FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TTY (703) 883–4434, or

Mary Alice Donner, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: July 14, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–18192 Filed 7–18–11; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0116; Airspace Docket No. 11–ANE–1]

Establishment of Class E Airspace; Brunswick, ME

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the effective date of a final rule correction, that was published in the **Federal Register** on July 6, 2011. The effective date in that Final Rule; Correction. inadvertently listed the wrong effective date in the Correction to Final Rule section.

DATES: *Effective Date:* 0901 UTC, July 28, 2011.

FOR FURTHER INFORMATION CONTACT: John Fornito; telephone (404) 305–6364.

Correction to Final Rule; Correction

In final rule FR Doc 2011–16783, on page 39259 in the **Federal Register** of July 6, 2011 (76 FR 39259), make the following correction:

On page 39259, in the second column, in the Correction to Final Rule section, in the second paragraph, remove the dates August 28, 2011, and July 25, 2011, and replace them with the dates August 25, 2011, and July 28, 2011.

Issued in Washington, DC on July 8, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–17978 Filed 7–18–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

RIN 3084–AA91

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') is amending the Hart-Scott-Rodino (''HSR'') Premerger Notification Rules (the ''Rules''), the Premerger Notification and Report Form (the ''Form'') and associated Instructions in order to streamline the Form and capture new information that will help the FTC and the Antitrust Division, Department of Justice (together the ''Agencies'') conduct their initial review of a proposed transaction's competitive impact. The FTC is making substantive and ministerial revisions, deletions and additions to streamline the Form and make it easier to prepare while focusing the Form on those categories of information the Agencies consider necessary for their initial review. The FTC is also amending certain Rules and parts of the Form and Instructions, as well as adding Items 4(d), 6(c)(ii) and 7(d), in order to capture additional information that would significantly assist the Agencies in their initial review. Finally, minor changes are being made to address minor omissions from the FTC's 2005 rulemaking involving unincorporated entities and to remove the reference to the 2001 transition period.

DATES: These final rules are effective August 18, 2011.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room H–303, Federal Trade Commission, Washington, DC 20580, (202) 326–3100, *rjones@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

Section 7A of the Clayton Act (the ''Act'') requires the parties to certain mergers or acquisitions to file with the Agencies and to wait a specified period of time before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the 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, pursuant to Section 7 of the Act.

On August 13, 2010, the Commission made a Notice of Proposed Rulemaking and Request for Public Comment available on its Web site, and it was published in the **Federal Register** on September 17, 2010.[1] The comment period closed on October 18, 2010. The Proposed Rules recommended improvements and updates to the HSR Form and associated Instructions as well as amendments in 16 CFR parts 801, 802 and 803 of the Rules.

The Commission received eleven public comments addressing the Proposed Rules. The comments are published on the FTC Web site at *http://www.ftc.gov/os/comments/hsr/index.htm.*

The following submitted public comments on the Proposed Rules:

1. Caterpillar, Inc. (Howrey LLP, Paul C. Cuomo) (10/18/2010)
2. The Private Equity Growth Capital Council (10/18/2010)
3. Willkie Farr & Gallagher LLP (Theodore C. Whitehouse) (10/18/2010)
4. Cooley LLP (Francis M. Fryscak and M. Howard Morse) (10/18/2010)
5. Skadden, Arps, Slate, Meagher & Flom LLP (Neal R. Stoll, Steven C. Sunshine and Matthew P. Hendrickson) (10/18/2010)
6. Howrey LLP (Jacqueline I. Grise, Michael W. Jahnke, Paul C. Cuomo, Chris P. Cooper and Victor Cohen) (10/18/2010)
7. International Chamber of Commerce Commission on Competition (10/18/2010)
8. Securities Industry and Financial Markets Association (Sean C. Davy) (10/18/2010)
9. BUSINESSEUROPE, Grocery Manufacturers Association, National Association of Manufacturers, The Pharmaceutical Research and Manufacturers of America, U.S. Chamber of Commerce (10/18/2010)
10. Wachtell, Lipton, Rosen & Katz on behalf of Alcoa Inc., Bank of America Corporation, BB&T Corporation, ConocoPhillips, Harmon International Industries, Incorporated, IAC/Interactive Corporation, JPMorgan Chase & Co., Nustar Energy L.P., NYSE Euronext, PPG Industries, Inc., Qwest Communications International, Inc., Sigma-Aldrich Corporation, The Valspar Corporation, United Rentals, Inc., Valero Energy Corporation, Wells Fargo & Company (10/18/2010)

[1] 75 FR 57110 (September 17, 2010).

11. Sections of Antitrust Law and International Law, American Bar Association (10/15/10)

The Commission proposed ministerial changes in Items 1 through 3 in order to make the Form easier to use, as well as the revision or deletion of many items, such as Items 2(e), 3(b), 3(c), 4(a), 4(b), 5(a), 5(b)(i), 5(b)(ii), 5(d), 6(a), and 6(b), which currently ask for information that the Agencies no longer consider necessary for their initial review. There were no adverse comments received on these amendments, therefore, the Commission adopts the changes as proposed. The Commission also proposed amending certain Rules and parts of the Form and Instructions, such as Items 2(d), 5(c) and 8 in order to capture additional information (such as current year revenues by 10 digit NAICS product code) that would significantly assist the Agencies in their review. There were also no adverse comments received on these revisions and they are adopted as proposed. In addition, there were no adverse comments received on the proposed minor changes to §§ 801.1,[2] 801.15, 801.30, 802.4, 802.21, 802.52, 803.2 and 803.5, and these changes are also adopted as proposed.

The Commission did, however, receive substantive objections or criticisms regarding three proposed changes that commenters found to be overly burdensome additions: Item 4(d), which requires the submission of certain documents separate from those required by Item 4(c); changes to Item 5 requiring the reporting of North American Industry Classification System (''NAICS'') product code information for products manufactured outside of the U.S. and sold into the U.S.; and changes to Items 6(c) and 7 to require the submission of information on the holdings of associates that overlap with the entity(s) or assets that are being acquired. These comments and the Commission's response to them are discussed more fully below.

Part 801—Coverage Rules

801.1(d)(2) Associate

An acquiring person is required to provide information in its notification with respect to all entities included within it at the time of filing. In some instances, particularly with families of investment funds, entities that are commonly managed with the acquiring person are not included because these ''associated'' entities are not controlled, as defined in § 801.1(b) of the Rules, by the acquiring Ultimate Parent Entity (''UPE''). As a result, the Agencies do not receive the information they need to get a complete picture of potential antitrust ramifications of an acquisition. This scenario arises frequently in the energy industry with Master Limited Partnerships, where competitive overlaps among limited partnerships (''LPs'') with the same general partner may go undetected.

To capture information on overlaps between entities commonly managed with the acquirer and the target, the Commission proposed three changes: introducing and defining the term associate, creating Item 6(c)(ii), and revising Item 7 to require the submission of information on minority and controlling interests of associates that overlap with the entity(s) or assets that are being acquired.

The Commission received six comments regarding the proposed definition of associate and its application to proposed Items 6(c)(ii) and 7. The comments generally focused on two concerns: the definition of associate as too vague and overly broad, and the burden of compiling the information required by Items 6(c)(ii) and 7 regarding the holdings of associates that overlap with the target, particularly minority holdings. Both will be discussed below.

Section 801.1(d)(2): Definition of Associate

The Commission proposed the term ''associate'' in new § 801.1(d)(2) to define entities under common management with the acquiring person, but not controlled by the acquiring person. The proposed definition reads:

Associate. For purposes of Items 6(c) and 7 on the Form, an associate of an acquiring person shall be an entity that is not an affiliate of such person but: (A) Has the right, directly or indirectly, to manage, direct or oversee the affairs and/or the investments of an acquiring entity (a ''managing entity''); or (B) has its affairs and/or investments, directly or indirectly, managed, directed or overseen by the acquiring person; or (C) directly or indirectly, controls, is controlled by, or is under common control with a managing entity; or (D) directly or indirectly, manages, directs or oversees, is managed by, directed by or overseen by, or is under common management with a managing entity.

Comments 2, 6, 9 and 11 stated that the definition of associate as proposed was not only overly broad, but was also unduly complex and confusing. Comment 2 stated that the phrase ''the right, directly or indirectly, to manage, direct or oversee'' affairs of the acquiring entity was so expansive as to provide little guidance regarding the relationships to be covered. Comment 6 noted that the definition as proposed was not limited to entities subject to common investment management, but also included entities that were subject to a common ability to ''direct and oversee the affairs'' of other entities. Comment 9 also addressed the potentially broad scope of the term ''oversee.'' Comment 11 recommended that the Commission consider limiting associates to master limited partnerships and private equity funds.

Comments 7 and 9 stated that the control rules provided well understood and easily applied guidance as to the scope of HSR filings. Comment 7 stated that requiring filers to determine which entity might be an associate would increase the complexity, burden and expense of HSR filings. Both recommended that the Commission reconsider requiring information on associates.

To address these concerns, the Commission has refined the definition of associate. The Commission's purpose in requiring information on associates is to be able to analyze the holdings of entities that are under common investment or operational management with the person filing notification. The term is not intended to include entities that are under other forms of common management or direction. To clarify this, the definition of associate has been revised to eliminate the terms ''direct'', ''oversee'' and ''affairs'' from the rule. Any examples that contain these terms have also been revised. Additional examples have also been added to clarify the definition.

The Commission is unwilling to limit the definition to master limited partnerships and private equity funds, as suggested by Comment 11. New types of entities that are not master limited partnerships or private equity funds may emerge in the future, and the Commission does not want to limit the information it would receive about these entities as a result. The Commission believes that the changes to the definition of associate clarify its intent and reduce the burden of identifying associates.

The new definition of associate reads as follows:

Associate. For purposes of Items 6 and 7 of the Form, an associate of an acquiring person shall be an entity that is not an affiliate of such person but: (A) has the right, directly or indirectly, to manage the operations or investment decisions of an acquiring entity (a ''managing entity''); or (B) has its operations or investment decisions, directly or indirectly, managed by the acquiring person; or (C) directly or indirectly controls, is controlled by, or is under common control with a managing entity; or (D) directly or indirectly manages, is managed by, or is under common operational

[2] These minor changes to § 801.1 do not relate to the definition of associate.

or investment management with a managing entity.

Items 6(c) and 7

The Commission proposed adding Item 6(c)(ii) to require an acquiring person to report, based on its knowledge or belief, all of its associates' holdings of voting securities and non-corporate interests of 5 percent or more but less than 50 percent in the acquired entity(s) and in entities having 6-digit NAICS industry code overlaps with the acquired entity(s) or assets.

The Commission also proposed amending the instructions to Item 7 as follows:

Item 7(a) to require reporting any 6-digit NAICS industry code in which the acquiring person, or any associate of the acquiring person, derives revenues and in which the acquired entity(s) or assets also derive revenues;

Item 7(b)(i) to require reporting the name of any entity(s) controlled by the acquiring person that derived revenues in the overlapping 6-digit NAICS code in the most recent fiscal year and Item 7(b)(ii) to require reporting the name of any entity(s) controlled by an associate of the acquiring person that derived revenues in the overlapping 6-digit NAICS code in the most recent fiscal year; and

Item 7(c) to require reporting the geographic information for any entity(s) controlled by the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year.

Item 7(d) to require reporting the geographic information for any entity(s) controlled by an associate of the acquiring person that derived revenues in the overlapping NAICS code in the most recent fiscal year.

The comments focused on Item 6(c)(ii), citing Item 7 only in reference to Item 6(c)(ii), and addressed the burden of gathering the information required by Item 6(c)(ii).[3] Comment 5 stated that the request in Item 6(c)(ii) to provide information on minority holdings of associates that overlap with the acquired assets or entity(s) exceeded reasonable expectations about the type of information that an acquiring person can obtain when it does not have possession or control of the requested data and does not maintain the data in the ordinary course of its business. In the same vein, Comment 6 contended that the specific requirements of Item 6(c)(ii) imposed a disproportionate burden on filing parties regardless of the benefit to the Agencies. Comment 11 stated that the breadth of Item 6(c)(ii) could create a significant additional burden on a filing party, while providing the Agencies with little additional useful information. It claimed that, as written, this item required a filing party to report minority holdings of minority holdings, and suggested limiting Item 6(c)(ii) to holdings of associates of interests in the target company rather than including holdings of other entities that overlap with the target.

The purpose of Item 6(c)(ii) is not to obtain information on ''minority holdings of minority holdings'' as Comment 11 suggested, but to receive information on competitively relevant minority holdings of entities that are under common investment or operational management with the acquiring person. For the Agencies, there is clear utility to having the HSR filing contain information regarding the acquiring person's associates' minority holdings in competitors of the target. As such, limiting the response for Item 6(c)(ii) only to holdings of associates in the acquired entity(s), as suggested by Comment 11, is too narrow. Take, for instance, a transaction in which Pharma Fund A is acquiring 100 percent of the voting securities of Acquired Pharma Corp. Pharma Fund A does not have holdings in any competitors of Acquired Pharma Corp, but four associates of Pharma Fund A (Pharma Funds B–E) each hold 15 percent of Pharma Competitor. The Agencies would certainly benefit from knowing that the funds under common management hold an aggregate controlling interest in a competitor. The Agencies, however, may have no other realistic means of learning about the holdings of Pharma Funds B–E, particularly if Pharma Competitor is not publicly traded, making it very difficult to find this information through public sources. Item 6(c)(ii) as proposed requires the disclosure of the holdings of Pharma Funds B–E.

