10 CFR Part 26

Fitness-for-Duty Program; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Meeting.

SUMMARY: The NRC staff will conduct a meeting to further public understanding of a proposed rule that will require nuclear power plant licensees to implement a fitness-for-duty program. The proposed rule appears in this issue of the **Federal Register**.

DATE: October 17, 1988.

ADDRESS: Holiday Inn Crowne Plaza (Ballroom, Meeting Group No. 4836), 1750 Rockville Pike, Rockville, MD 20852. Telephone: (301) 468–1100, 1–800–638–5963.

FOR FURTHER INFORMATION CONTACT: Nancy Ervin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–0946.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide a forum for discussion of issues raised by the Commission's proposed rule on fitness for duty, and in particular, aspects related to random urine tests for drugs.

The NRC wishes to facilitate the public comment process by providing an opportunity for members of the public to raise issues and have questions answered on the proposed rule.

The tentative meeting agenda is shown below:

Morning Session

9:00 am Opening Remarks (NRC)
9:20–9:30 Brief History and Purpose of Rule (NRC staff)
9:30–10:45 Guidelines for Drug Testing Programs (National Institute on Drug Abuse)
10:45–11:45 Provisions of the Proposed Rule and Issues (NRC staff and Attendees)
11:45–1:00 Lunch Break

Afternoon Session

1:00–3:30 Provisions of the Proposed Rule and Issues, cont. (NRC staff and Attendees)
3:00–4:30 Comments Requested by the Commission (NRC staff and Attendees)
4:30–4:45 Closing Remarks (NRC staff)

Dated at Washington, DC, this 8th day of September, 1988

For The Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Reactor Inspection and Safeguard, Office of Nuclear Reactor Regulation.

[FR Doc. 88–21414 Filed 9–21–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–2932]

National Indemnity Co., et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and set aside the order.

SUMMARY: National Indemnity Company and six subsidiary respondents in the order in Docket No. C–2932, filed a petition on August 30, 1988, requesting that the Commission reopen and set aside the order concerning the failure to comply with the Fair Credit Reporting Act.

DATE: Deadline for filing comments in this matter is October 14, 1988.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: George T. O'Brien, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2972.

SUPPLEMENTARY INFORMATION: The order in Docket No. C–2932 was published at 43 FR 52467 on November 13, 1978. The petitioners are engaged in the underwriting and sale to the public of property and liability insurance throughout the United States. The order requires that in connection with the consideration of applications for insurance respondents disclose to the consumer that an investigative consumer report may be procured and that the consumer has the right to request a disclosure of the nature and scope of the report. The order modification requested by petitioners would set aside the order on the basis that they have complied with the order for 10 years and all but one of the petitioners no longer use investigative consumer reports. The petition was placed on the public record on August 30, 1988.

List of Subjects in 16 CFR Part 13

Fair Credit Reporting Act; utilizing consumer reports.

Donald S. Clark,

Secretary.

[FR Doc. 88–21659 Filed 9–21–88; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Parts 801, 802, and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. This notice seeks 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.

DATE: Comments must be received on or before November 21, 1988.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 136, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Davidson, Attorney, Evaluation Office, Bureau of Competition, Room 394, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-3300.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

Each of these proposed amendments to the Hart-Scott-Rodino premerger notification rules is designed to reduce the burden and improve the effectiveness of the premerger notification program. The Commission has determined that none of the amendments is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the proposed amendments expands the coverage of the premerger notification rules in a way that would affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354 (September 19, 1980), the Federal Trade Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of some rules, is therefore inapplicable.

Paperwork Reduction Act

The Hart-Scott-Rodino Premerger Notification rules and report form contain information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501-3518. These requirements were reviewed and approved by the Office of Management and Budget (OMB Control No. 3084-0005). Because the proposed amendments would affect the information collection requirement of the premerger notification program, the proposed amendments have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. The Supporting Statement accompanying the Request for OMB Review estimates the principal proposal would reduce the number of notifications required, on average, by 20 filings per year. This would reduce the existing burden estimate of 142,000 hours annually by about 800 hours. The two alternatives being considered would not materially change the current burden estimate. Each of those proposed procedures would be optional if adopted. Persons who wish to do so could continue to file notifications under existing procedures. Comments on the Commission's submission may be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Don Arbuckle, Desk Officer for the Federal Trade Commission.

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 (who are 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.

Changes of a substantive nature have been made in the premerger notification rules or Form on six occasions since they were first promulgated. The first was an increase in 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 Federal Trade Commission as proposed rule 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 rules 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 the rules and to improve the program's effectiveness. The Commission decided to adopt nine of the proposals, to reject one proposal 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 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. Upon reviewing the comments on the "acquisition vehicle" proposal, the Commission reconsidered its proposal and proposed a new approach that applies only to partnerships and other entities that do not have outstanding voting securities. On March 6, 1987, the Commission proposed in the **Federal Register**, 52 FR 7095, amendments to its premerger notification rules to implement this approach. The final rule was published in the **Federal Register** of May 29, 1987, 52 FR 20058, and became effective on July 4, 1987.

The current set of proposals grew out of efforts by the Commission to insure compliance with the antitrust premerger notification obligations. The Commission has investigated a number of transactions in which persons purchased voting securities without filing notification or waiting the requisite period. Few of these transactions raised any competitive issues. In addition, in almost every case, acquiring stock without notifying the issuer and at the lowest possible price, rather than escaping antitrust review, appears to have been the reason for avoiding the premerger notification process.

The Commission recognizes that premerger notification obligations can create delay even for acquisitions that do not raise competitive concerns, and that this delay can impose significant burdens on buyers and sellers. However, this interruption does not reflect a Congressional decision that the Commission should regulate generally the acquisition of voting securities or assets. It is, rather, the necessary consequence of preventing consummation while the antitrust agencies assess the likelihood that proposed transactions will violate the antitrust laws. The special treatment of cash tender offers in section 7A(b)(1)(B) of the Act illustrates Congressional concern to avoid unnecessary disruption of the operation of the market for corporate control. *See* 122 Cong. Rec. H. 10,293 (daily ed. Sept. 16, 1976). In addition, the Commission has tried to minimize any unnecessary disruptive effect of premerger review by the design of its procedures and the speed with which it reviews proposed transactions. In addition, whenever the Commission can determine that a class of transactions is unlikely to violate the antitrust laws, it has sought, with the concurrence of the Assistant Attorney General for Antitrust, to exempt such transactions from all notification obligations and the delay inherent in premerger review. Accordingly, the Commission is exploring whether, consistent with its antitrust responsibilities, it can modify its premerger notification rules so as to: (1) Substantially reduce the non-antitrust-related incentive to evade the obligations of the program; (2) eliminate any unnecessary burden on the parties; and (3) avoid any unneeded interference with the securities laws' disclosure requirements and the market for corporate control.

This Notice discusses in some detail the nature of the transactions in which the compliance problems have arisen, laws and regulations that affect the non-antitrust related incentives not to comply with the Commission's rules, and the extent to which these and other purchases of minority interests have competitive significance. It then offers one principal and two alternative methods of modifying the rules that would diminish the avoidance incentive and explains what the Commission believes are the advantages and disadvantages of each. The Commission has undertaken the somewhat unusual step of presenting an extended discussion of the problem and proposing two alternatives in addition to the principal proposal because this area involves numerous issues and each of the proposed solutions appears plausible.

The Commission, therefore, invites interested persons to submit comments on the nature and scope of the problems described, on the desirability of each of the proposed amendments, and on other alternatives.

Statement of Basis and Purpose for the Commission's Proposed Revision of its Premerger Notification Rules

The purpose of section 7A of the Clayton Act is clear: to give the antitrust agencies an opportunity to determine whether a proposed acquisition might violate the antitrust laws and an

opportunity to challenge any such transaction prior to consummation. It is solely in order to meet this objective that section 7A requires advance notification to federal antitrust agencies of proposed acquisitions.

The Act was never intended to generate public disclosure of stock acquisitions. To the contrary, Section 7A(h) sets forth a rigorous confidentiality standard. Nonetheless, in order to assure that premerger notification and information are received from the acquired person, in circumstances in which the acquired person might not otherwise be aware of its filing obligation (*e.g.*, open market stock purchases), the antitrust premerger notification rules require that the acquiring person disclose its holdings and intentions to the acquired person at an early stage-before the $15 million reporting threshold is crossed. (See 16 CFR 803.5.)

The securities laws have as their purpose investor protection and the efficient functioning of capital markets. There has been vigorous and continuing debate over the years as to when Congress should require public disclosure of stock acquisitions through the securities laws.

The antitrust review procedures can require disclosure to the issuer whose stock is being acquired before any disclosure to a takeover "target" can be very costly, both in terms of driving up the price of the stock and more generally by enabling the target to undertake defensive maneuvers. As a result, it appears that some purchasers have used various techniques to avoid their antitrust notification obligation. Their aim has evidently been to buy stock immediately and secretly and to delay notice to the issuer at least until public disclosure is required by securities laws.

The Commission rejects the view that violation of the premerger notification requirements may be justified by the non-antitrust-related incentive to avoid disclosure to a takeover target or the public until required by the securities laws. The Commission will continue to require compliance with its rules. Nevertheless, it may be the case that certain aspects of the Commission's rules that require filing notifications create an incentive to avoid that obligation, but do not play any significant role in the effective operation of the premerger review. It may be possible, therefore, to broaden the circumstances in which voting securities may be purchased without prior notification to the antitrust agencies or prior notice to the target. In particular, the Commission believes that the premerger notification rules should be amended if they can be changed in a way that would reduce compliance problems and reduce filing burdens while maintaining the program as an effective antitrust enforcement tool. If such changes can be made, a major benefit would be the freeing up of Commission resources currently expended on compliance investigations regarding transactions that lack antitrust significance.

This Notice seeks public comment on three alternative means of achieving these ends. The principal proposal would exempt any acquisition of 10 percent or less of an issuer's voting securities, regardless of value. The Commission's experience, particularly its eight years experience reviewing premerger notifications, supports the conclusion that such acquisitions are unlikely to violate the antitrust laws. This exemption would subsume the "solely for the purpose of investment" exemption in section 7A(c)(9) of the act (15 U.S.C. 18a(c)(9)), and, as a result, eliminate the need for the parallel provision in § 802.9 of the rules. The two alternatives propose procedures designed to address the apparently unlikely possibility that an anticompetitive acquisition of 10 percent or less might occur. One procedure would allow an acquiror to purchase up to 10 percent of an issuer's voting securities without reporting to the enforcement agencies, provided that the stock remains in escrow until the agencies have completed their antitrust review. The other would enable a purchaser of up to 10 percent of the voting securities of an issuer to meet the premerger notification requirements without notifying the target firm. For certain non-consensual transaction, it would eliminate the reporting requirement currently imposed on the target firm if the acquiring person submits specified information not required by the existing notification and report form.

I. The Compliance Problem

Experience with the premerger notification program demonstrates a persistent problem in obtaining full compliance with notification obligations for acquisitions of 10 percent or less of an issuer's voting securities. As outlined above, those compliance problems are largely, if not entirely, the result of non-anti-trust related economic incentives to avoid the notification procedures. In order to describe and assess these proposals more fully, it is important to understand the operation of the antitrust notification procedures and the securities laws, the point at which their requirements result in disclosures, and the types of transactions that are most affected by these requirements.

A. Hart-Scott-Rodino Requirements

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires that certain acquisitions be reported to the Commission and Department of Justice prior to consummation. Assuming all other criteria are satisfied and not exemptions are applicable, an acquisition of voting securities or assets must be reported to the enforcement agencies and a waiting period must be observed before consummation if the transaction is valued at $15 million or more, or if the transaction would result in the acquiring person holding 50 percent or more of the voting securities of an issuer with sales or assets of $25 million or more. Section 7A(a)(3)(B) of the Clayton Act, 15 U.S.C. 18a(a)(3)(B), and § 802.20. The Commission's regulations eatablish three additional "notification thresholds" for acquisitions of voting securities valued at more than $15 million. *See* § 801.1(h). The next thresholds are 15 percent; 25 percent; and, finally, 50 percent. The regulations impose a potential filing and waiting requirement for each threshold that will be crossed. However, subsequent filings can be avoided if the initial filing is for the highest threshold the acquiror will meet. *See, e.g.*, § 802.21 and examples.

The waiting period prior to consummation of an acquisition is the keystone of the act. During this 30-day period (15 days in the case of a cash tender offer) the antitrust agencies can examine whether the proposed transaction is likely to violate the antitrust laws. *See* section 7A(b) of the act. They are authorized to require additional information from the parties and extend the waiting period up to another 20 days (10 in the case of cash tender offers) to review the additional submission. *See* section 7A(e) of the act. Armed with the information developed while the waiting period preserves the status quo, the agencies can and do challenge proposed mergers. *See* section 7A(f) of the act. They thereby avoid the complex remedial problems of undoing anticompetitive transactions.

Typically, however, the waiting period is less than the statutory maximum. Few transactions need to be challenged, and only a small percentage receive requests for additional information. For most transactions, the agencies complete their antitrust review within about two weeks and terminate the waiting period in less than half of the maximum time allowed by statute.

