

FEDERAL TRADE COMMISSION**16 CFR Part 803****Antitrust Improvements Act,
Notification and Report Form for
Certain Mergers and Acquisitions****AGENCY:** Federal Trade Commission.**ACTION:** Promulgation of Final Rule Revision.

SUMMARY: This final rule revises 16 CFR Part 803 Appendix, the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions (the "Form"). This Form must be completed and submitted by persons required to report mergers or acquisitions as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). The revised Form will require that 1982 revenue data be provided in response to certain questions on the Form relating to product lines that previously asked for 1977 data. Certain other related minor changes have been made on the Form.

EFFECTIVE DATE: March 26, 1986.

ADDRESS: All completed Forms, including any documents required to be supplied in response to any item on the Form, must be delivered to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, and Director of Operations, Antitrust Division, Room 3218, Department of Justice, Washington, D.C. 20530, as specified by 16 CFR 803.10(c)(1985).

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Senior Attorney, or Wayne E. Kaplan, Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580. Telephone: (202) 523-3894.

List of Subjects in 16 CFR Part 803

Antitrust, Reporting and recordkeeping requirements.

The authority for 16 CFR Part 803 continues to read:

Authority: Section 7A(d), Clayton Act, 15 U.S.C. 18a(d) as added by section 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

This change to the existing OMB clearance, Control No. 3084-0005, has been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Act

The proposed revision will not expand the coverage of the premerger notification rules in a way that would significantly affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, September 19, 1980, the Federal Trade Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of this revision, is therefore inapplicable.

Background Information

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires all persons contemplating certain mergers or acquisitions to file notification with the Federal Trade Commission ("the Commission") and the Antitrust Division of the Department of Justice and to wait designated periods of time before consummating such proposed transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division ("the Assistant Attorney General"), to require "that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate" to enable the agencies "to determine whether such acquisitions may, if consummated, violate the antitrust laws." (15 U.S.C. 18a(d) (1985)).

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions. The Form is designed to provide the Commission and the Assistant Attorney General with the information and documentary material necessary and appropriate for an initial evaluation of the potential anticompetitive impact of significant mergers, acquisitions and certain similar transactions. The Form is not intended to elicit all potentially relevant information relating to an acquisition. Completion of the Form by all parties required to file will ordinarily permit both agencies to determine whether the waiting period should be allowed to expire or be terminated early upon request, or whether a request for additional information should be made under section 7A(e) of the Act and 16 CFR 803.20.

All acquiring and acquired persons required by the Act to file notification

must complete the Form, or a photostatic or other equivalent reproduction, in accordance with the attached instructions and the premerger notification rules.

The Form was first promulgated on July 31, 1978, 43 FR 33552, and became effective on September 5, 1978. It was revised to require data for 1977 as the base year in 1980. (45 FR 14205 (March 5, 1980)). Subsequently, new versions of the Form were approved by the Office of Management and Budget on December 29, 1981, February 23, 1983, September 14, 1984, and September 30, 1985. The most recent version has been in use since then and it was published in the **Federal Register** on November 12, 1985. (50 FR 46633).

The primary changes resulting from this revision concern the revenue data that must be submitted in response to Item 5 of the Form. Other changes reflect new reference materials cited in the Form or more precise identification of terms developed by the Bureau of the Census.

Item 5 of the Form is designed to elicit economic data classified by Standard Industrial Classification ("SIC") codes with respect to all those lines of commerce in which the reporting person derives any dollar revenues. Such revenue data is required by industry (4-digit SIC code), by product class (5-digit SIC based code), and by product (7-digit SIC based code). More specifically, item 5(a) requires that the reporting person provide 1977 revenue data for each 4-digit industry in which that filing person was engaged. Item 5(b)(i) requires that the reporting person engaged in manufacturing provide 1977 aggregate revenues for each 7-digit code product from which the reporting person derived any revenues. Item 5(b)(ii) requires the reporting person to identify each manufactured product that has been added or deleted since 1977. For those products added, the reporting person must provide the total revenue attributable to the added product for the most recent year. Item 5(b)(iii) requires that the reporting person engaged in manufacturing provide aggregate revenues for the most recent year derived from each 5-digit product class. Item 5(c) requires that the reporting person engaged in non-manufacturing industries provide 4-digit code revenue data for the most recent year.