Item 6(c)(ii) would also provide very useful information to the Agencies in transactions involving the intricate structures that often characterize Master Limited Partnerships. For example, consider a transaction in which Pipeline MLP A is acquiring 100 percent of Acquired Pipeline Corp., and Pipeline MLP A's general partner is Pipeline GP, which is also the general partner of Pipeline MLP B and Pipeline MLP C, neither of which holds a minority interest in Acquired Pipeline Corp. or a controlling interest in a competitor of Acquired Pipeline Corp. Thus, Pipeline MLP B and Pipeline MLP C would not be identified in either Item 6(c)(ii) or Item 7 under Comment 11's proposal. Pipeline MLP B and Pipeline MLP C each indirectly hold a 45 percent interest in Competing Pipeline Co., a direct competitor of Acquired Pipeline Corp., through a number of intermediate entities. The Agencies clearly would be interested in these minority holdings in this fairly typical scenario in the oil and gas industry, but might have trouble identifying the relationship as a result of the number of layers between the top level entity and the competitor at the bottom of the structure. Item 6(c)(ii) requires the disclosure of the holdings of Pipeline MLP B and Pipeline MLP C. As these examples illustrate, Item 6(c)(ii) provides the Agencies with a much clearer picture of the competitive impact in transactions involving families of private equity funds or master limited partnerships.

The Commission acknowledges that some filing parties may face an increase in burden the first time they respond to Item 6(c)(ii) but believes that thereafter, the burden should be largely limited to keeping responsive information current. Further, it believes the burden of responding to Item 6(c)(ii) does not outweigh the benefit to the Agencies. An acquiring person must look beyond the concept of control to determine whether it has entities that are under common investment or operational management with the acquiring person. The general partner makes investment or operational decisions for its managed limited partnerships and should therefore have access to information on the holdings of the other managed limited partnerships for the purposes of responding to Item 6(c)(ii).

Further, the Commission notes that Item 6(c)(ii) provides mechanisms for limiting the potential burden. For instance, if an acquiring person cannot provide information on the minority holdings of its associates in response to Item 6(c)(ii) at the NAICS-code level, it could opt to respond on the basis of industry. That is, instead of providing a list of its associates' minority holdings based on an overlapping NAICS code with the target, the acquiring person could provide a list of its associates' minority holdings that fall into the same industry as the target, such as pharmaceuticals, mining, healthcare, etc.

Item 6(c)(ii) also allows the acquiring person to respond to Item 6(c)(ii) by listing all the minority holdings of its associates. This is intended to provide an option for an acquiring person that, despite its best efforts, cannot obtain more granular information about the minority holdings of its associates. The Commission notes that if an acquiring person responds by listing all holdings in Item 6(c)(ii), whether overlapping or not, the review of the filing could be

[3] Comment 5 stated that the problems with collecting information for associates that are identified for Item 6(c)(ii) are equally applicable to Item 7.

delayed and the parties may be more likely to receive follow up requests from staff to obtain the information. It is thus in the best interests of the acquiring person to limit the list of minority holdings in Item 6(c)(ii) to those that overlap with the acquired entity(s) or assets, even if only by industry, to allow the Agencies to conclude quickly whether the acquisition may be competitively problematic because of these holdings.

The Commission has made one additional change to Item 6(c) to attempt to mitigate further the burden on persons who must respond to this item. The person filing notification may rely on its regularly prepared financials that list investments and the regularly prepared financials of its associates that list investments to respond to Items 6(c)(i) and (ii), provided the financials are no more than three months old.[4] Many investment funds routinely prepare such documents on a quarterly basis, and this change allows acquiring persons to rely on documents prepared in the ordinary course to gather the information necessary to respond to Items 6(c)(i) and (ii). If the acquiring person and its associates make quarterly filings concerning their investments in publicly traded companies with the Securities and Exchange Commission (''SEC''), those lists can be relied on to gather the information necessary to respond to Items 6(c)(i) and (ii) with respect to publicly traded companies, as long as they are no more than three months old. Of course, acquiring persons must still report in Items 6(c)(i) and (ii) their holdings of non-publicly traded companies.

In summary, the Commission believes that the benefits of Item 6(c) and Item 7, as revised, to the Agencies with regard to information on associates outweigh the additional burden on certain acquiring persons of providing the information. Consequently, the Commission promulgates Items 6(c)(i) and 6(c)(ii), with the aforementioned allowance for relying on financial statements and SEC documents, and Item 7, as proposed. The caveats in the language in the instructions to Items 6(c)(i) and 6(c)(ii) that the information be provided based on the knowledge or belief of the acquiring person should ease concerns on certification of the Form. If the information is completely unobtainable the acquiring person can rely on a statement of reasons for noncompliance.[5]

Item 4

Item 4(d): Additional Documents

In proposing Item 4(d), the Commission noted that certain categories of documents are quite useful for the Agencies' initial substantive analysis of transactions but were not always provided because parties have differing interpretations as to whether they were called for under current Item 4(c). The Commission proposed new Item 4(d) to enumerate these discrete categories of documents and require their submission with the Form.

In expressing concerns regarding proposed Item 4(d), all of the comments raised the overarching issue of the relationship of proposed Item 4(d) to Item 4(c). Item 4(d) is indeed closely related to Item 4(c), as is evident in the language of Item 4(d) which closely parallels the language of Item 4(c). But Item 4(d) seeks different documents from those covered by the language of Item 4(c) as will be more fully discussed below.

Item 4(d)(i): Offering Memoranda

Proposed Item 4(d)(i) required filing parties to provide all offering memoranda (or documents that served that function) that reference the acquired entity(s) or assets produced up to two years before the date of filing.

With the exception of Comments 5 and 8, the comments suggested that proposed Item 4(d)(i) uses, in the words of Comment 3, ''ambiguous and overbroad language.'' For instance, the requirement that materials responsive to Item 4(d)(i) ''reference'' the acquired entity(s) or assets and documents that ''serve the function of''an offering memorandum were imprecise and as drafted could lead to the production of a large of amount of documents in response to Item 4(d)(i). Comments 1, 2, 6, 7, 10, and 11 expressed concern that the Item 4(d)(i) requirement was not limited to the evaluation or analysis of the acquisition, as is the language of Item 4(c). Comments 1, 2, 3, 6, 10 and 11 suggested that a limitation such as the one in Item 4(c) involving only materials prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) would be helpful in guiding responses to Item 4(d)(i). Comments 1, 2, 3, 4, 6, 7 and 11 expressed the related concern that searching beyond the team of people aware of the transaction would compromise the confidentiality of the transaction. Finally, Comments 1, 2, 9 and 11 stated that the 2-year time frame in Item 4(d)(i) was too long to provide a useful limitation on this item.

In proposing Item 4(d)(i), the Commission intended to capture offering memoranda. These are formal documents created in-house or by a third party that lay out the details of a company, or a part of a company, that is for sale. The Commission intends to reach in Item 4(d)(i) what comment 10 termed ''transaction-specific marketing presentation[s]'' because they are invaluable to staff in their initial analysis. In order to make the parameters of this item more clear, the Commission uses the term ''Confidential Information Memoranda'' instead of the broader term ''offering memoranda.'' Many filing parties already submit Confidential Information Memoranda because these documents often contain a section on the industry or competitive landscape and thus fall within the requirements of Item 4(c). But, in cases where they do not, the in-depth overview of the business, even without competition-related content, is still immensely helpful to staff in understanding the companies and products involved in a transaction.

Confidential Information Memoranda are useful even though, arguably, there may be no ''acquisition'' at the time they are prepared. Item 4(c) requires the submission of all studies, surveys, analyses and reports prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) *for the purpose of evaluating or analyzing the transaction* with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. Leaving out of the language of Item 4(d)(i) the Item 4(c) requirement that responsive materials evaluate or analyze ''the acquisition'' addresses the fact that some parties have relied on the transaction-specific language of Item 4(c) when not submitting Confidential Information Memoranda.

The comments expressed concern that without the requirement that responsive materials evaluate or analyze the transaction, the scope of what was required by Item 4(d)(i) was too broad. In response to this concern, the Commission can provide a more precise parameter than ''some reference to the acquired entity(s) or assets.'' The Commission intends to capture materials that provide an in-depth overview or analysis of the entities or assets that are for sale, not just those materials that contain a passing

[4] This approach does not apply to the response required with regard to associates in Item 7. Item 7 deals with controlled entities and the information required by Item 7 should therefore be easier to obtain.

[5] 16 CFR 803.3.

reference to them. To make this intent clear, the language in Item 4(d)(i) has been changed to adopt in part the language proposed by Comment 4, namely to capture those Confidential Information Memoranda that ''specifically relate to the sale of the acquired entity(s) or assets.''

Comment 4 also suggested narrowing proposed Item 4(d)(i) to ''those separate presentations [that] would have been responsive to Item 4(c) if they had been prepared for the filed-for transaction.'' The problem with this language is that it requires competition-related content. As discussed above, the underlying rationale behind Item 4(d)(i) is that Confidential Information Memoranda are always helpful, and so Item 4(d)(i) requires their submission regardless of the presence of competition-related content.

Comments 1, 2, 3, 4, 5, 10 and 11 expressed concern that proposed Item 4(d)(i) was not limited to officers and directors. The Commission does not intend to reach those Confidential Information Memoranda, as stated in Comment 1, received by ''any employee within the company regardless of their location or involvement in a particular transaction.'' Instead, the Commission intends to reach those Confidential Information Memoranda prepared in the specific contemplation of a sale. In reality, an officer or director would likely be informed of the internal or external drafting of such a memorandum. The easiest way to clarify the Commission's intent is by adopting the suggestion in the comments that a limitation involving officer(s) or director(s) be added to Item 4(d)(i). As such, the Commission is promulgating Item 4(d)(i) with a requirement that responsive documents must have been prepared by or for any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions. Further, the Commission limits this requirement to any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions, of the Ultimate Parent Entity of the Acquiring or Acquired Person and/or any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions, of the Acquiring or Acquired Entity(s). These changes also address the concerns raised by many of the comments that gathering documents responsive to Item 4(d)(i) could compromise the confidentiality of the transaction.

Comment 10 suggested that this item be limited to ''offering memoranda prepared for the purpose of evaluating or analyzing the transaction and which were shared with prospective buyers.'' Sellers will sometimes create a Confidential Information Memorandum and, for one reason or another, it does not end up being shared with the eventual buyer. This, if the Commission limited Item 4(d)(i)'s requirement to submit Confidential Information Memoranda to only those given to the buyer, in some cases, no Confidential Information Memorandum would be submitted even though one was created. This is counter to the rationale behind Item 4(d)(i). Under Item 4(d)(i), if the eventual buyer did not receive a copy of the Confidential Information Memorandum, but one was prepared, that Confidential Information Memorandum must be submitted with the Acquired Person's filing.

Comments 1, 2, 3, 6, 7, 9, 10, and 11, expressed concern about the exact definition of ''documents serving the same function as an offering memorandum.'' As a starting point, if there was a Confidential Information Memorandum prepared, filing parties do not need under Item 4(d)(i) to supply documents that served the purpose of a Confidential Information Memorandum. The Commission intends to capture only those situations in which no Confidential Information Memorandum was prepared, but the seller has a pre-existing presentation containing an overview of the company that was given to any officer(s) or director(s) of the buyer as an introduction to the company. In this case, the presentation *effectively serves the purpose* of a Confidential Information Memorandum in an instance in which no Confidential Information Memorandum was prepared. Filing parties often submit such documents when no Confidential Information Memorandum was prepared, and the Commission does not seek any other category of materials in response to this item. For instance, the Commission does not intend this item to require ordinary course documents and/or financial data shared in the course of due diligence, except to the extent that such materials are shared with the buyer *specifically to serve the purpose* of a Confidential Information Memorandum when no Confidential Information Memorandum was prepared. Unlike the case of Confidential Information Memoranda, a document that served the purpose of a Confidential Information Memorandum will only be responsive to Item 4(d)(i) if it was given to the buyer (and a Confidential Information Memorandum was not). The instructions to Item 4(d)(i) outline these specifics.

Many filing parties already submit materials responsive to Item 4(d)(i) based on longstanding informal interpretations that Confidential Information Memoranda should be submitted as Item 4(c) documents. However, parties have sometimes excluded these documents on the grounds that they were not prepared for the purpose of evaluating or analyzing the acquisition or did not contain competition-related content. Item 4(d)(i) is intended to make clear that Confidential Information Memoranda must be submitted in response to Item 4(d)(i). The Commission intends Items 4(c) and 4(d) to complement one another. For instance, if a filing party includes a document responsive to Item 4(d)(i) with its HSR filing, it need not submit that document separately in response to Item 4(c).

