

of the first plant, both plants would be considered assets of "A" held by "B" as a result of the second acquisition (see § 801.13(b)(2) of this chapter). Since the total sales in or into the United States exceed \$50 million, the acquisition of the second plant would not be exempt under this paragraph (a) of this section.

3. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States of \$200 million. If "A" acquires only foreign assets of "B," and if those assets generated \$50 million or less in sales in or into the United States, the transaction is exempt.

4. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States and assets located in the United States of less than \$100 million. If "A" acquires only foreign assets of "B", and those assets generated in excess of \$50 million in sales in or into the United States during the most recent fiscal year, the transaction is exempt from reporting if the assets are valued at \$200 million or less, but is reportable if valued at greater than \$200 million.

11. Revise § 802.51 to read as follows:

§ 802.51 Acquisitions of voting securities of a foreign issuer.

(a) *By U.S. persons.* (1) The acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over \$50 million; or made aggregate sales in or into the United States of over \$50 million in its most recent fiscal year.

(2) If interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million threshold is exceeded.

(b) *By foreign persons.* (1) The acquisition of voting securities of a foreign issuer by a foreign person shall be exempt from the requirements of the act unless the acquisition will confer control of the issuer and the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over \$50 million; or made aggregate sales in or into the United States of over \$50 million in its most recent fiscal year.

(2) If controlling interests in multiple foreign issuers are being acquired from

the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million threshold is exceeded.

(c) Where a foreign issuer whose securities are being acquired exceeds the threshold in paragraph (b)(1) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than \$110 million in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) are less than \$110 million; and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

Example to § 802.51 1. "A," a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of \$77 million in the most recent fiscal year. The transaction is not exempt under this section.

2. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States of \$200 million, and that "A" is acquiring 100% of the voting securities of "B." Included within "B" is U.S. issuer C, whose total U.S. assets are valued at \$161 million. Since "A" will be acquiring control of an issuer, C, with total U.S. assets of more than \$50 million, and the parties' aggregate sales in or into the U.S. in the relevant time period exceed \$110 million, the acquisition is not exempt under this section.

3. "A," a foreign person, intends to acquire 100 percent of the voting securities of two wholly owned subsidiaries of "B" for a total of \$65 million. BSUB1 is a foreign issuer with \$10 million in sales into the U.S. in its most recent fiscal year and with assets of \$10 million located in the U.S. \$20 million of the acquisition price has been allocated to BSUB1. BSUB2 is a U.S. issuer with \$60 million in U.S. sales and \$60 million in assets located in the U.S. The remaining \$45 million of the acquisition price is allocated to BSUB2. Since BSUB1 does not exceed the \$50 million limitation for U.S. sales or assets in § 802.51(b), its voting securities are not held as a result of the acquisition (see § 801.15(b) of this chapter). Since the acquisition price for BSUB2 alone would not result in "A" holding in excess of \$50 million of voting securities of the acquired person, the transaction is non-reportable in its entirety. Note that the U.S. sales and assets of BSUB1 are not aggregated with those of BSUB2 for purposes of determining whether the limitations in paragraph (b) of this section are exceeded. If BSUB2 were also

a foreign issuer, such aggregation would be required under paragraph (b)(3) of this section, and the transaction in its entirety would be reportable.

12. Amend § 802.52 by revising the Example to read as follows:

§ 802.52 Acquisitions by or from foreign governmental agencies.

* * * * *

Example: The government of foreign country X has decided to sell assets of its wholly owned corporation, B, all of which are located in foreign country X. The buyer is "A," a U.S. person. Regardless of the aggregate sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate sales were \$50 million or less, the transaction would also be exempt under § 802.50.)

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02-6251 Filed 3-15-02; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 802

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is amending the premerger notification rules, which require the parties to certain mergers or acquisitions to file reports with the Commission and with the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions, pursuant to section 7A of the Clayton Act. The filing and waiting period requirements enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. This rule amendment is necessary to address public comments regarding a previously published interim rule provision, and will increase the clarity and improve the effectiveness of the rule.

EFFECTIVE DATES: This final rule is effective on March 18, 2002 and will be applied retroactively to February 2, 2002, as explained in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, Karen E. Berg, Attorney, or B. Michael

Verne, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326-3100.

