Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 01–7249 Filed 3–22–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1361–DR]

Washington; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1361–DR), dated March 1, 2001, and related determinations.

EFFECTIVE DATE: March 16, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 1, 2001:

Grays Harbor for Public Assistance (already designated for Individual Assistance).

Skagit County for Individual Assistance and Public Assistance.

Cowlitz, Island, Jefferson, Pacific, Skamania, Wahkiakum, and Yakima Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 01–7250 Filed 3–22–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, March 28, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 21, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–7394 Filed 3–21–01; 1:06 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Premerger Notification: Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of Amendment of Formal Interpretation 15.

SUMMARY: The Premerger Notification Office (''PNO'') of the Federal Trade Commission (''FTC''), with the concurrence of the Acting Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''DOJ''), is amending a Formal Interpretation of the Hart-Scott-Rodino Act, which requires persons planning certain mergers, consolidations, or other acquisitions to report information about the proposed transactions to the FTC and DOJ. The Interpretation concerns the reportability of certain transactions involving the formation of a Limited Liability Company (''LLC''), a relatively new form of entity authorized by state statutes, resulting in the combination of businesses into the new LLC.

This Formal Interpretation was first published on October 13, 1998, 63 Fed. Reg. 54713. It was subsequently modified and republished on February 5, 1999, 64 Fed. Reg. 5808; and on June 29, 1999, 64 FR 34804.

On December 21, 2000, the President signed into law certain amendments to Section 7A(a) of the Clayton Act, 15 U.S.C. 18a(a). *See* Public Law 106–553, 114 Stat. 2762, effective on February 1, 2001. The current amendments to Formal Interpretation 15 merely reflect the changes in the statutory size-of-transaction test and size-of-person test, and the resultant repeal of 16 CFR. 802.20.

The reference to § 802.20 at 64 FR 34806 is removed. Example 2 to Formal Interpretation 15 is amended to reflect the new $50 million threshold. Minor typographical errors were corrected in two footnotes, and footnote 7 was revised to reflect the elimination of the size-of-person test for transactions which are valued in excess of $200 million.

DATES: The Amended Formal Interpretation 15 will become effective on March 23, 2001.

FOR FURTHER INFORMATION CONTACT: B. Michael Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3167.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation 15, as amended, is set out below. The revision is bolded and italicized. The removed language is bracketed and underlined.

Formal Interpretation Number 15

Formal Interpretation Pursuant to § 803.30 of the Premerger Notification Rules, 16 CFR 803.30, Concerning the Reporting Requirements for the Formation of Certain Limited Liability Companies (''LLCs'').

This is a Formal Interpretation pursuant to § 803.30 of the Premerger Notification Rules (''the rules''). The rules implement Section 7A of the Clayton Act, 15 U.S.C. 18a, which was added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''the act'').

This Formal Interpretation was first published on October 13, 1998, together with a request for comments, to become effective on December 14, 1998. 63 FR 54713 (October 13, 1998). The PNO received six comments which were placed on the public record. On

December 2, 1998, the effective date of this Interpretation was postponed until February 1, 1999, to give the PNO staff more time to analyze and respond to the comments. 63 Fed Reg 66546 (December 2, 1998).

Formal Interpretation 15 was modified in response to the comments and republished on February 5, 1999. 64 FR 5808 (February 5, 1999). Under the revised Interpretation, the formation of an LLC which combines under common control in the LLC two or more pre-existing businesses will be treated as subject to the requirements of the HSR act under § 801.2(d) of the HSR rules, 16 CFR 801.2(d), which governs mergers and consolidations. Because Formal Interpretation 15 had been modified substantially, the effective date of the Interpretation was postponed until March 1, 1999. Id.