The filing obligation for a typical acquisition of voting securities contains

two notification obligations. The acquiring person must file the Notification and Report Form with the antitrust agencies. *See* § 803.2. It also must notify the issuer of the voting securities, if the shares are to be bought from a third party. *See* §§ 801.30 and 803.5. The acquiror must serve this notice on the issuer prior to notifying the enforcement agencies. *See* § 803.5.

The prior notice of the target, therefore, is a precondition to the initiation of the waiting period for an acquisition of voting securities from a person other than the issuer. Pursuant to § 801.30, the waiting period begins when the acquiring person files its notification. The acquired person must file its notification within the 15 days (10 if the transaction is a cash tender offer) thereafter. Without notice from the acquiring person, the acquired person might not know that its voting securities were being acquired, that it might have a filing obligation, or when it is required to file. Section 803.5(a), therefore, requires the acquiring person to inform the target firm of the following:

(i) The identity of the acquiring person;

(ii) The fact that the acquiring person intends to acquire voting securities of the issuer;

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

(iv) The fact that the acquisition may be subject to the act, and that the acquiring person will file notification under the act with the Federal Trade Commission and Assistant Attorney General;

(v) The anticipated date of receipt of such notification under § 803.10(c).

One exception to these filing requirements should be noted. Congress declared in section 7A(c)(9) that acquisitions of up to 10 percent of an issuer's voting securities would not be subject to the Act's obligations if made solely for the purpose of investment. The Commission has broadened the solely-for-investment exemption and permits institutional investors to acquire up to 15 percent of an issuer's voting securities without filing notification. *See* § 802.64.

At this point in the discussion, then, the class of transactions of interest comprises acquisitions of voting securities that are valued at more than $15 million and are not made solely for the purpose of investment. These proposed transactions must be reported regardless of the percentage acquired, unless another exemption is applicable. For acquisitions of the stock of large, publicly-traded firms relatively small acquisitions in terms of percentage acquired may therefore be reportable. If a firm's outstanding voting securities are valued at $1 billion, a $15 million purchase would constitute only 1.5 percent of the outstanding shares. It would require $50 million to acquire a 5 percent share or $150 million to acquire a 15 percent share.

B. Securities Laws

The Williams Act, passed in 1968 as a series of amendments to the Securities Exchange Act of 1934, had as its primary objective the regulation of tender offers. Pub. L. 90–439, 82 Stat. 454 (1968). It requires acquiring persons to disclose publicly, at the time of making a tender offer, who the acquiring persons are, where they will raise the money for the purchase, what their plans for the company are, and whether they have special agreements with other shareholders of the target management. Acquirors are required to keep the office open to all shareholders for a minimum of 20 business days. *See* section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d) and the rules thereunder. The Williams Act also requires any person who acquires beneficial ownership of more than 5 percent (reduced in 1970 from the original 10 percent) of an issuer's voting securities to make a similar public disclosure within 10 days *after* acquiring more than 5 percent. *See* section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d).

In some respects, Williams Act disclosures parallel antitrust premerger requirements. The securities law disclosures concerning tender offers, like the antitrust premerger notifications, take place prior to the acquisition of shares. Thus, the § 803.5 notice given in connection with a tender offer provides no new information to the target firm.

The requirement to disclose beneficial ownership under section 13(d), however, does not apply to purchases of 5 percent or less, and the required disclosures for larger purchases need not be made until after the 5 percent threshold has been crossed. Consequently, an acquiror may buy 5 percent without any disclosure. The § 803.5 notice to the target can thus reveal an acquiror's otherwise secret plans. These acquirors have an incentive not to comply with the premerger notification rules in order to purchase shares more cheaply in secret.

In addition, although the section 13(d) disclosure obligation is triggered by the acquisition of more than a 5 percent interest, an acquiror may accumulate a substantially larger percentage of the target's shares before making the disclosures. For example, the acquiror conceivably might, through block purchases, obtain a majority or even all of the target's shares before making its public disclosure. Moreover, section 13(d) permits the acquiror to continue buying shares during the 10 days it has to make the disclosures.

The percentage of shares an acquiror is likely to purchase initially and during this 10-day period is significant for determining whether the level of purchases at which secrecy is maintained under the Williams Act can be matched under the antitrust rules without compromising the effectiveness of the premerger review program as an antitrust enforcement tool. If purchasers typically acquire enough voting securities to transfer working control of target firms before they make their acquisitions public, the Commission would be unable to bring its rules into close harmony with section 13(d). The enforcement agencies must have information in advance from both the acquiring and the acquired firm to evaluate adequately the antitrust implications of a transfer of control. If, however, purchasers more typically limit their non-public acquisitions to a lower percentage of voting securities—one that is unlikely to allow them to influence the firm's management—it may be possible to revise the premerger notification requirements to accommodate the level at which Congress permitted secrecy under the securities laws.

Analysis of a random sample of one hundred Schedule 13D disclosures of beneficial interest filed with the Securities and Exchange Commission shows that 59 of the acquirors held less than 10 percent of the target's securities. Of the remainder, it appears that none of the acquirors had an incentive to violate their premerger notification obligations. Those acquisitions exceeding 10 percent fell into several categories: exempt from premerger notification obligations (because the acquisitions were valued at $15 million or less or were stock options); otherwise not reportable; made by the issuer's managers who had little reason to hide their transactions from the issuer; or made after filing the required antitrust notification. A conclusion that acquisitions of more than 10 percent are less likely to be involved in antitrust notification compliance problems would

also be consistent with the Commission's experience under the Hart-Scott-Rodino act described in the following section.

There appear to be a least two reasons that holdings greater than 10 percent are often not amassed before filing a Schedule 13D, despite existence of the "10 day window" between the crossing of the 5 percent threshold and the mandatory disclosure. First, it may be difficult or unduly expensive to acquire such holdings during that time period. Second, section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78p(b), may discourage purchases beyond the 10 percent level. Section 16(b) requires a person holding more than 10 percent of a company's shares to disgorge to the company any profits that person makes on the sale of company shares held for less than six months. Thus, persons whose plans contemplate, as one possibility, selling shares within the six-month period may limit their acquisitions to less than 10 percent. If, for example, there objective is to obtain control, acquirors may prefer to seek additional shares through a tender offer that conditions acceptance of additional shares on having a specified percentage of shares tendered. Then the acquiror can be sure of obtaining control when it buys the tendered shares or, it the acquisition plan fails because too few shares are tendered, the acquiror risks loss only on the 10 percent holding and can retain any gain if it sells those shares at a profit.

The ability of acquirors to amass holdings greater than 5 percent without disclosure may be significantly reduced as a result of legislation introduced in Congress to alter the Williams Act requirements. One approach would narrow the "10 day window" or close it entirely by forbidding purchases beyond 5 percent until disclosure had been made. *See, e.g.*, Tender Offer Reform Act of 1987, H.R. 2172, 100th Cong., 1st Sess. (1987). Another proposal would, in addition, lower the disclosure threshold to 3 percent or less. Tender Offer Disclosure and Fairness Act of 1987, S 1323, 100th Cong., 1st Sess. (1987).

C. Experience under the Hart-Scott-Rodino Act

The Commission's experience with the permerger notification program suggests that acquiring persons have in a number of instances sought, through various devices, to avoid filing premerger notifications. These acquirors appear to have done so not in order to escape or delay antitrust review but, rather in order to acquire voting securities prior to informing the issuer. Acquirors have tried at least two ways to argue under the Commission's rules that purchases of a small percentage of an issuer's voting securities were exempt: (1) They acquired shares directly and claimed the transaction was exempt under § 802.9, because the shares were acquired "solely for the purpose of investment;" and (2) they acquired shares "indirectly" through brokers under what were described as option agreements, claiming an exemption under § 802.31. In most of these instances the acquiring person held less than 10 percent of the issuer's voting securities. Furthermore, in a number of these instances the acquirors had actually filed or declared an intention of file the antitrust notifications for shares purchased subsequent to disclosing their beneficial ownership under the securities laws. This experience and our assessment of the current stituation under the securities laws set forth above suggest that the secrecy-based incentive to avoid filing premerger notifications is greatest for acquisitions of less than 10 percent.

Accordingly, the Commission believes that most acquirors would submit additional purchases to an antitrust premerger review, if they could acquire up to 10 percent without prior notice to the issuer. The question raised in this Notice is whether the Commission can alter its premerger notification rules in a way that will reduce this incentive while maintaining an effective antitrust enforcement mechanism. The answer to that question depends in large part on the antitrust significance of acquisitions of up to 10 percent of an issuer's voting securities.

II. The Antitrust Significance of 10 Percent Acquisitions

The Commission has examined three sources of guidance in considering the antitrust implications of acquisitions of 10 percent or less: antitrust chase law, experience with antitrust premerger filings, and federal statutory presumptions. All three indicate that acquisitions of up to 10 percent are less likely to violate the antitrust laws than acquisitions of greater percentages.

A. Antitrust Case Law

Section 7 of the Clayton Act prohibits acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly." 15 U.S.C. 18. It requires courts to predict whether a stock acquisition may give the acquiring person the power to influence target management in an anticompetitive manner. *United States v. E.I. du Pont de Nemours and Co.*, 353 U.S. 586 (1957).

An acquiring person does not need to purchase as much as 50% of another company's stock to violate section 7. *See, e.g., Denver & R.G.W.R.R. Co. v. United States*, 387 U.S. 485 (1967); *United States v. E.I. du Pont De Nemours and Co., supra.* In *Du Pont*, the court stated that an acquisition of "any part of the stock of another corporation, * * * is within reach of the Section whenever the reasonable likelihood appears that the acquisition will result in a restraint of commerce of in the creation of a monopoly * * *" 353 U.S. at 592. The court held that Du Pont's 23% share of General Motors securities violated section 7.

Other antitrust cases have recognized the influence on a target's management that the holder of a 20 percent interest can exert. *See, e.g., Crane v. Briggs*, 280 F.2d 747 (6th Cir 1960) (22% and the power to elect two directors enjoined as a violation of section 7); *Jacobson Manufacturing Co. v. Sterling Precision Corp.*, 282 F. Supp 598 (E.D. Wisc. 1968) (a 22% owner "is going to be in position to exercise some form of control"). Other courts have indicated that it would be appropriate to enjoin an acquisition that would result in the acquiror holding 20 percent of a target's shares. *See, e.g., Gulf and Western Industries, Inc. v. Great A&P Tea Co., Inc.* 476 F.2d 687 (2d Cir. 1973) (19% share); *Hamilton Watch Co. v. Benrus Watch Co.*, 114 F. Supp 307 (D. Conn.), *aff'd*, 206 F.2d 738 (2d Cir. 1953) (24% share).

Acquisitions of under 10 percent have received a mixed appraisal in cases not involving section 7. For example, in *Dan River, Inc. v. Unitex, Ltd.*, 624 F.2d 1216 (4th Cir. 1980), a securities law case, the court noted that 20 percent is "frequently regarded as control of a corporation * * * [but] at this point in their purchase program when they have but some eight percent of Dan River's stock, they could not hope to exercise control." 624 F.2d at 1225. However, the Civil Aeronautics Board has declared that a carrier may be in a position to exert control over another carrier at any percentage. *See, e.g., Toolco-Northeast Control Case*, 42 C.A.B. 822, 825 (1965); *Allegheny Airlines*, 41 C.A.B. 743, 744–5 (1964). With the agreement of incumbent management, an acquisition of only a few percent of shares sometimes has been the basis of a transfer of control to the acquiror. *See generally Matter of Caplan v. Lionel Corp*, 14 N.Y.2d 679 (1964), *aff'g*, 20 A.D.2d 301 (1964); *cf. Essex Universal Corp v. Yates*, 305 F.2d 572 (2d Cir. 1962).

There has apparently been no section 7 case that addressed directly and in

detail the implications of an acquisition of less than 10 percent of the target's voting securities. There are two cases, however, that suggest that acquisitions of less than 10 percent may violate section 7. In the first, a district court issued a preliminary injunction against an acquisition of 9.9 percent of the target's shares. While this injunction was vacated on appeal, *Kennecott Copper Corp v. Curtiss-Wright Corp.*, 584 F.2d 1195 (2d Cir. 1978), the reversal appears to rest on the inadequate definitions of product and geographic markets not on the ground that a 9.9 percent holding and the power to elect one director was insufficient to trigger section 7. In *Vanadium Corp. of America v. Susquehanna Corp.*, 203 F. Supp. 686 (D. Del. 1962), the court enjoined Susquehanna, its president and related interests from voting their combined 19.7 percent block of shares in Vanadium on the grounds that the exercise of those voting rights would probably lessen competition in the vanadium market. It issued the injunction notwithstanding that no person or entity in the Susquehanna group held as much as 10 percent of Vanadium's shares. Consequently, it appears that a court might also enjoin the acquisition of shares by individual members of a group even where no individual's holdings would be sufficient alone to influence the target management.

Finally, in one instance an acquisition of under 10 percent resulted in an interlocking directorate which the Commission found illegal under section 8 of the Clayton Act. In *Borg-Warner Corp. v. Federal Trade Commission*, 746 F.2d 108 (2d Cir. 1984), Bosch GmbH had placed two of its directors on the board of Borg-Warner after acquiring 9.5 percent of Borg-Warner's shares. The Commission held that the presence of common directors on both corporate boards violated both section 8 of the Clayton Act and section 5 of the Federal Trade Commission Act, because the firms competed in three lines of business. The Second Circuit reversed the Commission's order, but only on grounds of mootness (competition between the two firms had ceased as a result of divesting the competing business line, and the firms no longer had common directors).