The comments raised concerns about the length of the proposed two year time period applicable to proposed Item 4(d)(i). Although such a timeframe is consistent with the specified ''relevant time period'' of two years as applicable to second requests in the 2006 merger process reforms,[6] the Commission believes that, as applied to the documents required by Item 4(d)(i), a period of one year is more appropriate. Confidential Information Memoranda are typically drafted within this shorter timeframe and arguably are more useful to staff if they are more recent. The instructions to Item 4(d)(i) have been changed to reflect the one year time period.[7]

In summary, the Commission is promulgating Item 4(d)(i) using the term ''Confidential Information Memoranda'' instead of ''Offering Memoranda'' and with the clarification that this item requires only those Confidential Information Memoranda that ''specifically relate to the sale of the acquired entity(s) or assets'' and that were prepared by or for any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions, of the Ultimate Parent Entity of the Acquiring or Acquired Person and/or any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions, of the Acquiring or Acquired Entity(s) within one year of filing. In addition, the Commission requires the submission of

[6] See REFORMS TO THE MERGER REVIEW PROCESS (p.19) announced by then Chairman Deborah Platt Majoras on February 16, 2006. *http://www.ftc.gov/os/2006/02/mergerreviewprocess.pdf* and *http://www.justice.gov/atr/public/press_releases/2006/220302.htm.*

[7] The one year time limit applicable to materials responsive to Items 4(d)(i) and 4(d)(ii) does not apply to materials responsive to Item 4(c); Item 4(c) has no specific timeframe.

documents that served the function of a Confidential Information Memorandum only when given to the buyer in situations in which no such Confidential Information Memorandum exists.

Item 4(d)(ii): Materials Prepared by Investment Bankers, Consultants or Other Third Party Advisors

Proposed Item 4(d)(ii) required filing parties to provide all studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors if they were prepared for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and that also reference the acquired entity(s) or assets produced up to two years before the date of filing.

In response to proposed Item 4(d)(ii), the comments expressed concern that this item as drafted was too broad and would capture many documents immaterial to staff's initial analysis. Each comment stated that Item 4(d)(ii) as drafted would pull in ordinary course documents because it was not limited to materials that evaluated or analyzed the acquisition. Comments 2, 3, 5, 6, 7, 9, 10, and 11 raised the issue that searching beyond the team of people aware of the transaction would lead to confidentiality concerns. Finally, Comments 1, 5, 7, 8, 9, and 11 contended that the 2 year time frame in Item 4(d)(ii) was too long to provide a useful limitation on this item.

Item 4(d)(ii) is intended to reach materials prepared by investment bankers, consultants or other third party advisors (''third party advisors'') that contain competition-related content pertaining to the transaction. The most typical example of this kind of document is, as defined by Comment 8, ''pitch books,'' which are ''developed by investment banking firms for the purpose of seeking an engagement.'' These materials are sometimes also known informally as ''bankers' books.'' In the Commission's experience, these are typically presentations that contain an overview of several potential courses of action available to a company (e.g., whether to buy another business or sell a particular business) and that also contain several pages analyzing the specific industry at issue.

Item 4(d)(ii) also seeks documents prepared by third party advisors who have been hired by a particular company to develop and analyze a variety of strategic options, one of which is a merger that requires an eventual HSR filing. These materials are different from bankers' books in that the third party advisor has been hired and is already working with the company in detail, but they contain information that is just as valuable to staff. Whether developed by a third party for the purpose of seeking an engagement or after having been engaged, these materials often provide staff with a useful overview of the relevant industry and/or competitive landscape. Sometimes such materials fall within the requirements of Item 4(c). In some cases, however, they may not, as there is arguably no ''acquisition'' at the time they are prepared.

The most strenuous objection we received to proposed Item 4(d)(ii) was that leaving out the Item 4(c) requirement that responsive materials evaluate or analyze the acquisition made the language of proposed Item 4(d)(ii) too broad. As noted above, leaving this language out of Item 4(d)(ii) addresses the fact that some parties have relied on this language when not submitting this category of documents. As documents responsive to Item 4(d)(ii) must meet all the other requirements of Item 4(c), one approach would be to rely on the language proposed by Comment 4 in reference to Item 4(d)(i) to require only those materials that ''would have been responsive to Item 4(c) had they been prepared for the acquisition.'' While this language narrows the scope of this item and better reflects the Commission's intent, it leaves Item 4(d)(ii) without the limiting language on the entity(s) or assets for sale and officer(s) and director(s) the Commission has adopted in Item 4(d)(i).

To further clarify the intent of Item 4(d)(ii), the Commission limits materials responsive to Item 4(d)(ii) to those prepared by third party advisors during an engagement or for the purpose of seeking an engagement and, as has been done in Item 4(d)(i), that specifically relate to the sale of the acquired entity(s) or assets. In addition, the Commission similarly limits the officer(s) and director(s) encompassed in Item 4(d)(ii) to any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions, of the Ultimate Parent Entity of the Acquiring or Acquired Person and/or any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions, of the Acquiring or Acquired Entity(s). These clarifications, included in the instructions to Item 4(d)(ii), also address the confidentiality concerns raised by many of the comments.

Item 4(d)(ii) seeks materials developed by third party advisors during an engagement or for the purpose of seeking an engagement prepared by or for certain officers and directors (as discussed above) that contain competition-related content specifically related to the sale of the acquired entity(s) or assets, and the instructions specify this. Item 4(d)(ii) is not intended to capture many of the broad categories of materials envisioned by the comments; the language of Item 4(d)(ii) is drafted in recognition of the fact that there are numerous kinds of consultants who create responsive materials during an engagement or for the purpose of seeking an engagement. We note that Item 4(d)(ii) does not require, as enumerated in Comment 11, the submission of corporate subscriptions to market studies, information or periodicals; industry reference materials and databases; routine market research; information received by financial investors; unsolicited financial and market analyses from investment bankers and consultants; and reports prepared in the course of patent, securities, antitrust or other forms of litigation. Some unsolicited materials developed by investment banking firms or other third parties for the purpose of seeking an engagement may appear in the files of officers or directors covered by Item 4(d)(ii). Item 4(d)(ii) requires the submission of such unsolicited materials only if they specifically relate to the sale of the acquired entity(s) or assets and contain competition related content as specified in the instructions.[8]

Many filing parties already submit materials responsive to Item 4(d)(ii) based on longstanding informal interpretations that materials developed by third party advisors during an engagement or for the purpose of seeking an engagement should be submitted as Item 4(c) documents. However, parties have sometimes excluded these documents on the grounds that they were not prepared for the purpose of evaluating or analyzing the acquisition. Item 4(d)(ii) is intended to make clear that materials developed by third party advisors during an engagement or for the purpose of seeking an engagement must be submitted in response to Item 4(d)(ii). The Commission intends Items 4(c) and 4(d) to complement one another. For instance, if a filing party includes a document responsive to Item 4(d)(ii)

[8] Item 4(d)(ii) does not require the inclusion of unsolicited materials received from third party advisors as a separate category.

with its HSR filing, it need not submit that document separately in response to Item 4(c).

The comments raised concerns about the length of the proposed two-year time period applicable to proposed Item 4(d)(ii). Consistent with the modification to Item 4(d)(i), the time period for this item has been changed to one year.[9]

In summary, the Commission is promulgating Item 4(d)(ii) with the clarification that this item seeks materials developed by third party advisors during an engagement or for the purpose of seeking an engagement that ''specifically relate to the sale of the acquired entity(s) or assets'' and that were prepared by or for any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions, of the Ultimate Parent Entity of the Acquiring or Acquired Person and/or any officer(s) or director(s) or, in the case of unincorporated entities, individuals exercising similar functions, of the Acquiring or Acquired Entity(s) within one year of filing.

Item 4(d)(iii): Materials Evaluating or Analyzing Synergies and/or Efficiencies

Proposed Item 4(d)(iii) required filing parties to provide all studies, surveys, analysis and reports evaluating or analyzing synergies and/or efficiencies if they were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition.

Although proposed Item 4(d)(iii) did not receive as many comments as the other parts of proposed Item 4(d), Comments 2 and 6 questioned staff's need to review these documents in every transaction, suggesting that staff could seek these documents from the parties at a later time if relevant in a specific transaction. Comments 1, 6, and 11 stated that even if filers did not submit synergies documents at the time of filing, they should not be precluded from being able to make arguments concerning applicable synergies at a later time.

Item 4(d)(iii) requires the submission of documents that evaluate or analyze the synergies related to a particular acquisition. Although many filing parties do submit documents discussing synergies in response to Item 4(c), the PNO has long provided the informal advice that this category of documents, without separate competition-related content, is not caught by the language in Item 4(c). At the same time, these kinds of documents are very useful to staff in many transactions. Thus, Item 4(d)(iii) requires that these documents be submitted. The Commission believes that the benefits to the Agencies from receiving this discrete set of documents outweighs the burden to parties of producing them. Filing parties can assert synergies arguments at any time, but there is the possibility that documents submitted with an HSR filing in response to Item 4(d)(iii) may carry greater weight with the Agencies than materials claiming synergies created and submitted at a later time during an investigation.

Instructions to Item 4(d)

Incorporating many of the comments as described above, the instructions to Item 4(d) will read as follows:

Item 4(d)

For each category below, indicate (if not contained in the document itself) the date of preparation, and the name of the company or organization that prepared each such document.

Item 4(d)(i): Provide all Confidential Information Memoranda prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the Ultimate Parent Entity of the Acquiring or Acquired Person or of the Acquiring or Acquired Entity(s) that specifically relate to the sale of the acquired entity(s) or assets. If no such Confidential Information Memorandum exists, submit any document(s) given to any officer(s) or director(s) of the buyer meant to serve the function of a Confidential Information Memorandum. This does not include ordinary course documents and/or financial data shared in the course of due diligence, except to the extent that such materials served the purpose of a Confidential Information Memorandum when no such Confidential Information Memorandum exists. Documents responsive to this item are limited to those produced up to one year before the date of filing.

Item 4(d)(ii): Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors (''third party advisors'') for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the Ultimate Parent Entity of the Acquiring or Acquired Person or of the Acquiring or Acquired Entity(s) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets that specifically relate to the sale of the acquired entity(s) or assets. This item requires only materials developed by third party advisors during an engagement or for the purpose of seeking an engagement. Documents responsive to this item are limited to those produced up to one year before the date of filing.

Item 4(d)(iii): Provide all studies, surveys, analyses and reports evaluating or analyzing synergies and/or efficiencies prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided in response to this item.

Item 5

Item 5(a) and Foreign Manufactured Products

The Commission proposed changes to Item 5 of the Form to make it easier for filing parties to complete, and to obtain information more useful to the Agencies. In this vein, the Commission proposed modifying the Form to require filing persons to identify the 10-digit NAICS product codes and revenues for each product they manufacture outside the U.S. and sell in the U.S. at the wholesale or retail level, or that they sell directly to customers in the U.S. This would give the Agencies a more accurate understanding of products in the U.S. Filing parties would include 10-digit NAICS product codes and revenues for such foreign manufactured products only for the most recent year in proposed Item 5(a). As proposed, sales made directly to customers in the U.S. would be reported in a manufacturing code while sales made into the U.S. through a wholesale operation within the same person would be reported in both manufacturing (transfer price) and wholesale or retail (sales price) codes, to be consistent with current practice when companies have both domestic manufacturing and wholesale or retail operations.

Comment 1 objected to the proposed reporting of revenues for products manufactured outside the U.S. on the grounds that compiling NAICS code information would be a substantial burden for foreign manufacturers who do not currently use NAICS. Comment 2 objected on the same grounds, and also stated that the double listing of foreign manufacturing and importing revenues was confusing. Comment 6 stated that the Commission specifically declined to require foreign manufactured product data by U.S. census code in the 1978 final rules, and that the burden of providing such data is not significantly smaller today. Comment 7 also stated that finding NAICS information would be burdensome for foreign filers and that only U.S. operations should be reported. Comment 9 also raised this concern and cited to International Competition

[9] The one-year time limit applicable to materials responsive to Items 4(d)(i) and 4(d)(ii) does not apply to materials responsive to Item 4(c); Item 4(c) has no specific timeframe.

Network principles that unnecessary costs on transactions should be avoided.

After considering these comments, the Commission is not persuaded that NAICS reporting would be significantly more difficult for foreign manufacturers than it is for domestic manufacturers. One of the reasons the Commission decided to propose the elimination of base year reporting was that HSR practitioners have told the PNO that filers generally do not rely on previous NAICS data compiled for submission to the Bureau of Census, as the Commission previously understood, but rather that the parties determine the appropriate NAICS codes and underlying revenues as they are preparing their filings. That being the case, foreign manufacturers should be able to identify appropriate NAICS codes as readily as domestic manufacturers can; in fact, foreign entities with U.S. wholesale or retail operations already use the NAICS system to report revenues from those operations. Finally, the Commission believes that whatever additional burden may be initially experienced by foreign manufacturers because of their unfamiliarity with NAICS manufacturing codes is outweighed by the usefulness of the information to the Agencies.