Shortly after the Interpretation became effective, it became apparent that the Interpretation as it applies to transactions involving existing LLCs did not give clear guidance. The section of the Interpretation dealing with acquisitions of and by existing LLCs was therefore amended in a number of respects to explain how such transactions are to be analyzed. First, the first full paragraph in the third column at 64 FR 5809 (February 5, 1999) was deleted. Second, the four paragraphs in the notice which begin with the phrase ''The acquisition of a membership interest in an existing LLC will be potentially reportable event * * *.'' and end with the phrase ''* * * whether there is a change in any member's membership interest.'' was inserted between the carryover paragraph and the first full paragraph in the second column at 64 FR 5810. Third, Example 2, at 64 FR 5811, was revised in a number of respects. Fourth, a new Example 3 was added, and current Examples 3 and 4 at 64 FR 5811 were renumbered as Examples 4 and 5. Fifth, a new Example 6 was added, and current Examples 6–8 at 64 FR 5811 were renumbered as Examples 8–10. Finally, current Example 8 (now Example 10) was revised in a number of respects.

The most recent amendments to Formal Interpretation 15 merely reflect the changes in the statutory size-of-transaction test and size-of-person test, and the resultant repeal of 16 CFR 802.20

The act requires the parties to certain acquisitions of voting securities or assets to notify the FTC and DOJ and to wait a specified period of time before consummating the transaction. The purpose of the act and the rules is to ensure that such transactions receive meaningful scrutiny under the antitrust laws, with the possibility of an effective remedy for violations, prior to consummation. Under the rules, certain types of transactions, such as mergers, consolidations, and the formation of corporate joint ventures, are treated as acquisitions of voting securities potentially subject to the act, while other transactions, such as the formation of partnerships, are deemed non-reportable. See §§ 801.2(d) and 801.40 of the rules, 16 CFR 801.2(d) and 801.40.

The LLC [(1)] is a relatively new form of business organization that is neither a partnership nor a corporation but a hybrid legal entity that combines certain desirable features of both partnerships and corporations. Specifically, an LLC is taxed as a partnership but shields its members from liability as a corporation shields its shareholders. The first LLC statute was passed in 1977 by Wyoming [(2)] and a trickle of other states followed. The use of LLCs expanded significantly after 1988 when the Internal Revenue Service (''IRS'') concluded that an LLC organized under the Wyoming statute was taxable as a partnership.[(3)] By 1993 all 51 jurisdictions had LLC laws of one form or another.

When it first encountered these types of organizational structures, the PNO concluded that as ''companies'' LLCs are ''entities'' within the meaning of § 801.1(a)(2), 16 CFR 801.1(a)(2), and that, until it had more experience with them, the PNO would treat LLCs like corporations. Initially, therefore, § 801.40 of the rules, 16 CFR 801.40, ''Formation of joint venture or other corporations,'' governed the formation of LLCs and an interest in an LLC was treated as a voting security for HSR purposes.

On further analysis, the PNO concluded that this initial approach was too inclusive. LLCs at the time were primarily used as vehicles for the creation of start-up businesses. The PNO's treatment of LLCs resulted in requiring HSR filings in a large number of transactions that did not raise antitrust concerns. Furthermore, the PNO believed that in most LLCs the interest held by the members of the LLC was more like a partnership interest than a voting security interest. Consequently, in 1994, the PNO began to informally advise parties that the treatment of LLCs for reporting purposes would depend on a determination of whether the interest acquired in the LLC was more like a voting security interest or more like a partnership interest.[4]

This treatment of LLCs has not been completely satisfactory. The use of LLCs has evolved, and while LLCs continue to be used as vehicles for start-up enterprises, they are now often used to combine competing businesses under common control. Indeed, the Commission's litigation staff has investigated several transactions raising potential antitrust concerns involving the formation of LLCs. In these transactions, previously separate businesses were combined under common control when they were both contributed to a single, newly-formed LLC. Nevertheless, the creation of the LLC to combine competing businesses under common control was typically not treated as reportable under the PNO's then-current treatment. However, the union of competing businesses under common control is of obvious potential antitrust concern. Since the past treatments of LLCs have not been satisfactory at singling out those transactions that were the most likely to have anticompetitive effects, the PNO staff has decided to revise its approach to LLCs in order to better carry out the purposes of the act.