These decisions indicate that although there are circumstances in which the acquisition of 10 percent or less of an issuer's voting securities may violate the antitrust laws, the occurrence of actual anticompetitive acquisitions in this range has been rare or non-existent. In addition, there are reasons why anticompetitive acquisitions of under 10 percent would be unusual. Anticompetitive acquisitions appear to be of two principal types: acquisitions conferring control of an issuer, and acquisitions that facilitate collusion by obtaining the power to elect a member of the issuer's board of directors. Ten percent is not enough to guarantee control without the agreement of the issuer's management; a person seeking control is therefore likely to purchase more shares individually or set up a group to purchase the requisite shares. The former would not be protected by an exemption (or other rules modification) that was limited to holdings of 10 percent or less. The latter would require a public disclosure under the securities laws and would risk liability under section 1 of the Sherman Act as well as under section 7 of the Clayton Act. Obtaining a seat on the board of directors might be an efficient way to facilitate collusion between the parties, but it too would normally be a public act likely to incite unwanted scrutiny by the antitrust agencies. Accordingly, it appears probable that nearly all acquisitions of 10 percent or less will have no antitrust significance.

The same reasoning applies even more forcefully to voting security acquisitions of 5 percent or less. Obtaining control or a seat on the board is even less likely, while all the risks of unwanted antitrust scrutiny from using a group or obtaining the seat are the same. Moreover, even the sparse precedent for finding antitrust violations for acquisitions of less than 10 percent evaporates for acquisitions of less than 5 percent of an issuer's voting securities. *Kennecott, Vanadium,* and *Borg-Warner* all involved acquirors of more than 5 percent. We are aware of no case in which a tribunal at any level found a violation of section 7 for an acquisition of less than 5 percent, apart from acquisitions by a person operating as a member of a group.

B. Antitrust Enforcement Activities

Available records indicate neither of the antitrust agencies has ever challenged an acquisition of 10 percent or less of an issuer's voting securities as a violation of section 7. (In *Borg-Warner,* though, the Commission challenged under § 8 an interlocking directorate achieved through a 9.5 percent acquisition.) The complete absence of section 7 actions by federal enforcement agencies is not surprising. Rather, it is consistent with the conclusion of the preceding section that acquisitions of 10 percent or less do not appear to have presented competitive problems.

This conclusion is further supported by an even more sensitive preliminary indicator of antitrust enforcement interest. The Commission maintains records of two levels of preliminary enforcement interest on all transactions filed under the premerger notification program: "clearance," the first indication of antitrust concern, initiates a procedure by which the two antitrust agencies decide which agency will begin an in-depth review of a transaction, and "second requests," the procedure under the act for obtaining additional information from the parties that generally indicates a higher level of concern. We have complete statistics for the years 1981–1984 (see table below), and these demonstrate a much lower than average level of enforcement interest in acquisitions of 10 percent or less. Overall, the percentage of clearances for these transactions was under 10 percent, which is less than two-thirds the percent in which clearances were sought for all transactions. The more recent but incomplete data for 1985 and 1986 show, for 1986, a higher number of transactions reported and a higher percentage of clearances. The larger number of transactions involving acquisitions of up to 10 percent probably reflects the larger number of transactions reported overall that year. The higher percentage of clearances may be just a chance variation.

ENFORCEMENT INTEREST IN SELECTED PREMERGER TRANSACTIONS

Calendar year	Transactions	Total clearances granted (FTC & DOJ)		Second requests issued (FTC & DOJ)		Transactions as a percentage of annual total adjusted transactions
		Number	Percent	Number	Percent	
A. Voting Securities Acquired—10% and Less:						
1981	16	1	6.3	0	–	2.1
1982	10	1	10.0	0	–	1.4
1983	36	3	8.3	1	2.8	4.0

ENFORCEMENT INTEREST IN SELECTED PREMERGER TRANSACTIONS—Continued

Calendar year	Transactions	Total clearances granted (FTC & DOJ)		Second requests issued (FTC & DOJ)		Transactions as a percentage of annual total adjusted transactions
		Number	Percent	Number	Percent	
1984	12	2	16.7	0	-	1.1
1985	26	2	7.7	1	3.8	N.A.
1986	45	12	26.7	0	-	N.A.
1981-1986 Total	145	21	14.5	2	1.4	N.A.
1981-1984 Total	74	7	9.5	1	1.4	8.6
B. Voting Securities Acquired—5% and Less:						
1981	11	1	9.1	0	-	1.4
1982	1	0	-	0	-	0.1
1983	22	1	4.5	1	4.5	2.4
1984	5	1	20.0	0	-	0.4
1985	14	1	7.1	0	-	N.A.
1986	25	6	24.0	0	-	N.A.
1981-1986 Total	78	10	12.8	1	1.3	N.A.
1981-1984 Total	39	3	7.7	1	2.6	4.3
C. All Transactions (Adjusted) [1]:						
1981	762	166	21.8	78	10.2	.....
1982	713	137	19.2	42	5.9	.....
1983	903	129	14.3	51	5.6	.....
1984	1,119	175	15.6	71	6.3	.....
1981-1984 Total	3,497	607	17.4	242	6.9	.....

[1] Data not available for calendar years 1985 and 1986.

Even more significant are the "second request" data that show virtually no interest in these transactions beyond the most preliminary stage. The two second requests on the table involved special circumstances. Both transactions were subject to second requests because the securities were being received in exchange for the independently reported acquisition of 100 percent of the acquiror's assets. In other words, the concern that generated the second request was the merging of the two businesses, not the acquisition of a small amount of voting securities by what would become a shell corporation. Had the acquisition of voting securities in these two instances been exempt from reporting obligations, the asset acquisitions would still have been reported and the agencies' investigations, which included issuance of second requests, would not have been impeded. Apart from these transactions we know of no second requests issued that were for acquisitions of 10 percent or less since the program was established in 1978.

The small number of transactions reported in these categories and the low degree of enforcement interest should be interpreted with some caution. Because a premerger notification remains in effect for a year, acquirors generally file for the highest threshold they expect to cross. Otherwise, an additional filing and waiting period would be required if a subsequent acquisition would increase the acquiror's holdings over the 15, 25, or 50 percent thresholds. Thus, it is possible that a clearance or second request recorded in these statistics at a higher threshold level might have been sought by the enforcement agencies if the percentage of voting securities intended to be held were 10 percent or less. There is, however, no indication of whether this is the case in any of these transactions.

In addition, historical data on enforcement interest may not always be of great value in assessing whether a rules change would be likely to let anticompetitive transactions go unreported. If all acquisitions up to 10 percent were exempt, more persons might be encouraged to make initial acquisitions within this range before making a filing, and it is possible that some of these acquisitions would raise competitive issues. Nonetheless, the central fact that we are unable to uncover any instance of either of the antitrust agencies ever challenging a stock acquisition of less than 10 percent under section 7 alleviates this concern.

The enforcement interest statistics, like the case law, indicate that there has been relatively little antitrust interest in acquisitions of small percentages of an issuer's voting securities. The enforcement agencies' interest has been demonstrated only at the "clearance" level and even at that level the interest has been must lower than for other transactions. There have been no relevant second requests. Moreover, neither antitrust agency has ever challenged an acquisition of 10 percent or less of an issuer's voting securities as a violation of section 7.

C. Federal Statutory Presumptions

There are a number of federal statutes that establish reporting and other regulatory requirements based on the percentage of securities a person holds. They frequently reflect an implicit or explicit assumption that below the stated percentage the acquiror is unlikely to control the issuer or above that percent it is likely to control the issuer. While not determinative for the premerger rules, the generalizations in those laws provide a useful perspective.

Federal regulatory statutes have generally used three percentages as benchmarks: 5, 10, and 25. Most common is a presumption of control at a 25 percent holding: Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*; Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*; Savings and Loan Insurance Corporation Act, 12 U.S.C. 1730(q)(8)(B); National Housing Act, 12 U.S.C. 1730a (a)(2)(B); and the Investment Company Act of 1940, 15 U.S.C. 80a-2 *et seq.* Another significant group of statutes use 10 percent either to presume control or the possibility of control or more simply as a notification threshold: Federal Aviation Act of 1953, 15 U.S.C. 1378(f); Securities Exchange Act of 1934, 15 U.S.C. 78p(a); and Public Utilities Holding Company Act of 1935, 15 U.S.C. 79(b)(a)(9) and (10). Still other statutes have used a 5 percent holding as a notification threshold without any

necessary implication of control: Bank Holding Company Act of 1956, 12 U.S.C. 1841(a)(2); Securities and Exchange Act of 1934, 15 U.S.C. 78m(d). Finally, several acts have established a presumption that control does not exist for holdings of less than 5 percent: Bank Holding Company Act of 1956, 12 U.S.C. 1841(a)(3); Federal Deposit Insurance Act, 12 U.S.C. 1817(j)(1)(A).

The legislative history of the securities laws, especially of section 13(d) of the Securities Exchange Act of 1934, includes extensive discussion of whether a holder of 5 percent or less is likely to control an issuer. The purpose of section 13(d) is to alert the marketplace to rapid accumulations of securities which might represent a potential shift in control. *Mosinee Paper Corp. v. Rondeau*, 500 F.2d 1011 (7th Cir. 1974); *GAF Corp. v. Milstein*, 453 F.2d 709 (2d Cir. 1971). An acquisition which reaches the 5% level signals "the earliest possible moment of the potential for a shift in control." *Mosinee Paper*, 500 F.2d at 1016.

As noted earlier, section 13(d) was amended in 1970 to reduce from 10 percent to 5 percent the threshold level at which an acquisition of shares must be disclosed. The principal reason for the change was evidence presented to Congress that companies limited their open market purchases to just below 10 percent as a means of avoiding the prior disclosure requirement applicable to tender offers. Pub. L. 91-567, 84 Stat. 1497 (1970). Because of the "ten day window," during which additional shares may be bought prior to disclosure, the amendment may not have achieved its objective. However, the legislative history shows Senator Williams' concern that "even 5 percent, can involve large amounts of money and can have a significant impact on corporate control." *Hearings of S. 336 and S. 3431 Before the Subcommittee on Securities of the Senate Committee on Banking and Currency*, 91st Cong., 2d Sess. 1 (1970).

On the other hand, the Chairman of the Federal Securities Acts Committee of the Investment Bankers Association, who also spoke in favor of the amendment to decrease the section 13(d) threshold, stated, "We believe it has not been demonstrated that ownership of less than 10 percent of the equity securities of any company constitutes "control" of the company in any way, even in the case of large corporations where the value of 9 percent of the equity securities would be many millions of dollars." *Hearings, supra*, at 115.

If other federal statutes imply that holders of 10 percent or less of an issuer's voting securities are unlikely to control the issuer, the legislative history of the Hart-Scott-Rodino Act tends more to the opposite view. Congress was aware that the premerger notification program would require filing for far smaller percentage acquisitions of voting securities than those covered by other statutes. Representative Hutchinson responded to a criticism that the notification requirements of the act—$15 million or 15 percent—were not strict enough: "If the percentage test were the only test of substantiality, the cited statutes might provide appropriate guidance. But the [$15] million figure, in effect, operates to reduce the percentage required as the transaction gets larger. Thus, the two-pronged committee test is both more flexible and more exact than the other statutory test." *Id.* Cong. Rec. H-8140 (daily ed. Aug. 2, 1976).

When Congress considered a *de minimis* exemption for voting security acquisitions, it limited the exemption to acquisitions that (1) were "solely for the purpose of investment," and (2) constituted 10 percent or less of the outstanding voting securities of the issuer. Section 7a(c)(9) of the act. The Commission could and did broaden this exemption using its authority under section 7A(d)(2)(B) to exempt "transactions which are not likely to violate the antitrust laws." Section 802.64 exempts an acquisition of up to 15 percent of an issuer's voting securities by an institutional investor if made solely for the purpose of investment. Neither this nor any of the other exemptions in the rules are based on other federal statutory presumptions about control of corporations.

Overall, these other statutory presumptions support the proposition that acquisitions of up to 10 percent are less likely to confer control or create competitive problems than acquisitions of greater percentages. Similarly, they indicate that any such problems are even less likely for holdings of 5 percent or less. In contrast, the $15 million reporting threshold in the Hart-Scott-Rodino Act and the "solely for the purpose of investment" qualification to its voting securities exemption indicate a Congressional interest in subjecting some types of acquisitions of 10 percent or less to premerger review. At the same time, however, Congress gave the enforcement agencies broad authority in the act to exempt classes of transactions that are unlikely to violate the antitrust laws.

III. Proposed Solutions

The proposals outlined below are directed at acquisitions of 10 percent or less of an issuer's outstanding voting securities. In part because the antitrust agencies appear never to have challenged such an acquisition, such acquisitions appear unlikely to violate the antitrust laws. As the foregoing discussion makes clear, the Commission has identified the 10 percent level based also in part on marketplace incentives related to the securities laws. If the federal securities laws are amended, the Commission may want to focus on a different threshold level. At present, though, the 10 percent level seems appropriate in light of both the securities laws and antitrust enforcement interest.