Comments 6 and 11 also objected to the double-counting effect that would result from the proposed requirement that foreign manufacturers report revenues under both manufacturing codes (at transfer price) and wholesaling codes (sales revenues) if their products are manufactured outside the U.S. and sold in the U.S. Indeed, Comment 11 stated that this is a long-standing problem with Item 5 in its current form as it relates to domestic manufacturers who sell their product from a separate establishment and must then report manufacturing and wholesaling revenues.

The Commission agrees that double-counting can distort revenues reported in Item 5 and therefore will amend the instruction for Item 5(a) to require that any manufacturer, whether foreign or domestic, report revenues from the sale of its manufactured products only under 10-digit NAICS manufacturing product codes. Sales of products that are not manufactured by the parties but only sold by them would, of course, continue to be reported under 6-digit wholesaling or retailing codes. Comment 6 advocated eliminating the double-counting problem by requiring the listing of revenues from manufactured products by 6-digit wholesaling code only, but this solution would not provide the Agencies with sufficient information about the products being manufactured and sold.

Item 5 De Minimis Exception

The proposed changes to Item 5 also included a proposal to eliminate the million dollar minimum that currently applies to reporting revenues for non-manufacturing operations in the most recent year. As discussed in the Proposed Rule, the minimum was based on the way filing persons reported non-manufacturing data to the Census Bureau, but given that there appears to be little or no reliance on the part of filers on previously assembled census data for HSR reporting, there seemed to be little reason to retain it. In addition, the minimum was sometimes misconstrued as a minimum for the reporting of overlaps in Item 7, which it is not. Comments 6 and 11 objected to the proposed elimination of the million dollar minimum, stating that the minimum reduces the burden of characterizing minor operations by NAICS code and allocating revenues to those codes; further, the comments suggested that instead of eliminating the minimum, an instruction could be added to clarify that an Item 7 overlap can still exist for operations that generate less than $1 million in revenues in the most recent year.

The Commission accepts that the million dollar minimum is helpful to filers and agrees that amending the instruction to Item 7 to state that the item is applicable to an overlap of operations generating any amount of revenue is a reasonable approach. Therefore, the million dollar minimum will remain for Item 5, and the Item 7 instruction has been amended, as below:

> If, to the knowledge or belief of the person filing notification, the acquiring person, or any associate (see § 801.1(d)(2)) of the acquiring person, derived any amount of dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition also derived any amount of dollar revenues in the most recent year, or in which a joint venture corporation or unincorporated entity will derive dollar revenues (note that if the acquired entity is a joint venture the only overlaps will be between the assets to be held by the joint venture and any assets of the acquiring person or its associates not contributed to the joint venture), then for each such 6-digit NAICS industry code:
> * * *

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the amendments on small businesses, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to trigger a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, these amendments are intended to reduce the burden of the premerger notification program. Further, none of the rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–3521, requires agencies to submit ''collections of information'' to the Office of Management and Budget (''OMB'') and obtain clearance before instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The existing information collection requirements in the HSR Rules and Form have been reviewed and approved by OMB under OMB Control No. 3084–0005. The current clearance expires on June 30, 2013. On September 23, 2010, the Commission submitted a clearance request to OMB regarding the then proposed amendments to the reporting requirements in the Rules and Form. On November 8, 2010, OMB filed a comment, requesting that the FTC consider public comments on the proposed amendments and to respond to them and make any necessary adjustments in its ensuing submission to OMB for the final amendments. Consistent with the analysis shown here, the Commission is submitting a supplemental response to OMB as a follow-up to its prior clearance request.

Increase or Decrease in Filings Due to Ministerial Changes in Filing Requirements

The final amendments are primarily changes to the information reported on the Notification and Report Form and do not affect the reportability of a transaction. Most of the ministerial changes to the Rules are clarifications (e.g., the change to § 802.4) or new procedures (e.g., the change to § 801.30), which also would have no effect on reporting obligations. One amendment could theoretically produce an increase

in filings. The definition of ''entity'' in § 801.1(a)(2) is being modified to include unincorporated entities engaged in commerce that are controlled by a government. The definition currently includes only corporations engaged in commerce. Another amendment could theoretically produce a decrease in filings. The amendment to the aggregation rules in § 801.15 would eliminate the unintended effect of requiring aggregation when exactly 50 percent of multiple subsidiaries have been acquired and additional voting securities of the same person are newly being acquired. The Commission believes that any increase or decrease in filings as a result of the final ministerial amendments would be negligible.

Reduced Time Collecting Data for and Preparing the Form

Premerger Notification Office staff canvassed eight practitioners from the private bar to estimate the projected change in burden due to the then proposed, now final, amendments to the Form. All those consulted are considered HSR experts and have extensive experience with preparing HSR filings for the types of transactions that are most likely to be affected by the amendments.

Many of the final amendments would significantly reduce burden for all filers. Others would increase burden, particularly for acquiring persons that are private equity funds and master limited partnerships. The consensus of those canvassed was that, on average, burden for collecting and reporting would decrease by approximately five percent. Thus, 37 hours (rounded to the nearest hour) will be allocated to non-index filings.[10] [(Current estimate, 39 hours[11]) × (1 − .05) = 37.05 hours.]

Net Effect

The Form changes only affect non-index filings which, for FY 2011, the FTC projects will total 1,428. The amendments to the HSR Rules and Notification and Report Form should reduce the time required to prepare responses for non-index filings, with an estimated net reduction of 2 hours per filing (39 hours to 37 hours). Cumulatively, however, owing to a projected increase from 841 such filings to 1,428 (independent of the amendments' effects), total burden will increase from the currently cleared estimate of 33,298 hours[12] to 53,756 hours.[13]

Applying the revised estimated hours, 53,756, to the previous assumed hourly wage of $460 for executive and attorney compensation,[14] yields $24,728,000 (rounded to the nearest thousand) in labor costs.[15] The amendments presumably will impose minimal or no additional capital or other non-labor costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the HSR Rules and the corresponding Notification and Report Form.

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

Antitrust.

For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR parts 801, 802 and 803 as set forth below:

PART 801—COVERAGE RULES

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

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

■ 2. Amend § 801.1 by revising paragraphs (a)(2) and (b)(2), revising example 2 to paragraph (b), adding example 5 to paragraph (b), revising paragraph (d), and revising paragraph (f)(1)(ii) to read as follows:

§ 801.1 Definitions.

* * * * *

(a) * * *

(2) *Entity.* The term *entity* means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules:

Provided, however, that the term entity shall not include any foreign state, foreign government, or agency thereof (other than a corporation or unincorporated entity engaged in commerce), nor the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation or unincorporated entity engaged in commerce).

* * * * *

(b) * * *

(2) Having the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest, the trustees of such a trust.

* * * * *

Examples: * * *

2. A statutory limited partnership agreement provides as follows: The general partner ''A'' is entitled to 50 percent of the partnership profits, ''B'' is entitled to 40 percent of the profits and ''C'' is entitled to 10 percent of the profits. Upon dissolution, ''B'' is entitled to 75 percent of the partnership assets and ''C'' is entitled to 25 percent of those assets. All limited and general partners are entitled to vote on the following matters: the dissolution of the partnership, the transfer of assets not in the ordinary course of business, any change in the nature of the business, and the removal of the general partner. The interest of each partner is evidenced by an ownership certificate

[10] *Id.* Clayton Act sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant Attorney General. Thus, parties must submit copies of these ''index'' filings, but completing the task requires significantly less time than non-exempt transactions that require ''non-index'' filings.

[11] *Id.*

[12] The preceding estimate, detailed further at 75 FR 27558, 27559–27560 (May 17, 2010), was calculated as follows: [(841 non-index filings × 39 hours) + (22 transactions requiring more precise valuation × 40 hours) + (20 index filings × 2 hours)] − [841 non-index filings × ½ of these filings incorporating Item 4(a) and Item 4(b) documents by reference to an Internet link × 1 hour savings) = 33,298 hours. The reduction within this prior calculation for time saved when incorporating Item 4(a) and Item 4(b) documents by reference to an Internet link would be mooted by the final amendments. The amendments would further reduce time to complete the Form, and are factored into the estimated five percent reduction stated above.

[13] This is determined as follows: [(1428 non-index filings × 37 hours) + (22 transactions requiring more precise valuation × 40 hours) + (20 index filings × 2 hours)].

[14] *See* 75 FR at 57122 n. 48 and accompanying text.

[15] Though the filing time and associated labor per respondent is reduced as a result of these amendments, the cumulative dollar total is higher than previously stated ($15,317,000) at the time of the proposed rulemaking. This is attributable solely to a projected increase in the number of related filings for fiscal year 2011, as compared to the prior estimated filings for fiscal year 2010.

that is transferable under the terms of the partnership agreement and is subject to the Securities Act of 1933. For purposes of these rules, control of this partnership is determined by paragraph (1)(ii) of this section. Although partnership interests may be securities and have some voting rights attached to them, they do not entitle the owner of that interest to vote for a corporate ''director'' as required by § 801.1(f)(1). Thus control of a partnership is not determined on the basis of either paragraph (1)(i) or (2) of this section. Consequently, ''A'' is deemed to control the partnership because of its right to 50 percent of the partnership's profits. ''B'' is also deemed to control the partnership because it is entitled to 75 percent of the partnership's assets upon dissolution.

* * * * *

5. A is the settlor of an irrevocable trust in which it does not retain a reversionary interest in the corpus of the trust. A is entitled under the trust indenture to designate four of the eight trustees of the trust. A controls the trust pursuant to § 801.1(b)(2) and is deemed to hold the assets that constitute the corpus of the trust. Note that the right to designate 50 percent or more of the trustees of a business trust that has equity holders entitled to profits or assets upon dissolution of the business trust does not constitute control. Such business trusts are treated as unincorporated entities and control is determined pursuant to § 801.1(b)(1)(ii).

* * * * *

(d)(1) *Affiliate.* An entity is an affiliate of a person if it is controlled, directly or indirectly, by the ultimate parent entity of such person.

(2) *Associate.* For purposes of Items 6 and 7 of the Form, an associate of an acquiring person shall be an entity that is not an affiliate of such person but:

(A) Has the right, directly or indirectly, to manage the operations or investment decisions of an acquiring entity (a ''managing entity''); or

(B) Has its operations or investment decisions, directly or indirectly, managed by the acquiring person; or

(C) Directly or indirectly controls, is controlled by, or is under common control with a managing entity; or

(D) Directly or indirectly manages, is managed by, or is under common operational or investment decision management with a managing entity.

Examples:

1. ABC Investment Group has organized a number of investment partnerships. Each of the partnerships is its own ultimate parent, but ABC makes the investment decisions for all of the partnerships. One of the partnerships intends to make a reportable acquisition. For purposes of Items 6(c) and 7, each of the other investment partnerships, and ABC Investment Group itself are associates of the partnership that is the acquiring person. In response to Item 6(c)(i), the acquiring person will disclose any of its 5 percent or greater minority holdings that generate revenues in any of the same NAICS codes as the acquired entity(s) in the reportable transaction. In Item 6(c)(ii) it would report any 5 percent or greater minority holdings of its associates in the acquired entity(s) and in any entities that generate revenues in any of the same NAICS codes as the acquired entity(s). In Item 7, the acquiring person will indicate whether there are any NAICS code overlaps between the acquired entity(s) in the reportable transaction, on the one hand, and the acquiring person and all of its associates, on the other.

2. XYZ Corporation is its own ultimate parent and intends to make a reportable acquisition. Pursuant to a management contract, Fund MNO has the right to manage the investments of XYZ Corporation. For the HSR filing by XYZ Corporation, Fund MNO is an associate of XYZ, as is any other entity that either controls, or is controlled by, or manages or is managed by Fund MNO or is under common control or common investment management with Fund MNO.

3. EFG Investment Group has the contractual power to determine the investments of PRS Corporation, which is its own ultimate parent. Natural person Mr. X, who is not an employee of EFG Investment Group, has been contracted by EFG Investment Group as its investment manager. When PRS Corporation makes an acquisition, its associates include (i) EFG Investment Group, (ii) any entity over which EFG Investment Group has investment authority, (iii) any entity that controls, or is controlled by, EFG Investment Group, (iv) Natural person Mr. X, (v) any entity over which Natural person Mr. X has investment management authority, and (vi) any entity which is controlled by Natural person Mr. X, directly or indirectly.

4. CORP1 controls GP1 and GP2, the sole general partners of private equity funds LP1 and LP2 respectively. LP1 controls GP3, the sole general partner of MLP1, a newly formed master limited partnership which is its own ultimate parent entity. LP2 controls GP4, the sole general partner of MLP2, another master limited partnership that is its own ultimate parent entity and which owns and operates a natural gas pipeline. In addition, GP4 holds 25 percent of the voting securities of CORP2, which also owns and operates a natural gas pipeline.

