Wellsville, NY, Wellsville Muni Arpt, Tarantine Fld, VOR–A, Amdt 6, CANCELED
Columbus, OH, John Glenn Columbus Intl, RNAV (RNP) Z RWY 10L, Amdt 1C
Columbus, OH, John Glenn Columbus Intl, RNAV (RNP) Z RWY 10R, Amdt 1C
Delaware, OH, Delaware Muni—Jim Moore Field, RNAV (GPS) RWY 10, Amdt 1A
Delaware, OH, Delaware Muni—Jim Moore Field, RNAV (GPS) RWY 28, Amdt 1A
London, OH, Madison County, RNAV (GPS) RWY 9, Orig-A
London, OH, Madison County, RNAV (GPS) RWY 27, Orig-A
Mount Vernon, OH, Knox County, RNAV (GPS) RWY 28, Amdt 1C
New Philadelphia, OH, Harry Clever Field, RNAV (GPS) RWY 15, Amdt 1
New Philadelphia, OH, Harry Clever Field, RNAV (GPS) RWY 33, Orig
New Philadelphia, OH, Harry Clever Field, VOR–A, Amdt 2B
Sidney, OH, Sidney Muni, RNAV (GPS) RWY 28, Amdt 1A
Steubenville, OH, Jefferson County Airpark, RNAV (GPS) RWY 32, Amdt 1A
Willard, OH, Willard, Takeoff Minimums and Obstacle DP, Amdt 2
Fairview, OK, Fairview Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Tahlequah, OK, Tahlequah Muni, RNAV (GPS) RWY 35, Amdt 1A
Beaver Falls, PA, Beaver County, LOC RWY 10, Amdt 4C
St Marys, PA, St Marys Muni, LOC RWY 28, Amdt 4D
St Marys, PA, St Marys Muni, RNAV (GPS) RWY 28, Amdt 1D
St Marys, PA, St Marys Muni, Takeoff Minimums and Obstacle DP, Amdt 2A
Cleveland, TN, Cleveland Rgnl Jetport, RNAV (GPS) RWY 3, Amdt 2
Cleveland, TN, Cleveland Rgnl Jetport, RNAV (GPS) RWY 21, Amdt 2
Cleveland, TN, Cleveland Rgnl Jetport, Takeoff Minimums and Obstacle DP, Amdt 2
Austin, TX, Austin-Bergstrom Intl, ILS OR LOC RWY 35R, ILS RWY 35R SA CAT I, ILS RWY 35R SA CAT II, Amdt 4
Floydada, TX, Floydada Muni, RNAV (GPS) RWY 17, Amdt 1
Floydada, TX, Floydada Muni, RNAV (GPS) RWY 35, Amdt 1
Renton, WA, Renton Muni, Takeoff Minimums and Obstacle DP, Amdt 8A
Seattle, WA, Seattle-Tacoma Intl, Takeoff Minimums and Obstacle DP, Amdt 4B
Wheeling, WV, Wheeling Ohio Co, RNAV (GPS) RWY 34, Amdt 1A
Jackson, WY, Jackson Hole, RNAV (RNP) Y RWY 1, Amdt 1
Jackson, WY, Jackson Hole, RNAV (RNP) Y RWY 19, Amdt 2
Jackson, WY, Jackson Hole, RNAV (RNP) Z RWY 1, Amdt 1

[FR Doc. 2018–15059 Filed 7–13–18; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802, and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending the Hart-Scott-Rodino (''HSR'') Premerger Notification Rules (the ''Rules'') that require the parties to certain mergers and acquisitions to file reports with the Federal Trade Commission (''the Commission'' or ''FTC'') and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'' or ''DOJ'') (together the ''Antitrust Agencies'' or ''Agencies'') and to wait a specified period of time before consummating such transactions. The Commission is amending the Rules to make them clearer and easier to apply. The Commission is also amending the Rules to allow for the use of email in certain circumstances. Finally, the Commission is adding updated Instructions to the Premerger Notification and Report Form which include amendments for clarity and to make several non-substantive changes.

DATES: Effective August 15, 2018.

FOR FURTHER INFORMATION CONTACT: Nora Whitehead, Attorney, Premerger Notification Office, Bureau of Competition, Room 5301, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024. Telephone: (202) 326–3100, Email: *nwhitehead@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Section 7A of the Clayton Act (the ''Act'') requires the parties to certain mergers or acquisitions to file reports with the Commission and DOJ and wait a specified period before consummating the proposed transaction to allow the Agencies to conduct their initial review of the transaction's competitive impact. The reporting requirement and the waiting period that it triggers are intended to enable the Antitrust 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.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Section 7A(d)(2) of the Act, 15 U.S.C.

18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A of the Act.

Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Rules, codified in 16 CFR parts 801, 802, and 803, and the Premerger Notification and Report Form (''Form'') and its associated Instructions, codified in the appendix to part 803, to govern the form of premerger notification to be provided by merging parties.

Potential filing parties rely on the Rules to determine whether they must file under the Act and often consult the Premerger Notification Office to better understand how to apply the Rules. These changes to the Rules and Instructions address many of the questions received.

Amendments to the Rules

The Commission is amending the Rules, as described below, in order to clarify them and make them easier for potential filing parties to apply. The Commission is also amending the Rules to allow for the use of email in sending notice letters pursuant to 16 CFR 801.30, granting early termination, withdrawing a filing pursuant to 16 CFR 803.12, and issuing requests for additional information or documentary material (''Second Requests'').

A. Control of a Trust

The Commission is amending § 801.1(b)(2) to clarify the term ''control'' as it pertains to trusts. This change explains that a person or entity is deemed to control a trust if that person or entity has the contractual power to designate 50 percent or more of the trust's trustees, where the trust is also irrevocable and/or the settlor does not retain a reversionary interest. This revision does not alter the substance of the test, but merely aims to eliminate confusion that arises from the text as currently written.

B. Exemption for Goods Acquired in the Ordinary Course of Business

The Commission is amending § 802.1 to remove ''realty'' from the heading and introductory paragraph of the rule. Although section 7A(c)(1) of the Act exempts from the reporting requirement both goods and realty transferred in the ordinary course of business, § 802.1 addresses only the exemption of goods, and the reference to realty in the heading and introductory paragraph is misleading and confusing. Prior to 1996, § 802.1 paralleled the language of the statute, which allowed for a broad ordinary course exemption but contained no guidance on specifics. In 1996, the FTC revised and clarified the ''ordinary course of business'' exemption with four new rules—§ 802.1 through§ 802.3 and § 802.5. With this change, § 802.1 was amended to address only the acquisition of goods in the ordinary course of business. The removal of the term ''realty'' from § 802.1does not affect the treatment of acquisitions of realty, which are addressed in the other regulations noted above.