The formation of an LLC into which two or more businesses are contributed, like other unions of businesses under common control, is a kind of merger or consolidation.[5] Section 801.2(d)(1)(i) of the rules, 16 CFR 801.2(d)(1)(i), states that ''[m]ergers and consolidations are transactions subject to the act * * *''[6]

[1] This Formal Interpretation applies only to the reportability of the formation of certain LLCs. The position of the FTC staff on the status and treatment under the act of other non-corporate entities such as partnerships remains unchanged.

[2] Wyo. Stat. section 17–15–101 to 135 (Supp. 1989).

[3] Rev. Rul. 88–76, 1988–2 C. B. 360 361.

[4] Specifically, the formation of an LLC was treated as potentially reportable only if the LLC had a group that functioned like a board of directors and the LLC ownership interest resulted in the holders appointing person(s) other than their employees, officers, or directors (or those of entities controlled by such holder or its ultimate parent entity to that group. In such cases, the LLC interest was treated as a voting security interest. In all other instances, LLC interests were treated as partnership interests and the acquisition of these interests was not reportable (unless the acquiring person would hold 100 percent of the interests as a result of the acquisition).

[5] While combining businesses in an LLC may not be a ''merger'' or ''consolidation'' in the strictest sense because they do not involve corporations, the rationale of this interpretation is similar to that used by the PNO under § 801.2(d) to require filing for acquisitions of non-profit corporations which, like LLCs, typically do not issue voting securities. (See ABA, The Premerger Notification Practice Manual, 1991 ed., Interp. #109.)

[6] In fact, as it was originally promulgated in 1978, § 801.2(d)(1)(i), 16 CFR 801.2(d)(1)(i), stated that ''[a] merger, consolidation, or other transaction combining all or any part of the business of two or more persons shall be an acquisition subject to the act * * *'' (emphasis added) 43 FR 33539, July 31, 1978. In 1983, this section was changed to clarify

A filing requirement for those LLC formations that involve the combination of businesses is appropriate and advances the purposes of the act and the rules, namely, to ensure that the antitrust enforcement agencies have advance notice of, and a timely opportunity to challenge, transactions which may violate the antitrust laws.

This Formal Interpretation, therefore, changes the PNO's treatment of LLC's as follows: The PNO will henceforth treat as reportable the formation of an LLC if (1) two or more pre-existing, separately controlled businesses will be contributed, and (2) at least one of the members will control the LLC (i.e., have an interest entitling it to 50 percent of the profits of the LLC or 50 percent of the assets of the LLC upon dissolution).[7] The formation of all other LLCs will be treated similar to the formation of a partnership which, under the PNO's longstanding position on partnership formations, will not be reportable.

In determining what is a ''business'' for purposes of this Interpretation, the PNO will look to the definition of ''operating unit'' for purposes of § 802.1(a) of the rules, 16 CFR 802.1(a), namely, '' * * * assets that are operated * * * as a business undertaking in a particular location or for particular products or services, even though those assets may not be organized as a separate legal entity.'' In addition, for purposes of this Formal Interpretation, the contribution to an LLC of an interest in intellectual property, such as a patent, a patent license, know-how, and so forth, which is exclusive against all parties including the grantor, is the contribution of a business, whether or not the intellectual property has generated any revenues.

Under this Interpretation, the approach of § 801.2(d) will be used to determine the acquiring person(s) and acquired person(s) for potentially reportable LLC formations.[8] Section 801.2(d)(2)(i) states that ''[a]ny person party to a merger or consolidation is an acquiring person if as a result of the transaction such person will hold any assets or voting securities which it did not hold prior to the transaction'' (emphasis added). In the context of the formation of a new LLC, this means that any person that will control an LLC in which two or more previously separate businesses will be combined will be an acquiring person. Thus, if ''A'' and ''B'' form a 60–40 LLC, the 60 percent member, ''A,'' will be an acquiring person with respect to the contributions of ''B.'' Section 801.2(d)(2)(ii) states that ''[a]ny person party to a merger or consolidation is an *acquired person* if as a result of the transaction the assets or voting securities of any entity included within such person will be held by any other person'' (emphasis added). In the above example of the formation of a 60–40 LLC, ''B'' would therefore be an acquired person. If ''A'' and ''B'' were to form a 50–50 LLC to which both were to contribute businesses, both would be both acquiring and acquired persons because both would control the LLC and thus hold assets or voting securities it did not hold prior to the transaction. ''A'' and ''B'' would file in both capacities, assuming the relevant size criteria were met. Thus, both the acquiring and acquired persons will be required to file notification and, in accordance with § 803.10 of the rules, the 30-day waiting period will begin when both persons have substantially complied with the notification requirements.