When originally promulgated the premerger notification rules required revenue data for two time periods, 1972 and the most recent year for which the requested information is available. The use of the 1972 "base year" was designed to coincide with the then most

recent quinquennial economic census and the *Annual Survey of Manufactures*. These publications of the Bureau of the Census serve as the most readily available and reliable statistical sources of industry components and market universes to which individual company product and revenue data can be compared. When the original rules were promulgated the Commission and the Antitrust Division of the Department of Justice stated their intention to revise item 5 to require submission of 1977 revenue data as soon as the Bureau of the Census published the *1977 Census of Manufactures*. (43 FR 33526 (July 31, 1978)). Accordingly, the Commission amended item 5 on March 5, 1980, when it promulgated the revision in the *Federal Register*. (45 FR 14205 (March 5, 1980)). The revision became effective on publication, but the published notice provided for a sixty-day transitional period during which either 1972 or 1977 revenue data could be submitted.

The Bureau of the Census has now completed its publication of final paperbound reports for the *1982 Census of Manufactures*. Since most companies within the United States submit data to the Bureau of the Census for the economic censuses, reporting persons presumably have gathered, compiled and assembled 1982 revenue data in accordance with the SIC code format for the *1982 Census of Manufactures*. Furthermore, the Bureau of the Census has now completed the *Numerical List of Manufactured and Mineral Products, 1982 Census of Manufactures and Census of Mineral Industries* (MC 82 R-1) ("*1982 Numerical List*"). That publication is necessary for reference to final "5-digit" product class and "7-digit" product codes for 1982 and is currently available from the Government Printing Office. Because of this, and the fact that the 1982 aggregate data is now available to the Commission and the Antitrust Division of the Department of Justice, item 5 is hereby being revised to require 1982 data instead of 1977 data. As in the 1980 change to the 1977 base year, the change is effective immediately, with a sixty-day transitional period during which either 1977 or 1982 revenue data may be submitted.

The Commission is aware that the Bureau of the Census proposed extensive changes in the SIC codes and SIC based codes in 1982, and that those proposed changes were not implemented because of budget restrictions. Thus, although the Bureau of the Census collected data in anticipation of those changes, it published the data using codes that are

in some instances different than the codes it used to collect the information.

Since the Commission and the Antitrust Division use the universe revenue figures published by the Bureau of the Census as the basis upon which to compare revenue data supplied by reporting persons in response to item 5, it is important that reporting persons submit information using the codes published by the Bureau of the Census. For this reason, the Commission has determined to require reporting persons to submit revenue information on the basis of the codes published by the Bureau of the Census in the *1982 Census of Manufacturers*. Accordingly, reporting persons will be required to convert the 1982 revenue data they submitted to the Bureau of the Census from the collected codes to the codes published by the Bureau of the Census. The *1982 Numerical List*, which is one of the two basic reference publications used to prepare responses to item 5, contains two parallel columns, "Product code published" and "Product code collected," which provide a basis for determining when the codes used to collect information differ from those used to publish the information. When the "Product code published" and the "Product code collected" differ, reporting persons will be able to comply, in most cases, by changing the code they used to submit information to the Bureau of the Census to the code used by the Bureau of the Census to publish the information. In a few extremely rare instances, the "Product code published" is derived from two or more collected codes. The Bureau of the Census has identified these codes by placing an asterisk in the "Product code collected" column in the *1982 Numerical List*. Reporting persons that have codes in this category may be able to comply by reviewing underlying records compiled in accordance with the 1982 census reports and retabulating such data according to the published codes.

The Commission has determined that any inconvenience resulting from this requirement is unavoidable in light of the antitrust agencies' need to be able to compare quickly an individual company's submission with published census universe data. The use of census data is currently the only feasible basis on which the agencies can perform a preliminary antitrust analysis within the time limits imposed by the Act.

At the request of the Bureau of the Census, we are also revising references in the Instructions to the Form to 5-digit product class and 7-digit product codes (presently referred to as SIC codes) which are technically SIC based codes.

The Standard Industrial Classification developed by the Office of Management and Budget classifies establishments only to the 4-digit industry level by their primary type of activity.