In addition, the Commission is amending example 4 to § 802.1 to clarify that the acquisition described could be exempt pursuant to § 802.2.

C. Intraperson Transactions

The Commission is amending § 802.30(c) to add ''non-corporate interests'' after assets and voting securities. This change clarifies that, in the context of a formation pursuant to § 801.40 or § 801.50, the contribution of non-corporate interests by the acquiring person to the newly formed entity, like the contribution of assets and voting securities, is exempt from the requirements of the Act as to that contributing acquiring person. This change corrects an oversight in the non-corporate rulemaking.[1]

D. Entity Formation

The Commission is amending § 802.41, Example 1, to replace the word ''cash'' with ''assets.'' In its current form, the example is confusing and misleading because the acquisition of an entity that holds only cash is not subject to notification requirements.

E. Affidavits

The Commission is amending § 803.5(a)(1) to clarify that the provision applies to acquisitions of non-corporate interests as well as acquisitions of voting securities. With this amendment, the Commission brings § 803.5(a)(1) into accord with the language in the rest of § 803.5 regarding the applicability of the rule to acquisitions of non-corporate interests.

F. Withdraw and Refile Notification

The Commission is amending § 803.12(c) to clarify that the process for withdrawing an HSR filing and resubmitting it without incurring a new filing fee is available only during the initial waiting period. Although a filing may be withdrawn at any time while the waiting period is open, pursuant to § 803.12(a), a party may refile without paying a new fee only prior to the expiration or early termination of the initial waiting period and prior to the issuance of a Second Request. This revision eliminates confusion about the availability of the withdraw and refile process.

G. Use of Email

The Commission makes the following amendments to allow for the use of email.

- Section 803.5(a)(1) is amended to allow notice letters required by § 801.30 to be sent via email. The PNO has permitted notice letters to be sent via email for many years, and the Commission now formally authorizes the use of email to send notice letters pursuant to § 801.30. The Commission is also amending § 803.5(a)(1) to clarify that notice letters sent via email must be sent to the email address of an officer within the acquired issuer, such as the Chief Executive Officer, General Counsel or Secretary, or in the case of an unincorporated entity, persons exercising similar functions. Allowing notice letters to be sent via email to an appropriate person at the acquired entity will make the process of providing and receiving the notice letter required by § 801.30 more efficient for filing parties.
- Section 803.11(c) is amended to provide that grants of early termination will become effective upon notice to the filing persons transmitted by either telephone or email. Notice by email will also serve as written confirmation. Allowing for notice of grants of early termination by email eliminates the time-intensive and inefficient process of calling each party individually and then following-up with a hard copy letter, instead combining notice and confirmation into one step.
- Section 803.12(a) and (b) are amended to provide that a party's notification to the Agencies of its withdrawal of its premerger notification may be delivered in writing by email or mail to the Agencies.
- Section 803.20(b) is amended to provide that a Second Request may be delivered in writing by email. Current Agency practice is to send notice via mail as well as to email the parties a Second Request within the original waiting period. In addition, the section is amended to eliminate the requirement that the full text of a Second Request will be read upon request. This amendment makes clear that email confirmation of the Second Request within the original waiting period is sufficient for the Second Request to be effective, and that email is a valid means of communication during the waiting period.

These amendments will make the Rules easier to apply for both filing parties and the Agencies. Further, amending the Rules to allow for the use of email in sending notice letters pursuant to § 801.30, granting early termination, withdrawing a filing, and issuing Second Requests will make these processes more efficient.

Revisions to the Instructions to the Form

The Commission is adding updated Instructions to the Form with amendments as follows.

- Page I of the Instructions now provides an email address for the Premerger Notification Office, an updated address for DOJ's Premerger and Division Statistics Unit, and a reminder that affidavits and certifications submitted with DVD filings should be in searchable PDF format.
- Page I of the Instructions is also edited to clarify how the terms ''documentary attachments,'' ''person filing,'' ''filing person,'' and ''ultimate parent entity'' are used in the Instructions.
- Page II of the Instructions is edited to clarify that filing parties should continue to use 6- and 10-digit 2012 NAICS codes when responding to certain items in the Form, until further announcement by the Premerger Notification Office.
- Page II of the Instructions is further edited to clarify that the limitation on the acquired person's response applies to Items 5–7 of the Form.
- Page III of the Instructions is edited to indicate that there are now specific, limited criteria for fee payment via certified check.
- Page IV of the Instructions is edited to remove references to fax numbers.
- Page V of the Instructions is edited to clarify that it is not necessary to list all subsidiaries wholly owned by the acquired entity in Item 3(a), and to require filing parties to provide an index of any coded names used to refer to the parties in any transaction document(s).

[1] 70 FR 11502 (Mar. 8, 2005).

▪ Page V of the Instructions is also edited to include a list of the most common mistakes when completing the HSR Form.

▪ Page VI of the Instructions is edited to include additional instructions regarding the numbering and cross-referencing of Item 4(c) and 4(d) documents.

▪ Page VI of the Instructions is further clarified to note that any privilege log(s) should contain the names of inside and outside counsel providing privileged legal advice.

▪ Page IX of the Instructions is edited to note that if the acquiring person reports an associate overlap only, the acquired person need not respond to Item 7.

▪ Page XI of the Instructions is edited to cross-reference the regulation setting civil penalties for consummation of a reportable transaction without providing complete and proper notification.

▪ The footer on each page of the Instructions has been updated to reflect the date of the latest revision.

These amendments to the Instructions, which provide additional clarity, will benefit filing parties in the preparation of the Form.

Administrative Procedure Act

The Commission finds good cause to adopt these changes without prior public comment. Under the Administrative Procedure Act (''APA''), notice and comment are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B).

The Commission is amending the Rules to make them clearer and easier to apply. The Commission is also amending the Rules to allow for the use of email in certain circumstances. Finally, the Commission is amending the Instructions to the Form for clarity and to make several non-substantive changes. These amendments fall within the category of rules covering agency procedure and practice that are exempt from the notice-and-comment requirements of the APA. *See* 5 U.S.C. 553(b)(A). Because the amendments are not substantive in nature, they are also not subject to the delayed effective date provisions of the APA. *See* 5 U.S.C. 553(d) (substantive rules may take effect no sooner than 30 days after publication). For these reasons, the Commission finds that there is good cause for adopting this final rule as effective on August 15, 2018 without prior public comment.

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 proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. The Regulatory Flexibility Act requirements apply, however, only to rules or amendments that are subject to the notice-and-comment requirements of the APA. *See* 5 U.S.C. 603, 604. Because these amendments are exempt from those APA requirements, as noted earlier, they are also exempt from the Regulatory Flexibility Act requirements. In any event, because of the size of the transactions necessary to invoke an HSR Filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, amendments to the Act in 2001 were intended to reduce the burden of the premerger notification program by exempting all transactions valued at less than $50 million (as adjusted annually). Further, none of the proposed rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, to the extent, if any, that the Regulatory Flexibility Act applies, the Commission certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. This document serves as notice of this certification to the Small Business Administration.

