Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with British Aerospace Regional Aircraft Service Bulletin J41–11–020, dated November 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 015–11–97.

(e) This amendment becomes effective on July 30, 1998.

Issued in Renton, Washington, on June 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16703 Filed 6–24–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 802

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule with request for comments.

SUMMARY: This final rule amends the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and 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. The reporting and waiting period requirements are intended to 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. During the nineteen years the rules have been in effect, the Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust, has amended the premerger notification rules several times to improve the program's effectiveness and to lessen the burden of complying with the rules. This final rule amends Rule 802.70, which exempts from the reporting requirements acquisitions of stock or assets required to be divested by an order of the Federal Trade Commission or of any Federal court in an action brought by the Commission or the Department of Justice. As amended the Rule will exempt as well divestitures pursuant to consent agreements that have been accepted by the Commission for public comment or have been filed with a court by the Commission or the Department of Justice and are subject to public comment, but are not yet final orders. These transactions are adequately reviewed for potential antitrust concerns during the approval process under the consent agreement, in which the antitrust agencies determine that the divestiture to that party does not raise antitrust concerns. The Commission has thus made this change to Section 802.70 because such acquisitions are unlikely to raise antitrust concerns.

The Commission has made this final rule without notice and comment because notice and comment would be unnecessary and the delay in implementing the rule would be contrary to the public interest. Section 802.70 already exempts from the reporting requirements transactions that satisfy divestiture requirements under Commission or Court orders in cases brought by the Commission or the Department of Justice. The amendment merely extends the exemption to transactions entered into before the relevant order has been made final. Whatever delay and cost result from the HSR reporting requirements are contrary to the public interest where the antitrust agencies already have notice of the transaction and have completed their review.

Notice and comment in this matter are unnecessary because the Commission has already exempted acquisitions pursuant to a final divestiture order, and there is no relevant difference between the two situations. The agencies in each case already have all the notice and information they would otherwise obtain under HSR. No other person has access to or interest in the information provided under HSR, and therefore no other person has an interest in ensuring a filing in these circumstances.

DATES: This final rule is effective on June 25, 1998. The Commission will, however, accept comments on the revised rule that are received on or before July 27, 1998, and may reevaluate the rule in light of those comments.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 159, Washington, D.C. 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington DC 20530.

FOR FURTHER INFORMATION CONTACT: Roberta S. Baruch, Deputy Assistant Director, Bureau of Competition, Room S–2115, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2687.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendment on small businesses.

The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 provides, however, that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 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. Furthermore, the amendment will merely exempt companies from Hart-Scott-Rodino reporting requirements for certain transactions. Accordingly, pursuant to the Regulatory Flexibility Act provisions of the Administrative Procedure Act, 5 U.S.C. 605(b), the Federal Trade Commission has certified that this rule 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 these rules; is therefore, inapplicable.

Paperwork Reduction Act

The premerger notification rules and report form contain information collection requirements that have been reviewed and approved by the Office of Management and Budget under OMB Control Number 3084–0005. The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires agencies to submit requirements for ''collections of information'' to OMB and obtain

clearance prior to instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The proposed amendment does not impose any such requirements beyond those that have already been approved by OMB. The amendment will exempt reporting requirements for transactions that have been made pursuant to consent agreements that have been accepted by the Commission for public comment or that have been filed with a court by the Commission or the Department of Justice for public comment, but that are not yet final orders. This revision will eliminate an unnecessary burden in connection with these acquisitions and will generally provide some reduction of the Paperwork Reduction Act burden currently associated with the Rule.

Background

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by §§ 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''the act'' or ''HSR''), requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as ''the Commission'') and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as ''the Assistant Attorney General''), and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of § 7A. This amendment to the Clayton Act did not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress expressly intended to eliminate the large ''midnight merger,'' which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (who are sometimes hereafter referred to collectively as the ''antitrust agencies'' or the ''enforcement agencies'') to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful.

Thus, the act requires that the antitrust agencies receive prior notification of certain acquisitions; provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of those acquisitions; and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it, reducing the problem of unscrambling the assets after the transaction has taken place.

Subsection 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 the 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. Subsection 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: (a) define the terms used in the act; (b) exempt additional classes of persons or transactions which are not likely to violate the antitrust laws from the act's notification and waiting period requirements; and (c) prescribe such other rules as may be necessary and appropriate to carry out the purposes of § 7A.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules. Changes of a substantive nature have been made in the premerger notification rules or Form on nine occasions since they were first promulgated.

The Commission recognizes that the premerger notification obligations can create delay and impose the cost of the filing fee even for acquisitions that do not raise competitive concerns, and that this delay and cost can impose burdens on buyers and sellers. The delay that occurs is the necessary consequence of preventing consummation while the antitrust agencies assess the likelihood that proposed transactions will violate the antitrust laws. The special treatment of cash tender offers in section 7A(b)(1)(b) of the Act illustrates congressional concern to avoid unnecessary disruption of the operation of the market for corporate control. *See* 122 Cong. Rec. H. 10,293 (daily ed. Sept. 16, 1976). In addition, the Commission has tried to minimize any unnecessary disruptive effect of premerger review by the design of its procedures and the speed with which it reviews proposed transactions and in a majority of transactions grants early termination of the waiting period. Moreover, whenever the Commission can determine that a class of transactions is unlikely to violate the antitrust laws, it has sought, with the concurrence of the Assistant Attorney General for Antitrust, to exempt such transactions from all notification obligations and the delay and cost inherent in premerger review.

Statement of Basis and Purpose for the Commission's Revised Premerger Notification Rules

The Commission, with the concurrence of the Assistant Attorney General, promulgates this amendment pursuant to 15 U.S.C. 18a(d).