The Commission believes that the notice and comment period ordinarily required by the Administrative Procedure Act ("the APA"), 5 U.S.C. 553(b), is unnecessary here. Section 553(b)(B) exempts from the notice and comment requirements of the APA, promulgation of a rule where the agency for good cause finds that the standard procedure would be "impracticable, unnecessary, or contrary to the public interest." Promulgation of the proposed revision falls within this exemption for several reasons.

The public was afforded the opportunity to comment on the original rules and Form in two-notice and comment periods provided pursuant to the rulemaking requirements of the APA. The rulemaking culminated in the promulgation and publication of the premerger rules and Form, and was accompanied by a Statement of Basis and Purpose. (43 FR 33450 (July 31, 1978)). Since the amendment does not depart from or alter the substance of the prior rulemaking (i.e., it does not change the type or amount of information required by the Form), further opportunity for comment seems unnecessary. See generally, *Texaco, Inc. v. Federal Energy Administration*, 531 F.2d 1071 (Emer. Ct. App.), cert. denied, 428 U.S. 941 (1976); *Durkin v. Edward S. Wagner Co.*, 115 F. Supp. 118 (D.N.Y. 1953), aff'd, 217 F.2d 303 (2d Cir.), cert. denied, 348 U.S. 964 (1954).

Additionally, the agencies gave notice of their intention to revise item 5 in the original promulgation of the rules, as previously stated, in response to numerous comments received during the two comment periods of the rulemaking. Several comments opposed the requirement that 1972 data be supplied on the grounds that the compilation of 1972 data would be unduly cumbersome, burdensome and expensive. For the second time, the Commission is changing the requirements of item 5 consistent with its earlier notice. The change will lessen the compliance burden by requiring more recent revenue data that is generally more easily retrievable and readily available to reporting persons than 1977 data. The Commission finds that a separate notice and comment period at this time would be unnecessary and not in the public interest and, therefore, is not required by the APA.

Section 553(d) of the APA requires that 30 days' notice be provided to the

public before a rule becomes effective, but provides an exception from this requirement where good cause is found. (5 U.S.C. 553(d)(3)). Rather than delay the effective date of the new requirements by 30 days, the Commission has determined in the public interest to accommodate all reporting persons by instituting a 60-day transitional period (as was done in the prior changeover from the 1972 base year to the 1977 base year) during which reporting persons may submit either 1977 or 1982 revenue data in response to items 5(a), 5(b)(i) and 5(b)(ii). Thereafter, the Commission and the Antitrust Division of the Department of Justice will accept only 1982 revenue data. Forms which do not provide 1982 data after the 60-day period will be treated as deficient under section 803.10(c)(2) of the premerger notification rules. (16 CFR 803.10(c)(2)).

The Commission, with the concurrence of the Assistant Attorney General, hereby revises the Appendix to 16 CFR part 803.

PART 803—[AMENDED]

Appendix [Amended]

In 15 CFR Ch. I, the Appendix to Part 803 is amended by removing the current Instructions to the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions ("Instructions"), pages I-VI, in its entirety and substituting the following new Instructions, pages I-VI, and by deleting pages 6, 7, 8 and 10 of the Notification and Report Form for Certain Mergers and Acquisitions and substituting the following new pages 6, 7, 8 and 10.

BILLING CODE 6750-01-M

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

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-16) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

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

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

Information—The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 301, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 523-3894.

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

Affidavit—Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 801.5(a).)

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

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the 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. Estimated data should

Privacy Act Statement - Section 18(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws. Furnishing the information on this Form is voluntary.

be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

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

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

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

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

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

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

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

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

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

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

Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to \$10,000 per day.

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

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

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

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

ITEM BY ITEM

Affidavit—Attach the affidavit required by § 803.5 to page 1 of the Answer Sheets. 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)(1). (See § 803.5 (a)(3).)

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

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

ITEM 1

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

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

Item 1(d)—Put an X in all the boxes that apply to this acquisition.

Item 1(e)—Acquiring persons put an X in the box to indicate the highest threshold for which notification is being filed (see § 801.1 (h)): \$15 million, 15%, 25%, or 50%.

Item 1(f)—All persons state the value of voting securities held as a result of the acquisition and/or the value of assets held as a result of the acquisition. (Insert responses to Item 3(c).)

Item 1(g)—Put an X in the appropriate box to indicate

whether the entity in Item 1(a) is a corporation, partnership, or other (specify)

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

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

ITEM 2

Item 2(a)—Description of acquisition. Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification and a description of the assets or voting securities to be acquired by and/or the consideration to be received by each party. If voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons in tender offers should describe the terms of the offer.