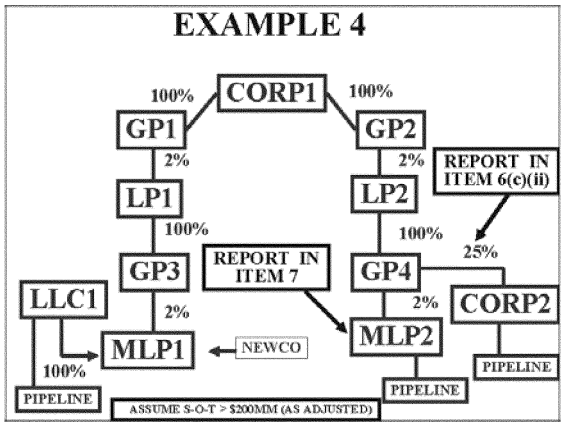
MLP1 is acquiring 100 percent of the membership interests of LLC1, also the owner and operator of a natural gas pipeline. MLP2, CORP2 and LLC1 all derive revenues in the same NAICS code (Pipeline Transportation of Natural Gas). All of the entities under common investment management of CORP1, including GP4 and MLP2, are associates of MLP1, the acquiring person.

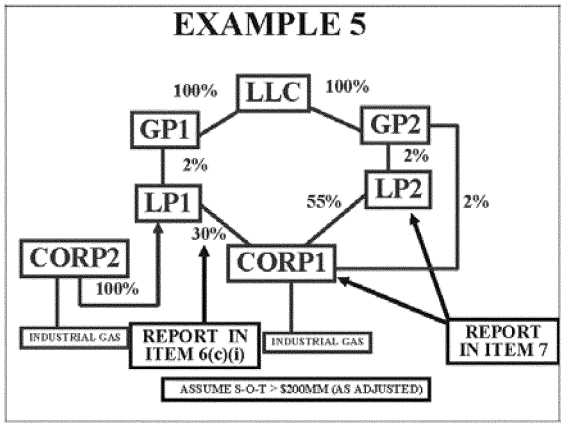
In Item 7 of its HSR filing, MLP1 would identify MLP2 as an associate that has an overlap in pipeline transportation of natural gas with LLC1, the acquired person. Because GP4 does not control CORP2 it would not be listed in Item 7, however, GP4 would be listed in Item 6(c)(ii) as an associate that holds 25 percent of the voting securities of CORP2. In this example, even though there is no direct overlap between the acquiring person (MLP1) and the acquired person (LLC1), there is an overlap reported for an associate (MLP2) of the acquiring person in Item 7. 5. LLC is the investment manager for and ultimate parent entity of general partnerships GP1 and GP2. GP1 is the general partner of LP1, a limited partnership that holds 30 percent of the voting securities of CORP1. GP2 is the general partner of LP2, which holds 55 percent of the voting securities of CORP1. GP2 also directly holds 2 percent of the voting securities of CORP1. LP1 is acquiring 100 percent of the voting securities of CORP2. CORP1 and CORP2 both derive revenues in the same NAICS code (Industrial Gas Manufacturing).

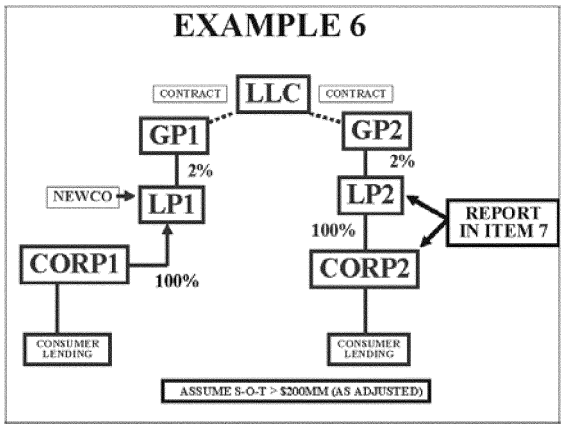
All of the entities under common investment management of the managing entity LLC, including GP1, GP2, LP2 and CORP1 are associates of LP1. In Item 6(c)(i) of its HSR filing, LP1 would report its own holding of 30 percent of the voting securities of CORP1. It would not report the 55 percent holding of LP2 in Item 6(c)(ii) because it is greater than 50 percent. It also would not report GP2's 2 percent holding because it is less than 5 percent. In Item 7, LP1 would identify both LP2 and CORP1 as associates that derive revenues in the same NAICS code as CORP2.

6. LLC is the investment manager for GP1 and GP2 which are the general partners of limited partnerships LP1 and LP2, respectively. LLC holds no equity interests in either general partnership but manages their investments and the investments of the limited partnerships by contract. LP1 is newly formed and its own ultimate parent entity. It plans to

acquire 100 percent of the voting securities of CORP1, which derives revenues in the NAICS code for Consumer Lending. LP2 controls CORP2, which derives revenues in the same NAICS code. All of the entities under the common management of LLC, including LP2 and CORP2, are associates of LP1. For purposes of Item 7, LP1 would report LP2 and CORP2 as associates that derive revenues in the NAICS code that overlaps with CORP1. Even though the investment manager (LLC) holds no equity interest in GP1 or GP2, the contractual arrangement with them makes them associates of LP1 through common management.







7. Corporation A is its own ultimate parent entity and is making an acquisition of Corporation B. Although Corporation A is operationally managed by its officers and its investments, including the acquisition of Corporation B, are managed by its directors, neither the officers nor directors are considered associates of A.

8. Limited partnership A is an investment partnership that is making an acquisition. LLC B has no equity interest in A, but has a contract to manage its investments for a fee. LLC B has an investment committee comprised of twelve of its employees that makes the actual investment decisions. LLC B is an associate of A but none of the twelve employees are associates of A, as LLC B is a managing entity and the twelve individuals are merely its employees. Contrast this with example 3 where a managing entity, EFG, is itself managed by another entity, Mr. X, who is thus an associate.

9. GP is the general partner of FUND. GP has contracted with LLC to act as an

investment advisor with respect to FUND's investments. In this role, LLC acts as a consultant who makes recommendations to GP on what portfolio companies FUND should invest in. The recommendations are non-binding and GP is the only entity that has the authority to exercise investment discretion over FUND's acquisitions of interests in portfolio companies. In this example, GP is an associate of FUND, while LLC is not.

10. GP A is the general partner and investment manager of FUND A1. Mr. X is a principal in the A family of private equity funds and has the contractual right to veto certain proposed actions of GP A and FUND A1, for example, divestitures of stock that would result in a change of control in a portfolio company. His contractual right to veto certain proposed actions does not constitute managing operations. Mr. X does not have the authority under the contract to veto proposed investments of FUND A1 directed by GP A or to direct GP A to authorize investments by FUND A1. In this example, GP A is an associate of FUND A1, while Mr. X is not.

11. LLC is the general partner of LP and has entered into a management contract to exercise investment discretion over LP's investments in portfolio companies as well as to provide certain other administrative services for LP. Mr. Y is the managing member of LLC and as such is the person who actually makes the investment decisions on behalf of LLC. Mr. Y has no management contract with either LLC or LP. In this example, LLC is an associate of LP, while Mr. Y is not. Compare with Example 7 where officers and directors of a corporation are not associates of the corporation.

12. GP is the general partner of LP and has entered into a management contract to exercise investment discretion over LP's investments in portfolio companies. GP has entered into a contract with CORP, under which CORP will manage building maintenance and certain back office functions (e.g., maintenance of phones and computers, accounting, IT and human resources) for LP. GP is an associate of LP because it manages LP's investments. However, the management services provided by CORP do not constitute operational management, therefore, CORP is not an associate of LP.

* * * * *

(f) * * *

(1) * * *

(ii) *Non-corporate interest.* The term ''non-corporate interest'' means an interest in any unincorporated entity which gives the holder the right to any profits of the entity or in the event of dissolution of that entity the right to any of its assets after payment of its debts. These unincorporated entities include, but are not limited to, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, cooperatives and business trusts; but these unincorporated entities do not include trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest and any interest in such a trust is not a non-corporate interest as defined by this rule.

* * * * *

■ 3. Amend § 801.10 by revising paragraph (c)(2) to read as follows:

§ 801.10 Value of voting securities, non-corporate interests and assets to be aquired.

* * * * *

(c) * * *

(2) *Acquisition price.* The acquisition price shall include the value of all consideration for such voting securities, non-corporate interests or assets to be acquired.

* * * * *

■ 4. Amend § 801.15 by revising its section heading, introductory text and paragraphs (a) and (b) to read as follows:

§ 801.15 Aggregation of voting securities, non-corporate interests and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of determining the aggregate total amount of voting securities, non-corporate interests and assets of the acquired person held by the acquiring person under Section 7A(a)(2) and § 801.1(h), none of the following will be held as a result of an acquisition:

(a) Assets, non-corporate interests 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—

(1) Sections 7A(c)(1), (3), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.30, 802.31, 802.35, 802.52, 802.53, 802.63, and 802.70 of this chapter;

(b) Assets, non-corporate interests 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 §§ 802.3, 802.4, and 802.64 of this chapter 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; and

* * * * *

■ 5. Amend § 801.30 by revising its section heading and paragraph (a)(5) to read as follows:

§ 801.30 Tender offers and acquisitions of voting securities and non-corporate interests from third parties.

(a) * * *

(5) All acquisitions (other than mergers and consolidations) in which voting securities or non-corporate interests are to be acquired from a holder or holders other than the issuer or unincorporated entity or an entity included within the same person as the issuer or unincorporated entity;

* * * * *

PART 802—EXEMPTION RULES

■ 6. The authority citation for part 802 continues to read as follows:

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

■ 7. Amend § 802.4 by revising paragraph (a) to read as follows:

§ 802.4 Acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt.

(a) An acquisition of voting securities of an issuer or non-corporate interests in an unincorporated entity whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act pursuant to section 7A(c) of the Act, this part 802, or pursuant to § 801.21, is exempt from the reporting requirements if the acquired issuer or unincorporated entity and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than $50 million (as adjusted). The value of voting or non-voting securities of any other issuer or interests in any unincorporated entity not included within the acquired issuer or unincorporated entity does not count toward the $50 million (as adjusted) limitation for non-exempt assets.

* * * * *

§ 802.21 [Amended]

■ 8. Amend § 802.21 by removing paragraph (b) and its three examples.

■ 9. Amend § 802.52 by revising its section heading and paragraph (b) to read as follows:

§ 802.52 Acquisitions by or from foreign governmental entities.

* * * * *

(b) The acquisition is of assets located within that foreign state or of voting securities or non-corporate interests of an entity organized under the laws of that state.

* * * * *

PART 803—TRANSMITTAL RULES

■ 10. The authority citation for part 803 continues to read as follows:

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

■ 11. Amend § 803.2 by revising paragraphs (b)(2), (c), and (e) to read as follows:

§ 803.2 Instructions applicable to Notification and Report Form.

* * * * *

(b) * * *

(2) For purposes of item 7 of the Notification and Report Form, the acquiring person shall regard the acquired person in the manner described in paragraphs (b)(1)(ii), (iii) and (iv) of this section.

* * * * *

(c) In response to items 5, 7, and 8 of the Notification and Report Form—Information need not be supplied with respect to assets or voting securities to be acquired, the acquisition of which is exempt from the requirements of the act.

* * * * *

(e) A person filing notification may instead provide:

(1) A cite to a previous filing containing documentary materials required to be filed in response to item 4(b) of the Notification and Report Form, which were previously filed by the same person and which are the most recent versions available; except that when the same parties file for a higher threshold no more than 90 days after having made filings with respect to a lower threshold, each party may instead provide a cite to any documents or information in its earlier filing provided that the documents and information are the most recent available;

(2) A cite to an Internet address directly linking to the document, only documents required to be filed in response to item 4(b) of the Notification and Report Form. If an Internet address is inoperative or becomes inoperative during the waiting period, or the document that is linked to it is incomplete, or the link requires payment to access the document, upon notification by the Commission or Assistant Attorney General, the parties must make these documents available to the agencies by either referencing an operative Internet address or by providing paper copies to the agencies as provided in § 803.10(c)(1) by 5 p.m. on the next regular business day. Failure to make the documents available, by the Internet or by providing paper copies, by 5 p.m. on the next regular business day, will result in notice of a deficient filing pursuant to § 803.10(c)(2).

* * * * *

■ 12. Amend § 803.5 by revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(1)(iii), and (a)(1)(vi) to read as follows.

§ 803.5 Affidavits required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, or attached as part of the electronic submission, attesting that the issuer or unincorporated entity whose voting securities or non-corporate interests 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:

* * * * *

(ii) The fact that the acquiring person intends to acquire voting securities or non-corporate interests of the issuer or unincorporated entity;

(iii) The specific classes of voting securities or non-corporate interests of the issuer or unincorporated entity sought to be acquired; and if known, the number of voting securities or non-corporate interests of each such class that would be held by the acquiring person as a result of the acquisition or, if the number of voting securities is not known in the case of an issuer, 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 waiting period;

* * *

(vi) The fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the act.