There are basically two approaches to reducing the conflict between the acquiror's desire to purchase small percentages of voting securities in secret, which is permitted by the securities laws, and the obligation to notify the issuer contained in the premerger rules. The first is simply to exempt small percentage acquisitions from all premerger obligations. The second is to alter the notification procedures in a way that removes the obligation to notify the target but assures that the antitrust agencies receive the information they require and have an opportunity to review it before consumers are harmed or remedial options are lost or become unworkably complex.

The principal proposal follows the first approach and would exempt all acquisitions of 10 percent or less of an issuer's outstanding voting securities. The alternative proposals follow the other approach and are designed to prevent competitive harm in those apparently unlikely instances when an acquisition of 10 percent or less would be anticompetitive. One would permit an acquiror to purchase 10 percent or less of an issuer's voting securities without filing notification, provided the securities are held in escrow until the antitrust agencies have completed their review. The other would permit an acquiror to file its prior notification for an acquisition of 10 percent or less without notifying the issuer (who would not have a filing obligation), provided the acquiror supplies certain information about the transaction and the issuer that is not now required. Under this proposal, the enforcement agencies would retain the authority to seek information from the issuer if necessary.

The Commission presents these alternatives with the recognition that there are disadvantages, as well as advantages, to each of the proposals. It requests comments on the provisions of each proposal. It would also welcome suggestions for other proposals as well as comments on the problems described

in this Notice and the proposals set out below. In addition, the Commission would appreciate comments on several specific issues. Those that relate to a particular proposal are stated after the discussion of that proposal. The following questions concern all the proposals.

1. Is promulgation of any one of these proposals likely to change significantly existing patterns of acquiring voting securities? Would, for example, many more persons make acquisitions of up to 10 percent of the voting securities of an issuer?

The dearth of antitrust cases involving acquisitions of 10 percent or less suggests that it is unlikely that such acquisitions will raise competitive problems. It is possible, however, that some acquisitions of more than 10 percent that were found to be anticompetitive would also have had significant anticompetitive effects if they had involved 10 percent or less. Special treatment of acquisitions of 10 percent or less could encourage some acquirors who might not otherwise have done so to limit their initial or total purchases to 10 percent. Under what circumstances might acquirors be so influenced, and in what situations would such small acquisitions be likely to violate the antitrust laws?

2. Under any of these proposals, will a substantial number of purchasers typically seek to acquire more than 10 percent of the voting securities of an issuer before notifying the target? If so, is it likely that any of these proposals will effectively reduce the Commission's burden of policing compliance with the premerger rules?

Analysis of the random sample of Schedule 13Ds filed with the Securities and Exchange Commission discussed earlier indicates that few acquirors with an antitrust notification obligation exceed the 10 percent level without first previously satisfying their antitrust premerger notification obligations. The Commission's own experience also suggests that most, but not all, such acquirors file with the SEC and this Commission before exceeding the 10 percent level.

Even for those who seek to acquire more, however, it appears that the incentive to avoid the rules would be diminished if the Commission eliminated notice to the target for a lower percentage than the acquiror had intended to accumulate. For example, assume that for $15 million an acquiror could purchase one percent of the voting securities of an issuer. Assume further that the acquiror expects to obtain a $1.5 million profit upon resale of the shares and that the expected costs and profits are proportional for acquisitions of 5 and 10 percent, provided the acquiror does not notify the issuer prior to these acquisitions. Finally, assume that the acquiror can buy 11 percent of the shares before the securities laws would require a public disclosure. In deciding how much to buy under the current premerger rules, the acquiror must balance a no risk $1.5 million profit on 1 percent of the stock against a risky $16.5 million profit on 11 percent. (This profit is risky because it can be achieved only by violating the rules, which may result in substantial civil penalties.) If, under any of these proposals, the acquiror could buy 5 percent of the shares without notifying the target, the acquiror would face a different choice, balancing a $7.5 million profit without any risk of violating the rules, against the riskier $16.5 million profit option. If the rules permitted the acquisition of 10 percent without notice to the target, the choice would be between the risky $16.5 million profit and a legal profit of $15 million. In that case the incentives appear to be very different.

Are there other factors which would affect a purchaser's decision?

3. If Congress amends the securities laws to eliminate the "ten day window," how should that change be reflected in these proposals?

Under those circumstances, should all the proposals be restricted to voting security acquisition of 5 percent or lower? Would applying any or all of these proposals to acquisitions of 5 percent (or percent), rather than 10 percent, of an issuer's voting securities be a better approach even without changes in the securities laws? In this regard, it should be noted that all relevant transactions identified by the staff to date as being possible violations of the premerger notification requirements have involved acquisitions of more than 5 percent.

4. Should the Commission revise the other voting securities thresholds of § 801.1(h) if it exempts acquisitions of 5 percent or 10 percent of the voting securities of an issuer?

For example, if a 10 percent exemption were adopted, would it make sense to retain the 15 and 25 percent reporting thresholds? Would the program be diminished or enhanced by replacing those with 10 and 20 percent thresholds?

A. The Principal Proposal: An Unrestricted Exemption

Proposed § 802.24 would exempt from the obligations of the act the accumulation by any persons of up to 10 percent of any issuer's voting securities. Acquirors would not have to suspend consummation of transactions during a waiting period nor would they be required to notify the antitrust agencies or the target of their acquisitions before or after consummation. This proposal appears to address most directly the non-antitrust-related incentive to avoid premerger notification obligations that acquirors face prior to the point when § 13(d) of the Securities Exchange Act of 1934 requires them to disclose their beneficial ownership. The Commission will also consider whether a lower percentage exemption, such as 5 percent, might be appropriate, particularly if the provisions of the securities laws are amended.

Acquirors are reluctant to file premerger notifications because both the delay imposed by the waiting period and informing the target could increase the cost to them of acquiring the issuer's voting securities. In general, this class of persons would not acquire more than 10 percent of a target's voting securities because of the strictures on short-swing profits imposed by section 16(b) of the Securities Exchange Act of 1934 and because of the difficulties of acquiring more shares at low prices in the ten-day Williams Act period. Where such persons do seek to acquire more than 10 percent of the shares, the Commission expects that they would comply voluntarily with the obligations of the premerger notification program. Unless the securities laws are changed, a 5 percent exemption would reduce but not eliminate this non-antitrust-related incentive to avoid premerger notification requirements for most persons.

Currently, acquisitions of voting securities valued at more than $15 million, but which constitute 10 percent or less of an issuer's voting securities, are exempt under § 802.9 if the shares are held "solely for the purpose of investment." That exemption is not now available if the securities are purchased "with the intention of influencing the basic business decisions of the issuer, or with the intention of participating in the management of the issuer." *See* letter of Bureau Director Thomas J. Campbell dated August 19, 1982, included as Exhibit D in the Commission's Sixth Annual Report to Congress on the Hart-Scott-Rodino Act (July 26, 1983). This proposal would subsume that exemption by eliminating the filing requirement for all acquisitions of 10 percent or less of an issuer's voting securities, regardless of the intent of the acquired person.

In 1978 when the premerger rules were originally adopted, the Commission rejected the suggestion "that investment intent should be disregarded and that all acquisitions below the 10 percent level

should be exempt." 43 FR 33490, July 31, 1978. The Commission's current consideration of an unrestricted 10 percent exemption is based on eight years experience reviewing premerger notifications which supports the view that such acquisitions are unlikely to violate the antitrust laws. It also responds to persistent problems enforcing filing obligations for acquisitions of 10 percent or less, an continued suggestions for some type of unrestricted exemption for acquisitions of small percentages of voting securities. See Comment 20 to the proposed "acquisition vehicle" rule 50 FR 38742, September 24, 1985 and comment 4 to the proposed "partnership control" rule, 50 FR 7095, March 6, 1987, promulgated 50 FR 20058, May 29, 1987.

The Commission, with the concurrence of the Assistant Attorney General, is authorized to "exempt, from the requirements of [the act], classes of * * * transactions which are not likely to violate the antitrust laws." Section 7A(d)(2)(B) of the act. The finding required by the statute can be demonstrated in different ways. The Commission can exempt a class of transactions on the grounds that that type of transaction is inherently unlikely to be anticompetitive. For example, § 802.30 and section 7A(c)(3) exempt acquisitions of voting securities by persons who already own 50 percent or more of an issuer. Given that such an acquiror already controls the issuer it is possible, but not likely, that as a result of the acquisition the issuer will act in a way that significantly diminishes competition in any relevant market. The Commission relied in part on this rationale when it adopted § 802.35 which permits Employee Stock Option Plans (ESOPs) to acquire shares in their employer's firm if the employer controls the ESOP by a contractual right to appoint the plan's trustees.

Exemptions can also be based on enforcement experience and statistics. In 1985 the Commission proposed to raise the § 802.2(b) "controlled issuer" annual net sales and total assets thresholds. That proposal was based on the observation that few of the reportable "controlled issuer" transactions have raised competitive problems, not that they could not do so. The proposal rested on the grounds that many persons, whose transactions typically raised no competitive problems, were unnecessarily burdened by reporting obligations because of the possibility that statistically unlikely anticompetitive transactions might occur.

It is not possible to say that voting securities acquisitions of 10 percent or less, or 5 percent or less, cannot violate the antitrust laws. The proposed exemption is rather based on the evidently low likelihood that "the class of transactions" will violate the antitrust laws. The statistics compiled by the Commission, discussed earlier, demonstrate a much lower level of enforcement interest in acquisitions of 10 percent or less than in other transactions. Our review of antitrust litigation and inability to find any section 7 cases filed by the agency with 10 percent or less ownership provides even stronger support for the exemption. The conclusion that the class of transactions is unlikely to violate the antitrust laws is also supported both by the reasons that make it likely that persons who have anticompetitive objectives would not acquire only small percentages and the likelihood that the antitrust agencies would become aware of such anticompetitive transactions even without premerger notifications. Of course, such anticompetitive transactions occur, the proposed exemption would provide no basis for arguing the legality of the transaction.

The advantages of proposed § 802.24 are clear. The exemption directly reduces the non-antitrust-related incentives to avoid filing. Its criteria are objective—10 percent or less of an issuer's voting securities—and therefore easy to administer. The antitrust agencies would not have to devote their resources to determining whether particular acquisitions were made solely for the purpose of investment.

The disadvantages of proposed § 802.24 are also evident. The antitrust agencies would not have the benefit of prior notice, information about the parties to a transaction, or the waiting period to prevent any anticompetitive acquisitions of 10 percent or less of an issuer's voting securities. In addition, the Commission may continue to have a significant compliance problem with persons who seek to acquire more than 10 percent of the voting securities of issuers without prior disclosure to the target companies. However, as discussed at some length above, it appears unlikely that an acquisition of 10 percent or less of the voting securities of an issuer will violate the antitrust laws. And the Commission's experience has shown that most reportable acquisitions without notice to the target have been at or below the 10 percent level.

The Commission has considered the foregoing but has not finally evaluated the merits of proposed § 802.24. Its further consideration would be aided by comments on the following matters.

1. When would the antitrust agencies likely learn of an acquisition of 10 percent or less of the voting securities of an issuer if the acquisition were anticompetitive?

The Commission could of course monitor Schedule 13D filings, but most of those are not transactions that would have antitrust notification obligations and, in any case, do not contain adequate information to do a quick screening.

2. Should the Commission consider some limitation on the 10 percent exemption?

The Commission might, for example, specifically exclude transactions that enable the acquiror to elect a director or that include an agreement to appoint one or more directors to the issuer's board.

3. Should the Commission reconsider using the group concept from the securities laws if it exempts acquisitions of 5 percent or 10 percent of the voting securities of an issuer?

One aspect of the antitrust interest in 5 percent holdings is raised by the decision in *Susquehanna* discussed above that enjoins the exercise of rights to 2 percent of the issuer's voting securities. That decision was premised on the collective exercise of rights held by a "group" holding 19 percent of the shares. While such groups can act anticompetitively, the antitrust premerger notification rules have not used the group concept, perhaps because the $15 million criterion effectively lowers the percentage threshold in large transactions. The Commission never used the securities law group concept in defining the acquiring person, and formally deleted the term "group" from the definition of "entity" in a 1983 amendment to § 801.1(a)(2). 48 FR 34428, July 29, 1983. It should be noted that if such a group formed an entity that was not controlled under § 801.1(b) and used that entity to make an acquisition, the transaction probably would not be reportable if, pursuant to § 801.11(e) the entity did not itself meet the minimum size-of-person test.

4. Would a 5 percent exemption unduly complicate the rules by creating for acquisitions of voting securities a 5 percent unrestricted exemption under proposed § 802.24, on top of a 10 percent "investment only" exemption under § 802.9, and the 15, 25 and 50 percent reporting thresholds of § 801.1(h)?