Paperwork Reduction Act

These changes do not contain any record maintenance, reporting or disclosure requirements that would constitute agency ''collections of information'' that would have to be submitted for clearance and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

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

Antitrust.

By direction of the Commission.

Donald S. Clark,

Secretary.

For the reasons stated above, 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 the introductory text of paragraph (b)(2) to read as follows:

§ 801.1 Definitions.

* * * * *

(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 50 percent or more of the trustees in the case of trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest.

* * * * *

PART 802—EXEMPTION RULES

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

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

■ 4. Amend § 802.1 by revising the section heading, introductory text, and Example 4 of paragraph (d)(4) to read as follows:

§ 802.1 Acquisitions of goods in the ordinary course of business.

Pursuant to section 7A(c)(1) of the Clayton Act (the ''Act''), acquisitions of goods transferred in the ordinary course of business are exempt from the notification requirements of the Act. This section identifies certain acquisitions of goods that are exempt as transfers in the ordinary course of business. This section also identifies certain acquisitions of goods that are not in the ordinary course of business and, therefore, do not qualify for the exemption.

* * * * *

(d) * * *

(4) * * *

Examples: * * *

4. ''A,'' a national producer of canned fruit, preserves, jams and jellies, agrees to purchase from ''B'' for in excess of $50 million (as adjusted) a total of 20,000 acres of orchards and vineyards in several locations throughout the U.S. ''A'' plans to harvest the fruit from the acreage for use in its canning operations. The acquisition is not exempt under this section because orchards and vineyards are real property, not ''goods.'' If, on the other hand, ''A'' had contracted to acquire from ''B'' the fruit and grapes harvested from the orchards and vineyards, the acquisition would qualify for the exemption as an acquisition of current supplies under paragraph (c)(3) of this section. Although the transfer of orchards and vineyards is not exempt under this

section, the acquisition could be exempt under § 802.2(g) as an acquisition of agricultural property.

* * * * *

■ 5. Amend § 802.30 by revising the introductory text of paragraph (c) to read as follows:

§ 802.30 Intraperson transactions.

* * * * *

(c) For purposes of applying § 802.4(a) to an acquisition that may be reportable under § 801.40 or § 801.50, assets, voting securities, or non-corporate interests contributed by the acquiring person to a new entity upon its formation are assets, voting securities, or non- corporate interests whose acquisition by that acquiring person is exempt from the requirements of the Act.

* * * * *

■ 6. Amend § 802.41 by revising Example 1 to read as follows:

§ 802.41 Corporations or unincorporated entities at time of formation.

* * * * *

Examples: 1. Corporations A and B, each having sales of in excess of $100 million (as adjusted), each propose to contribute in excess of $50 million (as adjusted) in assets in exchange for 50 percent of the voting securities of a new corporation, N. Under this section, the new corporation need not file notification, although both A and B must do so and observe the waiting period prior to receiving any voting securities of N.

* * * * *

PART 803—TRANSMITTAL RULES

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

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

■ 8. Amend § 803.5 by:

■ a. Revising the introductory text of paragraph (a)(1);

■ b. Adding an example in paragraph (a)(1)(vi); and

■ c. In paragraph (a)(2), removing ''*Example:*'' and adding in its place ''*Examples to paragraph (a)(2):*''.

The revisions and addition 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 with the DVD submission, attesting that the issuer or unincorporated entity whose voting securities or non-corporate interests are to be acquired has received written notice delivered to an officer (or a person exercising similar functions in the case of an entity without officers) by email, certified or registered mail, wire, or hand delivery, at its principal executive offices, of:

* * * * *

(vi) * * *

Example to paragraph (a)(1)(vi): 1. Company A intends to acquire voting securities of Company B. ''A'' sends, via email, a notice letter to a general email account, *information@CompanyB.com.* ''A'' has not provided sufficient notice. Alternatively, ''A'' sends, via email, a notice letter to ''B's'' President, Jane Doe, at *Jane.Doe@CompanyB.com.* ''A'' has provided email notice to a specific officer of ''B.''

* * * * *

■ 9. Amend § 803.11 by revising paragraph (c) to read as follows:

§ 803.11 Termination of waiting period.

* * * * *

(c) The Federal Trade Commission and the Assistant Attorney General may, in their discretion, terminate a waiting period upon the written request of any person filing notification or, notwithstanding paragraph (a) of this section, sua sponte. A request for termination of the waiting period shall be sent to the offices designated in § 803.10(c). Termination shall be effective upon notice to any requesting person by either email or telephone, and such notice shall be given as soon as possible. Such notice shall be made to each person which has filed notification, and notice of termination shall be published in the **Federal Register** in accordance with section 7A(b)(2) of the Clayton Act (the ''act''). The Federal Trade Commission and the Assistant Attorney General also may use other means to make the termination public, prior to publication in the **Federal Register** in a manner that will make the information equally accessible to all members of the public.

■ 10. Amend § 803.12 by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 803.12 Withdraw and refile notification.

(a) *Voluntary.* An acquiring person, and in the case of an acquisition to which § 801.30 does not apply, an acquired person, may withdraw its notification by notifying the Federal Trade Commission and the Antitrust Division in writing by email or mail of such withdrawal.

(b) *Upon public announcement of termination.* An acquiring person's notification or, in the case of an acquisition to which § 801.30 of this chapter does not apply, an acquiring or an acquired person's notification, will be deemed to have been withdrawn if any filing that publicly announces the expiration, termination or withdrawal of a tender offer or the termination of an agreement or letter of intent is made by the acquiring person or the acquired person with the U.S. Securities and Exchange Commission (''SEC'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and rules promulgated under that act. The acquiring person or acquired person must notify the Federal Trade Commission and the Antitrust Division in writing by email or mail that such filing has been made with the SEC and the withdrawal shall be deemed effective on the date of the SEC filing. Withdrawal of the HSR notification(s) shall occur even if statements are made in the SEC filing indicating a desire to recommence the tender offer or enter into a new or amended agreement or letter of intent. This paragraph is inapplicable if the initial 15-day or 30-day waiting period has expired without issuance of a request for additional information or documentary material and without an agreement in place with the Agencies to delay closing of the transaction (''a timing agreement''); or early termination of that waiting period has been granted, without a timing agreement in place; or if a request for additional information or documentary material has been issued and the Agencies have either granted early termination or allowed the extended waiting period to expire following certification of compliance without a timing agreement in place.