SUPPLEMENTARY INFORMATION: On February 1, 2001, the Commission published in the **Federal Register** and sought comment on Interim and Proposed Rules to amend the Hart-Scott-Rodino rules ("HSR rules") contained in 16 CFR parts 801, 802 and 803. See 66 FR 8679-8721. The Interim Rules took effect upon publication and implemented amendments to Section 7A of the Clayton Act enacted on December 21, 2000 ("2000 Amendments"). The Commission has decided that it needs more time to consider whether to make the Interim Rules final. A primary focus of this analysis is whether the Commission should make final the dollar-based reporting thresholds that were newly introduced by the Interim Rules. In light of the public comments, however, the Commission has determined to make final at this time an amendment to interim § 802.21(b), containing a transitional filing rule that was scheduled to expire on February 1, 2002, as explained below.

Background

Interim § 802.21 (Acquisitions of voting securities not meeting or exceeding greater notification threshold) contained paragraph (b), which addressed acquisitions of voting securities up to the next notification threshold by "transitional" filers, i.e., acquiring persons who filed using the 1978 notification thresholds and who have met or crossed the threshold for which they filed within a year of the waiting period's expiration, but whose five-year period for making additional acquisitions under § 802.21(a) had not expired as of February 1, 2001 (the effective date of the 2000 Amendments).

Section 802.21(b), as published in the Interim Rules, allowed these transitional filers until February 1, 2002 (one year from the effective date of the 2000 Amendments) to acquire up to what was the next reporting threshold at the time that they filed, and permitted them to do so without filing another notification, even though they might cross a new 2001 threshold. Thereafter, these acquiring persons, along with any other acquiring persons filing on or after February 1, 2001, were required to observe the 2001 thresholds contained in § 801.1(h). Interim § 802.21(b) was an effort to strike a balance between the reliance of transitional filers on rules

that were in effect when they filed, and minimizing the agency's burden of administering two different sets of notification thresholds after February 1, 2001.

The Commission received five comments on this transition rule.¹ Comment 3 stated that any burden imposed on the Commission in maintaining two sets of thresholds is vastly outweighed by the burden on the parties who are required to prepare filings and pay additional filing fees, and the burden on the agencies in reviewing these additional filings, which were previously exempt for up to an additional four years. Comment 8 similarly claimed that the burden to the parties would outweigh the burden on the Commission and also expressed concern that the short notice prior to effecting the rule was unfair to parties who had filed recently with the good faith expectation that they would have five years to acquire additional securities. Comment 9 suggested that the transition rule remain unchanged, but that the full five-year period should be extended to acquisitions where a filing was made for an acquisition valued in excess of a 2001 threshold and the subsequent acquisition would not cross another 2001 threshold. For example, if "A" acquired \$60 million of B's voting securities and filed indicating the \$15 million notification threshold, "A" should be able to acquire up to \$100 million of B's voting securities during the five-year period without a new filing. Comments 13 and 15 recommended elimination of the transition rule as an adjunct to restoring intermediate percentage notification thresholds.

The Commission agrees that any burden in administering two sets of notification thresholds for five years may well be outweighed by the burden to transitional filers. Therefore, the final rule restores to parties who filed prior to February 1, 2001, the full five-year period following expiration of the waiting period to acquire up to the next notification threshold that was in effect at the time of filing. With this modification, the change suggested by Comment 9 becomes unnecessary.

Administrative Procedure Act

The Commission has previously solicited public comment on this rule

¹ Ford Motor Company (Bolerjack, Stephen D.) (Comments 3, 3/19/01); National Association of Manufacturers (NAM) (Comment 8, 3/29/01); O'Melveny and Myers (Beddow, David T.) (Comment 9, 3/19/01); Section of Antitrust Law of the American Bar Association (Comment 13, 3/19/01); Skadden, Arps, Slate, Meagher & Flom, LLP (Stoll, Neal R., Esq., et al.) (Comment 15, 3/19/01).

provision. Since the Commission believes that this final rule adequately addresses the commenters' concerns, the Commission finds that further public comment is unnecessary. See 5 U.S.C. 552(b)(3). Although the Commission believes this rule is strictly procedural in nature, to the extent, if any, that it is substantive, the Commission believes it grants or recognizes an exemption and relieves a restriction that would have taken effect upon expiration of the time period that was set forth in interim § 802.21(b). See 5 U.S.C. 553(b)(B). Accordingly, the Commission is adopting this rule as final and effective upon publication and will apply it retroactively to February 2, 2002, in order to ensure the continuity and clarity of the filing procedures that apply to transitional filers, as explained above.