B. The Escrow Proposal

Proposed § 801.34 would permit acquirors to purchase, but not take possession of, up to 10 percent of an issuer's voting securities without filing a notification. The shares purchased would be placed in escrow and voted by the escrow agent in proportion to the votes cast by all other shares. The acquiror would be required to file and observe the waiting period prior to purchasing more than 10 percent of an issuer's voting securities or prior to taking the shares out of escrow. Like the unrestricted exemption, this proposal directly addresses the source of the incentive not to file antitrust premerger notifications. Both permit the purchase of shares without delay or prior notification to the target. The acquiror can thereby obtain the economic benefit of acquiring in secret. Thus, unless it would acquire more than 10 percent prior to making its securities law disclosures, the acquiror has no confidentiality reasons to avoid its subsequent antitrust premerger obligations.

The excrow proposal, unlike the unrestricted exemption, would not necessarily require a conclusion by the Commission that holdings of 10 percent or less are unlikely to violate the antitrust laws. Rather the proposal could be based in part on the judgement that in the relatively rare event such antitrust enforcement actions must be undertaken, the escrow arrangement normally will be an effective guard against competitive harm and preserve the opportunity for effective remedies. This procedure would not be available for acquisitions through tender offers. Because tender offers are announced in advance, there is no interest served in delaying the antitrust review.

The primary advantage of this proposal is that the antitrust agencies will learn of an acquisition and have an opportunity to review it before the purchaser can vote its shares. Its weakness is that this opportunity occurs after the shares have been separated from the prior holder(s).

The Commission has considered whether it has the authority under the act to promulgate the proposed treatment of voting securities held in escrow. The question arises because this proposal creates a procedure under which the filing and waiting requirements of the act would be met before shares are taken out of escrow but after they are purchased. In contrast, the act explicitly prescribes procedures which provide for the antitrust review to be completed before an acquisition takes place. The Commission has concluded that its authority under the act to "define terms," exempt certain "categories of transactions," and prescribe other rules "necessary and appropriate to carry out the purposes" of the act (section 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2)) would enable it to establish the procedures prescribed in proposed § 801.34 as a solution to the problem described in this Notice.

The treatment of acquisitions under proposed § 801.34 parallels the treatment of tender offers under the Commission's rules. Section 801.33 establishes what steps in the acquisition process may be undertaken in a tender offer prior to the end of the waiting period without violating the act: the offer may be made, the tender pool may be established and the shares may be tendered, but the acquiror may not accept the shares for payment. Thus, § 801.33 establishes acceptance for payment as the consummation of an acquisition. Similarly, proposed § 801.34 would determine the steps in the acquisition process that may be undertaken prior to filing by defining when consummation of an acquisition occurs for certain escrow purchases.

In one respect, though, the proposed treatment of these escrow purchases differs from the treatment of tender offers. Proposed § 801.34 would permit payment and complete termination of the previous shareholder's rights without antitrust review. In this respect it is more like the acquisition of convertible voting securities. Under § 802.31 the acquisition of unconverted securities, including the termination of the previous shareholder's rights, in exempt. Section § 801.32 requires a filing only when the shares are subsequently exchanged with the issuer for voting securities.

The Commission has previously created other procedures to permit escrow purchases before filing in limited circumstances. Section § 801.31 allows persons who tender their shares in a non-cash tender offer to accept in payment shares from the offeror, if those shares are placed in escrow during the pendency of their waiting period. Also, the Premerger Notification Office staff has permitted cash tender offerors seeking control of an issuer to consummate acquisitions after the expiration of their waiting periods even if the target held a reportable amount of another issuer's securities. The staff has allowed in appropriate transactions the reportable secondary acquisition on the condition that the secondary target's shares be placed in escrow pending expiration of the waiting period for the secondary acquisition.

It should be noted here, however, that the circumstances in which the Commission has permitted purchases in escrow have been very limited. The antitrust enforcement agencies have opposed escrow agreements and continue to believe that, in general, purchases in escrow or hold separate agreements do not adequately protect against interim competitive harm or ensure adequate relief. *See, e.g., FTC v. PPG Industries,* 798 F. 2d 1500 (D.C. Cir. 1986) and *Application of Texas Air Corporation,* U.S. Department of Transportation, Order 86-3-48 (March 14, 1986). The use of the escrow procedures proposed here may be justified because the small percentages of voting securities involved make it likely that there will be no competitive harm and that divestiture will be available as an effective remedy.

Other agencies operating under similar statutes have also permitted purchases to be made and kept in escrow before the agencies exercised their power to examine the transactions. For example, one airline may not acquire control of another until the proposed acquisition had been reviewed and approved by the Civil Aeronautic Board and now the Department of Transportation. 49 U.S.C. 1378(a)(5). Beneficial ownership of 10 percent or more of the voting securities of an airline creates a rebuttable presumption of control. 49 U.S.C. 1378(f). Nevertheless, the Department of Transportation after a case by case review, permits the prior acquisition of stock and requires only that it be placed in a voting trust while the acquisiton is under review.

The fact that other agencies permit escrow purchases offers some support for the view that the Commission may be justified in establishing a similar procedure. There are, however, significant differences in the procedures they use and the statutes they enforce. The CAB, for example, had extensive regulatory authority over airlines when it developed the escrow policy. Different programmatic needs or legislative expectations may have different implications for the appropriateness of escrow procedures.

The Hart-Scott-Rodino Act and its legislative history unequivocally emphasize the requirement and expectation of antitrust review prior to an acquisition. The focus on prior review reflects the Congressional commitment to creating a program which would assure that transactions could be evaluated and, if necessary, prevented, before businesses become so intertwined as to make it impossible to

restore effective competiton. However, none of the examples in the Congressional debate illustrating the need for prior review included an acquisition of a small percentage of voting securities. And none of the debates about establishing the $15 million/15 percent of voting securities reporting threshold mentioned problems of formulating antitrust remedies for such transactions. The Commission has drafted the proposed procedures for escrow purchases in light of the clear Congressional concern specifically to prevent the scrambling of businesses by assuring that the shares cannot be voted. And, because the proposal is limited to purchases of 10 percent or less of the voting securities of an issuer, there would appear to be little problem in obtaining an effective divestiture if that became necessary.

In evaluating the merits of the escrow purchase proposal, the Commission is considering—in addition to issues discussed above—the following propositions and welcomes comment on them.

1. Is there a significant possibility of competitive harm during the time the stock would be placed in escrow given that acquirors will not be able to acquire more than 10 percent of an issuer's voting securities?

There is of course, the possibility of harm to the issuer from the fact of purchase and the concern about more to come. Employees may leave, or customers or suppliers may alter their plans based on expectations of events following release of the securities from escrow. These effects seem, however, to be of much the same character as those resulting from a tender offer or a definitive contract to buy shares, both of which can be made, under the rules, prior to filing.

2. Would the acquisition of a small percentage of shares, held in escrow, prevent an effective antitrust remedy?

Because no intermingling of assets or businesses seems likely during the escrow period, any remedy for an antitrust violation would be the sale of the voting securities. In most instances to maintain or fully restore competition it ought not be necessary to return these shares to their former owners, even if those owners were, de facto, in control of the business. The likelihood of the remaining instances in which the transaction would both violate the antitrust laws and require resale to the former owner seems small.

The Commission is also considering as an alternative to a 10 percent escrow proposal, a 5 percent escrow proposal, for the reasons and in the circumstances described in the unrestricted exemption proposal.

C. The Optional Notification Proposal

The optional notification proposal would establish a separate system for antitrust premerger notifications for certain transactions in which the acquiring person would hold 10 percent or less of the outstanding voting securities of an issuer. This optional system would require the acquiror to submit specified public documents describing the entity to be acquired, but would not require that the issuer be given notice of the intended acquisition. The optional form would thus be available only for the acquisition of 10 percent or less of the voting securities of firms that file Schedule 10Ks with the Securities and Exchange Commission and have publicly available annual reports. While the acquired person would not be required to file an initial notification, the antitrust agency reviewing the filing would remain authorized to seek information from the acquired person either informally or through a formal request for additional information.

The optional notification proposal would reduce the incentive to avoid filing the antitrust premerger notification by eliminating the prior notice to the issuer of the voting securities. Like the other two proposals, its provisions limit the special treatment to acquisitions of up to 10 percent of the voting securities of an issuer. Like the escrow proposal, but unlike the unrestricted exemption proposal, the notification alternative does not rely necessarily on a finding by the Commission that acquisitions of 10 percent or less of the voting securities of an issuer are unlikely to violate the antitrust laws. Like the other proposals, it would be likely to reduce the non-antitrust-related incentive to violate the Commission's rules.

The primary strength of this proposal is that it provides prior notice to the antitrust agencies of transactions. It maintains the full statutory period to review and, in appropriate instances, challenge them before there is any change in the status quo. The proposal has, however, several possible drawbacks. The antitrust agencies may contact the target during the waiting period, so that acquirors seeking secrecy still may be reluctant to file. In addition, this proposal maintains the full waiting period, so that those who may be more concerned about the ability to buy the moment the price is right, may still be inclined to avoid filing. Moreover, the proposal is likely to reduce the initial information available to the antitrust agencies because the target will not file a Notification and Report Form.

The Optional Notification and Report Form attempts to mitigate this last disadvantage by significant revisions to the requirements of items 4 and 7. The Optional Form would require the acquiror to submit certain information and documents relating to the issuer. Items 4(d) and 4(e) would require that the acquiror provide copies of Schedule 10Ks and annual reports of the issuer. This will assure some independent verification of the characteristics of the target firm. The instructions to the Optional Form would state that if the issuer is not required to submit periodic reports to the Securities and Exchange Commission so that the documents listed in item 4(d) do not exist, then the acquiror cannot take advantage of the alternative procedure allowed by § 801.30(c) by submitting the Optional Form. The actual documents must be submitted; no incorporation by reference to previous filings would be acceptable for either item 4(d) or 4(e). Item 4(c) would also be expanded. It would require that the acquiror submit all information it has developed about the target or used in consideration of the takeover, not merely the information prepared for officers or directors.

In addition, the form would require the acquiror to develop information about the issuer. Item 7 would require the acquiring person to determine for each product or service it offers, whether the target produces a competing product or service. The form details a series of minimum efforts that the acquiror must make to identify the target's businesses. For each competing product or service, the Optional Form requires the acquiror to identify the geographic areas in which it or the issuer operates. If the acquiror concludes that the acquiror and the issuer produce no competing products or services, then Item 7 requires that the acquiror detail the search upon which it based that conclusion. An acquiror who does not conduct the necessary search or submit the required information for this item may not use the Optional Form.

Item 6 would also be expanded to require the acquiror to submit additional information about the issuer. Items 6(d), 6(e), and 6(f) would require a description of entities included within the isuer, shareholders of the issuer, and holdings of the issuer, the same information the acquiror must submit about itself in Items 6(a), 6(b), and 6(c).

The Optional Form requires the acquiror to assemble or compile information about the issuer because the antitrust agencies will not have the

benefit of a form from the issuer. This requirement could be burdensome in some instances. In such instances the acquiror is free to use the existing procedures under § 801.30(b).

The Optional Form and instructions would differ from the existing form and instructions in a number of other, less significant areas. Because the optional form could be used only for an acquisition of 10% or less of the voting securities of an issuer, references to other types of transactions and questions soliciting information with respect to other types of transactions would be deleted. For example, questions regarding a cash tender offer, formation of a joint venture, or an acquisition of assets would be omitted. The question requiring identification of the threshold to be crossed as a result of the acquisition would also be deleted.

Finally, reference in the instructions to the requirement that notice be served on the target issuer regarding its probable filing obligation would also be deleted; in § 801.30(c) transactions the target issuer would have no filing obligation and the acquiror would not be required to notify the target of the acquisition.

In addition to an Operational Notification and Report Form, this proposal would require a series of amendments to the rules. The following is a brief outline of the necessary changes:

Proposed Section 801.30(c). This provision would state that the 30-day initial waiting period will commence after an acquiring person that seeks to acquire 10 percent or less of the voting securities of an issuer, in a transaction other than a tender offer, files the Optional Notification and Report Form.

This provision together with § 803.5(c) would establish three central elements of this procedure. First, this procedure is optional. Second, the acquiring person need not give notice to the issuer (§ 803.5(c)). Third, the acquired person has no obligation to file a Notification and Report Form.

This proposal, like the escrow proposal, would not be applicable to acquisitions made through tender offers because securities laws require that such offers be made openly with advance notice. As a result, with respect to such transactions, acquirors do not have an incentive to avoid filing premerger notifications for the purpose of making acquisitions without giving notice to the issuer.

Proposed Section 802.25. This provision would exempt certain acquired persons from the obligation to file the Notification and Report Form. It would also make clear that the acquired person would not be exempt from a request for additional information.

Because section 7A(e)(1) authorizes the antitrust agencies to issue "second requests" to any person required to file a notification under section 7A(a), a quick reading of the statute may suggest the Commission lacks the authority to require additional information from persons it has exempted from the initial notification obligation. A closer examination suggests, however, that the determinative factor under paragraph (e)(1) is whether the person was obliged to file a notification under section 7A(a) of the act, not whether the Commission in its discretion exempted that person from that obligation.

Proposed Section 803.1. This provision would add reference to the Notification and Report Form.

Proposed Section 803.2(b)(3). This provision would reflect that the acquired person has no obligation to file if the waiting period is initiated by filing the Optional Form, and specify for what entities the acquiring person is to complete the Optional Form.