Section 802.70 of the Rules exempts from the reporting requirements acquisitions of assets or voting securities from an entity required to divest such assets by order of the Federal Trade Commission or of any Federal Court in an action brought by the Federal Trade Commission or the Department of Justice. The agencies have recognized that there is no need for filing under HSR in these circumstances. Under existing procedures the agencies already review divestitures required by final orders. This review gives the agencies the full opportunity to weigh the competitive impact of the proposed transaction prior to consummation and to prevent the transaction if appropriate, the same goal that HSR was designed to accomplish.

Both the Commission's Rules of Practice and the Antitrust Procedures and Penalties Act require a proposed settlement to be published in the **Federal Register** for a 60-day public comment period. Proposed orders thus do not become final until at least 60 days following their acceptance by the parties and the antitrust agencies, and therefore the exemption created by section 802.70 of the Rules does not apply to any divestiture that might be made during the period between acceptance of a settlement and issuance of a final order, even if such divestiture were to an acquirer and according to a

contract that is specified in the proposed settlement.

Recently, the Commission has been shortening the time period in which divestiture is to take place and has more frequently included specific approved acquirers and reference specific divestiture agreements in proposed orders when the Commission accepts proposed orders for public comment. This trend has increased the likelihood that the divestiture transaction will occur before there is a final order requiring divestiture. In these circumstances, Rule 802.70 as written, because it applies only to final orders, does not provide an exemption. Nevertheless, the same reasons to exclude from the HSR filing requirements divestitures after the order is entered also apply in cases where the proposed order identifies the acquirer and the divestiture contract. The agencies have already had an opportunity comparable to that which HSR provides to weigh the competitive impact of proposed transaction and to approve or disapprove the transaction. There is therefore no need for a separate HSR filing.

The Federal Trade Commission believes that an acquisition of assets or voting securities pursuant to the terms of a proposed order of divestiture is unlikely to violate the antitrust laws and that exempting such acquisitions is necessary and appropriate to carry out the purposes of the act. Accordingly, the Commission has amended § 802.70 of its premerger notification rules to exempt such acquisitions from premerger reporting requirements.

The following section outlines briefly the rationale for this rulemaking. Subsequent sections discuss certain key issues concerning the Commission's authority to promulgate § 802.70, and the nature of the new rule.

Statement of the Underlying Problem

The purpose of section 7A of the Clayton Act is clear: to give the antitrust agencies an opportunity to determine whether a proposed acquisition might violate the antitrust laws and an opportunity to challenge any such transaction prior to consummation. At the same time, the program is not without cost, including the cost of filling out the form, filing fees, delaying transactions and otherwise. For transactions that do not rise significant issues under the antitrust laws these costs can be particularly burdensome. The Commission has continually reviewed the premerger notification program in an effort to increase its efficiency and decrease the burden on filing parties. This rulemaking proceeding is part of this effort.

Analysis of Proposed Revised Rule 802.70

Revised rule 802.70 exempts completely from HSR premerger notification requirements acquisitions pursuant to a divestiture order once the order is accepted by the Commission for public comment or is filed with the Federal court for public comment. It does so because the Commission believes that such transactions, having received a full review and been accepted by the Commission or the Antitrust Division, are not likely to violate the antitrust laws and because exempting such acquisitions is necessary and appropriate to carry out the purposes of the act.

In deciding to revise rule 802.70, the Commission relied upon its own extensive merger enforcement experience, as well as that of the Antitrust Division of the Department of Justice.

Congress expressly has authorized the Commission, with the concurrence of the Assistant Attorney General, to ''exempt from requirements of [the act], classes of * * * transactions which are not likely to violate the antitrust laws.'' Section 7A(d)(2)(B) of the Act. The finding required by the statute can be demonstrated in different ways. The Commission can exempt a class of transactions because that class of transactions is inherently unlikely to be anticompetitive. Acquisitions pursuant to divestiture orders are inherently unlikely to be anticompetitive. Such transactions are already subject to the approval of the agencies and such approval would not be granted if the transaction would be anticompetitive. This is true whether or not the divestiture order is final. Accordingly, there is no need for a separate HSR filing.

List of Subjects in 16 CFR Part 802

Antitrust.

Final Rule

The Commission amends Title 16b Chapter I, Subpart H, The Code of Federal Regulations as follows:

PART 802—EXEMPTION RULES

1. *Authority.* The authority citation for Part 802 continues to read as follows:

Authority: Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94–435, 90 Stat. 1390.

2. Section 802.70 is revised to read as follows:

§ 802.70 Acquisitions subject to order.

An acquisition shall be exempt from the requirements of the act if the voting securities or assets are to be acquired from an entity pursuant to and in accordance with:

(a) An order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice;

(b) An Agreement Containing Consent Order that has been accepted by the Commission for public comment, pursuant to the Commission's Rules of Practice; or

(c) A proposal for a consent judgment that has been submitted to a Federal court by the Federal Trade Commission or the Department of Justice and that is subject to public comment.

Donald S. Clark,

Secretary.

[FR Doc. 98–16954 Filed 6–24–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8773]

RIN 1545–AV62

EIC Eligibility Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and wish to claim the EIC in a subsequent year. The temporary regulations apply to taxpayers claiming the EIC for taxable years beginning after December 31, 1997, where the taxpayer's EIC claim was denied for a taxable year beginning after December 31, 1996. The text of these temporary regulations also serves as the text of proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective date:* June 25, 1998.

Applicability dates: For dates of applicability, see § 1.32–3T(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202–622–6060 (not a toll-free number).