(c) *Resubmission without a new filing fee.* (1) An acquiring person whose notification has been voluntarily withdrawn pursuant to paragraph (a) of this section, or an acquiring person whose notification is deemed to have been automatically withdrawn under paragraph (b) of this section, may resubmit its notification, thereby initiating a new waiting period for the same transaction without an additional filing fee pursuant to § 803.9(f). This procedure may be used only one time, and only under the following circumstances:

(i) The notification is withdrawn prior to the expiration or early termination of the waiting period and prior to the issuance of a request for additional information pursuant to § 803.20 and section 7A(e) of the act;

(ii) The proposed acquisition does not change in any material way;

(iii) The resubmitted notification is recertified, and the submission, as it relates to Items 4(a), 4(b), 4(c), and 4(d) of the Notification and Report Form, is updated to the date of the resubmission;

(iv) A new executed affidavit is provided with the resubmitted HSR filing; and

(v) The resubmitted notification is refiled prior to the close of the second business day after withdrawal.

* * * * *

■ 11. Amend § 803.20 by revising paragraphs (b)(2)(ii) and (b)(3) and the example in paragraph (b)(3) to read as follows:

§ 803.20 Requests for additional information or documentary material.

* * * * *

(b) * * *

(2) * * *

(ii) In the case of a written request, upon notice of the issuance of such request to the person to which it is directed within the original 30-day (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides), provided that written confirmation of the request is emailed or mailed to the person to which the request is directed within the original 30-day (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides). Notice to the person to which the request is directed may be given by email, telephone or in person. The person filing notification shall keep a designated individual reasonably available during normal business hours throughout the waiting period at the email or telephone number supplied in the Notification and Report Form. Notice of a request for additional information or documentary material need be given by email or telephone only to that individual or to the individual designated in accordance with paragraph (b)(2)(iii) of this section. The written confirmation of the request shall be emailed or mailed to the ultimate parent entity of the person filing notification, or if another entity within the person filed notification pursuant to § 803.2(a), then to such entity.

* * * * *

(3) *Requests to natural persons.* A request addressed to an individual, requiring that he or she submit additional information or documentary material, shall be transmitted to the person filing notification of which the individual is an ultimate parent entity, officer, director, partner, agent or employee, and shall be effective as to that individual when effective as to the person filing notification pursuant to paragraph (b)(2) of this section. A written copy of the request shall also be delivered to the individual by email, by hand, or by registered or certified mail at his or her home or business address.

Example: A designee of the Federal Trade Commission sends, by email, a written request for additional information to the CEO of corporation W, the ultimate parent entity within a person that filed notification. The request is effective under paragraph (b)(2)(i) of this section. If the email also addressed a request for documentary material to the Secretary of corporation W, a named individual, under this paragraph (b)(3), the request would likewise be effective as to the individual upon receipt of the email by corporation W. In the latter case, the Federal Trade Commission also would send a copy of the request to the Secretary of the corporation at his or her home or business address, or email.

* * * * *

Appendix to Part 803 [Redesignated as Appendix A to Part 803]

■ 12. Redesignate the appendix to part 803 as appendix A to part 803.

■ 13. Add appendix B to part 803 to read as follows:

Appendix B to Part 803—Instructions to the Notification and Report Form for Certain Mergers and Acquisitions

BILLING CODE 6750–01–P

CMXCV

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

INSTRUCTIONS **OMB: 3084-0005**

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 that must be provided in response to the items on the Form.

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

Premerger Notification Office
Federal Trade Commission, Room #5301
400 7th Street, S.W.
Washington, D.C. 20024
Phone: (202) 326-3100
E-mail: HSRhelp@ftc.gov

Copies of the Form, Instructions and Rules as well as information to assist in completing the Form are available at the PNO website.

Definitions
The definitions used in this Form are set forth in the Rules. See Statute, Rules and Formal Interpretations for copies of the Hart-Scott-Rodino Act ("the Act"), the Rules, and the Federal Register Notices issuing the Rules and Rule amendments ("Statements of Basis and Purpose").

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

The terms "person filing" or "filing person" mean the ultimate parent entity ("UPE"). (See § 801.1(a)(3)). The terms are used herein interchangeably.

Filing
Parties should file the completed Form, together with all documentary attachments, with the Premerger Notification Office ("PNO") of the Federal Trade Commission ("FTC") and the Premerger Unit of the Antitrust Division of the Department of Justice ("DOJ") (together, "the Agencies"). Filers have the option of submitting a DVD filing or a paper filing. Filings should be submitted to:

Premerger Notification Office
Federal Trade Commission, Room #5301
400 7th Street, S.W.
Washington, D.C. 20024

and

Department of Justice
Antitrust Division
Premerger and Division Statistics Unit
450 Fifth Street, N.W., Suite 1100
Washington, D.C. 20530

If one or both delivery sites are unavailable, the Agencies may announce alternate sites for delivery through the media and, if possible, at the PNO website.

If submitting a DVD filing

1) Provide the FTC with:

   TWO (2) DVDs, each containing the Form, affidavit, certification and all documentary attachments, along with the original hard copies of the cover letter, certification and affidavit.

2) Provide DOJ with:

   TWO (2) DVDs containing the same content as above, along with **THREE** (3) hard copies of the cover letter.

The Form must be a searchable PDF document. All other files must be in searchable PDF or MS Excel spreadsheet format and saved in color, if applicable. This includes the affidavit and certification.

Label each DVD with the name of the person filing, the name of a contact person and that person's phone number. Leave space on the DVD for the Agencies to write the assigned transaction number and date of receipt.

If the DVD or files contain viruses, passwords, or are not readable, the filing will not be accepted and the waiting period will not start.

For further instructions on DVD filing and specific DVD requirements, go to HSR Resources on the PNO website.

If submitting a paper filing

1) Provide the FTC with:

   ONE (1) original and **ONE** (1) copy of the Form, certification page and affidavit, along with an original cover letter and **ONE** (1) set of documentary attachments.

2) Provide DOJ with:

   TWO (2) copies of the Form, certification page and affidavit, along with **THREE** (3) copies of the cover letter, and **ONE** (1) set of documentary attachments.

Affidavits
Affidavit(s) are required by § 803.5 and must attest to the good faith of the persons filing to complete the transaction. Affidavits must be notarized or use the language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury. If an entity is filing on behalf of the acquiring or acquired person, the affidavit must still attest to the good faith of the UPE.

In non-§ 801.30 transactions, the affidavit(s) (submitted by both persons filing) 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. (See § 803.5(b)).

In § 801.30 transactions, the affidavit (submitted only by the acquiring person) must attest:

1) that the issuer whose voting securities or the unincorporated entity whose non-corporate interests are to be acquired has received notice, as described below, from the acquiring person;

2) in the case of a tender offer, that the intention to make the tender offer has been publicly announced; and

3) the good faith intention of the person filing notification to complete the transaction.