Item 2(b)—State the scheduled consummation date of the transaction.

Item 2(c)—Describe the manner in which the transaction is to be carried out. The description should include the expected dates of any major events required in order to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers).

Item 2(d)(i)—Assets to be acquired. This item is to be completed only to the extent that the transaction is an acquisition of assets. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction giving approximate dollar values thereof. If the transaction is the formation of a joint venture or other corporation (see § 801.40), include assets to be acquired by the joint venture or other corporation.

Give the approximate total value or estimated total value of the assets to be acquired in this transaction.

Examples of general classes of assets other than cash and

securities are land, merchandising inventory, manufacturing plants (specify location and products produced), and retail stores. For each general class of assets, indicate the page or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

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

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

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

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

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

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

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

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

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

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

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

Item 2(f)(ii)—Index to ancillary documents. Furnish an index containing a brief description sufficient to identify each ancillary document or class of documents related to this agreement, such as those relating to personnel matters (e.g., union contracts, employment agreements), third-party financing agreements, leases, subleases and other documents relating to the transfer of realty, or other similar documents related to this transaction.

ITEM 3

Assets and voting securities held as a result of the acquisition (to be completed by both acquiring and acquired persons). State:

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

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

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

ITEM 4

Furnish one copy of each of the following documents. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity. Furnish copies of:

Item 4(a)—all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition): the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed; if the acquisition is a tender offer, Schedule 14D-1. Alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance;

NOTE: In response to Item 4(a), 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).

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

Item 4(c)—all studies, surveys, analyses and reports which were prepared 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, the name and title of each individual who prepared each such document.

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

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

ITEMS 5 through 9 and the Appendix

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

ITEM 5

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

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

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

Persons filing notification should include the total dollar revenues for 1982 derived by all entities included within the person filing notification at the time this Notification and

Report Form is prepared (even if such entities have become included within the person since 1982). For example, if the person filing notification acquired an entity in 1984, it must include that entity's 1982 revenues in Items 5(a) and 5(b)(i).

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

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

Do not provide 7-digit data for product codes ending in 00 if the Numerical List of Manufactured and Mineral Products contains a further breakdown. See also the "NOTE" on page 1 of these instructions concerning required references to Appendix C of the Numerical List.

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

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

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

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

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

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

JOINT VENTURE OR OTHER CORPORATIONS

Item 5(d)—Supply the following information only if the acquisition is the formation of a joint venture or other corporation. (See § 801.40.)

Item 5(d)(i)—List the name and mailing address of the joint venture or other corporation.

Item 5(d)(ii)(A)—List contributions that each person forming the joint venture or other corporation 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(d)(ii)(B)—Describe any contracts or agreements whereby the joint venture or other corporation will obtain assets or capital from sources other than the persons forming it.

Item 5(d)(ii)(C)—Specify whether and in what amount the persons forming the joint venture or other corporation have agreed to guarantee its credit or obligations.

Item 5(d)(ii)(D)—Describe fully the consideration which each person forming the joint venture or other corporation will receive in exchange for its contribution(s).

Item 5(d)(iii)—Describe generally the business in which the joint venture or other corporation 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(d)(iv)—Identify each 4-digit (SIC code) industry in which the joint venture or other corporation will derive dollar revenues. If the joint venture or other corporation will be engaged in manufacturing, also specify each 5-digit product class 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.

Item 6(a)—*Entities within person filing notification.* List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than \$1 million may be omitted.

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

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

ITEM 7

If, to the knowledge or belief of the person filing notification, the person filing notification derived dollar revenues in the most recent year from operations in any 4-digit (SIC code) industries in which any other person which is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture of other corporation will derive dollar revenues), then for each such 4-digit (SIC code) industry:

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

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

Item 7(c)—*Geographic market information*

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

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

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

Item 7(c)(iv)—for each 4-digit industry within SIC major groups 52-62 and 64-89 (retail trade, finance, insurance other than insurance carriers, and real estate, and 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; and

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

NOTE: Except in the case of those SIC major industry groups 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 8

Item 8—Put an X in the appropriate box to indicate if the acquired person and an acquiring person maintained a vendor-vendee relationship during the most recent year with respect to any manufactured product (or, if the acquisition is the formation of a joint venture or other corporation (see § 801.40), if the joint venture or other corporation will supply to any of the persons forming it any manufactured product which such person purchased from another such person during the most recent year) which the vendee either resells or consumes in or incorporates into the manufacture of any product. Persons filing notification which are vendees of such product(s) should list each product purchased, identify each vendor which is a party to the acquisition from which the product was purchased and state the dollar amount of the product purchased from that vendor during the most recent year.