Under this Interpretation, the nature of the acquisition(s) taking place when an LLC is formed, that is, whether it is an acquisition of assets or of voting securities, depends on what is being contributed by the other member(s) of the LLC.[9] In the 50–50 LLC described above, suppose that ''A'' contributes a group of assets constituting a business and ''B'' contributes 50 or more percent of the voting securities of a corporate subsidiary, S. In this example, ''B'' will be deemed to have made an acquisition of assets and ''A,'' an acquisition of voting securities.

In addition, any exemption in the act or rules that would make any other acquisition non-reportable may make the acquisition by one or more of the contributors to an LLC non-reportable. If, for example, ''A's'' asset contribution consists of hotel properties the acquisition of which would be exempt under § 802.2(e), ''B's'' acquisition in the formation of this LLC would not be reportable. [*Similarly, if S has sales and assets of less than $25 million and the value of the S stock that will be held by ''A'' as a result of the acquisition is $15 million or less then ''A's'' acquisition in the formation would be exempted by § 802.20(b).*]

To determine whether a filing is required, the parties to potentially reportable formation transactions also must determine the size-of-person and size-of-transaction, which should be done just as in any other asset or voting securities acquisition in accordance with §§ 801.10 and 801.11 of the HSR rules. Since these transactions are similar to asset exchanges, for most such transactions there will not be a determined acquisition price for the acquired assets or voting securities to use in applying the size-of-transaction test. For such transactions, parties should use the market price or fair market value where another contributor contributes 50 or more percent of the voting securities of an issuer (see § 801.10(a)), or the fair market value where another contributor puts assets constituting a business into the LLC (see § 801.10(b)).

The acquisition of a membership interest in an existing LLC will be a potentially reportable event (1) if it results in the acquiring person holding 100 percent of the membership interests in that LLC, and (20 that person had not previously filed for and consummated the acquisition of control of that LLC. Such an acquisition is reportable as the acquisition of all the assets of the LLC. This is similar to the PNO's treatment of acquisitions of partnership interests.

Acquisitions of additional businesses by existing LLCs fall into one of two categories. First, those that result in a change in the percentage membership interest of any member will be treated by the PNO as the formation of new LLC under this Interpretation. In such a new formation, the acquisition by any person that will control the new LLC of the assets or voting securities of the business(es) being contributed that it did not previously control is potentially reportable. Both additional businesses and the business(es) already in the existing LLC are regarded as being contributed to the new LLC. These transactions should be analyzed using the criteria for formations. Accordingly, persons will be regarded as acquiring

the treatment of mergers and consolidations under the rules, and the italicized wording was eliminated. However, there is no indication that this change was intended to narrow the scope of § 801.2(d). Rather, according to the Statement of Basis and Purpose to the 1983 changes, 48 FR 34430, July 29, 1983, the Commission simply sought to make clear that mergers and consolidations are treated as acquisitions of voting securities and to aid the parties to a merger in determining which is the acquiring person and which is the acquired person.

[7] Of course, as with all transactions, the HSR size requirements (size of transaction and, if size of transaction is $200 million or less, size of person) need to be met as well, and exemptions may apply.

[8] The Formal Interpretation as published in October, 1998 described a method to determine reportability that was based on concepts found in § 801.40 of the HSR rules, 16 CFR 801.40. Certain comments suggested that such an approach was confusing and would increase the likelihood that parties would make erroneous conclusions on their reporting obligations. In light of those comments, and the change in approach this Formal Interpretation adopts, there will no longer be any need to look to § 801.40 to determine reporting obligations.