Proposed Section 803.3(e). This provision would state that the acquiring person must provide the copies of certain SEC documents and annual reports describing the acquired entity and required by items 4 (d) and (e) on the Optional Form. In contrast, the more usual standard requires only the acquiring person to submit what it knows about the issuer. Because the Commission would intend to do an initial review without contracting the issuer, it would insist that the acquiror supply at a minimum this information. Of course, the antitrust agencies would be free to contact the issuer for any information they may think relevant, but the expectation is that such instances would be rare. If the acquiror fails to include this required information about the issuer, then the filing will be deemed deficient and no waiting period will be initiated in accordance with § 803.10(c)(2).

Proposed Section 803.5(c). This provision would require the acquiror to submit an affidavit that it intends to make an acquisition of 10 percent or less of the outstanding voting securities. Section 803.5 is designed in part to make sure that the antitrust agencies do not review hypothetical transactions.

Proposed Section 803.20. This provision would reflect the fact the second requests may be issued to acquired persons that have been exempted, pursuant to proposed § 802.25, from the obligation to file a notification.

Proposed Part 803 Appendix. The amendment would add the Optional Notification and Report Form.

In evaluating the merits of the optional notification proposal, the Commission is considering the following propositions and welcomes comment on them.

1. It is likely that the optional notification system can significantly reduce the incentive to avoid notification, given the delay inherent in prior review?

2. Can the antitrust agencies conduct their premerger review without contacting the acquired person and other firms in the industry in most transactions?

In this connection, it should be noted Canada recently adopted a premerger notification program that allows for a confidential filing solely from the acquiror. Their early experience suggests it is possible to conduct some reviews in secret.

3. Would the adoption of the optional notification system require the antitrust agencies to impose even more stringent rules protecting the confidentiality of the information or monitor the stock transactions of persons who have access to information included on an Optional Form?

The antitrust agencies have an unblemished record in maintaining the confidentiality of information submitted pursuant to the premerger notification program. Most confidential information associated with premerger filings is either not easily exploitable or, like a decision to seek an injunction, valuable only for a very short time. The information contained in the Optional Form, however, is likely to come in well in advance of the typical price run up that precedes takeover announcements.

List of Subjects

16 CFR Parts 801 and 802

Antitrust.

16 CFR Part 803

Antitrust, Reporting and recordkeeping requirements.

IV. Proposals

The Commission proposes to amend Title 16, Chapter I, Subpart H, the Code of Federal Regulations as follows:

PARTS 801, 802 AND 803—[AMENDED]

1. The authority citation for Parts 801, 802 and 803 continues to read as follows:

Authority: Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201 of the

Hart-Scott-Radino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

2. In the amendments the Commission proposes below new language is indicated by arrows: (——>new language<——) and deleted language is indicated by brackets: [deleted language].

Proposal I

This proposal would amend the rules by revising § 801.15(b) and republishing the introductory text of § 801.15, removing § 802.9, and adding new § 802.24.

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

Notwithstanding § 801.13, for purposes of section 7A(a)(3) and § 801.1(h), none of the following will be held as a result of an acquisition:

* * * * *

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under [section 7A(c)(9) and] §§ ——>802.24<——802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in [section 7A(c)(9) or] those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held;

* * * * *

§ 802.9 [Removed]

——>§ 802.24 De minimis acquisitions of voting securities.

An acquisition of voting securities shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of the voting securities so acquired or held.<——

Proposal II

This proposal would amend the rules by adding new § 801.34.

——>§ 801.34 De minimis acquisitions of voting securities.

(a) An acquiring person shall not be considered to have consummated an acquisition of voting securities within the meaning of the act if:

(1) The acquiring person:

(i) Holds as a result of the acquisition ten percent or less of the issuer's outstanding voting securities;

(ii) Immediately places into escrow any voting securities whose acquisition is subject to the notification obligations of the act; and

(iii) Requires the escrow agent to vote and withhold from voting all such voting securities placed into escrow in the same proportion that all other voting securities of the issuer are voted and withheld from voting; and

(2) The acquisition is not the result of a tender offer.

(b) The release of such voting securities from escrow shall be considered consummation of an acquisition of those voting securities.<——

Proposal III

This proposal would amend the rules by:

1. Section 801.30 is amended by revising paragraph (b) introductory text and adding paragraph (c) to read as follows:

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

* * * * *

(b) For acquisitions described by paragraph (a) of this section——>for which no notification has been filed pursuant to paragraph (c) of this section<——:

* * * * *

——>(c) For acquisitions described by paragraph (a) of this section, other than tender offers, that would result in the acquiring person holding 10 percent or less of the outstanding voting securities of an issuer, the acquiring person may file notification by submitting the Optional Notification and Report Form.

(1) The waiting period required under the act shall commence upon such filing of notification by the acquiring person as provided in § 803.10(a); and

(2) Pursuant to § 802.25, the acquired person is exempt from filing the notification required by paragraph (b)(2) of this section.

2. Section 802.25 is added to read as follows:

——>§ 802.25 Optional Notification and Report Form exemption.

For any acquisition in which the acquiring person filed an Optional Notification and Report Form pursuant to § 801.30(c), the acquired person is exempt from the obligation to file notification described in § 801.30(b)(2), but is not exempt from the obligation to submit additional information or documentary material pursuant to section 7A(e) and § 803.20.<——

3. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Notification and Report Form.

(a) The notification required by the act shall be the Notification and Report Form ——>or the Optional Notification and Report Form<—— set forth in the appendix to this Part (803), as amended from time to time. All acquiring and acquired persons required to file notification by the act and these rules shall do so by completing and filing the Notification and Report Form, or a photostatic or other equivalent reproduction thereof, in accordance with the instructions thereon and these rules ——>except that acquiring persons may choose to file instead the Optional Notification and Report Form for transactions described by § 801.30(c), in accordance with the instructions thereon and these rules.<—— Copies of the Notification and Report Form ——>and the Optional Notification and Report Form<—— may be obtained in person from the Public Reference Branch, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, DC, or by writing to the Premerger Notification Office, Room 303, Federal Trade Commission, Washington, DC 20580.

* * * * *

4. Section 803.2 is amended by revising the section heading and by adding (b)(3), a heading for (b)(1) and the phrase "and the Optional Notification and Report Form" to the introductory text of paragraph (c), the first sentence of paragraph (e), and paragraph (d) after the phrase "Notification and Report Form" to read as follows:

§ 803.2 Instructions Applicable to Notification and Report Form ——>and Optional Notification and Report Form<——

* * * * *

(b)(1) ——> *Notification and Report Form.* ——> * * *

——> (3) *Optional Notification and Report Form.* Except as provided in paragraph (c) of this section,

(i) An acquiring person responding to the request for information about the acquiring person in items 5-9 and the Appendix to the Optional Notification and Report Form must include information about itself and all entities included within the acquiring person;

(ii) An acquiring person responding to the request for information about the acquired person in item 6-8 and the Appendix to the Optional Notification and Report Form must include information about the issuer whose voting securities are to be acquired and

all entities controlled by such issuer. <——

* * * * *

(c) In response to items 5, 7, 8, and 9 and the appendix to the Notification and Report Form ——> and the Optional Notification and Report Form <——

* * * * *

(d) The term "dollar revenues" as used in the Notification and Report Form ——> and the Optional Notification and Report Form <——

* * *

(e) A person filing notification may incorporate by reference only documentary materials required to be filed in response to item 4a of the Notification and Report Form ——> and the Optional Notification and Report Form ——> * * *

5. Section 803.3 is amended by revising the introductory text and adding paragraph (e) to read as follows:

§ 803.3 Statement of reasons for noncompliance.

A complete response shall be supplied to each item on the Notification and Report Form ——> or Optional Notification and Report Form <—— and to any request for additional information pusuant to § 7A(e) and § 803.20. Whenever the person filing notification is unable to supply a complete response, that person shall provide, for each item for which less than a complete response has been supplied, a statement or reasons for noncompliance. The statement of reasons for noncompliance shall contain all information upon which a person relies in explanation of its noncompliance and shall include at least the followings:

* * * * *

——> (e) Provided, however, an Optional Notification and Report Form will be considered incomplete and deficient within the meaning of § 803.10(c)(2) if it is submitted without the information or documents required by item 4(d) and (e), regardless of the reason for non-compliance. <——

6. Section 803.5 is amended by revising paragraph (a)(1) introductory text and adding paragraph (c) to read as follows:

§ 803.5 Affidavits required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies ——> and for which the acquiring person is not filing the Optional Notification and Report Form pursuant to § 801.30(c) <——, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, attesting that the issuer whose voting securities are to be acquired has received notice in writing by certified or registered mail, by wire or by hand delivery, at its principal executive offices, of:

* * * * *

——> (c) *§ 801.30(c) acquisitions.* For acquisitions to which § 801.30 applies and for which the acquiring person is filing the Optional Notification and Report Form in accordance with § 801.30(c), the notification required by the act from each acquiring person shall contain an affidavit attached to the front of the notification attesting the good faith intention of the acquiring person filing notification to make the acquisition described in the Optional Notification and Report Form. <——

7. Section 803.6 is amended by revising paragraph (b) to read as follows:

§ 803.6 Certification.

* * * * *

(b) Additional information or documentary material submitted in response to a request pursuant to section 7A(e) and § 803.20 shall be accompanied by a certification in the format appearing at the end of the Notification and Report Form ——> or Optional Notification and Report Form <—— completed in accordance with paragraph (a) of this section by the person or individual to whom it was directed.

* * * * *

8. Section 803.8 is amended by revising paragraph (a) to read as follows:

§ 803.8 Foreign language documents.

(a) Whenever at the time of filing a Notification and Report Form ——> or Optional Notification and Report Form <—— there is an English language outline, summary, extract or verbatim translation of any information or of all or portions of any documentary materials in a foreign language required to be submitted by the act or these rules, all such English language versions shall be filed along with the foreign language information or materials.

* * * * *

9. Section 803.20 is amended by revising paragraph (a)(1), designating the example in (a)(1) as 1 and revising it, and adding example 2 to read as follows:

§ 803.20 Requests for additional information or documentary material.

(a)(1) Persons and individuals subject to request. Pursuant to section 7A(e)(1), the submission of additional information or documentary material relevant to the acquisition may be required from one or more persons required ——> by section 7A(a) of the act <—— to file notification, and, with respect to each such person, from one or more entities included therein, or from one or more officers, directors, partners, agents, or employees thereof, if so required by the same request.

Example ——>s<——: ——>1.<—— A request for additional information may require a corporation and, in addition, a named officer or employee to provide certain information or documents, if both the corporation and the officer or employee are named in the same request. See sub-paragraph (b)(3) of this section.

——> 2. Where the acquiring person has filed an Optional Notification and Report Form pursuant to § 801.30(c), a request for additional information may require the acquired person to submit certain information or documentary material notwithstanding that § 802.25 exempts that person from the obligation to file notification, because pursuant to section 7A(a) the acquired person is a person required to file notification with respect to such acquisition.<——

* * * * *

10. The Appendix to Part 803 is amended by adding at the end, the Optional Notification and Report Form to read as follows:

BILLING CODE 6750-01-M

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

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-16) constitute the Optional Notification and Report Form ("the Optional Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Only those persons described in § 801.30 (c) of the rules may file this Optional Form. Filing persons need not, however, record their responses on the Optional Form.

These Instructions specify the information which must be provided in response to the Items on the Answer Sheets. *Only* the completed Answer Sheets, together with all documentary attachments are to be filed with the Federal Trade Commission and the Department of Justice.

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

The term "documentary attachments" refers to materials supplied in responses to Item 2(f)(i), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information—The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Optional Form is Room 303, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions—The definitions and other provisions governing this Optional Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) and 48 FR 34427 (July 29, 1983).

Affidavit—Attach the affidavit required by § 803.5 to page 1 of the Optional Form.

Responses—*Each answer* should identify the Item to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be so identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Optional Form and the date on which the Optional Form is completed at the top of each page of the Optional Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If the issuer whose voting securities are to be acquired is not required to file periodic reports to the Securities and Exchange Commission, so that the documents listed in Item 4(d) are not available, then the Optional Form may not be submitted. Furthermore, if the person filing notification is unable to respond completely to Items 4(e) or 7 of the Optional Form, then the Optional Form may not be submitted. (See 16 CFR § 803.3(e)).

If unable to answer any other Item fully, give such information as is available and provide a statement of reasons for noncompliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year—All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

SIC Data—This Optional Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) *All persons* must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufactured operations* (SIC major groups 20-39), data must also be submitted at the *5-digit product class* and *7-digit product levels* (SIC based codes).

The term "dollar revenues" is defined in § 803.2(d).

References— In reporting information by "*4-digit (SIC code) industry*" refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 supplement published by the Executive Office of the President, Office of Management and Budget.

In reporting information by "*5-digit product class*" and "*7-digit product*" refer to one or both of the following reference publications published by the U.S. Bureau of the Census:

(a) Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1). Make sure that the Numerical List you use has MC82-R-1 printed on the cover.

Privacy Act Statement - Section 18a(a) of Title 15 of the U.S. Code authorized the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Optional Notification and Report Form may violate the antitrust laws. Furnishing the information on this Optional Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $10,000 per day.