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.

Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Further, this rule amendment does not expand the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501-3518, requires agencies to submit requirements for "collections of information" to the Office of Management and Budget ("OMB") and obtain clearance prior to instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The HSR premerger notification rules and Form contain information collection requirements as defined by the PRA that have been reviewed and approved by OMB under OMB Control No. 3084-0005. This final rule implements amendments to section 7A of the Clayton Act, which reduces the burden of the premerger reporting

program by exempting all transactions valued at \$50 million or less. Because this final rule does not affect the information collection requirements of the premerger notification program as implemented by the interim rules, it has not been resubmitted to OMB under the PRA for review.

List of Subjects in 16 CFR Part 802

Antitrust, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 802 as follows:

PART 802—EXEMPTION RULES

1. The authority citation for part 802 continues to read:

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

2. Amend § 802.21 by revising the text of paragraph (b) preceding the examples; by removing example 2; by redesignating examples 3 and 4 as examples 2 and 3 respectively; and by revising examples 1 and newly redesignated examples 2 and 3 to read as follows:

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

* * * * *

(b) *Year 2001 transition.* For transactions filed using the 1978 thresholds where the waiting period expired after February 1, 1996, an acquiring person may, during the five-year period following expiration of the waiting period, acquire up to what was the next percentage threshold at the time it made its filing without filing another notification, even if in doing so it crosses a 2001 notification threshold in § 801.1(h) of this chapter. However, after the end of that period, any additional acquisition will be the subject of a new notification if it meets or exceeds a 2001 threshold in § 801.1(h) of this chapter.

Examples: 1. Corporation A filed to acquire 20 percent of the voting securities of corporation B and indicated the 15 percent threshold. The waiting period expired on October 3, 1999. "A" acquired the 20 percent within the year following expiration of the waiting period. "A" has until October 3, 2004, to acquire additional securities up to 25 percent of "B"'s voting securities, and need not make another filing before doing so, even though such acquisition by "A" may cross the \$50 million, \$100 million or \$500 million notification threshold in § 801.1(h) of this chapter. After October 3, 2004, "A" and "B" must observe the 2001 notification thresholds set forth in § 801.1(h) of this chapter.

2. Prior to February 1, 2001, "A" filed to acquire 12 percent of the voting securities of corporation B, valued at \$120 million, and indicated the \$15 million notification threshold. After February 1, 2001, "A" determines that it will make an additional acquisition which will result in its holding 16 percent of the voting securities of B, valued at \$160 million. "A" is required to file notification at the \$100 million notification threshold prior to making the acquisition since it is now crossing the next higher 1978 threshold (15 percent).

3. Prior to February 1, 2001, "A" filed to acquire 26 percent of the voting securities of "B" and indicated the 25 percent notification threshold. After the end of the five-year period following expiration of the waiting period, "A" will acquire additional shares of "B" which will result in its holding 30 percent of the voting securities of "B", valued at \$125 million. "A" is required to file notification at the \$100 million notification threshold prior to making the acquisition. "A" could, however, have reached this level (30 percent valued at \$125 million) prior to the end of the five-year period without making an additional filing since it would not have crossed the next higher threshold at the time it filed (50 percent) and the acquisition would have been exempted by this § 802.21(b).

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02-6252 Filed 3-15-02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96-1-019;
Order No. 587-N]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued March 11, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations governing standards for interstate pipeline business operations and communications to require that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. Recalls of released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with

at least one opportunity to rescheduled any bumped volumes, which is similar to the protection afforded interruptible shippers. This rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The rule also will enhance competition by freeing up capacity that otherwise would not be released and creating greater parity between scheduling of capacity release transactions and pipeline interruptible service.

DATES: 1. The rule becomes effective April 17, 2002.

2. Pipelines must make tariff filings by May 1, 2002, to become effective by July 1, 2002, to provide shippers with the ability to recall scheduled and unscheduled capacity at the Timely and Evening Nomination cycles and to recall unscheduled capacity at the two other standard nomination times.

3. Comments are to be filed by the North American Energy Standards Board and others by October 1, 2002, regarding standards for implementing partial day or flowing day recalls. Reply comments must be filed by October 15, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-2294.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-1283.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-0507.

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