* * * * *

■ 13. Appendix to Part 803 is revised to read as follows:

Appendix to Part 803—Notification and Report Form

16 C.F.R. Part 803 – Appendix

NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

☐☐☐☐☐☐☐☐
TRANSACTION NUMBER ASSIGNED

FEE INFORMATION *(For Payer Only)*

AMOUNT PAID $ _____

In cases where your filing fee would be higher if based on acquisition price or where the acquisition price is undetermined to the extent that it may straddle a filing fee threshold, attach an explanation of how you determined the appropriate fee.

Attachment Number _____

TAXPAYER IDENTIFICATION NUMBER _____
OR SOCIAL SECURITY NUMBER FOR NATURAL PERSONS

NAME OF PAYER *(if different from PERSON FILING)* _____

WIRE TRANSFER ☐ or CERTIFIED CHECK / MONEY ORDER ATTACHED ☐

WIRE TRANSFER CONFIRMATION NO. _____

FROM (NAME OF INSTITUTION) _____

IS THIS A CORRECTIVE FILING? ☐ YES ☐ NO | CASH TENDER OFFER? ☐ YES ☐ NO | BANKRUPTCY? ☐ YES ☐ NO

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? ☐ YES ☐ NO
(Grants of early termination are published in the Federal Register and on the FTC web site, www.ftc.gov)

(*voluntary*) IS THIS ACQUISITION SUBJECT TO NON-US FILING REQUIREMENTS? ☐ YES ☐ NO
IF YES, list jurisdictions:

ITEM 1

1(a) PERSON FILING

NAME	
HEADQUARTERS ADDRESS	
ADDRESS LINE 2	
CITY, STATE, COUNTRY	
ZIP CODE	
WEB SITE	

1(b) PERSON FILING NOTIFICATION IS ☐ an acquiring person ☐ an acquired person ☐ both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE THE PERSON FILING NOTIFICATION
☐ Corporation ☐ Unincorporated Entity ☐ Natural Person ☐ Other *(Specify)*: _____

1(d) DATA FURNISHED BY
☐ calendar year ☐ fiscal year *(specify period)*: _____ (month/year) to _____ (month/year)

1(e) PUT AN "X" IN THE APPROPRIATE BOX BELOW AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION, IF DIFFERENT THAN THE ULTIMATE PARENT ENTITY

☐ Not Applicable	☐ 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).

NAME	
ADDRESS	
CITY, STATE, COUNTRY	
ZIP CODE	

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS, VOTING SECURITIES OR NON-CORPORATE INTERESTS ARE BEING ACQUIRED, IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

NAME		☐ Not Applicable
ADDRESS		
CITY, STATE, COUNTRY		
ZIP CODE		

PERCENT OF VOTING SECURITIES OR NON-CORPORATE INTERESTS THAT THE UPE HOLDS DIRECTLY OR INDIRECTLY IN THE ACQUIRING OR ACQUIRED ENTITY IDENTIFIED IN ITEM 1(f)	%

1(g) IDENTIFICATION OF PERSONS TO CONTACT REGARDING THIS REPORT

CONTACT PERSON 1		CONTACT PERSON 2	
FIRM NAME		FIRM NAME	
BUSINESS ADDRESS		BUSINESS ADDRESS	
CITY, STATE, COUNTRY		CITY, STATE, COUNTRY	
ZIP CODE		ZIP CODE	
TELEPHONE NUMBER		TELEPHONE NUMBER	
FAX NUMBER		FAX NUMBER	
E-MAIL ADDRESS		E-MAIL ADDRESS	

1(h) 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	
FIRM NAME	
BUSINESS ADDRESS	
CITY, STATE, COUNTRY	
ZIP CODE	
TELEPHONE NUMBER	
FAX NUMBER	
E-MAIL ADDRESS	

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS	LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

2(b) THIS ACQUISITION IS *(put an "X" in all the boxes that apply)*

- ☐ an acquisition of assets
- ☐ a merger (see § 801.2)
- ☐ an acquisition subject to § 801.2(e)
- ☐ a formation of a joint venture or other corporation or unincorporated entity (see § 801.40 or § 801.50)
- ☐ an acquisition subject to § 801.30 (*specify type*)
- ☐ a consolidation (see § 801.2)
- ☐ an acquisition of voting securities
- ☐ a secondary acquisition
- ☐ an acquisition subject to § 801.31
- ☐ an acquisition of non-corporate interests
- ☐ other (*specify*) _____

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED
(acquiring person only in an acquisition of voting securities)

☐ $50 million (as adjusted) ☐ $100 million (as adjusted) ☐ $500 million (as adjusted) ☐ 25% (see Instructions) (as adjusted) ☐ 50% ☐ N/A

2(d)(i) VALUE OF VOTING SECURITIES ALREADY HELD ($MM) $	**(v)** VALUE OF NON-CORPORATE INTERESTS ALREADY HELD ($MM) $	
(ii) PERCENTAGE OF VOTING SECURITIES ALREADY HELD %	**(vi)** PERCENTAGE OF NON-CORPORATE INTERESTS ALREADY HELD %	
(iii) TOTAL VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $	**(vii)** TOTAL VALUE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $	**(ix)** VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITION ($MM) $
(iv) TOTAL PERCENTAGE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION %	**(viii)** TOTAL PERCENTAGE OF NON-CORPORATE INTERESTS TO BE HELD AS A RESULT OF THE ACQUISITION %	**(x)** AGGREGATE TOTAL VALUE ($MM) $

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

ACQUIRING UPE(S)	ACQUIRED UPE(S)
ACQUIRING ENTITY(S)	ACQUIRED ENTITY(S)

TRANSACTION DESCRIPTION

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

(DO NOT ATTACH THE DOCUMENT TO THIS PAGE) ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT _____

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 4

PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 *(See Item by Item instructions)*. THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

4(a) ENTITIES WITHIN THE PERSON FILING NOTIFICATION THAT FILE ANNUAL REPORTS WITH THE SECURITIES AND EXCHANGE COMMISSION	CENTRAL INDEX KEY NUMBER

4(b) ANNUAL REPORTS AND ANNUAL AUDIT REPORTS	ATTACHMENT OR REFERENCE NUMBER

4(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS	ATTACHMENT OR REFERENCE NUMBER

4(d) ADDITIONAL DOCUMENTS	ATTACHMENT OR REFERENCE NUMBER

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5

5(a) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY CODE AND BY MANUFACTURED PRODUCT CODE

6-DIGIT INDUSTRY CODE AND/OR 10-DIGIT PRODUCT CODE	DESCRIPTION	YEAR I_____I TOTAL DOLLAR REVENUES ($MM)

NONE ☐ *(PROVIDE EXPLANATION)*

NAME OF PERSON FILING NOTIFICATION	DATE

5(b) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY	☐ Not Applicable

5(b)(i) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY HAS AGREED TO MAKE

5(b)(ii) DESCRIPTION OF CONSIDERATION THAT EACH PERSON FORMING THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL RECEIVE

5(b)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE CORPORATION OR UNINCORPORATED ENTITY WILL ENGAGE

5(b)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 10-DIGIT PRODUCT CODE (manufactured)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6

6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) HOLDERS OF PERSON FILING NOTIFICATION

6(c)(i) HOLDINGS OF PERSON FILING NOTIFICATION

6(c)(ii) HOLDINGS OF ASSOCIATES *(ACQUIRING PERSON ONLY)*

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 7

OVERLAP DOLLAR REVENUES

7(a) 6-DIGIT NAICS INDUSTRY CODE AND DESCRIPTION

7(b)(i) LIST THE NAME OF EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

7(b)(ii) LIST THE NAME OF EACH ASSOCIATE OF THE ACQUIRING PERSON THAT ALSO DERIVED DOLLAR REVENUES (*ACQUIRING PERSON ONLY*)

7(c) GEOGRAPHIC MARKET INFORMATION FOR EACH PERSON THAT ALSO DERIVED DOLLAR REVENUES

7(d) GEOGRAPHIC MARKET INFORMATION FOR ASSOCIATES OF THE ACQUIRING PERSON (*ACQUIRING PERSON ONLY*)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 8

PRIOR ACQUISITIONS *(ACQUIRING PERSON ONLY)*

CERTIFICATION

This **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 _____ [SEAL]

this _____day of _____, the year _____

Signature _____

My Commission expires _____

Attach the Affidavit required by § 803.5 to the Form.

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

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 **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 $16,000 for each day during which such person is in violation of 15 U.S.C. §18a.

Pursuant to the Hart-Scott-Rodino Act, information and documentary material filed in or with this 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.

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 37 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office, H-303, Federal Trade Commission, Washington, DC 20580
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

Under the **Paperwork Reduction Act**, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears above.

Privacy Act Statement--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the 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 $16,000 per day. We also may be unable to process the Form unless you provide all of the requested information.

This page may be omitted when submitting the Form.

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

INSTRUCTIONS

GENERAL

The Notification and Report Form ("the Form") is required to be submitted pursuant to §803.1(a) of the premerger notification rules, 16 CFR Parts 801-803 ("the Rules").

These instructions specify the information which must be provided in response to the items on the Form. The completed Form, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice ("the Agencies").

The term "documentary attachments" refers to materials supplied in response to Item 3(b), Item 4 and to submissions pursuant to §803.1(b) of the Rules.

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

Information

The central office for information and assistance concerning the Rules and the Form is:

Premerger Notification Office
Federal Trade Commission, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
phone: (202) 326-3100 - e-mail: HSRHelp@hsr.gov

Copies of the Form, Instructions and Rules as well as materials to assist in completing the Form are available at www.ftc.gov/bc/hsr. An electronic version of the Form is available at www.hsr.gov and may be used for the direct electronic submission of filings or to generate a print version of the Form for paper copy submission.

Definitions

The definitions and other provisions governing this Form are set forth in the Rules, 16 CFR Parts 801-803. The governing statute ("the Act"), 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) 48 FR 34427 (July 29, 1983), 61 FR 13688 (March 28, 1996), 66 FR 8693 (February 1, 2001), 70 FR 4994 (January 31, 2005), 70 FR 11513 (March 8, 2005), 70 FR 73369 (December 12, 2005), 70 FR 77312 (December 30, 2005), 71 FR 2943 (January 18, 2006), and Pub. L. No. 106-533, 114 Stat. 2762. See www.ftc.gov/bc/hsr for copies of these materials.

Affidavit

Attach the affidavit required by §803.5 to the Form. If filing electronically, submit an electronic version of the affidavit as attachment 1.

The language found in 28 U.S.C. §1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the affidavit.

For acquisitions to which §801.30 does not apply, the affidavit must attest that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of the person filing notification to complete the transaction.

For acquisitions to which §801.30 does apply, the affidavit must also attest that the issuer whose voting securities or the unincorporated entity whose non-corporate interests are to be acquired has received notice; the identity of the acquiring person and the fact that the acquiring person intends to acquire voting securities of the issuer or non-corporate interests of the unincorporated entity; the specific notification threshold that the acquiring person intends to meet or exceed if an acquisition of voting securities; the fact that the acquisition may be subject to the Act, and that the acquiring person will file notification under the Act; the anticipated date of receipt of such notification by the Agencies; and the fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the Act.

Acquiring persons in transactions covered by §801.30 are required to also submit a copy of the notice served on the acquired person pursuant to §803.5(a)(3).

In the case of a tender offer, the affidavit must also attest that the intention to make the tender offer has been publicly announced.

An affidavit is **not** required of an acquired person in a transaction covered by §801.30. (See §803.5(a)).

Responses

Each answer should identify the item to which it is addressed. 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 identified.

For electronic filings, all items are automatically identified within the Form. Electronic attachments and endnotes may be appended to the Form for any item.

Enter the name of the person filing notification as reported in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the 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 unable to answer any item fully, give such information as is available and provide a statement of reasons for non-compliance 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. All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars. Estimated data should be followed by the notation, "est." For electronic filings, add an endnote with the notation, "est." to any item where data is estimated.

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.

North American Industry Classification System (NAICS) Data

The Form requests dollar revenues and lines of commerce for non-manufactured and manufactured products with respect to operations conducted within the United States and for products manufactured outside of the United States and sold into the United States. Filing persons must submit data at the 6-digit NAICS national industry code level to reflect non-manufacturing revenues. To the extent that dollar revenues (see §803.2(d)) are derived from manufacturing operations (NAICS Sectors 31-33), filing persons must submit data at the 10-digit NAICS product code levels.

References

In reporting information by 6-digit NAICS industry code, refer to the most recent *North American Industry Classification System - United States* published by the Executive Office of the President, Office of Management and Budget. In reporting information by 10-digit NAICS product code, refer to the most recent *Numerical List of Manufactured and Mineral Products* published by the Bureau of the Census. Information regarding NAICS is available at www.census.gov.

Thresholds

Filing fee and notification thresholds are adjusted annually pursuant to Section 7A(a)(2) of the Clayton Act based on the change in gross national product, in accordance with Section 8(a)(5). The current threshold values can be found at www.ftc.gov/bc/hsr.

