1989.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Georgia Department of Natural Resources, Floyd Towers East, Room 1162, 205 Butler Street, Atlanta, Georgia 30334.