Acquiring persons in § 801.30 transactions are required to submit a copy of the notice received by the acquired person pursuant to § 803.5(a)(3) along with the filing. This notice must include:

1) 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;

2) the specific notification threshold that the acquiring person intends to meet or exceed in an acquisition of voting securities;

3) the fact that the acquisition may be subject to the Act, and that the acquiring person will file notification under the Act;

4) the anticipated date of receipt of such notification by the Agencies; and

5) the fact that the person within which the issuer or unincorporated entity is included may be required to file notification under the Act. (See § 803.5(a)).

Responses
Enter the name of the person filing notification in Item 1(a) on page 1 of the Form, and enter the same name and the date on which the Form is completed at the top of each page of the Form.

If there is insufficient room on the Form for a response to a particular item, attach "additional pages" behind that item on the Form. Filers must submit a complete set of additional pages within each copy of the Form.

Each additional page should identify, at the top of the page, the name of the person filing notification, the date on which the Form is completed and the item to which it is addressed.

Voluntary submissions pursuant to § 803.1(b) should be identified as V-1, V-2, etc.

If unable to answer any item fully, provide such information as is available and 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 source or basis of such estimates. Add an endnote with the notation "est." to any item where data are estimated.

All financial information should be expressed in millions of dollars rounded to the nearest one-tenth of a million dollars.

Limited Response
The acquired person should limit its response in Items 5-7:

1) in the case of an acquisition of assets, to the assets being acquired;

2) 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; and

3) in the case of an acquisition of non-corporate interests, to the unincorporated entity(s) whose non-corporate interests 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)).

Information need not be supplied regarding assets, voting securities or non-corporate interests currently being acquired when their acquisition is exempt under the Act or Rules. (See § 803.2(c)).

Year
All references to "year" refer to calendar year. If data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period that 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" categorized by NAICS codes 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. (See § 803.2(d)). Filing persons must submit data at the 6-digit NAICS national industry code level to reflect non-manufacturing dollar revenues. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), filing persons must only submit data at the 10-digit NAICS product code levels, not the 6-digit level. (See Item 5 below).

In reporting information by 6-digit NAICS industry code, refer to the 2012 *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 2012 *Numerical List of Manufactured and Mineral Products* published by the Bureau of the Census. Information regarding NAICS is available at www.census.gov. This site also provides assistance in choosing the proper code(s) for reporting in Item 5 of the Form.

Filers should continue to use 6- and 10-digit 2012 NAICS codes when filling out Items 5, 7, and 8 of the Form. The U.S. Census Bureau is transitioning to a new classification system and the PNO will wait until that system is fully functional before switching. Please monitor the PNO's website for further announcements on this topic.

Thresholds
Filing fee and notification thresholds are adjusted annually pursuant to 15 U.S.C. § 18A(a)(2)(A) based on the change in gross national product, in accordance with 15 U.S.C. § 19(a)(5). The current threshold values can be found at Current Filing Thresholds.

END OF GENERAL SECTION

Online Style Sheet for the Form

Online Tips for the Form

THE FORM - ITEM BY ITEM

Fee Information
The fee for filing the Form is based on the aggregate total value 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 the PNO website.

Amount Paid
Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges.

Payer Identification
Provide the payer's name and 9-digit Taxpayer Identification Number (TIN). If the payer is a natural person with no TIN, provide the natural person's social security number.

Method of Payment
The preferred method of payment is by electronic wire transfer (EWT). For EWT payments, provide the EWT confirmation number and the name of the financial institution from which the EWT is being sent. If the EWT confirmation number is not available at the time of filing, provide this information to the PNO within two business days of filing.

In order for the FTC to track payment, the payer must provide information required by the Fedwire Instructions to the financial institution initiating the EWT. A template of the Fedwire Instructions is available at the PNO website on the Filing Fee Information page.

There are now specific, limited criteria for paying by certified check. Please see the Filing Fee Information page for details.

Corrective Filings
Put an X in the appropriate box to indicate whether the notification is a corrective filing (i.e., an acquisition that has already taken place without filing, in violation of the statute). See Procedures for Submitting Post-Consummation Filings 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 U.S.C. § 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 15 U.S.C. § 18A(b)(2), and on the PNO website. Note that if either party in any transaction 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. Response to this item is voluntary.

Index of Hyperlinks in these Instructions:

PNO website: https://www.ftc.gov/enforcement/premerger-notification-program

Statute, Rules and Formal Interpretations: https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-formal-interpretations

HSR Resources: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources

Current Filing Thresholds: https://www.ftc.gov/enforcement/premerger-notification-program/current-thresholds

Online Style Sheet for the Form: https://www.ftc.gov/enforcement/premerger-notification-program/form-instructions/style-sheet

Online Tips for the Form: https://www.ftc.gov/system/files/attachments/form-instructions/hsr_form_tip_sheet_1.0.5.pdf

Filing Fee Information: https://www.ftc.gov/enforcement/premerger-notification-program/filing-fee-information

Procedures for Submitting Post-Consummation Filings: https://www.ftc.gov/enforcement/premerger-notification-program/post-consummation-filings-hsr-violations

Online Tips for Item 4(c): https://www.ftc.gov/sites/default/files/attachments/hsr-resources/4ctipsheet.pdf

Online Tips for Item 4(d): https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/pno-guidance-item-4d

Online Tips for Item 5: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/reporting-revenues-item-5

Online Tips for Item 6: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/tips-completing-item-6-hsr-form

Online Tips for Item 7: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/tips-completing-item-7-hsr-form

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 UPE. (See § 801.1(a)(3)).

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). (See § 801.1).

Item 1(d)
Put an X in the appropriate box to indicate whether data furnished in Item 5 is by calendar year or fiscal year. If fiscal year, specify the time period.

Item 1(e)
Put an X in the appropriate box to indicate if the Form is being filed on behalf of the UPE 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 filing person named in Item 1(a) of the Form.

Item 1(f)
For the acquiring person, if an entity other than the UPE listed in Item 1(a) is making the acquisition, provide the name and mailing address of that entity and the percentage of its voting securities or non-corporate interests held directly or indirectly by the person named in Item 1(a) above.

For the acquired person, if the assets, voting securities or non-corporate interests of an entity other than the UPE 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 directly or indirectly by the person named in Item 1(a) above.`

Item 1(g)
Provide the name and title, firm name, address, telephone number, and e-mail address of the primary and secondary individuals to contact regarding the Form. A second contact person is required. (See § 803.20(b)(2)(ii)).

Item 1(h)
Foreign filing persons must provide the name, firm name, address, telephone 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)).

Note: The Form has fields for fax numbers in Item 1. Providing fax numbers is no longer necessary. The fields will be deleted during the next update of the HSR Form.

END OF ITEM 1

ITEM 2

Item 2(a)
Provide the names of all UPEs of acquiring and acquired persons that are parties to the transaction, whether or not they are required to file notification. If a person is not required to file, check the non-reportable box.