[9] In this respect, the Interpretation necessarily departs from the text of § 801.2(d)(1)(i), which provides that all mergers and consolidations shall be treated as acquisitions of voting securities.

only those businesses that they come to control as a result of the transaction.

Second, those acquisitions of businesses by existing LLCs that do not result in a change in the percentage membership interest of any member are not treated as new formations but, rather, as the acquisition of the assets or voting securities of the business by the LLC or, if it is controlled, by its ultimate parent entity, or entities, and, as such, are potentially reportable.

The acquisition by an existing LLC of assets or voting securities not constituting a business will be treated as the acquisition of assets or voting securities by the LLC or, if it is controlled, by its post-acquisition ultimate parent entity, or entities, and, as such, is potentially reportable. This treatment will pertain without regard to whether there is a change in any member's membership interest.

This Formal Interpretation will not require reporting of some LLC formations and some acquisitions of existing LLC interests that would have required reporting under the Interpretation announced by the PNO in October of 1998. Unlike the October version, this Formal Interpretation requires reporting of the formation of an LLC only if the formation brings together within the LLC two formerly separately controlled businesses. Comments received suggested that the treatment announced in the October version would have covered a substantial number of LLCs that are not likely to raise competitive concerns. For example, the October Formal Interpretation would have viewed LLCs that are created solely as financing vehicles as reportable. In these transactions, a financial institution (or other party providing financing) in the ordinary course of its business contributes only cash or other financial assets and one other party contributes one or more operating units to a new LLC that the financial institution may control for HSR purposes, at least for a period of time. Under this revised interpretation, so long as such financing transactions do not result in the contribution of a business to the LLC by two or more members, it will not be treated as reportable.[10]

As described above, except for a situation where, as a result of an acquisition, the acquiring person would hold 100 percent of the interests in an existing LLC, no acquisition of an interest in an existing LLC is reportable under this Interpretation. Several comments indicated that LLC agreements are sometimes entered into in which the right to receive more than 50 percent of the LLC's profits shifts from one member to another upon the happening of some event outside the control—or even the knowledge—of the members. Under the definition of control applicable to LLCs (i.e., § 801.1(b)(ii)), under the October Interpretation, such a shift in the right to receive profits might have created a reporting obligation. The commenters argued that it would be unduly burdensome to require the beneficiaries of such shifts to file and that no substantive law enforcement interest would be served. The PNO does not intend that such shifts be reportable under this Formal Interpretation. Since such a shift would be the post-formation acquisition of an interest in an existing LLC without the contribution of another business, it will not be treated as subject to the reporting requirements of the act.

Some of the reasons for concluding that the formation of certain LLCs should be treated as reportable may apply equally well to partnerships. The position of the PNO, however, is that the formation of a partnership is not reportable and acquisitions of partnership interests that do not result in one person's holding 100 percent of the interests in a partnership are non-reportable. Several comments received on the Formal Interpretation published in October suggested that no change to the treatment of partnerships was necessary at this time. The treatment of partnerships was originally adopted, in part, because of the difficulty of monitoring compliance with HSR reporting obligations since many partnerships can be formed informally or by implication in many typical business arrangements. Furthermore, there has been no suggestion in any of the comments that partnerships are being used with any greater frequency now to combine competing businesses. Consequently, the PNO has decided not to change its treatment of partnerships at this time, but it may re-visit this issue in the future as developments require.

The following examples are an integral part of this Formal Interpretation:

1. ''A'' and ''B'' both plan to contribute businesses to a new LLC in which each will acquire a 50 percent interest. This LLC formation would involve both ''A'' and ''B'' making reportable acquisitions if the size-of-person and size-of-transaction tests are met. Each acquisition would be reportable unless exempted by Section 7A(c) of the act or Part 802 of the HSR rules. ''A'' would file as an acquiring person and ''B'' as an acquired person for ''A's'' acquisition of the assets being contributed by ''B,'' and ''B'' would file as an acquiring person and ''A'' as an acquired person for ''B's'' acquisition of the assets contributed by ''A.'' If ''A'' or ''B'' (or both) contributed 50 percent or more of the voting securities of a corporation, the acquisition(s) would be treated as an acquisition of voting securities of the issuer whose shares are contributed.