Limited Response

Information need not be supplied regarding assets, non-corporate interests, or voting securities currently being acquired, when their acquisition is exempt under the statute or rules. (See §803.2(c)). The acquired person should limit its response in the case of an acquisition of assets, to the assets being sold, in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) whose non-corporate interests are being acquired, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such acquired entities. Separate responses may be required where a person is both acquiring and acquired. (See §§803.2(b) and (c)).

Filing

Filers have three options:

(1) Complete and return **ONE** original and **ONE** copy (with one notarized original affidavit and certification and one set of documentary attachments) of the Notification and Report Form ("Form") to:

Premerger Notification Office
Federal Trade Commission, Room 303
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Also, **THREE** copies (with one set of documentary attachments) should be sent to:

Office of Operations, Premerger Unit
Antitrust Division, Department of Justice
950 Pennsylvania Avenue, N.W., Room #3335
Washington, D.C. 20530.

(For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004);

(2) Complete the electronic version of the Form and submit the completed Form with all electronic attachments as directed at www.hsr.gov; or

(3) Complete the electronic version of the Form and submit it electronically as directed at www.hsr.gov, while providing the documentary attachments in paper copy to the FTC and DOJ as in Option 1 above. Note that for Option 3, the attachments must be listed on the attachments page of the Form and classified as "paper to follow".

If one or both delivery sites are unavailable, the Agencies may announce alternate sites for delivery through the media and, if possible, at www.ftc.gov/bc/hsr and www.hsr.gov.

ITEM BY ITEM

Fee Information

The fee for filing the Notification and Report Form is based on the aggregate total amount of assets, voting securities, and controlling non-corporate interests to be held as a result of the acquisition:

Value of assets, voting securities and controlling non-corporate interests to be held	Fee Amount
greater than $50 million (as adjusted) but less than $100 million (as adjusted)	$45,000
$100 million (as adjusted) or greater but less than $500 million (as adjusted)	$125,000
$500 million or greater (as adjusted)	$280,000

For current thresholds and fee information, see www.ftc.gov/bc/hsr.

Amount Paid

Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges. Where an explanatory attachment is required, include in your explanation any adjustments to the acquisition price that serve to lower the fee from that which would otherwise be due. If there is no acquisition price or if the acquisition price may fall within a range that straddles two filing fee thresholds, state the transaction value on which the fee is based and explain the valuation method used. Include in your explanation a description of any exempt assets, the value assigned to each, and the valuation method used.

Payer Identification

Provide the 9-digit Taxpayer Identification Number (TIN) of the

acquiring person and, if different from the filing person, the TIN of the payer(s) of the filing fee. A payer or filing person who is a natural person having no TIN must provide the name and social security number (SSN) of the payer. If the payer or filing person is a foreign person, only the name of the payer and the name of the filing person, if different, need be supplied.

Method of Payment

Check the box indicating the method of fee payment. If paying by electronic wire transfer (EWT), provide the name of the financial institution from which the EWT is being sent and the confirmation number.

To insure filing fees paid by EWT are attributed to the appropriate payer filing notification, the payer must provide the following information to the financial institution initiating the EWT:

The Department of Treasury's ABA Number: 021030004; and
The Federal Trade Commission's ALC Number: 29000001.

If the name used to transmit the EWT differs from the filer's name, provide the filer's name. If the confirmation number is unavailable at the time notification is filed, provide this information by letter within one business day of filing.

When submitting an EWT, all payers should include a contact person and a phone number in the Comment Field.

If paying by certified check or money order, send the payment to the Premerger Notification Office at the address above.

Corrective Filing

Put an X in the appropriate box to indicate whether the notification is a corrective filing being made for an acquisition that has already taken place in violation of the statute. See http://www.ftc.gov/bc/hsr/postconsumfilings.shtm for more information on how to proceed in the case of a corrective filing.

Cash Tender Offer

Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Bankruptcy

Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or by a debtor-in-possession for a transaction that is subject to section 363(b) of the Bankruptcy Code (11 USC §363).

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 and on the FTC web site, www.ftc.gov. Note that if *either* party requests early termination, it may be granted and published.

Transactions Subject to International Antitrust Notification

If, to the knowledge or belief of the filing person at the time of filing, a non-U.S. antitrust or competition authority has been or will be notified of the proposed transaction, list the name of each such authority and the date or anticipated date of each such notification. Response to this item is voluntary.

ITEM 1

Item 1(a)

Provide the name, headquarters address and website (if one exists) of the person filing notification. The name of the person filing is the name of the ultimate parent entity.

Item 1(b)

Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See §801.2).

Item 1(c)

Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, unincorporated entity, natural person, or other (specify).

Item 1(d)

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(e)

Put an X in the appropriate box to indicate if the 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 the 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) of the Form.

Item 1(f)

If an entity within the person filing notification (other than the ultimate parent entity listed in Item 1(a)) is making the acquisition, or if the assets, voting securities or non-corporate interests 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 or non-corporate interests 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 1(g)

Provide the name and title, firm name, address, telephone number, fax number and e-mail address of the primary individual to contact regarding the Form and a backup contact. (See §803.20(b)(2)(ii)).

Item 1(h)

Foreign filing persons must provide the name, firm name, address, telephone number, fax number and e-mail address 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)).

ITEM 2

Item 2(a)

Give the names of all ultimate parent entities of acquiring and

acquired persons that are parties to the acquisition, whether or not they are required to file notification. If not required to file, note as non-reportable.

Item 2(b)

Put an X in all the boxes that apply to this acquisition.

Item 2(c)

(Acquiring person only) Put an X in the box to indicate the highest threshold for which notification is being filed (see §801.1(h)): $50 million (as adjusted), $100 million (as adjusted), $500 million (as adjusted), 25% (if value of voting securities to be held is greater than $1 billion, as adjusted), or 50%. The notification threshold selected should be based on **voting securities only** that will be held as a result of the acquisition.

Note that the 50% notification threshold is the highest threshold and should be used for any acquisition of 50% or more of the voting securities of an issuer, regardless of the value of the voting securities (e.g. an acquisition of 100% of the voting securities of an issuer, valued in excess of $500 million (as adjusted) would cross the 50% notification threshold, not the $500 million (as adjusted) threshold.

Item 2(d)

Item 2(d)(i)

State the value of voting securities already held (see §801.10).

Item 2(d)(ii)

State the percentage of voting securities already held (see §801.12).

Item 2(d)(iii)

State the total value of voting securities to be held as a result of the acquisition (see §801.10).

Item 2(d)(iv)

State the total percentage of voting securities to be held as a result of the acquisition (overall voting power; see §801.12).

Item 2(d)(v)

State the value of non-corporate interests already held (§801.10).

Item 2(d)(vi)

State the percentage of non-corporate interests already held (economic interests).

Item 2(d)(vii)

State the total value of non-corporate interests to be held as a result of the acquisition (see §801.10).

Item 2(d)(viii)

State the total percentage of non-corporate interests to be held as a result of the acquisition (economic interests).

Item 2(d)(ix)

State the value of assets to be held as a result of the acquisition (see §801.10).

Item 2(d)(x)

State the aggregate total value of voting securities, assets and non-corporate interests of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§801.10, 801.12, 801.13, and 801.14).

ITEM 3

Item 3(a)

Briefly describe the transaction, indicating whether assets, voting securities, or non-corporate interests (or some combination) are to be acquired. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification, and the names of any acquired issuers or non-corporate entities. In an asset acquisition, provide a brief description of the business the assets to be acquired comprise. Also 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 there are additional filings, such as shareholder backside filings, associated with the transaction, list those, as well as any special circumstances that apply to the filing, such as whether part of the transaction is exempt under one of the exemptions found in Section 802.

If voting securities or non-corporate interests are to be acquired from a holder other than the issuer or unincorporated entity (or an entity within the same person as the issuer or unincorporated entity) separately identify (if known) such holder and the issuer of the voting securities; an acquisition of non-corporate interests from a holder other than the unincorporated entity or an entity within the unincorporated entity should be reported in the same manner. Acquiring persons involved in tender offers should describe the terms of the offer.

Item 3(b)

Furnish copies of all documents that constitute the agreement(s) among the acquiring person(s) and the person(s) whose voting securities, non-corporate interests or assets are to be acquired. Also furnish Agreements Not to Compete. Documents that constitute the agreement(s) (e.g., a Letter of Intent, Merger Agreement, Purchase and Sale Agreement) must be executed, while Agreements Not to Compete may be provided in draft form if that is the most recent version. If parties are filing on an executed Letter of Intent, they may also submit a draft of the definitive agreement. Note that transactions subject to §801.30 and bankruptcies under 11 USC §363 do not require an executed agreement or letter of intent. (For paper copy submissions, do not attach these documents to the Form).

ITEM 4

Item 4(a)

Provide the names of all entities, including the UPE, within the person filing notification that file annual reports (Form 10-K or Form 20-F) with the United States Securities and Exchange Commission and provide the Central Index Key (CIK) number for each entity.

For Items 4(b) through 4(d), furnish one copy of each of the indicated documents.

Item 4(b)

Provide the most recent annual reports and/or annual audit reports

of the person filing notification and of each unconsolidated United States entity included within such person. Natural persons need only provide annual reports and/or annual audit reports for the highest level entity(s) they control. Alternatively, the person filing notification may incorporate a document by reference to an internet address directly linking to the document (see §803.2(e)(2)).

> **NOTE:** In response to Item 4(b), 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).

If the annual report and/or annual audit report does not show sales or assets sufficient to meet the size of person test, and the size of person test is relevant given the size of the transaction, the filing person must stipulate in Item 4(b) that it meets the test.

Item 4(c)

Provide all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) 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, and the name and title of each individual who prepared each such document.

> **NOTE:** If the person filing notification withholds or redacts 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).

Item 4(d)

For each category below, indicate (if not contained in the document itself) the date of preparation, and the name of the company or organization that prepared each such document.

Item 4(d)(i): Provide all Confidential Information Memoranda prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the Ultimate Parent Entity of the Acquiring or Acquired Person or of the Acquiring or Acquired Entity(s) that specifically relate to the sale of the acquired entity(s) or assets. If no such Confidential Information Memorandum exists, submit any document(s) given to any officer(s) or director(s) of the buyer meant to serve the function of a Confidential Information Memorandum. This does not include ordinary course documents and/or financial data shared in the course of due diligence, except to the extent that such materials served the purpose of a Confidential Information Memorandum when no such Confidential Information Memorandum exists. Documents responsive to this item are limited to those produced up to one year before the date of filing.

Item 4(d)(ii): Provide all studies, surveys, analyses and reports prepared by investment bankers, consultants or other third party advisors ("third party advisors") for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) of the Ultimate Parent Entity of the Acquiring or Acquired Person or of the Acquiring or Acquired Entity(s) for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets that specifically relate to the sale of the acquired entity(s) or assets. This item requires only materials developed by third party advisors during an engagement or for the purpose of seeking an engagement. Documents responsive to this item are limited to those produced up to one year before the date of filing.

Item 4(d)(iii): Provide all studies, surveys, analyses and reports evaluating or analyzing synergies and/or efficiencies prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition. Financial models without stated assumptions need not be provided in response to this item.

Persons filing notification may provide an optional index of documents called for by Item 4.

ITEMS 5 through 7

For Items 5 through 7, the acquired person should limit its response in the case of an acquisition of assets, to the assets to be acquired, in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) being acquired and all entities controlled by such unincorporated entity(s), and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. A person filing as both acquiring and acquired may be required to provide a separate response to these items in each capacity so that it can properly limit its response as an acquired person. (See §§ 803.2(b) and (c)).

> **NOTE:** See "References" listed in the General Instructions to the Form.

ITEM 5

This item requests information by NAICS code regarding non-manufacturing and manufacturing dollar revenues. All persons must submit data on non-manufacturing revenues at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), data must be submitted at the 10-digit product code level (NAICS-based codes). Where certain published NAICS industry codes contain only 5 digits, the filing person should add a zero (0) after the fifth (5th) digit.

Nondepository credit intermediation (NAICS Industry Group Code 5222); securities, commodity contracts, and other financial investments (NAICS Subsector 523); funds, trusts, and other financial vehicles (NAICS Subsector 525); real estate (NAICS Subsector 531); lessors of nonfinancial intangible assets, except copyright works (NAICS Subsector 533); and management of companies and enterprises (NAICS Subsector 551) should identify or explain the revenues reported (e.g. dollar sales receipts).

Persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time the Form is prepared. If no revenues are reported, check the "None" box and provide a brief explanation.

Item 5(a)

Provide 6-digit NAICS industry data concerning the aggregate operations of the person filing notification for the most recent year in NAICS Sectors other than 31-33 (non-manufacturing industries) in which the person engaged and 10-digit NAICS product code data

for each product code within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged, including revenues for each product manufactured outside the U.S. but sold in or into the U.S. Sales of any manufactured product should be reported in a manufacturing code only, even if sold through a separate warehouse or retail establishment. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry codes and 10-digit NAICS product codes 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 non-manufacturing NAICS codes.*

Item 5(b)

Supply the following information only if the acquisition is the formation of a joint venture corporation or unincorporated entity (see §§801.40 and 801.50). If the acquisition is not a formation, check the "Not Applicable" box.