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

ITEM 9

Item 9—*Previous acquisitions* (to be completed by acquiring persons)—Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of \$1 million or more in the most recent year and in which either the acquired issuer derived revenues of \$1 million or more in the most recent year, (or in which, in the case of the formation of a joint venture or other corporation, the joint venture or other corporation reasonably can be expected to derive dollar revenues of \$1 million or more), or revenues of \$1 million or more in the most recent year were attributable to the acquired assets.

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

For each such acquisition, supply:

- (a) the name of the entity acquired;
- (b) the headquarters address of the entity prior to the acquisition;
- (c) whether securities or assets were acquired;
- (d) the consummation date of the acquisition;
- (e) the annual net sales of the acquired entity for the year prior to the acquisition;
- (f) the total assets of the acquired entity in the year prior to the acquisition; and

(g) the 4-digit (SIC code) industries (by number and description) identified above in which the acquired entity derived dollar revenues.

ITEM 10

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

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

Certification—(See § 803.6.)

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE

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

ITEM 1

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

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

ITEM 2

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

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

ITEM 3

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

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

NAME OF PERSON FILING NOTIFICATION _____ DATE _____

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

5a) DOLLAR REVENUES BY INDUSTRY

4-DIGIT INDUSTRY CODE <i>Product code published</i>	DESCRIPTION	1982 TOTAL DOLLAR REVENUES

6

NAME OF PERSON FILING NOTIFICATION _____ DATE _____

ITEM 5(b)(1) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

7-DIGIT PRODUCT CODE <i>Product code published</i>	DESCRIPTION	1982 TOTAL DOLLAR REVENUES

7

NAME OF PERSON FILING NOTIFICATION				DATE	
ITEM 5(b)(i) PRODUCTS ADDED OR DELETED					
DESCRIPTION (7-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES	
ITEM 5(b)(ii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS					
5-DIGIT PRODUCT CLASS CODE <small>Product code published</small>	DESCRIPTION			YEAR	TOTAL DOLLAR REVENUES
<small>(Item 5(b)(ii) continued on page 9)</small>					

BILLING CODE 6750-01-C

NAME OF PERSON FILING NOTIFICATION		DATE
5(d) COMPLETE ONLY IF ACQUISITION IS THE FORMATION OF A JOINT VENTURE OR OTHER CORPORATION		
5(d)(i) NAME AND ADDRESS OF THE JOINT VENTURE OR OTHER CORPORATION		
5(d)(ii)		
(A) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION HAS AGREED TO MAKE		
(B) DESCRIPTION OF ANY CONTRACTS OR AGREEMENTS		
(C) DESCRIPTION OF ANY CREDIT GUARANTEES OR OBLIGATIONS		
(D) DESCRIPTION OF CONSIDERATION WHICH EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION WILL RECEIVE		
5(d)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE OR OTHER CORPORATION WILL ENGAGE		
5(d)(iv) SOURCE OF DOLLAR REVENUES BY 4-DIGIT SIC CODE (non-manufacturing) AND BY 5-DIGIT PRODUCT CLASS (manufacturing)		

By direction of the Commission.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 86-6559 Filed 3-25-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1208

[Docket No. 85-12; Notice 2]

National Minimum Drinking Age

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule clarifies the provisions which a State must incorporate or have incorporated into its laws in order to prevent the withholding of a portion of its Federal-aid highway funds for noncompliance with the National Minimum Drinking Age. This rule implements section 6 of Pub. L. 98-363.

EFFECTIVE DATE: This rule becomes effective March 26, 1986.

FOR FURTHER INFORMATION CONTACT:

NHTSA: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0837) or Kathleen C. DeMeter, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1834).

FHWA: Mr. R. Clarke Bennett, Director, Office of Highway Safety, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1153) or Mr. David Oliver, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0825).