2. ''A,'' ''B,'' and ''C'' form an LLC in year 1 in which each receives a one-third interest and to which each contributes a business valued at approximately $60 million. ''A,'' ''B,'' and ''C'' are $100 million persons. This formation would not be reportable because no member controls the LLC. In year 2, ''X,'' also a $100 million person, acquires the membership interests of ''A'' and ''B'' for cash. This would not be reportable because acquisitions of membership interests in existing LLCs are potentially reportable only if they result in one person holding 100 percent of the interests in the LLC. Note that if ''X'' also contributes a business to the LLC in exchange for the LLC membership interest it receives, the transaction will be treated as the formation of a new LLC. The acquisition of the new business will not be reportable because ''X'' already controls it. ''X'' may, however, have a filing obligation as an acquiring person with respect to the businesses already in the LLC if the size tests are met and no exemption applies. The existing LLC would be the acquired person because no member controls it. Note also that in the example where ''X'' contributed only cash and did not file under HSR, if ''X'' were subsequently also to acquire ''C's'' membership interest it would then hold 100 percent of the interests in this LLC and would therefore have to file for the acquisition of all of the assets of the LLC.

3. In year 1, ''A'' and ''B'' form an LLC to which ''A'' contributes a business and takes back a 60 percent interest and ''B'' contributes cash and takes back a 40 percent interest. This transaction is not reportable. Suppose, however, that in year 4:

a. ''B'' contributes a new business, ''A'' contributes cash, and there is no change in percentage membership interests. This would not be analyzed as a new formation but would be treated as an acquisition by the LLC. ''A,'' as the ultimate parent entity of the LLC, would file as acquiring and ''B'' as acquired for the acquisition of the business.

[10] There is no evidence to suggest now that LLC formations where only one business is contributed are being used to accomplish a merger or consolidation of two businesses. However, the PNO will look carefully at these transactions in the future and, if they begin to be used to accomplish a merger or consolidation, will re-visit this issue.

b. ''A'' contributes a business, ''B'' contributes cash, and their interests change so that ''A'' has 61 percent and ''B'' has 39 percent. This is a new formation because of the changes in the membership interests but it is not reportable because two or more separately controlled businesses are not being contributed, as ''A'' controlled both businesses before the transaction.

c. ''B'' contributes a business, ''A'' contributes cash, and their interests change so that ''A'' has 59 percent and ''B'' has 41 percent. This is also a new formation. ''A'' will file to acquire the business being contributed by ''B.''

d. ''B'' contributes a business and the membership interests change so that ''B'' has 60 percent and ''A'' has 40 percent. This is a new formation, and ''B'' would file to acquire the business contributed by the LLC. ''A,'' as the ultimate parent entity of the existing LLC, would file as the acquired person.

e. ''C'' contributes assets not constituting a business and the percentage interests are adjusted so that ''A'' has 50 percent, ''B'' has 30 percent, and ''C'' has 20 percent. This is not a new formation because the assets being contributed are not a business. ''A,'' as ultimate parent entity of the LLC, will file to acquire these assets from ''C.''

4. ''A'' and ''B'' form a new LLC, to which ''A'' will contribute its widget business and ''B'' will contribute cash for operating capital. This formation would not be reportable because two previously separate businesses are not being contributed to the LLC.

5. ''A,'' ''B,'' and ''C'' form a 60–20–20 LLC to which ''A'' contributes cash and receives a 60 percent membership interest and ''B'' and ''C'' each contribute an operating unit for a 20 percent interest. This is a kind of a consolidation of ''B's'' and ''C's'' operating units into the new LLC and ''A'' will control the LLC. There are two reportable transactions (assuming the size criteria are met and no exemption applies): ''A'' acquiring the operating unit contributed by ''B,'' and ''A'' acquiring the operating unit contributed by ''C.''