Note: Submit information using the codes in the columns labeled "Product code published." Do not submit information using the codes in the columns labeled "Product code collected."

(b) Volume II, "Industry Series," (MC82-1-20 A2-39D), *1982 Census of Manufactures.*

Note: Do not submit information by product codes ending in 00 if the Numerical List of Manufactured and Mineral Products listed above contains a further breakdown. Furthermore, when the Numerical List refers to Appendix C for detail collected in a specified Current Industrial Report ("CIR") for the following SIC code industries, you should provide revenue information using the 7-digit product codes listed in the CIR in the columns labeled "Published."

SIC 2392 (CIR MQ-23X) SIC 3261 (CIR MQ-34E)
SIC 3312, 3315, 3316 and 3317 (CIR MA-33B)
SIC 3357 (CIR MQ-33L) SIC 3431 (CIR MQ-34E)

Items 5, 7, 8, 9 and the Insurance Appendix —Supply information *only* with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. (See §§ 801.1(k), 803.2(c)(1).)

Information need *not* be supplied regarding assets or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See § 803.2(c)(2).)

Limited or separate responses may be required from the person filing notification. (See § 803.2(b).)

Filing—Complete and return two notarized copies (with *one set* of documentary attachments) of this Optional Notification and Report Form to the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, and *three* notarized copies (with *one* set of documentary attachments) to Director of Operations, Antitrust Division, Department of Justice, Room 3218, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20530.

ITEM BY ITEM

Affidavit—Attach the affidavit required by § 803.5 to page 1 of the Answer Sheets.

Applicability of § 801.30(c)—Put an X in the Yes box to indicate that § 801.30(c) is applicable to this acquisition; *i.e.*, that 10% or less of an issuer's voting securities will be acquired.

Early Termination—Put an X in the yes box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by § 7A(b)(2) of the Clayton Act.

ITEM 1

Item 1(a)—Give the name and headquarters address of the person filing notification. The name of the person is the name of the ultimate parent entity included within that person.

Item 1(b) —Give the name and headquarters address of the issuer whose voting securities are to be acquired in this acquisition.

Item 1(c)—Give the names of all ultimate parent entities of acquiring and acquired persons which are parties to the acquisition whether or not they are required to file notification.

Item 1(d)—State the value of voting securities held as a result of the acquisition. (Insert responses to Item 3(c).)

Item 1(e)—Put an X in the appropriate box to indicate whether the entity in Item 1(a) is a corporation, partnership, or other (specify).

Item 1(f)—Put an X in the appropriate box to indicate whether the entity in Item 1(b) is a corporation or other (specify).

Item 1(g)—Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(h)—Put an X in the appropriate box to indicate if this Optional Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Optional Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) on the Optional Form.

Item 1(i)—If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the voting securities of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b)).

ITEM 2

Item 2(a)—*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification. Indicate what consideration will be received by each party. In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction.

If the voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities.

Item 2(b)—*Assets held by acquiring person.* If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 2(b)(i), and the dollar value or estimated dollar value at the time they were acquired.

Item 2(c)—*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition:

Item 2(c)(i)—List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition;

Item 2(c)(ii)—Total number of shares of each class of securities listed on page 3 which will be outstanding after the acquisition has been completed;

Item 2(c)(iii)—Total number of shares of each class of securities listed on page 3 which will be acquired in this acquisition. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(c)(iv)—Identity of each person acquiring any securities of any class listed on page 3. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(c)(v)—Dollar value of securities of each class listed on page 3 to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person; (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made.)

Item 2(c)(vi)—Total number of each class of securities listed on page 3 which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 2(c)(vii)—Percentage of each class of securities listed under 2(c)(vi) above which will be held by the acquiring person(s) after the acquisition has been completed (see § 801.12(b)). If there is more than one acquiring person for any class of security, show data separately for each acquiring person;

Item 2(c)(viii)—Dollar value (or estimated dollar value) of securities to be held as a result of the acquisition (see § 801.13).

Item 2(d)—Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired. (Do not attach these documents to page 4 of the Answer Sheets.)

ITEM 3

Assets and voting securities held as a result of the acquisition. State:

Item 3(a)- the percentage of the assets;

Item 3(b)- the percentage of the voting securities;

Item 3(c)- the aggregate total dollar amount of voting securities and assets of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801.13, and 801.14).

ITEM 4

Furnish one copy of each of the following documents.

Item 4(a)—all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition) by the person filing notification: the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Optional Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity.

Item 4(b)—the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recent regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person;

Item 4(c)—all studies, surveys, analyses and reports which were prepared for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such document;

Item 4(d)—all of the following items which have been filed with the United States Securities and Exchange Commission by the entity whose voting securities are to be acquired (and, if different, for each issuer included within that entity): the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Optional Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; and

Item 4(e)-the most recent annual reports and the most recent annual audit reports of the entity whose voting securities are to be acquired (and of each unconsolidated United States issuer included within that entity) and, if different, the most recent regularly prepared balence sheet

of the entity whose voting securities are to be acquired and of each unconsolidated United States issuer included within that entity. The reports must be prepared in accordance with generally accepted accounting principles and certified as such.

NOTE: If the person filing notification does not have copies of documents responsive to Item 4(a) readily available, identification of such documents and citation to date and place of filing will constitute compliance; alternatively, the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(e).

However, to comply with the act and the rules, a person electing to file this Optional Form must submit copies of documents responsive to Items 4(d) and 4(e). Neither identification of such documents and citation to date and place of filing nor incorporation by reference will be adequate.

Persons filing notification may provide an optional index of documents called for by Item 4 on page 5 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

* * * *

ITEMS 5 through 9 and the Appendix

NOTE: *For Items 5 through 9 and the Appendix limited or separate responses may be required of the person filing notification. (See § 803.2(b) and (c).)*

ITEM 5

ITEMS 5(a) — 5(c): These Items request information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States by the person filing notification. (See § 803.2(c)(1).) All persons filing notification must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufacturing operations* (SIC major groups 20-39), data must also be submitted at the 5-digit *product class* and 7-digit *product levels* (SIC based codes).

Note: See the "References" listed in the General Instructions to the Form. Refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 supplement for the 4-digit (SIC code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code published." Do not report revenues using the columns labeled "Product code collected."

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within 2-digit major group 63. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; holding and other investment offices, and real estate companies (2-digit SIC major groups 61, 62, 67 and 65) should identify or explain the revenues reported (e.g., dollar sales, receipts).

Include the total dollar revenues for 1982 derived by all entities included within the person filing notification at the time this Optional Notification and Report Form is prepared (even if such entities have become included within the person since 1982). For example, if the person filing notification acquired an entity in 1984, it must include that entity's 1982 revenues in Items 5(a) and 5(b)(i).

Item 5(a)—*Dollar revenues by industry.* Provide aggregate 4-digit (SIC code) *industry* data for 1982.

Item 5(b)(i)—*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations of the person filing notification for 1982 for each 7-digit product of the person in 2-digit SIC major groups 20-39 (manufacturing industries).

Do not provide 7-digit data for product codes ending in 00 if the Numerical List of Manufactured and Mineral Products contains a further breakdown. See also the 'NOTE' on page I of the these instructions concerning required references to Appendix C of the Numerical List.

Item 5(b)(ii)—*Products added or deleted.* Within 2-digit SIC major groups 20-39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1982, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 7-digit product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1982 by reason of mergers or acquisitions occurring since 1982. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 1982 by the person filing notification (and now included within the person) itself has added any products since 1982, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets or voting securities since 1982 should also be listed here.

Item 5(b)(iii)—*Dollar revenues by manufactured product class.* Provide the following information about the aggregate operations of the person filing notification for the most recent year for each 5-digit *product class* of the person within SIC major groups 20-39 (manufacturing industries). If such data have not been compiled for the most recent year, estimates of dollar revenues by 5-digit product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)—*Dollar revenues by non-manufacturing industry.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to Item 5(c).*

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63, and, if voting securities of an insurance carrier are being acquired directly or indirectly should complete the Insurance Appendix to this Optional Form.

ITEM 6

Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "documentary attachment" furnished with this Optional Form if the information so referenced is a complete response and is up-to-date and accurate. Indicate for each Item the specific page(s) of the document that are responsive to that Item.

Item 6(a)—*Entities within person filing notification.* List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $10 million may be omitted.

Item 6(b)—*Shareholders of person filing notification.* For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class, and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

Item 6(c)—*Holdings of person filing notification.* If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holdings of issuers with total assets of less than $10 million, may be omitted.

Item 6(d)—*Entities within entity whose voting securities are to be acquired.* List the names and headquarters address of each entity included within the issuer whose voting securities are to be acquired. Entities with total assets of less than $10 million may be omitted.

Item 6(e)—*Shareholders of entity whose voting securities are to be acquired.* For each entity included within the issuer whose voting securities are to be acquired as well as the issuer itself the voting securities of which are held (see §801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class, and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

Item 6(f)—*Holdings of entity whose voting securities are to be acquired.* If the entity whose voting securities are to be acquired holds voting securities of any issuer not included within that entity, list the issuer and class, the number and percentage held, and the entity which holds the securities. Holdings of less than five percent of the outstanding securities of any issuers, and holdings of issuers with total assets of less than $10 million may be omitted.

ITEM 7

If, after a diligent search of all relevant information available to it (including, but not limited to, directories such as Standard & Poor's Corporate Records, Moody's Industrial Manual, Dun & Bradstreet Reference Book; indices such as Predicasts F & S Index; trade journals and publications; internal corporate files; and reports, studies, analyses, or memoranda completed internally or by outside consultants or advisors), the person filing notification concludes that it derived dollar revenues in the most recent year from operations in any 4-digit (SIC code) industries in which any other person which is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture or other corporation will derive dollar revenues), then for each such 4-digit (SIC code) industry:

Item 7(a)—supply the 4-digit SIC code and description for the industry;

Item 7(b)—list the name of each person which is a party to the acquisition which also derived dollar revenues in the 4-digit industry;

Item 7(c)—*Geographic market information for the person filing notification:*

Item 7(c)(i)—for each 4-digit industry within SIC major groups 20-39 (manufacturing industries) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(ii)—for each 4-digit industry within SIC major groups 01-17 and 40-49 (agriculture, forestry and fishing, mining, construction, transportation, communications, electric, gas and sanitary services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the

person filing notification conducts such operations;

Item 7(c)(iii)—for each 4-digit industry within SIC major groups 50-51 (wholesale trade) listed in Item 7(a) above, list the states, (or, if desired, portions thereof) in which the customers of the person filing notification are located;

Item 7(c)(iv)—for each 4-digit industry within SIC major groups 52-61, 70, 75, 78, and 80 (retail trade, banking, and certain services) listed in Item 7(a) above, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification.

Item 7(c)(v)—for each 4-digit industry within SIC major group 62, 64-67, 72, 73, 76, 79, and 81-89 (certain finance, insurance and real estate groups and certain services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which establishments were located from which the person filing notification derived revenues in the most recent year; and

Item 7 (c)(vi)— for each 4-digit industry within SIC 63 (insurance) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

Item 7(d)—*Geographic market information for the entity whose voting securities are to be acquired.*

Item 7(d)(i)—for each 4-digit industry within SIC major groups 20-39 (manufacturing industries) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry produced by the entity whose voting securities are to be acquired are sold without a significant change in their form, whether they are sold by that entity or by others to whom such products have been sold or resold;

Item 7(d)(ii)—for each 4-digit industry within SIC major groups 01-17 and 40-49 (agriculture, forestry and fishing, mining, construction, transportation, communications, electric, gas and sanitary services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the entity whose voting securities are to be acquired conducts such operations;

Item 7(d)(iii)—for each 4-digit industry within SIC major groups 50-51 (wholesale trade) listed in Item 7(a) above, list the states, (or, if desired, portions thereof) in which the customers of the entity whose voting securities are to be acquired are located;

Item 7(d)(iv)—for each 4-digit industry within SIC major groups 52-61, 70, 75, 78, and 80 (retail trade, banking, and certain services) listed in Item 7(a) above, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the entity whose voting securities are to be acquired.

Item 7(d)(v)—for each 4-digit industry within SIC major group 62, 64-67, 72, 73, 76, 79, and 81-89 (certain finance, insurance and real estate groups and certain services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which establishments were located from which the entity whose voting securities are to be acquired derived revenues in the most recent year; and

Item 7(d)(vi)— for each 4-digit industry within SIC 63 (insurance) listed in Item 7(a) above, list the state(s) in which the entity whose voting securities are to be acquired is licensed to write insurance.

NOTE: Except in the case of those SIC major industry groups mentioned in Item 7(c)(iv) and 7(d)(iv) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

NOTE: If, after the required search, the person filing notification concludes that it derived no dollar revenue from any 4-digit (SIC code) industries in which any person which is a party to this acquisition also derived dollar revenues in the most recent year, then the person filing notification shall provide a detailed description of the search it conducted, including, but not limited to, the sources it relied upon, the files it searched, and the name and title of all persons responsible for conducting the search.