Item 2(b)
Put an X in all the boxes that apply to the transaction.

Item 2(c)
This item should only be completed by the acquiring person where voting securities are being acquired. If more than voting securities are being acquired, respond to this item only regarding voting securities. Put an X in the box to indicate the highest applicable threshold for which notification is being filed: $50 million (as adjusted), $100 million (as adjusted), $500 million (as adjusted), 25% (if the value of voting securities to be held is greater than $1 billion, as adjusted), or 50%. (See § 801.1(h)).

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. For instance, 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)
Provide the requested information on assets, voting securities and non-corporate interests. If a combination of assets, voting securities and/or non-corporate interests are being acquired and allocation is not possible, note such information in an endnote.

For determining percentage of voting securities, evaluate total voting power per § 801.12.

For determining percentage of non-corporate interests, evaluate the economic interests per § 801.1(b)(1)(ii).

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. (See § 801.12).

Item 2(d)(v)
State the value of non-corporate interests already held. (See § 801.10).

Item 2(d)(vi)
State the percentage of non-corporate interests already held. (See § 801.1(b)(1)(ii)).

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 cont.

Item 2(d)(viii)
State the total percentage of non-corporate interests to be held as a result of the acquisition. (See §§ 801.10 and 801.1(b)(1)(ii)).

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 assets, voting securities and non-corporate interests of the acquired person to be held as a result of the acquisition. (See §§ 801.10, 801.12, 801.13 and 801.14).

END OF ITEM 2

Most Common Mistakes When Completing the HSR Form

- Noncompliant affidavit
- Missing contact information in Item 1(g)
- Failure to describe target in Item 3(a)
- Incomplete privilege log
- Failure to properly identify authors and recipients of Item 4c/4d documents
- Failure to properly round revenues in Item 5 to nearest tenth of a million and failure to list in ascending order
- Failure to provide required geographic information (e.g., state, county, and city

ITEM 3

Item 3(a)
At the top of Item 3(a), list the name and mailing address of each acquiring and acquired person, and acquiring and acquired entity, whether or not required to file notification. It is not necessary to list every subsidiary wholly-owned owned by an acquired entity.

In the Transaction Description section, briefly describe the transaction, indicating whether assets, voting securities or non-corporate interests (or some combination) are to be acquired. Describe the business operation(s) being acquired. If assets, describe the assets and whether they comprise a business operation. Also, indicate what consideration will be received by each party and the scheduled consummation date of the transaction.

If any attached transaction documents use coded names to refer to the parties, please provide an index identifying the codes.

If there are additional filings, such as shareholder backside filings, associated with the transaction, identify those. Also, identify any special circumstances that apply to the filing, such as whether part of the transaction is exempt under one of the exemptions found in Part 802.

Item 3(b)
Furnish copies of all documents that constitute the agreement(s) among the acquiring person(s) and the person(s) whose assets, voting securities or non-corporate interests are to be acquired. Also furnish agreements not to compete and other agreements between the parties. Do not submit schedules and the like unless they contain agreements not to compete, other agreements between the parties, or other important terms of the transaction. For purposes of Item 3(b), responsive documents must be submitted; identifying an internet address or providing a link is not sufficient.

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, if one exists.

Note that transactions subject to § 801.30 and bankruptcies under 11 U.S.C. § 363 do not require an executed agreement or letter of intent. For bankruptcies, provide the order from the bankruptcy court.

END OF ITEM 3

M

ITEM 4

Item 4(a)
Provide the names of all entities within the person filing notification, including the UPE, 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.

Item 4(b)
Provide the most recent annual reports and/or annual audit reports (or, if audited is unavailable, unaudited) of the person filing notification.

The acquiring person should also provide the most recent reports of the acquiring entity(s) and any controlled entity whose dollar revenues contribute to an overlap reported in Item 7.

The acquired person should also provide the most recent reports of the acquired entity(s).

Natural persons need only provide the most recent reports for the highest level entity(s) they control. Do not provide personal balance sheets or tax returns.

If the most recent reports do 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.

Note that the person filing notification may incorporate a document by reference to an internet address directly linking to the document. (See § 803.2(e)).

Items 4(c) and 4(d)
For each document responsive to Items 4(c) and 4(d), provide the:

1) document's title;
2) date of preparation; and
3) name and title of each individual who prepared the document.

If a specific date is not available, indicate the month and year the document was prepared.

If a large group of people prepared the document, list all the authors and their titles, identifying the principal authors.

Alternatively, it is acceptable to indicate that the document was prepared under the supervision of the lead author and to provide the name and title of that author. If a third party prepared the document, the date of preparation and the name of the third party will suffice.

Numbering
Number each document provided in response to Items 4(c) and 4(d). Number 4(c) documents 4(c)-1, 4(c)-2, 4(c)-3, etc. Likewise, number 4(d) documents 4(d)-1, 4(d)-2, 4(d)-3, etc., regardless of the three sub-categories within Item 4(d). If providing only one document, identify it as 4(c)-1 or 4(d)-1.

When submitting a document responsive to both 4(c) and 4(d), list it only once, under 4(c) or 4(d). If a document is responsive to both 4(c) and 4(d), do not cross-reference.

Privilege
Note that if the filing person withholds or redacts portions of any document responsive to Items 4(c) and 4(d) based on a claim of privilege, the person must provide a statement of reasons for non-compliance (a "privilege log") detailing the claim of privilege for each withheld or redacted document. (See § 803.3(d)).

For each document, include the:

1) title of the document;
2) its author;
3) author's title/position;
4) addressee;
5) addressee's title/position;
6) date;
7) subject matter;
8) all recipients of the original and any copies;
9) recipients' titles/positions;
10) document's present location; and
11) who has control over it.

Additionally, the filing person must state the factual basis supporting the privilege claim in sufficient detail to enable staff to assess the validity of the claim for each document without disclosing the protected information.

If a privileged document was circulated to a group, such as the Board or an investment committee, the name of the group is sufficient, but the filing person should be prepared to disclose the names and titles/positions of the individual group members, if requested. If the claim of privilege is based on advice from inside and/or outside counsel, the name of the inside and/or outside counsel providing the advice (and the law firm, if applicable) must be provided. If several lawyers participated in providing advice, identifying lead counsel is sufficient. In identifying who controls a document, the name of the law firm is sufficient.

When creating a privilege log, use a separate numbering system for withheld documents, such as P-1, P-2, etc. Redacted documents should also be listed in a separate log that complies with § 803.3(d).

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.

Item 4(d)
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 UPE 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)

ITEM 4 cont.

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 UPE 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.

END OF ITEM 4

Tip for Item 4
If there is insufficient room on the Form for a response, attach "additional pages" behind that item on the Form. (See Responses on page II).