Item 5(b)(i)

List the contributions that each person forming the joint venture corporation or unincorporated entity has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(b)(ii)

Describe fully the consideration which each person forming the joint venture corporation or unincorporated entity will receive in exchange for its contribution(s).

Item 5(b)(iii)

Describe generally the business in which the joint venture corporation or unincorporated entity will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(b)(iv)

Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing, also specify each 10-digit NAICS product code in which it will derive dollar revenues.

ITEM 6

This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired. Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "document attachment" furnished with this 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)

List the name and city and state/country of any U.S. entities and any foreign entities that have sales into the U.S. included within the person filing notification. Entities with total assets of less than $10 million may be omitted. In responding to Item 6(a), it is permissible for a filing person to report all entities within it.

Item 6(b)

For the acquired entity(s) and for the acquiring entity(s) and its UPE or, in the case of natural persons, the top-level corporate or unincorporated entity(s) within that UPE, list the name and headquarters mailing address of each other person that holds (See §801.1(c)) five percent or more of the outstanding voting securities or non-corporate interests of the entity, and the percentage of voting securities or non-corporate interests held by that person.

For limited partnerships, only the general partner(s), regardless of percentage held, should be listed.

Item 6(c)

The person filing notification may rely on its regularly prepared financials that list its investments and those of its associates (for acquiring persons) that list their investments to respond to Items 6(c)(i) and (ii), provided the financials are no more than three months old.

Item 6(c)(i)

If the person filing notification holds five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity, list the issuer and percentage of voting securities held, or in the case of an unincorporated entity, the unincorporated entity and the percentage of non-corporate interests held.

The acquiring person should limit its response, based on its knowledge or belief, to entities that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year. The acquired entity should limit its response, based on its knowledge or belief, to entities that derive revenues in the same 6-digit NAICS industry code as the acquiring person. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the filing person, should be listed. In responding to Item 6(c)(i),it is permissible for a filing person to list all entities in which it holds five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity. Holdings of issuers or unincorporated entities with total assets of less than $10 million may be omitted.

Item 6(c)(ii)

(Acquiring person only) For each associate (see §801.1(d)(2)) of the person filing notification holding five percent or more but less than fifty percent of the voting securities or non-corporate interests of the acquired entity(s) or five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity that derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which the acquired entity(s) or assets also derived dollar revenues in the most recent year, list, based on the knowledge or belief of the acquiring person, the associate, the issuer or unincorporated entity and percentage held. If NAICS codes are unavailable, holdings in entities that have operations in the same industry, based on the knowledge or belief of the acquiring person, should be listed. In responding to Item 6(c)(ii), it is permissible for the acquiring person to list all entities in which its associate(s) holds five percent or more but less than fifty percent of the voting securities of any issuer or non-corporate interests of any unincorporated entity. Holdings of issuers or unincorporated entities with total assets of less than $10 million may be omitted.

ITEM 7

If, to the knowledge or belief of the person filing notification, the acquiring person, or any associate (see §801.1(d)(2)) of the acquiring person, derived any amount of dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which any acquired entity that is a party to the acquisition also derived any amount of dollar revenues in the most recent year, or in which a joint venture corporation or unincorporated entity will derive dollar revenues (note that if the acquired entity is a joint venture the only overlaps will be between the assets to be held by the joint venture and any assets of the acquiring person or its associates not contributed to the joint venture), then for each such 6-digit NAICS industry code:

Item 7(a)

Supply the 6-digit NAICS industry code and description for the industry.

Item 7(b)

Item 7(b)(i)

List the name of each person that is a party to the acquisition that also derived dollar revenues in the 6-digit industry and, if different, the name of the entity(s) that actually derived those revenues.

Item 7(b)(ii)

(Acquiring person only) List the name of each associate of the acquiring person that also derived dollar revenues in the 6-digit industry and, if different, the name of the entity(s) that actually derived those revenues.

Item 7(c)

Item 7(c)(i)

For each 6-digit NAICS industry code within NAICS Sectors 31-33 (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 6-digit NAICS industry code 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 6-digit NAICS industry code within NAICS Sectors or Subsectors 11 (agriculture, forestry, fishing and hunting); 21 (mining); 22 (utilities); 23 (construction); 48-49 (transportation and warehousing); 511(publishing industries); 515 (broadcasting); 517 (telecommunications); and 71 (arts, entertainment and recreation) 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 6-digit NAICS industry code within NAICS Sector 42 (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 6-digit NAICS industry code within NAICS Sectors or Subsectors Nonmetallic Mineral Mining and Quarrying (2123); Concrete (32732); Concrete products (32733); Industrial gases (32512); 44-45 (retail trade), except 442 (furniture and home furnishings stores), and 443 (electronics and appliance stores); 512 (motion picture and sound recording industries); 521 (monetary authorities- central bank); 522 (credit intermediation and related activities); 532 (rental and leasing services); 62 (health care and social assistance); 72 (accommodations and food services), except 7212 (recreational vehicle parks and recreational camps), and 7213 (rooming and boarding houses); 811 (repair and maintenance), except 8114 (Personal and Household Goods Repair and Maintenance); and 812 (personal and laundry 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 6-digit NAICS industry code within NAICS Subsectors 442 (furniture and home furnishings stores), 443 (electronics and appliance stores); 516 (internet publishing & broadcasting); 518 (internet service providers); 519 (other information services); 523 (securities, commodity contracts and other financial investments and related activities); 525 (funds, trusts and other financial vehicles); 53 (real estate and rental and leasing); 54 (professional, scientific and technical services); 55 (management of companies and enterprises); 56 (administrative and support and waste management and remediation services); 61 (educational services); 813 (religious, grantmaking, civic, professional, and similar organizations); and NAICS Industry Group 5242 (insurance agencies and brokerages, and other insurance related activities); 7212 (recreational vehicle parks and recreational camps), 7213 (rooming and boarding houses) and 8114 (personal and household goods repair and maintenance) 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.

Item 7(c)(vi)

For each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

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

Item 7(d)

(Acquiring person only) Use the geographic markets listed in Items 7(c)(i) through 7(c)(vi) to respond to this item, providing the information for associates of the acquiring person. List separately responses for each associate of the acquiring person and, if different, the entity(s) that actually derived the revenues.

ITEM 8

(Acquiring person only). Determine each 6-digit NAICS industry code listed in Item 7(a) above, in which the acquiring person derived dollar revenues of $1 million or more in the most recent year and in which either the acquired entity derived revenues of $1 million or more in the recent year (or in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive revenues of $1 million or more), or, in the case of acquired assets, to which revenues of $1 million or more were attributable in

the most recent year. For each such 6-digit NAICS industry code, 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 6-digit NAICS industry code. List only acquisitions of 50 percent or more of the voting securities of an issuer or 50 percent or more of non-corporate interests of an unincorporated entity that had annual net sales or total assets greater than $10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

For each such acquisition, supply:

(a) the name of the entity from which the voting securities, non-corporate interests or assets were acquired;

(b) the headquarters address of that entity prior to the acquisition;

(c) whether voting securities, non-corporate interests or assets were acquired;

(d) the consummation date of the acquisition; and

(e) the 6-digit (NAICS code) industries by (number and description) identified above in which the acquired entity derived dollar revenues.

CERTIFICATION- (See §803.6)

The language found in 28 U.S.C. §1746 relating to unsworn declarations under penalty of perjury may be used instead of notarization of the certification.

Privacy Act Statement--Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. Our authority to collect Social Security numbers is 31 U.S.C. 7701. The primary use of information submitted on this Form is to determine whether the reported merger or acquisition may violate the antitrust laws. Taxpayer information is collected, used, and may be shared with other agencies and contractors for payment processing, debt collection and reporting purposes. Furnishing the information on the 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 $16,000 per day. We also may be unable to process the Form unless you provide all of the requested information.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–17822 Filed 7–18–11; 8:45 am]

BILLING CODE 6750–01–C

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1120

Substantial Product Hazard List: Children's Upper Outerwear in Sizes 2T to 12 With Neck or Hood Drawstrings and Children's Upper Outerwear in Sizes 2T to 16 With Certain Waist or Bottom Drawstrings

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (''CPSIA''), authorizes the U.S. Consumer Product Safety Commission (''Commission,'' ''CPSC,'' or ''we'') to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product hazard under certain circumstances. We are issuing a final rule to determine that children's upper outerwear garments in sizes 2T to 12 or the equivalent, which have neck or hood drawstrings, and in sizes 2T to 16 or the equivalent, which have waist or bottom drawstrings that do not meet specified criteria, present substantial product hazards.

DATES: The rule takes effect August 18, 2011. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of August 18, 2011.

FOR FURTHER INFORMATION CONTACT: Tanya Topka, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7594, *ttopka@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') was enacted on August 14, 2008. Public Law 110–314, 122 Stat. 3016 (August 14, 2008). The CPSIA amends statutes that the Commission administers and adds certain new requirements.

Section 223 of the CPSIA expands section 15 of the Consumer Product Safety Act (''CPSA'') to add a new subsection (j). That subsection delegates authority to the Commission to specify by rule, for a consumer product or class of consumer products, characteristics whose presence or absence the Commission considers a substantial product hazard. To issue such a rule, the Commission must determine that those characteristics are readily observable and have been addressed by an applicable voluntary standard. The Commission also must find that the standard has been effective in reducing the risk of injury and that there has been substantial compliance with it. 15 U.S.C. 2064(j).

Drawstrings in children's upper outerwear can present a hazard if they become entangled with other objects. Drawstrings in the neck and hood areas of children's upper outerwear present a strangulation hazard when the drawstring becomes caught in objects, such as playground slides. Drawstrings in the waist or bottom areas of children's upper outerwear can catch in the doors or other parts of a motor vehicle, thereby presenting a ''dragging'' hazard when the operator of the vehicle drives off without realizing that someone is attached to the vehicle by the drawstring. The injury data associated with drawstrings is discussed below in section C of this preamble.

In 1994, at the urging of the CPSC, a number of manufacturers and retailers agreed to modify or eliminate drawstrings from hoods and necks of children's clothing. In 1997, the American Society for Testing and Materials (now ASTM International) addressed the hazards presented by drawstrings on upper outerwear by creating a voluntary consensus standard, ASTM F 1816–97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear,* to prohibit drawstrings around the hood and neck area of children's upper outerwear in sizes 2T to 12, and also to limit the length of drawstrings around the waist and bottom of children's upper outerwear in sizes 2T to 16 to 3 inches outside the drawstring channel when the garment is expanded to its fullest width. For waist and bottom drawstrings in upper outerwear sizes 2T to 16, the Standard prohibited toggles, knots, and other attachments at the free ends of drawstrings. The Standard further required that waist and bottom drawstrings in upper outerwear sizes 2T to 16 that are one continuous string be bartacked (*i.e.,* stitched through to prevent the drawstring from being pulled through its channel).

We have estimated that the age range of children likely to wear garments in sizes 2T to 12 is 18 months to 10 years. The age range of children likely to wear garments in sizes 2T to 16 is 18 months to 14 years.

On July 12, 1994, we announced a cooperative effort with a number of manufacturers and retailers who agreed to eliminate or modify drawstrings on the hoods and necks of children's clothing.

In February 1996, we issued guidelines for consumers, manufacturers, and retailers that incorporated the requirements that became ASTM F 1816–97.

On May 12, 2006, the CPSC's Office of Compliance posted a letter on CPSC's website to the manufacturers, importers, and retailers of children's upper outerwear, citing the fatalities that had occurred and urging compliance with the industry standard, ASTM F 1816–97. The letter explained that we consider children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury under section 15(c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1274(c).

The 2006 letter also indicated that we would seek civil penalties if a manufacturer, importer, distributor, or retailer distributed noncomplying children's upper outerwear in commerce and/or failed to report that fact to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). From 2006 through 2010, we participated in 115 recalls of noncomplying products with drawstrings and obtained a number of civil penalties based on the failure of firms to report the defective products to CPSC, as required by section 15(b) of the CPSA.

On May 17, 2010, we published a proposed rule (75 FR 27497) that would deem children's upper outerwear garments in sizes 2T to 12, or the equivalent that have neck or hood drawstrings, and in sizes 2T to 16 or the equivalent that have waist or bottom drawstrings that do not meet specified criteria, substantial product hazards. We received seven comments in response to the proposed rule. We describe and respond to the comments in section E of this preamble.

B. Readily Observable Characteristics That Have Been Addressed by a Voluntary Standard

As mentioned in section A of this preamble, ASTM F 1816–97 addresses upper outerwear garments in sizes 2T to 12 that have neck or hood drawstrings, and in sizes 2T to 16 that have waist or bottom drawstrings that do not meet specified criteria. All of the requirements of the ASTM voluntary standard can be evaluated with simple physical manipulations of the garment,