6. In year 1, ''A,'' ''B,'' and ''C'' form a new LLC to which each contributes a business and takes back a one-third membership interest. In year 4, the LLC acquires all the voting securities of another business from ''D'' in exchange for certain assets not constituting a business. This acquisition would not be analyzed as the formation of a new LLC because no member's percentage interest changes as a result of the transaction. Rather, the LLC would be viewed as acquiring the voting securities of the new business from ''D.'' This transaction will be reportable if the size criteria are met and no exemption applies. ''D'' will, of course, have to analyze its acquisition of assets from the LLC to determine if it is also reportable.

7.''A'' proposes to consolidate its widget business, which it has conducted in two subsidiaries and a division, into a newly-formed LLC in which it will hold a 60 percent membership interest. This would not be reportable because, although separate businesses are being combined, they were not under separate control prior to the transaction.

8. ''A,'' ''B,'' and ''C'' form a new LLC in which ''A'' will have a 60 percent interest and ''B'' and ''C'' each will have 20 percent interests. ''A,'' a large, international pharmaceutical company, contributes $100 million in cash and the assets of a pharmaceutical product which is currently on the market. This pharmaceutical product line constitutes a business. ''B'' contributes licenses to several patents which it will also continue to use to manufacture various drugs. ''C'' will contribute licenses which are exclusive even against itself for several drugs which are still at the testing stage and which have never been marketed. With a 60 percent interest, ''A'' will control the LLC. Since the licenses ''B'' will contribute are not exclusive as against it, they do not constitute a business. However, the licenses being contributed by ''C'' do constitute a business, even though they have not generated any revenue. ''A'' has a potential reporting obligation for the formation of this LLC for acquiring assets from ''C.'' This formation combines two pre-existing, separately controlled businesses in an LLC which ''A'' will control.

9. ''A'' and ''B'' are both regional grocery store chains which do their data processing in-house. ''A's'' data processing unit does work only for ''A'' and ''B's'' only for ''B.'' ''A'' and ''B'' decide to contribute the assets used in their data processing operations to a new jointly-controlled LLC which will provide data processing services to ''A'' and ''B.'' Assume the size tests are met. This would not be reportable because the assets used to provide such management and administrative support services do not constitute businesses. Cf § 802.1(d)(4) of the rules and Examples 10 and 11, 16 CFR 802.1(d)(4). This would be the case even if the new LLC intends to begin offering data processing services to third parties, since this would be beginning a new business rather than uniting existing businesses. Note, however, that the result would be different if ''A'' and ''B'' had used their equipment to provide any data processing services to others prior to contributing it to the new LLC, for then each would be contributing an existing business.

10. In year 1, ''A,'' ''B,'' and ''C'' form a new LLC to which each contributes a business in exchange for a one-third interest. This formation is not reportable because no member controls the LLC. Suppose that in year 2 ''A'' sells additional assets to the LLC for cash. This transaction is not analyzed as a new formation under this Formal Interpretation. However, the LLC has a potential filing obligation as the acquiring person of those assets and ''A'' as the acquired person. Note that it is irrelevant whether the assets sold by ''A'' in year 2 constitute a business. Note also that if assets not constituting a business are acquired by an LLC, even if the percentage membership interests change in the transaction, this is not analyzed as the formation of a new LLC, either, but as an acquisition by the LLC (or its post-acquisition ultimate parent entity).

Donald S. Clark,

Secretary.

[FR Doc. 01–7253 Filed 3–22–01; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Commercial Activities Panel

AGENCY: General Accounting Office.

ACTION: Notice and request for comments.

SUMMARY: Section 832 of the National Defense Authorization Act for Fiscal Year 2001 requires the Comptroller General to convene a panel of experts to study the transfer of commercial activities currently performed by government employees to federal contractors, a procedure commonly known as ''contracting out'' or ''outsourcing.'' Selection of panel members is proceeding, and the formation of the panel will be announced in a subsequent **Federal Register** notice. To ensure that the panel considers the full array of possible issues and a wide range of views, this notice seeks public input on issues the panel should address. This notice also seeks reference to or copies of written materials on topics related to outsourcing. The General Accounting Office encourages input from all interested parties, including federal government agencies, federal employees or their representatives, industry groups, labor unions, and individuals. All submissions received will be reviewed for consideration by the panel.