Online Tips for Item 4(c)

Online Tips for Item 4(d)

ITEMS 5 THROUGH 7

Limited response for acquired person. For Items 5 through 7, the acquired person should limit its response in the case of an acquisition of:

1) assets, to the assets to be acquired;

2) voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer; and/or

3) non-corporate interests, to the unincorporated entity(s) being acquired and all entities controlled by such unincorporated entity(s).

A person filing as both acquiring and acquired persons may be required to provide a separate response to Items 5 through 7 in each capacity so that it can properly limit its response as an acquired person. (See §§ 803.2(b) and (c)).

ITEM 5

This item requests revenue information by NAICS code regarding dollar revenues. (See NAICS Data section on page II). All persons must submit data on non-manufacturing dollar revenues at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), only submit data at the 10-digit product code level (NAICS-based codes).

List all NAICS codes in ascending order.

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 dollar revenues are reported, check the "None" box and provide a brief explanation.

Item 5(a)
Provide 6-digit NAICS industry data concerning the aggregate U.S. operations of the person filing notification for the most recent year in all non-manufacturing NAICS Sectors in which the person engaged. If the dollar revenues for a non-manufacturing NAICS code totaled less than one million dollars in the most recent year, that code may be omitted from Item 5(a).

Provide 10-digit NAICS product code data for each product code within all manufacturing NAICS Sectors (31-33) in which the person engaged in the U.S., including dollar revenues for each product manufactured outside the U.S. but sold 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.

Check the Overlap box for a NAICS code if both parties to the transaction generate dollar revenues in that NAICS code. If there is only a 6-digit overlap in a manufacturing code in Item 7, do not check the Overlap box for a related 10-digit code in Item 5.

ITEM 5 cont.

Item 5(b)
Complete 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 the formation of a joint venture, 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 that 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 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.

END OF ITEM 5

Tip for Item 5
Remember, all financial information should be expressed in millions of dollars, rounded to the nearest one-tenth of a million dollars.

Online Tips for Item 5

ITEM 6

An acquired person does not complete Item 6 if the transaction involves only the acquisition of assets. If the transaction involves a mix of assets along with voting securities and/or non-corporate interests, the acquired person must complete Item 6 as related to the voting securities and non-corporate interests.

Item 6(a)
Subsidiaries of filing person. List the name, city and state/country of all U.S. entities, and all foreign entities that have sales in or into the U.S., that are included within the person filing notification. Entities with total assets of less than $10 million may be omitted. Alternatively, the filing person may report all entities within it.

Item 6(b)
Minority shareholders. 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 shareholder that holds 5% or more but less than 50% 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. (See § 801.1(c))

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

Item 6(c)
Minority holdings. Item 6(c) requires the disclosure of holdings of 5% or more but less than 50%, of any entity(s) that derives dollar revenues in any 6-digit NAICS code reported by the other person filing notification. Holdings in those entities that have total assets of less than $10 million may be omitted.

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

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 Items 6(c)(i) and 6(c)(ii), it is permissible for the acquiring person to list all entities in which it or its associate(s) holds 5% or more but less than 50% of the voting securities of any issuer or non-corporate interests of any unincorporated entity. Holdings in those entities that have total assets of less than $10 million may be omitted.

Item 6(c)(i)
Minority holdings of filing person. If the person filing notification holds 5% or more but less than 50% 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, list 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 person should limit its response, based on its knowledge or belief, to entities that derive dollar revenues in the

ITEM 6 cont.

same 6-digit NAICS industry code as the acquiring person.

Item 6(c)(ii)
Minority holdings of associates.
This item should only be completed by the acquiring person.
Based on the knowledge or belief of the acquiring person, for each associate (see § 801.1(d)(2)) of the acquiring person holding:

1) 5% or more but less than 50% of the voting securities or non-corporate interests of the acquired entity(s); and/or

2) 5% or more but less than 50% 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 the associate, the issuer or unincorporated entity and the percentage held.

END OF ITEM 6

Tip for Item 6(c)
Remember, 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.

Online Tips for Item 6

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 (even if omitted from Item 5) in the most recent year from operations:

1) 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

2) in which a joint venture corporation or unincorporated entity will derive dollar revenues;

then for each such 6-digit NAICS industry code follow the instructions below for this section.

Note that if the acquired entity is a joint venture, the only overlaps that should be reported are those 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.

Also, if the acquiring person reports an associate overlap only, the acquired person does not need to respond to Item 7.

Item 7(a)
Industry Code Overlap Information
Provide the 6-digit NAICS industry code and description for the industry, and indicate whether the overlap is from the person, an associate or both.

Item 7(b)
Item 7(b)(i)
If the UPE of the other person(s) filing notification derived dollar revenues in the same 6-digit industry code(s) listed in Item 7(a), list the name of that UPE and the name of the entity(s) within that UPE that actually derived those dollar revenues, if different from the entity(s) listed in Item 3(a).

Item 7(b)(ii)
This item should only be completed by the acquiring person.
List the name of each associate of the acquiring person that also derived dollar revenues through a controlled operating company(s) in the 6-digit industry and, if different, the name of the entity(s) that actually derived those dollar revenues.

Item 7(c)
Geographic Market Information
Use the 2-digit postal codes for states and territories and provide the total number of states and territories at the end of the response.

Note that except in the case of those NAICS industries in the Sectors and Subsectors mentioned in Item 7(c)(iv)(b), the person filing notification may respond with the word "national" if business is conducted in all 50 states.

Item 7(c)(i)
NAICS Sectors 31-33
For each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a), list the relevant geographic information in which, to the knowledge or belief of the person filing the 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). Except for industries covered

ITEM 7 cont.

by Item 7(c)(iv)(b), the relevant geographic information is all states or, if desired, portions thereof.

Item 7(c)(ii)
NAICS Sector 42
For each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a), list the states or, if desired, portions thereof in which the customers of the person filing notification are located.

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

Item 7(c)(iv)(a)
Other NAICS Sectors
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

11	agriculture, forestry, fishing and hunting
21	mining
22	utilities
23	construction
48-49	transportation and warehousing
511	publishing industries
515	broadcasting
517	telecommunications
71	arts, entertainment and recreation

Item 7(c)(iv)(b)
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, 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.

2123	nonmetallic mineral mining and quarrying
32512	industrial gases
32732	concrete
32733	concrete products
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)
812	personal and laundry services

Item 7(c)(iv)(c)
For each 6-digit NAICS industry code listed in item 7(a) within the NAICS Sectors or Subsectors below, list the states or, if desired, portions thereof in which the person filing notification conducts such operations.