ITEM 8

Item 8—Put an X in the appropriate box to indicate if the acquired person and an acquiring person maintained a vendor-vendee relationship during the most recent year with respect to any manufactured product which the vendee either resells or consumes in or incorporates into the manufacture of any product. Persons filing notification which are *vendees* of such product(s) should list each product purchased, identify each vendor which is a party to the acquisition from which the product was purchased and state the dollar amount of the product purchased from that vendor during the most recent year.

Manufactured products are those within 2-digit SIC major groups 20-39. Any product purchased from the vendor in an aggregate annual amount not exceeding $1 million, or the manufacture, consumption or use of which is not attributable to the assets to be acquired, or to the issuer whose voting securities are to be acquired (including entities controlled by the issuer), may be omitted.

ITEM 9

Item 9—*Previous acquisitions.* Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $1 million or more in the most recent year and in which the acquired issuer derived revenues of $1 million or more in the most recent year.

For each such 4-digit industry, list all acquisitions made by the person filing notification in the five years prior to the date of filing of entities deriving dollar revenues in that 4-digit industry. List only acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition.

For each such acquisition, supply:
(a) the name of the entity acquired;
(b) the headquarters address of the entity prior to the acquisition;
(c) whether securities or assets were acquired;
(d) the consummation date of the acquisition;
(e) the annual net sales of the acquired entity for the year prior to the acquisition;
(f) the total assets of the acquired entity in the year prior to the acquisition; and
(g) the 4-digit (SIC code) industries (by number and description) identified above in which the acquired entity derived dollar revenues.

ITEM 10

Item 10(a)—Print or type the name and title, firm name, address, and telephone number of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

Item 10(b)—Foreign filing persons print or type the name and title, firm name, address, and telephone number of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

Certification—(See § 803.6.)

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE

Insurance carriers (2-digit SIC major group 63) are required to complete this Appendix if voting securities of an insurance carrier are being acquired directly or indirectly.

ITEM 1

Item 1(A)—*Life Insurance.* Provide for the most recent year the amount of premium receipts (calulated on the accrual basis) for each of the lines of insurance listed on page 16 of the Answer Sheets.

Item 1(B)—*New Business.* Provide for the most recent year the amount of new life insurance business issued in the United States (exclusive of revivals, increases, dividend additions and reinsurance ceded) for each of the lines of insurance listed on page 16 of the Answer Sheets.

ITEM 2

Item 2(A)—*Property Liability Insurance.* Provide for the most recent year the amount of direct premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

Item 2(B)—Provide for the most recent year the amount of net premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

ITEM 3

Item 3(A)—*Title Insurance.* Provide for the most recent year the amount of net direct title insurance premiums written in the United States.

Item 3(B)—Provide for the most recent year the amount of direct title insurance premiums earned in the United States.

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OPTIONAL NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

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

► Attach the Affidavit required by §803.5 to this page.

FOR OFFICE USE ONLY
Transaction Number

IS THIS ACQUISITION SUBJECT TO § 801.30(c)?

☐ YES ☐ NO

☐ ETR

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? (*Grants of early termination are published in the Federal Register.*)

☐ YES ☐ NO

ITEM 1 1(a) NAME AND HEADQUARTERS ADDRESS OF PERSON FILING NOTIFICATION (*ultimate parent entity*)

(b) NAME AND HEADQUARTERS ADDRESS OF ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

(c) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS

LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

(d) VALUE OF VOTING SECURITIES TO BE ACQUIRED

(e) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE ENTITY FILING NOTIFICATION

☐ Corporation ☐ Partnership ☐ Other (*Specify*) _____

(f) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

☐ Corporation ☐ Other (*Specify*) _____

(g) DATA FURNISHED BY

☐ calendar year ☐ fiscal year (*specify period*) _____ (*month/year*) to _____ (*month/year*)

(h) PUT AN "X" IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION (*if other than ultimate parent entity*)

☐ NA ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4 ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

(i) NAME OF ENTITY FILING NOTIFICATION

ADDRESS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to § 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Optional Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. § 18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $10,000 for each day during which such person is in violation of 15 U.S.C. § 18a.

All information and documentary material filed in or with this Optional Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Complete and return *two* notarized copies (with *one* set of documentary attachments) of this **Optional Notification and Report Form** to Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, and *three* notarized copies (with *one set* of documentary attachments) to Director of Operations, Antitrust Division, Room 3218, Department of Justice, Washington, D.C. 20530. The central office for information and assistance with respect to matters in connection with this *Optional Notification and Report Form* is Room 301, Federal Trade Commission, Washington, D.C. 20580, phone (202) 326-3100.

NAME OF PERSON FILING NOTIFICATION	DATE

(i) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES HELD BY EACH ENTITY IDENTIFIED IN ITEM 1(a)

ITEM 2

2(a) DESCRIPTION OF ACQUISITION

NAME OF PERSON FILING NOTIFICATION	DATE

2(b)(i) ASSETS HELD BY ACQUIRING PERSON

2(c) VOTING SECURITIES TO BE ACQUIRED

(c)(i) LIST AND DESCRIPTION OF VOTING SECURITIES AND LIST OF NON-VOTING SECURITIES:

(c)(ii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY:

(c)(iii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY BEING ACQUIRED:

(Item 2(c) continued on next page)

NAME OF PERSON FILING NOTIFICATION	DATE

(c)(iv) IDENTITY OF PERSONS ACQUIRING SECURITIES:

(c)(v) DOLLAR VALUE OF SECURITIES IN EACH CLASS BEING ACQUIRED:

(c)(vi) TOTAL NUMBER OF EACH CLASS OF SECURITIES HELD BY ACQUIRING PERSON AS A RESULT OF THE ACQUISITION:

(c)(vii) PERCENTAGE OF EACH CLASS OF SECURITIES HELD BY ACQUIRING PERSON AS A RESULT OF THE ACQUISITION:

(c)(viii) DOLLAR VALUE OF SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION

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

DO NOT ATTACH THIS DOCUMENT TO THIS PAGE. ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT _____

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 3 ASSETS AND VOTING SECURITIES HELD AS A RESULT OF THE ACQUISITION

(A) PERCENTAGE OF ASSETS	(b) PERCENTAGE OF VOTING SECURITIES	(c) AGGREGATE TOTAL VALUE

ITEM 4 PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX REQUIRED TO BE SUBMITTED BY ITEM 4 (SEE ITEM BY ITEM INSTRUCTIONS). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

(a) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION BY PERSON FILING NOTIFICATION — ATTACHMENT OR REFERENCE NUMBER

(b) ANNUAL REPORTS, ANNUAL AUDIT REPORTS, AND REGULARLY PREPARED BALANCE SHEETS OF PERSON FILING NOTIFICATION — ATTACHMENT OR REFERENCE NUMBER

(c) STUDIES, SURVEYS, ANALYSES AND REPORTS BY PERSON FILING NOTIFICATION — ATTACHMENT OR REFERENCE NUMBER

(d) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION BY ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED OR BY ENTITY WITHIN WHICH THAT ENTITY IS INCLUDED

(e) ANNUAL REPORTS, ANNUAL AUDIT REPORTS AND REGULARLY PREPARED BALANCE SHEETS BY ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED OR BY ENTITY WITHIN WHICH THAT ENTITY IS INCLUDED

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5 (See the "References" listed in the General Instructions to the Optional Form. Refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 Supplement for the 4-digit (SIC Code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1982 Census of Manufactures and Census of Mineral Industries* (MC82-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code published." Do not report revenues using codes in the columns labeled "Product code Collected.")

5(a) DOLLAR REVENUES BY INDUSTRY

4-DIGIT INDUSTRY CODE *Product code published*	DESCRIPTION	1982 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

7-DIGIT PRODUCT CODE *Product code published*	DESCRIPTION	1982 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(ii) PRODUCTS ADDED OR DELETED

DESCRIPTION (7-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS

5-DIGIT PRODUCT CLASS CODE *Product code published*	DESCRIPTION	YEAR ____ TOTAL DOLLAR REVENUES

(Item 5(b)(iii) continued on page 9)

NAME OF PERSON FILING NOTIFICATION	DATE

5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS - CONTINUED

5-DIGIT PRODUCT CLASS CODE	DESCRIPTION	YEAR TOTAL DOLLAR REVENUES

5(c) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY

4-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) SHAREHOLDERS OF PERSON FILING NOTIFICATION

NAME OF PERSON FILING NOTIFICATION	DATE

6(c) HOLDINGS OF PERSON FILING NOTIFICATION

(d) ENTITIES INCLUDED WITHIN THE ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

(e) SHAREHOLDERS OF ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

(f) HOLDINGS OF ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

ITEM 7 DOLLAR REVENUES

7(a) 4-DIGIT SIC CODE AND DESCRIPTION

7(b) NAME OF EACH PERSON WHICH ALSO DERIVED DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

7(c) GEOGRAPHIC MARKET INFORMATION FOR PERSON FILING NOTIFICAION

(d) GEOGRAPHIC MARKET INFORMATION FOR ENTITY WHOSE VOTING SECURITIES ARE TO BE ACQUIRED

7(e) DESCRIPTION OF SEARCH

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 8 VENDOR-VENDEE RELATIONSHIP

☐ NO ☐ YES (*If yes and you are the vendee, complete the following*)

PRODUCT PURCHASES	VENDOR	DOLLAR AMOUNT

ITEM 9 PRIOR ACQUISITIONS (*to be completed by acquiring person only*)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 10 IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT

10(a) NAME OF CONTACT PERSON	TITLE OF CONTACT PERSON
FIRM NAME AND BUSINESS ADDRESS	BUSINESS TELEPHONE NUMBER

10(b) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. *(See § 803.20(b)(2)(iii))*

NAME	TITLE
ADDRESS	BUSINESS TELEPHONE NUMBER

CERTIFICATION

This OPTIONAL NOTIFICATION AND REPORT FORM, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME *(Please print or type)*	TITLE
SIGNATURE	DATE

Subscribed and sworn to before me at the

City of _____, State of _____

this _____ day of _____, 19____.

Signature _____

My Commission expires _____

[SEAL]

NAME OF PERSON FILING NOTIFICATION	DATE

APPENDIX: INSURANCE

ITEM 1

A PREMIUM RECEIPTS	YEAR ____ AMOUNT
1 LIFE INSURANCE	
1a. ORDINARY LIFE INSURANCE	
1b. GROUP LIFE INSURANCE (Including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance).	
1c. INDUSTRIAL LIFE INSURANCE	
1d. CREDIT LIFE INSURANCE	
2 ANNUITY CONSIDERATIONS	
2a. INDIVIDUAL ANNUITY CONSIDERATIONS	
2b. GROUP ANNUITY CONSIDERATIONS	
3 HEALTH INSURANCE	
3a. INDIVIDUAL HEALTH INSURANCE	
3b. GROUP HEALTH INSURANCE	
TOTAL	

B NEW BUSINESS	YEAR ____ AMOUNT
1 ORDINARY LIFE INSURANCE	
2 GROUP LIFE INSURANCE	
3 INDUSTRIAL LIFE INSURANCE	
4 CREDIT LIFE INSURANCE	
TOTAL	

ITEM 2 PROPERTY LIABILITY INSURANCE — YEAR ____

LINE OF INSURANCE	A. DIRECT PREMIUMS	B. NET PREMIUMS

ITEM 3 TITLE INSURANCE — YEAR ____

A. NET DIRECT PREMIUMS WRITTEN	B. DIRECT PREMIUMS EARNED

BILLING CODE 6750-01-C

By Direction of the Commission.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Strenio

I am skeptical about whether the proposed amendments would confer net benefits. Nonetheless, these proposals are entitled to serious consideration and public comment should serve that end.

[FR Doc. 88-21524 Filed 9-21-88; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3450-3]

Intent to Delete the New Castle Steel Site From the National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete a site from the National Priorities List (NPL) and requests public comments. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended.

DATE: Comments concerning the site may be submitted on or before October 24, 1988.

ADDRESSES: Comments may be mailed to the Regional Docket. Comprehensive information on the site is maintained and available through the EPA Regional Docket Clerk.

The Regional Docket is located at the U.S. EPA Region III office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Requests for copies of the information from the Regional public docket should be directed to the EPA Region III docket office.

Addresses for the Regional and Local Docket office are:

U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107

Wilmington Library, 10th & Market Streets, Wilmington, Delaware 19801

DNREC, 715 Grantham Lane, New Castle, Delaware 19720.

FOR FURTHER INFORMATION CONTACT: Colleen Leden at (215) 597-8593.

For background information on the site, contact:

Leonard Nash, DELMARVA/DC/WV CERCLA, Remedial Enforcement Section (3HW16), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-0978.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction

The Environmental Protection Agency (EPA) Region III announces its intent to delete the New Castle Steel site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund ("Fund") financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR § 300.66(c)(7), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that the remedy (or no remedy if appropriate) is protective of public health, welfare, and the environment. In addition, section 121(f)(1)(c) of CERCLA requires State concurrence for deleting a site from the NPL.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states:

"Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up To Date' on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system."

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As is mentioned in Section II of this notice, Section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA Region III will accept and evaluate public comments. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region III has recommended deletion and has prepared the relevant documents.

2. The State of Delaware has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local and community newspapers and has been distributed to appropriate federal, state, and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts two weeks from the date of the notice, October 6, 1988, and will conclude on October 24, 1988.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.