SUPPLEMENTARY INFORMATION: On July 17, 1984, the President signed Public Law 98-363, which strongly encourages States to have laws prohibiting the purchase and public possession of alcoholic beverages by anyone under 21 years of age by withholding a portion of Federal-aid highway funds from States without such laws (23 U.S.C. 158, hereinafter called the National Minimum Drinking Age). The statute requires the Secretary of Transportation to withhold

a portion of Federal-aid highway funds from any State whose laws permit the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age. If any such State does not enact a new law or amend its existing laws to make age 21 the legal minimum drinking age by October 1, 1986 (fiscal year 1987), five percent of its Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6), which are primary system, secondary system, Interstate system (including resurfacing, restoring, rehabilitating and reconstructing funds) and urban system funds, shall be withheld. If by October 1, 1987 (fiscal year 1988) no such law is adopted or amendments made, ten percent of its fiscal year 1988 Federal-aid highway apportionment under these sections will be withheld. Responsibility for administering the program has been delegated jointly to the National Highway Traffic Safety Administration and the Federal Highway Administration (the "Agencies"). 50 FR 43165 (October 24, 1985).

The Notice of Proposed Rulemaking (NPRM), which was issued on September 24, 1985 (50 FR 39140, September 27, 1985), sought comments on several issues that the Agencies were considering adopting in the final rule. The Agencies received comments from 17 States, State agencies and private organizations. Although most of the commenters support a national minimum drinking age of 21, many of those comments raised serious concerns about the ability of States that already have age 21 statutes to satisfy various particular provisions contained in the NPRM. As a result of these comments, and as a result of the Agencies' preliminary review of existing State minimum drinking age statutes, the Agencies have made several amendments to the proposal as it appeared in the NPRM. The issues which were addressed in the NPRM and additional changes made in the final rule are discussed below.

In analyzing the legislative history of the National Minimum Drinking Age, the Agencies believe that Congress did not intend to cause States, especially those that already had a minimum drinking age of 21, to lose a portion of their Federal-aid highway funds merely because of a technical, non-substantive difference between a State law and the literal language of the Federal law. Indeed, the legislative history of the statute suggests that Congress did not believe that this law would generally have any adverse effect on States which had already enacted 21 drinking age laws.

For example, Representative Howard, the sponsor of the age-21 legislation in the House of Representatives, said "The amendment I am offering would encourage those States *that have not yet done so* to raise their minimum drinking age to 21." (Emphasis supplied). (130 Cong. Rec. H5395, daily ed. June 7, 1984). During the Senate consideration of the age-21 legislation, Senator Danforth, one of the sponsors in the Senate, was engaged in a colloquy with Senator Leahy. Senator Leahy said, "But the Senator's amendment is *not penalizing any State which is already at 21*. It penalizes those below [21]." Senator Danforth responded, "Right." Senator Leahy then stated, "To that extent, the benefit of it, the not being penalized, *goes automatically to any State at 21*." (Emphasis supplied). (130 Cong. Rec. S8219, daily ed., June 26, 1984). This sentiment was echoed several more times during the debates in both Houses of Congress.

Other comments made during the debate in both the House and Senate strongly support the agencies' conclusion that Congress considered it unlikely that the highway fund withholding sanctions would ever need to be applied. For example, Representative Anderson, who chairs the Surface Transportation Subcommittee of the House Public Works and Transportation Committee, discussed the highway funds withholding sanctions provided by the Clean Air Act and the National Maximum Speed Limit law as analogies to the age-21 legislation, and noted, "To date, the sanctioning process has never been used, indicating its effectiveness *and the unlikelihood that it will have to be employed*." (Emphasis supplied.) (130 Cong. Rec. H5395, daily ed., June 7, 1984). Senator Lautenberg, one of the Senate sponsors of the age-21 legislation, said in response to a question from Senator Baucus, "As the Senator is aware, the Department of Transportation is always most reluctant to impose sanctions upon States whenever it can be reasonably avoided. If in fact, by fiscal year 1987, . . . if the State could not practically comply through the use of its normal and general procedures for amending its constitution and its statutes, *then all evidence would suggest that the Department should take this into account in its imposition of sanctions*." (Emphasis supplied.) (130 Cong. Rec., S8214, daily ed., June 26, 1984). Thus, both House and Senate debates reflect a sense that Congress did not think it likely that the sanctions would need to be imposed and, in any event, that the