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
5242	insurance agencies and brokerages, and other insurance 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
7212	recreational vehicle parks and recreational camps
7213	rooming and boarding houses
813	religious, grantmaking, civic, professional, and similar organizations
8114	personal and household goods repair and maintenance

Item 7(d)
This item should only be completed by the acquiring person. Use the geographic markets listed in Items 7(c)(i) through 7(c)(iv) to respond to this item, providing the information for associates of the acquiring person. Provide separate responses for each associate of the acquiring person and, if different, the controlled operating company(s) that actually derived the dollar revenues.

END OF ITEM 7

Online Tips for Item 7

MV

ITEM 8

This item should only be completed by the acquiring person. Determine each 6-digit NAICS industry code listed in Item 7(a), in which the acquiring person derived dollar revenues of $1 million or more in the most recent year and in which either:

1) the acquired entity derived dollar 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 dollar revenues of $1 million or more); or

2) in the case of acquired assets, to which dollar revenues of $1 million or more were attributable in the most recent year.

For each such 6-digit NAICS industry code, list all acquisitions of entities or assets deriving dollar revenues in that 6-digit NAICS industry code made by the acquiring person in the five years prior to the date of the instant filing, even if the transaction was non-reportable. List only acquisitions of 50% or more of the voting securities of an issuer or 50% 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.

This item pertains only to acquisitions of U.S. entities/assets and foreign entities/assets with sales in or into the U.S., i.e., with dollar revenues that would be reported in Item 5.

For each such acquisition, supply:

1) the 6-digit NAICS industry code (by number and description) identified above in which the acquired entity derived dollar revenues;

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

3) the headquarters address of that entity prior to the acquisition;

4) whether assets, voting securities or non-corporate interests were acquired; and

5) the consummation date of the acquisition.

END OF ITEM 8

CERTIFICATION

See § 803.6 for requirements.

The certification must be notarized or use the language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury.

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 the amount listed in 16 C.F.R. §1.98(a) per day.

We also may be unable to process the Form unless you provide all of the requested information.

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
Federal Trade Commission, Room #5301
400 7th Street, S.W.
Washington, D.C. 20024

and

Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 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. The operative OMB control number, 3084-0005, appears within the Notification and Report Form and these Instructions.

END OF FORM INSTRUCTIONS

[FR Doc. 2018–14378 Filed 7–13–18; 8:45 am]
BILLING CODE 6750–01–C

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1303

[Docket No. DEA–480]

RIN 1117–AB48

Controlled Substances Quotas

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is publishing this final rule to strengthen the process for setting controls over diversion of controlled substances and make other improvements in the quota management regulatory system for the production, manufacturing, and procurement of controlled substances.

DATES: This final rule is effective August 15, 2018.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–8953.

SUPPLEMENTARY INFORMATION:

Legal Authority

Provisions of the Controlled Substances Act, 21 U.S.C. 801 *et seq.,* authorize the Attorney General to issue rules and regulations relating to registration and control of the manufacture, distribution, and dispensing of controlled substances and listed chemicals. 21 U.S.C. 821. Pursuant to this authority, the Attorney General, through the Drug Enforcement Administration (DEA), has issued and administers regulations setting aggregate production quotas for each basic class of controlled substances in schedules I and II, manufacturing quotas for individual manufacturers, and procurement quotas for manufacturers to produce other controlled substances or to convert the substances into dosage form. *See* 21 CFR part 1303.

The current regulations, issued initially in 1971, need to be updated to reflect changes in the manufacture of controlled substances, changing patterns of substance abuse and markets in illicit drugs, and the challenges presented by the current national crisis of controlled substance abuse. This final rule modifies the regulations to strengthen controls over diversion—that is, the redirection of controlled substances which may have lawful uses into illicit channels—and makes other improvements in the controlled substance regulatory quota system.

The quota process, in general terms, is a critical element of the Controlled Substances Act's regulatory system that seeks to prevent or limit diversion by preventing the accumulation of controlled substances in amounts exceeding legitimate need. The measures the final rule adopts to strengthen the system include authorizing the requisition from quota applicants of additional information helpful in detecting and preventing diversion, and ensuring that DEA's determinations regarding the appropriate quotas are adequately informed by input from other federal agencies, from the states, and from quota applicants.

Section-by-Section Analysis

The DEA is finalizing the rule as proposed without changes. Below are summaries of provisions contained in the final rule.

Section 1303.11—Aggregate Production Quotas

Section 1303.11 currently directs the Administrator of DEA to determine the total quantity of each basic class of controlled substance listed in schedule I or II needed in the calendar year for the medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. Section 1303.11(b)(1) through (4) identifies a number of factors that are categorically to be considered in determining aggregate production quotas—relating to total net disposal, net disposal trends, inventories and inventory trends, and demand—followed by a final catchall factor, (5), regarding factors to be considered as the Administrator finds relevant.

The final rule makes two additions to the list of factors that must regularly be considered in setting the aggregate production quotas because of their importance. First, it adds to the list the extent of any diversion of the controlled substance in the class, which will ensure that the allowed aggregate production quota is limited to that needed to provide adequate supplies for the United States' legitimate needs. Second, the final rule amends the list of factors to be considered in establishing these quotas to include relevant information from the Department of Health and Human Services (HHS) and its components, including the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), and the Centers for Medicare and Medicaid Services (CMS), as well as relevant information obtained from the states. The amendment will ensure that information will be requested from the relevant HHS components and will be considered in setting the aggregate production quotas.

The final rule provides that the Administrator will consider information from the states in setting the aggregate production quotas and make additional changes enhancing their role in § 1303.11(c). The states are critically situated to provide information about the extent of legitimate and illegitimate use of controlled substances because of their responsibilities for drug enforcement within their jurisdictions, including through the Prescription Drug Monitoring Programs (PDMP), their responsibilities for administration of their health care systems, and their responsibilities for dealing with the human and social costs of drug abuse and diversion. States may have relevant information indicating that individual procurement quota requests reflect quantities which will in fact be diverted to illicit use, which may in turn yield an exaggerated picture of the aggregate production quotas needed for legitimate purposes.

The final rule accordingly includes amendments to § 1303.11(c) which provide for (i) transmitting notices of proposed aggregate production quotas, and final aggregate production quota orders, to the state attorney general, and (ii) holding a hearing if necessary to resolve an issue of material fact raised by a state's objection to a proposed aggregate production quota as excessive in relation to legitimate United States need.

Section 1303.12—Procurement Quotas

Section 1303.12 currently directs the Administrator to issue procurement quotas for manufacturers that use controlled substances to put them into dosage form or to make other substances. The section requires applicants for procurement quotas to state what basic class of controlled substance is needed, the purpose or purposes for which the class is desired, the quantity desired for each purpose during the next calendar year, and the quantities used and estimated to be used for each purpose during the current and preceding two calendar years. If the applicant's purpose is to manufacture another basic class of controlled substance, the applicant also must state the quantity of the other basic class that the applicant has applied to