FEDERAL TRADE COMMISSION

16 CFR Parts 800 and 803

Notification and Report Form for Certain Mergers and Acquisitions Under the Antitrust Improvements Act

AGENCY: Federal Trade Commission. **ACTION:** Final rule.

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"). The Form must be completed and submitted by persons required to report mergers or acquisitions pursuant to Section 7A of the Clayton Act as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). The revised Form will require that 1992 revenue data, identified by 1987 Bureau of the Census Standard Industrial Classification (SIC) Codes, be provided in response to certain items on the Form that previously called for 1987 data. This final rule also removes 16 CFR part 800, the Transitional Rule addressing the treatment of acquisitions consummated before, and notifications filed on or before, September 5, 1978, the effective date of the Form and the rules implementing the HSR Act ("the Rules").

EFFECTIVE DATE: August 9, 1995.

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

FOR FURTHER INFORMATION CONTACT: William I. Schechter, Attorney, or Melea R. Epps, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Federal Trade Commission ("the Commission") has previously certified

that the Permerger Notification Rules and Report Form do not significantly affect small businesses. The revision to the Form made by this notice will not change the premerger notification rules in any way that would affect that determination. Therefore, pursuant to 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354 (September 19, 1980), the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. Section 604 of the Administrative Procedure Act, 5 U.S.C. 604, requiring a final regulatory flexibility analysis of this revision is therefore inapplicable.

Background Information

The HSR Act requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General of the Antitrust Division of the Department of Justice ("the Assistant Attorney General") and to wait a designated period of time before consummating such proposed transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require "that the notification * 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)(1988)).

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 (collectively referred to as "the enforcement agencies") with the information and documentary material necessary and appropriate for an initial evaluation of the potential anticompetitive effects 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 ordinarily will permit both enforcement agencies to determine whether the waiting period should be allowed to expire or be terminated 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 HSR Act to file

notification must complete the Form, or a photostatic or other equivalent reproduction, in accordance with the Rules, 16 CFR 801–803, and the instructions attached to the Form.

Statement of Basis and Purpose for the Commission's Revision of the Form and Removal of the Transitional Rule

Form Revision

To aid the enforcement agencies in determining the competitive significance of a proposed transaction, the Form requires parties to the transaction to provide information concerning their revenues for a given base year and for the most recent year for which revenue information is available. When the Form was first promulgated on July 31, 1978, 43 FR 33450, and became effective on September 5, 1978, it required data for 1972 as the base year.

The Form was revised in 1980 to require data for 1977 as the base year (45 FR 14205 (March 5, 1980)). In 1986, the Form was revised to require data for 1982 as the base year (51 FR 10368 (March 26, 1986)). Thereafter, a revision to the Form in 1990 changed the base year to 1987 (55 FR 31371 (August 2, 1990)). This notice changes the base year from 1987 to 1992 and requires revisions to the Form relating to the revenue information required by item 5 of the Form and the reference materials to be used in completing item 5, as discussed more fully below.

Item 5 of the Form is designed, in part, to elicit economic data classified by Standard Industrial Classification ("SIC") codes with respect to business activities within the U.S. in which the reporting person derived any dollar revenues in the base year and in the most recent year for which data are available. (Rule 803.2 (b) and (c), 16 CFR 803.2 (b) and (c), provide for certain limitations on item 5 and other data to be supplied by the reporting person). Such revenue data are 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) currently requires that the reporting person provide 1987 revenue data for each 4-digit industry in which that filing person was engaged. Item 5(b)(i) currently requires that the reporting person engaged in manufacturing provide 1987 revenue data for each 7-digit product code from which it derived any revenues. Item 5(b)(ii) currently requires the reporting person to identify each manufactured product that it has added or deleted since 1987. For those products added, the reporting